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**Theo Gavrielides**

**Restorative Justice Theory and Practice:  
Addressing the Discrepancy**

Helsinki 2007

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"I encourage you to read Dr. Gavrielides' book on restorative justice that examines the disconnect between theory and practice in this field. I believe it is an important book that reminds those of us who are engaged in criminal justice reform to regularly take stock of the direction of the restorative justice movement."

Lisa M. Rea  
President and Founder  
The Justice & Reconciliation Project, USA

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"In a time when restorative justice has been embraced with unbridled enthusiasm by virtually every criminal justice network and dispute resolution stakeholder outside of the criminal justice system, Theo Gavrielides presents us with an original, comprehensive, and essential examination of the subject. This work should be read by anyone and everyone who is the least bit interested in the future health of the restorative justice movement."

John Winterdyk, Ph.D.  
Department of Justice Studies  
Chair, Mount Royal College, Canada

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"Theo Gavrielides has provided a constructive and thought-provoking contribution to our understanding of the dynamics of one of the most significant contemporary developments in thinking about criminal justice."

Professor Nicola Lacey, LSE, UK

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"The rapidly increasing numbers of people incarcerated in UK prisons is a clear demonstration that imprisonment alone does not work to reduce reoffending. Restorative Justice offers society the opportunity to deal with crime in a grown up and effective way and this important book by Theo Gavrielides provides the reader with extensive research on the subject as well as examples of good practice. This excellent book is highly recommended".

Tony Shepherd MBA RN FInstD C.Dir  
Chief Executive  
Safer London Foundation, UK

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This book makes a clear case for the use of restorative justice through such methods as victim-offender mediation, family group conferencing and community restorative boards... the book pushes the boundaries for restorative justice as it examines its application with regard to hate crime and sexual offending cases. It also carries a warning that if restorative justice is not supported in a way that respects its core values it will soon be watered down and disappear – that in itself would be a crime."

Dinah Cox  
Chief Executive  
Race On The Agenda

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"Restorative justice is a noble concept, but if the actual practice does not match the ideal, it could be discredited. That would be a great loss. Theo Gavrielides has brought together some challenging thoughts about this danger..."

Martin Wright, European Forum of restorative justice and Restorative Justice Consortium, UK and EU

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It is a concise, engaging, innovative and informative book for practitioners and scholars. This comprehensive introduction to restorative justice provides a much-needed textbook for an increasingly popular area of study and practice, which can be used as a basis for further theoretical development and elaboration on the concept's limitations and accountability.

Dr. Effi Lambropoulou  
Professor of Criminology  
Department of Sociology  
Panteion University of Social and Politic, Greece

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Dr. Theo Gavrielides' book provides a special journey from the underlying theoretical foundations to the daily practice of restorative justice. By his thought-provoking and critical approach, he gifts the restorative justice field with an essential analysis that bridges theory and practice in an interdisciplinary and multisectoral way.

Borbala Fellegi, researcher and lecturer at the ELTE University, consultant of the Ministry of Justice in Hungary in the field of restorative justice, Hungary

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As a restorative justice practitioner for ten years, I continue to be impressed with the in-depth research Theo Gavrielides does in the field of restorative justice. He meets the challenges with provocative and cutting edge topics directly and succinctly... The struggle of theory vs. practice has been a difficult one in the field since restorative justice began mostly with practice. Gavrielides approaches this struggle with wisdom of historical roots and with encouragement that restorative justice is developing theory to catch up with practice.

Linda Harvey  
Program Director and Founder of the Restorative Justice Council on Sexual Misconduct in Faith Communities, USA

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# Contents

<b>Foreword</b> .....	<b>11</b>
Restorative Justice Theory and Practice - Problem Statement .....	13
Impetus for the Book .....	14
Methodology and Organisation of the Book.....	17
Acknowledgements.....	18
<b>PART ONE: ARGUING AND ANALYSING THE RESTORATIVE JUSTICE LITERATURE</b> .....	<b>19</b>
Restorative Theory and Practice in Context .....	20
Understanding the 'Restorative Justice Theory' through Contemporary Writings: 1970s-today.....	21
Understanding the 'Restorative Justice Practice'.....	29
Victim-Offender Mediation .....	31
Family Group Conferences .....	33
Healing and Sentencing/Peacekeeping-peacemaking Circles .....	34
Community Restorative Boards .....	35
Restorative Justice: the Perplexing Concept.....	36
Conflicts in Conception: Six Fault-Lines within the Restorative Justice Movement .....	36
Restorative Justice: a New Paradigm or a Complementary Model? .....	38
A Place for Restorative Justice Practices: within or Outside the Criminal Justice System? .....	39
A Definition for Restorative Justice: Process-based or Outcome-based? .....	40
Stakeholders in Restorative Justice: How Big should the Circle be? .....	41
Restorative Justice: an Alternative Punishment or Alternative to Punishment? .....	41
The Restorative Justice Principles and their Flexibility .....	42
Striking an Accord .....	43
Tony Marshall's Definition.....	44
Definition by the 'Working Party on Restorative Justice' .....	45
Ron Claassen's Principles .....	47
A Definition by the United Nations .....	47
Declaration of Leuven.....	49
The Victim-Offender Mediation Association (VOMA) Guidelines.....	50
The Restorative Justice Consortium Principles.....	50
David Miers' Findings .....	51
The International Dimension of Restorative Justice: from Theory to Policy & Practice .....	52

Restorative Justice In Policy Making: National Experiences .....	53
New Zealand .....	54
Canada.....	59
Australia.....	62
England and Wales.....	64
Restorative Justice in Policy Making: International Experiences.....	72
Regional Restorative Justice: The Example of Europe .....	72
Council of Europe .....	72
European Union .....	74
Other European Institutions .....	75
International Restorative Justice .....	76
Restorative Justice and the United Nations.....	76
Restorative Justice and Paramilitaries in Northern Ireland .....	77
Restorative Justice and Rwanda.....	78
Critical Reflections .....	79
<b>PART TWO: MEASURING THE GAP BETWEEN THE RESTORATIVE JUSTICE THEORY AND PRACTICE.....</b>	<b>81</b>
Findings from Survey I: the International Practitioners' Account .....	82
Presenting the Crude Evidence from Survey I.....	82
Questions of Methodology.....	85
Questions on the Use and Meaning of Restorative Justice .....	87
Questions on the Theoretical and Practical Development of Restorative Justice .....	106
Questions on the Past and Future Development of Restorative Justice.....	112
Assessing the Findings of Survey I against the Extant Literature .....	123
The Impact of Restorative Justice on Victims: An Account of the Literature .....	124
Victim Satisfaction.....	124
Victim Monetary-material Compensation.....	125
Victim Non-material Compensation .....	126
Victims' Overall Restoration .....	127
The Impact of Restorative Justice on Offenders: an Account of the Literature .....	128
Reduction of Re-offending.....	128
Offenders' Satisfaction and Overall Restoration.....	129
The Impact of Restorative Justice on Communities: an Account of the Literature .....	130
Concluding Remarks.....	131
Analysing and Triangulating the Findings of Survey I.....	133

The Findings: Problems in the Practical and Theoretical Development of Restorative Justice .....	133
Confusion Around the use and Meaning of Restorative Justice.....	133
Issues of Training, Education and Accreditation .....	140
Funding Restorative Justice Work: the Realities of the Voluntary and Community Sector .....	143
'Data Triangulation' .....	147
'Triangulating' the Findings on the Conceptual Conflicts.....	148
'Triangulating' the Findings on Training and Accreditation.....	151
'Triangulating' the Findings on Funding .....	154
Findings from Survey II: The UK Practitioners' Account .....	155
Problems in the Practical and Theoretical Development of Restorative Justice: A Follow-Up .....	157
Confusion around the Use and Meaning of Restorative Justice.....	157
Issues of Training, Education and Accreditation .....	164
Funding Restorative Justice Work: The Realities of the Voluntary and Community Sector .....	172
Two Additional Problems in the Practical and Theoretical Development of Restorative Justice.....	177
The Implementation of the Restorative Justice Victim-related Principles .....	177
The Implementation of the Principle of Voluntariness .....	184
<b>PART THREE: PUSHING THE BARRIERS – FINDINGS FROM SURVEY III AND IV ON THE APPLICATION OF RESTORATIVE JUSTICE WITH HATE CRIME AND SEXUAL OFFENCES.....</b>	<b>187</b>
Restorative Justice and Hate Crime: Addressing the Gap between Theory, Policy and Practice.....	188
<i>Dr. Theo Gavrielides, Lewis Parle Baber Khan and Ryan Honeyman</i>	
Deconstructing Hate Crime.....	188
Defining Hate Crime.....	190
Understanding Hate Crime and its Causes .....	191
Policies and Legislation on Hate Crime: An International Approach .....	195
Is Restorative Justice a Viable Option for Hate Crime? .....	197
Findings from Survey III: A Hate Crime Case Study.....	201
Case Studies from Around the World: Addressing Hate Crime through Restorative Justice.....	201
Case Study from Minnesota, US – Just Schools .....	201
Case Study from Israel - Intercommunity Relations .....	203
Case Study from London, England – Southwark Mediation Centre .....	204
Case Study from London, England - The Metropolitan Police Authority London-Wide Race Hate Crime Forum .....	205
Case Study from Oregon, US – Post September 11th Hate Crime.....	206
Case Study from Slough, England – Aik Saath.....	208
Case study from Southwark, England – Police, Partners and Community Together in Southwark (PPACTS).....	208

Case Study from Lambeth, England: Restorative Approaches in Schools Project.....	209
Findings and Recommendations from Survey III.....	210
Concluding Remarks.....	214
Restorative Justice and Sexual Offending: Resolving the Catholic Church's Sexual Scandals through Restorative Justice..... <i>Dr. Theo Gavrielides and Dale Coker</i>	215
Sexual Scandals in the Catholic Church: a Case Digest.....	217
A New Understanding: the Restorative Way.....	223
Three Successful Case Studies from Survey IV.....	228
Concluding Remarks.....	232
<b>PART FOUR: CRITICAL REFLECTIONS .....</b>	<b>234</b>
Mind the Gap Between the Restorative Justice Theory and Practice .....	235
Looking Down into the Gap .....	236
Concluding Remarks.....	244
A Way Forward: Recommendations for the Restorative Justice Movement.....	245
Addressing the Conceptual Conflicts of Restorative Justice at the Micro-Level .....	246
Addressing the Conceptual Conflicts of Restorative Justice at the Macro-Level.....	249
Accreditation - Training - Guidance .....	254
Evaluating the Evaluation of Restorative Justice.....	256
Funding Restorative Justice .....	259
<b>Conclusion .....</b>	<b>264</b>

<b>APPENDIX I: Original Sample of Survey I.....</b>	<b>269</b>
<b>APPENDIX II: Final Sample of Survey I.....</b>	<b>274</b>
<b>APPENDIX III: Sample of Survey II.....</b>	<b>276</b>
<b>APPENDIX IV: Sample of Survey III &amp; IV.....</b>	<b>278</b>
<b>APPENDIX V: Chronology of Sexual Abuse Cases Against the North American Catholic Church.....</b>	<b>280</b>
<b>Bibliography .....</b>	<b>283</b>



## Foreword

The underlying assumption of the current criminal justice system is that criminal conflicts are community matters and hence they should be aired and managed in a manner that brings 'just deserts' and also sends a message to avoid similar acts. Although some may argue that there is nothing wrong with this philosophy per se, factors such as court caseload, prison population, costs and recidivism often shift the focus of the criminal justice system from delivering justice to 'processing cases'. This type of justice disregards the needs of victims while it pays little attention to offenders' reintegration.

It is easy to assume that retribution has always been the underlying philosophy of criminal justice systems worldwide, whether adversarial or inquisitorial. Historians would easily argue against such an assumption. One attempt to bring a fresh approach to the way we view and deal with antisocial behaviour is reflected in the writings and practices of reformers from around the world who in the 1970s wished to introduce a new model of criminal justice called restorative justice.

Since then restorative justice has caused a phenomenon of global interest stemming from a number of stakeholders both within and outside the criminal justice system. The hard work of passionate and dedicated practitioners is to be credited for this success. In the shadow of the law and with little or no financial or state support they make restorative justice an available option to those who seek it. Their views, fears and needs, however, are rarely recorded by the literature.

On the other hand, the pace in which different theoretical claims and normative aspirations have been generated to support restorative justice practices has been unprecedented. However, the application of restorative justice does not seem to catch up with these promises. Many practitioners in the field fear that the extant literature might not be in accordance – or at least at the same speed – with the practical development of the restorative notion. More importantly, they seem to pay none, or little attention to their alarming warnings as they become increasingly concerned about a developing gap between the well-intended normative understandings of restorative justice and its actual implementation.

This book was written to give the opportunity to restorative justice practitioners to identify problems that they faced during implementation and which could help understand the gap that appears to exist between the theoretical and practical development of restorative justice.

To this end four original surveys were carried out through a combination of various qualitative methodologies. Over a period of seven years, this study aimed to understand the alleged gap by unravelling its implications for practice and the future development of restorative justice. The research aimed at producing evidence that would benefit the wider restorative movement and hence it avoided focusing on any particular criminal justice system. Practitioners from around the world kindly offered their expertise by responding to long questionnaires, attending interviews and focus groups and by giving detailed feedback on early drafts of this book.

While carrying out the research, I witnessed a power-interest battle within the restorative movement, which included not only different professionals (e.g. practitioners vs theoreticians), but also types of practices (e.g. mediation vs family group conferencing) as well as fundamental restorative justice principles (e.g. voluntariness vs coercion). Although constructive debates are always essential for the advancement of criminal justice doctrines, it is my conclusion that if the restorative movement does not restore its own power struggles, the consequences will be severe. This book collects some evidence that bears evidence to this claim and posits recommendations on how to reconcile our different views and practices as 'restorativists'.

Restorative justice was reborn not out of formal structures and legislation, but of voluntary action by enthusiastic and dedicated practitioners from around the world. As the restorative tradition is now expanding to deal with crimes, ages and situations that it has never addressed before and as it starts to make sense in national, and also regional and international fora, the responsibilities of both restorative justice practitioners and academics redouble. Bridges must be built in order to synthesise. The tensions characterising the field have to congeal to create a stable platform. Awareness must be increased both at the macro and micro level. This book aspires to respond to this urgent need.

## RESTORATIVE JUSTICE THEORY AND PRACTICE – PROBLEM STATEMENT

*[Katy Hutchison remembers a magical evening, celebrating the last few hours of 1997 with her husband, Bob McIntosh, and a few close friends at their home. “At one point, I looked around the room at everyone and I thought: There is no place on earth I would rather be at that particular moment”, Ms. Hutchison recalls. As midnight neared, however, Mr. McIntosh became worried about a rowdy house party down the road where he knew the owners were away. He went over with a few of their guests to try to calm things down. “They walked out the door and that was the last time I ever saw Bob,” Ms. Hutchison told a rapt audience of 500 high-school students... Mr. McIntosh was killed during a sudden, savage assault by two local intoxicated 19-year-olds. Resenting his suggestion that they close the party down, one knocked him out with a single punch. The other man, Ryan Aldridge, delivered five fierce kicks to his head. An artery to Mr. McIntosh’s brain was severed and within minutes, he was dead, leaving Ms. Hutchison and their four-year-old twins.*

*In the spring of 2002, Mr. Aldridge admitted his involvement to an undercover agent, and was arrested. He refused to repeat his confession, however, until police played a tape from Ms. Hutchison imploring him to accept what he did and seek forgiveness. There have been too many tears shed since for anyone to doubt Mr. Aldridge’s sincerity... The two have met twice face-to-face. He has consistently expressed deep remorse over his actions. Ms. Hutchison calls their first encounter the most intense human experience of her life. Last month, she spent five hours with Mr. Aldridge...reporting happily that there was “a twinkle in his eye” when he was not overcome by the guilt and regret still ruling his emotions. “There was a salvageable person who wanted to move ahead with his life and who was remorseful,” Ms. Hutchison said.*

*Mr. Aldridge is now serving a five-year term for manslaughter and hardly a day goes by when Ms. Hutchison does not think about him and wonder how he is doing. He is almost part of the family. At a recent meal, she wondered what Mr. Aldridge was eating in prison. Her second husband likes to joke that Mr. Aldridge is his wife’s third child.*

*To critics who question her forgiveness of the man who took her husband’s life, Ms. Hutchison said, “Anger is a dead end. We do have choices...I chose to move ahead and I am going to help Ryan move ahead too...Not one thing remained the same for me, except I had two young children and the next morning they wanted Cheerios...I had this feeling I was the only one in control. I thought: how am I not going to make my life about this?” Many in her school audiences are stunned by her compassion. “They can’t understand where I am coming from,” she said. “But when I look into my*

*children's eyes, I am always reminded that everyone has to be given a chance*"<sup>1</sup>.

The experience of Ms. Hutchison is an example of a case managed by criminal justice systems around the globe using the ideology of restorative justice (hereafter RJ). Unquestionably, RJ has finally gathered some real momentum. To begin with, it attracted the interest of many reformers and policy makers particularly those working within the voluntary and community sector. RJ also captured the imagination and determination of many dedicated practitioners, who with their personal commitment and hard work made it available in a number of justice systems worldwide. Subsequently, it inspired many academics the writings of whom continue to expand. RJ has now become a top policy area in many national and international agendas. It has been applied and discussed in a variety of contexts throughout the world's legal systems, including educational institutions, interpersonal and organisational conflicts, public disorders and criminal justice cases. This book will focus on the latter.

The writings on RJ's application within the criminal justice context have been numerous and their contribution profound. However, as the restorative practice expands to deal with crimes, ages and situations it has never addressed before, at least in its contemporary version, and as it starts to make sense not only to national, but also to regional and international fora, new questions are posed. The question that this book aims to address is critical for RJ's future development.

## IMPETUS FOR THE BOOK

The impetus for this book came from a basic observation. After talking with several practitioners in the RJ field at home and abroad, observed that despite their many disagreements around a number of issues (such as what constitutes a genuine restorative practice, what the primary RJ principles are or even what RJ really is), there was at least one view that was shared by everyone without exception: the normative restorative concept, as it is currently reflected in the numerous volumes of theoretical and historical writings, is not in accordance with the way RJ is currently applied. The various problems faced by RJ practitioners do not seem to fit with the impressive literature in the field and the many theories that have been developed on RJ's potential. Many of these writings portray RJ as the new 'big thing' in the policy agendas of

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<sup>1</sup> The case was taken from Mickleburgh 2003. It has attracted the public interest in many countries, and appeared in various versions in newspapers, magazines and online articles e.g. O'Connor; November 17, 2003. Ms. Hutchison, who was contacted by this study, gave her consent for her case to be included in the book.

our Western societies and the basis for a paradigm change in the way we view and approach criminal justice or even justice. The harsh reality is that RJ practitioners are often left without state support, guidance or coordination, striving to find the means to continue practising. Therefore, their fears and the theoreticians' proclamations of a new criminal justice era do not seem to add up.

Admittedly, it was not until recently that the RJ movement took a step back to attempt a self-critique and evaluate the fast-growing literature on RJ. Some authors even identified the aforementioned discrepancy. This is what came to confirm my fears. For example, many who have been associated with RJ's development from its earliest days now view its growth with a certain degree of suspicion (Braithwaite 1999; Zehr 1989). What triggered their concern was the growing diversity of opinions in what constitutes RJ theory and practice. According to these writings, RJ theory is sometimes stretched to fit elements that are not restorative in nature, whereas, on other occasions, it is narrowed down to a notion that cannot take in all the essential features that characterise its thought (Walgrave 2001; Zehr and Mika 1998). This also seems to be true for its practice, which is not always founded upon RJ's core principles. Nine years ago, Sullivan, among others, saw these problems and the way RJ is developed as its first "potential step toward [its] demise" (Sullivan et al. 1998, 7). The timing of this study is critical for the future of RJ as it aims to examine these fears and provide evidence based solutions to them.

For example, how is this discrepancy interpreted in practical terms? What does it mean for restorative practices? What are the exact practical areas that are affected by it? Are practitioners aware of the many writings in the field? And if they are, then why are they not using them? How can the normative work be used to overcome this pitfall? What about the RJ Standards and Principles that have been produced at both national and international levels?

Questions such as the ones above led me to assume that there is a gap between the way RJ's theory and practice have developed since the 1970s. This constituted the study's underlying hypothesis and focus of investigation. This inconsistency concerns not only the different chronological starting points after which the RJ theory and practice re-appeared, but also something far more complex. The hypothesis mainly refers to a discrepancy that seems to exist between the priorities, outcomes and processes of the various practices that are labelled 'restorative justice' and the abstract theoretical norms and principles that constitute RJ's normative and historical notion.

Claims that have been made in the past were never tested with empirical research (Daly and Imarrigeon 1998; Harris 1998; Smith 1998; Sullivan et al. 1998; Zehr and Mika 1998). As a result, they remain either assumptions of various theoretical writings or

observations of practitioners that were never validated. On the other hand, suggestions that were put forward to address them can only be valued as ideas in abstracto. The need for an ad hoc study, which could provide the empirical evidence to test these assertions, was therefore identified. This could reveal the factors that are causing this discrepancy, and identify its practical implications. For the RJ movement to advance and reach its potential, the alleged discrepancies between its theory and practice have to be bridged.

I will not speak for or against RJ. The many writings in the field well cover RJ's advantages and disadvantages in relation to the traditional criminal justice system. Secondly, I do not wish to question the theoretical or philosophical arguments surrounding the validity and ethical legitimacy of RJ's theory or practice<sup>2</sup>. For the purposes of its research, I accept all these matters a priori and move on to investigate RJ not as an opponent or advocate, but as an outsider appraiser. Thirdly, I will not investigate matters that concern RJ's substance. The various aspects of RJ's content as a theory or as a practice do not constitute the focus of this research. For example, I will not ask questions such as "what are the aims of RJ" or "what are its limits". On the contrary, I will seek to investigate matters such as "are these aims, as they currently appear in the literature, compatible with the goals of practice and vice versa"? "Do RJ theory and practice share the same limits?"

To conclude, I will neither try to sell nor condemn RJ, but rather to identify what has gone wrong with its development so that it can be better used in the future. However, I do not believe in any constant or superiority models; nevertheless I do hope that practical ways can be found to advance an RJ orientation. I am particularly sceptical of hasty findings that present RJ to be a fully-fledged criminal justice alternative, disregarding the extant data literature and the evidence which is still accumulating. I also accept that normative accounts can never be fully reflected in practice. Hence, I do not simply aim to observe the space that the alleged gap creates between RJ's theory and practice. It is easier to find disciplines where theory and practice developed inconsistently rather than fields of study where normative values developed in absolute agreement with practices. Therefore, I will ask: "How is this gap understood in practical terms?" "If it is indeed existent, then how is practice affected by it?" "What are the exact areas that have been negatively affected?" "What are the particular factors that seem to be causing them?" "Have these problems led to any additional practical or theoretical implications?" And finally, "Is there a way to bridge the space it creates?"

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<sup>2</sup> For a detailed analysis of RJ's philosophical justification see Theo Gavrielides (2005) "Some Meta-theoretical Questions for Restorative Justice", 18:1 Ratio Juris, pp. 84-106.

## METHODOLOGY AND ORGANISATION OF THE BOOK

To address these questions, a combination of theoretical analysis and empirical research was attempted. Desk research was first carried out to look into the development of the practical and theoretical concepts of RJ. This provided a descriptive account that put the terms 'restorative justice theory' and 'restorative justice practice' in context and set up the study's conceptual framework. Attention was given to the variation that seems to exist in the RJ conception as well as the implications of RJ's expansion into the international arena.

The desk research was then followed up with four original surveys. Various qualitative methodologies were used to collect the views of people who had direct experience with RJ's practice. In particular, the sample included practitioners who had implemented RJ, researchers and evaluators who had measured RJ programmes ("action research") and policymakers who had considered it as a possible criminal justice option. Subsequently, the findings were 'triangulated' and analysed, creating an evidence base for policy recommendations. Equally important was to identify questions that were raised during analysis, but did not fall within the book's examination. These could then be investigated with further research.

The research did not focus on any particular criminal justice system although various case studies were used for in-depth analysis. The intention was to acquire a thorough understanding of RJ's practical development and how this relates to the wider RJ movement and not to any national criminal justice system.

The book is divided into four parts. Part I constructed the conceptual framework for the research and translated its underlying hypothesis in practical terms. By arguing and analysing the literature, this section prepared themes for the fieldwork. Part II presented and analysed the results of the first two surveys. The first was carried out with qualitative questionnaires with forty practitioners from around the world and the second with in-depth, face-to-face interviews with thirteen organisations that play a significant role in RJ's development in England and Wales. Part III presented and analysed the findings of two more surveys that focused on the application of RJ with hate crime and sexual offending cases. For the former twenty-two organisations that have direct experience with RJ and hate crime were interviewed face-to-face. For the latter, a combination of various qualitative methodologies was adopted with an international sample that had experienced the value and dangers of using RJ for sexual offences. The final Part of the book drew all the evidence together to identify their links with the study's underlying hypothesis and provide an answer to the central research question. An evidence base was

then created for recommendations of international policy and intellectual significance.

## ACKNOWLEDGEMENTS

The writing of a book is by definition a very lonely and isolating experience. Nonetheless, it is not possible without the patient, professional and personal support from numerous people.

Much gratitude and many thanks go to Director Kauko Aromaa for the time and attention he devoted to this research which I used for my doctorate. I am particularly grateful to my doctoral supervisor Professor Nicola Lacey for her patience and generous investment in my development as she occasionally had to 'fight a tug of war' between my enthusiastic, emotional nature and her rationality and methodological excellence. Trying to be objective while researching a notion that you deeply believe in is indeed not an easy process, and this experience has certainly taught me the difference between personal or normative aspirations and objectivity. However, this would not have been possible, if it had not been for the faith and confidence that Professor Paul Roberts had shown in me. Many thanks should also go to a number of other academics and practitioners who advised me on early drafts of this book including Dr. Kate Malleson, Elena Noel, Dr. Martin Wright, Dr. Maria Hadjipavlou, Dr. Declan Roche, Nancy Erbe, Lisa Rea, Dale Coker and Professor Robert Reiner. Special thanks to Professor Heather Strang and Professor Tim Newburn for their constructive criticism and advice as well as Professor John Winterdyk and Professor Richard Allinson.

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**PART ONE:  
ARGUING AND ANALYSING THE RESTORATIVE JUSTICE  
LITERATURE**

## RESTORATIVE 'THEORY' AND 'PRACTICE' IN CONTEXT

Arguably, the term 'Restorative Justice' was first introduced in the contemporary criminal justice literature and practice in the 1970s. However, strong evidence suggests that the roots of its concept are ancient, reaching back into the customs and religions of most traditional societies. In fact, some have claimed that the RJ values are grounded in traditions of justice as old as the ancient Greek and Roman civilisations (Braithwaite 2002, 64-68). For instance, Daniel Van Ness believes that the term was probably coined by Albert Eglash in a 1977 article (Eglash 1977), but the ideas underlying it, as well as many of its practices date back to the early types of human aggregations (Van Ness and Heetderks 1997, 24).

This book's investigation will focus only on the contemporary development of RJ. The purpose of this chapter is to reach an understanding of the why and how the theory and practice of RJ developed to be what we understand today. The chapter has been divided into two sections. The first will identify the main contemporary theoretical work that has been done in the field to reach an understanding of the core normative elements, which comprise the modern RJ concept. The second section will provide a descriptive account of the main programmes that have come under the banner of RJ practices since the 1970s.

The central objective of this chapter is to put the terms RJ 'theory' and 'practice' in context. Without a clear and comprehensive understanding of the substance of these two notions, the examinations of the study's hypothesis would have been impossible. The description will provide only a normative understanding of the theory and practice of RJ as this is understood through its literature. Subsequent chapters will reflect upon RJ's practical reality. The focus of the research is not the examination or questioning of the substance of RJ's theory, but the investigation of a possible discrepancy between its theoretical and practical development.

The literature review and theoretical analysis of RJ's practical and normative concepts faced a caveat. The review mainly focused on English-based sources. This reflects the language limitations of the author, but also the fact that RJ is largely developed in the Anglophonic world – although there is an increasing interest in the European continent. Effort was made to include critical writings in other languages, but again this was done through translation and secondary sources.

## UNDERSTANDING THE 'RESTORATIVE JUSTICE THEORY' THROUGH CONTEMPORARY WRITINGS: 1970s-TODAY

There seems to be a consensus in the literature that RJ was brought back onto the criminal justice agenda in the 1970s. However, acknowledgment needs to be made to the work of all those writers who, although did not refer to RJ directly, opened the way for others by identifying the deficiencies of the modern criminal justice system particularly with regard to victims' rights. Arguably, two good examples are the fathers of Victimology, Hans von Hentig (1887-1974) (Hentig 1948), and Benjamin Mendelsohn (1900-1998) (Mendelsohn 1937).

Margery Fry (1874 – 1958) and Stephen Schafer are two more examples. Margery Fry, a British reformer, claimed that victims were being ignored by the criminal justice system, and proposed a formal use of restitution (Fry 1951)<sup>3</sup>. In 1970, Stephen Schafer claimed that “if one looks at the legal systems of different countries, one seeks in vain a country where a victim of crime enjoys a certain expectation of full restitution for his injury” (Schafer 1970, 117).

However, what provoked the interest in RJ as such, were two 1977 articles by Randy Barnett (Barnett 1977) and Nils Christie (Christie 1977). Arguably, 1977 was also the year, when the term 'Restorative Justice' was first coined by Albert Eglash (Eglash 1977). Barnett, Christie and Eglash were among the first to speak of a crisis, taking place in the criminal justice system, and of an alternative paradigm, which could fundamentally replace the punitive one<sup>4</sup>.

In particular, Eglash distinguished three types of criminal justice: retributive, distributive and restorative (Eglash 1977). He claimed that the first two focus on the criminal act, deny victim participation in the justice process, and require merely passive participation by offenders. The third one, however, focuses on restoring the harmful effects of these actions, and actively involves all parties in the criminal process. RJ, he said, provides: “a deliberate opportunity for offender and victim to restore their relationship, along with a chance for the offender to come up with a means to repair the harm done to the victim...” (Mirsky 2003, 2).

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<sup>3</sup> Arguably, Fry's work led to the creation of State victim compensation programmes in the early 1960s in Britain and New Zealand. These served as models for many other countries.

<sup>4</sup> All three have been described as 'penal abolitionists'. The central contention of Abolitionism is that: “events and behaviours that are criminalized only make up a minute part of the events and behaviours that can be so defined”, and that crime is not the object, but the product of crime control philosophies and institutions”, De Haan 1987.

On the other hand, with his article *Restitution: A New Paradigm of Criminal Justice*, Randy Barnett<sup>5</sup> was the first to use the term 'paradigm shift'<sup>6</sup> (Barnett 1977). In particular, he claimed that we are living a "crisis of an old paradigm"<sup>7</sup>, and that "this crisis can be restored by the adoption of a new paradigm of criminal justice-restitution" (Barnett 1977, 245).

One year later, Nils Christie<sup>8</sup> published an article in the 'British Journal of Criminology', which still provokes a number of discussions on the division of private and public law<sup>9</sup> (Christie 1977). There, he claimed that the details of what society does or does not permit are often difficult to decode, and that "the degree of blameworthiness is often not expressed in the law at all" (Christie 1977, 8). He argued that the State has 'stolen the conflict' between citizens, and that this has deprived society of the "opportunities for norm-classification". Social problems, conflicts and troubles are inevitable parts of everyday life, he said, and therefore should not be delegated to professionals and specialists claiming to provide solutions. Christie believes that by restricting criminal procedure and law to the narrow legal definition of what is relevant and what is not, the victim and the offender cannot explore the degree of their culpability and the real effects of the case. He explained that the most important difference between the conventional criminal justice system and RJ is the contrasting values that underlie them.

1977 was also the year when Martin Wright<sup>10</sup> published: 'Nobody Came: Criminal justice and the needs of victims' (Wright 1977). In this early article, he proposed that the victim be helped by the offender or the community, and that the offender be required to make amends to both. This, he said, will demonstrate respect for victims' feelings and offer them practical help, while treating offenders in a way that will draw them back into society rather than increase their isolation. Wright claimed: "The boundary between

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5 See his 1977 article with John Hagel, where they argued for the abolishment of criminal law, and its replacement with the civil law of 'torts'. They suggested that restitution constitutes a new paradigm of justice, one that is preferable to criminal justice, Barnett and Hagel 1977.

6 Barnett defined 'paradigm' as "an achievement in a particular discipline which defines the legitimate problems and methods of research within that discipline", Barnett 1981, 245.

7 One of the most influential books on 'paradigm changes' is by Kuhn (1970). There, Kuhn claimed that paradigms can replace another, causing a 'revolution' in the way we view and understand the world. What can cause such a change is a 'paradigm crisis'.

8 Nils Christie is considered a leading proponent of the 'Informal Justice' movement. After 'Conflicts as Property', he published 'Limits to Pain', where he showed the connection between the "theft of conflicts" that he advanced in the article, and the use of punishment, Christie 1981.

9 Loc. Cit. supra note 11

10 Martin Wright is a founding member of Mediation UK and the 'European Forum of Mediation and Restorative Justice', and acts as a voluntary mediator in the 'Lambeth mediation Service' in London. He was one of the participants of Survey I.

crime and other harmful actions is an artificial and constantly changing one” (Wright 1996, 132). “Crimes are not necessarily different in kind from other actions by which people harm each other... Crimes are actions by which people cause certain types of harm, prohibited by law, and for which, if a person is convicted of them in court, a sanction may be imposed” (Wright 1996, 133). In conclusion, he believes that RJ can create a new model of justice where “the response to crime would be, not to add to the harm caused, by imposing further harm on the offender, but to do as much as possible to restore the situation” (Wright 1996, 112).

Herman Bianchi, whose name is often forgotten in literature reviews of RJ, is a Dutch criminologist, jurist, poet and historian, who is believed to be one of Europe's most prominent critics of imprisonment as a punishment for crime. As early as 1978, he claimed that there are better ways of dealing with society's criminals than putting them behind bars, arguing that the current criminal justice system is based on a view of justice as retribution (Bianchi 1978). What he proposed instead was justice as reconciliation. Justice, for him, is not a set of scales to be balanced, or a form of moral accounting – it is an experience. His interest grew stronger after the publication of a 1973 article on *Tsedeka* Justice, where he contrasted the *tsedeka*<sup>11</sup> model with the punitive Western justice systems by focusing on a “priority of results over intentions” (Bianchi 1973).

Moving on to 1980 and Howard Zehr<sup>12</sup> whose most prominent piece of RJ work is his book *Changing Lenses*. There, he claimed that the current criminal justice system's ‘lens’ is the retributive model, which views crime as lawbreaking and justice as allocating blame and punishment (Zehr 1990). Zehr sees ‘crime’ as a “wound in human relationships”, and an action that “creates an obligation to restore and repair” (Zehr 1990, 181). To make his understanding of RJ clearer, he contrasted it with the retributive way of defining ‘crime’. He argued that retributive justice understands ‘crime’ as “a violation of the State, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the State directed by systematic rules” (Zehr 1990, 181). On the other hand, RJ, he said, sees things differently as “crime is fundamentally a violation of people and interpersonal relationships” (Zehr and Mika 1998, 17). RJ sees ‘crime’ as a conflict not between the individual and the State, but between individuals. Accordingly, this understanding encourages the victim and the offender to see one another as persons. In consequence, the focus of the process is on the restoration of human bonds, and the reunion of the two individuals and of the individual with the

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11 *Tsedeka* conveys the Hebrew sense of ‘justice’, but defies easy translation.

12 He is currently professor at Eastern Mennonite University. He was the founder and director of the ‘Centre for Community Justice’, the first U.S. ‘Victim Offender Reconciliation Programme’.

community. As he pointed out, this understanding of 'crime' "creates an obligation to make things right", and while "retributive justice focuses on the violation of law... RJ focuses on the violation of people and relationships" (Zehr 1990, 199).

In 1986, Daniel van Ness<sup>13</sup> published a book on RJ, where he argued that biblical justice is highly concerned with the needs and rights of victims, as well as with the worth of offenders (Van Ness 1986). There, he also provided a blueprint for comprehensive criminal justice reform. The objective of the criminal justice system, he said, must be to help restore community by resolving the injury that an offender causes to a victim. Although offenders should be held responsible for reparations to the victim, they should be removed from the community only if there is no other option. In a 1993 series of articles in 'Criminal Law Forum', he engaged in a discussion with Andrew Ashworth and Andrew von Hirsch<sup>14</sup>, who expressed strong reservations about RJ (Ashworth 1993; Van Ness 1993). Van Ness argued in favour of a paradigm shift that would introduce the restorative values into the justice system. The impetus for these articles came from a debate that was taking place between 'just deserts' proponents on the issue of RJ causing unwarranted disparity in sentencing, creating a conflict between its values and the values of the current justice system (e.g. proportionality, due process). Ness's central contention was that RJ need not necessarily do that, and that its concern with addressing the harm caused by crime might be used to link crimes and punishment (Van Ness 1995). To his mind, crime is "more than simply lawbreaking, an offence against the governmental authority... it causes multiple injuries to victims, the community, and even the offender" (Van Ness 1993, 251). Finally, in 'Restorative Justice and international human rights', he argued that RJ can provide a theoretical framework under which otherwise conflicting human rights proclamations may be reconciled (Van Ness 1996).

John Braithwaite<sup>15</sup> is another leading proponent of RJ. In 1989, he published *Crime, Shame and Reintegration*, where he first introduced the idea of reintegrative shaming (Braithwaite 1997). This work has been highly influential in demonstrating that current criminal justice practice creates shame that is stigmatising. According to Braithwaite, RJ seeks to reintegrate the offender by acknowledging the shame of wrongdoing, but then offering ways to

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13 Van Ness is the executive director of the 'International Centre for Justice and Reconciliation', a programme of 'Prison Fellowship International.'

14 Andrew von Hirsch is considered one of RJ's first big critics. He is a noted retributivist, whose analysis centres on the censuring element of criminal law (reprobation) with a secondary emphasis on the "prudential disincentive" that hard treatment affords (prevention of crime), Ashworth and Von Hirsch 1993. His ideas have been influential, and his work is frequently cited by RJ advocates, Von Hirsch et al. 2003.

15 John Braithwaite is a professor at Australian National University.

expiate that shame. Braithwaite believes that shaming is the key to controlling all types of crime. In particular, he distinguishes two kinds of shame. The first is, what he calls, stigmatising shame, as it disintegrates the moral bonds between the offender and the community. The second is the reintegrative shame, which strengthens the moral bonds between the offender and the community. Stigmatisation (bad shaming) increases crime, but reintegrative shaming decreases it. Braithwaite embraces the idea of 'hating the sin but loving the sinner', claiming that offenders should be given the opportunity to re-join their community as law-abiding citizens. However, in order to earn this 'right to a fresh start', offenders must express remorse for their past conduct, apologize to their victims and repair the harm caused by the crime<sup>16</sup>.

Based on the concept of reintegrative shaming, the Australian National University developed a project called 'Reintegrative Shaming Experiments' (RISE). Since 1995, the project has been running in the Australian Capital Territory by the 'Centre for Restorative Justice'<sup>17</sup>. RISE use an experimental research process, which randomly assigns cases to a conference or a court hearing. There are various reports by RISE, which give evidence of the effects of diversionary RJ conferences on re-offending, as well as comparing the effects of standard court processing with a diversionary conference for a number of offences. Its directors, Heather Strang, and Lawrence Sherman produced a rich collection of data, which explore the effectiveness of RJ conferencing by comparing re-offending patterns and the satisfaction experienced by victims who were randomly assigned to these programmes, with those who experienced the formal court system in the usual way. For example, in *Repair or Revenge: Victims and Restorative Justice*, Strang reported on the experiences of the victims of violence and property crime who participated in these experiments (Strang 2002). This research has been influential in many countries such as the United Kingdom. For instance, a recent publication by Sherman and Strang (Sherman and Strang 2007) reported on the findings of a project that used RISE to implement and evaluate RJ practices in the UK. The project compared the impact of face-to-face restorative meeting and court-ordered financial restitution with the conventional criminal justice.

John Braithwaite's contribution is also identified in his work with Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Braithwaite and Pettit 1990). Arguably, their book transcended the criminological debate of theories of punishment with a comprehensive theory of criminal justice, which can address issues concerning the criminal justice system in its entirety. In

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16 The notion of reintegrative shaming has been the issue of discussion and critique by many authors e.g. Sawasky 2002, Nathanson 1992.

17 See <http://www.aic.gov.au/rjustice/rise/>

particular, their criminal justice theory found its roots in the Republican tradition, and advanced a restorative paradigm based on republican ideals. In a few words, their Republican theory introduced the target of maximizing dominion, which was understood in a holistic sense. They rejected the liberal conception of freedom as the condition of the atomistic individual, and took on board its Republican dimension as freedom of the city. Dominion, they explained, is constituted by the enjoyment of certain rights, and by the infrastructure of capacity and power that this involves: it is the conception of, what they called, 'full citizenship'. Arguably, 'Not Just Deserts' now constitutes the strongest proof of theoretical work on RJ. The book should be read as part of a discussion which started in 1982 in the 'Journal of Criminal Law and Criminology' between John Braithwaite and Andrew Von Hirsch<sup>18</sup> and Ernest van den Haag (Braithwaite 1982, 1982, 1982; Van den Haag 1983).

After Wesley Cragg's *The Practice of Punishment*, the discussion of RJ is said to have taken an even more philosophical turn (Cragg 1992). His book revisited some basic problems that are associated with the role and use of punishment, criticizing the traditional punishment theories. In a nutshell, Cragg believes that formal procedures are important, and that, with the right reforms they might be able to provide a process that promotes offenders' acceptance of responsibility. He argued in favour of formal justice, which according to his opinion is not antithetical to the restorative values of forgiveness, understanding, compassion, healing and restoration.

1992 was also the year when Bazemore and Mackay<sup>19</sup> had some of their work on RJ published. Gordon Bazemore is an American academic, whose work is mainly focused on juvenile justice and on ways of improving its standards. His 1992 article 'On mission statements and reform in juvenile justice' was the first of a series of writings on the relationship between RJ and juvenile justice and how the former can enhance the effectiveness of the latter (Bazemore 1992). In Bazemore's mind, restorative ideals can benefit juvenile justice by transforming it to a less formal process. Robert Mackay, on the other hand, is a British academic, whose work is more philosophically orientated. In 1992, he published 'Reparation and the debate about justice' (Mackay 1992) and 'Restitution and ethics: An Aristotelian approach', taking the theoretical literature on RJ a step further (Mackay 1992). He later addressed the issue of how to develop and maintain mediation practice that respects ethical principles, and is of good quality for victims and offenders (Mackay 2000). He also analysed the contribution of ethics to RJ theory.

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18 Loc. Cit supra note 32.

19 Robert MacKay used to be the Chair of the Restorative Justice Consortium.

In 1992, Tony Marshall, a British academic and executive director of the then 'Forum for Initiatives in Reparation and Mediation in England and Wales'<sup>20</sup>(FIRM) published *Restorative Justice on Trial in Great Britain* (Marshall 1992). There, he claimed that: "Restorative Justice is a problem-solving approach to crime, which involves the parties themselves and the community generally, in an active relationship with statutory agencies" (Marshall 1995,5). This work came two years after the publication of a project he carried out with Susan Merry on behalf of the Home Office, describing the first substantial empirical research conducted on mediation and reparation in England and Wales (Marshall and Merry 1990). Marshall's name is also associated with what is currently accepted in the literature as the dominant definition for RJ.

In 1995, Aleksandar Fatic, a Montenegrin professor, published *Punishment and Restorative Crime-handling: A Social Theory of Trust* (Fatic 1995). There, he attempted a philosophical justification for RJ, claiming that most theories of justice are rationalizations for private and public vengeance. With his book, he approached the problem of the moral justification of punishment, proposing a restorative theory of crime handling. He based his theory on the moral principle of refraining from the deliberate infliction of pain, as well as on the functional principle of maximization of trust as a social commodity. Fatic believes in a cultural transformation led by moral elites, and in the creation of a pacifist society, where reconciliatory behaviour will be rewarded and punitive one will be sanctioned.

In 1998, the restorative literature was taken a step further with the work of Ezzat Fattah<sup>21</sup> and Mark Umbreit<sup>22</sup>. Fattah spoke about the 'erroneous premises' on which punitive/retributive justice is based, and on the false dichotomy between 'crimes' and 'civil wrongs' (Fattah 1998). He said: "justice paradigms have to change with social evolution in order to remain in harmony with current belief systems and to take stock of whatever advances and discoveries are made in the fields of criminology and penology" (Fattah 1998). He used the example of juvenile justice, which "earlier this century...moved from the punishment paradigm to the rehabilitations paradigm", the disappointing results of which "resulted in the system moving back to punishment under the euphemism of just deserts" (Fattah 1998, 390). This development, he said: is "rather surprising because the punishment paradigm is anachronistic and out of tune with the mentality of our time.... In the

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20 Now known as Mediation UK; loc. Cit infra note 108. The organisation was one of the participants of Survey II.

21 Egyptian academic, currently, Professor Emeritus of criminology, Simon Fraser University.

22 The founding director of the 'Centre for Restorative Justice and Peacemaking' and the 'National Restorative Justice Training Institute', both at the University of Minnesota.

modern, secular societies of today, the notions of risk and harm are slowly replacing those of evil, wickedness, malice and are bound to become the central concepts in social and criminal policy of the future” (Fattah 1998: 392). Mark Umbreit’s work on the other hand is more empirically based, providing data from evaluation studies he carried out on various restorative programmes (Umbreit 1998).

During 1999, Gerry Johnstone, Antony Duff and Kathleen Daly published some important work on RJ. Johnstone spoke about the importance of forgiveness and its potential role within the criminal justice system, and attempted to set out the core themes that characterise the restorative thought (Johnstone 1999, 2001). He approached the question of how we can take a step towards RJ, and whether this step will make things significantly better, or worse, than they currently are. He argued that the most common way of explaining RJ is by describing it as a distinctive process, which makes those who caused harm to acknowledge the impact of what they had done and give them the opportunity to make reparation (Johnstone 2001, 2). Antony Duff<sup>23</sup>, on the other hand, in *Punishment, Communication and Community* introduced the ‘communicative theory’, according to which punishment is best justified if taken as a way of communicating “to offenders the censure they deserve for their crimes... and... through that communicative process to persuade them to repent those crimes, to try to reform themselves, and thus to reconcile themselves with those whom they wronged” (Duff 2000, 17). The book also cast light on many problematic issues that are associated with consequentialist and libertarian theories of criminal justice. Most importantly, however, it distinguished Braithwaite’s reintegrative shaming and Braithwaite and Pettit’s ‘Republican theory’ from the ‘communicative theory’, and defended their status as complete criminal justice theories. Duff also tried to incorporate some of the above two restorative theories’ elements, including the values of forgiveness and apology. Finally, Kathleen Daly<sup>24</sup> aimed to introduce a new understanding of the relationship of punishment and RJ. Her central contention is that writers should stop comparing retributive justice and RJ in oppositional terms and embrace - and not eliminate - the concept of punishment as the main activity of the State’s response to crime (Daly 2000; Daly and Imarrigeon 1998).

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23 Antony Duff is known for his distinctive contribution to the philosophy of criminal justice. He is an academic and a philosopher, whose work cast light on a number of questions of legal and social philosophy impinging on criminal justice.

24 Kathleen Daly is a professor at Griffith University.

## UNDERSTANDING THE 'RESTORATIVE JUSTICE PRACTICE'

Nowadays, it is widely accepted that when the term "Restorative Justice" is used in a criminal justice context<sup>25</sup>, it can refer to any of these four programmes:

- (i) 'Victim-Offender Mediation'
- (ii) 'Family Group Conferences'
- (iii) 'Healing and Sentencing Circles'
- (iv) 'Community Restorative Boards'.

This is a standard classification of restorative practices and is based on the extant literature. Examples may be found in Chapter 2 of Crawford and Newburn (2003) and Bazemore and Walgrave (1999, 127-235). However, as the subsequent chapters will argue the criteria for defining 'restorativeness' are still far from clear<sup>26</sup>. In fact, for many years RJ and mediation used to be synonyms<sup>27</sup>. For example, Bazemore and Walgrave's edition argues that although mediation has traditionally been associated with RJ the two are not the same. In fact, the recent literature has often argued that RJ may be able to provide a list of fully-fledged alternative programmes to both the rehabilitative and the retributive approaches to crime (Bazemore and Walgrave 1999; Braithwaite 1997; Gavrielides 2005; Wright 2001).

The chapter will now proceed with a brief description of the main programmes that have traditionally been associated with the RJ practice. The purpose of this account is to complete the normative description of RJ, providing a summary of the dominant theoretical positions that characterise its practical side. The description will not include the following:

- **'Victim Support Schemes'**: (e.g. Victim Impact Statements, 'restitution', 'compensation' and 'community service'). As the restorative movement grew bigger, and particularly during the 1990s, some means and outcomes of the traditional criminal justice process that used to come under the banner of 'victim support schemes' began to be referred to as 'Restorative Justice'. Still, only the aforementioned four programmes are 'restorative practices' strictu sensu. This is because only these fully meet the following three requirements, which, according to the restorative literature, are sine qua non ingredients for a restorative meeting: (a) involve victims, offenders and their

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25 RJ practices are developed not only within the criminal justice system, but also for neighbour disputes, community, clubs and organisational conflicts, schools, divorce and family conciliation and employment/trade union disputes. However, these practices fall outside the book's scope, which is RJ in a criminal justice context.

26 See also the discussion on "debating restorativeness" in Crawford and Newburn 2003.

27 A number of recent studies have also shown that the confusion still persists especially among practitioners' circles, Hoyle et al. 2002, Wilcox, et al. 2004.

community (b) in direct (face to face) or indirect (go-between) meetings (c) so that they, and no one else, can determine how best to deal with the offence (Wachtel and McCold 2001).

- **Ad hoc local practices based on RJ:** e.g. Youth Offending Teams restorative cautioning, Youth Offending Panels. For presentation purposes, these will be discussed separately in Chapter 3, which will examine in detail the practical development of RJ within certain jurisdictions.
- **Empirical findings on the effectiveness of restorative programmes:** Again, for presentation purposes, these will be discussed separately.

Arguably, for all the above schemes, means and outcomes to be considered restorative in the broader sense, they need to include the offender, the victim and representatives of their communities. It is also essential that they maintain and express RJ's neutrality on the matter of whose interests should come first in the process. This is because according to the normative understanding of RJ, its practices do not place priority over any of the parties involved in a case. Both victims and offenders are equally important in the restoration of the harm, and that is why their equal treatment and voluntary participation is needed throughout the process<sup>28</sup>.

Concurrently with the academic debate, the contemporary practical concept of RJ was 're-born' not of academic theory, but of practitioners' intuitive recognition that the court was not meeting the needs of litigants, combined with a number of other factors such as their wish to reduce the backlog of cases. According to some, the first contemporary scheme that included restorative elements was a 1974 victim-offender reconciliation programme in Ontario, Canada (Braithwaite 2002). Dean Peachey, who reported on this scheme, claimed that it was a variation of a victim-offender mediation programme, which started as an alternative to probation for young offenders and expanded into a pre-sentence scheme that allowed the victim and the offender to construct a sentencing proposal for the judge's consideration (Peachey 1989). It was assumed that offenders would benefit from their exposure to the pain of their victims and that this would reduce recidivism and increase the likelihood of restitution being completed. What was not expected was that victims would also benefit from this approach, reporting higher satisfaction levels than with traditional court processes.

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<sup>28</sup> They have been characterised as 'win-win processes', because they leave no losers.

## Victim-Offender Mediation

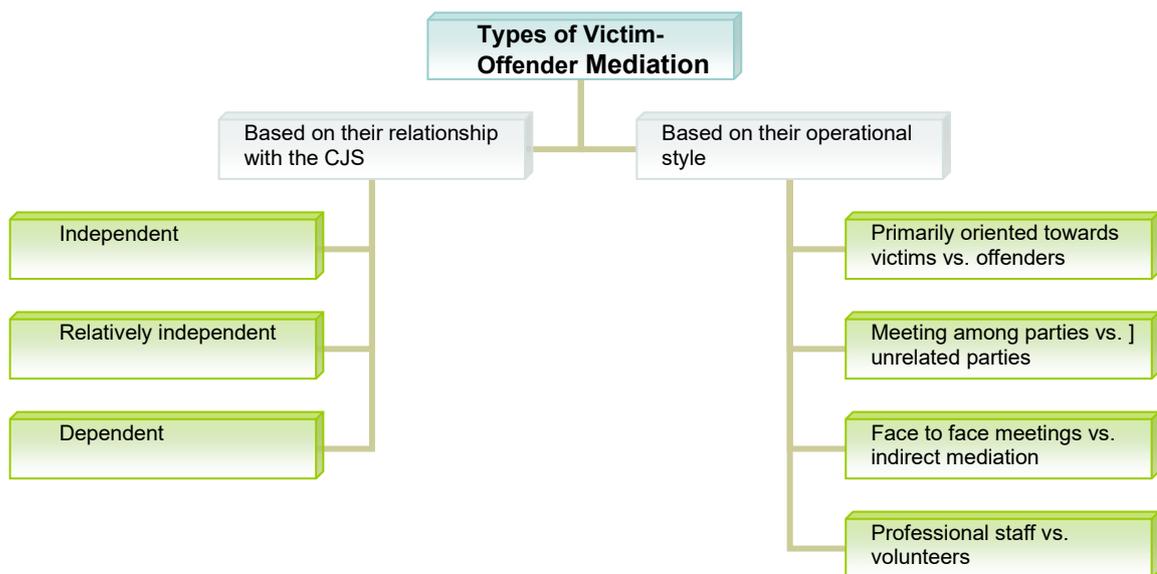
Victim-offender mediation is one of the most well-known and commonly used contemporary restorative programmes. In its typical form, it brings together the primary victim and offender using a trained mediator to coordinate the meeting. When both parties have had their say, the mediator helps them consider ways to make things right. In Lon Fuller's terms "since mediators claim no authority, they can empower people through the mediation process to regain control over their own relationship rather than assume that all social order must be imposed by some kind of authority" (Fuller 1971). Fuller claimed that the justice system should welcome the introduction of programmes that divert cases from the formal and 'cold' procedure of courts and prisons to the 'warmer' and more personal mediation rooms. He argued that mediation's central quality is "its capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another" (Fuller 1971).

Victim-offender mediation can appear in various shapes and forms depending on the structure of the criminal justice system in which it is introduced, as well as the level of tolerance coming from the public, the politicians and the cultural and historical background of the country. In an attempt to categorise the various kinds of mediation programmes, a classification can be drawn on two broad bases.

The first category uses the programmes' relationship with the traditional criminal justice system, distinguishing three different types of mediation schemes: 'independent', 'relatively independent' and 'dependent'. First, victim-offender mediation programmes are 'independent', when they are offered as real alternatives for criminal litigation, diverting the criminal case out of the formal process. This occurs at a very early stage of the case, replacing any penal response to crime. An example is the Dutch process of *dading*, which involves negotiating a settlement between the parties. The final outcome precludes re-entrance of the case in the criminal justice system. Second, victim-offender mediation can be 'relatively independent', when it is offered as part of the regular criminal procedure. This can take place at any stage of the case, which is diverted and referred to a mediator charged with reaching an agreement between victim and offender. If this is accomplished successfully, it will have an impact on the outcome of the criminal proceedings. Its most common effect is to reduce sentencing, although there have been cases where charges were dropped altogether. This type of victim-offender mediation is employed by some European jurisdictions. Some examples include: the Belgian

strafbemiddeling (penal mediation)<sup>29</sup>, the German Täter-Opfer-Ausgleich and the Austrian Außergerichtliche Tatausgleich. Finally, mediation projects can be 'dependent', when they are situated adjacent to the conventional system. This model is used after the criminal trial has run its course, and is mainly employed in instances of the most serious crime or in the prison context (Groenhuijsen 2000).

The second basis for classification of victim-offender mediation programmes is their operational style. Five distinctions can be made, none of which is mutually exclusive. The first is between programmes that are primarily oriented towards the needs of the offender, and those that also take account of the needs of the victim. The second distinction is made between projects where victims meet their offenders and projects where groups of victims take part in discussions with unrelated offenders. Although this type of mediation does not preclude bringing the individuals together to consider how offenders can make amends, their main goal is to help both victims and offenders to challenge each other's prejudices. The third distinction concerns mediation programmes that may include face-to-face meeting of the victim with the offender, and those that have mediators act only as go-betweens. The fourth category depends on the cases that the mediation programmes accept. For instance, a project may take cases below or above a certain level of seriousness, or only juvenile cases. Lastly, there are victim-offender mediation programmes that are carried out by paid professional staff or by trained volunteers (See Figure 1).



**Figure 1:** Classification of Victim-Offender Mediation Practices

<sup>29</sup> See Weitekamp 1995.

To sum up, victim-offender mediation can appear as part of/instead of/on top of the structure of the formal criminal justice system. It can take place at any time during the criminal process, or outside the system altogether. In general, the process of all types of victim-offender mediation programmes follows the same basic steps. The first step is a referral of the case to the mediation programme. Referrals usually come from the system's agents (such as police, prosecutors, judges and probation officers), and may take place at any time from the report of the crime to the parole period. The second step is the preparation of the case. Victim and offender are contacted separately, and asked if they are interested in joining the mediation programme. The facilitator then gathers information about the offence, and schedules the session. The third step is the actual meeting between the offender and the victim. Here, the structure of the meeting varies accordingly. The final step involves preparing the file and returning it to the referral source.

### **Family Group Conferences**

This programme finds its roots in tradition. There seems to be an agreement in the literature that it has developed from a Maori<sup>30</sup> ancient practice in New Zealand<sup>31</sup> (Umbreit 1998). A family-group conference differs from victim-offender mediation in that it involves more parties in the process. In particular, not only are primary victims and offenders included, but also secondary victims, the parties' families and close friends, community representatives or the police<sup>32</sup>. All these people are welcomed, because they are connected to at least one of the primary participants. They are brought together by a third impartial party, who is usually trained for this task (facilitator). However, the facilitator does not play a role in the substantive discussion.

Some forms of conferencing are 'scripted', which means that the facilitator follows a prescribed pattern in guiding discussion. A necessary pre-condition of all family-group conferences is that the offender has admitted to the offence and that all parties are participating out of their own will and desire to reconcile and restore their relationship in a sincere and humane way.

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30 Maori people are the indigenous population of New Zealand.

31 More on New Zealand and family-group conferences in Chapter 3.

32 The target group varies depending on the model and the legal system in which RJ is implemented: e.g. the New Zealand family-group conference model is open to the 'Youth Justice Coordinator', offender, offender's counsel and family, victim and victim's family and support system, whereas the Australian Wagga model is open to the family-group conference coordinator, offender and his family, victim and his family and to the investigating officer.

The process starts with offenders' description of what has happened, and whom they think are affected by their actions. Victims then describe their experience and the effect that the harm had on their lives. Through narrations and questions, all parties are given the chance to have a thorough discussion, expressing feelings such as anger, fear, hate, pity, regret and vengeance. Most importantly, however, offenders are faced with the human impact the incident had on their victims and their family, and, of course, on their own family and friends. However, restored relationships and feelings are not the only possible outcomes of this programme. Together, the group decides what the offender needs to do to repair the harm, and what assistance the offender will need in doing so. Victims are asked what 'practical outcomes' they expect from the conference, so that the director of the programme can shape the appropriate obligations on the offender. The session ends with parties signing an agreement outlining their expectations and commitments to each other. All participants may take part in carrying out the final agreement, which is then sent to the appropriate criminal justice officials.

Family-group conferences can be used in multiple stages of the criminal process. Most often, however, they are used by police as an alternative to arrest and referral to the formal criminal justice system. According to Daniel van Ness, this has led to a unique linkage between RJ and the formal justice system (Van Ness 2000).

Overall, this programme provides the victim, the offender and all those who are affected by crime a chance to be directly involved in a discussion leading to a decision regarding sanctions and amends. The narrations increase the offenders' awareness of the human impact of their actions, and provide an opportunity to regret, apologise, take full responsibility, and be forgiven by their victim and community. In this way, it may shape their future behaviour, allowing both to reconnect to key community support systems.

### **Healing and Sentencing/Peacekeeping-peacemaking Circles**

These programmes are community-directed processes, usually working side-by-side with the criminal justice system. They are organised by a community justice committee, which decides which cases to accept. They originate from traditional circle rituals, where tribes<sup>33</sup> used to gather and discuss their conflicts to find solutions to their disputes. Today, they typically involve a multi-step procedure, which starts with an application by offenders to participate in the process, and continues with a 'healing circle' for them and their

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33 For instance, the *Kapauku* of New Zealand, the *Nuer*, the Middle Atlas tribes, the Egyptian Bedouin and the *Yonga* tribe of Zambia; See Nader and Combs-Schilling; 1977.

victims. If the discussion in the 'healing circle' proves to be constructive, helpful and sincere, then a 'sentencing circle' is formed for the discussion on the elements of a sentencing plan. After all parties have agreed a sentence, 'follow-up circles', in various intervals, are formed to monitor the progress of the offender.

Circles are similar to conferencing in that they expand participation beyond the primary victim and offender. However, in this case, additionally any member of the community who has an interest in the case may participate. These can be: the victim, the offender, their families and friends, judges as well as court personnel, prosecutors, defence counsels and police. There is a 'keeper of the circle' whose role is to ensure that the process is protected.

All participants sit in a circle, and the process typically begins with an explanation of what has happened. Subsequently, everyone is given the opportunity to talk. The discussion moves from person to person around the circle with anyone saying whatever they wish and continues until everything that needs to be said has been said. The overall goal is to promote healing for all injured parties, and an opportunity for the offender to make amends to the victim and to the society. This programme promotes a sense of community, empowering its participants by giving them a voice and a shared responsibility in a process whereby all parties try to find constructive solutions. Circles are used at various stages both within and outside the criminal process.

### **Community Restorative Boards**

This restorative programme is a typical example of community members becoming substantially involved in the justice process. Community Restorative Boards are small groups of active citizens, specifically trained to conduct public, face-to-face meetings with offenders 'sentenced' by the court to participate. The aim of each board is to provide an opportunity for victims and the community to confront offenders in a constructive manner, while giving the chance to the offender to take personal responsibility. Community Restorative Boards promote citizens' ownership of the criminal justice system, as they provide them with an opportunity to get directly involved in the justice process, generating meaningful 'community-driven' consequences for criminal actions that are said to reduce costly reliance on formal criminal justice processing.

The process usually involves a meeting with the board members discussing the nature of the offence, and the negative effects it had on the victim and community. After a thorough examination, the board develops a set of proposed sanctions, which they discuss with the offender and the victim, until they all reach an

understandable and acceptable agreement. Then, they talk about the method, specific actions and timetable for the reparation of the crime. Subsequently, offenders have to document their progress in fulfilling the exact terms of the agreement. The process ends when the stipulated period of time has collapsed, and the board of members has submitted a report to the court on the offender's compliance with the agreed upon sanctions.

## RESTORATIVE JUSTICE: THE PERPLEXING CONCEPT

The analysis of RJ's contemporary notion constructed the book's conceptual framework. These conceptual parameters were thought to be necessary as the RJ notion seems to be characterised by instability and lack of consensus. This chapter will investigate the substance of the variety in the RJ norm in the hope of finding a nexus between RJ's conceptual conflicts and the book's central research question.

To this end, the chapter has been divided into two sections. The first will outline the principal conflicts that exist within the restorative field around the issue of RJ's concept. Up to date no ad hoc study has been done to identify these conflicts in a clear and comprehensive manner. Most often, both critics and proponents of RJ tend to speak about the diversity in RJ's conception without acknowledging that the battle that takes place both within and outside the restorative movement is multi-layered. For that reason, by pinpointing the exact areas of this conceptual conflict, not only will we become more equipped to understand it, but also more able to identify the practical implications of each one of these tensions. The second section will provide an account of various international attempts to define RJ.

## CONFLICTS IN CONCEPTION: SIX FAULT-LINES IN THE RESTORATIVE JUSTICE MOVEMENT

"Over the last two decades 'Restorative Justice' has emerged in varied guises with different names, and in many countries; it has sprung from sites of activism, academia and justice system workplaces. The concept may refer to an alternative process for resolving disputes, to alternative sanctioning options, or to a distinctively different, new model of criminal justice organised around principles of restoration to victims, offenders and the communities in which they live. It may refer to diversion from formal court processes, to actions taken in parallel with court decisions, and to meetings between offenders and victims at any stage of the criminal process" (Daly and Imarrigeon 1998, 21).

Many have attempted to facilitate a consensual understanding for RJ. The truth is, however, that it has not been possible for RJ proponents to formulate a definition to which all would be able to subscribe. Examples include Tony Marshall's definition, found in his 1999 Home Office study (Marshall 1999), the definition developed by the 'Working party on Restorative Justice' funded by the United Nations and directed by Paul McCold (1998), Ron Claasen's principles (Claasen 1995) and the United Nations' own definition cited in Resolution E/CN.15/2002/L.2/Rev.1 *Basic principles on the use of restorative justice programmes in criminal matters* (United Nations 1999).

It is not the intention of this chapter to criticise these projects. This would be out of place and time. Besides the space provided for this paper does not allow such examination, and even if it did, the information would be repetitive of other critical analyses (e.g. Miers 2001, Miers et al., 2001, Walgrave 2001, Zehr and Mika 1998). More importantly, it would seem unfair to comment on the flaws of projects that were carried out five or even ten years ago. Pretending that we know better because we enjoy the luxury of time is methodologically and logically wrong. However, this does not mean that we cannot reflect upon the general philosophy of the different approaches that have been favoured towards resolving RJ's conceptual ambiguity. This is the only way we can learn from past experiences and advance current understanding.

Arguably, the only agreement that exists in the literature regarding RJ's concept is that there is no consensus as to its exact meaning (Daly and Imarrigeon 1998; Harris 1998; McCold 1998; Sullivan et al. 1998). The truth is that only until recently the restorative theory and practice have advanced enough to create a general sense of, at least, what RJ stands for. And again, the term is used interchangeably, and while 'Restorative Justice' might mean 'restorative cautioning' to the Thames Valley police officer, at the same time, it can stand for a complete justice paradigm or a transformative model of ethics (Gavrielides 2005).

The paper argues that so far the tensions between normative abolitionist and pragmatic visions of RJ have been dealt with as a single-dimensional problem. Past projects attempted to address the different conceptual problematic aspects of these tensions with a single strike. Some even believed that this could be achieved with the coining of a consensual definition which could accommodate all of RJ's normative and practical peculiarities (McCold 1996, 1997 and 1999).

The coining of a consensual definition is not the answer to RJ's ambiguity. This paper considers the aforementioned tension to be multi-dimensional, with a number of different layers each of which needs to be addressed in a different way. The literature has examined these individual conceptual misunderstandings, but only

in isolation, failing to place them within the larger framework of RJ's conceptual confusion. Consequently, there has not been any *ad hoc* work that pinpoints the exact areas of these conceptual conflicts, or one that describes their particular substance.

The bulk of the extant literature either adds a new dimension to this tension, or disregards its existence all together. On the other hand, many critical writings take the tension as a given, and proceed to address it without analysing its particular dimensions. Arguably, the only piece of writing that attempts to approach the *substance* of these conceptual conflicts, but nonetheless does not deal with them as the central matter of its investigation, is James Dignan's *Restorative Justice and the Law: The case for an integrated, systemic approach* (Dignan 2002).

Therefore, the analysis of this chapter will not look into the various: (a) disagreements between proponents and adversaries of RJ (b) philosophical directions or theoretical discussions taking place for or against these issues of conflict<sup>34</sup>. Overall, the main objective of the first part of the paper is to give a descriptive flavour of the substance of these conflicts by providing a drop list of their main themes.

### **Restorative Justice: a New Paradigm or a Complementary Model?**

The first fault-line concerns RJ's relationship with the current criminal justice system. According to some, RJ is a complete, consistent and independent criminal justice paradigm that has the potential to stand alone, and which should replace the current one. Others argue that RJ can only exist if supported by other paradigms, namely the present one.

This tension has accompanied RJ since its early days. During that period, and while the retributive and utilitarian models were already deep-seated, RJ advocates such as Gilbert Cantor (Cantor 1976) Nils Christie (Christie 1977), Randy Barnett (Barnett 1977), Ab Thorvaldson (Thorvaldson 1978) and Howard Zehr (Zehr 1990) portrayed the relationship between the then emerging RJ approach and the existing criminal justice system as being 'polar opposites' in almost every aspect. Gilbert Cantor, for instance, argued in favour of a total substitution of civil law for criminal law processes with a view to 'civilising' the treatment of offenders (Cantor 1976). Nils Christie spoke of conflicts being stolen from the parties by the State, while Howard Zehr saw crime through the lenses of a new paradigm<sup>35</sup>.

Although these radical claims may now appear to be out of place and immature for their time, on second thought, they make

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34 For an analysis of RJ's philosophical background see Gavrielides 2005.

35 Further on these authors in Chapter 1.

absolute sense. By introducing RJ as a radical concept, using exaggeration and overstatements, its proponents were hoping to make the then new concept of RJ appealing and interesting enough for writers and practitioners who knew nothing about it. However, once the excitement was over, and while RJ was leaving the phase of 'innovation' to enter the one of 'implementation', its advocates began to talk about the need to combine its values and practices with existing traditions of criminal practice and philosophy (Braithwaite 1999; Dignan 1994; Dignan and Lowey 2000).

Nonetheless, this tension exists until today, and although this might seem understandable, what can not be accepted is the triggering of misunderstandings and confusion, which in turn can have an impact on the restorative movement.

### **A Place for Restorative Justice Practices: within or outside the Criminal Justice System?**

The second fault-line concerns the way RJ practices are integrated into the process of existing criminal justice systems. On one side are the RJ proponents who argue for restorative programmes to operate completely outside of the present criminal justice system, which can remain in place, but unrelated to the restorative one (Marshall 1985; Marshall and Walpole 1985). On the other side are the RJ advocates who believe that restorative programmes should be offered as fully-fledged alternatives to the existing system, which can accommodate them through integration mechanisms. The subtle but yet important difference between this fault-line and the previous one lies mainly in the fact that it does not speak of a potentially independent justice paradigm that can stand either in parallel or instead of the current punitive one, but of the way restorative practices can be implemented into or outside the existing system. The question therefore raised by the two groups of this fault-line is whether restorative programmes should be implemented as complementary processes or be separated, diverting cases out of the system all together.

Supporters of the first school of this fault-line believe that operating a restorative system of criminal practice in parallel to the current one is the only way restorative programmes can function (Daly and Imarrigeon 1998; Harris 1998; Sullivan et al. 1998). Their argument is that if integrated into current traditions of punitive philosophy, some restorative programmes will be co-opted, while others will be gradually marginalised and withdrawn. The 'implementational' fault-line, on the other hand, argues that restorative programmes cannot stand alone for a number of practical reasons such as retaining sufficient numbers of referrals to remain viable and creating a risk of double punishment for offenders (Dignan 2002).

This fault-line is one of the most traceable within the restorative movement. It has repeatedly led to misconceptions and disagreements, in the sense that it has created tendencies to either playing up or down differences and similarities between RJ and the criminal justice system. These are often exemplified by a reluctance from a number of RJ advocates to acknowledge that the criminal justice system comprises certain restorative elements (e.g. in the form of victim impact statements, community service and compensation). More importantly, however, this tension has held practice back for a number of reasons that this book aims to examine in depth.

### **A Definition for Restorative Justice: Process-based or Outcome-based?**

The third fault-line concerns the approaches that have been adopted when attempting to define RJ. According to Dignan, these may fall into two groups (Dignan 2002). On one side are those who “conceive of RJ as a distinctive type of decision-making process”. On the other side, he said, are those who “take the view that the process-based definition of RJ is at best incomplete, because it has nothing to say on the subject of ‘restorative outcomes’, or how these might be defined and evaluated” (Dignan 2002, 172).

Those who follow the first line, adopting a process-based definition, tend to limit the scope of restorative programmes to cases that are considered appropriate for an RJ intervention or to those in which both parties are willing to participate and abide by the ground rules. However, as argued in the previous chapter, restorative programmes may appear in different shapes and forms. As Paul McCold and Ted Wachtel put it, there are ranges of restorative practices, from ‘fully restorative’ to ‘mostly restorative’ to ‘partially restorative’ (McCold and Wachtel 2000). By adhering, therefore, to a definition that understands RJ as a process, we risk excluding the ‘mostly restorative’ and ‘partially restorative’ programmes. And this is only one of the limitations of this approach. On the other hand, those who adopt the second line of outcome-based definitions risk stretching the concept to include programmes, which although may in the end result with restorative outcomes (such as compensation, community service), they might not be carried out respecting central RJ procedural rules.

As a result, RJ is often stretched to fit elements that are not restorative in nature, or is narrowed down to a notion that cannot take in all the essential features that characterise its thought. The book intends to identify examples that are due to this fault-line, and reveal some of the practical implications that it might have on RJ.

## Stakeholders in Restorative Justice: How Big should the Circle Be?

This fault-line concerns the numbers of the key stakeholders in a restorative process. Some believe that the key stakeholders in a restorative process are the parties who are the most affected by the offence; that is the victim and the offender (Christie 1977). Some others, however, identify the key stakeholders as encompassing all those who are touched by the offence; hence the victim and the offender, all those who care about their well-being (family and friends), all those who are concerned about execution of the agreed sentence (prosecutors, judges, police), and finally all those who may be able to contribute towards a solution to the problem presented by the offence and are not related to the parties in any way (victim support, community workers and counsellors).

The impact of this dichotomy has been considerable on RJ's implementation. Adherents to the first group usually accept victim-offender mediation as the sole truly restorative practice, because it is the only programme that does not extend participants to anyone beyond the direct victim and offender. Conversely, supporters of the second view argue that only family-group conferences and the various types of circles and boards are genuinely restorative schemes, because they include the wider 'community of interest'<sup>36</sup> (Morris and Young 2000, 10).

The discussions over which group is right or wrong have been plentiful. The main argument against the first group is that it more or less collapses the distinction between crimes and civil wrongs, falling within the 'School of Abolitionists'<sup>37</sup>, which seems to fail to acknowledge that offences may have broader social implications that go beyond the personal harm or loss that is experienced by the direct victim (Lacey 1988, 1994, 1994). The principal argument against the second group is that it creates a risk that the processes and values of RJ might be invoked to provide a cover-up not only for "illiberal populism", but also for vigilantism and "community despotism" (Dignan 2002, 178). The research aims to look into this dichotomy through fieldwork.

## Restorative Justice: an Alternative Punishment or Alternative to Punishment?

The fifth fault-line relates to RJ's measures and outcomes and their relationship with the concept of punishment. Once again, the views are divided into two groups. The first denies that RJ measures can, in any way, be punitive (Wright 1996, 27). The second argues that RJ is not "alternative to punishment", but "alternative punishment" (Duff 1992). The argument of the first group is that restorative measures' primary purpose is to be constructive. Therefore, they

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<sup>36</sup> For a descriptive analysis of these and other restorative justice practices.

<sup>37</sup> *Loc. cit. supra* note 16.

are not inflicted 'for their own sake' rather than for a higher purpose (Walgrave and Bazemore 1999, 146). The second group has argued that "this purported distinction is misleading because it relies for its effect on the confusion of two distinct elements in the concept of intention. One element relates to the motives for doing something; the other refers to the fact that the act in question is being performed deliberately or wilfully" (Dignan 2002, 2003, 179).

The debate has been particularly interesting. To give some examples, Kathleen Daly takes RJ to be punishment, because it leads to obligations for the offender (Daly 2000). She backed up her position with the results of a qualitative analysis on young offenders who had experienced family-group conferences (Daly 1999). On the other hand, Paul McCold rejected the idea of including coercive judicial sanctions in the restorative process, as they might shift RJ back to being punitive (McCold 1999). Tony Marshall claimed that coercive processes are not always achievable, and that they must be considered. However, this should be done through the criminal justice system. He argued that this is where RJ should end, and where the traditional system should take over (Marshall 1996). On the other hand, John Braithwaite believes that if a restorative process fails, it should be tried again and again; in his own words: "RJ rewards the patient" (Braithwaite 1999). However, he envisages "not a future where punishment is abolished, but a future where punishment is marginalized" (Braithwaite 1999). Finally, Gordon Bazemore and Lode Walgrave believe that restorative practices include both coercive actions as well as voluntary processes, and that the coercive intervention should also be "reasonable, restorative and respectful" (Walgrave 2001).

### **The Restorative Justice Principles and their Flexibility**

The last fault-line concerns the content and level of flexibility afforded to some core RJ principles. The main tension characterising this fault-line concerns the extent to which certain RJ principles should be respected, and whether practice can be carried out without adhering to them religiously. To give an example, the application of the principle of voluntariness<sup>38</sup> has divided RJ proponents between those who claim that a certain level of coercion is acceptable if RJ is to work side by side with the current criminal justice system, and those who believe that if the principle is not fully respected, then the practice simply cannot be called restorative.

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38 In simple words, the term means that the parties (victim, offender and the community) need to decide for themselves to take part in the process. This term is preferred by the Restorative Justice Consortium and the majority of RJ authors.

For example, in *Fundamental Concepts of Restorative Justice*, Zehr and Mika provided a list of principles to clarify what constitutes RJ (Zehr and Mika 1998). They explained that the impetus for their study came from fears that “some of the programmes defined as restorative do not appear to contain some of the essential elements originally associated with RJ” (Zehr and Mika 1998, 47). They fear that “retributive and punitive programmes are simply being repackaged as RJ initiatives, a reflex of the growing popularity of the concept, and/or the availability of financial recourses” (Zehr and Mika 1998, 49). Their list was composed of three major headings: (a) Crime is fundamentally a violation of people and interpersonal relationships. (b) Violations create obligations and liabilities. (c) RJ seeks to heal and put right the wrongs. Under each of these headings, a number of secondary and tertiary points specified and elaborated on the general themes providing elements, which, according to their opinion, can address the critical components of one vision of RJ practice.

However, the content and particularly the level of flexibility of their principles - differ significantly from other lists. For instance, in *Restorative Justice: Variations on a theme*, Paul McCold recorded four principles, which he attempted to put to test. He said RJ is: (a) moralizing (b) healing (c) empowering (d) transforming. According to McCold, these principles failed to constitute a common basis for agreement among the 29 participants of his project. One of the principal causes that prevented consensus among his sample was the flexibility that these principles should or could have in practice.

Focusing on the principle of voluntariness, Howard Zehr and Harry Mika claimed that in RJ: “Voluntary participation by offenders is maximised; coercion and exclusion are minimised. However, offenders may be required to accept their obligations if they do not do so voluntarily” (Zehr and Mika 1998, 51). Some, however, do not accept coercion in any form<sup>39</sup> (New Zealand Department for Courts 2004), while others do not consider the matter to be in any way different from what we encounter within existing criminal procedures. The latter group has often wondered: “Can it be regarded as truly voluntary, if the offender knows that prosecution may be discontinued if s/he takes part?”.

## STRIKING AN ACCORD

Zehr and Mika may have avoided coining a definition for RJ per se, but many others attempted to achieve this. The irony is that even on this matter the restorative movement does not seem to agree whether a definition is in fact desirable or not. The views are again

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<sup>39</sup> “The conference is voluntary. It will take place only if the victim and the offender agree to participate. All parties are free to withdraw from the restorative justice process at any time”, New Zealand Department for Courts 2004.

divided into two groups: those who believe that a definition for RJ is imperative if we are to avoid confusion, and those who claim that it will expose the concept to great danger. To give an example, Zehr and Mika said: “We do not believe that any single definition will ever be likely or even particularly useful” (Zehr and Mika 1998, 49). David Miers, on the other hand, claimed that without a clear and comprehensive understanding of RJ, evaluation is hampered (Miers 2001).

However, the reality is that despite the extensive literature on RJ and the growing interest and widespread application of its programmes there is still confusion as to what we call ‘Restorative Justice’. Dennis Sullivan, Larry Tifft and Peter Cordella asked: “What are the essential elements of RJ, and when can a particular correctional practice be considered restorative and when not?” (Sullivan et al. 1998, 13) As Daly and Immarigeon put it: “The concept has many aliases: reparative justice, transformative justice, informal justice, among them<sup>40</sup>. Global networks of academics, system workers and activists have fostered a multinational stew of ideas; as a result, key terms can shift in usage and meaning”<sup>41</sup> (Daly and Immarigeon 1998, 23). In one word: “This area is complicated and confused enough as it is” (Walgrave and Aertsen 1996). This section will review some of the most prominent international attempts to define RJ and its principles.

### **Tony Marshall’s Definition**

Arguably, one of the most frequently quoted works in the area, and one that resulted in what is currently accepted as the dominant definition for RJ, is found in Tony Marshall’s 1999 project for the Home Office (Marshall 1999). There, he said: “Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall 1999, 5).

This definition is a classic example of the aforementioned ‘process-based’ School. Marshall claimed that the primary objectives of RJ are: (a) to attend fully to victims’ needs (b) to prevent re-offending by reintegrating offenders into the community (c) to enable offenders to assume active responsibility for their

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<sup>40</sup> Tony Marshall reports hearing the following terms used in referring to new justice models: restorative, communitarian, neighbourhood, progressive, situational, accessible, informal, reparative, holistic, green, real, soft, negotiated, balanced, true, positive, natural, genuine, restitutive, relational, community, alternative, constructive, participatory, problem-solving, and transformative. (Marshall 1997).

<sup>41</sup> For instance, Lode Walgrave and Ivo Aertsen discussed about the utility of the term *reintegrative shaming* coined by John Braithwaite. They argued that while *reintegrative shaming* and RJ may be seen as “complementary concepts, [they] should not be fused together (Walgrave and Aertsen 1996).

actions (d) to recreate a working community that supports rehabilitations of offenders and victims, and is active in preventing crime and (e) to provide a means of avoiding escalation of legal justice and the associated costs and delays (Marshall 1999, 6).

The central concern of RJ, he said, is the restoration of: (a) the victim (b) the offender to a law-abiding life (c) the damage caused by crime to the community. Marshall claimed that the RJ principles are the consequence of innovative practice, which has mainly been due to frustrations that many practitioners have felt with the limitations of traditional approaches. Marshall believes that the principles' "basic justification is still grounded in practical experience" (Marshall 1999,3). In his Home Office report, he concluded that: "RJ is not, therefore, a single academic theory of crime or justice, but represents, in a more or less eclectic way, the accretion of actual experience in working successfully with particular problems" (Marshall 1999, 7).

Marshall's definition has often been criticised by several theoreticians in the field. Zehr and Mika, for instance, said that: "it captures this core idea of RJ practice as a collaborative process to resolve harms. Despite the seductiveness of his succinct definition, however, we feel it is important to be more explicit about the elemental features of a restorative approach" (Zehr and Mika 1998, 54). In the same vein, James Dignan said: "Although the formulation proposed by Tony Marshall is reasonably flexible...in another sense, it is also highly restrictive" (Dignan 2002, 176). This chapter will argue that the prevalence of Marshall's definition in the literature is partly due to the criticism it received, the publicity it was afforded and finally its endorsement by the 'Working Party on RJ'.

### **Definition by the 'Working Party on Restorative Justice'**

One of the most ambitious steps towards a consensual definition for RJ was taken by the 'Working Party on Restorative Justice'<sup>42</sup> (hereafter Working Party) under the auspices of the 'Alliance of NGOs on Crime Prevention and Criminal Justice'. Aiming to give to RJ a sufficiently high profile so that it could be placed on the agenda of the 10<sup>th</sup> United Nations crime congress in 2000<sup>43</sup>, the Working Party set off a 1995 research project involving the most

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42 This was formed as a result of the 9<sup>th</sup> United Nations congress, which included several sessions on RJ. While interest in the topic seemed to be strong, it was apparent that presentations during ancillary meetings had little if any effect on debate during the Committee and plenary sessions of the congress itself.

43 Among the traditional features of United Nations crime congresses are the ancillary meetings that run simultaneously with the congress. These meetings are convened by NGOs, United Nations institutes and Governments, and address topics expected to be considered by the congress. At the 2000 congress, the Working Party presented a series of these meetings.

well known RJ theoreticians and practitioners of that time<sup>44</sup>. The project was carried out under the direction of Paul McCold<sup>45</sup>, director of research of the 'International Institute for Restorative Practices'<sup>46</sup> in Bethlehem, Pennsylvania. The Working Party achieved its first target, providing an annotated bibliography of the literature on RJ (McCold 1997). However, as Paul McCold put it: "the development of a working definition [for RJ] has proved more elusive" (McCold 1996, 20).

In detail, McCold used the Delphi method<sup>47</sup> with the help of e-mail via the internet. The sample of the study consisted of 29 selected members<sup>48</sup>, who were asked to participate in three rounds of questions. The first included a list of RJ principles as these were discussed in various theoretical writings in the field. Only ten members responded, and therefore the same questions were repeated in the second round, where twelve members participated. The issues, where no objections were voiced, were suggested as points of agreement. These formed the questions of the third round to which only six respondents replied. In brief, eleven of the selected panel members did not respond to any of the three rounds, while many of the respondents to the third round did not comment on the previous notes, but simply stated their own definition. Therefore, it was concluded that "there was no movement toward a consensus, and that the Delphi process had failed in that regard"<sup>49</sup> (McCold 1996, 24).

As a result, the Working Party ended the Delphi, and "convened a subcommittee to choose among the many definitions gathered" (McCold 1996, 24) This process resulted in accepting Tony Marshall's definition. McCold said: "By endorsing Marshall's definition, we do not intend to limit the continuing dialogue on the

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44 The Working Party would issue a report and recommendations, which could possibly become the basis for an ancillary meeting at a crime congress.

45 Paul McCold was one of the participants of the first survey of this study.

46 This non-profit organization provides education, consulting and research in support of the development of restorative practices around the world.

47 According to this method, a panel of experts are gathered and asked to respond to the scenarios offering modification or suggesting additional considerations. Through the iterative interaction and modification of ideas a consensus emerges. However, in order to be successful, the *Delphi* requires a recursive interaction of each panel member with the group. Therefore, it has been argued that Paul McCold's chosen method of e-mail did not suffice to allow such a modification.

48 These were: Gordon Bazemore, John Braithwaite, Ron Claassen, James Considine, Peter Cordella, Frank Dunbaugh, Burt Galaway, Julia Hall, Kay Harris, Virginia Mackey, Tony Marshall, Gabrielle Maxwell, John MacDonald, Paul McCold, Fred McElrea, Harry Mika, David Moore, Ruth Morris, Allison Morris, Wayne Northey, Dean Peachey, Joan Pennell, Kay Pranis, Barry Stuart, Daniel van Ness and Howard Zehr.

49 According to Van Gigch and R Hommes, the *Delphi* method is not appropriate for problems or questions on which the experts have already made up their minds so that changes of opinion cannot be expected (Van Gigch and Hommes, 1973).

concept. Many will feel that the definition is incomplete, but it avoids many of the value issues that prevent consensus. The Working Party felt that this served our immediate purposes, and recall that we have also adopted Ron Claassen's RJ principles. Together, these do paint a more complete picture of RJ." (McCold March 07, 2003).

### **Ron Claassen's Principles**

In 1995, Ron Claassen, currently the director of the 'Centre for Peacemaking and Conflict Studies'<sup>50</sup>, presented at the 'National conference on peacemaking and conflict resolution'<sup>51</sup> (NCPCR) the 'Fundamental principles of Restorative Justice' (Claassen 1995).

According to these principles:

- (a) Crime is primarily an offence against human relationships.
- (b) RJ is a process to make things as right as possible.
- (c) As soon as immediate victim, community and offender safety concerns are satisfied, RJ views the situation as a 'teachable moment' for the offender.
- (d) RJ prefers responding to the crime at the earliest point possible and with the maximum amount of voluntary cooperation and minimum coercion since healing in relationships and new learning are voluntary and cooperative.
- (e) RJ recognises that not all offenders will chose to be cooperative, and that those who pose significant safety risks be placed in settings where the emphasis is on safety, values, ethics, responsibility, accountability and civility.
- (f) RJ recognises and encourages the role of community institutions, and requires follow-up and accountability structures (Claassen 1995).

### **A Definition by the United Nations**

In April 2000, the Canadian and Italian Governments submitted Resolution 1999/26 to the United Nations 'Commission on Crime Prevention and Criminal Justice', proposing that the organisation develops international guidelines to assist countries in adopting RJ programmes. This proposal was made in the aftermath of the 10th United Nations congress on 'Crime Prevention and Treatment of

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50 The centre is based in Fresno Pacific University, and offers graduate education in conflict management and peacemaking leading to the MA degree or graduate certificate.

51 The NCPCR was founded in 1982 to provide a forum where individuals working and researching conflict resolution processes could gather to exchange ideas.

Offenders<sup>52</sup>, for which the Working Party was preparing the definition.

Just before the congress convened, the United Nations 'International Scientific and Professional Advisory Council' released a study drafted by Paul Friday (Friday 1999). He concluded as follows: "Guidelines and standards are desperately needed. There is a danger that programmes that are initially restorative in outlook recreate the courtroom process and in turn undermine rather than cultivate restorative justice. There is also the danger that the legal basis for initiating the process can get lost. And there is a third danger that the etiological factors producing crime-poverty, racism, cultural/social values, individualism will not be addressed as they are uncovered in the process" (Friday 1999, 35).

Therefore, Resolution 1999/26 proposed that draft elements of a declaration of basic principles on the use of RJ be circulated to member States, requesting comments on whether such an instrument would be helpful. In December 2000, the Secretary General issued a note verbale, inviting country comments. By the end of May 2001, 37 countries responded along with various NGOs and United Nations entities. In consequence, the United Nations convened an Expert Meeting to review the received comments<sup>53</sup>.

The meeting, which took place in Canada, was attended by 18 experts from 16 countries. There, they discussed the concept of RJ and its use in criminal justice systems in different parts of the world. They then reviewed the Secretary General's report on RJ<sup>54</sup>, detailing the comments made by member States and others to the draft elements of the basic principles circulated with the note verbale. The Expert Group concluded that it was desirable to develop an international instrument on RJ, and that the draft elements provided a good basis from which to begin developing that instrument. It also agreed that the purpose of the principles was to assist member States to adopt and standardise RJ in their justice systems, and thus should not be taken as mandatory or prescriptive. It added: "since theories of RJ continue to evolve, the Expert Group will avoid using prescriptive or narrow definitions that might impede further development" (Expert Group 2002).

In April 2002, the Canadian Government proposed that the Expert Group's 'Basic Principles' be recommended by the United Nations Commission for adoption by the 'Economic and Social Council'. On the 24th of July 2002, the Council adopted Resolution E/CN.15/2002/L.2/Rev.1 'Basic principles on the use of Restorative

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52 Every five years, the United Nations convenes this congress for discussion and debate on topics related to crime, criminal justice, treatment of offenders and more recently of victims.

53 Under United Nations rules, 30 country responses are required before an expert meeting can be convened.

54 UN Doc. E/CN.15/2002/5.

Justice programmes in criminal matters', encouraging countries to use it in developing RJ (United Nations 1999). RJ was included in the 2005 agenda of the United Nations congress on 'Crime Prevention and Criminal Justice'.

### **Declaration of Leuven**

In 1997, the 'International Network for Research on RJ for Juveniles' (Network) based at the University of Leuven, convened the first of what has now become the 'Annual Conference on RJ for Juveniles' (International Conference on Restorative Justice for Juveniles 1997). There, the Network adopted the 'Declaration on the advisability of promoting the restorative approach to juvenile crime'. In spite of differences in approach and emphasis, the participants<sup>55</sup> agreed that this text could be considered as a common ground for further elaboration.

Some of their propositions include:

- (a) Crime should... be dealt with as a harm done to victims, a threat to peace and safety in community and a challenge for public order in society.
- (b) Reactions to crime should contribute towards the decrease of this harm, threats and challenges and consider in full the account- ability of the offender.
- (c) The main function of social reaction to crime is not to punish, but to contribute to conditions that promote restoration of the harm caused by the offence.
- (d) The role of public authorities in the reaction to an offence needs to be limited to contributing to the conditions for restorative responses to crime.
- (e) The victim has the right to freely choose whether or not to participate in a restorative justice process.
- (f) If the victim refuses to cooperate, the offender should nevertheless in the first place be involved in some form of restorative responses (International Conference on Restorative Justice for Juveniles 1997).

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<sup>55</sup> These were: Gordon Bazemore, John Braithwaite, Ezzat Fattah, Uberto Gatti, Susan Guarino-Ghezzi, Russ Immarigeon, Janet Jackson, Hans-Juergen Kerner, Rob MacKay, Paul McCold, Mara Schiff, Klaus Sessar, Jean Trépanier, Mark Umbreit, Peter van der Laan, Daniel Van Ness, Ann Warner-Roberts, Elmar Weitekamp, Martin Wright, and Lode Walgrave.

## **The Victim-Offender Mediation Association (VOMA) Guidelines**

In 2001, the VOMA<sup>56</sup> adopted its 'Recommended Ethical Guidelines'. This document was directed to practitioners, and covered the process and procedures to be used in handling cases with victim-offender mediation (Victim Offender Mediation Association 1998). It also referred to the rights of the parties to self-determination and professional advice, the training of mediators, their advertising and fees, and how mediators should relate to their peers and the media.

Some of these principles are:

- (a) Victim-offender mediation is a restorative conflict resolution process which actively involves victim and offender in an effort to repair the emotional and material harm caused by a crime.
- (b) Presenting choices to the parties whenever possible maximizes their opportunities to feel empowered by the process.
- (c) Training for mediators in victim-offender sensitivity issues.
- (d) The mediator shall reach an understanding with the participants regarding the procedures to be followed in mediation.
- (e) The primary responsibility for the outcome and restitution agreement rests with the participants. The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement and/or to have an informed and voluntary dialogue.
- (f) Contact with the media for purposes of education and information regarding the underlying philosophies of restorative justice and victim-offender mediation is generally supported. However, programmes are encouraged to use great caution and care in responding to media requests to be directly involved in cases, particularly live settings or the taping of cases for later viewing (Victim Offender Mediation Association 1998).

## **The Restorative Justice Consortium<sup>57</sup> Principles**

The Restorative Justice Consortium is a British group of organisations and individuals formed in 1997 to bring together a wide range of people with an interest in RJ. Its members represent victims, offenders, young people and mediators and academics, with or without a professional interest in RJ. From its early days, the Restorative Justice Consortium sought to provide good

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<sup>56</sup> It is an international membership association, which supports and assists people and communities working at restorative models of justice. VOMA provides resources, training, and technical assistance in victim-offender mediation, conferencing, circles, and related RJ practices.

<sup>57</sup> The Restorative Justice Consortium was one of the interviewees of Survey II.

principles for standards of practice, to share and exchange information about RJ, and to promote a comprehensive understanding of the concept and its use.

To this end, in 1999, the Consortium issued: 'Standards in Restorative Justice' (Restorative Justice Consortium 1999), which was subsequently replaced by the 2002 'Statement of Restorative Justice Principles' (Restorative Justice Consortium 2002). These principles are presented in seven sections organised around the rights, needs, obligations and responsibilities of different parties. They are proposed as a means of preserving human rights, and ensuring ethical practice as victims, offenders, community, criminal justice officials and RJ practitioners participate in RJ.

### **David Miers' Findings**

In 2001, David Miers, a professor at Cardiff University, prepared a report for the UK Home Office, providing an overview of the position and use of RJ programmes in twelve European jurisdictions (Miers 2001). The review drew some lessons about good practice aiming to place it within theoretical debates about the nature and scope of RJ. It also tried to highlight some of the strengths and weaknesses of evaluative research into RJ's impact. One of its main concerns was the issue of defining and understanding RJ. The overall aim of the report was to provide an overview of the position and use of RJ in other jurisdictions in order to inform policy development in England and Wales.

"This review is concerned with RJ provisions in [twenty] countries. This simple proposition disguises, however, a key definitional difficulty. The phrase 'Restorative Justice' is used to refer to an extraordinarily wide and diverse range of formal and informal interventions" (Miers 2001, 4). He then provided a list of programmes that use RJ principles both within and outside the criminal justice context (e.g. schools). He subsequently claimed: "as these various uses illustrate, one can approach RJ from a variety of standpoints ... The jurisdictions reviewed display all of these variations. Indeed, we may note that for some there is no linguistic equivalent of the Anglo-Saxon phrase Restorative Justice".

Miers concluded: "the precise form of the paradigm is as yet unclear whether in theory or in practice and the whole debate is characterised by considerable terminological and conceptual confusion. This is reflected very graphically in the bewildering variety of terms that have been proposed to describe the new movement...For their part, believers celebrate this diversity: plurality is a strength not a weakness. Nevertheless, if a 'Working Party' of leading RJ authors cannot agree on a working definition of

the key phrase both analysis and evaluation are hampered” (Miers 2001, 88).

In 2001, Miers completed a second report, this time with the help of a research group funded by the Home Office (Miers et al. 2001). There, they presented the results of a 15-month study of the effectiveness of seven RJ schemes conducted between July 1999 and November 2000 across England. Two of these schemes were dealing principally with adult offenders and the rest with juveniles.

In their executive summary, they said: “Carrying out the research proved difficult in a number of respects... The schemes evaluated in this research were diverse in their understanding of the notion of RJ, their degree of focus on victims and offenders, and their implementation of the interventions which they understood” (Miers et al. 2001 ix). In the second chapter, they claimed that they sought to update Tony Marshall’s comprehensive overview of the meaning, purposes, practices and impacts of RJ. They said: “in broad and simple terms, RJ signifies those measures that are designed to give victims of crime an opportunity to tell the offender about the impact of the offending on them and their families and to encourage offenders to accept responsibility for and to repair the harm done. Its general aims are to reduce re-offending, to restore the relationship between the victim and the offender that was disturbed by the offence, and to improve victims’ experiences with the criminal justice system” (Miers et al. 2001, 8).

They concluded: “The diversity of practice, the powerful sense of ownership on the part of its practitioners, the tensions between offender-centred and victim-centred criminal justice and penal policies, divisions as to its theoretical base, and what counts as success, are all matters that continue to exercise those who have, in the short time since Marshall’s review, contributed to the RJ debate” (Miers et al. 2001, 8).

## THE INTERNATIONAL DIMENSION OF RESTORATIVE JUSTICE: FROM THEORY TO POLICY & PRACTICE

This chapter’s objective is twofold. First, it will try to identify RJ within recent statutory and policy developments that took place in four criminal justice systems: New Zealand, Canada, Australia and England & Wales. These examples are not meant to be exhaustive, but rather illustrative, giving only a flavour of RJ’s implementation in policy and legislation. The aim of this investigation is neither to provide a comparison of the developments that took place in these countries, nor to examine which has been at the forefront of the movement.

There are three reasons for this account. Firstly, it will provide concrete examples of areas that have been affected by restorative

values and practices. This will aid our understanding of RJ. Secondly, the examination of policy and statutory developments will provide a basis for comparison between the normative understanding of RJ's theory and practice and its actual implementation. The significance of this is twofold. It will generate additional indications that will allow a deeper investigation through fieldwork and provide examples where the alleged gap is evident. Thirdly, the chapter will complement the abstract description that Part I has so far provided for RJ to provide a more accurate understanding of its up-to-date application.

In particular, the Chapter will discuss a relatively new dimension of RJ and an aspect impossible to ignore when looking at the way its theory and practice have developed. This refers to RJ's application at the international level. This description has been divided into two subsections. The first will portray RJ's regional dimension and capabilities, using the example of Europe. It will achieve this by referring to the various changes that RJ brought to areas like European legislation, jurisprudence, policy and practice. The second will examine RJ's global dimension, and the influence it had on the international arena. It will attempt this by using three examples: (a) the Rwanda genocide (b) paramilitaries in Northern Ireland (c) and the United Nation's policy and legislative work on RJ.

This trans-national review of RJ is imperative in the examination of its notion. It will provide examples to show the nexus between its national and international developments, and the ways they affect each other. This will illustrate that RJ has not been immune to the contemporary trend of 'globalisation', which seems to affect not only the exchange and sharing of ideas, but also the delivery, efficiency and effectiveness of practices both within and outside the criminal justice field.

## RESTORATIVE JUSTICE IN POLICY MAKING: NATIONAL EXPERIENCES

RJ's impact is evident in numerous legislative amendments, policy and strategy documents, governmental papers and official reports both nationally and internationally. This section uses four examples to reflect upon these developments. Policy and statutory changes that were due to RJ are also found in other countries. However, the study chose these particular examples, because it believed that the four of them together can provide a good representation of the significance that RJ has had in the field of policy and legislation. The description for each country is not meant to be exhaustive. The central target is to give a flavour of the direction towards which criminal justice systems are oriented, but most importantly of the way the norm (RJ as described in Chapter 1 has been implemented through legislation and policy.

## New Zealand

In New Zealand, the 1980s witnessed fierce debates in three areas, which are said to have changed the country's criminal justice system. The first concerned the way in which decisions were taken by the State regarding children and young people. Although this debate started wider than youth justice, in the end, it proved decisive in determining the provisions for young offenders (Morris and Maxwell 1998). This was the result of a strong opposition on behalf of the Maori people.

Maori hold the view that decisions must involve the families, including *whanau* (all those descended from common grandparents), *hapu* (clan) and *iwi* (tribe), and should not be taken by professionals. As a result, in the mid 1980s the 'Children and Young Persons Bill' was introduced in Parliament. This was then referred to a Select Committee, and subsequently reviewed by the Department of Social Welfare, which made sure that it was culturally sensitive and accommodating to the *tangata whenua* (indigenous people). The committee was also directed to consider involving parents and family groups in developing solutions to youth problems (Hudson et al. 1996). In 1989, a substantially modified Bill was drafted, proposing the use of family-group conferences to deal with care for children and youth crime. The result was the 'Children, Young Persons and their Families Act 1989', which, according to some, is based on Maori concepts and traditions of justice (Cunneen 1997). Overall, it has been described as groundbreaking in setting in motion a worldwide restorative youth justice conferencing movement (Bowen and Boyack 2003).

The second area concerned the actual role of Maori in the wider society, including ways in which their justice practices could or should transform the current system, which was based upon Western traditions. Maori justice processes use the notion of 'collective responsibility', which they link to the reasons behind offending. These are believed to lie not in the individual, but in a lack of balance in the offenders' social and family environment. In their view, these problems can be addressed only by adopting a collective community response. Through this, the community can achieve restoration of harmony between the offender and the victim's family. After colonialism took over in the country, these indigenous systems were more or less absorbed or destroyed<sup>58</sup> (Pratt 1992).

However, in the 1980s, the resurgence of Maori traditions challenged conventional criminal justice practices that were going

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58 The relationship between the State and Maoridom is set out in the 1840 Treaty of Waitangi. It intended to create a partnership, but this never happened. Maori culture and values were not allowed to co-exist with the culture of the colonizers, and, at least on an official level, they were all dismantled. (Jackson 1988)

through a crisis at the time. The result was the introduction of Sections 11 and 12 of the 'Criminal Justice Act 1985', which directed sentencing policies towards restorative values. In 2002, the 'Sentencing Act' was passed, which obliged sentencing judges to consider restorative processes. In particular, Sections 7, 8, 9 and 10 set out the purposes and principles of sentencing, and asked from courts to any remorse shown by the offender as a mitigating factor. Section 10 is the statute's main RJ part, as it directly requires the court to give weight to a number of actions that are taken up by offenders and fall within RJ's framework. The 'Parole Act 2002' also became law on the same day. This required the Parole Board to follow four guiding principles one of which is that "RJ outcomes are given due weight".

The third debate that was taking place during that time concerned the emergence of victims' movement, which, inter alia, resulted in the passing of the 'Victim of Offences Act 1987', and the formation of the 'Victims Task Force'. Although the Act does not use the word RJ directly, some believe it contains the most restorative provisions of all three 2002 above-mentioned Acts. Section 9, for instance, provides that if a suitable person is available to arrange and facilitate a meeting between a victim and offender to resolve issues relating to the offence, a judicial officer, lawyer, court staff, probation officer or prosecutor should encourage the holding of a meeting of that kind. The main restriction is that parties participate out of their own will, and the meeting is practicable, considering the surrounding circumstances.

These legislative changes were cemented through case-law. In 1998, the New Zealand Court of Appeal in *R v. Clotworthy*<sup>59</sup> substituted a three-year prison sentence for a two-year suspended sentence of imprisonment having used RJ as a mitigating factor<sup>60</sup>. This involved a serious stabbing case, where the offender attended a conference, the report of which was considered by the district court judge. In his sentencing remarks, the judge said that the report made: "very clear that they [victim and offender] had intimate and personal communications, which could well have achieved more by way of healing of attitudes than anything else". It is also obvious, he said, that the victim: "did not see any benefit in a festering agenda of vengeance or retribution in his heart against the prisoner". He, therefore, considered that it was appropriate to balance this aspect favourably against the aggravating circumstances of the case.

The Court of Appeal then said: "[W]e would not want this judgment to be seen as expressing any general opposition to the concept of RJ (essentially the policies behind ss11 and 12 of the

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59 (1998) 15 CRNZ 651 (CA).

60 This is an example of the judiciary trying to integrate restorative practices into the existing criminal justice system, a matter that was discussed in Chapter 3 regarding the 'separation vs. integration fault-line'.

Criminal Justice Act 1985). Those policies must, however, be balanced against other sentencing policies, particularly in this case those inherent in s5, dealing with cases of serious violence. Which aspect should predominate will depend on an assessment of where the balance should lie in the individual case. Even if the balance is found, as in this case, to lie in favour of Section 5 policies, the restorative aspects can have, as here, a significant impact on the length of the term of imprisonment which the Court is directed to impose. They find their place in the ultimate outcome in that way”.

As a result, in 2001, the Government initiated a national pilot to examine RJ practices at four district courts. The pilot evaluates conferences with adult offenders and which take place between the time a plea of guilty is entered and sentence passed. A report of the conference is then given to the judge, and the outcomes agreed by the parties are taken into account at sentencing. To the end of March 2003, there had been 750 referrals from judges or magistrates in the pilot courts. The process of the four pilots is described in Figure 2.

However, only 260 of them were completed. According to Alison Hill, manager of the pilot, it is too early to determine exactly why conferences do not take place after referrals. She outlined a range of possible reasons, including (a) the victim or the offender was not willing to meet (b) they may not have been able to be contacted (c) they may not have been able to take time off from work or get away from family commitments. Evaluation work is continuing to determine precisely why conferences do not proceed (Bowen and Boyack 2003). Initial findings, however, suggest that only 40% of victim referrals actually went to court (Hill and Hennesy 2007).



Figure 2: New Zealand RJ Pilot projects<sup>61</sup>

Family-group conferences have been criticised for several other reasons. According to Bowen et al., one of these criticisms concerned the inadequate monitoring of conference agreements (Bowen and Boyack 2003). The Government sought to rectify this by getting a commitment from responsible people to supervise conference outcomes. This was especially necessary in the event the court sentence of supervision, administered by Community Corrections, was not imposed. Furthermore, according to New Zealand's first RJ supporting group, Te Oritenga, the way family-group conferences are currently applied fails to locate and invite the widest family group, which could enhance the possibility of offenders taking responsibility for their future behaviour (Bowen and Boyack 2003). For example, the legislation (i.e. the three 2002 Acts) provided for only one supporter to accompany the victim.

However, the biggest governmental step away from RJ was taken after a 1999 referendum that revealed that 98% of people still wanted tougher sentences. The Government, instead of taking this as a sign to increase public awareness of alternative means of sentencing, responded with a more punitive policy. Justice Minister Phil Goff said: "The public referendum showed New Zealanders wanted tougher measures taken against criminals, and the Government has acted on that" (Goff 09 March 2004). "We have also abolished the nonsense of serious violent offenders being automatically released at two thirds of their sentence", Mr. Goff said. Four new prisons are now under construction. These will cost

<sup>61</sup> Taken from Hill A. and Hennesy J (2007) *Restorative Justice: The New Zealand Picture*, New Zealand: Ministry of Justice.

over \$600 million, and generate operating costs of over \$120 million a year. With this political decision, the Government is said not only to have taken a step back in its RJ initiatives, but also to have ignored the many research and evaluation reports that had been conducted on family-group conferences, showing increased victim satisfaction and reduction in recidivism.

The New Zealand Ministry of Justice recently released the findings of an evaluation study of a pilot project that ran from 2001-2004. The evaluation showed positive results but also recommended changes. The Court-Referred Pilot Project allowed judges in four district courts to refer qualified adult offenders to restorative conferences. The requirements were that the offenders plead guilty and that the charges be serious. Only property crimes with a maximum sentence of at least two years, and other offences with maximum sentences between two and seven years, were subject to referral. The evaluation of the pilot project ran from 4 February 2002 to 4 February 2003' and its goals were to:

- Increase resolution of the effects of crime for victims who participated in the restorative justice conferences,
- Increase victim satisfaction with the criminal justice system, and
- Reduce re-offending rates for offenders participating in the conferences

Of the 577 cases referred to conferencing during the evaluation period, only 36% actually went to a conference. The primary reason for this was refusal by victims to meet their offenders. In terms of increasing the resolution of the effects of crime for victims, initial responses of victims were very positive. In reference to increased victim satisfaction with the criminal justice system, one-third of victims said they felt better about the criminal justice system as a result of their conference experience. The one year re-conviction rate for pilot participants was 32%. This was a slight decrease from the reconviction rates of 10 matched comparison groups (36%). A study examining two-year reconviction rates is currently underway.

In 2006, four new proposals were accepted by the New Zealand government in order to expand RJ availability at different stages of the Criminal Justice System. The proposals are: restorative justice processes for both less serious, and more serious offending; increased provision of restorative justice in conjunction with prisoners' re-integration into the community; and the development of a national performance framework. With the passing of the *Corrections Act 2004*, which requires the Parole Board to take RJ process into account when making decisions on release of offenders, as well as the new proposals for national application of RJ, it is said that in New Zealand there is currently a momentum for the restorative justice movement. However, key challenges such as the influence of the punitive climate and lack of training and national standards make this process a challenge.

In 1988, the Canadian 'Parliamentary Standing Committee on Justice' and Solicitor General conducted a review of sentencing, conditional release and related aspects of corrections. The results were published in a 1988 report by the House of Commons. This focused on the needs of victims and RJ<sup>62</sup>. In particular, it recommended that the Government "supports the expansion and evaluation throughout Canada of victim-offender reconciliation programmes at all stages of criminal justice process which: (a) provide substantial support to victims through effective victim services (b) encourage a high degree of community participation" (House of Commons 1988). The report also recommended that the purposes of sentencing be enacted in legislation, and that these should include reparation of harm to the victim and the community and promoting a sense of responsibility in offenders. In 1996, these were introduced in the 'Criminal Code of Canada' (Criminal Code, Canada ss. 718).

The importance of the aforementioned legislative amendments is reflected in the jurisprudence of the Supreme Court of Canada, and particularly in the landmark decisions: *R v. Gladue*<sup>63</sup> and *R. v. Proulx*<sup>64</sup>. There, the court rejected the view that a restorative approach is a more lenient approach to crime, or that a sentence focusing on RJ is a lighter sentence. In particular, the court said: "Restoring harmony involves determining sentences that respond to the needs of the victim, the community, and the offender"<sup>65</sup>. The court also pointed out that practice should now be directed towards alternative ends such as RJ. Therefore, it called for less reliance on incarceration as a sanction, and increase of the use of principles of RJ in sentencing<sup>66</sup>.

In 1996, the Federal, Provincial and Territorial Ministers responsible for Justice endorsed a report that was written to address the growth in the prison population at that time (Solicitor General Canada 1996). One of the recommendations was to increase the use of RJ, and share information on the results of demonstration projects based on its principles. In subsequent 1997, 1998 and 2000 reports by the Solicitor General, most Canadian jurisdictions reported having introduced RJ policies and programmes (Solicitor General Canada 1997, 1998, 2000).

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62 This is also known as the 'Daubney Report'.

63 *R v. Gladue* [1999] 2 C.N.L.R. 252.

64 *R. v. Proulx* [2000] 1 S.C.R. 61.

65 *Ibid.*

66 The court stated: "The 1996 sentencing reforms ("Bill C-41") substantially reformed Part XXIII of the Code... Bill C-41 in general and the conditional sentence in particular were enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of RJ in sentencing" (*Ibid.*.)

After a 1997 RJ conference by the 'Canadian Criminal Justice Association' and the 'International Centre for Criminal Law Reform and Criminal Justice Policy', a working group composed of senior officials from Federal, Provincial and Territorial Governments was established. Its mandate was to collaborate in elaboration of policies for RJ, promote and disseminate research and share information on developments in the various Canadian jurisdictions. In 2000, it prepared a consultation paper titled: 'Restorative Justice in Canada', with an overview of the nature of RJ and its application in Canada. The consultation questions included in the paper aimed to address: (a) the role of Government and community in RJ (b) the effects of victims, appropriate offences for restorative process (c) accountability issues and (d) training and standards of practice (Department of Justice Canada 2000).

In October 1999, the Government's commitment to "launch a programme of RJ to help victims overcome the trauma of crime and provide non-violent offenders with a chance to help repair the damage caused by their actions" was stated in the 'Speech from the Throne' of the Second Session of the 36th Parliament.

A year earlier, the Government had released its 'Youth Justice Strategy' (Government of Canada 1998), which eventually resulted in the 'Youth Criminal Justice Act' (YCJA). This was passed by Canada's Parliament in 2002, becoming effective on April 1st, 2003. The purpose of the Act was to set out the principles, rules and procedures for young persons who come into conflict with the law. It applies to laws about criminal conduct passed by the Government of Canada, such as the 'Criminal Code of Canada' and the 'Narcotics Act'. The new Act replaces the 'Young Offenders Act', and is based on a number of restorative ideas like accountability, responsibility, meaningful consequences for youth crimes, support for long-term/sustainable solutions, consistency with national and international human rights, and promotion of a more flexible and streamlined youth justice system.

However, in his analysis for the '6th International Conference on Restorative Justice', Serge Charbonneau, Director of ROJAQ<sup>67</sup>, said: "We cannot escape the conclusion that the YCJA draws upon a hodgepodge of perspectives from a social reaction point of view. While several of its principles reflect a restorative perspective, its structure is undeniably penal in nature. The terms used in this legislation refer to sentences, and one of its very significant provisions would have young offenders found guilty of a serious offence subject to adult sentences, thereby endorsing the notion that harsh sentences are effective. Several of the stated principles and objectives are inspired by the rehabilitative model, thus limiting the restorative approach to less serious offences. Beyond its stated objectives, the YCJA identifies the police as first interveners and

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67 Regroupement des organismes de justice alternative du Québec (ROJAQ).

gives them the discretion to apply a series of non-judicial measures in the case of minor offences. As a result, the mission of the police and the professional ideology of police officers take on added importance” (Charbonneau 2003, 8).

In addition, several other concerns emerged around RJ’s implementation. In its 1998 report, the ‘Standing Committee on Justice and Human Rights’ expressed fears that restorative programmes might end up being used inappropriately, failing to denounce and deter serious crime. Robert Cormier, Deputy Director General in the Department of the Solicitor General was concerned that “RJ programmes are dominated by NGOs with a primary mandate to assist offenders in their rehabilitations and reintegration, and that the perspective of victims has not been adequately taken into account in the design and implementation of these programmes (Cormier 2002).

Practitioners, on the other hand, were worried about the absence of guidelines on implementation, especially in relation to victim participation, power imbalances, serious crimes and the training of facilitators. Victim groups also seemed to be nervous of losing funding for services currently being offered by the mainstream system to victims. Chris Simmonds, president of ‘Caveat BC’<sup>68</sup> said: “To my knowledge [RJ] programmes [in Canada] are set up with very little or no victim input. They are being implemented so fast that not enough skilled facilitators can be found. The resulting scenario is one of well-meaning but naïve volunteers operating in poorly-run programmes and a likelihood of the re-victimisation... the RJ agenda benefits the offender more than the victim” (Simmonds 2000). Finally, concerns were reported that while encouraging offenders’ participation, their rights may end up being compromised (Brown 1994).

Finally, many have argued that the way RJ is implemented may undermine principles of sentencing. In particular, in a Solicitor General evaluation report on the effectiveness of victim-offender mediation, it was suggested that RJ’s focus on repairing harm in an individualized manner often put in danger the proportionality principle, according to which the severity of punishment should reflect the seriousness of the crime (Roberts 1995). Tim Roberts cautioned that this will lead the public to reject sentences with restorative aims that are not sufficiently punitive in cases of serious crimes.

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68 This is a non-governmental organisation set up to disseminate information and organise activities to promote victims’ rights in British Columbia, Canada.

## Australia

At the time of writing, apart from Victoria, all Australian jurisdictions have introduced legislation incorporating restorative conferencing in their responses to youth crime. In 1991, John MacDonald, the then advisor to the New South Wales (NSW) police service, introduced in the country town of Wagga-Wagga a pilot scheme of police-run conferencing originally practiced and legislated in New Zealand to provide an “effective cautioning scheme” for juvenile offenders (Moore and O’Connell 1999, 46). The programme tried to combine both New Zealand’s model and Australian John Braithwaite’s theory of reintegrative shaming. This attracted considerable attention and criticism, as intense debate arose about the merits and difference between the two models of police-run (Wagga model) and non-police-run (New Zealand model) conferencing. Despite the tension, the Wagga scheme operated in the absence of legislation for approximately three years.

After its introduction into other Australian States (e.g. Tasmania, the Northern Territory and Queensland), and a series of parliamentary inquiries that were established in Western Australia, Queensland, NSW and South Australia to address the perceived problem of increased juvenile offending and consider effective approaches to juvenile justice, legislated approaches to RJ began to take place. The first happened in 1993 in South Australia with the enactment of the ‘Youth Offenders Act 1993’. This was the product of a select committee inquiry into the juvenile justice system, which was widely perceived as ineffective. One of its recommendations was the introduction of family-group conferences. This was suggested to be established under the control of the senior judge of the Youth Court. According to Heather Strang, restorative programmes in Australia and particularly family-group conferences are mostly based on the conferencing model developed in New Zealand. By 1998, there were approximately 1,450 of these programmes convened in South Australia. Since then, all other Australian jurisdictions, except Victoria, had introduced legislation, with all but one of the statutory-based schemes rejecting the Wagga model in favour of non-police-run conference models<sup>69</sup>.

In NSW where the programme was first introduced, after an evaluation undertaken by Power for the NSW Attorney General (Attorney General’s Department 1996), it was recommended that a legislative scheme including ‘community accountability conferences’ be introduced into the juvenile justice system State-wide. As a result, this was included in the ‘Young Offenders Act 1997’, which became law in 1998. The Act set out a legislative

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69 The ‘Wagga model’ differs from the ‘New Zealand model’ in two ways: it is facilitated by a police officer, and it draws heavily on the theory of *reintegrative shaming*.

hierarchy of increasingly intrusive interventions for juveniles, ranging from police warnings to police cautions to youth justice conferences, depending on a number of legislative criteria and eligibility tests, including the seriousness and persistence of the offending behaviour. Administrative responsibility for the conferencing programme was assigned to the Department of Juvenile Justice. It began operating officially in mid-1998.

In 2001, Heather Strang claimed that RJ was still seen as most suited for dealing with juvenile rather than adult offenders. "Even in the three jurisdictions where adult conferencing is taking place (Queensland, Western Australia and the ACT), the great majority of those selected remain young offenders" (Strang 2001). Several other concerns were also evident. First, most of the programmes had limited eligibility criteria: "they are usually restricted to juveniles, sometimes to first or early offenders, and eligible offences are often at the trivial end of the spectrum" (Strang 2001). This created fears of net-widening, and the construction of an intermediate type of process between cautioning and court, where referrals are still dependent upon the officers' good judgement. Second, according to Danny Sandor, serious concerns have now arisen about the potential for the violation of due process protections of offenders (Sandor 1994). These include agreeing to plea guilty in the belief that they will receive more lenient outcomes through conferencing, as well as the potential for police intimidation. On the other hand, there are fears of victims being re-victimised by taking part in conferences that leave them more fearful than before.

Finally, Chris Cunneen reported on a number of concerns relating to RJ's appropriateness and effectiveness in Indigenous communities (Cunneen 1997). These included: (a) failure of those setting up restorative programmes to negotiate and consult with Aboriginal communities and organizations (b) the discretionary powers of police over access to programmes (c) inadequate attention to cultural differences and (d) the undermining of self-determination through a tokenistic recognition of Indigenous rights (Cunneen 1997).

In her 1999 evaluation of the NSW programme, Jenny Barga observed: "...disappointingly, but perhaps not surprisingly, the Young Offenders Act is not yet working as it should in Indigenous communities. Cautioning rates and conference referral numbers for Indigenous children and young people remain low in many parts of the state. It is not always possible for an administrator to appoint an Aboriginal convenor in all appropriate cases. Many Indigenous people are still not aware of the existence of the Act nor of the part they can play in its operation nor of its potential to reduce the entry of significant numbers of Aboriginal children into the juvenile justice and ultimately adult criminal justice systems" (Barga 4 August 1999). Similar problems were reported in extending the reach of the

new legislation into ethnic communities. According to Kelly and Oxley, the way family-group conferences are currently being delivered does not address the social causes of crime, while at the same time both referral practices and the conference process itself may favour middle class, articulate participants (Kelly and Oxley 1999).

## England and Wales

As with other jurisdictions, RJ's first development in England and Wales came from the community without any legislative or other support from the Government. This happened in 1972 with the introduction of a victim-offender mediation programme. To be more precise, during that year, the 'Bristol Association for the Care and Resettlement of Offenders'<sup>70</sup> (BACRO) was looking into the possibility of making offenders become more aware of the harm they were doing by introducing them to their victims. This project helped BACRO to realise that they knew little about victims, and in 1974, it set up a pilot scheme to give victims the opportunity to express how they have been affected by crime. This was then followed by a series of similar programmes, which eventually resulted in the formation of the 'National Association of Victim Support Schemes' (NAVSS) in 1979 — now called Victim Support<sup>71</sup>. Enquirers from agencies interested in starting mediation or reparation projects tended to confuse victim-offender mediation with victim support and contacted NAVSS. After a series of such enquiries, NAVSS set up a working party, which produced several publications, while from 1981 it held regular six-monthly meetings for all those interested. These led to the establishment of the 'Forum for Initiatives in Reparation and Mediation' (FIRM) in 1984, now known as Mediation UK<sup>72</sup> (Liebmann and Masters 2001).

Since then, the new practice had to find its way in the 'shadow of the law', as no specific legislation was enacted to regulate it. However, this was soon to change. After a 1996 Audit Commission report, which severely criticised the youth justice system as ineffective and expensive (Audit Commission 1996), a White Paper

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70 Local branch of NACRO (National Association for the Care and Resettlement of Offenders).

71 Victim Support's main concern is not the representing of RJ *per se*, but the provision of community support for victims, and the promotion of their interest in criminal policy. However, it is now seen as a key player in RJ thinking and a leading organisation in implementing RJ and training facilitators. The organisation was one of the participants of Survey II.

72 Mediation UK is a voluntary umbrella body for mediation initiatives within or outside the criminal justice context. In particular, it comprises practising mediators, mediation bodies, individuals and organisations with an interest in RJ. From its inception as a formally constituted body, it has played a major role in the development of victim-offender mediation in the UK. Apart from information sharing, it provides training, accreditation and coordination. The organisation was one of the participants of Survey II.

titled 'No More Excuses' was introduced in the British parliament (Home Office 1998). The paper argued in favour of a philosophical shift in the approach to youth crime, which "should promote greater inclusion of the views of victims in the youth justice, while juveniles be encouraged to make amends for their offences" (Home Office 1998).

The result was the introduction of the 'Crime and Disorder Act 1998' (CDA), which according to many writers, is the first enabling legislation for victim-offender mediation in England and Wales (Liebmann and Masters 2001). With its principal aim "the prevention of offending by young people", the Act introduced three central innovative features into the youth justice system, which are said to have changed it fundamentally, bringing it one step closer to RJ values.

The first feature was a new governmental body: the 'Youth Justice Board for England and Wales'<sup>73</sup>. Since March 1999, the organisation has been monitoring the youth justice system and identifying, innovating and promoting good restorative practice. In the 2003 'Youth Justice Annual Convention' of the Youth-Justice Board, the then Prime Minister, Tony Blair, praised the Board for "improving the way we deal with young offenders, cutting delays to allow earlier and more effective intervention... and for helping young people and their communities". He also said: "You are setting an example to the rest of the criminal justice system in the way you are removing barriers which prevent you working effectively together" (Blair December 2003).

In January 2004, eight years after its last critical report (Audit Commission 1996), the Audit Commission published the findings of its new audit, praising the "considerable improvements" that had taken place (Audit Commission 2004). "The Youth-Justice Board provides a clear national framework and takes a lead role in monitoring performance and developing policy. As a consequence, persistent young offenders are dealt with more promptly by the courts and most magistrates are satisfied with the quality of service received from Youth-Offending Teams. Young offenders are less likely to commit offences on bail and the reconviction rates for the new pre-court interventions, such as police reprimands and Final Warnings and court orders have fallen" (Audit Commission 2004).

The second innovative element was the creation of 'Youth Offending Teams'. These are multi-agency panels formed by local authorities to provide reports for courts, supervise young offenders sentenced by the court, and to undertake preventative work. Their staff includes police officers, social workers, probation officers, education and health workers and youth service officers.

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<sup>73</sup> The Youth-Justice Board was among the participants of Survey II.

Third, the Act introduced a range of new orders and amended existing ones. In particular, it established a specific 'Reparation Order', which enables courts to order young people to undertake practical reparation activities directly to either victims or the community. This needs to be the outcome of a mutual agreement between the parties. The Government wanting to make sure that the process would be kept as restorative as possible issued a 1998 guidance notes on the Act (Home Office 1998). In particular, Section 2.4 made it clear that "...it should not be a mechanistic process based upon an eye for eye approach; instead any reparation should be tailored to meet both the needs of the victim, if they wish to be involved, and addressing the offending behaviour of the young offender" (Home Office 1998, S2.4). Section 6.1 set down the restorative nature of the outcomes to which such a process should lead. Finally, the guidance notes suggested that victim-offender mediation could be considered as a part of 'Reparation Order', and that Youth-Offending Teams may wish to consider establishing this restorative process (Home Office 1998, S6.1). Tim Newburn and Adam Crawford claimed that RJ is also visible in other elements of the Act such as 'Action Plan Orders', final warnings and reprimands (Newburn and Crawford 2002).

A year later, the Government introduced the 'Youth Justice and Criminal Evidence Act 1999' (YJCEA), which introduced the 'Referral Order'<sup>74</sup>. This is a mandatory sentence for young offenders (10-17) appearing in court for the first time who have not committed an offence likely to result in custody. The court determines the length of the Order based on the seriousness of the offence, and can last between three and twelve months. Once the sentence length has been decided, the juvenile is referred to a 'Youth Offender Panel' to work out the content of the order. These panels are arranged by local Youth-Offending Teams and can include: the offender and their family and friends, the victim and their family, a representative of the local Youth-Offending Team and three members of the community. In theory, the process is a restorative one, including honest and sincere understanding of what happened and the pain inflicted and what needs to occur to put it right. The Government has described the Order as the first introduction of RJ into the youth justice system, while the Act itself makes specific reference to victim-offender mediation as a possible agreed outcome of a panel.

Many have argued that none of the above legislative developments would have taken place if it had not been for the change in culture that Thames Valley Police brought with its innovative RJ initiatives. Thames-Valley Police is currently the

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74 The two Acts also introduced Detention and Training Orders, Intensive Supervision and Surveillance Programmes, Bail Supervision and Support programmes, Parenting Orders; see Crawford and Newburn 2003, Dignan 1999, Morris and Gelsthorpe 2000.

largest non-metropolitan police force in the country, covering 2,200 square miles of Berkshire, Buckinghamshire and Oxfordshire. In the mid 1990s, Thames-Valley Police felt they had to respond to the strong criticisms that were launched against the system of 'cautioning', according to which the police in the UK has the power to divert young offenders away from a court appearance by giving them a formal police caution as a way of finalising the offence committed, providing certain conditions are met. According to the then Chief Constable, Sir Charles Pollard: "when we looked at our traditional cautioning system, we found that no training was given to police officers on how to deliver them. Police officers just did them, with little thought about how effective they were, and never a thought about whether the victim would wish to be involved in some way" (Pollard 2000). Research that was carried out in this area also showed that cautioning sessions were sometimes used to humiliate and stigmatise offenders. For example, Thames-Valley Police officers who were interviewed by a team researching this particular criminal justice feature confirmed that in traditional cautions the usual aim was to give offenders a 'bollocking' and to make them cry (Hoyle et al. 2002).

Consequently, the 'restorative caution' was introduced. Based very much on the work of Terry O'Connell<sup>75</sup> in Australia at Wagga-Wagga, Thames-Valley Police were the first to launch this initiative, whereby police officers administering cautions were meant to invite all those affected by the offence, including victims, to a meeting. In particular, the police officer uses a script to facilitate a structured discussion about the harm caused by the offence, and how this could be repaired. The first experiment took place in 1994 in Milton Keynes with the carrying out of the 'Retail Theft Initiative', whereby young people, who had been caught shoplifting, were brought face-to-face with store managers to hear how shop theft affects others. Over the first three years of the initiative, 1,915 restorative conferences took place at which victims were present. In a further 12,065 restorative cautions, the views of any absent victims were relayed by the cautioning officer. To date, restorative cautioning is considered the largest-scale restorative justice programme in the UK.

The Thames-Valley Police restorative cautioning initiative has been the focus of a three year study (1998-2001) by the Oxford University Centre for Criminological Research. This was led by Richard Young and Carolyn Hoyle<sup>76</sup>, and resulted in the report *Proceed with Caution* and several other publications (Hill 2002; Hill et al. 2003; Hoyle et al. 2002).

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<sup>75</sup> Terry O'Connell was one of the participants of Survey I.

<sup>76</sup> The team was later joined by Roderick Hill, one of the participants of the Survey I, and Karen Cooper.

Their report concluded: “Thames-Valley Police largely succeeded in transforming its cautioning practices from traditional cautioning to restorative cautioning. In particular, it eradicated much of its earlier poor practice in a relatively short period of time between the interim study and the final evaluation. While there was considerable room for further improvement, the findings suggest that even restorative sessions that were less well facilitated were a substantial improvement on traditional cautions” (Hoyle et al. 2002).

For example:

- Offenders, victims and their supporters were generally satisfied with the fairness of proceedings and the results.
- Apologies were usually offered to the victims and were mostly viewed as the result of genuine remorse.
- One in three offenders entered willingly into a formal agreement to make some kind of reparation
- However, additional training and better understanding was still thought to be needed. High-quality facilitation produced the most effective results, but implementation also proved problematic on several occasions.

The youth justice system was not the only domain affected by the restorative movement. In June 2001, the Home Office announced that the police complaints system would also be restructured. Before 1984, all complaints were investigated by a ‘Professional Standards Department’ detective, who was then replaced by the ‘Police Complaints Authority’ (PCA)<sup>77</sup>. After the release of PCA’s 2001 report where it urged the Government to establish RJ as the focal point of local resolution, the Home Office took the idea seriously. The result was the introduction of a new body, the ‘Independent Police Complaints Commission’ (IPCC), which recruits and trains civilians to investigate allegations of serious misconduct and corruption. As Sir Charles Pollard said: “If police officers act in an inappropriate manner, how can we expect them to change their behaviour if they don’t understand how they have affected others? ... And how can we assume that members of the public who make a complaint against an officer feels that justice has been done, when they are no more involved than as providers of statements as to the facts alleged and sometimes as witnesses in an adversarial and punitive misconduct hearing?” (Pollard 2000).

In 2003, the UK Government announced its intention to consult on a national strategy that would expand RJ outside the youth justice system, covering specific crimes prosecuted within the adult

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<sup>77</sup> This full time civilian body was established with the ‘Police and Criminal Evidence Act 1984’ to supervise both the investigation of the most serious complaints against police officers as well as non-complaint cases voluntarily referred by police forces. It was also vested with powers to review the reports of completed investigations in order to decide whether police officers should face disciplinary action.

criminal justice system. This step was in line with its White Paper 'Justice for All', where it agreed to launch a consultation on RJ that would consider its use at all stages of the criminal justice system (Home Office 2002).

In the foreword of his Consultation Paper, the Home Secretary expressed his optimism about RJ (Home Office 2003). "Restorative justice can lead to the offender making reparation—putting right the harm done to their victim, or the community... [it] can also help us deliver on a much wider range of objectives... I want a society where everyone recognises their responsibility for the problems we all face, and one in which individuals and communities get involved in building solutions" (Home Office 2003, Foreword). A special unit was established to develop the strategy<sup>78</sup>. The outcomes of this initiative were the focus of Survey II of this research and will be discussed elsewhere.

Another governmental initiative to test RJ beyond the youth justice system is the Home Office funded 'Justice Research Consortium'. This was founded in September 2001, bringing together crime justice professionals and police chiefs to test RJ as a strategy to reduce crime<sup>79</sup>. Some of the programme's principal targets are to establish whether RJ approaches applied pre-sentence and post-sentence: (a) lead to a reduction in re-offending rates and (b) increase victim satisfaction with the process. Its tests take place in London (Lewisham and Haringey), Sunderland, Gateshead, Oxfordshire, Berkshire and at HM Prison Bullingdon. In particular, youths and adults pleading guilty to robbery, assault, burglary and other property offences are asked to participate in the programme, which is voluntary for both offenders and victims. The research is largely based on a previous study carried out in Canberra (Australia), which had demonstrated increased victim satisfaction and a 38% reduction in re-offending rates among violent offenders (Sherman, Strang and Wood 2000). The two co-project directors of the Justice and Research Consortium are Heather Strang and Lawrence Sherman, carried out the research in Australia<sup>80</sup>.

The aforementioned UK statutory and policy developments have been reflected in the Court of Appeal's judgement in *Regina v. David Guy Collins*<sup>81</sup>. The appellant, aged 26, had been sentenced to a three-and-a-half years' imprisonment for unlawful wounding

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78 The head of the team was one of the interviewees of Survey II.

79 The operational partners are: The Metropolitan Police Service, Thames Valley Police, Northumbria Police, National Probation Service (Thames Valley), HM Prison Bullingdon, Pennsylvania University and the Australian National University.

80 Among its other members, the Justice and Research Consortium team has three Research Managers: Sarah Bennett, Nova Inkpen and Dorothy Newbury-Birch. The two first were among the participants of Survey II.

81 [2003] EWCA Crim 1687.

and a consecutive term of three-and-a-half years for robbery. For the latter, he undertook to participate in a victim-offender mediation programme, which resulted in the writing of a letter of apology and a report by the mediation authority. The offender agreed to deal with the drugs problems, which to some extent had led to these serious offences, and promised to attend 'Narcotics Anonymous'<sup>82</sup>. He also applied for a change of prison where a drug treatment programme was available, and was required to write to a liaison officer every three months to report upon his progress. All these were taken into consideration by the Court of Appeal, which said: "We think that was a powerful feature of the sentence, and one to which it is important we draw attention. The judge referred to the fact that the appellant had written to the victim, but we think that it was to the credit of the appellant that he took part in that programme and that it is a factor properly to be taken into account...RJ is a comparatively recent programme designed to ensure effective sentencing for the better protection of the public...It is by no means a soft option, as the facts of this case reveal...In all the circumstances, having regard to that feature and to the appellant's plea of guilty, we think that the total sentence of seven years was too long. We think that for the period of seven years a total of five years' imprisonment should be substituted".

Almost without exception, the aforementioned policy and statutory developments have been the focus of severe criticism by writers and practitioners both from and outside the restorative movement. Three examples will be mentioned. The first concerns the Thames-Valley Police restorative cautioning initiative. University of Oxford research showed that on various occasions the restorative cautioning initiative proved to be problematic as police facilitators tended to dominate the conferences, "reducing other participants to passive observers. Additional training and revised script helped to reduce these problems, but did not eliminate them altogether" (Hoyle et al. 2002). Many offenders and their supporters, they said, had little understanding of the process they were entering and felt that they had no choice but to participate. On the other hand, some victims were confused about the purpose of the meeting. Cautioning sessions that adhered most closely to RJ principles tended to produce the most positive outcomes, while two-fifths of offenders said that they felt the meeting made them feel a bad person, something the process is meant to avoid.

The second example concerns the new features brought by the CDA and YJCEA, and particularly the referral and reparation order. According to Tim Newburn and Adam Crawford, "there is a tension between managerialisation and communitarian appeals to local

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82 This is an international non-profit Fellowship of recovering addicts that meet regularly to help each other. Narcotics Anonymous has local branches in many countries including the UK. The only requirement for membership is the desire to stop using drugs. <http://www.ukna.org/>

justice. The managerialistic obsession with speed, cost reduction, performance measurement and efficiency gains, has often led to a move away from 'local justice... and encouraged both professionalisation (in which lay members of the public have less involvement) and centralisation (in which government departments and related agencies closely govern local practices) ... Priorities outside the RJ agenda leave less time "for the reparative and deliberative elements of the process, such as victim contact, preparation, party participation and follow-up" (Newburn and Crawford 2002, 492).

Along the same lines were the results of a study conducted by Loraine Gelsthorpe and Allison Morris. This examined the changes that recently took place in the youth justice system of England and Wales. The authors said: "It seems that restorative practices are developing in a somewhat ad hoc fashion at numerous decision points in the youth justice system, but at no point are the key participants in all of this actually able to take charge.... It seems to us that despite the good intentions and enthusiasm of many politicians, policymakers and practitioners, the hold of RJ in England and Wales will remain tenuous unless the competing and contradictory values running through criminal and youth justice policy in general and in the youth justice legislation in particular concede more space.... key findings following the introduction of reforms suggests that the way RJ principles are being implemented may well limit achievements" (Morris and Gelsthorpe 2000).

Thirdly, serious questions have also been raised in relation to the prospect of using RJ in the adult sector. Judge Pitman asked in his letter to Lord Chief of Justice Lord Woolf: (a) Should time in custody be reduced on the basis of mitigation by RJ? (2) If so, how should parity for offenders be reconciled with mitigation by RJ, if some victims refuse to meet with offenders? (3) How should parity for offenders be addressed in the course of a research programme, which randomly assigns only half of the eligible offenders to RJ?<sup>83</sup>

Unfortunately, the momentum that was created by the Home Office's 2003 consultation and the encouraging research findings slowly started to fade away. In 2005, the Home Office RJ unit was closed down and during 2005 – 2007 no major policy or legislative development followed the consultation. However, in 2007, an encouraging publication by Lawrence Sherman and Heather Strang was released. This is a non-governmental assessment of the evidence on RJ in the UK and internationally. It was carried out by the Jerry Lee Centre of Criminology at the University of Pennsylvania for the Smith Institute in London. It examined what constitutes good-quality RJ practice, drawing conclusions on its effectiveness with particular reference to re-offending (Sherman and Strang 2007).

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83 <http://www.sas.upenn.edu/jerrylee/jrc/lcjustice.html>

## RESTORATIVE JUSTICE IN POLICY MAKING: INTERNATIONAL EXPERIENCES

RJ is no longer merely a local or national phenomenon. It has expanded to include practices that address crises taking place at the international level. The question that is most pertinent here is whether this development is significant for the purposes of this study. Indeed, if RJ has broken through national borders, then how does this affect its local or national understanding and application? If regional and international fora have a direct say in the implementation and policy-making of national or local authorities, then surely this relationship has to be understood and taken into consideration.

### **Regional Restorative Justice: the Example of Europe**

According to European studies, RJ has been introduced into a number of European countries (Aertsen 1999; Miers 2001). However, what made it a regional concept so that it can be legislated and used for policy-making at a regional level were Europe's two largest and most significant organisations: the Council of Europe (hereafter Council) and the European Union.

### **Council of Europe**

The Council is a regional organisation formed after the 2<sup>nd</sup> World War aiming to unify the continent under the banner of human rights and fundamental freedoms. Any European State can become a member provided it accepts the principle of the 'rule of law' and guarantees human rights and fundamental freedoms to everyone under its jurisdiction. At the time of writing, there are 47 members. The Council's most significant achievement is the European Convention on Human Rights (ECHR), an international treaty of unprecedented scope, which was adopted in 1950 and came into force in 1953. It set out a list of rights and freedoms, which States are under an obligation to guarantee to everyone within their jurisdiction. The ECHR also established international enforcement machinery whereby States and individuals, regardless of their nationality, may refer alleged violations by contracting States. The sole body that now deals with applications and other issues concerning the rights and principles enshrined in the ECHR is the European Court of Human Rights (ECtHR) in Strasbourg. Most member States have introduced the ECHR into their domestic legal order with some giving it a direct effect through statutory implementation.

In 1985, the Council adopted Recommendation No R(85) 11: 'The position of the victim in the framework of criminal law and procedure'. There, it acknowledged that European national criminal justice systems have traditionally focused on the relationship

between the State and the offender. It also stressed the necessity to consider the fundamental function of criminal justice to meet the needs and safeguard the interests of the victim. It differentiated improvements on the police, prosecution and court level including enforcement and sentencing. More importantly, however, it asked member States to examine the possible advantages of mediation and conciliation schemes, and encourage research on the efficacy of provisions affecting victims<sup>84</sup>. In 1987, the Council passed Recommendation No R (87) 21: 'Assistance to victim and the prevention of victimisation'. There, it emphasised the development of victim assistance programmes.

In 1999, the Council passed Recommendation No R(99) 19: 'Mediation in penal matters'. This promoted the use of mediation and recognized "the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimization, to communicate with the offender and to obtain an apology and reparation". It also considered "the importance of encouraging the offenders' sense of responsibility and offering them practical opportunities to make amends, which may further their reintegration and rehabilitation". In its appendix, the Recommendation defined what mediation in penal matters means, and listed five general principles. In particular, it defined: "These guidelines apply to any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)". The five principles were: (1) Mediation in penal matters should only take place if the parties freely consent... [they] should be able to withdraw such consent at any time ... (2) Discussions are confidential and may not be used subsequently, except with the agreement of the parties. (3) Mediation in penal matters should be a generally available service. (4) It should be available at all stages of the criminal justice process. (5) It should be given sufficient autonomy within the criminal justice system<sup>85</sup>.

In 2005, the 26th Conference of European Ministers of Justice (Helsinki, 7-8 April 2005) passed Resolution No 2 on The Social Mission of the Criminal Justice System - Restorative Justice. The participating European Ministers were "Convinced that by a restorative justice approach the interests of crime victims may often be better served, the possibilities for offenders to achieve a

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84 15 years after Recommendation No R(85) 11, Marion Brienen and Ernestine Hoegen published an evaluation report on 22 Western European member States concerning its implementation. Although it showed that there have been several considerable efforts to improve the position of the victim, "the overall rate of implementation ... was disappointing" (Brienen and Hoegen 2000.)

85 The following are also relevant: Recommendation No R(85) 11 on 'The position of the victim in the framework of criminal law and procedure', Recommendation No R(90) 2 on 'Social measures concerning violence in the family', Recommendation No R(97) 13 on 'Intimidation of witnesses and the rights of the defence', Recommendation No R(98) 1 on 'Family mediation'.

successful integration into society be increased and public confidence in the criminal justice system be thereby enhanced". The Ministers agreed on the importance of promoting the restorative justice approach in their criminal justice systems. The Recommendations also invited the Committee of Ministers to support and develop cooperation programmes put in place to promote the widespread application of restorative justice in the member countries, on the basis of the Council of Europe's Recommendations in this field (Council of Europe 2005)

The ECtHR, on the other hand, has slowly developed an RJ-friendly jurisprudence. According to Jonathan Doak, this shift in the Court's approach is a phenomenon attributable to the breakdown of the public/private divide and the expanding parameters of human rights and criminal law (Doak 2003). For instance, in cases such as *Kostovski v. the Netherlands*,<sup>86</sup> *Doorson v. the Netherlands*<sup>87</sup> and *Visser v. the Netherlands*<sup>88</sup>, it was pointed out that while the principle of orality used to be considered a fundamental tenet of the adversary system, it is now gradually seen as an oft-criticised perception of the criminal trial as a contest.<sup>89</sup> Furthermore, in *X and Y v. the Netherlands*<sup>90</sup> and *Z. v. Finland*,<sup>91</sup> the Court pointed out that victims' rights will have to be balanced not only against the State's interest, but also the interests of any accused.<sup>92</sup>

## European Union

The nature and enforceability of European Union law was set out in two precedent-setting judgments by the European Court of Justice (ECJ) in 1963 and 1964 (*van Gend en Loos v. Netherlands*<sup>93</sup> and *Costa v ENEL*<sup>94</sup>). The ECJ established inter alia the 'Doctrine of Primacy', through which European Union law gained direct applicability into the members' domestic legal orders which do not have the power to overwrite it<sup>95</sup>.

In March 2001, the Council of the European Union passed the Framework Decision: 'The standing of victims in criminal proceedings', in which mediation was also included

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86 Series A, No. 166, 12 EHRR 396.

87 (1996) 22 EHRR 330.

88 App. No. 26668/95, 14 February 2002.

89 See article 13 of the 'European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126.

90 Series A, No. 91, 8 EHRR 235.

91 (1998) 25 EHRR 371.

92 See also *Van Mechelen v. the Netherlands*, (1998) 25 EHRR 647.

93 Case 26/62 [1963] ECR 1.

94 Case 6/64 [1964] ECR 585.

95 This refers only to 'primary' European Union law (i.e. the establishing Treaties), and some types of 'secondary' European Union law (i.e. Regulations and Directives). Decisions, Recommendations and Opinions although without direct applicability are still binding (Craig and Burca 2003).

(2001/220/JHA). With this important step, the European Union set out minimum norms to be developed concerning the protection of victims of criminal offences. In its explanatory memorandum, the Decision explained that it concerns mutual adaptation of rules and laws of the main rights of the victim such as to be treated with respect, the right to speak and to be informed, and to receive protection during the different stages of the process. In addition, it called upon member States to introduce penal mediation and RJ by 2006<sup>96</sup>.

In particular, Article 10 declared that all member States shall seek to promote mediation in criminal cases, while pursuant to Article 17, each State must put into place laws, regulations and administrative provisions to comply with the decision. Article 1(e) defined what mediation for criminal matters is: “the search prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person”. All in all, this step is said to have raised the hopes in shifting Europe’s attitude towards RJ. In effect, the national parliaments of all 25 member States will soon be called to make national law the decisions’ provisions<sup>97</sup>.

### **Other European Institutions**

RJ has also received the support of various other RJ regional organisations. One example is the ‘European Forum for Victim-offender Mediation and RJ’. This is a non-governmental, not-for-profit organisation established according to Belgian law in 2000. Its general aim is to aid the establishment and development of victim-offender mediation and other RJ practices throughout Europe. It makes possible the exchange of information, experience and expertise in this field, and handles policy-oriented work in an independent manner<sup>98</sup>. Finally, reference needs to be made to the various bilateral collaborations between countries. For instance,

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96 The decision states, “Article 10 Penal mediation in the course of criminal proceedings: (1) Each member State shall seek to promote mediation in criminal cases for offences, which it considers appropriate for this sort of measure. (2) Each member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account”, Official Journal of the European Communities L 82/1-22.3.2001.

97 The law of the European Union also plays a role in the penal systems of the member States. An important step was the adoption of the ‘Treaty of Amsterdam’, which has now increased with resolutions and additional agreements. This treaty makes it possible to use parts of the penal laws into a common European process, and covers all forms of criminality. Due to a new title III included in 1999, harmonization is now also possible on penal matters. The joint operation concerning judicial co-operation in these matters covers, inter alia, the gradual adoption of measures of minimum standards concerning the elements of criminal facts (Corstens 1999).

98 Other organisations include: The Conférence Permanente Européenne de la Probation (CEP).

there was an exchange of practical experience and studies between Austria and Germany, which provided support for the development of mediation and the training of mediators in Poland. Norway and Denmark offered help to Albania, while the Nordic countries engage in regional consultations.

## International Restorative Justice

This section will provide a brief examination of RJ's developments in the international arena. It will do so by using three examples where the concept was used in an international context.

### Restorative Justice and the United Nations

The United Nations' most important initiatives in promoting RJ have already been discussed<sup>99</sup>. What remains to be said is that it all started with the 1985 'Declaration of basic principles of justice for victims of crime and the abuse of power'<sup>100</sup>. This document is considered historic in the development of international victim policy. It established basic standards to ensure that victims receive immediate attention, help and justice pointing out directions to follow in order to develop criminal and social justice (Joutsen and Shapland) 1989). This was only the first of a series of consequent Declarations, policy documents, position statements, background papers and research findings, all prepared on behalf of the United Nations.

The following instruments are examples that reflect RJ's values: the General Assembly's 'Standard minimum rules for the administration of juvenile justice' (the 'Beijing Rules'),<sup>101</sup> the Economic and Social Council's 'Victims of crime and abuse of power' and the 'Basic principles on the use of force and firearms by law enforcement officials'<sup>102</sup>. In addition, the organisation issued the 'Guidelines on the role of prosecutors',<sup>103</sup> adopted by the 8th United Nations congress on the 'Prevention of crime and the treatment of offenders', the 'Basic principles for the treatment of prisoners' and the 'Standard minimum rules for non-custodial measures' (the 'Tokyo Rules')<sup>104</sup>, and the 'Development and implementation of mediation and restorative measures in criminal justice'<sup>105</sup>. Finally, it funded the 1993 report by Theo van Boven to the 'Sub-Commission

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99 See pp.60-62.

100 Adopted by General Assembly Resolution 40/34 of 29 November 1985; UN Doc A/40/881.

101 UN Doc. A/40/881.

102 UN Doc. E/AC.57/DEC/11/119.

103 UN Doc. E/AC.57/DEC/11/16.

104 UN Doc. A/45/49 (1990).

105 UN Doc 1999/26.

on Human Rights' entitled 'Rights to restitution, compensation and rehabilitation for victims'<sup>106</sup>.

### **Restorative Justice and Paramilitaries in Northern Ireland**

For decades now, Northern Ireland has been the victim of grave human rights violations mostly carried out by non-State actors, better known as paramilitaries. The two most active ones are the 'Republican Violence' (with its most well formed grouping the IRA) and 'Loyalist Paramilitaries'. Many human rights groups and individuals have tried to ameliorate the situation by attempting to shape or influence the conduct of these actors. Occasionally, these proved to be relatively helpful, but, in general terms, they more or less failed to meet their targets.

Three types of these interventions can be identified. The first concerns the attempts made by international human rights NGOs based on humanitarian law (e.g. 'Human Rights Watch', 'Helsinki' and 'Amnesty International'). Although no one can deny their success in increasing public awareness through the monitoring of abuses, these bodies failed to have any discernible impact on the targeting policy of either of the two major paramilitary groupings. The second type of interventions refers to the political lobby groups, which again failed to impose any limitations on the paramilitaries' effectiveness. The third, and last type that also failed to meet its target, refers to the work of human rights organisations that have focused on the activities of the State (e.g. 'Committee on the Administration of Justice').

In 1997, however, a draft report introduced the notion of 'informal justice', suggesting the implementation of training programmes for Republicans based on ideas of RJ, human rights, crime prevention, mediation and non-violence (Mitchell et al. 1996). This was fully endorsed by 'Sinn Fein'<sup>107</sup>, and was followed up by a NIACRO<sup>108</sup> research project. Soon after, the IRA expressed its support for community based RJ as a mechanism for their responsible disengagement from punishment attacks. In consequence, RJ is now cited in Northern Ireland as an official response to questions on punishment beatings and shootings. According to Kieran McEvoy, the pilot programmes are now operational, and the IRA has to date sought to maintain a

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106 UN Doc E/CN.4/Sub.2/1993/8.

107 This is one of the oldest Republican political parties in Northern Ireland. Their central objectives are "to end British rule in Ireland, seek national self-determination, unity and independence of Ireland as a sovereign State". <http://sinnfein.org>

108 'Northern Ireland Association for the Care and Resettlement of Offenders'.

moratorium on punishment attacks where community RJ projects are established<sup>109</sup> (Braithwaite 2001).

Immediately after this apparent success, NIACRO introduced the 'Greater Shankill Alternatives', another project based on the values of RJ. It also drew its principles from 'Community RJ'<sup>110</sup>, and included the investigation of complains, restitution or reparative work, networking with available statutory and community provision, and a system of mentoring and support for offenders going through the system. The programme has so far succeeded to liaise directly with the paramilitary groups, and is now due for expansion to other areas and types of conflict.

With the introduction of community programmes, RJ has developed material social structures, which have directly prevented or mitigated human suffering. This success allowed pragmatic engagement with paramilitaries, all of which have been done privately outside the glare of the media. It has also promoted the notion of 'responsibility' among paramilitaries for protection of their communities, and a parallel culture of dependency that anti-social crime should be resolved by them.

### **Restorative Justice and Rwanda**

After the 1994 genocide in Rwanda where some 800,000 people were systematically slaughtered (about 10% of the total population), the international community responded with the creation of the ad hoc 'International Criminal Tribunal for Rwanda' (ICTR). In the recitals of the United Nations Resolution 955/94 establishing the Court, RJ is evidently prominent<sup>111</sup>.

However, in the political and societal environment of post-genocide Rwanda, it was easier for the retributive penal response to prevail as a way of resolving the situation. But alas, nobody took into account that the Rwandan criminal justice system was hopelessly ill equipped to detain, prosecute and try the 200,000 suspects who were held on remand for over seven years. In 2000, Mark Drumbl noted: "at the present rate of progress, it will take hundreds of years to clear the backlog of cases"(Drumbl 2000, 1323).

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109 Over 200 people have gone through the introductory seven week training course, and there are demands for further training as well as for the establishment of further pilot projects in ten-twelve areas across Northern Ireland.

110 This is an organisation based in Belfast, which operates a number of RJ programmes throughout Northern Ireland. Arguably, their most significant achievement was the publication of what they call the 'Blue Book', or Auld *et al.* 1997.

111 For instance, it uses the words "national reconciliation and... the restoration and maintenance of peace".

In November 2002, an indigenous system of local tribunals called Gacaca was used as the raw material for institutional adaptation in furtherance of a holistic RJ orientated response to genocide. In particular, it led to the development of a communal judicial system, which now hopes to aid reconciliation and speed up the trials. Its success will be determined by the level of participation by the Rwandan people, who are being called upon to confess to crimes committed, elect judges and give testimony to what they saw, heard and experienced during the genocide. The Gacaca strategy is planned in four phases. The first focuses on raising awareness about Gacaca and increasing knowledge about the law. The second is concerned with the election of Gacaca judges, while the third deals with confession, testimony, and reconciliation. Finally, the fourth phase focuses on re-integration of prisoners back into society through a work programme.

Consolata Mukanyiligira, coordinator with the Avaga 'Association of Genocide Widows', told to the 'Integrated Regional Information Networks'<sup>112</sup> (IRIN) that in the context of Gacaca, Rwandans were mainly concerned with finding who killed their loved-ones and where they were buried, so they could lay them to rest "with dignity". After that, she said: "We are obliged to reconcile, because we are neighbours." The pilot Gacaca trials had gone "very well" so far, Deogratias Kayumba, of the 'National Human Rights Commission', told IRIN<sup>113</sup>.

## CRITICAL REFLECTIONS

The chapter has examined selected legislative and policy developments that were influenced by RJ, and implemented at three different levels: national, regional and international. At the first level, the four case studies illustrated a shift that is currently taking place in national criminal justice systems towards incorporating RJ elements, at least, as complementary processes. These adaptations aim to increase victim satisfaction, reduce re-offending and enhance the effectiveness and fairness of the criminal process, reducing at the same time prison population. At the second level, the example of Europe showed some of the most important areas that this change has affected, and illustrated the means that are most commonly used by regional bodies to being about an RJ practice. Finally, the chapter discussed RJ's implementation at the international level, using three examples that showed the effect it

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112 Part of the United Nations Office for the 'Coordination of Humanitarian Affairs' (OCHA), created in 1994 to provide constantly updated and accurate information of events taking place in countries facing crisis.

113 However, as with every pilot RJ programme, one can easily identify various flaws in the system. These included cases of people being paid to desist from giving evidence, threats against those giving evidence, and politicians in some rural areas advising people to keep quiet.

had and the changes it brought to old models of international punitive responses to crime.

At least two considerations emerge. First, it becomes apparent that the contemporary notion of RJ should no longer be confined within local or national perceptions of 'conflict resolution', but be expanded to include trans-national understandings and traditions of justice. This is an important finding for this study, as it shows that the various theoretical and practical developments of RJ taking place at different community levels are not disengaged from each other. On the contrary, they seem to exert a mutual influence upon each other mainly through mechanisms that were originally set up to promote safety and unity in the regions (e.g. the United Nations, the European Union, Council of Europe). This cannot be overlooked in the book's further examination particularly since, as this analysis has shown, RJ's conceptual and implementation issues are not attached to any specific local or national system, but can relate to four community levels (local, national, regional or international). The international methodology of this book will enable a better understanding of these issues.

Second, although the immediate reaction to the legislative and policy developments described in this chapter is a positive one, further reflection reveals that the direction they have taken suggests that the application of the RJ norm is not always reflected in practice. Surely, a certain degree of adaptation is always to be expected, particularly since RJ is expanding to include wider community levels, something that was impossible to consider in ancient times and places. No doubt, policymakers acting at all four levels express the current trends and needs of their communities. It would therefore be a mistake if contemporary RJ ignored the needs and changes of our times.

**PART TWO:  
MEASURING THE GAP BETWEEN THE RESTORATIVE JUSTICE  
THEORY AND PRACTICE**

## FINDINGS FROM SURVEY I: THE INTERNATIONAL, PRACTITIONERS' ACCOUNT

Part II is based upon original findings that were collected through two surveys. To follow up Part I, two small-scale qualitative surveys were carried out. The first involved questionnaires that were sent to one hundred RJ practitioners from around the world. At the time of writing, all participants of this international survey had experienced RJ in practice through implementation, action research or policymaking. The survey generated original information that were then used in conjunction with existing data to test the study's underlying hypothesis. Survey II was carried out to complement the findings of the questionnaires by adopting the methodology of face-to-face, in-depth interviews and by focusing on the criminal justice system of England and Wales.

## PRESENTING THE CRUDE EVIDENCE FROM SURVEY I

This section will attempt a preliminary presentation of the collected information. At this point, the book could not get into a detailed investigation of the data's possible contribution to the study's research questions. The presentation, therefore, will take the form of 'data display'. This was created by coding the quotes from the participants' answers. These data could then be 'triangulated' with (a) research evidence that is available through the extant literature (b) follow-up field research.

Qualitative methodologies were selected for the survey research strategy. Some of the reasons that led to this decision included the limited time and resources available as well as the need to allow the possibility of issues emerging from the data without being forced through fixed theoretical frames.

To identify the most appropriate survey population, a number of factors had to be considered. These included the relevance of the population to study's the central research objective, ethics and social research principles. The central research objective of the survey was to collect original information that is hard or impossible to find in the existing literature and which could be used – in conjunction with this literature – to reach the study's central research target which included the testing of the discussed hypothesis and the identification of any possible negative implications that may result from it.

Therefore, as a group, the most appropriate target population had to carry at least one very important characteristic: the practical experience of RJ. This was interpreted to mean anyone who had 'considerable experience' in the implementation of RJ either through i. application ii. design iii. research or evaluation ('action research') of its programmes. The latter were understood to mean the four core restorative practices (Chapter 1) and the ad hoc RJ

practices that have been developed in individual countries (Chapter 3).

As there was no possible way of identifying the 'sampling frame' of the chosen 'population' of this survey, 'probability' sampling was abandoned. The study applied the rules governing "convenience sampling" (non-probability sampling), allowing its sample to be self-selected<sup>114</sup>. The factors that this study took into account when identifying its acceptable sample size were the following: i. available time; ii. available resources; iii. inherent limitations; iv. the 'non-sampling error'/'non-response rate' and methodologically required minimum standards/numbers.

At least 100 questionnaires were distributed and 40 were completed. This was considered a good response rate based on the available literature (Becker and Bryman 2004; Bulmer 2004; Gray 2004). After analysis, it was verified that the original sample (100 individuals) was adequately represented by the final one (40 individuals). Appendix I provides a table with the names, role, occupation and employer organisation of the original sample (100 individuals) that was selected through the method of 'convenience sampling'. Appendix II then provides the same information for the survey participants (40 individuals).

A snapshot of the 40 participants would reveal that:

- All individuals (irrespective of their current profession) had experienced RJ in practice either through application/design, or evaluation/research (action research).
- Some had experienced RJ only as practitioners, others only as researchers/evaluators while others through both capacities.
- Considering the above point, the numbers of individuals who had experienced RJ through practice/design were the same as with those who had experienced it through evaluation/research (50%-50%).
- Although gender differences were not expected to have any significant impact on the results of this study, it was noticed that 48% were women.

Similarly with the conclusions of Part I of this book, the survey acknowledged the trans-national dimension of RJ and thus avoided focusing on any particular jurisdiction. At least four additional reasons were thought to be adequate in justifying the supra-national approach of the survey.

Firstly, the sample was approached as a homogeneous group<sup>115</sup> that had experience in RJ's application. That is why Appendix I and II should not be read in a manner that suggests that the participants

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114 The survey was widely advertised in newsletters, electronic forms of media and conferences.

115 See question 1 of the questionnaire.

from the final sample were representing the jurisdiction in which they practised RJ. On the contrary, the sample was identified to speak the voice of the practical RJ world in general. The research targets/needs of this study did not require any further delineation of this practical world into countries and jurisdictions. Put another way, the book's question on the discrepancy between the theoretical and practical development of RJ is not attached to any particular country but refers to the advancement of RJ as a notion.

Secondly, the application of RJ has gone beyond the local or national understandings of alternative dispute resolution. Therefore, it was important that this development was reflected in the survey. Thirdly, none of the questions carried any local or national elements. Undoubtedly, peoples' attitudes, views and approaches are always influenced by their surroundings. However, the questionnaire did not address issues that carried strong elements of locality. Finally, as the rules of 'convenience sampling' suggest, it is permissible to identify units of sampling that are "merely believed to be interesting for the purposes of the research" (Shipman 1997, 56).

The second characteristic of the sample that also needs to be treated here with attention concerns its division between researchers and practitioners, and again between different kinds of RJ practitioners (victim-offender mediation, family-group conferencing etc). Although participants from both professions had direct, practical experience with RJ, it was anticipated that some questions would be answered differently.

The study took this division seriously while compiling the data display and data analysis. What was equally important, however, was to make sure that while doing so, the original concern of the survey was not forgotten i.e. to address the practical world of RJ and not any particular professional roles and practical dimensions that may fall under this label which we already accepted to be methodologically broad and undefined.

Put another way, the term 'practitioners' was understood not in its narrow sense (e.g. mediators, facilitators) but comprising anyone who had considerable experience in the implementation of RJ either through practice or 'action research' (research or evaluation)<sup>116</sup>. This understanding is reflected in the type of questions and issues raised by the research, as these were not attached to any particular sub-group comprising the world of RJ 'practitioners'.

The same applies to the division between various types of practitioners *strictu sensu*. In addition, it can be argued that as the restorative practical world is still not fully developed, it is impossible

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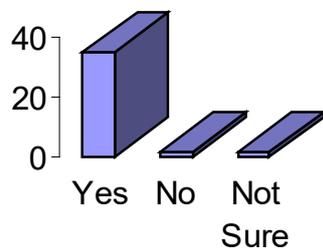
116 Therefore, a terminological caveat that needs to be kept in mind concerns the use that the questions make of the word 'practitioner' whereby they refer to the wider circle comprising the practical world of RJ.

to make any safe classification between different practitioners (McCold 1996). Probably, the only safe distinction that can be made is between practitioners who adopt the limited circle of participants (victims and offenders) and those who expand participation to the wider community (victims, offenders, their families, representatives of the community etc) (Dignan 2002, 2003).

## QUESTIONS OF METHODOLOGY

The first group of questions gathered information about the nexus between the respondents and RJ. The focus was not the collection of the participants' personal details<sup>117</sup>, but their views on how they saw their role in RJ's development. This information was hoped to help the analysis of the responses and confirm the homogeneity of the examined group. Therefore, these methodological questions are preparatory, and the information they provide is mainly of methodological significance.

**Q1: "Restorativist: a person who has engaged in a restorative project either at a theoretical or practical level. Do you consider yourself to be one?"**



-- 36 respondents replied positively, two negatively and two were not sure.  
-- The great majority of respondents agreed that they belonged to a group which the survey called 'restorativists', sharing at least one common feature: past or current theoretical or practical engagement in RJ.

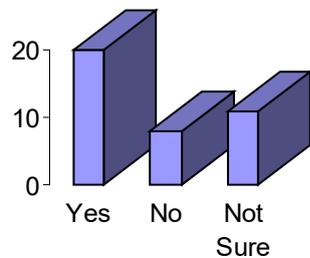
Chart 1

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<sup>117</sup> The respondents were asked to fill out a form with their details.

## Q2: “Do you accept the division between theoreticians and practitioners in the criminal justice field”?

This partly methodological question wanted to get the participants’ reactions to the suggested separation between theoreticians and practitioners in the criminal justice field.



-- 21 respondents accepted the division, while eleven were not sure, and eight replied negatively.

-- For those who answered positively, there were Sub-questions 2.2 and 2.3, and for the rest Sub-question 2.1.

Chart 2

### Sub-Q2.1: “If ‘No’ or ‘Not Sure’, then please give reasons for your answers”

This question was addressed to the 19 respondents who either had not accepted the above division, or had not been sure about it. It mainly wished to investigate whether the rejection of this division is significant for the anticipated results of the second thematic group. The respondents explained that although they accept a difference in the theoretical and practical approaches, they do not believe that there is a clear-cut distinction between them. Some also noted that theoreticians usually have some practical experience and vice versa; when this is not the case, they said then: “the ‘practical people’ should be in a position to understand theory and current debates [to be able]... to interpret and apply [RJ] in a practical way”. In short, the respondents of this group agreed that the two ‘camps’ overlap, and for those rare cases where they do not, RJ is not promoted in the best way possible. Practice can only make sense if ‘restorativists’ are in a position to combine it with theory. In a respondent’s words: “...if you want to comment on driving skills in an academic way, [a number of] arguments will always be in question if you have never driven a car yourself”.

### Sub-Q2.2: “If ‘Yes’, where would you place yourself?”

The last methodological question was addressed to the 21 respondents who had replied positively to Q2, accepting a division between theoreticians and practitioners.

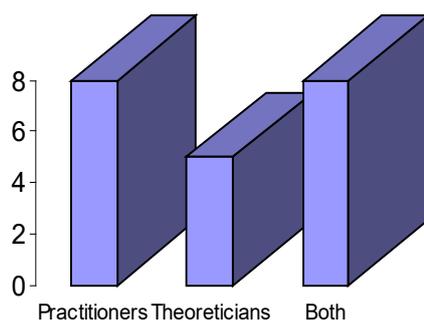


Chart 3

*-- Out of the 21 respondents who had replied positively to Question 2, nine said that they considered themselves to be practitioners, five to be theoreticians, and seven to be both.*

*-- According to the form that they were asked to fill out with their details, they all had experienced RJ during their profession at a practical level.*

## QUESTIONS ON THE USE AND MEANING OF RESTORATIVE JUSTICE

The second group of questions mainly followed Chapter 2 by investigating whether RJ's conceptual tensions had any impact on its implementation. Since the participants had experienced RJ in practice, they were thought to constitute an appropriate sample for this inquiry.

### **Sub-Q2.3: "If 'Yes', do you think that this division has created a discrepancy in the way RJ is understood?"**

The question aimed to find out whether the participants who had accepted the division between theoreticians and practitioners (as this was understood above<sup>118</sup>) thought that this had any effect on RJ and the discussed discrepancy. Four different categories of answers were identified based on what this group had previously replied to Q2 and Sub-questions 2.1 and 2.2.

► **1st Category (seven respondents):** This consisted of answers that were given by the respondents who had replied positively to Q2, and had characterised themselves as practitioners under Sub-Q2.2. One respondent believed that the distinction between theoreticians and practitioners had nothing to do with the discrepancy in the way RJ is understood. The remaining respondents agreed that, though the division is not the only cause, it is indeed one. One respondent pointed out: "I hear of theoreticians talk about the types of cases that are mostly and appropriately handled by RJ processes, which are far from reality; this fails to reflect systemic changes, which are occurring as a result of positive RJ experiences". Another respondent gave an

<sup>118</sup> This division between 'theoreticians' and 'practitioners' should not be confused with the two types of professions that were represented in the sample (researchers and practitioners) and which both had 'considerable practical experience' in RJ as this was described in the first methodological sub-chapter.

example: ‘The ‘Balanced and RJ’<sup>119</sup> (BARJ) project is perhaps one of the most confusing developments in the US, as it has led many practitioners to perceive RJ largely as community service by offenders... I suspect that some theoreticians do not really understand the nature of the practice of RJ”.

► **2nd Category (five respondents):** This consisted of answers that were given by the respondents who had replied positively to Q2, and had characterised themselves as theoreticians under Sub-Q2.2. All agreed that the division is partly responsible for the confusion around RJ. They claimed that practitioners see RJ as ‘a set of practices’, and thus do not change their approach to working with offenders. As one respondent put it: “...practitioners are pushing the right buttons for the Government...”. Another respondent said: “It is easy for practitioners to fall into the trap of not appreciating what RJ actually means in the fullest sense”.

► **3rd Category (eight respondents):** This included answers that were given by the respondents who had replied positively to Q2, characterising themselves as being both theoreticians and practitioners. Six of them believed that the division between the two camps does not really affect RJ’s understanding. However, one respondent accepted that: “academics tend to see the philosophy and principles behind RJ, whereas practitioners often miss some of them, and use it as a general label to stick onto certain practices”.

► **4th Category (five respondents):** These were the respondents who did not originally agree that there is a division between theoreticians and practitioners in the field. They answered this sub-question though it was addressed only to those who had accepted this division in the field. Surprisingly, these respondents believed that the existence of this division affects the way RJ is understood. One respondent who was originally not sure that such a division exists said: “I have listened to a researcher presenting his work in a national stage, who, when questioned, dismissed my concern about the ‘shape’ of ‘Referral Orders’, which I consider make it difficult to deliver a fully restorative process. Yet, the same researcher had openly admitted never even seeing an RJ intervention; let alone run one. I would suggest that he did not fully understand RJ, and that he was relying on his status as a researcher”.

### **Q3: “How do you understand the term Restorative Justice”?**

This was considered a key question in light of the findings of Chapter 2. It asked the participants to explain what in their view constitutes ‘Restorative Justice’. Four codes were created each

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119 “Balanced and Restorative Justice” is a project driven by Mark Umbreit and Gordon Bazemore. It aims to provide a framework for developing responsive juvenile justice systems.

corresponding to a different theme that kept coming up in the respondents' replies. The first included the various words they used as the 'Central Noun' of their main sentence while describing RJ. The second referred to the words they used to characterise the 'Central Goals' they believed RJ carries. The third code, 'Key Stakeholders', referred to the various groups of people the respondents believed to be directly or indirectly affected by RJ's approach to crime. The fourth code was created for the elements that could not compose their own pattern, but were nonetheless important for their own argument.

► **1st Code-'Central Noun'**: The terms that were chosen by the respondents to characterise RJ's nature were: 1) 'A set of principles' 2) 'An ethos' 3) 'A set of values' 4) 'A philosophy' 5) 'A concept' 6) 'A new approach'. The most repeated one was the word 'ethos'.

► **2nd Code-'Central Goals'**: This was further divided into five categories. Each included words that the respondents used to describe what they believed to be the main objectives of RJ. The majority of respondents mentioned more than two of the following categories, while few of them made reference to all of them.

- The first category included words that mean to repair: 'restore', 'amend', 'put right', 'ratify' and 'resolve'.
- The second category included words that suggest a change to a fresh understanding of crime and its control: 'a new understanding', 'redefining crime', 're-identifying harm', 'alternative to punishment' and 'education'.
- The third category consisted of words that were used to suggest the importance of including all affected in the restorative process in an effective and productive way. This was named inclusion: 'empowerment', 'collectivity', 'social inclusion', 'dialogue', 'communication', 'social participation', 'comprehension', 'enabling', 'inform' and 'involve'.
- The fourth category was labelled rehabilitative restorative goals, and referred to the side-effects that the RJ theory and practice can have on offenders' behaviour towards victims and communities: 'accountability', 'responsibility', 'prevention' and 'bringing re-offending to an end'.
- The last category was created to include words that fell in a pattern that was named the humanitarian element of RJ, describing the human effect that RJ's principles can have through their implementation: 'peace', 'harmony', 'creating and developing human bonds', 'reintegration' and 'high justice'.

► **3rd Code-'Key Stakeholders'**: The information gathered, here, was straightforward. All respondents agreed that the main participants in RJ processes are: the victim, the offender and their respective communities (which are represented through the facilitator). No precedence was given to any party.

► **4th Code-‘Independent General Code’:** Four responses could not fall into any of the previous codes. For instance, one respondent saw RJ as “the criminal justice system in its pure form”. Another participant said: “How can you fully describe the delivery, context, value, application and experience of such a concept? Even the words RJ are only semantics... [understanding RJ] is a bit like the thrill of driving: if you have never driven, reading books cannot fully describe it. And having learnt to drive, it is the practical application of that driving over time, which develops real skills, and real understanding”.

**Q4: “Do you think that all ‘restorativists’ understand the same when referring to RJ”?**

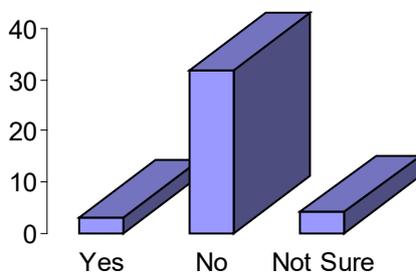


Chart 4

-- More than 82% believed that when ‘restorativists’ refer to RJ they do not all use it in the same context.  
 -- These results should be read within the survey’s framework and should not be used to draw general conclusions.  
 -- The chart is illustrative of the differing understanding that RJ has among the respondents themselves.

**Q5: “What do you think ‘restorativists’ base their understanding of RJ on”?**

The question hoped to reveal the sources, which are used to understand RJ. This would hopefully help understanding whether the differences in RJ’s conception are, in any way, reflective of how ‘restorativists’ come to learn about RJ.

The responses were organised under two codes (‘Pursuing Learning’ and ‘Silent Learning’); each was sub-divided into two sub-codes. . The former included the responses, according to which the process of understanding RJ is the result of active learning (e.g. through books, work, training). The latter listed the responses according to which the understanding of RJ is the outcome of external factors to which we are exposed (e.g. the media, politics)<sup>120</sup>.

► **‘Pursuing Learning:** The first general code had the strongest frequency. This was an indicator that the majority of respondents

120 The two codes should not be interpreted as representing two different groups of respondents, but rather two different groups of answers. In fact, on various occasions, answers included elements that fell in both general codes.

believed that the way we understand RJ is more likely to be the result of active learning, rather than of external influence from factors that exist beyond our control. Its first sub-code, RJ in Action, included factors such as: “personal experience with restorative or criminal justice programmes”, “various conversations with other practitioners or victims/offenders and their friends/family” and “observing others’ experience and mistakes while applying RJ”. It also included: “giving training to groups of people or organisations interested in or promoting RJ”, “doing research observation of RJ programmes as applied in practice,” as well as “organising, participating or driving an RJ programme”.

Its second sub-code, RJ in the Books, included factors such as: “reading general theories on RJ and criminal justice”, “teaching or taking classes on RJ and criminal law”, “learning about RJ practices and models”, “participating in RJ conferences” and “receiving training from RJ experts”. The names of various leading authors in the RJ literature were also cited as influential. These were: “John Braithwaite’s model” (Braithwaite 1997), “Howard Zehr’s Changing Lenses” (Zehr 1990), Daniel van Ness (Van Ness 1993) and Nils Christie (Christie 1977). Some also mentioned “reading the Bible, or victim-offender mediation cases”<sup>121</sup>.

► **‘Silent Learning’**: Its first sub-code, Own Profession, included: “the nature of one’s profession”, “employer’s influence”, “various limitations imposed by funding/financial difficulties”, as well as by policymakers. Its second sub-code, General Environment, included: “the politics of a country”, “the various local forms of justice”, “what is being taught in a country”, “the media”, “someone’s own values and beliefs of life and how to treat and deal with others”, “the history and tradition of a place”, “general religious beliefs” and “the various moral and other biases to which everybody is exposed”. Some respondents also mentioned the current justice system’s influence on the general understanding and approach to crime.

#### **Q6: “What do you base your own understanding of RJ on”?**

The difference between this question and the previous one lies in its focus on the sample’s personal influences. It hoped to shed light on whether the differences in perspective are reflective of how the participants, themselves, came to learn about RJ. Comparison between the results of this question and the previous one was also expected to prove helpful. As with the responses of the previous question, these were also broken down into the same codes and sub-codes. Finally, a special code was created for the answers that could not fit into any of the other two patterns. Once again, the two

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121 The two sub-codes should not be interpreted as representing two different groups of respondents, but rather two different groups of answers. In fact, on various occasions, answers included elements that fell in both general codes.

codes should not suggest the existence of two groups of respondents, but rather of two types of sources.

► **‘Pursuing Learning’:** The first sub-code RJ in Action included: “own experience”, “own practical engagement”, “own research” and “diary practice”. The RJ in the Books sub-code included: “taking training”, “attending lectures, seminars and conferences on RJ”, “listening to victims’ stories and experiences”, “studying theory” and reading authors such as Howard Zehr, John Braithwaite, Kay Pranis, Nils Christie, Alexander Fattah, Daniel van Ness, Kay Harris and Martin Wright<sup>122</sup>.

► **‘Silent Learning’:** The first sub-code Own Profession included: “being evaluator”, “directing RJ projects”, “working with juveniles”, “being a researcher”, “being a mediator”, “maintaining an academic post”, “colleagues’ understanding” and “driving other organisations’ projects e.g. United Nations”. The General Environment sub-code included: “local expectations from the justice system”, “deep rooted reparation ideas”, “general social psychology”, “various stories from local practitioners”, “one’s personal life outlook”, “locality in general” and “personal values and biases”.

► **Independent Code:** “I rely on the ‘Social Discipline window’ concept<sup>123</sup> in which RJ is more broadly defined to engage all those affected by wrongdoing... not [by] doing things to (authoritarian, punitive) them or for (permissive, paternalistic) them, but rather [by] doing things with (restorative, authoritative) them”. Another respondent said: “My own understanding, and of those ‘restorativists’ I am close to, is based on a set of values and beliefs that inform my worldview. These values include equality, honesty and integrity, and a belief in the presence of something valuable in every human being. Also included is the belief that every conflict, however traumatic or seemingly insignificant, presents opportunities for constructive solutions and learning important lessons. Another important belief is that looking to the future (finding solutions) is healthier than focusing on the past (assigning blame and punishing)”. A third practitioner said: “I hold a very broad view of RJ, which I think, needs to be flexible and adaptable to different situations, not be prescriptive with texts to follow”. “For me... RJ must have its roots in social justice and equity. In other words, [it should not only be seen as] ... a response to crime, but also a proactive and educational approach to relationships. RJ may also mean more than an incident-specific response. Social inequities can lead to criminal behaviour; the definition of crime is based upon the mandates of legislators, and can be extremely arbitrary”.

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122 For a review of these restorative authors see Chapter 1.

123 See <http://www.iirp.org/library/anu.html>

**Q10: “Have you ever encountered any disagreements with other practitioners with regard to the way they understand and want to apply RJ”?**

The term ‘practitioner’ was taken to be broad enough to include any type of practical experience with RJ either through implementation, or action research (research or evaluation). The 32 respondents who replied to the question gave a positive answer. In particular, some said that a number of practitioners: “see RJ standing independently of the criminal justice system, working, however, with it”, while others want to see it “depending on it”. Some of their colleagues, they said, wanted to apply RJ only for domestic violence incidents, while others believed that RJ is not appropriate for this type of offence at all. The respondents also claimed that there are often disagreements between victim-offender mediation and family-group conferencing practitioners. This is because the former are often reluctant to include a wider range of participants in the process, or to let them interact without strict supervision. In addition, it was pointed out that training programmes can end up confusing the trainees (individual members or organisations), as they do not always promote a clear understanding of the concept of RJ.

According to one practitioner, disagreements “have been a fairly regular experience and they largely have to do with the instrumental approach taken by others, within a very narrow set of constructs, which becomes an impediment to effective dialogue”. The same practitioner gave an example: “...In 1993, a political decision was taken not to adopt the Wagga-Wagga police conference model by the Department of Juvenile Justice. The decision was based on the argument that police were not suited to facilitating conferences (without evidence and based on ‘industry’ assumptions). Our research, however, had shown significant results in terms of recidivism, compliance and so on. My argument has always been that RJ is not just about policing, but also something that all agencies should be involved in... It is the absence of a decent rigorous operating framework, which is the greatest impediment to practitioners engaging in reflective practices, and not disagreements about idiosyncrasies around restorative language and practice”.

Another practitioner said: “The main disagreement I had ... [concerned] training developments in ...[X]<sup>124</sup> Despite the highly acclaimed course, which I helped deliver to the Youth-Offending Teams in 2000 ... [X] wrote a completely new RJ training course. This was written by someone who was not an RJ trainer himself... His prime objective ... [was] to produce a ‘packaged’ trainer’s course, which could be accredited, and then sold... This new course ... is not [currently] being delivered within the ethos of RJ”.

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124 The name cannot be disclosed due to confidentiality agreements.

“I think there are few in the RJ field who are exploring and seek to ‘push the envelope’ to test how to broaden the application of these principles.... [We] have a tiered system here... Many practitioners in the field are applying the principles based on their superficial understanding of RJ. I come from a political perspective and a desire to apply RJ principles spiritually. Also ... [people working] in the theoretical world are only concerned about crossing over to the political or policy-making world”.

Finally, two practitioners argued: “... [Disagreements exist] principally around empowerment issues. [For instance]...if participants are to speak from their heart, why can’t the facilitator put aside the script and just talk with them? Another issue is forcing anyone to participate – or using any form of manipulation or coercion to get victims to participate in order to help the offender – that is just wrong”. And, “it can be hard work getting people who work with offenders to also think about victims, and understand the move away from punishment”. “There are multiple understandings [of RJ] and a reluctance to develop a consensus”.

**Q11: “Have you ever encountered any disagreements with funding bodies because of the way they understand or want you to apply RJ”?**

18 participants replied, 4 of who were action researchers. There was homogeneity in these responses, as the sample indicated that the disagreements they had encountered with funding bodies were mainly attributed to the way they understood RJ. Other reasons were also mentioned, such as the influence of the political and social environments, the prevalence of the traditional punitive response to crime, Governments’ inclination towards conventional crime handling and public bodies’ hesitation to go against this tradition. For example, funding bodies, they said, are generally reluctant about anything that is introduced to them as new. Moreover, they tend to confuse RJ with: victim-offender mediation, family-group conferencing, another form of retribution or a religious practice. Some funding bodies, the respondents said, rejected their applications, because they did not believe that restorative practices could be applied to cases such as domestic disputes. This was a result, they claimed, of failing to capture the real meaning of RJ, and the extent and value of its application. Finally, funding from their Governments was thought to be almost unfeasible, as their general policy is in favour of goals that are not primary on RJ’s agenda.

“...We have encountered strong reluctance among those funding organizations that have been prejudiced by victim-offender mediation practitioners to be suspicious of conferencing”. Another practitioner said: “... Funders are usually nervous about funding anything deemed ‘religious’... [However], at the same time, I have

encountered ... [others] who were nervous about funding anything they saw as too 'political'... Another problem is that funders often fund what they 'know' instead of new approaches that have not been tested. RJ still seems rather out of the mainstream, which I think makes funders nervous. Also, some funders [prefer to fund]... groups serving victims ... [and] non-profit [bodies] that support offenders and their families. Rarely, I think, you find funders who understand that RJ serves both groups". One practitioner said: "...[X] Police<sup>125</sup> does not want to fund or support RJ training for political reasons... Getting funding for RJ is very hard (despite how obviously important it is) mainly due to the pressures of the numbers game".

Some respondents focused on the difficulties associated with getting funding from governmental bodies. One researcher said: "working for the Government, [disagreements] are inevitable — they wish to know about recidivism only. I feel that there are wider issues which need to be considered". Another researcher said: "[disagreements occur] when two or more governmental departments are focusing on their objectives and not on the good of the programmes requesting funding". Finally, one practitioner pointed out that: "funders always want stats and figures of satisfaction, and it is very difficult to measure this, as there are numerous immeasurable ways people might benefit from a restorative encounter".

**Q12: "Did you ever have to face any kind of practical difficulties (e.g. programme design) that were due to a different understanding of RJ"?**

The 24 participants who replied to this question gave a positive answer. Some practitioners also claimed that RJ programmes cannot be located within existing institutional/organisational practices, and this creates problems with practical implications. Others gave examples from their personal experience claiming that they were often employed to introduce pilot RJ programmes, but were then expected to develop them according to how the funder wanted to see RJ and not how they thought the normative concept indicated. These funders, the respondents claimed, were mainly interested in: saving police time, reducing recidivism and cutting costs.

"We are taking on one of the pilot sites for a 'Retail Theft Initiative'<sup>126</sup>, and I am building as much RJ into it as I can. But the purpose of the project is to save police time, rather than do the right thing". Another practitioner noted: "As providers of technical

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125 Name cannot be disclosed due to confidentiality agreements.

126 This is a multi-agency approach to deal with shop-theft offenders. It has been in operation since 1994. The scheme exists principally to divert young people from re-offending.

assistance in creating restorative programmes or modifying existing ones to be more restorative, we had many experiences with programme design differences due to different understandings of RJ". One researcher said: "As an evaluator, I constantly find practitioners implementing RJ ... regardless of their impact on the context of crime and crime control".

In addition, one practitioner pointed out: "[We] always [face such difficulties] when it is a proposal ... submitted ... for funding". However, it was also reported that: "...[We do] not [experience such problems]... because we have chosen to forgo external funding rather than change practice. [In addition] the X experiment<sup>127</sup> had to retrain some officers who did not understand that conferencing was not shaming". Finally, two respondents reported: "...Personally [I haven't experienced such difficulties], but I am aware of others who are keen to develop programmes..., but have difficulties locating them within existing institutional and organisational practices... When I worked for X<sup>128</sup>, I helped services struggling with this [problem]..."

**Q13: "Do you think that the way 'restorativists' understand RJ can affect the process or the outcome of a restorative project (e.g. victim-offender mediation)?"**

This question utilised the results of Chapter 2 and the data from the methodological questions to examine whether, in the participants' view, the tension that exists in the field has any direct or indirect effect on the process and/or the outcomes of a restorative programme. The main concern was again to investigate the possibility of a link between these conflicts and the way RJ is implemented. Out of the forty participants, only two replied negatively. The 38 positive replies were then grouped into two categories<sup>129</sup>.

► **1st Category:** "... In recent years, we have seen programmes that call themselves 'restorative', using processes and delivering outcomes that I would not consider ... [RJ]. In cases that I am familiar with, the problem lies in the practitioners' understanding of RJ... [they see it] as just a new procedure that replaces courts". Here, the respondents claimed that outcomes and processes can be negatively affected by the given understanding of RJ. According to this group, the impact of the tensions in the field was evident in the shape that the process tended to take. This was often not controlled by the parties who "were told what to do". Some

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127 Loc. Cit. supra note 177.

128 The name cannot be disclosed due to confidentiality agreements.

129 These categories, however, are not suggestive of a division between the participants, but indicative of the existence of two important conclusions from their answers

respondents also said that on various occasions parties were completely excluded from decision-making. In this way, they said, “empowerment is one of the most important elements of a restorative process is put at stake”. As a result, the very objectives of the process, as well as its main philosophy are affected. In addition, the practitioners claimed that this discrepancy has an obvious impact on the fairness and impartiality of the process, as well as the prioritisation of interests and the level of victims’ satisfaction. Finally, they all pointed out that a false understanding could also affect participation. This is because it can let parties uncertain about the effectiveness and genuineness of the process. Additional reasons that contributed to this included the strong adherence to retributive and rehabilitative goals on behalf of both the system and some of the facilitators.

“RJ outcomes do not need to be the same – e.g. reduced re-offending, victim able to move on etc. An offender ... [might get something good] from an RJ intervention ... but ...still re-offend for another reason”. Another practitioner argued that: “If you don’t have a solid understanding of the basic principles of RJ, the outcomes are not going to be restorative... a process can be counter productive or even harmful, if one does not truly understand the idea of RJ”. As another practitioner put it: “Yes [the way ‘restorativists’ understand RJ can affect the process or the outcomes of a restorative project], especially if the victim, the offender and the community are not equally represented, or mutually respected... and the process is not done fairly or impartially...”.

► **2nd Category:** “There has been no ‘paradigm shift’ away from the State-run adversarial process designed to deliver punishment, to a process owned and controlled by those affected by the crime, founded on equality, honesty and integrity, and focused on repairing and healing the harm”. The responses within this group stressed the negative impact of the retributive culture on RJ’s development. The respondents said that many practitioners take RJ to be merely a new procedure that replaces courts. This cannot lead to a “paradigm shift”. In addition, they claimed that it could result in what many theorists fear: ‘repackaging restorative practices as retributive’ (Sullivan et al. 1998). One practitioner suggested that by legislating RJ, we could eliminate further confusion, and provide safeguards for the RJ’s original principles and practical goals.

One practitioner pointed out: “RJ should be based on legislation and policy – to limit (but not eliminate, as differences are important in terms of creative outcomes, and the philosophy of general community/non professional involvement) individual differences in application. How ‘restorativists’ understand RJ will affect the degree to which they will push for the process to remain true to RJ philosophy and aims”. Another practitioner said: “A simplistic

approach (incident-specific focus only) yields short term results, and does not solve the social problems, which contribute to alienation and crime. More in-depth and critical responses yield far-reaching results that may address poverty, equity, racism, etc". Finally, one researcher said: "...the facilitators of a meeting are crucial; they set the entire scene and mood... and they are often influenced by their managers, trainers and agencies".

"... What 'restorativists' think possible in terms of an outcome could affect the [overall] results. Some... practitioners can affect the ultimate goal e.g. how much a victim can heal, [or] how much an offender can change... Also, I think the spiritual nature of RJ has a large effect on victims and offenders... I practise as someone who is a Christian, and [therefore] my faith comes into my understanding of RJ... [which] I see as being based on biblical principles... [This] gives me a greater appreciation of how individuals can change [as well as] of the depth of pain and injury victims... and offenders... experience".

**Q14: "Do you think that the way victims and offenders understand RJ is important for the restorative practice"?**

This question aimed to follow up the analysis of Chapter 2 by stretching the findings outside the restorative movement to include victims and offenders' perspectives. Is there a link between RJ's implementation and the parties' level of understanding of its concept and procedures? Six of the participants replied negatively. The 34 positive replies were grouped into two categories. Again, this categorisation should not be interpreted as representing two categories of respondents, but two types of responses.

**A. Positive Replies (34 responses)**

► **1st Category:** "Yes, victims need to understand [that when] an offender re-offends, it does not automatically mean failure of the process. They both need to be well prepared by the practitioners... and understand what the possible outcomes could be, so [that] they ... [aren't] disappointed". According to this group, victims' and offenders' understanding of RJ can have a significant impact on implementation. Some respondents argued that the nature of the process is largely dependent upon the parties' good understanding. The principle of empowerment, for instance, is not always respected, and as a result, the parties' input and participation is devalued. Many practitioners do not always prepare the parties adequately. According to the respondents, this affects willingness to participate, while a number of high expectations are created. Overall, this group suggested that victim and offender should be seen as the key players in a restorative programme. This creates an obligation to educate them about the most important procedural

steps and features of the process, and help them understand and use the RJ language, so that they can participate effectively.

“Yes, otherwise they can see [RJ] as just another sort of punishment and/or a way of avoiding [it]”. In addition: “[Good understanding] ...affects their decision to take part ...in the process”. Finally, it was claimed that: “victims and offenders have to want to participate and understand what they might or might not get out of a process. They must enter it with respect for the other and agree to ground rules essential to the process”.

► **2nd Category:** “...RJ is about individual and social transformation; it is about addressing conflict in a constructive manner. For victim and offender it is like starting from a tragic incident and ending up stronger, with a better understanding of one’s self and of human interaction. RJ is also about empowerment. Can we really empower victims and offenders if they do not understand RJ? So far, many victims who have taken part in an RJ process and had a very satisfying experience are among the strongest advocates of RJ; they are certainly the most credible as far as the public goes”. This group argued that the way victims and offenders understand RJ can affect RJ’s character and not just individual practices. The respondents claimed that all parties have to be aware of the limitations and strengths of RJ before they are asked to participate in a process.

“[Understanding is important] ... especially concerning the offender, [because] RJ is very victim oriented, [and] it is often ignored that offenders are [sometimes] victims too who need to be approached as sensitively...”. Another practitioner claimed: “There should be some formalised introduction of the concepts to all parties involved, as well as interviews to ensure that the individuals participating are genuine about the processes”. Someone else said: “If one party sees it to the benefit of the other, then that is a problem. RJ takes no sides. It is about restoration of people and the healing of hearts”.

## **B. Negative Replies (6 responses)**

“What offenders need to understand is that their behaviour had caused harm and to take responsibility for it”. The respondents of this group said that: “All that matters are the circumstances of the offence and the way they are dealt with”.

“I don’t think victims or offenders have to understand RJ at all. Offenders need to understand that their behaviour caused specific human harm, and that they are responsible for making amends, but they do not need to know anything about RJ theory”. Another researcher pointed out: “I don’t think that [victims’ and offenders’ understanding] is important; to bring together victim and offender [does] not necessary [mean that they need] to be experts”. Finally, one practitioner claimed: “[What] they need to understand is that

they are being offered help... They need to be able to trust the mediator, and not have a detailed knowledge of what RJ means...”.

**Q15: “Do you think that the way victim and offender understand RJ is important for the outcomes of a restorative programme”?**

Although the survey’s sample did not include victims or offenders, hearsay evidence was taken. Seven respondents found that the parties’ understanding is not important for the outcomes of a restorative process, while 33 thought that their understanding, whether profound or superficial, plays a significant part in the parties’ healing.

**A. Positive Replies (33)**

“[The way they understand RJ] is very important; without understanding, the process can bog down because of unrealistic expectations... I believe that the preparation of victim and offender for an RJ process must provide an opportunity for understanding RJ values and principles”. According to this group, victims and offenders’ understanding has a significant impact on the outcomes of restorative programmes. In fact, both short and long-term outcomes seem to be affected by the level of participation. According to one respondent, her research showed that this level is dependent upon the quality of knowledge and good understanding that the parties have about the process. Furthermore, it was pointed out that a good understanding on behalf of the offender could aid reintegration, which is considered one of RJ’s objectives. It was also argued that the whole process could fail, if victim and offender approached one another with unrealistic expectations, which again could result from a false understanding of the process they engage in. Overall, it was believed that in order to have genuine restorative outcomes, good knowledge on behalf of all parties is imperative.

“... Our research has demonstrated that both short and long-term outcomes are in part affected by the level of preparation of victims and offenders”. Another practitioner said: “...Programmes depend upon public support. Therefore, the public, including victims and offenders need to be able to name what RJ is”. Two more practitioners claimed: “[understanding is very important] especially concerning the aspect of reintegration which is sadly neglected in both victims and offenders” and “[the process] needs to be clearly explained to [all parties]... the way it is done can affect the outcomes...”. Finally, another practitioner argued that: “...the participants who understand the basic philosophy of RJ contribute to good outcomes. Those who hold inherently punitive/retributivistic beliefs about punishment make outcomes difficult. Small

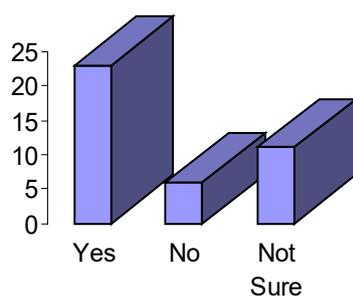
discrepancies in focus within an understanding of basic RJ philosophy probably do not make a difference – probably ironed out during the process”.

### A. Negative Replies (7)

“No [I don’t believe that the way they understand RJ is important]... because the outcomes are natural in the process. Participants, other than the facilitator, do not need to understand RJ as a theory or field”. Here, the respondents claimed that victims’ and offenders’ understanding is not important, as the outcomes are natural in the process. Facilitators’ understanding, they said, is enough. According to these respondents, what will affect the outcome is the experience the parties will get during the process and not what comes before it. All that victims and offenders need, they claimed, is to be treated with dignity and respect, and be given the chance to tell their stories, and express their emotional and psychological pain.

Another practitioner said: “If they [victim and offender] have attended an intervention meeting, they are ‘experiencing’ it, and thus do not need to understand it...”. Another practitioner pointed out: “[I don’t think it is]... really [important]. There may be some cultural preferences for certain associated rituals, but these only make entering into the process more comfortable. Once the group has reached consensus, outcomes are always tailored to the specific situation”.

### Q16: “Do you think that the term ‘Restorative Justice’ is appropriate”?



-- 23 respondents gave a positive reply.  
- For the 17 respondents who replied negatively, there were further sub-questions 16.1 and 16.2.  
-- The question looked into whether the confusion is due to bad terminology. The findings should be evaluated in conjunction with sub-questions 16.1, 16.2.

Chart 5

### Sub-Q16.1: “If ‘No’ or ‘Not Sure’ then please give reasons for your answer”.

The responses tended to focus on one of the two words in ‘Restorative Justice’, and as a result, they were divided into two

groups. Again, the classification merely aims to show the two prevailing themes in the respondents' replies.

► **1st Group on the adjective 'restorative':** "I think the term has been applied incorrectly in the past which has led to confusion and lack of understanding". The responses suggested that the word 'restore' is confusing, as its literal meaning implies coming back to where a situation originally was. This, according to the respondents, is by definition not always possible. This group also pointed out that no justice system can fully restore victims of certain crimes e.g. murder. Finally, respondents claimed that the word brings many people to ask what is RJ restoring, and to what<sup>130</sup>. One researcher objected to the way the term was first popularised, mainly because it established itself after a division that was created in the literature between 'retributive' and 'restorative' justice. Nonetheless, almost all respondents agreed that it is now too late to find an alternative adjective. This is because it was believed that most 'restorativists' take the term in a much broader context, and in this way they overcome some of the aforementioned pitfalls. The term has also gained a momentum, and a significant segment of the population has become familiar with it.

Another researcher claimed: "The public haven't got a clue what it means — a more basic term (I don't know one) may give the public a better understanding of the process". Furthermore, it was suggested that: "practitioners do not like the term, and victims and offenders do not understand it".

One practitioner said: "The use of the word 'restorative' brings many people to ask 'what are we restoring' or 'restoring to what'? In Canada ... too much time [was] spent on discussing whether we should use [the words] 'restorative' or 'transformative'. The late Ruth Morris ... was adamant that we should not use 'restorative', because it implies that we are restoring people to the context/conditions at the time of the offence, however unjust or unacceptable these were. Fortunately, most 'restorativists' understand the term 'restorative' in a broader sense...".

The practitioner continued: "...My own objection... arises from the reasons for, or the context in which the term was first popularised. If I remember correctly, it was Howard Zehr<sup>131</sup>, who, in trying to explain RJ without narrowly defining it, drew a comparison between our current traditional approach, and the new one he was proposing, in which the processes and outcomes were termed 'Retributive Justice' for the former approach and RJ for the latter. The comparison was effective in explaining the new approach, but

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130 "Restoring can mean to restore property loss, restore injury, restore sense of security, restore dignity, restore sense of empowerment, restore deliberative democracy, restore harmony based on a feeling that justice has been done, and restore social support" (Braithwaite 1999.)

131 See Zehr 1990.

it had the unfortunate side-effect of formalizing retribution as a legitimate form of justice. I believe there is no such thing as 'Retributive Justice' or even RJ; there is only plain old justice or ... not. A solution or outcome [can be]... just or ... unjust; it cannot be exclusively 'retributively just' or 'restoratively just'. There cannot be various forms of justice like so many ice cream flavours. Retribution is not justice. Furthermore, restoration is not necessarily justice either. Instead of giving justice one more flavour, one more adjective (restorative), we need to clearly define what justice means in the context of interpersonal conflict (which includes what we call crime), and we need to find a broad consensus for the new definition. In the crime/conflict context, I understand justice as the process that allows us to continue living together after one has harmed another in our community". The following statement was representative of other responses: "RJ has gained momentum, and the term is becoming familiar with a significant segment of the population; therefore abandoning the use of 'restorative' at this point would only lead to confusion and set us back a few years. That fact notwithstanding, we should not abandon the dialogue on what RJ is (or more appropriately, what justice is)".

► **2nd Group on the noun 'justice'**: "I am not sure about the 'justice' bit, but would find it hard to explain why. Often it isn't a clear cut distinction who the victim or the offender is, and there may be fuzzy boundaries between those labels". This group argued that a lot of RJ practices are not about the 'justice' system, while for many writers 'justice' has become synonymous with retribution. Some respondents suggested replacing it with the word 'practices' ('Restorative Practices'<sup>132</sup>), as it would give a broader term that could also allow RJ to be applied in conflict situations outside the justice system. "A lot of people find that the concepts are not conveyed by these words. For some, justice is synonymous with retribution".

However, one practitioner said: "At last, we have a word for RJ that most of the population understand to mean what we want them to understand it means. No one seems stressed that 'Referral Orders' has the word 'order' in it, and implies unquestioning compliance. This has always seemed to me to be a debate between those who feel that it is their idea, and who want their name attached to it. As far as I am concerned, you can call RJ what you like so long as the public come to understand what it means, and we successfully introduce it as the framework for all conflict resolution and legal system in this county. To change it now seems stupid and petty".

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132 See for instance, The International Institute for Restorative Practices (IIRP) in Bethlehem, USA.

**Sub-Q16.2: “If ‘No’ or ‘Not Sure’ then can you suggest an alternative term”?**

The question was addressed to the 17 respondents who thought that the term chosen for RJ might have contributed to the tensions that exist in the field. The following alternative terms were given: ‘Restorative Practices’, ‘Relational Practices’, ‘Inclusive Justice’, ‘Integrative Justice’, ‘Transformative Justice’, ‘Relational Justice’, ‘Reparative Justice’ or just ‘Justice’.

**Q19: “Do you think that it would be a good idea to set up a project to develop a consensual understanding of RJ”?**

This question followed up the third chapter’s examination of past projects on RJ’s definition and principles. Here, the central objective was to get the respondents’ reactions to a suggested new project that could investigate this matter afresh.

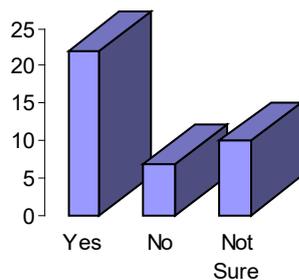


Chart 6

-- 23 respondents believed that this project would be a good idea. Ten respondents were not sure, while seven expressed their disagreement.  
-- For the respondents who replied positively, there was further Sub-question 19.2, and for the rest Sub-question 19.1.  
-- The chart should be read in conjunction with the qualitative results of its thematic group. It is important to note that the question referred to a project that would promote a consensual understanding and not a definition of RJ.

**Sub-Q19.1: “If ‘No’ or ‘Not Sure’, then please give reasons for your answer”.**

The question was addressed to the 17 respondents who replied negatively to the previous question. Two groups of answers were identified. Here, the classification was suggestive of the existence of two different groups of participants. Although the difference between them is subtle, it is essential.

► **1st group (12 respondents):** “...it is really crucial that practitioners really understand the theory they are putting into practice, [so that they] ... don’t make the programmes punitive. However, [when setting up such a project we will] need to be careful not just to get academics who already understand the theory ...” This group agreed that although a definition for RJ might not be a good idea, working on a better understanding of its concept and practice is indeed desirable. In particular, the group suggested that although RJ should not be confined within “the

narrow limits of definitions, additional efforts should be made towards a better understanding”.

“I don’t know if [setting up such a project] is possible... theorists/practitioners who are from a faith-based perspective [can be a problem] ... [The same applies to] theorists/practitioners from a more secular perspective (or non-religious). I see no harm in trying to get some kind of a consensus. I think also you have different views of RJ from the victims-rights world, and those on the pro-offender side of the world”. Another practitioner asked: “Isn’t there [such a project] ... already? Idealistically ... [I would consider this a good idea]... [however] the practice of RJ is guided by the pragmatic as well as the political — which means that an operational consensus [needs to] emerge”. One researcher claimed: “It is good for people in a particular region or country to agree on what they are doing; but to try to find an international consensual understanding may overlook indigenous approaches and understandings. If it was done with a lot of sensitivity to those issues, then I think it could be useful”. Finally, one practitioner said: “I am wary of determining a consensual definition, because all stakeholders must be involved in this decision making process. How could we involve everyone? Instead, it must fit each community. Some basic principles however are necessary”.

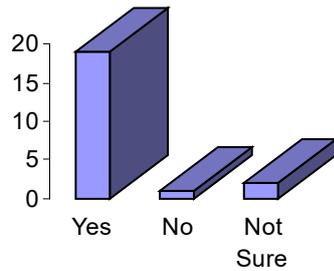
► **2nd Group (5 Respondents):** “[RJ] means and should mean different things to different people”. This group opposed to a definition for RJ. No distinction was made between understanding and defining. In particular, the group suggested that without plurality of meaning, RJ will be severely undermined, because its success is dependent upon its contextualisation or adaptation, and not on rigid definitions.

Another practitioner pointed out: “I feel, again, that this causes a mechanism to institutionalise definitions of what is and what is not an RJ project”. Finally, another practitioner claimed: “I think we should always keep talking about the different ways we look at RJ. I do not think it is necessary to try to lock in on a certain definition. There are always multiple ways to describe something [and still mean the same]... While there are differences, I believe there is significant common ground among people working toward this vision. I think fluidity and flexibility are assets to the movement. One of the aspects of RJ is its responsiveness to circumstances. It is not a world of absolutes. It is a world of context and considerable ambiguity – with those closest to any particular situation giving meaning to it”.

“No-one owns this stuff. There is a significant place for people to be trained in how to use it, but the actual ‘doing what’s right’ is part of all of us... I question who has the right to tell anyone what should be their understanding of RJ. Ask any parent how they would deal with their child doing wrong, and they will give you an RJ answer. It

would be a bit like having a convention to decide on the meaning of love, or how it should feel to drive a car. To find an agreed definition is not going to greatly advance the understanding of those who have never driven, or fallen in love”.

**Sub-Q19.2: “If ‘Yes’, would you be interested in taking part/contributing”?**



*-- 20 respondents replied positively to the question agreeing that they would be interested in taking part or contributing to a project to work on RJ's understanding. Two were not sure and one replied negatively.*

Chart 7

**QUESTIONS ON THE THEORETICAL AND PRACTICAL DEVELOPMENT OF RESTORATIVE JUSTICE**

The focus of the four questions of this group was to provide supplementary evidence on the tension between RJ's theory and practice strictu sensu. The question examined whether there is any connection between RJ's implementation and the political and social environments of our modern societies.

**Q8: “Do you think that the political and social environments in which RJ is implemented can affect the way it is applied”?**

All respondents, apart from one, agreed that these environments have indeed influenced implementation in both negative and positive ways.

► The environments' impact on RJ has been positive: “... Legislation and policies concerning the practice of RJ either protect or limit the extent to which the philosophy can be actualised in practice. Politicians concerned with ‘law and order’, especially coming up to election, try to emphasise the benefits to victims as opposed to mentioning restoration/reintegration for the offender into their community. In some jurisdictions, all participants are made to partake in an RJ process. In others, offenders must attend while victims do not have to (and vice versa), [while in other occasions] participation by all parties is voluntary. These differences are either the result of political and social environments or differing

understandings of RJ principles and [all these] affect the way RJ is applied in practice”.

A number of respondents claimed that this has been the primary reason that allowed adaptation of restorative practices to different jurisdictions with diverse procedural features. In other words, without the influence of the social and political environments, RJ would not have been an option for so many countries. They enhanced its incorporation into these justice systems, and made adaptation possible. All respondents stressed, however, that this process should not have included the thinning down of its central principles. These should remain unchanged and universal for all systems.

One practitioner said: “I believe that the political and social environments should affect the way RJ is applied. The particular method, tool, or model used should reflect the political and social realities of the community in which RJ is applied. However, I believe that the values, beliefs, and principles that form the foundation of RJ should not be affected by the social or political environments; they are universal and fundamental to human interaction everywhere”. In addition, it was suggested that: “There is no perfect implementation of any programme. The poorly defined understanding of the meaning of RJ is more likely to affect how it is implemented than the particular political environment... However, a political environment, which is in financial crisis, should help to encourage additional diversionary practices and present RJ with new opportunities”.

One practitioner claimed: “...it does [affect the way RJ is applied]. However, my experience suggests that it is not the ...well-thought ...RJ programmes, which are accompanied by sound policy frameworks that guarantee success, but the political machinations operating at the time. For example, having shared the ‘Wagga model’ with Thames Valley Police as early as 1994, I believe the significant breakthrough (which allowed what Thames Valley Police had developed by way of youth diversion to influence subsequent national developments in youth justice) had nothing to do with a strategic political or policy plan. Rather it was heavily influenced by the then Home Secretary Jack Straw who had visited Aylesbury, [and participated in] ... a couple of police facilitated conferences, and was able to contrast this experience against an earlier court experience. Of course, there were many other factors like Charles Pollard<sup>133</sup>, a good practice model and so on”.

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133 Sir Charles Pollard was Chief Constable of Thames Valley Police for 11 years up to February 2002. He is now a Trustee of the Restorative Justice Consortium, which is one of the organisations questioned by Survey II. Sir Charles has also been a member of the Youth Justice Board since 1998, also one of the interviewees of Survey II. He chairs the Board's ‘Youth Crime Prevention Committee’, ‘Communications Committee’ and ‘Restorative Justice Subcommittee’.

► **The environments' impact on RJ has been negative:** "Yes, I believe the political and social environments can affect the way RJ is applied. For instance, political and social factors may determine what kinds of crimes are referred to an RJ programme. In some places, only trivial crimes are referred, whereas the philosophy would suggest that the greater the harm, the greater the need for healing". One practitioner gave an example: "...Take how RJ has been used in the youth justice field in the UK. RJ comes across as a 'chance' for first time offenders, and I think this has a lot to do with the political and social environments. Certainly, RJ does not seem to promote itself in the literature as 'just for the kids". Finally, it was claimed that "RJ in Britain is being used alongside retributive criminal justice ... it is being used in the same way as retributive justice in reality i.e. the narrow aim of crime reduction is a priority".

Participants claimed that this is mainly the reason RJ is being confused as another form of punishment. It was argued that short-term political ends have often driven the way RJ is applied. "In their attempt to attract votes, politicians are happy to thin down RJ's original notion, resulting in this way in an alleviated practice, which is often driven by current punitive principles of seeing crime" one practitioner said. Another example referred to the effect of victims' rights groups on the holistic nature and approach of RJ to dealing with the harm done. Some respondents said that, in the past, there have been a number of occasions where groups in favour of victims' rights put pressure on policymakers and their Governments to promote an RJ that is almost centred exclusively on victim compensation. This, they said, has often resulted in creating programmes that retain many hallmarks of the current punitive system, namely: labelling offenders as criminals, or shaming/degrading them for what they had done.<sup>134</sup>

One practitioner said: "Some apply the name RJ to existing offender-focused programmes, totally leaving out the actual person who was harmed by the event, because that is what the political arena dictates. Some programmes leave them out, because they do not know or want to deal with the emotional aftermath of victims. Sometimes, systems demand programmes to eliminate voluntary participation for one or both of the parties directly affected, which is contrary to best practice". In addition, it was pointed out that: "...pressure can be brought on victims when targets have to be met. This is when it is vital to have clear practice guidelines based on ethical principles".

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134 Other factors included: concerns about performance measurement and financial costs; existing social values excluding personal contact and communication; difficulties on behalf of mediators and participants to deal with the emotional aftermath of the harm done and reluctance on behalf of policymaker to introduce RJ for serious crimes, or for criminals others than juveniles.

**Q7: “Do you think that the political and social environments in which RJ is implemented can affect its theoretical understanding”?**

All participants replied positively, claiming that the impact of both the political and social environments can have a negative and positive impact on RJ's theoretical development.

► **The political and social surroundings had pushed RJ's theoretical development, helping it to advance and adapt.** “It can be a success or a failure based on these environments. The political and social environments have to be such that they ‘allow’ for the testing of restorative pilot programmes”, one practitioner pointed out. However, the people who are vested with powers to implement RJ are still guided by retributive ways of thinking, the respondents claimed, while the social environment affects the perception of the public of the concept of justice. As it is illustrated by various surveys, they said, the overall climate is punitive, and this can make people concentrate on particular aspects such as the reduction of re-offending and cost-effectiveness and saving police time.

► **RJ's understanding has been limited to what Western societies comprehend as ‘crime reduction’.** In particular, one respondent said: “There is such an extensive, growing, and internationalised literature on RJ that it would be difficult to affect theoretical understandings in any significant way. But certainly some political/social environments will encourage the highlighting of some aspects to the exclusion of others – affecting RJ's overall understanding”. Another practitioner said: “I suppose a good example of this is found in the central tension between RJ setting itself up as something diametrically opposed to modern Western criminal justice outlook, whilst being incorporated into that very criminal justice machinery”. Furthermore, a third participant pointed out that: “[we are]... seeing a narrow application of RJ in Western society i.e. crime reduction and more crime reduction”. One practitioner gave an example: “I do [believe that they can affect the theoretical understanding of RJ]...[For instance,] the transition to democracy in South Africa, as well as the pre-existing African notions of justice and conflict resolution, allowed for RJ ideas to take root in our law reform process”. Finally, it was suggested that: “...It is a labour intensive way of working with long term benefits, but the political and social environments at the time affect practitioners' understanding of what they need to do”.

The following comment was also relevant: “...There is a real danger that RJ is viewed as a way of reducing recidivism, and little else. There is also the danger of lack of resources; resulting in the application of RJ becoming offender-focused. There is a danger that the moronic application of simplistic ‘performance measurement’ in the public sector will continue to stifle the growth

of RJ. For instance, in the police the divisional commanders will not put resources into RJ as the results will not appear in time to make them look good by solving short term performance measurement needs. We have a media that likes to rubbish good ideas, if they can do it in a way that sells more newspapers. We have a public that have been fed a set of judgemental, punishment and retribution principles for so long they struggle with the RJ concept until they actually experience it. It is my belief that the application of RJ principles across the spectrum of our communities would make this country a different and better place to live within 20-30 years". Finally, one respondent said: "Yes. I believe that the practice of RJ has preceded the development of theory, and theory must be guided by and tested against practice".

**Q17: "Are you in favour of a further practical development of RJ"?**

- All respondents irrespective of their profession replied positively, agreeing that they would like to see further practical development for RJ.
- The results should be weighed against the qualitative results of the thematic group. It is also very useful to have them compared with Question 18.
- In addition, it should be noted that this was the only question where there was absolute consensus among all participants.

**Q18: "Are you in favour of a further theoretical development of RJ"?**

38 respondents replied positively, 1 did not answer and one responded negatively but did not give any additional information. Among the 38 positive responses various levels of scepticism were identified. For example, some questioned the significance of such a development for the overall image of RJ. Some others, however, stressed how unavoidable this development is. "There is too much of an ideological battle going on to ignore", they claimed. Finally, some participants argued that the theoretical development of RJ should be directed towards broadening its rationale and application, taking it into business and other spheres. It was, however, interesting to notice that, although some respondents wanted to see more happening in the theoretical field of RJ, they expressed strong reservations about the quality and quantity of current theoretical work.

"I am not against it, but I just can't see what it will achieve in terms of benefiting victims and offenders. What is needed now is governmental action to implement work with adult offenders in a similar way to that of young offenders and their victims. Further theoretical development will naturally follow once all the new work

is undertaken and the results analysed. At present, theory is restricted in development, because of the paucity of adult programmes". In addition, one practitioner said: "... there is need to clarify understandings and use of the term". A third respondent suggested further theoretical development and made a claim which although interesting does not seem to fall within the study's scope of examination: "...I believe that the theory is shallow and [that there] should be studies in its relationship with social justice. At this time, RJ seems to be primarily a white, upper middle class movement in the US, where many theorists and practitioners are either religious evangelisers or status-seekers. This is dangerous, and may deter progress". One researcher said: "...practice is pointless without a theoretical/philosophical rationale to justify [it]".

In addition, respondents suggested that further theoretical development can work: "... towards [creating] a clear concept of resolving and reducing conflict between people, groups and nations", and "develop a coherent definition of the term – there are too many opinions about terminology, ideology and practice". Furthermore, "...theoreticians will continue theorizing, and I have no objections. However, at this point, we need a broader spectrum of practical experience, and we need to develop an evaluation framework appropriate for RJ. Statistics on recidivism and crime rates cannot tell the RJ story". One practitioner claimed: "we need both [theory, practice], we also need further research about successes/failures of already existing programmes". One practitioner gave an example: "In Spain [they] only talk about victim-offender mediation, they do not know anything about ...conferences, or sentencing circles". Finally, one respondent pointed out: "Yes [I am in favour of a further theoretical development of RJ], but, the development needs to include input from practitioners with some experience".

Finally, one practitioner said: "I disagree with some of the theories expounded. In my training, the main theories I usually cover are of [Abraham] Maslow<sup>135</sup>, [Donald] Nathanson<sup>136</sup> and [John] Braithwaite. But I cover this stuff, just so that practitioners can get a handle on the underlying principles, and help them think 'above the game', not because they are the only relevant theories. Understanding the process and phases of a meeting, the value, or not, of people speaking in a certain order, the value, or not, of the scripted process, is what is important. This [theoretical understanding] must be followed by the experience of making RJ work in real life and the reflective process of learning from that experience. If someone can come up with a [new] theory that can

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135 Maslow 1970; Maslow 1993; Maslow and Frager 1987.

136 Donald Nathanson is a psychiatrist at the Institute of Pennsylvania Hospital, clinical professor of psychiatry and human behaviour at Jefferson Medical College (Nathanson 1992)

assist me in teaching facilitators to deliver safe and effective restorative interventions, I am all for it”.

## QUESTIONS ON THE PAST AND FUTURE DEVELOPMENT OF RESTORATIVE JUSTICE

The last group of questions aimed to look into any possible links between RJ's past, present and future application by following up some of the indications of the descriptive chapters of the book. It hoped to achieve this by asking what the possible impact of the retributive culture might be on RJ, and what brought RJ back despite the existence of a deep-rooted tradition of punitive justice. It was also anticipated that the responses would reveal whether in the participants' view these factors have now been justified in practice.

### **Q9: “RJ is flourishing despite the strong neo-retributive culture of our times: how do you feel about this view”?**

The question was based on two assumptions. The first suggested that what we currently experience in our criminal justice systems is mainly driven by retributive ideals<sup>137</sup>. The second implied that RJ is flourishing. These were hoped to trigger the participants' reaction. Three groups of answers were identified. Once again, this categorisation does not correspond to numbers of participants.

► **1st Group:** This focused on the word 'neo-retributive'. There were three different approaches. The majority of respondents said that they did not believe that the great part of culture is retributive, while some claimed that the prefix 'neo' should be discarded as the culture never stopped being retributive. A few participants said that they did not understand the term.

“I am not at all sure that the majority of our culture is strongly retributive. Surveys taken a few years back by the 'Minnesota Council on Crime and Justice' indicated just the opposite<sup>138</sup>. I have also seen other communities demonstrate the same feeling of understanding; it is in everyone's best interests to work toward restoring all parties: victims, offenders and communities. There is a need for consequences, court sanctions, treatment programmes, and even incarceration. But the need for healing exists and largely goes unmet in court processes. So, whether RJ activities happen before or after sentencing, they are valuable and much appreciated by those who participate, their support people, family and friends,

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137 This, however, was not to suggest that the study agreed with this claim.

138 The 'Minnesota Council on Crime and Justice' is a private, non-profit agency, which integrates research, demonstration projects and advocacy in the field of criminal and social justice for over forty years.

and where programmes are true to RJ best practices, by the criminal justice system. To see punishment as the response to a criminal act is to be blind to the fact that nearly all who are incarcerated are going to return to the community, perhaps even angrier than before. When people are ostracized from the community, they have little reason to care about how their actions harm others". Another practitioner said: "I don't think there's much 'neo' in our Western society's addiction to retribution. As a society, we have not seriously visited the theme in almost a millennium. When explained competently, RJ makes sense to most people. When people are encouraged to question and explore our current retributive trend, most find it ineffective; therefore, a restorative alternative is, according to many, at least worth a try". In a similar vein another participant said: "I wouldn't call it neo-retributive, because it never stopped being retributive to become neo-retributive".

Finally, it was said: "...I agree that RJ is flourishing despite strong retributive momentum at the level of national dialogue. I believe that RJ taps into a deeper human urge to live in meaningful connection with others. Our national dialogue about difficult issues is generally neither respectful nor reflective. Dialogue in restorative work is both respectful and reflective, and therefore draws out something different from those involved. The retributive and restorative impulses live side by side in human nature. Our public culture nurtures the retributive impulse, but has not, until recently, clearly articulated and nurtured the restorative impulse".

► **2nd Group:** This focused on the verb 'flourishing'. Half of the respondents believed that RJ is not yet flourishing and that there is "still a long way to go". The other half said that there are many examples to illustrate that RJ is indeed flourishing although it has not reached its peak yet.

"RJ is flourishing, but what we are seeing [for example] in Canada is that it may have flourished just about as much as it can for the time being. RJ has now become popular enough to attract the attention of a growing number of practitioners in the traditional system, and we are beginning to see a strong negative reaction by those with a vested interest in the current, retributive approach (lawyers, judges, police officers, social workers, clerks, etc). Unfortunately for RJ, some of these dissidents have easy access to mainstream media, and enjoy a position of high privilege and respect in our society".

One practitioner pointed out: "Flourishing is ... a strong word. RJ has a good foothold, but its application [for example] in Youth-Offending Teams is generally offender focussed, and the involvement of victims is reluctant, sporadic and piecemeal. The training available is of a widely different standard. Some is being delivered as a money making venture, which because of the nature

of the training precludes the essential experiential element. (A bit like passing a driving test without ever having driven the car. Some will be safe behind the wheel, and some won't). The saving grace is that the Government has built some RJ into 'Final Warnings' and 'Referral Orders'. Too few Youth-Offending Teams engage victims as they should.... Any country, which ...has a recent history in such 'healing' processes, has a real advantage. There is a lot that could be done, such as the broad and well resourced application in schools to deal with bullying and exclusions would be an excellent start". Finally, one practitioner said: "I don't know if I would describe it as 'flourishing', although it continues to grow despite the retributive culture... RJ is advancing slowly but surely – inevitably".

► **3rd Group:** This did not focus on any of the previous two words, but approached the question in a more general manner.

"Perhaps people working in the criminal justice system (unlike politicians) realise that the current system does not work very well, and that we need to find alternative ways. Victims see that the current system does not serve their needs, and want to become more central to it. Theoreticians are taking the long view, and trying to visualise a different conceptualisation of justice. But we will probably have to live with an uncomfortable blend of retribution and RJ for some time to come". "RJ bridges the gap between neo-retributive and the opposite", another respondent said. "It has both sides' elements (e.g. offenders facing the victims, and victims having a say in the process)". "People want to be treated fairly... and RJ makes sense to victims, offenders and sentencers". "It taps into a deeper human need to live in meaningful connections with others". "That is why retributive programmes are being replaced with restorative practices", they claimed. Two examples that were given were the one of West Yorkshire 'Victim-Offender Unit', where practice has been based on RJ values, and Canada, where statutory changes (Criminal Code and YCJA) have been amended to include RJ principles.

Some respondents, however, claimed that, although RJ's normative notion is unquestionably growing, its general development might not be in agreement with the original restorative values. It was pointed out that 'restorativists' should keep on struggling to promote the right vision of RJ, as the strong adherence of our culture to retributivism can repackage its values to look like another form of punishment. The neo-retributive culture, however, is merely a construct of the political discourse, the respondents claimed, and "most of those who are in favour of it do not actually believe in it". "Practitioners are looking for alternatives", they added, "and this is where the support of leaders and theorists can play a significant role". "RJ should be protected by legislation", they said. This can help promote a uniform understanding of RJ, and safeguard the nature of its practices.

**Q20: “What do you think could contribute to the development of RJ”?**

Six codes were identified in the respondents’ replies, each corresponding to a different factor, which according to the participants can encourage RJ’s future development. Again, this identification should not be read to represent numbers of respondents.

► **The Media’s contribution:** “[What could help] would be more publicity for the idea [of RJ], in broadsheet newspapers, weeklies etc”. Another respondent added: “[what could also help is] press understanding of what [RJ] is about, and stop denigrating it”. According to some, the media can have a decisive role in shaping the public’s opinion about RJ practices. The respondents claimed that currently information about RJ is lacking. Mass media (television, radio, newspapers, magazines etc) are not actively promoting RJ, nor do they give accurate or adequate information concerning the various examples of its successful application. Usually, the only source of information comes from organisations that are especially created to promote RJ, and which have enough funding to circulate newsletters or periodical magazines. It was also pointed out that in order for RJ to make its way through people’s lives and transform their way of understanding and behaving, it has to be clearly comprehended.

“The public needs to be informed”, they said “and the best way to do this is through means that are most accessible to them e.g. television”. In a practitioner’s terms: “There needs to be fundamental public re-education especially with the media and schools, so that they do not constantly reinforce punishment models”. Finally, it was claimed that: “The public is not informed about the success of restorative programmes”.

► **Additional financial support:** “[what could contribute to the development of RJ is] well funded research, and the financial bankruptcy of the current punitive system”. This involved funding from bodies of both private and public nature, and referred to programmes seeking money not only for implementation but also for further research and/or evaluation. Some practitioners reported that, while applying RJ, one of the most important problems they had to face was lack of adequate funding. This usually resulted in limited or bad implementation. Furthermore, some researchers and evaluators complained that, although sometimes they approached private and governmental organisations with many innovative and interesting ideas, they were rejected.

► **Reduction of ineffective traditional criminal justice services:** “Making RJ community driven rather than system driven. Community should be working to reduce the demand for professional criminal justice services. It is not the nature of

professional systems to 'put themselves out of work'. Therefore, community must step up to take back some of the responsibility. This is a complex issue; I have worked with community and the system for five years [and came across a lot of] tough issues for both sides: motivation, longevity and more". This mainly involved current services to victims, offenders and the public concerning delivery of justice. Almost all respondents mentioned the low satisfaction rates with the current justice system, and suggested that these data need to be pointed out to the public and policymakers. The community, they said, should be assisted in realising the ineffectiveness of the current justice system, and reduce demand for its services. At the same time, they claimed, those in power should acquire a better understanding of RJ's theory and practice, so that they are better prepared to make judgements about it. Most importantly, open-mindedness needs to be promoted to the policymakers and politicians.

"[What is needed is to]...tell the public about the current system's failure... [and] encourage questioning". One practitioner pointed out: "Those in power, senior police, social services, education, Government, should understand RJ and not just read an A4 sheet on it, and claim that they understand".

► **Better training for RJ practitioners:** "Good training will promote better understanding among practitioners particularly in the statutory sector".

The importance of good design, and delivery of high quality of teaching and education programmes was highlighted. The respondents also stressed the significance of including theoretical courses in the curriculum and manuals for trainees. A better knowledge, they said, will promote better understanding and application, and will allow comparisons between jurisdictions and practices. One practitioner working with young offenders said: "there is no good guidance from the Youth-Justice Board".

► **Expansion of RJ practices beyond the criminal justice system:** "[What could help is]... better understanding of the variety of cases that are commonly referred to RJ processes... a variety of processes that might provide additional options for achieving RJ goals". The respondents claimed that RJ should be expanded to other justice and conflict resolution matters such as in school and neighbour conflicts, boundary disputes, community conflicts, organisation and club conflicts, divorce and family reconciliation and international, interstate disputes. They also suggested that more model projects should be designed to make RJ ready to respond to all kinds of dispute resolution. In order to be able to do that, they said, more studies need to be undertaken with advance research of national and international scope. Experiences from other countries should also be compared and evaluated.

One practitioner working with juveniles said: “[what could help is]... practical experience of trying to make [RJ] work against a culture in the Youth-Offending Teams that is mixed in [terms of] how wholeheartedly it is embraced”. Finally, one practitioner highlighted the importance of: “...performance measurement in the public sector based on quality of process”.

► **Further reflection on RJ’s theoretical values and principles:** “[What could contribute to the development of RJ is] ... bringing in the political side of this equation. I am a lobbyist who has worked in the arena of writing legislation/making policy/selling it. That is something overlooked. How do you get RJ (in its purest form) into the statutes that govern our States/countries? It is critical. I think you need to paint the vision of RJ to the victims of the world: those who are organized and those who are not”. It was suggested that these should be introduced to educative systems such as schools, training manuals and bar examinations. RJ, the participants said, should be further elaborated to create a clear and comprehensible understanding of guiding principles, so that fewer misapplications are experienced. It should become approachable, they said, for anyone who likes to know more about it. RJ should become able to transform society’s punitive values. The respondents also stressed the importance of making clear that RJ is inclusive, and that the reason for this is its simple and humane approach to pain and harm.

One practitioner claimed: “Youth-Offending Team managers and the Youth-Justice Board put RJ practices in place and do not always ensure [that] staff fully apply its principles—probably as they do not always fully understand them themselves”. It was pointed out that what could help would be “a sound understanding of the ontological and epistemological underpinnings of RJ’s theory”. One practitioner gave an example: “Being able to compare RJ practices across jurisdictions [could contribute to the development of RJ]. [However] this is virtually impossible due to differing interpretations of RJ practice, and differing legislations etc. Experimental work ... is obviously important – but very difficult to carry out”. It was suggested that: “Deep inner work on ourselves to look at whether we are walking in a restorative way with everyone we encounter in our lives” could aid development. Finally, one practitioner said: “[what could assist this process is] open-mindedness on the part of criminal justice system, lawyers, and judges to work alongside RJ practitioners, and not to undermine or impede their work. [They need to realise that even if] RJ enhances alternatives, there will still be roles for the professionals”.

**Q21: “Why do you think RJ has been brought back onto the criminal justice agenda”?**

The question was based on two assumptions. First, RJ has indeed been brought back onto the criminal justice agenda. Second, RJ used to be among the dominant criminal justice practices, but was at some point replaced by another paradigm. Six codes were identified each representing a different factor.

► **Increase victim satisfaction:** “...Most who are familiar with the concept will agree that it is ‘the right thing to do’. Victims deserve to be the primary participants in the justice process... The increased awareness about the impact of crime and the work of victim advocates has made criminal justice professionals realise that anyone can become a victim of crime. Most people are interested in a system of justice that is as responsive to victims’ needs and issues, as it is to offenders’. The challenge is making this happen”. According to some respondents, the increasing rates of victim satisfaction and the enhanced role that is given to them compose some of RJ’s strengths, and a characteristic that differentiates it significantly from the current retributive practice. Respondents claimed that RJ was brought back, because it increases awareness on behalf of victims and their families. It leaves them more satisfied, they said, and sometimes healed and ready to forgive.

“...Because there has to be a better way, and RJ models give hope for better alternatives. RJ is a response to continued frustrations from all affected by crime”. Another practitioner said: “RJ is on the criminal justice agenda, because the victims and feminist movements, as well as indigenous groups, have raised serious questions about power and its use in our culture”.

► **Strong historical background:** “RJ is the approach that has been dominant through most of our human history”... [There has been] recognition that there are other penal philosophies through history and culture - so for some indigenous communities it is an effort to reflect their history”. This factor referred to RJ’s strong historical background and the significance of the aboriginal and other traditions it carries. Some respondents said that RJ practices have been dominant in history, being with us since the formation of early societies. Special reference was made to certain countries, (i.e. Australia and Canada), where, according to the respondents, RJ used to be the sole understanding on which Aboriginal practices based their approach in dealing with crime.

► **A new approach to crime-solving:** “[RJ promotes] a general move towards community participation (desire to put power back in community rather than the State)”. One practitioner said: “...for the last 1,000 years we have got it wrong in this country, and there are many examples now of other countries embracing RJ to good effect. Thankfully, there are those who consider that it is too

important not to do something, even if they do not fully understand it". This concerned the character of RJ as a crime-solving process. In particular, the respondents claimed that RJ has the ability to maintain a just and fair system, holding offenders accountable for their actions and restoring victims. They said RJ can offer a natural way of addressing harm, giving voice to all affected parties, including them in a process of communication and understanding. It can enhance, they said, community and its values, and empower its members. It can also give a new hope for alternative ways of dealing with crime. One researcher claimed that evaluation and performance measurement have shown that RJ practices render higher rates of victims' and offenders' satisfaction, resulting at the same time in cuts in criminal justice expenditure. Finally, respondents claimed that RJ speaks to the hearts of the participants, while it appeals as a new and exciting idea.

► **Political support:** It was claimed that, to a great extent, current justice systems are directed according to the given political ideologies of their times. In particular, participants argued that over the last years, there have been a number of political discussions around RJ and its potential, while a large number of national and international conferences have focused on its theories and practices. This, they claimed has led to a change in political thinking, and undoubtedly boosted RJ. Finally, victims' rights movements have played a significant role in enhancing RJ's profile by bringing it onto the political agenda.

► **Promoting a community feeling:** "I believe there is a deep yearning in Western society for meaningful relationships, and for a purpose in life that is greater than the pursuit of worldly goods. RJ offers a way forward that responds to those urges". One practitioner gave an example: "[RJ can] cope with a large number of non-serious crimes [and promote] a heightened understanding of the role of victims and communities in criminal justice. [For example], in South Africa [there has been] a re-emergence of the concept of ubuntu, which gives new emphasis on juvenile justice". Finally, two more researchers said: "I believe RJ is part of a grand master plan for humankind", and "...what we call RJ is the most natural way we know to address conflict". This involved RJ's potential in enhancing the role of communities in dealing with both individual and communal problems. In particular, the respondents claimed that RJ can enhance the value and power of community, increase awareness and bring individuals closer, resulting in honest and strong human bonds. RJ questions the current distribution of powers in the criminal justice process, they said, creating a culture of increased sensitivity about our actions.

However, it was suggested that there is still scope for work. More pressure and better quality of information is needed to change public opinion. Governments' support in research, practice

and overall development of RJ has been important, they said, but there is still a long way to go.

“RJ [has been treated as] a political tool — however I now feel optimistic, because ... [the] Government is willing to try alternative ways to address crime. Underlying this though is the suspicion that the ‘causes of crime’ are less likely to be addressed than was the case prior to 1970s”. Another practitioner said: “I see it as part of the current political climate to embrace non-custodial alternatives to sentencing and to involve victims in the criminal justice process”.

► **The criminal justice system has let us down:** “The interest increases because all retributive criminal justice systems continue to fail leaving injured broken victims, and communities with increasing numbers of prisoners in overcrowded prisons. All seek answers to change this condition”. This was the most popular code, as it appeared in the majority of responses. It involved what the respondents saw as a failure of the current criminal justice system to respond effectively and promptly to victims and offenders’ needs. In particular, the participants mentioned the growing prison population and the inhumane conditions of custodial institutions. This problem, along with other breakdowns of the justice system, they said, has led to desperation and frustration on behalf of victims, offenders, and the public, and a wish for a change. Finally, it was argued that the criminal justice system’s officials seem to be realising the ineptness of the current paradigm, recognising the need for alternatives.

“...Desperation... incarceration costs are causing cuts in other areas within the US”. One practitioner said: “There is a story that Jack Straw visited a youth court in Oxfordshire (just before Labour got into power), and witnessed a judge passing sentence after a 10 minute hearing. He then asked the young person what he had been sentenced to, and he did not have a clue. He then elicited the fact from the young person that drugs were behind his offending. This had not been touched on by the court”.

## Q22: “How would you describe the ‘reawakening’ of RJ”?

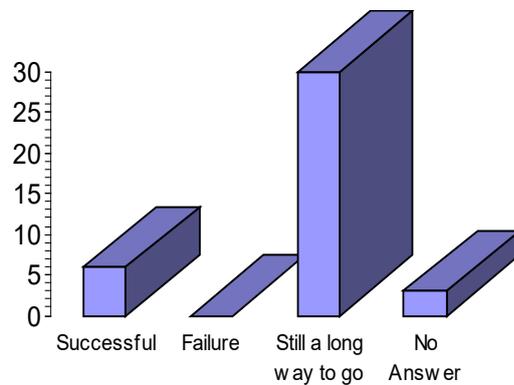


Chart 8

- 31 respondents said that there is still a long way to go, six characterised it as successful and three gave no answer. None said, however, that it was a failure.  
-- The findings are important when seen in conjunction with the rest of the qualitative results.  
-- The three respondents who did not reply disagreed with the term reawakening.

## Q23: “Are you optimistic about RJ’s future”?

This time the research looked into the reasons that might have led respondents feeling optimistic or pessimistic about RJ’s future. The question was also consistent with the group’s investigation of the impact of the current punitive criminal justice system on RJ. Finally, it hoped to capture the respondents’ overall attitude towards RJ’s future development, and provide them with a chance to make general comments. Three groups of answers were identified each representing a different segment of the sample.

► **Pessimism (two participants):** These focused on RJ’s application in the youth justice system, and expressed pessimism about its future development. The first practitioner said: “[I am] not really [optimistic] at the moment. However, the current youth justice system will have to overhaul radical change fairly soon”. The second respondent said: “[I am not optimistic] now, because RJ is being badly developed in the youth justice system”.

► **Reserved optimism (six participants):** The group expressed cautious optimism. Some claimed that people can be too enthusiastic to apply the RJ badge. It is crucial, they said, “to have an established independent assessment to see whether those who use the term live up to the approach”. This will safeguard the quality and authenticity of RJ’s implementation. The public is still not in favour of RJ and the “bureaucratic society” does not make it easier. In short, there was an overall sense of hope, accompanied by a feeling of more needs to be done in order to avoid seeing RJ remaining marginal in the justice system.

“[I am] cautiously optimistic. I think people can be too enthusiastic to apply the RJ badge to all sorts of different schemes because it is new, or the Government encourages it, or even because it can sometimes generate funding. What is crucial is that

independent assessment takes place to see if those who use the term live up to the approach. This is especially important when it comes to implementation". Another researcher said: "I am cautiously optimistic, although I think that restorative processes could remain marginal in the criminal justice system for a long time". Another researcher pointed out: "In theory, yes [I am optimistic]. Part of the difficulty is the idea of transplanting traditional means of dealing with conflict into 'Westernised', bureaucratic legal systems". Someone said: "I would say I am hopeful that restorative processes will gain more prominence in the years to come, but there is a lot of resistance in public opinion to a move in this direction".

► **Optimism (32 participants):** In general terms, this optimism was accompanied with a wish for further guidance, research, evaluation and resources, "as people are generally afraid of trying new ideas in the criminal justice system".

"I am very optimistic about the future of RJ. The experiences and insights I have gained while participating in restorative practices have been profound. I believe that as more people (professionals) have opportunities to take part in RJ more will make it a priority in their agenda. ... Most people believe that RJ is 'the right thing to do', but cannot seem to fit it in with all the overwhelming demands of our system. It is a great challenge to find ways to implement restorative practices in environments that are facing budget cuts, staff shortages, and are overwhelmed with offenders' rights and security issues. However, we are making progress...". Someone else was a bit more cautious: "[I am] both realistic and optimistic. What will, however, begin to make a difference is when RJ practitioners understand its 'normative' value. Then, we can expect a significant growth in working out RJ's role in enhancing our civil society".

One practitioner gave an example: "We cannot forget that the power of politicians and Governments is very important... and ... in the case of X<sup>139</sup> we need to take into account the important outcomes [experienced] in Europe and show them to our politicians to see how [well]... [RJ] is working ... abroad". One practitioner also pointed out: "I think we are at the edge of a movement that is expanding. I think it is worldwide... countries learn from countries. It is our job to share the tools, the vision, and tell the stories of those who have healed and those who have forgiven".

"There are so many excellent programmes around the world, and this number continues to grow. The danger is that there are some programmes that are not following international best practices guidelines, and could cause setbacks. However, systems are watching, learning and beginning to understand and appreciate RJ, because of the positive outcomes reported by staff, victims and

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139 The name cannot be disclosed due to confidentiality agreements.

offenders and their families, as well as by the community. Systems are also responding to comprehensive documentation provided by research that was unavailable in the past. Victims' rights groups have begun to appreciate and, in many cases, even endorse the good work RJ offers. A true partnership is forming between all stakeholders. Another consideration is that there are now many trainers who include much of what was left out of training in the past, including systems' partners, crime victim specialists, referral resource materials, experiential exercises and soft skills exercises. [Adequate] time for open discussion and research outcomes in training make a difference in the preparedness of the individuals who will facilitate the RJ processes. Because of this, programmes can offer better opportunities for positive outcomes to victims, offenders, the community and the justice system. Many programmes have or are in the process of improving, reporting back to systems on how the cases are going. They monitor restitution – whatever form has been decided upon, and stay in touch with offenders in an effort to encourage those who struggle to complete their agreements on time. They keep victims and mediators informed on how the offender is doing in regard to completing agreements post conference/mediation. All of these contribute toward healthier processes, and stronger possibilities for continued success of RJ”.

“Despite RJ being the most important development I have seen in my 25 years in the police service, we all have a very long road in front of us. My involvement in spreading RJ is, (apart from supporting my family), the most important contribution I will ever make in my life. It is the best chance I will ever have of making a real difference”.

## ASSESSING THE FINDINGS OF SURVEY I AGAINST THE EXTANT LITERATURE

The purpose of this chapter is to provide an ‘evaluation framework’ for the survey’s data display. This will allow the subsequent chapter to proceed with a more accurate data analysis and a thorough interpretation of the survey’s findings and their thematic links with the book’s research question.

This evaluation framework will be constructed by summarising some of the most important studies recorded by the extant literature. Similarly to the trans-national character of the survey, the data that will be summarised are not attached to any particular jurisdiction. Again, the central concern is to reflect the practical reality of RJ’s implementation but not in relation to a specific justice system or individual programme. This chapter has been divided into three sections, and it aims to provide a scientific account of RJ’s effectiveness on victims, offenders and their communities.

## The Impact of Restorative Justice on Victims: an Account of the Literature

It is easy to assume that victims can always be better off through an RJ intervention. As described in Chapter 1 and concurrently with the academic debate, RJ emerged from various victim movements. The data organised under the following four titles, summarise the up-to-date empirical knowledge regarding RJ's impact on victims.

### Victim Satisfaction

In the UK, the first RJ evaluation on victims' satisfaction was carried out between 1985-1987 by Marshall and Merry on behalf of the Home Office<sup>140</sup> (Marshall and Merry 1990). This project included all cases referred to the four governmental RJ pilot projects running at that time (Coventry, Cumbria, Leeds and Wolverhampton). It also drew on referrals made to four other services, providing over 1,000 cases to research. The research, *inter alia*, pointed out a number of practical difficulties including: (a) operational matters (achieving referrals, timing, preparation and follow-up, effective communication in indirect mediation, resources), (b) issues relating to reparation and compensation and (c) issues related to offender accountability. Dignan's early evaluation reports were not very encouraging either, as he pointed out that victims were not offered anything concrete by restorative processes apart from, what he called, 'sham reparation' which usually took the form of tokenism and dictated letters of apology (Dignan 1990, 1992). Along the same lines was Davis's research (Davis 1992), while Crawford reported that the early restorative schemes in the UK moved from being seen as a "new deal for victims" to a "new deal for offenders" (Crawford 1996). However, a few years later, he showed that the situation improved significantly, claiming that the programmes that survived into the 1990s after weathering this storm "have done much to answer their critics" (Crawford 1996, 7).

In Canada, Clairmon claimed that there was very little victim involvement in four RJ programmes for First Nations offenders (Clairmon 1994, 16-17). Similar also were the results of the research conducted by Obonsawin-Irwin Consulting Inc and LaPrairie, as they both showed that there were higher rates of offenders' satisfaction rather than of victims who participated in

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140 These findings were followed up by Umbreit and Warner (1996). This study focused on two of the four programmes of the previous study (Coventry and Leeds). It is worth noticing that these two projects used cases from every stage of the criminal justice system. Moreover, subsequent evaluation reports confirmed these results (Dignan 1992, Hughes *et al.* 1995 Warner 1992). Evaluation was again carried out by Wynne who focused on 73 adult offenders referred to the Leeds victim-offender unit, and found a 14% reduction in re-offending over a two-year period (Wynne 1996).

Canadian Aboriginal RJ projects (LaPrairie 1995; Obonsawin-Irin Consulting Inc 1992, 1992).

In Australia, two studies published in the late 1990s reported a significant minority of victims who were not satisfied by the restorative process (Daly 1996; Strang and Sherman 1997). This dissatisfaction was mainly due to an after-feeling of disrespect, a negative reaction to something said or generally feeling worse after meeting the offender. However, this minority has to be contrasted with the majority of victims who felt healing as a result of RJ. The positive message of the two Australian studies was reflected in the report of Birchall et al. who showed that 70% of the victims who participated in the Western Australia's Midland Pilot Reparation Scheme said they were feeling better after the restorative meeting (Birchall et al. 1992). This number needs to be compared with the 95% victim satisfaction rate reported by the Ministry of Justice of Western Australia (Ministry of Justice 1994). In a 2000 RISE report by Strang, it was also shown that victim participation reached 80% (Strang 2000), while Trimboli's 2000 evaluation of the NSW Youth Justice Conferencing Scheme found even higher satisfaction rates (Trimboli 2000).

In the US, McCold and Wachtel<sup>141</sup> found a 96% of victim satisfaction with programmes run in Pennsylvania (McCold and Wachtel 1998), while Umbreit and Coates found a satisfaction rate of 79% with victims who participated in four different mediation programmes (Umbreit and Coates 1992). In a subsequent study, Umbreit reported a 78% satisfaction rate with procedures undertaken in Canadian sites (Umbreit 1998).

### **Victim Monetary-material Compensation**

In the UK, Marshall reported that over 80% of the compensation agreements that were taken up during the examined restorative meetings were completed (Marshall 1992). Similarly, Dignan's research showed an 86% participant agreement with mediation outcomes, while Haley and Neugebauer's research on RJ programmes in Great Britain, Canada and the US showed a 64-100% completion rate of reparation agreements (Haley and Neugebauer 1992).

In Canada, Pate reported a non-completion rate of 5-10% (Pate 1990) and in Australia Wundersitz and Hetzel found 86% of full compliance with conference agreements (Wundersitz and Hetzel 1996). According to Waters, the Wagga-Wagga type conference rendered a 91% completion rate (Waters 1993). Fry's Australian study showed a surprising 100% completion of agreements in a pilot of 26 police-coordinated juvenile family-group conferences. In Finland, in two studies, Iivari reported that 85% of agreements

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141 Both were among the sample of Survey I.

reached through victim-offender mediation were fully completed (Iivari 1987, 1992). Similarly, in Germany, it was reported that 76% of victims' reparation received full completion (Trenczek 1990), but in New Zealand Galaway showed only a 58% of completion rate (Galaway 1992).

In the US, McCold and Wachtel reported a compliance rate of 94% with conferences (McCold and Wachtel 1998), and McGarrel et al. in a more recent study showed a compliance rate of 83% with the same type of programme (McGarrell et al. 2000). Umbreit and Coates' multisite study showed that mediation programmes rendered 81% completion rate of restitution obligations, whereas court-ordered compensation had only 58% completion. In a study carried out by Ervin and Schneider with a random assignment evaluation of six different RJ programmes a completion rate of 89% was reported (Ervin and Schneider 1990). Finally, a meta-analysis of 8 studies with a control group by Latimer et al. showed that restitution compliance in RJ cases could go up to 33% higher than among controls (Latimer et al. 2001).

### **Victim Non-material Compensation**

This is usually understood in terms of apology, asking for forgiveness, expression of remorse, regret and readiness to make amends. According to Retzinger and Scheff's research, victims may see non-material reparation equally or even more significant than material compensation (Retzinger and Scheff 1996). In a 1997 study by Strang and Sherman, it was shown that victims are not as punitive as once thought to be (Strang and Sherman 1997). In fact, in 2000, Strang showed that 71% of the victims who participated in the Australian RISE experiments and whose case was randomly assigned to a family-group conference got an apology compared with 17% of the cases that were randomly assigned to court. 77% of the conference apologies were considered by the victim to be sincere whereas this was the case for only 36% of the apologies that were given through court. Finally, 65% of victims felt either quite or very angry before the family-group conference and 27% felt so afterward. However, the proportion of victims who felt sympathetic to their offender almost tripled by the end of the restorative procedure (Strang 2000).

According to Wundersitz and Hetzel, 75-80% of the victims agreed to participate in restorative conferences in Australia mainly because they believed that in this way they could help the offender<sup>142</sup> (Wundersitz and Hetzel 1996). In Goodes' research, 88% of victims were happy with the conference outcome and 90%

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142 Other reasons included: desire to express feelings, meet the offender, make statement to the offender, ask questions such as 'why me', curiosity, desire to 'have a look' and responsibility as a citizen to attend.

found it helpful and said that they would attend again if they were a victim.

However, Braithwaite points out that when evaluating data on non-material victim compensation one needs to be careful as the risk of losing sight of “what most moves RJ advocates who have seen restorative processes work well” (Braithwaite 2002, Ch 3). RJ can play a spiritual role that is beyond any type of quantitative or even qualitative measurement. Many prominent writers have described this function of RJ as an ability to deliver grace, shalom (Van Ness 1993, 125). This cannot be underestimated. This dimension needs to be considered in the data analysis of the survey.

### **Victims’ Overall Restoration**

The question of how well RJ ‘restores’ victims is very complex and to some extent incapable of being measured. In Braithwaite’s terms “There is a deep problem in evaluating how well RJ restores” (Braithwaite 2002, 47). As each individual prioritises differently what is important in their healing and forgiveness process, the expectations from a restorative meeting may vary. Braithwaite suggests three possible paths which future evaluation may take in answering this question:

- (i) “...To posit a list of types of restoration that are important to most victims...”
- (ii) To measure “overall satisfaction of victims with RJ processes and outcomes assuming that satisfaction is a proxy for victims getting restoration on the things that are most important for them”.
- (iii) “...To ask victims to define the kinds of restoration they were seeking and then to report how much restoration they attained in these terms that matter most to them” (Braithwaite 2002, 46).

The third path, which is arguably the best - but also the most daunting one - was taken by Strang in a research study that was published in 2001 (Strang 2001). Inter alia, it showed that RJ programmes render less vindictive victims (7%). Overall, it can be safely claimed that the study allowed a sense of future optimism, since the RISE experiments that it investigated were only first-generation programmes. These can provide follow-up research with adequate material and guidance. In Strang’s terms: “Overall, victims most often said their conference had been a helpful experience in allowing them to feel more settled about the offence, to feel forgiving towards their offender and to experience a sense of closure (Strang 2000, 1).

## The Impact of Restorative Justice on Offenders: An Account of the Literature

It is widely accepted that the current criminal justice system is structured in such a way that its procedures are offender-focused. This is evident in most governmental reports, consultation papers and Acts that aim to improve the system, reinstating that its central target should be the reduction of offending and recidivism (Great Britain Parliament 1998, 1998, 2003). That is why RJ's impact on these numbers is particularly interesting to a number of stakeholders.

### Reduction of re-offending

It comes as no surprise that a considerable amount of the available research is dedicated to answering the question of whether RJ 'convinces' individuals to refrain from re-offending. While considering the relevant data, special care needs to be taken so that only studies of restorative processes are considered<sup>143</sup>.

Arguably, the most interesting results so far are found in the RISE in Australia. Sherman et al. for example, reported that although they noticed a reduction in offending rates by violent offenders and drunk drivers, there was no effect on repeat offending by juvenile property offenders or shoplifters (Sherman, Strang and Woods 2000). McGarrel et al. on the other hand, in the study they carried out with the Indianapolis Restorative Justice Experiment with Wagga-style conferences showed a rate of 40% reduction in re-arrest within 6 months and a 35% reduction after a 12 months follow-up.

In the US, Schneider reported a significant reduction in recidivism across 6 programmes (Schneider 1986, 1990), while Umbreit et al. found 18% recidivism across four victim-offender mediation sites (Umbreit et al. 1994). In New Zealand, Maxwell et al. reported on two adult restorative programmes finding a 16% twelve-month reconviction rate and a 33% for the other programme (Maxwell et al. 1999). Forsythe also showed a 20% re-offending rate for family-group conference cases of the Wagga model (Forsythe 1995).

In Canada, Burford and Pennell reported on a study of family-group conferences with family violence cases showing a marked reduction in both child abuse and abuse of mothers (Burford and Pennell 1998). In a 1997 qualitative study they also showed that family-group conferences can actually reduce family violence (Pennell and Burford 1997), while in a 2000 follow-up research they attempted to estimate levels of violence affecting different

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143 Braithwaite suggested that we keep in mind at least two things: (1) that the programme involves a restorative process and (2) it pursues restorative values, (Braithwaite 2002).

participants. The meta-analysis of 32 control groups conducted by Latimer et al. showed a significant decrease in recidivism (Latimer et al. 2001).

In the UK, Little reported a significant reduction in re-offending rates with juveniles that had gone through the 'Intensive Supervision and Support Programme' (ISSP) (Little 2001). On the other hand, Marshall and Merry's early study showed a decline of re-offending rates with individuals who had gone through victim-offender mediation processes (Marshall and Merry 1990), while the results of the Justice Research Consortium are yet to be seen. Chapter 3 reported the results of Oxford University's research on restorative cautioning by Thames-Valley Police. These have now been followed up by a two year re-sanctioning study that compared restorative and traditional cautions (Wilcox et al. 2004). The results of this Home Office report were not particularly positive as they showed that the restorative cautioning initiative was no more effective than traditional cautioning in terms of re-sanctioning. Nevertheless, the scheme did not seem to increase re-sanctioning.

Braithwaite summarises the findings from the up-to-date research on recidivism in the following sentence: "My own reading of the three dozen studies of re-offending reviewed is that while RJ programmes do not involve a consistent guarantee of reducing offending even badly managed RJ programmes are most unlikely to make re-offending worse" (Braithwaite 2002).

### **Offenders' Satisfaction and Overall Restoration**

Again, in order to identify the exact framework of evaluation of this variable, first there has to be some 'meta-research' on what offenders consider important in their restoration. For example, Moore and Forsythe's ethnographic study showed that the majority of offenders place equal - if not bigger emphasis - on the procedure rather than the final outcome of a programme (Moore et al. 1995). This is contrary to the traditional criminal justice system philosophy, which offers incentives to offenders to close their case in the least complicated way possible (even if that means never presenting their case e.g. plea bargaining).

Therefore, it should come as no surprise that in the US, McCold and Wachtel's study of the Pennsylvania conferences found a 97% satisfaction rate with the "way your case was handled" and 97% of a sense of fairness (McCold and Wachtel 1998). In a 2000 study, again McCold and Wachtel investigated the degree of offender satisfaction from 3 different types of RJ programmes which they described as: (1) 'fully restorative' (2) 'mostly restorative' and (3) 'not restorative'. They found that satisfaction was significantly higher for fully restorative programmes and lowest for non-restorative ones (McCold and Wachtel 2000). Similarly, in his

cross-site study with victim-offender mediation, Umbreit found a 89% perception rate of fairness (Umbreit and Coates 1992). Five years later, in a subsequent study, he reported 80% of offenders' perception of fairness. In addition, Coats and Gehm found a rate of 83% of offender satisfaction with the overall experience of victim-offender mediation (Coats and Gehm 1985, 1989).

In the UK, Smith et al. found that 10 out of 13 offenders were satisfied with the victim-offender mediation programmes that were run in the early years of mid 1980s in South Yorkshire (Smith et al. 1985). Dignan also found 96% of satisfied or very satisfied offenders with a victim-offender mediation process in Northamptonshire (Dignan 1990).

In Australia, Barnes reported higher satisfaction rates with both procedural and outcome fairness with RISE conferences compared with court-assigned cases (Barnes 1999), while Trimboli's research concluded with even higher rates of offenders' satisfaction and feeling of fairness (Trimboli 2000). Finally, Palk et al. found a 98% satisfaction rate among young offenders who found the conferences of the Queensland Department of Justice fair (Palk et al. 1998). 99% expressed satisfaction with the final agreement of the meeting and 96% reported they "would be more likely to go to your family now if you were in trouble or needed help" and that they had "been able to put the whole experience behind you" (Palk et al. 1998).

### **The Impact of Restorative Justice on Communities: An Account of the Literature**

Communities are usually the forgotten party. As theoreticians still strive to identify a commonly accepted understanding of what community entails, when trying to evaluate RJ's effect on this level, two considerations emerge. The first has already been discussed and involves the trans-national dimension of RJ practices which have now extended beyond local, national and regional perceptions of justice. So, while considering their effect, we need to identify the community where they are applied. Second, if we decide to expand our empirical findings and theoretical arguments to a community level beyond national borders, then we also need to ask whether our research also needs to consider the individual features characterising each individual jurisdiction and its underlying culture.

A number of studies have indicated that certain features that are related to the effect of restorative processes and outcomes are not attached to any local or national understandings (Morris et al. 1996; Ross 1996). Ross' study explored RJ's effect on restoring communities from sexual abuse cases. "...the healing process must involve a healthy group of people, as opposed to single therapists" he said (Ross 1996 150).

In Burford and Pennell's study it was shown that beyond the positive effect of RJ on reducing violence and child neglect in the participant cases, an increase in family support was also accomplished; the conferences also seem to enhance family unity and cohesion (Burford and Pennell 1998). Clairmont, on the other hand, showed that restorative programmes that involved native peoples in Canada were "proven to be popular with offenders... and to have broad, general support within communities" (Clairmont 1994, 28).

In a study that was carried out in Singapore, 95% of family members who participated in family-group conferences stated that they had benefited considerably from the programme (Hsien 1996). Similar high numbers were also reported by McCold and Wachtel, as 97% of parents of offenders were satisfied by family-group conferences and 97% considered them fair (McCold and Wachtel 1998). In 2000, McGarrel et al. reported that 80% of the parents who took part in family-group conferences felt involved and 90% that they had the opportunity to express their views (McGarrell et al. 2000). It is widely accepted that communities with strong social support enjoy reduced criminality (Chamlin and Cochran 1997; Cullen 1994). Schneider's study found a link between completing restitution with enhanced feelings of citizenship and community commitment (Schneider 1990). Tyler and Huo, however, showed that procedural fairness by authorities may increase considerably the trust of individuals in the system and thus enhance community cohesion (Tyler and Huo 2001). This, of course, does not mean that the restorative system cannot use this advantage. Braithwaite suggests that "Tyler's work opens up exciting new lines of research on why RJ might contribute to community building" (Braithwaite 2002, Ch 3).

However, Marshall and Merry's study showed that: "Even when volunteers were recruited, they were trained to act like professionals rather than being expected to inject local norms and definitions. With hindsight, perhaps, one can see the 'community' idea as having been added artificially to the concept of victim-offender mediation, because of the concurrent growth of community-mediation schemes for neighbourhood dispute" (Marshall and Merry 1990, 247).

## Concluding Remarks

The chapter attempted to provide a scientific account of RJ's empirical impact on its three targeted audiences. This account was based on some of the most important empirical evidence that has been collected through various studies that were carried out around the world over the last two decades. The description was not meant to be exhaustive but rather illustrative of the conclusions and

lessons that are to be learned from such empirical studies. Evidence on RJ's effectiveness will continue to accumulate. In fact, at the time of publication, new research by Sherman and Strang complemented the extant literature. This involved a review of research review RJ in the UK and abroad (Sherman and Strang 2007). It showed that across 36 direct comparisons to conventional criminal justice (CJ), RJ has, in at least two tests each:

- substantially reduced repeat offending for some offenders, but not all;
- doubled (or more) the offences brought to justice as diversion from CJ;
- reduced crime victims' post-traumatic stress symptoms and related costs;
- provided both victims and offenders with more satisfaction with justice than CJ;
- reduced crime victims' desire for violent revenge against their offenders;
- reduced the costs of criminal justice, when used as diversion from CJ;
- reduced recidivism more than prison (adults) or as well as prison (youths).

To conclude, RJ's up-to-date application appears to allow a general feeling of optimism as the bulk of the empirical literature demonstrates that there is much scope for investigation. While the evidence is still accumulating, it is too early to safely claim that RJ provides a better criminal justice alternative. In fact, both research evidence and theoretical writings suggest that we stop comparing RJ in terms of what it can offer in relation to the current criminal justice system (Braithwaite 2002; Daly 2000; Daly and Imarrigeon 1998). "Rather we must think more dynamically about developing the RJ process and the values that guide it" (Braithwaite 2002, 69). However, Sherman and Strang noted: "The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out nationally. RJ is ready to be put to far broader use ..." However, this is still not the case. This conclusion reinforces the impetus of this book's study as it brings evidence to the discussed gap between RJ's actual application and theoretical existence (Sherman and Strang 2007).

## ANALYSING AND TRIANGULATING THE FINDINGS OF SURVEY I

### THE FINDINGS: PROBLEMS IN THE PRACTICAL AND THEORETICAL DEVELOPMENT OF RESTORATIVE JUSTICE

The analysis of the data that was collected with Survey I disclosed a number of problems in RJ's implementation and theoretical development. These were thought to be related to the discussed gap. Three thematic groups were identified, each providing a detailed account of these problems, their causes and possible solutions.

#### **Confusion Around the Use and Meaning of Restorative Justice**

Q2.3, 4, 5 and 6 provided both direct and indirect information that, helped the study to understand what the literature identifies as RJ's conceptual problem (Chapter 2). The survey participants gave examples from their personal experience (implementation/ 'action research') and from what they had heard from others to point out the conceptual conflicts' different practical dimensions that seemed to have affected RJ's implementation. The findings complemented Chapter 3, which identified problems in RJ's application at the policy and statutory level. Data from Q10-15 then put the claims of Chapter 2 in context by providing examples where RJ's conceptual tensions negatively affected its application. In particular, the participants claimed that RJ's conceptual conflicts have affected:

- the level of collaboration and communication between them and other practitioners working either in the same or different RJ programmes/organisations;
- the outcomes of their funding applications to governmental or private bodies<sup>144</sup>;
- the outcomes of the RJ processes;
- the procedure that was followed by RJ facilitators;
- the evaluation of restorative programmes and their outcomes;
- the parties' willingness to participate;
- the parties' motives to participate;
- the level of communication among the parties and the genuineness of the restorative processes.

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144 This was also the case for some other practitioners and researchers who had shared this experience with the respondents.

## Probable Causes

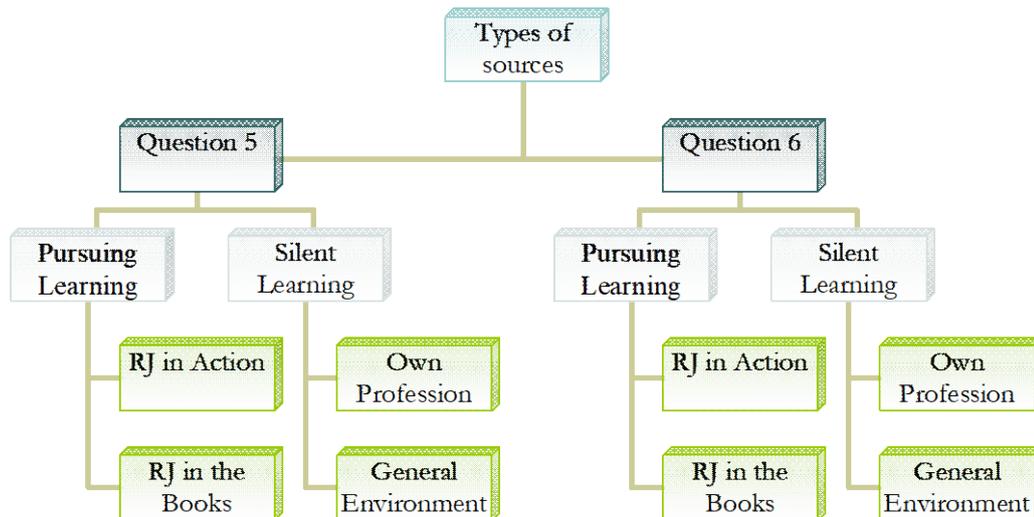
1. Conceptual conflicts seem to be reflective of how people come to learn about RJ:

Analysis of the answers to Q2.2, 5 and 6 shows that RJ's conceptual conflicts seem to be reflective of how the practitioners and researchers came to learn about its concept. Through Q5 and 6, it was concluded that the sample did not seem to agree that there is any definitive source for the RJ concept. More importantly, it appears that there is a division between sources of a theoretical nature and sources that originate from the field of practice. This separation seems to have affected the way the RJ conception was received. To give an example, many participants mentioned a number of theoretical writings that were influential to their understanding of RJ. Some others, however, came to RJ from an attempt to either incorporate aboriginal processes into Western justice systems<sup>145</sup>, or introduce radical diversionary mechanisms, which do not derive from a particular justice tradition, but are a mixture of academic, philosophical, practical, theological or biblical beliefs. And again, while some practitioners might have accepted all these different sources, some others preferred to adhere to a single foundation.

While Q6 asked the sample to identify the sources they used when trying to understand RJ, Q5 asked them to name the sources, which, in their own experience, their colleagues tend to use when approaching RJ. Interestingly, the two questions generated codes that were identical, with some respondents even referring to their previous answer.

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145 For example, family-group conferences in New Zealand and Sentencing Circles in Canada.



**Figure 2:** Comparing Question 5 and 6<sup>146</sup>

Comparison between the data of these two questions rendered another equally significant finding. There are two ways that can lead to a certain understanding of the RJ concept. The first is the ‘active way’, which can be achieved by pursuing an understanding either by experiencing RJ in practice (‘RJ in Action’) or by reading its literature (‘RJ in the Books’). The second is ‘passive and is due to external factors to which anyone can be exposed. These can be generated by one’s professional or general/societal environment.:

## 2. Theoretical vs. practical foundations for understanding RJ:

The separation of the first code (Pursuing Learning) implies the existence of a distinction between theoretical (RJ in the Books) and empirical (RJ in Action) foundations for understanding RJ. Complementary data from Q2 and Sub-Q2.1-2.3 suggested that the differences between these two sources promote a division in the field. According to all participants, these two sources should be complementary and not mutually exclusive. Their combination, they said, is not simply desirable, but imperative, if we are to avoid a sterile approach to RJ.

The results from Sub-Q2.2 and 2.3 strengthen these conclusions. In particular, the answers to Sub-Q2.3<sup>147</sup> were organised under five different categories, each of which represented a different group to which the respondents claimed to

146 Question 5: What do you think ‘restoratists’ base their understanding of RJ on? Question 6: Where do you base your own understanding of RJ on?

147 It asked whether the alleged division between theoreticians and practitioners in the field had encouraged a discrepancy in the way RJ is understood.

belong<sup>148</sup>. One of the most interesting elements identified in the first two of these groups' responses is that they allocated the blame for the existing confusion to the opposite 'camp'. For example, the participants who had previously identified themselves as practitioners said that theoreticians are "distant from reality", and are "not paying attention to the practical nature of RJ". On the other hand, the second group who had previously identified themselves as theoreticians claimed that practitioners are "not taking into account the theoretical underpinnings of RJ practices". This observation is interesting for two reasons. First, despite the obvious disagreement, all respondents agreed that the division between theory and practice in the criminal justice field affects the way RJ is understood. Second, this difference in views is illustrative of the way each camp prioritises what they think is essential in understanding RJ. This finding was reinforced by the answers of the participants who had characterised themselves as being both theoreticians and practitioners. The great majority of them argued that the confusion in the field cannot be attributed to a battle between theoretical and practical approaches to RJ.

### 3. The underlying societal, economic, political environments:

The two sources also revealed that although RJ's conceptual conflicts can generally be the product of 'active learning', they can also be the result of a 'silent influence' to which everyone is exposed. The significance of this finding becomes apparent when considering how to promote the right use and understanding of RJ. Although there can be ways through which the means of learning about RJ can be improved, the question remains as to how one can influence a whole pattern of thinking of the underlying societal, cultural and political environments.

Findings from Question 8 indicated that the underlying environments have both a positive and negative impact on RJ practices. For instance, some indicated that this influence helped RJ's adaptation to a number of jurisdictions. However, all respondents of this group stressed that this adaptation process should not have included a thinning down of RJ's central principles. These, they said, should remain unspoilt and universal. This fear was shared by the respondents who saw the impact of these environments as solely negative. This group of respondents claimed that this is the reason many confuse RJ as being another form of punishment. These environments, they said, have affected RJ's central principles, since practice has often been adapted to the needs and priorities of each society in which it is implemented. In a nutshell, all respondents agreed that the underlying

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148 This allocation of groups was based upon the participants' previous answers to Sub-question 2.2 (theoreticians, practitioner or both).

environments have and should affect RJ's practical development. They should not, however, affect its central principles<sup>149</sup>.

Q7 looked into whether these environments affect RJ's theoretical notion. In contrast to the mixed influence they were believed to have on its practice, this time, the impact was thought to be merely negative<sup>150</sup>. This finding only comes to confirm the conclusions from Q8, which showed that, though the social and political environment can have positive effects on RJ's application, they might also have a negative impact on its core principles.

To conclude, the sample seemed to agree that the underlying environments of a certain legal system may affect the way RJ is put into practice. This impact, they said, can be positive in the sense that it helps restorative practices to adapt to the given trends and peculiarities of each justice system allowing integration, better policymaking and successful implementation. On the other hand, the impact can also be negative, as it may dilute the restorative principles. According to the sample, the core restorative values should remain universal and unchanged.

### **Suggested Solutions**

#### **(i) A new name for Restorative Justice?**

The survey looked into whether the confusion that exists in the field might be due to RJ's name. The data from Q16 showed that "although 'Restorative Justice' might not be the best name, the fact that it has been used for the last three and a half decades does not leave room for alternatives" The participants suggested the following: better and more media coverage, wider circulation of leaflets and information material using real case-studies that show the effects of restorative procedures and outcomes on parties' lives and better and more thorough preparation of the parties that agree to participate in a restorative meeting. Special care also needs to be taken when translating the term into other languages, as no equivalent might be available.

#### **(ii) Lack of a consensual definition for RJ?**

In Chapter 2 the contribution of a consensual definition for RJ was questioned. The survey looked into this further by testing two opposite positions. These can be summarised in the following two statements; "plurality can possibly be a strength, not a weakness" (Miers 2001, 88). However, "if a Working Party of leading RJ

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<sup>149</sup> For these principles see the review of Chapter 1.

<sup>150</sup> Factors included: difficulties associated with the implementation of pilot programmes, RJ setting itself up as a theory with values diametrically opposed to modern Western criminal justice outlook, adherence to the punitive philosophy of the current criminal justice system and narrow interpretation of "crime".

authors cannot agree a working definition of the key phrase both analysis and evaluation are hampered” (Miers 2001, 88).

The majority of the survey participants talked about the weaknesses of process-based definitions such as Marshall’s. For instance, these involved the contextual use that Marshall makes of the word ‘process’. He uses this word as the central noun of his definition to describe RJ’s nature. Looking at his past work on RJ, one notices that the choice he made of this particular word was not accidental. Many times he had claimed that RJ of today has been the result of practical experimentation by enthusiastic practitioners who were not afraid to question the justice system’s foundations (Marshall 1995, 1999). RJ’s theoretical development, he said, appeared as these practices started to attract the Government’s interest and render good outcomes for all parties involved (Marshall 1999,7).

However, the data of the survey seem to point in the opposite direction. The sample agreed that RJ should not merely be seen as a practice with occasional theoretical proclamations. On the contrary, there appears to be a consensus that RJ practices are founded upon normative values without which they lose their character and purpose. Therefore, words such as ‘process’ could be replaced by more abstract terms. For instance, the word ‘ethos’, which was mentioned by the majority of the respondents, can mean either a way of thinking, understanding, seeing, dealing with something, or the core theoretical underpinnings of a practice. At the same time, however, it can also refer to the normative concept’s practical implications, as they are experienced in real life through the various restorative programmes<sup>151</sup>. This type of terms can describe RJ’s nature more accurately but at the same time in a broader fashion. More importantly, they avoid the division of process-based vs. outcome-based definitions. What is also worth noticing is that all six nouns put forward by the sample signify RJ’s normative dimension. By so doing, however, the participants did not exclude RJ’s practical character. On the contrary, the words used were broad enough to include both elements. This conclusion becomes particularly important if seen in the light of the following two arguments.

First, the great majority are not full-time academics, but practitioners. Their professional capacity, however, did not prevent them from seeing RJ as a notion that is inclusive of both theoretical and practical elements.

Second, the variance of words used in the literature and in the field of practice to describe RJ suggests that the problem of understanding may stem from a lack of a common starting point in the way we approach it. Marshall uses the word “process” but as it

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151 On the distinction between the use of the terms ‘philosophy’ and ‘theory’ see Gavrielides 2002.

becomes obvious this is too narrow. Therefore, in the absence of an appropriate term people who either write about it (theorists) or practise it (practitioners) or experience it (victims and offenders) do not share the same view as to RJ's nature.

Consequently, the issue is not one of definition, (not least a consensual one), but of a lack of a common starting point - in the sense described above. To achieve this, there has to be an agreement about RJ's character, and this can only be reached by identifying the core principles that form its backbone.

### (iii) Attempting to identify RJ's core normative values

Chapter 1 provided a descriptive account of RJ's theoretical principles as these are identified by its dominant literature. Chapter 2, on the other hand, showed that despite the growing interest in RJ, there seems to be a lack of consensus around the exact meaning of some of these principles. The debate around the defining criteria of 'restorativeness' in Crawford and Newburn is also relevant (Crawford and Newburn 2003, 41).

The survey (Question 3) generated data that refer to what the sample thought to be the central normative principles that are necessary in the identification of a restorative practice. The information that came under the codes and sub-codes of this question allowed the coining of a working definition of RJ. This was not attempted in its own right, but in the hope of drawing out the core restorative values.

**“Restorative Justice is an ethos with practical goals, among which is to restore the harm done by including all affected parties in a process of understanding through voluntary and honest dialogue, and by adopting a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals”.**

The core principles identified in the above working definition are:

- RJ, in nature, is not just a practice or just a theory. It is both. It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist in our respective communities.
- This ethos is relevant to criminal justice, because it can normatively and practically address conflicts including those that are related to antisocial behaviour.
- The principal route is through the restoration of the harm that results from someone's actions (offender). The focus, therefore, is putting things right, looking to the future and not in the past (retribution), by avoiding to inflict additional pain (punishment) and by promoting a sense of responsibility.

- To create this feeling, all parties affected (victim, offender, community) need to actively engage in this process of problem solving.
- The honest communication among these parties is essential. To make this happen, they need to have a clear understanding of the process, its principles and ground rules. Participation is voluntary and cannot be imposed on any of the parties, who have to enter it with honourable, realistic and valid expectations.
- The approach that is adopted to deal with the harm done is not only genuine and honest, but also fundamentally different from the one that the formal criminal justice system adopts.
- It does, however, retain certain rehabilitative goals such as recognising the impact of the harm done, apologising and actively pursuing reintegration into the community.

(iv) Setting up a follow-up project to promote a better understanding for RJ

The final step in this investigation was to look into whether the setting up of a project to promote a better understanding for RJ would be a good idea. As the results from Q19, Sub-Q 19.1 and 19.2 have shown, the sample seemed to be in favour of such an attempt. The majority of them said that they were willing to participate. One idea could be to use the aforementioned provisional list of RJ standards as initial themes for discussion.

### **Issues of Training, Education and Accreditation**

The second theme that emerged from the data (Questions 10-15, 18, 20 and 23) concerns the extent and quality of training that RJ facilitators receive, their accreditation and education. The facilitator's role may vary according to the practice they implement<sup>152</sup> For example, sometimes the facilitators' management is essential for the starting, carrying out and finishing of the restorative process (e.g. in victim-offender mediation). On other occasions, they stay as mere participants who contribute to the discussions, making also sure that all parties are involved (e.g. in family-group conferences and circles).

In addition, irrespective of their particular role, facilitators carry the responsibility of keeping the peace during a restorative process and of preparing the participants (victims and offenders) adequately and promptly so that the restorative meeting is as effective as possible. To achieve this they need to be adequately prepared for the challenges of a restorative programme. At the very least, they need to know about the structure and nature of the restorative process and the values and principles that should characterise it. In this way, they may adequately inform parties about the procedure

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<sup>152</sup> For a description of the four core RJ practices see Chapter 1.

they need to follow, possible outcomes and more importantly any anticipated dangers. Moreover, the facilitator needs to be able to answer any questions the parties might have, making sure that everyone is respecting and following procedural ground-rules.

However, the survey provided evidence to suggest that in relation to training and accreditation of RJ practitioners, as well as RJ education in general the following issues are problematic:

- There is lack of consistency in the way training courses are delivered. This may involve their length, depth, focus, methodology and assessment.
- Most training courses tend to focus on the practical side of RJ and do not necessarily include any theories on RJ's normative principles.
- Training that focuses solely on practical matters appears to be preoccupied by targets that are not primary in the RJ agenda. These usually involve how to conduct a programme in a way that will decrease re-offending, save police time or reduce costs. Objectives such as healing, forgiveness, reintegration and increasing victim satisfaction are often put second.
- Trainers themselves often appear to be misguided about RJ's central objectives. As a result, they promote a false understanding of the concept to the trainees who then pass it on to the parties and/or to other practitioners and facilitations.
- The length of training courses was also thought to be a problem in itself. There was consensus that not enough time is given for the trainees to absorb and fully understand the significance of both theoretical and practical elements (ethos) of their training.
- The sample also agreed that the lack of mainstream education on RJ encourages a piecemeal approach to its theory, practice and training. It also encourages misunderstanding both among the public and its practitioners whose sources of information are often limited to tabloids, radio and television.

These problems manifest themselves in the following ways:

- The lack of uniformity leads to double standards, which in turn often seem to create a range of different quality levels for RJ practices. Principally, these seem to differ in the way they are carried out, the effectiveness and 'restorativeness' of their outcomes. Thus, the inconsistency that exists among the various types and models of training result in good and not so good practices.
- By focusing on problems of practical significance and by failing to acknowledge the importance of including some theoretical teaching, facilitators are often left completely unaware of the practice's normative implications and the importance of adhering to certain rules to safeguard the 'restorativeness' of the process.

- This lack of knowledge on behalf of facilitators seems to affect parties' willingness to participate, as they are not properly informed about the benefits and dangers of restorative processes. This also may result in victims and offenders agreeing to participate for the wrong reasons.
- False hopes and unrealistic promises may result from bad training. This usually leaves victims and offenders disappointed, and often makes them hostile towards RJ.
- Inappropriate training leads to inadequate preparation of the parties, who may be re-victimised or excluded. This may create misunderstandings or communication breakdown.
- Gradually this leads to multiple types and standards of practices.

### **Probable Causes**

The participants proceeded to describe the principal factors, which either cause or encourage training-related problems:

- The lack of uniformity in training courses might be due to the absence of an acknowledged authority. Participants also pointed out that training-providers are rarely supervised by the State or any national or international body.
- Training and accreditation is provided in the shadow of the law and without state guidance.
- There are no commonly accepted and widely used manuals, or generally accepted textbooks to assist trainers and trainees at a national level. This again encourages a piecemeal approach and the use of various types and qualities of training material.
- The underlying political, social and cultural environments have a role in the way training is delivered. For instance, political agendas often guide publicly funded training courses. Examples were given to back this up particularly in relation to police training
- The retributive climate within which training is provided can also be influential. According to the participants, RJ practices are often called to prove their qualities against the deep-rooted traditions of retributive and utilitarian justice.. The very fact that the mindset of most practitioners, politicians and policymakers is still attached to the current punitive system's approach to crime exposes RJ to a number of pitfalls that can end up thinning down its central theoretical concept to fit with the current criminal justice framework.

### **Suggested Solutions**

- There needs to be a nationally or internationally accreditation process to allow uniformity in the way RJ practitioners are trained.
- A single qualification could be used to identified accredited and properly trained RJ facilitators. According to the participants,

accreditation processes can also decide upon training standards, and monitor their implementation. To this end adequate preparation consultation is needed. Fears were expressed that if this process is well organised, it might lead to further negative implications. Although the participants did not go into detail in what these implications could involve, they gave the sense that the consequences might be as serious as the problem that accreditation processes are hoped to solve.

- In some participants' view, the diversity of training courses and the lack of course-manuals could be resolved if there was a governmental lead on the matter. Although legislation was not thought to be absolutely necessary, it could be desirable for certain aspects of training. For instance, the establishment of a governmental committee responsible for training, accreditation and standards was mentioned.
- Failing to establish a public body to oversee accreditation and training, there needs to be a lead from the RJ movement which could establish its own committee. The example of the European Forum for victim offender mediation and restorative justice was mentioned. However, there needs to be commitment and resources available for such a task.
- Training needs to include both RJ's practical and procedural elements as well as its normative values.
- More public awareness is required before a shift from the current way of understanding and dealing with antisocial behaviour is achieved. To this end, more education and information is needed. Universities around the world have slowly started to introduce RJ courses into their curricula while RJ as a topic in criminology and criminal law courses is becoming a common phenomenon. This needs to be encouraged.
- The RJ principles and ways of resolving conflicts can also be taught in schools. There are a few case studies whereby primary and secondary schools introduced RJ principles as a means of resolving conflicts. Pupils are trained to become peer mediators and contribute to a whole school ethos that deals with antisocial behaviour in an inclusive and constructive manner.

### **Funding Restorative Justice Work: the Realities of the Voluntary and Community Sector**

Another problem that appears to exist in RJ's development is the way RJ programmes are funded. By 'RJ programmes' the sample meant:

- (i) practices that are already running (probably by a segment of the sample or by people they know);
- (ii) new practices that either a segment of the sample or people they know wished to introduce;

- (iii) research-evaluation that is already running (probably by a segment of the sample or by people they know);
- (iv) new research and evaluation studies that either a segment of the sample or people they know wished to introduce.

The following matters were seen as problematic:

- RJ is principally due to the voluntary and community sector. Therefore, committed funding is only the exception. Practitioners are often faced with difficulties such as resources, staffing and sustainability. In addition to their work as facilitators they are often engaged in fundraising activities and negotiations which may affect the way they deliver RJ.
- For instance, funders, especially public bodies, are guided by targets that aim to improve the current criminal justice system and thus limited resources are left for alternative procedures.
- The criminal justice mindset, participants said, affects organisations' way of prioritising the programmes they should fund. Funders, they said, are primarily interested in programmes that reduce recidivism. However, recidivism is not a core RJ principle.
- According to some participants, their funding applications were being rejected because RJ was seen by the funder as an untested way of doing justice. The fact that RJ is a new approach, they said, creates doubts about its effectiveness.
- A segment of the sample also claimed that their funding applications were turned down because RJ was considered a radical idea. They claimed that RJ was often treated as a threat to the current criminal justice system and the punitive way of dealing with antisocial behaviour. This fear was mainly attributed to a false belief that RJ has to lead to a fundamental transformation of the justice system. Undoubtedly, Schools such as the 'Abolitionists' and 'Transformative Justice' have contributed to this understanding (De Haan 1987; Morris 1994). The fault-lines described in Chapter 2 are particularly relevant.
- A significant number of respondents also reported that they had been refused funding, because RJ was often associated with religious beliefs. This, they said, makes funders uneasy especially when the practice is to be introduced in places that are multi-cultural and diverse in their population.
- The majority of the sample said that RJ is often left in the midst of a battle between victims and offenders' rights. For example, victim support groups apply for funding on the basis that they provide unique and necessary support and services to victims. Similarly, offender and defendant support groups are promoted for the opposite reasons. However, the case for RJ is rather different, as it is equally concerned with the interests of both parties, but, according to the participants, few are the organisations that are aware of this characteristic.

- Similarly, most participants claimed that funding bodies show that they either misunderstood what their suggested restorative programme would involve, or were already prejudiced against RJ. In fact, data (especially from Q11) showed that the way organisations understand RJ had affected most of their funding applications. To give an example, a number of them said that funding bodies had shown that they often adopt a false understanding of the extent and nature of RJ interventions, which they take as too ambitious or unrealistic. Funders can also be misguided about RJ's objectives, strengths and weaknesses, and can be completely ignorant of what it really is. On the other hand, many examples pointed out that, in the best occasion, when funding bodies use the term RJ they mean either victim-offender mediation or some other restorative programmes.
- Finally, respondents claimed that a number of applicants use the RJ badge to attract funding that is allocated to RJ practices. These, they said, are not always genuine restorative programmes, and therefore may create confusion and false impression about the real restorative goals and procedures.

Overall, we are led to conclude that without a proper administration of the financial resources that are specifically allocated to RJ not only does it become impossible for new programmes to be implemented, but also difficult for existing ones to survive. Furthermore, without adequate and possibly additional resources both RJ programmes and evaluation studies will continue to face serious difficulties. More importantly, it seems from the data that unjustified rejection of funding applications may lead organisations and practitioners to lower their standards in order to make their programmes fit with the funders' understanding and expectations. This, the sample said, might affect the overall image of RJ, and deter further support. In a nutshell, the sample seems to believe that the predominance of utilitarian and retributive goals in the criminal justice system in combination with the secondary role that has been bestowed on restorative practices expose the concept to a 'no-win' process, where restorative ideals are called to compete with the already deep-rooted beliefs of 'law and order' to which most policymakers and politicians adhere.

### **Probable Causes**

According to the sample, RJ's funding problem may be due to the following factors:

- There is no firm commitment on behalf of national governments to sustain and promote RJ practices.
- Although there is a plethora of academic papers on RJ, there is lack of information on its impact on people's lives. Organisations and policymakers are still not aware of its empirical implications,

and the various ways it can be put into practice and still co-exist with current criminal procedures.

- Some respondents also claimed that the weaknesses of the current criminal justice system are underplayed. Politicians and policymakers, they said are not informed about its fundamental flaws and available alternatives.
- RJ is still new and has not yet convinced either the public or the reformers and policymakers. As the evidence is still accumulating, additional research is needed before any safe conclusions can be reached.
- The media also seem to have a role as they tend to portray a negative image of RJ. It is often described as a soft-option; this makes politicians uneasy as they are often expected to adopt 'tough on crime' policies.
- The sample also stressed that RJ has often been treated as a quick fix tool. RJ may involve long processes of healing and integration, and "delays are not something that funders like". The study has shown that organisations want statistics almost immediately after implementation. RJ requires a considerable period of time for most of its results to show. It can also benefit parties in various immeasurable ways particularly in relation to the psychological impact it can have.
- Funding procedures often suffer from a lack of clear understanding and a set of minimum standards.

### **Suggested Solutions**

- A number of participants suggested providing funders with a 'check-list' composed of internationally accepted RJ standards.
- Some participants also suggested the establishment of an independent procedure or committee, which could be vested with powers to ensure that, at least, with reference to public money: (i) funding bodies are clear about what the application involves (ii) applicants who get money allocated to RJ are genuine (iii) applicant programmes that are not genuine are automatically rejected for RJ funding
- The sample also said that the public does not appear to be supportive of RJ. This, however, is not due to RJ's failure as a practice, but because there is lack of adequate information. This lack of support, they said, affects the way funding is prioritised by politicians and policymakers. The community as a whole knows very little, or nothing at all, about RJ's alternatives. Therefore, more information needs to be disseminated. Some respondents suggested using the media (television, radio, newspapers etc) to enhance RJ's profile. Some insisted on using examples of real life to show the real positive outcomes that RJ has on victims and offenders' lives. In their words, RJ has the inner ability to be able to speak to the hearts of people,

and this can be achieved by presenting real case-studies that have been processed restoratively.

- Finally, the participants suggested that (i) the lead of this profile campaign and (ii) the establishment of the aforementioned independent evaluation committee/procedure should become national Governments' responsibility.

## 'DATA TRIANGULATION'

The previous section of this chapter read into the survey's data to identify its qualitative findings. While reflecting upon them, two methodological considerations emerged. First, both the data and the conclusions we derive from them are based on the personal perceptions of the people who chose to participate in this survey. Subsequently, the claims and arguments that were organised by the previous section under its three thematic categories do not constitute universal or unchallenged truths. Nevertheless, they are conclusions we may draw from the direct practical experiences of the sample. The analysis emphasised only the findings that were shared by the participants and could amount to concrete patterns. This, after all, was the main reason that this small-scale survey was carried out: to listen to the shared views of people who had direct practical experience with RJ gained either through practice or 'action research'. This was anticipated to reveal common patterns that could be related to the book's underlying hypothesis.

Second, due to the study's sampling strategy (non-probability, convenience sample through self-selection), methodologically it became impossible to generalise its findings. Principally, the generated data do not provide adequate and safe means to draw conclusions that could refer to the wider restorative practical movement. However, these findings can "allow links to be forged with existing findings in the area" (Bryman 2004, 100). When this is successfully achieved, wider conclusions may be drawn.

This is a common methodological caveat in qualitative research, which usually resorts to the complementary method of 'triangulation' to address it. This is a term that is used by researchers to describe the methodology they adopt when trying to locate their own findings within existing data. There are different variations of this type of triangulation: investigator triangulation, theory triangulation, methodological triangulation, environmental triangulation and finally data triangulation. According to Bryman, triangulation can also mean the process whereby "the results of an investigation employing a method associated with one research strategy (e.g. questionnaires) are cross-checked against the results of using a method associated with another research strategy (e.g.

interviews)". (Bryman 2004, 454)<sup>153</sup>. Based on Bryman, Guion and Deacon's understanding of 'triangulation', this study will aim to verify its findings by taking the following two steps.

First, it will attempt to place the fieldwork's findings within the evaluation framework provided in Chapter 5. . Up-to-date, it has not been possible to identify any corresponding qualitative, small or large-scale studies that investigated similar topics. Consequently, the term 'triangulation' will only be 'borrowed', as the findings of the survey's consistency with actual reality could only be attempted at a general level. Second, the study will follow up the fieldwork data with a small in-depth study with face-to-face qualitative interviews. This will be attempted in the following chapter.

### **'Triangulating' the Findings on the Conceptual Conflicts of Restorative Justice**

There seems to be an agreement among the sample that the various conceptual conflicts taking place within the restorative movement affect RJ's implementation. This is a conclusion we derive from the individual practical problems that were identified by the respondents, and which appear to be largely due to definitional misconceptions. Possible causes of these problems and a number of solutions were also put forward for consideration. The findings need to be put in the context of the evaluation framework that is constructed through the extant literature:

► The discussions around a consensual definition or list of principles characterising RJ's essence have been extensive. Nevertheless, when it comes to measuring the impact of RJ's conceptual confusion on its implementation empirical evidence is scarce. The practical development of RJ should not be guided only by theoretical principles of good intentions, but also by evidence of real-world effects. This book takes the first step towards an evidence-base understanding of these conceptual tensions and their implications.

► Miers' 2001 research identified that evaluation of the examined restorative programmes was hampered by definitional problems. In his Home Office report, he said: "This review is concerned with RJ provision in the countries specified. This simple proposition disguises, however, a key definitional difficulty... As these various

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<sup>153</sup> In terms of what is achieved through triangulation, Guion explains that this "is a method used by qualitative researchers to check and establish 'validity' in their studies (Guion 2002, 1). 'Validity' in qualitative research relates to whether the findings of a study are 'true' and 'certain' (Guion 2002). Guion suggests that 'true' should be interpreted to mean "findings accurately reflecting the real situation", while 'certain' could be read to mean "findings being backed by evidence" (i.e. the weight of evidence supports the conclusions) (Guion 2002, 1). Deacon *et al.* said that "Increasingly, triangulation is also being used as a process of cross-checking findings deriving from both quantitative and qualitative research" (Deacon *et al.* 1998, 47).

uses [of RJ] illustrate, one can approach RJ from a variety of standpoints... these differences also bear on the measure of success employed in research on programme effectiveness" (Miers 2001, 4-5). This is a negative implication that was identified through this study's sample's practical experience with RJ. This findings is also found in Marshall and Merry's research (Marshall and Merry 1990) as well as in the evaluation by Davis et al. (Davis, et al. 1987). Furthermore, in the comparative study of Miers et al on the effectiveness of seven RJ schemes in the UK, it was reported that: "Carrying out the research proved difficult in a number of respects...The schemes evaluated in this research were diverse in their understanding of the notion of 'restorative justice', their degree of focus on victims and offenders, and their implementation of the interventions which they undertook..." (Miers et al. 2001, ix).

► The negative effect of conceptual conflicts on the practitioners and the way RJ is put into practice was discussed both by this study's sample and past evaluations. For example, the 2002 Oxford University evaluation report on the Thames Valley Police restorative cautioning initiative<sup>154</sup> showed that: "cautioning sessions that adhered most closely to RJ principles tended to produce the most positive outcomes". However, a number of police facilitators tended to approach the restorative meeting with a criminal justice mindset without properly understanding the restorative normative principles. "In the worst examples, officers reinvestigated the offence, sought admission to prior offending and asked questions that appeared to be attempts to gather useful criminal intelligence..." (Hoyle et al. 2002). One of the evaluation's recommendations was to provide better and more thorough preparation to the practitioners to understand the core principles of a restorative process. Similar were the findings and recommendations of a follow-up study by Wilcox et al. (Wilcox et al. 2004).

► Regarding the impact of this problem on the participants of a restorative meeting, both desk research and fieldwork seem to suggest that without an effective dialogue, the process will likely be ineffective and its outcomes counterproductive. Braithwaite explains that reintegration can only happen through an active process of acknowledging and understanding the harmful effect of the offence (Braithwaite 1997). 'Reintegrative shaming' can occur through honest and effective participation in a circle of dialogue and understanding. The same applies for victims, as this is the only way they may reciprocate feelings and become able to forget and forgive. Without adequate preparation and proper understanding of the restorative values and the principles that guide the restorative process this is impossible. Kilchling's research, which included over 3000 interviews with victims, former victims and non-victims showed that without proper and adequate information about the

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154 To date, this is the largest-scale RJ programme in the UK.

process and its possible outcomes it is likely that satisfaction rates will be disappointing (Kilchling 1991). Similar findings are reported by Shapland et al. concerning victims of violent crime (Shapland et al. 1985). For example, it was reported that victims feel neglected and angry about the lack of information they are given, while for many victims, their need for basic information centred on simple explanations about key decisions related to their cases (Bazemore 1999; Shapland et al. 1985). According to Umbreit's results, information may be the most important thing the system can provide to reduce victim fear" (Umbreit et al. 1994) and enhance victim coping skills (Wemmers 1996). The level of understanding on behalf of the parties and the effect it can have on their participation was also discussed in the research of Hoyle et al.: "Many offenders and their supporters had little understanding of the process they were entering and felt that they had no choice but to participate. Some victims and their supporters were also confused about the purpose of the meeting" (Hoyle et al. 2002). Similarly, Umbreit reported that: "At times, victims may develop inflated expectations of the mediation process". Consequently, more and better information is needed (Umbreit and Greenwood 1997, 15). Finally, Marshall and Merry reported that: "The best results usually followed careful preparation of both parties for mediation. Both parties need prior assistance from the mediators (or other staff of the mediation scheme) to identify their principal needs and objectives and to prepare their strategy to meet these... Good preparation, however, does not seek to impose aims and methods but elucidates the parties' own feelings, clarifies their purposes and imparts the skills with which they may pursue them themselves" (Marshall and Merry 1990, 242).

► Equally significant is to acknowledge that RJ is not an unmitigated good. Some of the respondents' answers may suggest that if properly applied, RJ can only render good outcomes. However, the evidence is still accumulating. Chapter 5 summarised research evidence which showed that RJ can have positive effects with certain crimes and parties, but none or even negative effects with some others.

Braithwaite advises that: "...the first of the new generation of RJ programmes of the 1990s may have had some effects in reducing re-offending and enhancing restoration in other ways. Some of these programmes seemed to be somewhat effective, even though we look back on them in the new century as flawed first-generation efforts..." (Braithwaite 2002, 54). In 2000, Sherman et al. said: "The substantive conclusion of RISE is that RJ can work, and can even reduce crime by violent offenders. But there is no guarantee that it will work for all offence types. Caution and more research are needed before rapid expansion of any new approach to treating crime. Less caution is needed, however, in testing RJ on more serious types of violent offences. The findings in this report provide

firm ground for repeating the violence experiment in many other venues and with more refined types of violent offences, including robbery, assault, and grievous bodily harm” (Sherman, Strang and Woods 2000).

### **‘Triangulating’ the Findings on Training and Accreditation**

The various practical dimensions the sample associated with inadequate training, lack of accreditation and RJ education are relatively easier to ‘triangulate’, although again, the evidence is scarce:

► Hoyle et al. who reported on Thames Valley Police restorative practice said that: “Implementation of the restorative cautioning model in individual cautions was often deficient. Police facilitators sometimes sidelined the other participants and occasionally asked illegitimate questions” (Hoyle et al. 2002). Consequently, one challenge of their project became the adequate preparation of facilitators (they provided them with a script-guide to follow while facilitating a meeting). “By the end of the research project, implementation was much better, although still not always good” (Hoyle et al. 2002).

► Umbreit’s research showed that: “Mediators need to be realistic with victims, providing accurate information about possible outcomes and the kinds of results that are most typical” (Umbreit and Greenwood 1997, 15). He continued to say that: “Mediators need to be careful in their use of language. Certain words and phrases can imply judgment or convey expectation” (Umbreit and Greenwood 1997, 17). “The initial training of mediators, as well as continuing education, should contain information on the experiences of victims of crime, referral sources, appropriate communication skills for mediators, victims’ rights and guidelines for victims sensitive mediation. It is helpful for trainees to hear from victim advocates and victims themselves” (Umbreit and Greenwood 1997, 19).

► The results of McCold and Wachtel’s research are equally revealing. These were based on structured observation of 56 family group conferences involving juveniles. They showed that soon after the 20 facilitators began running conferences they were brought together to be given critical feedback on their performance. Based on the in-service training officer’s comments, McCold and Wachtel said: “In spite of the ‘initial three day’ training the officers had received, some seemed surprised that they were not supposed to lecture the offender or affect the conference agreements... the officer with the poorest performance evaluation withdrew from the programme and a total of 5 officers never conferenced a second case” (McCold and Wachtel 1998, 27). Follow-up additional training was deemed necessary to maintain the restorativeness of the

process. The “authoritarian tone of the conferences was dramatically reduced by providing the corrective feedback” (McCold and Wachtel 1998, 33).

► The Thames Valley research of 23 cautions and restorative conferences showed that “Police facilitators in the Thames Valley are trained to ask a few open-ended scripted questions designed to help offenders tell their stories... Some police facilitators instead engaged in detailed and judgmental questioning that forced offenders to dwell upon aspects of the offence that the latter clearly found unpalatable” (Young 2001, 205). Young explained that: “...from the offender’s point of view, the police discourse was seen as implying that they were committed to offending and thus shameful in character. In other words, questions of this nature can undermine the conference goal of avoiding stigmatisation” (Young 2001, 206).

► According to the Canberra (Strang et al. 1998), Bethlehem (McCold and Wachtel 1998) and Thames Valley research (Hoyle et al. 2002), the parties’ feeling of procedural fairness may be affected by the facilitators’ misconceptions. In general terms, the majority of participants saw the restorative process as fair with the most important aspect of being allowed to have their say on an equal footing with everyone else present. “The more a cautioning session adhered to the principles of RJ, the more offenders, victims and others were likely to describe a session as fair” (Young 2001, 211). However, “in several cases, the offender was asked by the facilitators about their recent and current offending behaviour... in other cases, participants were asked to provide details on the extent of the involvement of other people in committing offences or to supply general criminal intelligence...” (Young 2001, 212-213). Strang said: “the one piece of training that the police seem to carry with them is that they simply must not get involved in the outcome agreement” (Young 2001, 217).

► The research recommendations of Hoyle et al. are relevant to the sample’s suggestions. “All training carried out by Thames Valley Police since 1 January 2000, both for its own officers and for staff from other organisations, has taken into account the findings of the interim study.... The action that directly resulted included the revision of the conference script and training manual, and the provision of top-up training for facilitators designed to eradicate the non-restorative elements in their practices... Other developments which have been influenced by the research include the introduction of a more rigorous selection procedure for would-be facilitators, the adoption of a set of practice standards by the leading mediation organisation in the UK, and moves towards ongoing monitoring (and possibly accreditation) of facilitation practice” (Young 2001, 221). It is important to note that all these recommendations (additional training, practice standards,

monitoring, and accreditation) were reflected in the questionnaires' data.

► “Although prevalent in the theoretical literature, there was little concern in practice amongst the leaders of the [examined] schemes for any degree of real input from local people. Even where volunteers were recruited, they were trained to act like professionals rather than being expected to inject norms and definitions” (Marshall and Merry 1990, 247).

► In a study conducted by Wemmers and Canuto it was reported that: “The experiences of victims in RJ programmes reveal that when the mediator comes across as supportive of the offenders, the victim may feel vulnerable, insecure and re-victimised. Mediators must receive proper training. They must be made aware of the impact their behaviour can have on victims and how they can avoid re-victimising victims” (Wemmers and Canuto 2002, 37).

► The evaluation of 7 RJ UK programmes by Miers et al. concluded, inter alia, that: “All those who deal with victims or offenders must be appropriately trained. Policies for initial and follow-up training must be fully planned and costed. Initial training should address mediation theory and practice, relevant legal considerations, and the scheme's own policies and administration... Basic training needs to be followed up with a staff or volunteer development policy. This may include formal accreditation as mediators, the completion of education qualifications, or development as trainers in their own rights” (Miers et al. 2001, 83-84).

► The UK Youth Justice Board's 2004 national evaluation of 46 RJ projects concluded: “It is important to provide sufficient information to both victims and offenders so that they can make informed choices about whether and how to proceed, and to address any questions they may have ...the new staff were not always fully trained. If the implementation of the projects had been phased in... these problems would have been minimised. Projects would also have benefited from a clearer understanding of what types of training (and how much) was on offer from the national supporters – while most projects were very satisfied with the support they received, others were unaware of their entitlement to a certain number of days of consultancy and training. Since the Board had not specified what types of restorative activities projects should offer, the types of training on offer were diverse and not always clearly related to the work of the project” (Wilcox and Hoyle 2004, 55-56). Regarding the issue of volunteer staff, the evaluation showed that: “Many projects made good use of volunteers, who were able to provide flexibility and devote more time to individual cases at a lower cost than paid staff. It was important, however, to ensure that they received regular support to keep their skills up to

date, and that they did not go for long periods without casework” (Wilcox and Hoyle 2004, 56).

### **‘Triangulating’ the Findings on Funding**

In relation to the practical implications of the funding problem, again the existing evidence is scarce. Arguably, for RJ programmes to justify their existence and especially their funding, they have to appeal to the persuasive power of utilitarian or economic rationalism. Brookes noted that victim-offender encounters are advanced as preferable alternatives to the traditional criminal justice process on the grounds that: (i) they will decrease court caseloads, the prisoner population, and recidivism rates; and (ii) they will increase the percentage of restitution settlements and victim/offender satisfaction (Brookes 2000). Brookes and the sample seem to be in accordance with Marshall and Merry’s research findings: “For the sake of maintaining the confidence of agencies, or of the general public, practitioners (even if there are no doubts in their own minds) will... need to supply some evidence that worthwhile progress towards ultimate goals is being made... Questions of economy and cost-effectiveness, or efficiency, are ...prominent at this stage” (Marshall and Merry 1990, 17).

► The sample talked about the impact of funding on research and evaluation. Marshall and Merry also said: “It is pointless trying to be puritanical when carrying out applied research of this kind. Potential funding bodies will continue to insist on some measure of success or failure at a reasonably early stage, which is almost well short of the time needed to develop firm and efficient strategies of work.... Rather than insisting on rigid academic conditions for ‘proper’ evaluation, researchers are forced to develop modes of investigation that address success while accommodating to the motile reality of what they are assessing” (Marshall and Merry 1990, 17).

► Wilcox and Hoyle showed that: “The limited funding period for the projects contributed to uncertainty and staff turnover... if a commitment to funding beyond March 2002 had been given, these problems would have been minimised” (Wilcox and Hoyle 2004, 55). They continued to recommend that: “If progress is to be made in assessing the outcomes of RJ projects, resources would be better spent on implementing well-designed projects with clearly defined aims and methods, and with evaluation built in from the start” (Wilcox and Hoyle 2004, 56).

► The sample spoke about reliance on public funders. Miers’ international study of 15 different jurisdictions showed that: “Financial provision for the implementation of RJ programmes is made variously by central (ten) and local (five jurisdictions) government. There also appears to be some reliance on charitable

support (Belgium, Germany)” (Miers 2001, 80). Miers et al. recommended that: “Research and evaluation needs to build in to any funding arrangement. This means that research requirements will comprise funding conditions. Evaluation needs to be large scale, and conducted a sufficient length of time following an intervention to accommodate re-offending data. Scheme co-operation must be a condition of any funding arrangements (Miers et al. 2001, 86).

► A 2004 evaluation report by the Youth-Justice Board noted: “There were a number of serious flaws in the design of the evaluation of the RJ projects: ...(iii) appoint national evaluators after decisions about funding of projects and local evaluators had been made (iv) allow insufficient time for projects to be implemented and evaluated effectively... National evaluators should have been appointed some months before awarding funding to projects and local evaluators. This would have enabled national evaluators to make project developers aware of the requirements of the national evaluation and they could therefore have allocated sufficient funding for the local evaluation.... Those writing the bids would have benefited from a longer bidding process, so that they could have designed projects with more realistic objectives” (Wilcox and Hoyle 2004, 53).

► Funding may be affected by the various conceptual misunderstandings of RJ. In 2004 the Youth-Justice Board reported: “The role of national evaluator in trying to ensure consistency of data collection was hampered by the great variety of activities funded by the Board under the banner of RJ. Funding bodies need to be more specific about the nature of the interventions they are funding, or else they risk funding non-restorative activities. There was a considerable amount of ‘drift’ from the aims stated in the bids, reflected by the fact that over 50% of interventions involved either community reparation or victim awareness only” (Wilcox and Hoyle 2004, 54).

## FINDINGS FROM SURVEY II: THE UK PRACTITIONERS’ ACCOUNT

Bryman explains that social researchers “often check out their observations with interview questions to determine whether they might have misunderstood what they had seen... With triangulation, the results of an investigation employing a method associated with one research strategy (e.g. questionnaires) are cross-checked against the results of using a method associated with another research strategy (e.g. interviews)” (Bryman 2004, 454). This chapter will present and analyse the findings of follow-up in-depth interviews that were carried out using the themes that emerged from the questionnaires that were sent to 100 RJ practitioners from around the world.

The most adequate locus for this small-scale, follow-up study was thought to be England and Wales as it could provide an accessible location for the carrying out of face-to-face interviews. These were thought to constitute the best methodology for the purposes of this second in-depth study. The sample included key stakeholders from the statutory and voluntary and community sectors<sup>155</sup>. Thirteen interviews were carried out while several follow up conversations were also carried out.

According to Bryman: "Often, qualitative researchers are clear that their samples are convenience or opportunistic ones, and on other occasions, the reader suspects that this is the case. The resort of convenience sampling is usually the product of factors such as the availability of certain individuals who are otherwise difficult to contact or a belief that because it aims to generate an in-depth analysis, issues of representativeness are less important in qualitative research than they are in quantitative research" (Bryman 2004, 333).

The interviews coincided with the release of the UK's Government's consultation on a national strategy that could see RJ implemented beyond the youth justice system (see Chapter 3). This policy development was expected to influence the respondents' answers.

The principal objective of Survey II was to follow up what Survey I had identified as problems in RJ's theoretical and practical development. To that end, all interviewees were asked at least five principal questions that were based on the findings of Survey I<sup>156</sup>. In particular, the first was an introductory question, which aimed to shed light on the sample's relationship with RJ and the way they understood its concept. The next three questions concerned the themes that were identified by the previous study as problems in RJ's development (conceptual tensions, funding and training). Finally, the concluding question gave the participants the chance to make general observations<sup>157</sup>.

This chapter has been divided into two sections. The first will present and analyse the findings that followed up the three themes identified by the questionnaires. The second will examine two additional areas, which the interviews identified as problematic, and had not been identified by Survey I:

It is important to remember that the chapter reflects the personal perceptions of the interviewed organisations as these were voiced

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155 Appendix III provides a detailed description of the participating organisations, their representatives, role and occupation.

156 A number of sub-questions and clarifying points were also raised. These varied from interview to interview.

157 The shortest session took 35 minutes, while the longest lasted for 2 hours and 45 minutes. The interviews were recorded, and then transcribed (typed into a word processing package).

through their representatives. Hence, the findings do not constitute universal or unchallenged truths. All in all, the findings of these followed-up, in-depth interviews should be read in conjunction with the findings of Survey I and existing data that are available through the extant literature. Any attempt to read them in isolation can lead to generalised assumptions with very little or no significance for the intellectual and policy purposes of this book.

## PROBLEMS IN THE PRACTICAL AND THEORETICAL DEVELOPMENT OF RESTORATIVE JUSTICE: A FOLLOW-UP

### **Confusion Around the Use and Meaning of Restorative Justice**

The interviewees provided both direct and hearsay evidence that confirmed the strong links that the international participants had identified between RJ's conceptual confusion and implementation<sup>158</sup>. To give some examples, some direct evidence can be found in the following: "...In the field of RJ, there is a certain kind of confusion around its principles, and what they might mean... For instance, in the youth justice system there are a lot of agencies that do not necessarily deliver RJ, but do need to have a good understanding of what it is, and how it works, and this demands a lot of work". In addition, "...In the outside field of RJ, that is the general public, there is little understanding of RJ. Although I do know that there are some very interesting research results, which showed that when certain concepts are explained to people the response is very good". Furthermore, "...I think RJ is a term that people get easily confused with, especially when trying to understand what it is as a practice... it is a multi-layered and multi-dimensional concept, and depending on which type of practice you engage with, or which bit you are looking at, it can mean different things to different people".

When asked what they understand by 'Restorative Justice', interviewees said: "...It is a very complicated question", "...it is very hard to describe RJ, because it is a term we use in so many different fields, not just in criminal justice, but in places like schools" and "RJ may not be considered as a type of justice at all in arenas outside the criminal justice system", and "...This sounds a hard question actually... and I [know] that other people too have problems when it comes to defining RJ...".

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158 'Direct evidence' was understood as the data that referred to the interviewees' personal views and experiences. 'Hearsay evidence' is the information that did not relate to them directly, but referred to situations they had experienced through others.

## **Unravelling the Causative Relationship between Conceptual Conflicts and Implementation**

Data from the interviews provided a better understanding of the why and how the identified conceptual conflicts had affected RJ's implementation. The following factors were mentioned:

► **Factor 1: Variance of sources used to learn about RJ:** As one organisation put it: "...I think because of the way theory and practice have developed, people now come from different perspectives... And I don't think we have worked out yet how to work better by staying in the same path, because so many different people work in so many different paths". Another one said: "...Some of RJ's areas of work have been in existence for way beyond the RJ label, and have been calling themselves mediation... So, those 'mediation people' think that the term RJ has, in a way, hijacked something that they have been doing for a while". A third participant claimed: "...My impression is that different groups of practitioners sometimes fail to see the difference in the various approaches, because they have been trained in a certain way, or have developed RJ and seen it working in a particular model. Also, sometimes there is a bit of a tendency to claim to know what the real RJ is, and be suspicious about alternative approaches".

► **Factor 2: Rapid RJ development:** One interviewee said: "...one of the problems is how quickly RJ is put onto a statutory basis. There hasn't been enough time for people to be trained, and there hasn't been enough time for the training... to be properly marked or properly accredited, and there hasn't been enough time for accreditation to come into existence and be monitored by those who do understand what RJ is. And ... RJ is now being administered by people that do not really understand its ethos. So, at the end of the day, we are not really getting RJ". A second participant added: "... We move very quickly. For example, we shouldn't be working with certain areas where we are not sure RJ works".

► **Factor 3: RJ is a radical concept, which requires innovative policymaking:** One interviewee said: "...For some, RJ was given a huge boost, when people started talking about a whole paradigm shift. Then, it became clear to everyone that RJ is about something completely new; something that the criminal justice system doesn't do at all. Then, there were people who thought that this gave only two alternatives: either the criminal justice system or RJ, and that the latter cannot make any sense at all within the former... I think it is a distortion of RJ to suggest that it cannot be used within prisons, or along other police practices. So, in a way, the 'paradigm shift language' made RJ look different from the criminal justice system, but ... we know that this is not theoretically true. Tony Marshall, for instance, talks about RJ having a much greater overlap with the

traditional system, and that the two can complement each other in a number of ways. Having said that, I don't want to jettison the 'paradigm shift language', because it is compatible with the ethos of RJ". Finally, a second participant pointed out that: "...It has been a radical change for the youth justice system, huge, momentous, and it is going to take a while to have a crystallised way of practice".

► **Factor 4: The position of restorative practices within the traditional criminal justice system:** According to some interviewees, RJ requires a certain level of cultural transformation for its values to be better understood and fully integrated into the current societal context. One interviewee said: "RJ is an evolving field of theory and practice... it is still relatively new, and there are a lot of disputes about best definitions and ... best practice". In another participant's words: "...It is not absolutely straightforward incorporating the RJ principles into a mainstream criminal justice context. For instance, if you look at Nils Christie's approach (Chapter 1) it is about taking power away from the State and giving it back to ordinary citizens empowering them to resolve their own conflicts and problems". A third organisation said: "...there is lack of agreement in people's approaches, and in this country, RJ has been a grass roots movement... and I am conscious that the Government has become aware of this quite late, but at least not too late...". A fourth organisation said: "...it is really important that criminal justice practitioners, policymakers and others wanting to use RJ recognise that its ethos is different from the one they would use in a traditional criminal justice system". Finally, a fifth interviewee pointed out that: "...there has been some naïve thinking, especially from the Youth-Justice Board, on how to turn from being an offender based organisation to undertaking RJ's ideals... there hasn't been a properly balanced approach to bring RJ in... a new power struggle is being created...".

From the above analysis, at least four considerations emerge. The interviewees seem to agree with Survey I which showed that the ways in which people become familiar with RJ tend to define their understanding. For instance, some come to RJ from an attempt to introduce diversionary mechanisms which do not derive from any particular justice tradition (e.g. the Thames-Valley Police restorative cautioning). Others adopt a mixture of academic, philosophical and practical beliefs (e.g. reintegrative shaming projects). Although this has allowed the application and expansion of a wide range of restorative practices, at the same time, it has encouraged a mixture of different understandings of RJ, which do not seem to share a common starting point in their approach. As the practitioners of the previous study have claimed, and as the policymakers of this survey pointed out, what is now really needed is to learn how to co-exist and pull as many common elements together as possible.

Second, the interviewees seem to agree that the various retributive and other dominant punitive traditions that characterise the current criminal justice system tend to affect RJ practices. It also seems that there is a connection between this impact and RJ's conceptual confusion since it leaves it vulnerable to the deep-rooted retributive and utilitarian mechanisms of dealing with crime. In fact, according to the participants they encourage an uneven relationship whereby restorative practices need to learn how to co-exist with existing traditions.

The interviewees also seem to agree that policymakers and legislators are not easily convinced by RJ's normative claims. It also involves a great level of radical decision-making, particularly because of its unconventional way of dealing with antisocial behaviour. On the other hand, the policymakers of the study believe that things have happened too fast for RJ to be absorbed and comprehended and that it should not be used within areas where application has not yet been empirically tested. Therefore, more thorough and careful implementation is needed that is based on research evidence that reflect practical reality. This can only gain substance if monitored and evaluated through well established research and evaluation projects. But again, good research takes time and requires adequate resources.

### **Is this Problem a 'Matter of Principles'?**

Similarly to the participants of Survey I, the interviewees asked for widely accepted RJ principles that could be endorsed, at least, at a national level to address RJ's conceptual inconsistencies. They also asked: "Why should we proceed to draft new principles when there are already a number of relevant documents that have been produced both at national and international levels?" The survey, therefore, considered it appropriate to inquire what in their opinion has held these particular documents back. The examples of the Restorative Justice Consortium (national) and the United Nations (international) RJ principles<sup>159</sup> were used. The following factors were mentioned:

► **Practicality:** One interviewee said, "I wonder how the [Restorative Justice Consortium] principles have been developed and towards what ends. For instance, are they there for recognising a way of treating one another, or guiding the way people treat one another, or are they there for describing how the concept could be taken into practice... for who are they being intended<sup>160</sup>...I find that

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159 See Chapter 2 and 3.

160 For example, under its second Section the Statement declares: "Respect for their personal experiences, needs and feelings". It continues along the same lines e.g. "Acknowledgement of their harm or loss". However, it is not clear whether these refer to the other party, the mediator, the system, the process, the outcome of the process all to all of them together.

some of them are unattainable and that practicality is a core issue... Another difficulty is to be able to say when one has safely demonstrated an RJ principle..." Another participant said: "I think it is because of practicality. For example, one of the challenges we had to deal with when implementing [RJ] into the criminal justice context was that... there were times where we simply couldn't do what we thought could be an ideal conference for an ideal RJ meeting". A third interviewee claimed: "...Some of the principles are just too vague to be able to say you can see them in practice... The United Nations, for instance, have developed the principles for a very broad range of situations ... and they are trying to cover a whole range of cases for which some principles are not relevant or possible in terms of how the practice is played out..."

► **Lack of adequate knowledge on behalf of those who draft them:** In one respondent's words: "...because I don't think that people who have been handed out the money truly understand the true word of the RJ ethos, or they don't think that people will understand it".

► **Timeframes and time pressure to deliver:** An organisation, which was asked to use the principles drafted by the Restorative Justice Consortium, said to the Consortium: "Well, your principles are fine, but in our context we have to think about other things too", and usually these involve: time pressure and time scales, and meeting performance measurement targets". A second interviewee said: "...One challenge with RJ is timeframes; for instance [in practice] we are not always able to get in touch with all victims..."

► **Lack of respect for the principles on behalf of those who introduced the principles:** As one interviewee put it: "...I find it very intriguing the fact that the Strategy Document and, I think, the Restorative Justice Consortium principles as well, say that RJ should be optional, but in practice it is not... So, in this country they are not following the principles, and, I think, this is why others do not appreciate them, because [the people who introduce them] are not actually implementing them".

► **Practitioners' involvement and governmental influence:** One respondent said: "Take the United Nations for a start... there was a lot of Government involvement in that group of experts, and there wasn't much involvement on behalf of practitioners. So, that document, valuable as it is, reflects the priorities of Governments throughout the world".

► **Inconsistency between the principles themselves:** One interviewee claimed: "...Some of these principles may have a theoretical basis and others a practical one. So, again there might be a gap between them. I found that a number of them captured some of the fundamental elements of RJ... but with regard to some others I am not clear what they have been developed for, and how they are meant to be used, and in what kind of environment. For

instance, some of them were very practical in running a conference or mediation, but I felt that some others were really hard to understand and how one could see them in practice”.

► **RJ is used for cases both within and outside the criminal justice system:** This creates doubts whether these principles are applicable to all different contexts in which RJ is applied; let that be for a criminal offence, family or neighbourhood dispute, school row or organisational disagreement. Prison Reform Trust said in their response to the Strategy Document: “The principal difference between the uses of RJ inside and outside the criminal justice system is that inside, restorative processes are dealing with crimes. One party to the meeting is therefore defined from the outset as the perpetrator (whether accused or convicted). This means that to begin the process requires that the other party is defined as victim. Restorative processes outside of the criminal justice system are more flexible in dealing with the consequences of a conflict. Mediation may practise a ‘no-blame’ approach, which rigorously precludes identifying one party as the perpetrator (wrongdoer) and the other as the victim” (Prison Reform Trust 2003).

### **Is this Problem a Matter of Definition?**

The interviews examined the value of a consensual definition for RJ. Tony Marshall’s definition was used as an example. Similarly with the Survey I participants, the interviewees seemed to have doubts about using a narrow term such as ‘process’ to describe RJ’s essence. Their concerns were in line with the fault-line between process-based and outcome-based definitions described in Chapter 2. One interviewee said: “...You are right... the task of defining RJ is a big challenge, and I am not sure I have a proper noun...”, while someone else said: “Indeed, this word [process] can end up having a negative impact on the way RJ is understood...”.

Survey II brought additional data to reinforce the findings of Survey I on the significance of choosing what Miers<sup>161</sup> calls ‘the right key phrase’ that may describe RJ’s essence. Like the questionnaires’ respondents (Chapter 4), the interviewees used words such as: ‘ethos’, ‘contact’, ‘interaction’, ‘respect’, ‘philosophy’ and ‘spirituality’ to replace the originally chosen word of ‘process’. Nouns such as these are inclusive of both RJ elements, since they are broad enough to mean both its practices and values. More importantly, however, they do not choose a process-based or an outcome-based understanding of RJ, but are open to include elements from both schools.

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161 See Miers 2001, 88

## **Campaigning Restorative Justice**

The interviews provided a follow-up of the various factors that according to the Survey I participants can increase RJ awareness among the general public. Similarly with the international sample, the interviewees believed that the information that is made available through the media and other means of communication is not adequate, and that a profile campaign should be endorsed to help promote its understanding among participants and the public in general. The following suggestions were put forward:

▶ **Work with membership policy organisations both at national and international levels.**

▶ **Extensive publicity** through the media: radio, television, newspapers).

▶ **Emphasise that RJ is not a ‘soft option’** providing examples with case studies and real life situations. “Views need to be changed ... Increasing people’s understanding and making people aware of the successes of RJ so they know that it’s not just a soft option is probably the biggest challenge right now”.

▶ **Introduce practical forums at schools** to educate and put in practice restorative principles in resolving conflict, providing a training ground for future citizenship. “Work needs to be done on the perception – RJ as the soft option... People are also enforcement orientated, so working to change opinions and this isn’t tangible. It takes a long time”, one interviewee said. Someone else said: “Views need changing; we think that people need to be punished for the safety of community. For many cases it’s a matter of prejudice which can be challenged better through RJ. Increasing people’s understanding and making people aware of the successes so they know that it’s not just a soft option”.

▶ **Encourage community groups’ involvement.** “Further community involvement could be encouraged by consulting and setting up communication channels with pre-existing community groups in those areas most affected by crime... If consultation and involvement of community groups was instigated, then the successes of RJ would be more widely known and could be more widely publicised...”. Someone else said “...The general public and others like to hear real stories, and this can be a good way of getting a message across, however safeguards need to be in place before offenders and victims tell their story to the media. Protocols are currently being worked on to address this issue... In the long term, it is the quality of service that victims receive from the criminal justice system, which will determine the future of RJ”.

▶ **RJ and the role of criminal justice agents:** “The police are seen by some of the public as the ‘front-line’ of the criminal justice system and often look to them to comment on new things. It is therefore important that every police officer gives a positive

response to RJ when asked. This can be done through initial police training and education of current officers. Having other police officers be part of that process may be important with regard to credibility. The Restorative Justice Consortium plan a small pilot of speaking to some officers to gauge their current knowledge and their response to the ideas” (Restorative Justice Consortium 2003).

### Issues of Training, Education and Accreditation

► There is inconsistency between:

(i) Available training courses<sup>162</sup>: “For instance, in London, there is a variety of training courses, and sometimes they are not consistent with each other, and to some extent there are even differences in the way they are doing RJ; so in a way, it comes back to [the problem of] definition and what RJ is”.

(ii) RJ approaches towards victims and offenders: One other respondent explained: “...What was challenging for our trainers was the problem of consistency with the actual offences we were dealing with... And there should be a different approach to victims of a serious assault, and victims whose garage has been broken into. I am not saying that the impact of crime might not be the same, but there should be different tools and approaches, which one could use. In the case of assault, for instance, if a sexual offence has also taken place, then there is an issue of sensitivity, which trainers need also to be aware of, and therefore additional training may be required”.

(iii) The various environments in which RJ is implemented and the cultural backgrounds of trainers and trainees: For instance: “...The training itself may not be specific to the actual environment in which RJ is implemented. And again, there are cultural differences between trainers and trainees. For instance, Australians and British facilitators, and how they approach each other and the sort of communication they have... For example, our trainers, although trained in Australia, Canada, New Zealand and the US, work in England; and again London is different from Northumbria, Thames Valley and other places [where RJ is practised]...”.

(iv) Existing course manuals and textbooks: Organisations that provide such training either have their own training manuals, or do not use any. Overall, the lack of standard course books and reference guides creates confusion and variation in the way programmes are delivered.

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<sup>162</sup> See for instance Mediation UK and Crime Concern training courses. ‘Crime Concern’ is a national non-profit crime prevention agency that was established in 1989 to provide a range of training and consultancy on effective crime prevention. It manages over 50 projects including mediation and reparation services.

► The length of training courses is inadequate: Available training is usually delivered within three to five days. This was thought to be a problem in itself, as it does not leave adequate time for trainees to fully grasp the real meaning of RJ's values. As a consequence, trainers do not have enough time to go through the theoretical and practical aspects of RJ, and truly pass the RJ ethos onto their trainees. Most of the time training is superficial and insufficient. For example, an organisation which is currently offering RJ training said: "...We do a four day course, but I don't think that this gives facilitators a full understanding of human contact... You can teach people quite a bit about communication skills and the criminal justice system, but there is a level that goes beyond that, and which is not always transmitted well in the training". Another organisation that also provides training said: "...The training has never communicated the importance of using the RJ values. For instance, the importance of empowering the offender to be able to have an input in what sort of suggestions would come out from the meeting, or the value of giving respect to the parties in the room, or the value of voluntarism...So the practitioners who haven't been trained about these values will not necessarily understand their importance..." Finally, someone else said: "...We believe that [RJ] is a subject of a depth and sensitivity, which cannot be learned in a short or simplistic fashion".

► Volunteers vs. professional facilitators: RJ is practised both by paid staff and volunteers. This is particularly true for voluntary and community sector organisations that are understaffed and under-resourced. "...Being a volunteer should not make someone less professional. It will help if principles about volunteers' involvement are developed so that there is clarity as to why they are performing some roles and paid professionals others. It is essential that volunteers are valued as offering a particular contribution that is different from a paid professional and represents the community's contribution to RJ". Another interviewee said: "I think there are double standards; and the latest scenario was that only trained and qualified people would be allowed to provide such training...". Someone else claimed: "Criminal justice professionals can bring a lot of knowledge about the criminal justice system to this process, and, of course, through their training they are more aware of the law relating to their professions. However, this can also mean that they have a fixed view on issues around crime conflict, and may not be able to adjust to a new way of working. Volunteers or the voluntary sector may look at RJ as not a threat to their decision-making and be more amenable to change. The advantage, of course, is that they play no other role in the parties' lives and are seen to be independent. They may be more likely to be seen to be part or from the participants' community. What should not happen, is the volunteers who may be used, should not be trained by the professionals who are not fully RJ trained and have not carried out RJ processes"

► Power imbalances between training providers: According to some respondents, existing power imbalances between public sector bodies and organisations from the voluntary and community sector offering training lead to double standards and confusion. In one interviewee's terms: "I think we need to correct the power imbalances taking place in this country. Everybody has their own standards; take the Youth-Justice Board for instance...". In addition, another participant pointed out the public sector organisations often impose their agendas on voluntary and community sector bodies, which often rely on funders to sustain their practices. One interviewee said about Mediation UK, "...Their work is very important, but to be honest they come from a world of mediators, and that is why their focus is mediation and not RJ. Most important, they accept money from the Home Office and they are employed by the Youth-Justice Board. So, they often compromise their theory, as their funders control what they are doing...".

Overall, the policymakers seem to agree that inadequate training and the absence of accreditation processes lead to bad practice and non-restorative outcomes. This creates a danger of gradual distortion of RJ, which tends to take on schemes and targets that are not truly restorative. Moreover, the interviewees also pointed out that this inconsistency creates uncertainty about who is an RJ practitioner and what, in the end, is a restorative practice.

To give some examples, one respondent said: "...There are different views out there about how much training one needs to become a good RJ practitioner, and this damages the confidence in RJ. For instance, one might say: 'I am an RJ practitioner', but yet it is not clear what that means. And on the other hand, someone who wants to use RJ might not be sure what they are going to get...". One interviewed organisation, which is currently providing RJ training to their facilitators, said: "...We wanted our results not to be attributed to the quality of training; and therefore there had to be consistency within all of our groups and facilitators, and no one had a special training". Finally, one additional theme that seems to be emerging is the various power imbalances that appear to exist between training providers who tend to support agendas and interests that are not necessarily compatible with best RJ practice'. The final chapter should look into this implication in more detail drawing also conclusions from the Survey I, and by taking on board considerations that involve not only policymakers, but also RJ practitioners, researchers, evaluators and theoreticians.

## **Establishing a National Accreditation Process**

### The benefits of accreditation

► Accreditation can bring an end to the inconsistency that exists among the various training courses that are currently offered

throughout the country. One respondent claimed: “A shared approach to training and accreditation based on national occupational standards and effective practice guidance is essential to ensuring consistency and good practice... Training in RJ needs to be nationally accredited and certified”. Another organisation said: “...there needs to be an overarching strategy about training that will be nationally and equally balanced with commonly accepted standards, which we will all understand in the same way. Also, there needs to be a national accreditation process, which people can take so that they rightly claim at the end of the course that they are RJ qualified”.

► Only holders of such a qualification will be recognised as RJ practitioners. This will help to resolve the confusion around who is an RJ facilitator, and boost confidence among participants and the wider public.

► It will formalise the training procedure and this will help to set up the lowest standards for RJ’s application. “...I think the idea of accreditation perhaps makes training a bit more formal, and will set a certain level of teaching and amount of skills that trainers should have...”.

► Gradually, it will result in having uniform application of RJ throughout the country. In particular, if accreditation processes achieve to reach uniformity of training courses and training standards, this can gradually lead to a homogeneous way of practice. It will at least create a common level and standard of practice for all RJ services operating in a certain legal system.

#### Dangers associated with accreditation

► **Accreditation can end up narrowing the RJ field:** One respondent said: “...You wouldn’t want accreditation to end up narrowing the field of RJ... For instance, different types of cases might not get conferences because there are no national accreditation processes...” In addition, “...Accreditation may also prevent further research and recognition of particular skills in learning to develop and facilitate RJ through mediation, conferences etc... we don’t want it to end up limiting how the process is applied”.

► **Accreditation might turn against practitioners who want to ‘push the boundaries’:** An interviewee said: “...Our facilitators are pushing the boundaries in the sense that they want to be able to use RJ to deal with serious crime including adult offenders. And I am worried that their skills will not be recognised, because they might not be included in the accreditation process. In fact they are taking RJ to a different level... And we are also concerned that people will stop pushing the boundaries, because their accreditation does not include those additional elements...”.

► **Accreditation needs to take into account cultural/case/individual variation:** One interviewee pointed out: "...[Accreditation] should not offer only one type of training, because it will simply not address issues like cultural variation, case variation and individual variation; the fact, for instance, that there is no way one can train practitioners about every individual case...".

► **Accreditation has to consider the already established traditions of practice and filter which practices should be maintained:** Someone pointed out: "I wonder what the implications of [accreditation] would be, because there are traditions of how to do mediation and conferencing. And I think they vary in terms of how the processes are applied, and each has a different way of benefiting the parties involved...". In their response to the Strategy Document, NACRO/CONNECT said: "There could be an initial period of 'passporting' schemes that are already in use at the moment. However, this should be only up to a basic level of acceptance and only for a set period of time. After this they must be built upon or added to in order to 'consolidate' them with up-to-date qualifications" (NACRO/CONNECT 2003).

► **Accreditation needs to be able to pass on the RJ ethos:** Training has so far been using what one interviewee called the 'scripted approach', focusing on teaching the trainees how to read and follow the prepared script. However, RJ is far more complex than this. It was suggested that the 'scripted approach' could undermine or even endanger the nature of the restorative process. In order to avoid falling into this trap, trainers need to work better on teaching about the ethos of RJ. Unlike criminal procedures, the restorative way of dealing with antisocial behaviour can range from a formal meeting to a very informal, highly emotional face-to-face interaction between the offender and the victim. The RJ ethos is sometimes difficult to be transmitted in training courses, and like other procedures that involve human communication and emotions general theoretical frameworks need to be pre-established and normative values need to be crystallised and accepted beforehand — sometimes as principles for our own way of living and interacting with each other. "...My experience comes from having evaluated RJ projects, which included preparation of facilitators and training... My only comment is that the approach which was taken was the scripted one ... the problem that we identified while evaluating how the programmes worked was that the training ... made clear only how to use the script, and it was pretty useless when it came to teaching how to communicate the ethos of RJ. And therefore practitioners could follow the script perfectly, but without conducting the process in a restorative way. On the other hand, the participants entrusted the facilitators in knowing what they were doing, but in reality they only knew how to go about running a script and nothing about RJ's philosophy. The training had never

communicated the importance of using these values... I think we can accommodate the diversity of viewpoints that currently exist, but we can't carry on sending out practitioners who carry a traditional criminal justice mindset to follow religiously the script, and then expect an ideal RJ process to occur. These people are still in the mindset of dealing with two adversaries that have certain rights and responsibilities... and view RJ as another type of adversarial encounter. They miss the important point right from the start...". Another participant said: "My vision of the future of RJ is that before going to a restorative meeting, all participants to be able to know how they can speak to one another without being interpreted as an attack.... this model is called 'non-violent communication'...and some practitioners do know about [it], but is not included [in the training]... and this is a possible future". Finally, a third interviewee said: "...A few days' training ... does not change the ethos in criminal justice".

► **Issues concerning the selection of accreditators-trainers:**

Another issue, which was thought to be problematic, concerned the process of selecting trainers for accreditation courses. In their response to the Strategy Document, NACRO/CONNECT pointed out: "There is a danger that only preferred providers will be allowed to deliver 'official' training schemes and that the materials for these schemes will be trade-marked and controlled, so that this clique will seek to control access to RJ training. If we believe in diversity and equal access, there must be an open market" (NACRO/CONNECT 2003).

► **Issues of accessibility:** Ensuring practitioners' access to the accreditation process was also thought to be a potential barrier. "Bearing in mind the likely range of practitioners it is also essential that any training or accreditation approaches are equally accessible by Government and voluntary bodies, large and small. There is a need for an inclusive approach, which respects the good practice of all practitioners and trainers, leading to congruence of training practice over a period of the next few years" (Victim Support 2003). NACRO/CONNECT said: "All practitioners should have access to a stepped or incremental programme of training, which meets their initial or local needs but can be built upon to move towards a fuller competence..." (NACRO/CONNECT 2003). Finally, it was pointed out that in the youth justice system: "... the Youth-Justice Board (i.e. a Government agency) decides what the training shall be, who shall deliver it, and who should be allowed to have it. We do not feel that this is a healthy or open process... Training and qualifications need to be open to all" (NACRO/CONNECT 2003).

► **The position of RJ in the retributive/utilitarian framework in which it is implemented:** Trainees are often either agents of the current criminal justice system (e.g. police officers), or have been educated based on the punitive understanding of amending harm. This needs to be taken into account while establishing an

accreditation process, so as to make sure that trainees' backgrounds are considered. One organisation said: "...It is actually harder when you are working with people that have worked in the criminal justice system. In fact, there were times when trainees would ask me how can I work with both offenders and victims; and this shows the current system's attitude, which is inherent in them. Therefore, it should not be assumed that someone from a traditional criminal justice agency would need less training to become an RJ facilitator than someone with no experience. My personal view on this is that those with no formal experience often make the best facilitators and are seen to be more neutral. They don't bring an agency culture into the process". The Restorative Justice Consortium said in their official response to the Strategy Document: "...All criminal justice agency practitioners and decision makers should have awareness training on RJ as a minimum... Those with previous training in mediation in other contexts would require training on the issues within the criminal justice system" (Restorative Justice Consortium 2003). However, as another interviewee said: "...Before we say that police officers shouldn't be facilitators, we need to be aware that community volunteers are not being paid for their time. [If we don't take this into account], then we will see the numbers of people engaging in RJ going down. On the other hand, there are serious questions whether police are the right people to be doing RJ...". Finally, it was pointed out by another participant: "...Every police officer who is to engage in RJ practices needs to be re-educated about the new practice's logic, and understand that it is done differently with different priorities and targets...".

► **Accreditation needs to strike an equal balance of practical and theoretical elements of RJ:** "The training will need to have some academic input, some theory and underpinning knowledge, but a strong element of experience in the workplace is vital" (NACRO/CONNECT 2003). "The values of RJ in which facilitators must be inculcated need to be clarified. Candidates for the role of facilitator ...need to be committed to upholding basic values of RJ, including healing, voluntarism, empowerment, and equality. It is essential that people who wish to pursue work as an RJ facilitator understand that these values are central to RJ approaches, and that they commit themselves to applying these principles in their practice. Meetings with stakeholders could be useful in generating targets that genuinely reflect restorative principles. At present, there is a real danger that these principles will be sacrificed in a drive to meet targets that are ill-suited to the aims of healing harm, resolving conflicts, and empowering participants" (Prison Reform Trust 2003).

### Establishing a national/international accreditation body

The interviewees supported the establishment of an independent, non-governmental body to supervise accreditation processes as well as: (a) commonly accepted training standards (b) training manuals and course books (c) extent and quality of training (d) selection of trainers.

In an open letter to RJ practitioners in the UK, Ben Lyon, director of NACRO/CONNECT, said: "...the time has come for practitioners of RJ to manage and regulate their own field of work... If we were to examine the structure of any professional body or association of skilled workers it would be inconceivable that they would be controlled directly by Government... Reliance upon employers for regulation will result in the lowest common denominator of standards: just sufficient to meet their short term needs and enforce the lowest rates of pay. Any agency which is in competition with others, or that claims primacy for their particular schemes of work or training is bound to be exclusive. There is a very real danger that one form of practice will be allowed to dominate and the future of RJ in this country will become set in stone. If we are to continue to offer the diversity of approaches that victims and offenders have shown that they value and if we are to respect each other's practice, then the independent route is the only guarantee"<sup>163</sup>.

"...There hasn't been time for accreditation ... to be monitored by those who do understand what RJ is... and we are trying to do something to stop this... and one of the things that we are doing at the moment is helping to set up the 'Association of Practitioners', and that's one of the areas we hope to come in... experienced practitioners who understand the ethos of RJ, and have been doing it for a while will actually have a say in accreditation and training, and provide a Quality Mark. This will then be the way one can actually get a job in RJ... having this Quality Mark..." The Restorative Justice Consortium said: "...there needs to be a full range of training providers who have agreed on quality or standards and methods for accreditation and ongoing professional development. The Restorative Justice Consortium is prepared to assist the Government to take this forward. One suggestion has been that the 'Association of Practitioners' sets the standards for best practice and feeds into the accreditation and training programme as well as assesses new practitioners and awards a 'Quality Mark'. This group is very new and will need to develop as with much within the RJ field..." (Restorative Justice Consortium 2003). Another participant claimed: "...There needs to be monitoring of what the courses consists of, and this will give us a properly accredited training. But that needs to be... monitored based on the information that we already have about what is good

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163 Ben Lyon's letter can be found at [www.iars.org.uk](http://www.iars.org.uk) .

restorative practice. And obviously there needs to be an ongoing supervision of RJ practitioners...”

“...There is need for a regulating body that reflects all practitioners equally and is not merely an executive arm of Government. It is the responsibility of practitioners to inform, and eventually oversee the training and accreditation of RJ. This task should be undertaken in partnership with Government agencies and other interested parties, but not controlled by agencies or organisations with a political or financial interest”. One participant said: “...Our growing experience has shown the need for increasing level of skill, especially when dealing with complex and sensitive casework. The supervision, monitoring and inspection of this work need to be carried out by a body of experts. This body does not exist, but it will need to be impartial”. Restorative Justice Consortium said “...It is important that what is known to be best practice filters into new practitioners’ work and not the particular needs of the agencies or organisations employing or contacting them, which may not have the same aims as RJ. The ethos of RJ needs to be maintained. It is important for training to be in all or most models of RJ, practitioners will then have the skills to offer the full range of options to both victims and offenders” (Restorative Justice Consortium 2003).

### **Funding Restorative Justice Work: the Realities of the Voluntary and Community Sector**

Here, the findings were organised into two general groups. The first described this issue as it was seen by the people who receive, or want to receive funding, to carry out RJ work/research (the applicants), while the second described how public bodies saw this matter (funding body).

#### **The Applicants’ Approach to the Issue of Funding**

► The way funding is allocated, and the limited resources available seem to affect the restorative character and priorities of programmes in the following ways:

(i) The Government’s expectations do not always seem to reflect RJ’s central normative objectives. For instance, public authorities tend to give primary importance to reducing re-offending, and although this might not be problematic as such, the way RJ has so far been used suggests that it has been treated as a ‘means to an end’. This is because the reduction of re-offending is not theoretically considered as one of its primary interests, but only a welcome side-effect of healing, forgiving and re-integration. “...There are two answers to the big problem of funding. One is to go to the Government ...but if you do that ... then they will give you a list of purposes that RJ should serve... these might not be even

consistent with [it]... What worries me is that the Government's pre-occupation is in reducing reconviction. Of course, I am not saying that RJ doesn't want to stop people from re-offending, but it is primarily interested in promoting healing". Another respondent said: "...The other question is in relation to where the funding has come from and ...whom you are reporting to. Take the 'Street Crime Initiative'<sup>164</sup>, for example... If the funding is coming from the Government, then there are problems ...One of our operational partners, for instance, is X Police<sup>165</sup>, and speaking to the inspector of the project, he would say that the reason of the process is to reduce re-offending. They are obviously very interested in the impact on victims, but they won't see [this] as their focus. So, whom you are getting your funding from is very important in terms of defining the focus of your research and research data. Unfortunately for us, we are trying hard to develop both: victims as well as offenders. And this is always a challenge in terms of who is funding you". A third interviewee pointed out: "...The people who sometimes fund RJ programmes have agendas that are different from RJ's ones. Usually they are the ones who have the money, and if this carries on then the RJ agenda isn't going to be the main feature of any project or agency no matter how hard practitioners try, because they will always be in conflict with their funders whose aims are different". A fourth participant said: "...Organisations can get caught up looking for money and getting distracted from their main targets...", or as a fifth respondent put it "...when it comes to money who pays for the service and what they want is rather important". The organisation continued: "For instance, an organisation that wants to do good RJ is contracted by another organisation that is not really interested in the same thing but has money... do you think they can afford saying no?" A sixth organisation commented on the problems associated when receiving funding from non-governmental bodies: "Getting funding from private sources creates serious limits on labour and other resources... Thames-Valley Police, for example, has been so effective, because it receives money from the Government. Of course, it is not a bottomless well of money, but it is enough to invest in what they are doing, and I don't think this is something that private sources can match... If the goal is to grow RJ and make it more widely available then there are tensions between RJ values and getting the funding that you need". Finally, a seventh respondent said: "...I think it comes down to valuing what you are funding, whether that's a research project or a practice..."

(ii) Although, in theory, in a restorative process the victim should be considered as important as the other two parties (offender and the

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164 This initiative is part of the Government's 'Crime Reduction' programme, which was initiated after its 'Crime Reduction Strategy' published in 1999.

<http://www.homeoffice.gov.uk/crimpol/crimreduc/strategy/index.html>

165 Names cannot be disclosed due to confidentiality agreements.

community), according to the participants this is not always the case due to the way funding is prioritised. "...Victims is where, I think, RJ has a lot to offer as a concept and as a practice... However, the Government is very concerned with reducing re-offending [and this affects how funding is allocated]" The following was also mentioned: "...When the Referral Order pilot project report came out it said that the work on victims was insufficient, because of lack of resources, and then the Youth-Justice Board and the Home Office said that they were going to give more money to allow Youth-Offending Teams to do a better victim contact work. My understanding is that there are now more contact Victim-Liaison Officer, but my feeling is that they are still not enough".

(ii) Funding bodies introduce time scales and performance measurement targets, which usually undermine practices' effectiveness and restorativeness. "If the trainers are given money to deliver training on a certain thing and in a certain way and in a smaller time scale (for instance instead of five in three days) -which this by the way is very common practice- then, they will be forced to do it". A second interviewee said that the difference with restorative programmes is that: "...When it comes to asking money, the problem is that RJ has a slow time delivery. It is a new practice, and it takes time for people to understand its benefits; this is especially the case with the Government where the money usually comes from. Funders, in general, want to see results now, and treat RJ as a 'quick fix tool'; this often leads to disappointments and misunderstanding about what RJ really is and what it can offer. All in all, it takes time for RJ to show its results, but patience is difficult when it comes to asking for money, or when showing that what you have received is being used wisely...". A third participant claimed: "...RJ also requires a lot of honest effort and, sometimes, personal commitment especially since there is lack of general support having not proved its value yet. Performance measurement, on the other hand, does not take this into account, but instead looks for 'instant results' that do not reflect reality". Finally, a fourth organisation added: "...Funders want direct answers to their problems and this is not always possible when applying RJ. As a result, funding applications do not always fit the RJ values".

(iv) According to the participants, the RJ ethos is not always maintained. "...The amount of information and exploration of the RJ ethos is in no way being funded...". Another organisation said: "What I have experienced is Youth-Offending Teams not investing enough money for RJ work to be anything beyond what one or two practitioners are given a few training in. And I don't think you can create RJ by giving a few days training to one or two people. That doesn't change the ethos in criminal justice...".

► The way funding is allocated affects RJ's evaluation: Similarly with the international sample, the interviews seem to agree that research and evaluation can be hampered by the way funding is

prioritised. "...One issue is what criteria [the Government] uses to say that [RJ programmes] work...". Someone else said: "...In theory, evaluation should be done on what RJ programmes intend to deliver. To give you an example, if we are evaluating a drug treatment programme, which is trying to stop people from using heroin, one shouldn't judge it by whether people commit crime or not, simply because this is not what the programme is for... It is not therefore legitimate for the Government to evaluate RJ solely on its power to reduce reconviction rates: it is not what RJ is centrally trying to do. So, this is about funding coming from the Government". A third organisation said: "So, when you get money from the Government, then it is likely that you get their agenda, and this affects how to measure the value of RJ and its outcomes". Finally, it was claimed by a fourth interviewee that: "...The challenge with research is that good one always takes time... For instance, although the Home Office said in their Strategy Document that they want results within 18 months, I think the long term ones are going to be more compelling... but these will take time. Meanwhile, you have this feeling of urgency of solving problems and forming a policy today. And I think this is what usually drives the Home Office when funding the projects..."

► The way funding is allocated affects communication among RJ practitioners: For example: "...Another problem is promoting communication... For instance, the 'London RJ network' is a practitioners' network group, which meets regularly and discusses the problems that we come across. We then try to help each other to get over them. In other words, people disseminate information and try to keep up-to-date. Ben Lyon, chair of NACRO/CONNECT project, which has a lot to do with this group, told us that when the project meets there is no one to take over its meetings. Mediation UK said that although this is something they would be interested in it costs money. So it comes down to how the money is being available so that communication can be opened, and get those messages out..."

► Funding was rejected because of a false understanding of what RJ is and what its programmes involve: "...There are times where RJ is thought to be a 'soft option'...RJ needs to be recognised ... [as] a legitimate justice response, and this can be achieved through research...". Someone else claimed: "...RJ is not an easy concept to comprehend or accept. It is difficult to get it across within a short period of time. It is still seen as a 'soft option', and this does not appeal either to victims or the politicians and policymakers...". In addition, a third organisation noted: "...RJ is a concept which has just been constructed, and therefore it is not yet politically respected...". As a fourth interviewee put it: "...the term RJ is currently being used to label things that are in no means restorative for either party involved. And there are a lot of reasons for this, and one of them is money. RJ is a very popular term, and in the last few

years there has been money available to those doing RJ practices. As a result, some people came along with their punitive practices and labelled them RJ in order to get this money”.

► **Funding is not adequate:** “It is easy to get money depending on who you are... it is a pity how people get [it], and I think it is about relationships, and whether you can build personal ones with the people that have the money or the power... I think there is some truth in what is said about people that shout the loudest get the money, and these are not necessarily the ones that are best placed to produce good RJ practices”. Furthermore, another organisation said: “...sometimes funding is given to practices that haven’t been researched whether they are harmful or not... Also, evaluation reports are not supposed to say that RJ is only very beneficial. In fact, it can be a very labour-intensive process, emotionally charged, which if it goes well then it goes well, but if it goes wrong, then it goes really wrong. So it is a very sensitive tool that needs to be respected, and in some ways better understood...”. A third interviewee claimed: “I will block allegations from the Home Office that were given this year [and were saying that additional funding was given to RJ], and I will say that they are actually responding worse, and it obviously goes worse year after year. It is to the publicity that the Government is responding better, and, in fact, it makes me wonder whether they are promoting the RJ ethos, or ... changing its nature”. This was confirmed by another organisation which said: “The bid we put in for Home Office funding is double of what we are getting in order to do all the things we want to be doing. And partly there will be new initiatives coming in that will eventually bring all the things that we have been suggesting, like victims’ personal statements, things that we have been talking about since the mid-nineties, and now we are really pleased they have been taken on board”.

### **The Government’s Approach to the Issue of Funding**

► **The Government is keen to fund, but needs to remain realistic:** “Since I am working in the field of RJ I am keen to promote it as much and quickly as possible, but that costs money... We live in the real world and when it comes to funding there are only limited resources. In addition, it was said “it would be great if somebody could fund all pilot projects that need to be done...”.

► **Evidence-based policy:** According to the Government, programmes should receive funding only if there is sufficient evidence to support that they will be effective. “...At this stage, the evidence is still accumulating and before we have a reasonable knowledge about what is good practice, it makes sense for funding to be limited ...There is no point funding things that you don’t know whether they work or not”.

► **Already enough to work with:** Some research projects have indeed received funding and yielded results that are being processed. As it was claimed: “The Home Office and the Government has funded some pilot schemes that are assessing RJ at various stages of the criminal justice system under their ‘Crime Reduction’ programme... and, of course, there is the question of what we can do with what we already know ...”.

## TWO ADDITIONAL PROBLEMS IN THE PRACTICAL AND THEORETICAL DEVELOPMENT OF RESTORATIVE JUSTICE

### The Implementation of the Restorative Justice Victim-Related Principles

The first additional theme identified by the interviews concerns the RJ victim-related principles and their implementation. The literature supports that no special treatment should be given to any of the parties (see Chapter 1). This appears to be in contrast to the philosophical basis of the current criminal justice system, which is founded upon utilitarian and retributive principles that focus on offenders and their actions (just deserts, deterrence, incapacitation and rehabilitation).

### The Dimensions of the Problem

► **Re-victimisation/secondary victimisation:** This is a generic term used to describe the way victims are sometimes treated by the current criminal justice system. Fears are now being expressed in relation to victims’ treatment by RJ. “Bringing offenders face-to-face with their victims may make offenders better realise the consequences of their actions and render them less likely to commit further offences, but it can also re-victimise victims who may feel obliged to participate against their will. Further, an attempt to reduce delays to bring swift justice to the offender may result in victims being given inadequate time to make informed decisions about whether or not to have contact with the offender. Failing to adhere to RJ principles in this way could lead to re-victimisation or secondary victimisation. Steps need to be taken to minimise such risks”.

Additional factors that may lead to secondary victimisation are:

(i) Time: First, “The timing of contact and interventions continues to cause concerns because of the lack of opportunity for victims to participate at a time that meets their needs, risking re-victimisation. Discussing options for RJ could be harmful if done in the immediate aftermath of the crime”. Second, “If statutory or other time limits set in respect of dealing with offenders do not allow the victim adequate time to consider their options (three weeks should be a minimum), this is a form of secondary victimisation. There are also

specific difficulties with 'Reparation Orders', as Youth-Offending Teams are unable to comply with the legal requirement to obtain the victim's input in an appropriate manner in the short time available before sentencing. On the other hand, the sometimes considerable time delay between the date of the incident and the RJ intervention can make the victim unwilling to participate either because they have put the crime behind them or because they do not want to revisit the painful memory of the crime". And third, "The lack of time for adequately trained personnel to commit to the process is also a key issue. Some Youth-Offending Teams refer to inadequate time to meet either the victims or their potential supporter prior to the first Panel meeting".

(ii) Venues: Arguably, this factor has received little consideration by RJ practitioners, as restorative programmes are often carried out in places which, in theory, are not appropriate e.g. prisons. For instance, as one interviewee said: "...one of the challenges we had to deal with when implementing [RJ] into the criminal justice context was that... there were times where we simply couldn't have what we believe to be an ideal conference, an ideal RJ meeting. For example, we are doing our conferences in custody, in prison, and one could argue that this is not actually the right restorative place [for offenders and victims to happen]". In addition, Victim Support said: "More consideration should be given to the issue of venues for meetings i.e. whether those used are the most suitable from the victim's perspective. Practice varies between Youth-Offending Teams. Adequate separate waiting spaces for victim and offender should be a requirement" (Victim Support 2003).

(iii) Information sharing: Information which is given by victims to describe the impact of crime on their lives is often used by criminal justice agents to achieve their own goals e.g. reduction of re-offending. Victim Support said: "Secondary victimisation could also occur if information a victim has provided about the effects of a crime on them is used in programmes to reduce re-offending without the victim's agreement" (Victim Support 2003). This is an abuse of the process and particularly of its central principles on confidentiality and information sharing.

(iv) Adequate preparation and support: According to the interviewees, victims seem not to be receiving sufficient support either before or after the process. The same applies for preparation, as they are rarely adequately informed about the process they are to engage in. For instance, "...[We have] concerns about whether victims are being offered appropriate preparation and adequate support at all stages.". It has been argued in previous sections of this book that this preparation is also essential for victims' understanding of RJ and particularly of the process to which they agree to participate. Confusion might lead to false hopes and expectations, disappointment and sometimes anger and frustration. Someone else said: "RJ must be one of the

considerations/options at the very beginning – it needs to be at the start of what has customarily been termed low level offending. I think what you lose if it's not considered at the earliest opportunity is the potential engagement of the victims who may have sustained a number of incidents of hate crime, then to be offered RJ or mediation may not want to engage because of the number of experiences that they have had. For me, RJ – in terms of engaging the victim and perpetrator and improve their understanding of each other then I think that it needs to be done earlier. If you're talking about RJ in terms of the perpetrator paying back something to the victim, then I think unless it is managed very carefully and the process takes place first, you're likely to alienate the victim and perpetrator even more”

(v) Insufficient information about the offence and offender: One of RJ's strongest aspects, and also an element that makes it stand out from the rest of the criminal justice theories is that it places the healing of victims among its priorities, recognising in this way the importance of addressing their psychological, physical, emotional and financial needs. However, it has been observed that the psychological need for information about the offender or even the crime that has affected their lives is not always met. For example, according to Victim Support: “Many victims have a psychological need for information after a crime which will help them to make sense of their experience. Victims may have questions, which only the offender can answer. The RJ process can provide a vehicle for this information which in turn can help the victim to recover from the crime and alleviate their fear of future crime” (Victim Support 2003).

► **‘Special Crimes’:** According to the participants, certain crimes need to be treated differently. This is because they usually carry an inherent danger of re-victimising victims. Domestic violence, sexual offences and hate crime were mentioned. For example: “...re-victimisation is a particular concern because the imbalance of power between the victim and the offender is an intrinsic component of the victimisation, preventing victims ever being able to exercise free choice. In these crimes there may also be a pre-existing relationship where abuse of power has been a long-term feature of the relationship. Contact (whether direct or indirect) between the victim and the offender in these cases is particularly problematic because the RJ process itself can provide a means by which the offender can further manipulate and undermine the victim. Someone else said:“...there is no need for specific principles for these sensitive offences, as principles should be the same. However, there is a need for adequate training and supervision for those facilitating them. This training should not just be on facilitating but on the specific issues of dealing with these types of offences. Again, care needs to be taken over the need for the facilitator to be seen as neutral by all parties. Time constraints by the court process can also be a hindrance in these difficult

offences where a lot of preparation is usually essential. The victims of these offences should still be provided with the same opportunity to a restorative response with all necessary safeguards, as a victim from another offence”.

► **‘Restorative Sentencing’**: Another central characteristic of the restorative process is that, in theory, it does not impose any sentencing measures on offenders, but lets parties to decide what could be appropriate, just and feasible to put right the harm done. However, according to the interviewees, current practice has shown that this is rarely the case, as offenders are often obliged to conform to sentences that do not occur as a result of mutual understanding and agreement, while victims are hardly ever advised on what they should expect or what could work better to amend the harm done. For example, it was said that: “Some courts have not been prepared to adjourn for the victim to be contacted and a proper assessment made of the offenders’ suitability, before reparation is ordered. Reparation has been ordered but with a flexible content. However, this means that the victim’s wishes are not expressed to the court and sometimes orders are made for reparation in unsuitable cases. There is then no legal recourse to make a more appropriate sentence” (Restorative Justice Consortium 2003). “For any intervention to be at least partly considered restorative it is necessary for the young person to be involved in the decision making process. Referral orders interventions should be based upon the agreement reached during the process of a panel meeting” someone else said.

### **Some Suggestions to Address the Problem**

► The role of **Victim Liaison Officers**: The first suggestion concentrated on the role of Victim-Liaison Officers, an institution which has gradually evolved from practice, as contact needed to be made with victims. It has not been regulated yet, nor has it appeared in legislation in any form<sup>166</sup>. In particular, Victim-Liaison Officers constitute the first encounter of victims and offenders when entering the traditional criminal process. This is most often the case with diversionary restorative practices. This is usually done by sending to the parties an introductory letter and leaflet explaining the background of RJ followed in two-three days by a telephone call. A number of issues have been identified as problematic in this process. “The Victim-Liaison Officer or other staff members contacting victims need to be able to provide information about the offender<sup>167</sup> in order for victims to be able to make informed decisions about their own involvement. However, in some situations we understand that staff contacting victims has

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<sup>166</sup> In fact, according to research findings, this creates problems among which issues of training and code of conduct (Evans 2003).

<sup>167</sup> For instance, their attitude towards the offence and/or the victim.

inadequate information about the offender. We believe therefore that the role of the Victim-Liaison Officer needs more consideration” (Victim Support 2003). One interviewee said: “...the victim contact officers in probation and Youth-Offending Teams need to have an awareness of ...what happens to victims and of the process they [enter] when they become victims of crime, [its] different stages and [of] the impact of crime, which can be variable”. NACRO/CONNECT said: “...the agency providing initial contact should provide access to a range of processes that might match the victim's needs, in terms of timing and degrees of contact with the offender. There should be clear routes of onward referrals” (NACRO/CONNECT 2003). Victim Support said: “The current emphasis on creating a network of professional victim workers employed by criminal justice agencies may need reviewing. While recognising the value of dedicated victim-friendly workers, we have concerns that it could lead to the victim contact work not being integrated strategically and operationally into the work of the Youth-Offending Teams as a whole, and thus into their RJ processes. This would have to be taken into account for any victim contact work that is contracted out” (Victim Support 2003).

► **Victim and community involvement:** Some interviewees seemed to be supportive of more active involvement of victims and the wider community in crime control and prevention. For example, it was proposed that: “local ‘Crime and Disorder Audits’<sup>168</sup> might have information about what action local residents would welcome regarding repairs where there has been graffiti, vandalism etc. Reparative work could include suggestions from local community groups who will thus be empowered to solve their local problems, while being given the security and means to arrive at solutions. Too often solutions are imposed from elsewhere without involving local people. Participation by local victims and the community needs to be encouraged by providing sensible guidelines for their participation and then acting upon the suggestions they make, and by publicising this through local press and the media. Such work would need to be linked into the work of probation service community service staff”. Someone else said “...this involvement is essential to the restorative nature of any reparation. From experience we have found that courts should not sentence offenders to reparation work without both victim and offender having been consulted or assessed”. The role of the voluntary and community sector was highlighted by all participants.

► **Victims are not tools to reduce re-offending:** The influence of the retributive and utilitarian traditions on RJ, and particularly the way they prioritise their criminal justice objectives appear to have

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168 After the Crime and Disorder Act, local authorities, the police and other key agencies are held responsible for crime and disorder through a Community Safety Partnership. One of the requirements of the act is that an audit of crime and disorder should be conducted in the area annually.

an impact on RJ procedures and victims' engagement. "...Although the reduction of offending is an important aim, if that is the primary aim of RJ, the result will be victims being used as tools to reduce re-offending and will be re-victimized in the process, albeit unintentionally. A key feature of introducing this ethos into correctional services will be good training of practitioners and management and the support of management with its development. Resources will be a concern for a number of managers, as RJ cannot be done on the cheap". Another interviewee said: "Look at the Strategy Document and how it was delivered. Again, the emphasis was on... offenders... [and] reducing re-offending rates. What I am constantly saying is that the reduction of re-offending, to me, is a by-product. The questions that should be asked in the evaluation process [of RJ] are: 'Are victims happy with the outcomes', 'Have they been able to make changes in their lives as a result of this process', 'Has the offender been able to make changes as a result of this process'. These are the questions that show about resolving the harm". One organisation gave an example: "... [Lets say that a] victim and an offender meet and they have a restorative meeting and [after that] they both ... feel very positive about how that meeting went and about their respective futures. Then that offender goes and shoplifts a Mars bar. Then some will say that the process has been a complete failure... But obviously it hasn't! The first question I get when I talk to a complete stranger about RJ is: 'does it stop re-offending?' It is always the first question. And we need to move the emphasis away from that. And yes, of course, it is important, but so are all of the other questions". Finally, another participant said: "...The Home Office perpetuates the idea of victims wanting incarceration, and does not engage in a dialogue to understand the importance of their feelings being ignored and alienated by the criminal justice system.... To give you a little vignette: You know that your car lights have been kicked in and you feel really bitter about it. Next day, someone knocks on your door to say that he is really sorry to have kicked the lights, but at that time he was drunk and really angry, but was there to apologise and see what he could do. The victim's attitude, of course, will change once the other person gets the courage and comes forth. And this is just an obvious example from private life. Unfortunately, I can't believe that the Home Office will go and talk to these angry victims who know nothing about their offenders ...".

► **Victim support services before, during and after the restorative process:** Victims' rights during restorative processes could be safeguarded by setting up more and better victim-services. These could involve psychological support, financial aid and adequate preparation/information. For example, the Restorative Justice Consortium said: "...offenders often have a full range of services available to them to address their specific needs, victims have not previously had many available to them. This will need to be rectified, particularly the needs of victims who are

children” (Restorative Justice Consortium 2003). In addition, “...all organisations should be equally bound by the relevant ‘Codes of Practice’. The problems thus far have arisen by ineffective use of data by the statutory agencies, which have often used data sharing issues as an excuse for not providing services. It should become a function of the ‘Information Commissioner’<sup>169</sup> to ensure that victims are provided with the information offering them participation in restorative processes, including access to reparation” (Restorative Justice Consortium 2003).

► **Secure ‘Equity’<sup>170</sup>:** Arguably, one feature that differentiates significantly restorative processes from traditional ones is the personal way in which the community deals with the offence and the offender. In order to be able to achieve this, however, the facilitator needs to ensure that the individual features of each case are considered (e.g. circumstances, harm done, backgrounds and characteristics of parties). “Every crime is different and has different participants with different needs. What maybe needs to be decided is whether the State will go with what the offender and victim regards as justice, rather than what the court do, whilst at the same time safeguarding human rights. There should be judicial oversight but perhaps not the intervention that there is now in some cases”<sup>171</sup>.

► **Liaison between Youth-Offending Teams and Victim Support:** “Liaison between Youth-Offending Teams and Victim Support has been good in some areas, but needs improvement in others”. In particular, Victim Support services often reported concerns that the Youth-Offending Teams were too offender-focused, and that the process had a heavy emphasis on the needs of offenders. Because of this, victims contacted by the Youth-Offending Teams or police Victim-Liaison Officer from Youth-Offending Teams offices may be less willing to consider whether or not to participate in RJ interventions (Evans 2003).

► **Sharing best practice:** One other way through which current practice on victims could be enhanced was through the comparison and learning from other practices that had been carried out both at home or abroad. “...it can be useful to compare good and bad

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169 The ‘Information Commissioner’ enforces and oversees the ‘Data Protection Act 1998’ and the ‘Freedom of Information Act 2000’. The Commissioner is a UK independent supervisory authority reporting directly to the UK Parliament. The Commissioner has a range of other duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data are processed.

170 This term is used in the Aristotelian sense meaning taking into account the individual features of each single case that is processed, whether these involve the circumstances of the offence, the nature of the harm done or the backgrounds of the parties involved, (Aristotle 1954).

<sup>171</sup> More on the Aristotelian Equity and its role in delivering RJ see Gavrielides 2008.

practice [with regard to victims]. We know of situations where victims are not given any time or explanations, just phoned up by the Youth-Offending Team so that the box can be ticked that contact has been made. As good practice we know of Youth-Offending Teams where victims are contacted by phone, have a face-to-face meeting with a Youth-Offending Team worker to explain RJ, leaving them to decide whether they wish to attend a panel with no pressure being placed upon them or have some other involvement. If they do wish to attend, the panel meeting is set at a time and place convenient for the victim, they are introduced to the Panel beforehand, and contacted afterwards to see if they are all right. If they do not wish to attend, they are involved to the extent they wish to be" (Victim Support 2003).

### **The Implementation of the Principle of Voluntariness**

Voluntariness is a core principles of restorative practices, which differentiates them from traditional criminal justice procedures. In simple words, it requires the voluntary participation of all parties in RJ procedures. "Much RJ literature stresses the voluntary nature of the process and the strength of ownership that this brings to the outcomes. This cannot be the case in criminal justice system cases as the offenders have been arrested and charged, and are the subject of legal process, which oblige them to take part. However, voluntary participation brings about the most beneficial outcomes and should be allowed or encouraged wherever possible" Moreover, "Voluntariness is imperative for the success of RJ, if any of the parties feel forced to participate this is likely to lead to a negative response, maybe even dangerous".

"RJ would always be optional for victims. But all victims would have the opportunity for some form of restorative interaction with their offender if they wanted it. They would be able to choose how this happened ...The restorative intervention would be fully integrated with other services on offer to the victim, with plenty of support both before and after the event" (Home Office 2003, 52).

However, according to the survey, this principle is not always reflected in practice. For example, one interviewee said: "Actually, one [area] where theory and practice are definitely way apart is the importance of being involved [in RJ] only when you want it. Definitely the way practice has developed leaves the offender with no option, and this makes quite a difference in the way RJ works in practice, and the difference it can have when people come to it voluntarily..." (Victim Support 2003). In addition, Victim Support said: "...not all victims want RJ. We therefore welcome the emphasis on the importance of any involvement with RJ being optional for victims..." They also said that victims risk the danger of facing secondary victimisation if they are "involved in such

programmes in ways which do not recognise and respond to their interests, wishes or preferences” (Victim Support 2003).

In theory, this principle is equally applicable to both victims and offenders (Fatic 1995; McCold and Wachtel 2000). However, as “...the youth justice system is a hybrid between RJ and conventional criminal justice. As a result there is some compulsion for the offender, which conflicts with the principles of RJ adopted by most proponents of RJ (e.g. the Restorative Justice Consortium). Compulsion on the offender’s part increases the risk of re-victimisation...” Moreover, “...the Consultation Strategy’s draft principles omit the duty of facilitators to respect offenders’ right to participate voluntarily”.

To be able to adhere to the principle of voluntariness both victims and offenders need to be given the chance to make informed choices whether to participate or not. As Carolyn Hoyle observed in their Thames-Valley Police evaluation, a key aspect of the decision to take part is informed choice: “potential participants must have the opportunity to have restorative processes explained fully to them before making a decision to take part. Voluntarism is equally important throughout the process. While it is a valid part of conferences for facilitators to put questions to both parties, neither should be compelled (or feel under a compulsion) to disclose more than they want to tell...” (Hoyle et al. 2002)

One interviewee said: “The [Home Office] has an issue about voluntariness; they don’t want it to be [included] in RJ. I tried to explain that you could maintain voluntariness on both parties if you give [them] enough choices. It doesn’t have to be either this or that ...Have a word with the young people, for example... and give them a whole range of choices of what they could do. [Also] try engaging them in the process, and get them to make suggestions...It is about making choices and decisions, and getting them to comply, than imposing something on them. And this can work for both victim and offender... By giving them choices we can maintain voluntariness”.

Victim Support on the other hand said: “We believe that victims must be offered the opportunity to make informed choices to enable them to decide whether and in what way they might want to be involved in any RJ intervention” (Victim Support 2003). In addition, “...there are some victims who are not being enabled to make an informed choice about participation. One factor relates to concern about whether victims are being offered appropriate preparation and adequate support at all stages” (Victim Support 2003). The same approach should be taken for the offender: “...There is a need to provide as many choices as possible to the participants. For instance, where an offender is unwilling or unable to have contact with the victim and a community reparation is being considered, then the range of options should be available which is

either offence related, at the request of the victim and/or using the skills/interests of the offender. Not slotted into a limited placement against their wishes or abilities. An offender is far more likely to succeed if they feel valued and respected for what they have to offer their community. This is a positive step towards integration. It is also easier to engage the community to offer suitable placements if they know that the offender is willing to be there. These placements should be respectful and non-degrading, if not, this will only result in a negative response” (Restorative Justice Consortium 2003).

**PART THREE:  
PUSHING THE BARRIERS – FINDINGS FROM SURVEY III AND IV  
ON THE APPLICATION OF RESTORATIVE JUSTICE WITH HATE  
CRIME AND SEXUAL OFFENCES**

## RESTORATIVE JUSTICE AND HATE CRIME: ADDRESSING THE GAP BETWEEN THEORY, POLICY AND PRACTICE

Dr. Theo Gavrielides, Lewis Parle Baber Khan and Ryan Honeyman

This Chapter is based on original fieldwork with RJ practitioners from Britain, and international findings from desk research. The research was carried out in 2007 and aimed to generate original evidence that would examine RJ's application with hate crime offences and racist violence. The ultimate objective of this follow up study was to provide complementary evidence that would test the book's central contention. This would allow a firmer evidence-base for its policy recommendations on how to bridge the gap between RJ's theory and practice.

In particular, the extant literature and evidence from Survey I and II suggested that RJ practices should not be used for crimes where a power-relationship between the victim and the offender may exist. Participants of the two surveys mentioned hate crime, sexual offending and domestic violence as examples. Victim support groups, policy makers and criminal justice bodies seem to support this view. This should explain the dearth of RJ practices dealing with the aforementioned offences.

Policy and practice, therefore, do not seem to agree with RJ's theoretical proclamations. According to the RJ principles and philosophical underpinnings, the RJ norm and practice can address any type of offence provided that there is willingness on both parties to participate.

This observation added a new dimension to the book's research. Its methodology could now adopt a case study approach to allow a more detailed examination of the gap that exists between RJ's theory and practice. To this end, a third, in-depth study was carried out with face-to-face interviews. The sample involved 22 practitioners from the RJ field who had direct experience with hate crime (Appendix IV).

### DECONSTRUCTING HATE CRIME

Violence in all its forms is a matter of concern. However, violence that also corrupts our ability to function and live together as a society, and denies our humanity and value as human beings is a cause for even greater concern. Hate crime is one example. It is defined as "a crime where the perpetrator's prejudice against any

identifiable group of people is a factor in determining who is victimised”<sup>172</sup>.

Hate crimes have long been ignored by policymakers, but from the 1990s and especially after the September 11th tragic events, they have become a significant area of concern for public policy. For example, only one year after September 11th, Human Rights Watch warned the US government that its officials should have been better prepared for the hate crime wave that followed the terrorist attacks. For example, an increase of 1700% was recorded with regards to anti-Muslim bias crime<sup>173</sup>. The hate crimes that followed the 9/11 events included murder, beatings, arson, attacks on mosques, shootings, vehicular assaults and verbal threats. This violence was directed at people solely because they shared – or were perceived as sharing – the national background, or religion, of the hijackers and al-Qaeda members deemed responsible for attacking the World Trade Centre and the Pentagon.

In the UK, the 2000 British Crime Survey estimated that there were 280,000 racially motivated incidents in England and Wales. In 2005, the Crown Prosecution Service prosecuted 4,660 defendants for racially aggravated offences, up by 29% from 3,616 for the previous year. The Metropolitan Police alone reported 11,799 incidents of racist and religious hate crime and 1,359 incidents of homophobic hate crime in the 12 months to January 2006. In October 2006, one year after the London bombings by terrorists, the Greater London Authority (GLA) published a thorough report on Muslims in London. It noted: “There were 269 incidents of religious hate crime across all faith groups in the Metropolitan Police area between 7 July and 31 July 2005, compared with 40 incidents over the same period in 2004. Increased attacks were primarily directed against Asian and Muslim people. In 2005/06 there were 1,006 reported faith hate crimes, an increase of 469 (87%) since 2004. At the same time, reports from Metropolitan Police Service (MPS) community contacts continue to note the possibility of a large gap between reported and experienced incidents” (GLA 2006). In addition, the face of homophobic crime is still highly prevalent in the capital<sup>174</sup>. In April 1999, three people died and many more were injured as a result of the bombing of the Admiral Duncan pub; in November 2004, David Morley was killed as a result of a homophobic attack; in October 2005, Jody Dobrowski was beaten to death in Clapham. A 2003-4 study by Stormbreak showed that 45% of Lesbian Gay Bisexual Transgender people had experienced a homophobic crime and 20% had been a victim of actual physical assault. According to a 2006 study by Victim

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172 Association of Chief Police Officers (ACPO) 2007. Also see Recommendation 12, Stephen Lawrence Inquiry Report 1999.

173 <http://www.hrw.org/campaigns/september11/>

174 The Metropolitan Police reported 1,359 incidents of homophobic hate crime in the 12 months to January 2006.

Support, between half and two-thirds of people from Lesbian Gay Bisexual Transgender communities have been victims of hate crime, with Lesbian Gay Bisexual Transgender people from Black Asian and minority ethnic groups 10% more likely to be victims of hate crime. Ageism, disabilism and sexism can also lead to hate crime. For the purposes of this paper, the analysis will now focus on racist behaviour that leads to hate offences.

## Defining Hate Crime

Although hate crime is considered an ancient phenomenon<sup>175</sup>, it has arrived relatively late on the political and policy agendas, and then onto the agenda of various statutory agencies. It is not until recently that criminologists started to seriously think about the definitional issues surrounding this type of crime. The lack of consensus, for example, around what constitutes a 'racial attack' or 'hate crime', made the studying of this phenomenon even more difficult.

In addition, varying definitions also lead to problems in real-world application such as inconsistency in public policy and judicial decisions. For example, in the UK, John Laidlaw, a 24-year-old British National Party (BNP) supporter who vowed to "kill all black people" and shot several others was found to not have been motivated by racial hatred. The Times reported that "Judge Samuel Wiggs, sentencing Laidlaw at the Old Bailey, made no finding that the shootings were racially motivated" (Bird 2007). However, this was not the man's first hate offence. In May of last year, Laidlaw opened fire on two black men in the space of half an hour in North London. In that incident, one man was left fighting for his life after being shot in the neck, while another individual was hit in the back. Laidlaw had been shooting at Evans Baptiste, 22, who recognized him as the man who had attacked him with a hammer earlier that year. Less than three weeks before the attempted murders, Laidlaw was given an 18-month supervision order for aggravated bodily harm and abuse towards Ayandele Pascall, a black man, who had beeped his car horn at him.

In the UK, 1993 was a critical year for the theoretical and legislative development of race hate crime including its definitional challenges. Stephen Lawrence, a black teenager, was attacked and stabbed by a group of five white youths while he was waiting for his bus in Eltham, South London. The investigation that followed as well as the processing of this case became the focus of a special inquiry. Among other things, it showed that there is institutional racism not only in the police force, but also in other public services.

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175 See for examples Socrates' Freedom of Speech and Hate Crime.

The incident fell within the jurisdiction of the Metropolitan Police who, according to the inquiry, failed to arrest the suspects for two weeks, and when they did so they did not prosecute them apparently for lack of evidence (Macpherson 1999). All five of them had a history of knife attacks while a number of eye witnesses that were present during the incident gave evidence to the police. In fact, as it appeared later, the most disastrous failure of the police was not following up very detailed information about the youths from an informant the day after the murder. The Lawrence family lawyer revealed that the police investigation was presented with a five-page statement from a witness right after the incident who talked of conversations with the suspects before and after the killing (Marlow and Loveday 2000).

In 1998, the Chief Constable of Greater Manchester acknowledged that his police force possessed a degree of institutional racism. Giving evidence at the Stephen Lawrence inquiry, he said: "We have a society that has got institutional racism. Greater Manchester Police therefore has institutional racism" (Cathcart 1999). At the same time, a spokesman for the Metropolitan Police was arguing that the two police chiefs were using different definitions. "The commissioner was talking about institutional racism as being a matter of policy which means that all police officers go to work with a racist agenda" (Green et al. 2000). Sir William Macpherson, who was responsible for the Lawrence inquiry, said: "There is a reluctance to accept that racism is there which means that it will never be cured" (Macpherson 1999). As a result, the inquiry produced what is now commonly accepted in the UK as the definition of a racist incident: "any incident which is perceived to be racist by the victim or any other person". This is the definition that will be used throughout this paper.

## **Understanding Hate Crime and its Causes**

### **Hate Crime – a Different Type of Crime**

Research on hate crime is relatively underdeveloped and hence that aspect of criminological knowledge is limited<sup>176</sup>. However, from the 1990s and onwards, hate crime has come to the attention of policymakers and criminologists who most of the time reacted with little knowledge about its causes. Hate crime is different from other types of crimes. There are several key distinctions between hate crimes and 'ordinary crimes'.

While most hate crimes involve relatively minor offences, including graffiti, propaganda, harassment, intimidation and

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176 In the UK, for instance, the first major report on hate crime was published in 1978 by Bethnal Green and Stepney Trades Council and was titled *Blood on the Streets*. The report was then followed by the Home Office first official study on statistics of racist incidents recorded by the police.

vandalism, their impact can be much greater and long lasting. For example, hate crimes are more likely to be directed at individuals than property, often involve patterns of repeat victimization, evoke a large amount of fear, and the emotional impact of hate crime is much higher than crimes without a specific motivational element. The International Centre for the Prevention of Crime report Preventing Hate Crimes states that: "The most likely offender is an adolescent or young male, living in a poor area with a high level of unemployment and economic instability, and in a country where there are rapid changes in population. On the other hand, the people most at risk of being victimized are racial and ethnic minority groups or individuals, religious minorities, gays and lesbians, children and young people, and those living in poor areas with high levels of unemployment and economic instability" (International Centre for the Prevention of Crime 2002).

The major underlying distinction between 'ordinary crime' and hate crime is an element of personal enmity (or motive) absent in other crimes. Robert Kelly in *Hate Crime: the Global Politics of Polarization* claims: "Hate conveys that behind a crime is an aversion for the victim or an attraction to a potential crime victim, precisely because of his or her perceived individual or social attributes. Sometimes an offender's motive for violence and murder may result from the tacit approval of an audience of 'respectable citizens'. Attacking Jews, blacks, homosexuals, and politically proscribed groups may be driven by the key consideration that these people cannot defend themselves and are therefore vulnerable" (Kelly 1998). Kelly goes on to say that motives may be further complicated by offender ideas that include 'audience approval' and the 'ratification of complex emotional needs' quite apart from practical considerations, including whether potential victims are likely to be affluent.

With hate crime, inferring a motive is often difficult by looking at the known facts of a crime. In the US, most interracial crimes are not hate crimes. The fact that the offender and the victim are of different races does not have a direct correlation with the motive. It is usually a chance occurrence that a certain victim was chosen, and nothing more. For example, a group of young Hispanic men leave a party and want to get in a fight with the first person they see. It could be anyone: another Hispanic kid, an old black couple, a south-Asian store owner, or a white male jogger. The target is selected by random occurrence. The symbolic status (e.g. race, religion, and ethnicity) of the victim is irrelevant; one target is as good as any other.

## Causes of Hate Crime

The criminological, sociological, psychological and biological theories around hate crime tell us that this phenomenon is attributed to a number of factors, some of which seem to be more prominent than others. The limited scope of this paper does not allow to elaborate on these theories but merely to refer to them for critical reflection.

One of the main theories behind why hate crime happens is based on the role of economics. While ethnic tensions are thought to increase during economic downturns, a study done in the late 1990s by an American political scientist attempted to refute this analysis (Green 1997). In this study, Green argued that a weak economy precipitated by a drop in cotton prices did not directly lead to an increase of hate crime activity. However, the study also found that tensions are easily inflamed when a new racial group moves into an ethnically homogenous area, and levels of violence were often directly correlated with the speed of racial integration.

According to Richard Berk, "The fact that people of one race may steal from people of another race may simply be a function of differences in wealth that happen to be associated with race. Indeed, the race of the victim may be unknown to the perpetrator even after the crime is committed (e.g. in a burglary)" (Hamm 1994). Professor Berk uses this example to show the difficulty of finding specific hateful motivation behind certain offences.

Criminologists have argued that the elevated rate of victimisation among Black-Asian and minority communities arises to some extent because their members fall into demographic groups that are at higher than average risk. They also tend to aggregate in areas where victimisation risks are relatively high. The tendency of ethnic minorities to aggregate in this way also triggers effects of 'non-mixed multiculturalism'. Examples include: Harlem in New York City (USA), Sabon-garis in Northern Nigeria and Tower Hamlets in East London (UK)<sup>177</sup>. It could be argued that this form of human ecology encourages social exclusion, stereotypes and prejudice of residents therein rather than social and community cohesion.

For instance, Kushnick argues that racial violence became an issue in England when African and Caribbean communities, along with other Commonwealth minority ethnic groups were invited to undertake unfilled low paying jobs in the booming post-war era (Kushnick 1998). Kushnick argues that what followed these groups of various ethnic origins were increased prejudice, neighbourhood segregation, discrimination, and racism in the work place and other spheres of life. It should not come as a surprise, therefore, that in

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<sup>177</sup> However, some have argued that London should be treated as a separate example because despite aggregation in certain areas, diversity is still maintained.

the UK the phenomenon of racist violence started to be discussed only after the Notting Hill Race Riots of 1958.

However, it would be naïve to think that hate crime is simply due to demographic factors. It is far more complex than that. Hate crime is a phenomenon that is largely due to a 'non-mixed multiculturalism', political and religious bigotry and social intolerance. Hence it could be argued that re-socialising social class, religious bigots and racial fanatics could impact the society's conceptual orientations, and influence the social lens through which we view and understand the 'Other'.

For instance, taking the example of Nigeria, it could be argued that the persistence of inter-ethnic and religious violence – especially among the Lgbos and the Hausa communities – is largely due to religious fanaticism and 'non-mixed multiculturalism'. Hence it is not uncommon to hear an Hausa person calling an Lgbo man *iyamiri* – which connotes a starving man looking for water to drink – and an Lgbo man calling an Hausa man *aboki* – meaning a fool or a cattle rearer – when social interaction degenerates in quarrels. These derogatory terms go as far back as Nigeria's 1960s civil war where they were used to consolidate the negative assumptions each ethnic group had about each other.

It could also be argued that the politicisation and the occasional unethical use of crime statistics, and the role of the media contribute to the negative held assumptions of the 'Others'. Members of Radstas, an advocacy group responsible for statistical data, are concerned at the extent to which official statistical data reflect governmental rather than social purposes. Thus, the lack of control by the community over the aims of statistical investigations, the way these are conducted and the use of the information produced, the power structures within which statistical and research workers are employed and who control the work and how it is used is of concern if hate crime is to be effectively addressed around the world. Similarly, the fragmentation of social ecology into "mono-ethnic communities" because of the fear of 'Other' obscuring human connectedness is an issue worthy of evaluation if racial violence is to be controlled.

The difficulties with statistical recording of hate crime do not stop there. According to the British Crime Survey, less than half of racist incidents are reported to the police. In addition, the Crown Prosecution Service found that despite efforts to boost confidence in the system, an additional 5% of hate crime charges were dropped because there was no witness testimony (of 6,200 charges brought, 2,506 were dropped). Moreover, in 2004-5, the Crown Prosecution Service reported that 8% fewer charges than last year were dropped because of insufficient evidence. Conviction rate for all race offences charged dropped 2%. The Commission for Racial Equality said the figures suggested a "difficult social problem

that continues to blight the lives of many of Britain's ethnic minorities ... Until all victims and witnesses of these crimes have full confidence that the justice system will deal with them, we will never know the true extent of the problem”.

Carr-Hill claimed that official/governmental statistics contribute to the exacerbation of hate crime in the UK (Carr-Hill 2006). He argued that perhaps the seed of racial violence against the British minority ethnic groups might have been sown in 1965, when McClintock brought out one of the Cambridge studies apparently showing that the Afro-Caribbean population were much more likely to be convicted of violent crime than the native white population. This report, Carr-Hill argued, was at the Home Secretary's desk when the first 'Race Relations Act' was passed by James Callaghan, limiting the number of Commonwealth immigrants. Reporting the work of Hall et al. Carr-Hill further noted that in the 1970s, when there was a 'mugging' panic in London, the Daily Mail over-exaggerated the Metropolitan Police crime statistics, saying that victims were “reporting their assailants as black”. However, this was “because the Daily Mail had already told them that muggers were black” (Carr-Hill 2006).

Furthermore, social exclusion and the phenomenon of ‘non-mixed multiculturalism’ has often been encouraged by political figures. Examples include Enoch Powell's Rivers of Blood in 1968, and Margaret Thatcher's 'swamping' statement of 1978. There she noted: “People are really rather afraid that this country might be rather swamped by people with different cultures ... the British character has done so much for democracy, for law, and done so much throughout the world, that if there is any fear that it might be swamped, people are going to react and be rather hostile to those coming in” (Ohri 1988). The speech of Roy Hattersley about black immigrants is also relevant: “Integration without control is impossible, but control without integration is indefensible” (Ohri 1988).

## Policies and Legislation on Hate Crime: an International Approach

The European Union has always had at its heart the need to combat discrimination, partly for increased economic integration and partly because the union itself was borne out of the horrors of racial hatred and genocide experienced during the Second World War. But while the Treaties of the European Union safeguard and protect workers from discrimination based on their race and ethnicity there is a lack of legislation to tackle hate crime across the 25 member states. The UK's Commission for Racial Equality believes that the European Union fails to provide protection to

individuals against the more “ruthless expressions of racism and xenophobia”<sup>178[1]</sup>.

There is little consensus among the countries of the European Union when it comes to combating hate crime. Part of the problem is that there is no agreement of what is classified as a racist crime or incident. Robin Oakley says that “there is a real need for comprehensive training programmes to be put in place across Europe, which can provide a co-ordinated response to policing in this area” (Oakley 2005, 3). Police investigations across the territories often fail to pick up on racist elements in many crimes. Oakley suggests that there should be Europe wide legislation in this area that requires the police to record ‘racial motivation’ for crimes. This would allow the effective monitoring of policing statistics at European level and make it easier to identify examples of good practice.

Awareness of the data recording comparison problem in Europe has been identified by the Fundamental Rights Agency. The Agency carries on the work of the European Monitoring Centre on Racism and Xenophobia (EUMC) created by Council Regulation 1035/97, which was responsible for collecting and processing information on the extent, development, causes and effects of the problem within the European 25. But, in relation to the problem identified above, analysing and comparing the statistics is treacherous. Countries like the UK who have much higher levels of reported racist crimes are not necessarily the worst perpetrators. It just so happens that the UK has possibly the most comprehensive data collection system in Europe (EUMC 2006).

Within the European 25 the UK deals with hate crime comparatively well and this is largely to do with its multi agency approach to tackling the problem, which is the “key feature of state policy against racist violence” (Witte 1996) and is lacking in many other members of the European Union. The co-operation between the police and other agencies has long been recognised in the European Union, indeed it is enshrined in Article III-257 of the European Union Constitution that the Union should “combat crime, racism and xenophobia through measures of co-ordination and co-operation between police and judicial authorities and other competent authorities”.

The United Nations shares similar goals with the European Union, which include the securing of peace, the protection of human rights and the promotion of economic and social development. It too seeks to prevent racial discrimination in all its forms and promote multiculturalism. For instance its International Convention on the Elimination of All Forms of Racial Discrimination seeks to “encourage universal respect for and observance of human rights... without discrimination as to race, sex, language or

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<sup>178[1]</sup> [www.cre.gov.uk/default.aspx.locid-0hgnew0o2.Lang-EN.htm](http://www.cre.gov.uk/default.aspx.locid-0hgnew0o2.Lang-EN.htm)

religion”<sup>179</sup>. Specifically in terms of provisions to deal with what this book deems as hate crime, Article 14 of the Convention requires states to criminalise acts of violence or incitement to commit acts of violence against any race or group of persons of another colour or ethnic origin. Furthermore, Article 5 places a positive obligation upon the States by giving people “the right to security of person and protection by the State against violence or bodily harm”. The Convention also set up a Committee on the Elimination of Racial Discrimination under Article 8, the main function of which is advisory, based on the scrutiny of signatory states.

The fundamental difference between the two bodies is one of sovereignty, which affects their efficacy to take decisive steps to dealing with hate crime. Whilst the Member States of the European Union are lacking in uniform policies to specifically deal with hate crime, European Law is higher law. This means that European Union law has the power to affect great change within its jurisdiction enforceable by the European Court of Justice. All European Union Member States must also ratify the European Convention on Human Rights and Fundamental Freedoms and its body of jurisprudence which is enforced by European Court of Human Rights. Whilst the Articles of the Convention don't specifically guard against hate crime they nevertheless place a positive duty to prevent such crimes. The United Nations treaty on the other hand exists in the wider international sphere which makes fulfilling its aim under the aforementioned United Nations Convention more difficult because it relies on the good will of signatory states.

## IS RESTORATIVE JUSTICE A VIABLE OPTION FOR HATE CRIME?

To combat hate crime the whole community needs to be targeted by our strategies and policy. This can be seen as important when the Home Office noted that: “The views held by all kinds of perpetrators towards ethnic minorities are shared by the wider communities to which they belong” (Sibbit 1997).

This ‘wider perpetrator community’ as well as the young population that is exposed to hate crime philosophies are two groups that RJ has addressed successfully in the past. Moreover, the significance of the community as a ‘party’ in hate crime, suggests that RJ might indeed be well suited for a holistic approach. According to RJ's theories, the restorative norm has the philosophical potential to address sensitive and complex crimes.

Undoubtedly, victims of hate crime experience a range of effects that can have a long-lasting or sometimes life-lasting impact. These

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179 United Nations International Convention on the Elimination of All Forms of Racial Discrimination 1969

include fear, particularly of repeat attacks, anger, illness including depression and physical ailments, trauma in children, restrictions in lifestyle and substantial financial loss. Statistics have shown that for various reasons nine out of ten victims had not gone to court although three-quarters said that they would be prepared to give evidence if the perpetrator were prosecuted (Victim Support 2006). Research has also shown that victims are often keen to move beyond “victimhood” and take a role in supporting other victims or changing/ engaging their communities. Survivors also want to see action taken to tackle the root causes of hate crime. RJ processes empower victims and may give them the feeling of taking control of what has happened to them. In addition, even when a restorative meeting may fail to achieve its transformative purpose, an apology and meaningful remorse on behalf of the offender can have a significant impact on the victim and their family.

Restorative practices are founded upon the principles of inclusion, respect, mutual understanding and voluntary and honest dialogue. One could argue that these are core values, which, if ingrained in society, could render hate crime almost virtually impossible. Hence, bringing people face to face with their fears and biases may help dispel myths and stereotypes that underlie hate attitudes. It may also allow perpetrators to see victims as people. In fact, it could be argued that the RJ encounter is fundamental to building cross-cultural bridges and integration. Umbreit suggests that “the continuing movement toward adaptation of the restorative justice paradigm could be enhanced only if practitioners, advocates and policymakers become increasingly sensitive to and knowledgeable about cross-cultural issues and dynamics that impinge on the practice and on the very notion of justice” (Umbreit 2001, 66). However, the lack of legislative, policy and financial support for these services should make us wary and seek for concrete evidence before any recommendations are made.

In fact, many have argued that RJ might indeed not be the best alternative for serious offences including hate crime. For example, some have claimed that RJ practices, such as face-to-face mediation, could expose victims to further victimisation and trauma. In addition, the ability of hate crime perpetrators to engage in an honest dialogue has been questioned. After all, why would a racist criminal whose attitude towards others has been consistent suddenly agree to engage in an honest dialogue? Furthermore, what guarantees can RJ practitioners give to victims that their racist attackers will not hurt them further, or change their minds and retaliate?

As with sexual offenders, perpetrators of racist violence fall within a special category of criminological interest, where criminal behaviour and activity is examined as a phenomenon that is attributed to deep-rooted causes. Racist perpetrators might not be easily susceptible to rehabilitative and community-based

approaches, while victims may be exposed to further victimisation if brought in contact with them (irrespective of how remorseful the perpetrator may seem).

The reluctance on the part of victims and offenders to participate in restorative justice is also seen as another challenge. For instance, participation in victim-offender mediation requires that both parties are willing and able to participate in the process. Moreover, there is always a feeling of apprehensiveness for the victim when they are going to encounter the offender. This is particularly true if the offence is a hate crime since there is a specific intent to attack an individual because he or she belongs to a specific community.

A further difficulty with RJ in addressing hate crime is the concept of restoration of the *status quo ante*. Like tort law, RJ is concerned with restoring the parties to the *status quo ante* through restitution and payment i.e. the position they would have been in, had the crime not occurred. In cases that deal with property crime – or even some crimes against the person – this is attainable. But when it is concerning a hate crime, this may be more difficult. Prejudicial attitudes are deeply rooted within a person. Victim-offender mediation may not have the thrust of causing an offender of hate crime to experience remorse. In fact, it has been argued that in most cases, victim offender mediation will meet an arrangement that suits the vengeful victim and a middle-class mediator that will lead to ganging up on the young offender, exact the expected apology, and negotiate an agreement to pay back what she/ he has taken from the victim by deducting portions of his or her earnings from his or her minimum wage job. Therefore, it has been said that little social transformation is likely to arise from utilitarian transactions of this sort.

The additional challenge in dealing with hate crime is to start from a blank slate. This is almost impossible when the biases and prejudices of not just the victim and offender, but also the mediator are brought in the room. Therefore, it is argued that hate crime issues ought to be necessitated by an objective judge that keeps the parties detached from one another and also keeps the influences of biases to a bare minimum.

However, some RJ practitioners claim that they can balance, or counter, inequalities among the parties. Others have argued that instead of breaking down the barriers and prejudices that the offender and victim bring to the table, mediation practices are apt to compound pre-existing power and status differences even more systematically and seriously than formal judicial processes. Specifically in terms of hate crime, RJ practices may alienate both the victim, and offender in its attempts to bring community cohesion. They may alienate the victim in the sense that after the crime, community cohesion is not a 'live' prospect; they may also

alienate the offender for the same reason. It has been suggested, therefore, that RJ practices conceivably maybe more successful in dealing with hate crime if they were implemented post-imprisonment because at this point heightened emotions have somewhat subdued.

Additional criticism of the use of RJ with hate crime includes its limitation with dealing with cross-cultural orientations where decidedly different ideas of what is required for restoration continue to prevail. For instance, Umbreit (2001) argues that in multicultural society the cultural background of victims, offenders and mediators are often different which if not carefully handled “carries a risk of miscommunication, misunderstanding, or worst of all, re-victimisation”. Smith also argues that, “for RJ to work, a broad moral consensus must exist on what is good and bad conduct, on right and wrong” (Smith 1995, 157). So can a restorative justice process work if the parties involved have different conceptions of restoration, or typification of others? Whose idea of 'restoration' or 'person typification' should prevail? For example, if a conflict occurs within African-Caribbean communities, or African-American communities, restorative processes might seem appropriate, as these communities tend to share similar sense of what is required for relationships of social equality to exist - although 'within-group' culture dynamics should not be underestimated. But what if one of the parties is not African or Caribbean? Are the prospects of a successful restorative justice process lessened in the absence of a shared understanding of restoration?

A further challenge facing RJ in dealing with hate crime is the unlikelihood of inspiring moral reflection and development. “In theory, bringing the offender to the table to confront the victim face-to-face will enable him to realise the cost of his actions in human terms and to resolve to lead a better life” (Delgado 2000, 765). However, it is said that it is very unlikely that the offender will have a crisis of conscience upon meeting the person he or she has victimized in a hate crime. Most often hate crime is premeditated and is caused from long-lasting negative images of a particular group of people. A 45 minute meeting is unlikely to have a lasting effect if the offender is released to his or her neighbourhood immediately afterwards. Delgado claims that this example demonstrates that RJ may be apt to make an offender a better person, but lacks the long-lasting effect to inspire moral reflection (Delgado 2000).

Furthermore, it is said that RJ does not have the capacity to address public interest in the way criminal law would. “Mediation pays scant attention to the public interests in criminal punishment, particularly retribution” (Delgado 2000, 770). In particular, the symbolic element of a public trial is an opportunity for society to reiterate its deepest values; loss of that staged public event is a major concern. In a trial where an offender is indicted for a hate

crime offence, the community at large has a chance to express its deepest emotions either to the media or among their own communities in mutual dialogue. Yet, if this process is done behind closed doors in which there are sworn testimonies signed by the offender, victim and mediator there is minimal chance that it will have a significant impact in the community because it is personalized and kept in the dark. There is also less of an opportunity for public outcry surrounding a mediation dialogue than a public trial. Therefore, poor outlook for the hate crime to be benighted by the community at large. This paradox has more of a likelihood to occur in large cities such as London than smaller towns, villages or hamlets.

All in all, it is argued that the traditional criminal justice system aims at uniformity, employing a system of graded offences and sentencing guidelines designed to assure that similar cases are treated alike. The absence of a formal adjudication process is a gap that RJ practitioners must fill. However, at this moment there is no obvious metric because RJ practices have not been applied on a systematic level towards hate crime.

The weaknesses of the current criminal justice system are the theoretical strengths of RJ. Proponents of RJ claim that the new paradigm offers a balance between the needs and rights of both offenders and victims regardless of race, gender or religion. Essentially according to advocates of restorative practices, if the theoretical version of RJ is applied to hate crime it should bring about positive results. To understand this claim, the following section of this chapter will present the findings from Survey III. The presentation has been divided into two parts. The first will present case studies where RJ is used successfully to address hate crime in various countries and within different cultural contexts. The second will summarise the key findings and recommendations from the in-depth, face-to-face interviews with 22 practitioners from Britain.

## FINDINGS FROM SURVEY III: A HATE CRIME CASE STUDY

### **Case Studies from Around the World: Addressing Hate Crime through Restorative Justice**

#### **Case Study from Minnesota, US – Just Schools<sup>180</sup>**

In the town of Fairmont Minnesota, US, the suburbs were gradually being encroached upon by a larger metropolitan centre. Racial and ethnic tension started to arise when minorities exiting from the inner city sought new opportunities in the suburbs. There was resentment, fear, and hate that bubbled to the surface in the

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180 Taken from Coates, Umbreit & Vos 2006.

community; especially in the local high school. Black-Asian and minority high school students were called names and spat upon, attacked with baseball bats, and intimidated at school. In response to the attacks, the Fairmont school personnel mounted an awareness campaign, which included inviting speakers to come and give lectures on African-American history and the civil rights movement. However, these efforts had little impact. As a last resort, school officials invited the assistance of a county-based mediation team to implement restorative justice dialogue.

As part of the plan, letters went out to families of high school students that school personnel had identified. These letters invited families to participate in a pre-conference to explain the larger meeting and the guidelines to be followed; and to give them an opportunity to share their concerns and experiences with the racial conflicts.

By the time of the meeting, 150 people, who had each been prepared in a pre-conference, showed up to express their views. While the meeting was open to anyone who wanted to attend, the county mediators were confident that because of the large number of persons who had gone through a pre-conference, the group would hold itself accountable to the guidelines of the process such as being respectful and not interrupting. On the stage of the high school auditorium two mediators facilitated a group of 10 students, encouraging them to talk about their fears and experiences. One of the victims, a young black girl, spoke of the intimidation she felt when she was accosted in a darkened school hallway by three white boys. These males responded by telling her they had no intention of physically harming her, they were only trying to scare her. The girl's tears spoke clearly of their success. Another white youth, who had been expelled by the school administration, was allowed to express his side of the story. It became clear to many participants that racial conflict was fuelled by both whites and blacks. These were not isolated events; everyone in the school was a victim.

The students, teachers, and community were greatly helped by the restorative conference. Student representatives met with school personnel over the following days to help take steps towards reducing harassment. One of the major positive outcomes was that the administrators agreed that the first line of response to student conflict would be referral to peer mediators rather than investigation and expulsion. Restorative justice dialogue provided an outlet for the key stakeholders and successfully addressed a hate-driven situation that was spiralling out of control.

### Case Study from Israel<sup>181</sup> - Intercommunity Relations

In Israel and the occupied territories, there is a significant amount of mistrust and dislike between the resident Jewish and Arab populations. This case study involves two young Arab offenders who committed an armed robbery against a Jewish victim. The Jewish victim experienced the offence as hate crime and an act of terrorism.

The young perpetrators, Mohammed and Sami, were interrogated and detained in a juvenile facility for fifteen days. Afterward, they returned to their houses and were under partial house arrest, enabled only to attend school. A charge was brought against them for attempted robbery and conspiracy to commit felony. Mohammed's father had a heart attack after hearing the news of what his son had done. Sami's father was immensely embarrassed by this son's actions which he saw as a terrible injury to the honour of the family. Since the event, the victim, Sarah avoided passing through Arab villages. She left her job and other projects that deal with the Arab community; relations with Arab friends became strained due to the trauma she experienced.

Although the young offenders and their families expressed a strong desire and willingness to correct the damage they had done, the victim expressed her absolute reluctance towards any contact. The young offenders tried to contact her around the time of the crime, and in different ways they tried to convey their message of *sulha*<sup>182</sup> (forgiveness), as is customary in Arab culture. Failing this, the juvenile probation officer for the boys consulted with the Restorative Justice Unit of the Juvenile Probation Services to check out the possibility of mediation between the participants involved. Initially, Sarah expressed reluctance, but after a thorough explanation from the RJ team, she decided to go ahead with family group conferencing. This was attended by Sarah, her husband, her eleven year old son, her brother, and her social worker; Mohammed, his father, and his mother; Sami, his father and his brother; the juvenile probation officer for the case; and the case mediator. At the beginning, the atmosphere was filled with tension and suspicion. Sarah retold the events she had experienced. The boys and their parents listened carefully to her words. They then spoke about their involvement and accepted responsibility. Mohammed and Sami explained that they had no real intention of

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181 Taken from Umbreit and Ritter 2006.

182 In Israel, as in other Middle Eastern countries, traditional informal processes of restorative justice exist alongside the criminal justice system. The most commonly known is called *Sulha* (peacemaking). Today it is used much less than before the establishment of the state of Israel 58 years ago, yet it still prevails among the Arab, Druze and Bedouin minorities. *Sulha* is used in cases as simple as small disputes, as well as in the most difficult criminal offences, such as murder or severe corporal damage. In severe cases, *Sulha* is put into motion to prevent a blood feud. [www.realjustice.org/library/beth06\\_goldstein.html](http://www.realjustice.org/library/beth06_goldstein.html)

physically hurting Sarah. They expressed sorrow and deep regret for their deeds and explained that they had not considered the difficult consequences of their actions. When they heard Sarah's words, they understood the serious implications of their actions.

The atmosphere allowed the parties to speak directly about the injuries to parent-child relationships, education, and neighbourly relations between Jews and Arabs. During the process Sarah and her family expressed understanding and compassion toward the boys and their families, even a will to affect their lives in a positive way. For Sarah, the retelling of the story allowed her to vent her feelings of anger and fear, and this was actually part of the process of healing. The mediation process fulfilled her need to be in a safe place, emotionally and physically, without feeling judgmental or guilty. For the boys and their families, this meeting fulfilled the need to live in a society without social and cultural injustice, to distance the boys from the criminal subculture, and to reintegrate them into the community by renewing trust in their place in society.

The meeting ended with a settlement written by the participants, which was later accepted by the juvenile court in lieu of a conviction. At the end of the mediation session, which lasted three and a half hours, all the participants expressed feelings of satisfaction and relief that the process had given them, allowing them to bridge the conflict, hurt feelings, and thoughts that had disturbed them. The impact of restorative justice dialogue offers a glimmer of hope to serve as a bridge toward greater understanding and tolerance among all diverse populations in the region.

### **Case Study from London, England – Southwark Mediation Centre**

The hate crime project at the Southwark Mediation Centre in London, UK is a community-based RJ project, which uses a multi-agency approach to the rising levels of hate crime in the community. The project trains and empowers community members to address issues of anti-social behaviour and crime in partnership with the education authority, the police and local and national Government agencies. It provides a conflict resolution service that works in partnership with enforcement agencies. It is a service which is accessible to all members of the community in order to resolve conflicts, reduce aggressive behaviour and assist the community to improve their quality of life, enabling them to feel safer; by reducing crime and the fear of crime. It enables those who are involved in anti-social behaviour and crime, take responsibility for their actions so that victims feel the conflict has been dealt with in a constructive way.

Cases are either referred to the mediator by another agency (police, local housing association etc), or are self-referred. Originally, the project was funded by the Home Office, and then by

the Local Authority and other independent funding. This will soon come to an end, and the mediation service will be challenged.

A 2003 evaluation of the project by Goldsmith University showed that it reduces incidents of repeat victimisation from 1 in 12 to 1 in 4. The project was also included as a best practice example in the 2004 Runnymede Trust "Preventing Racist Violence" handbook and the 2005 Office of the Deputy Prime Minister Toolkit on hate crimes.

Parents who experienced racial harassment and attended the project commented: "Nobody could deal with this issue until you came along. Now the children are talking. My children can come out now and play without being harassed. The young people are even waving hello rather than hauling abuse ... the constant feedback over the phone (from the mediators) was very helpful ..." (Southwark Mediation Centre 2006).

#### **Case Study from London – The Metropolitan Police Authority London-Wide Race Hate Crime Forum**

The MPA London-Wide Race Hate Crime Forum (LWRHCF) is one of the most prominent multi agency partnerships that addresses hate crime. Members include: the Metropolitan Police Service, the Crown Prosecution Service, Government Office for London, the London Probation Service, the Greater London Authority and the Commission for Racial Equality, but also voluntary and community sector organisations such as ROTA. One of the targets of this partnership is to tackle the gaps in the "co-operation, sharing of information and learning between agencies" as highlighted by the Stephen Lawrence enquiry (Macpherson 1999). The inquiry noted that such co-operation could generate trust and confidence of policing among BAME communities.

The Forum also aims to reduce and prevent the occurrence of race hate crime, promote a consistent service and instil confidence in its victims who report the crimes. Its work has centred on the London boroughs with the highest levels of recorded racist incidents. Each of these boroughs then makes a presentation to the Forum, which aims to highlight any good practices. A report by the Runnymede Trust praises this initiative's sharing of good practice across London boroughs as a particularly strong element of the project (Isal 2005, 36).

Evaluation that was commissioned from Essex University showed that four year after its creation, the Forum remains one of the best models of good practice for third-tier multi-agency partnerships against race hate crime in Europe. However, a number of challenges were highlighted which if not addressed could lead to the demise of the partnership. The members from the VCS although keen to support the work of the Forum were not

provided with support and proper resources to do so. As it is common in the third sector, organisations are understaffed and under-resourced and hence they have to prioritise what they are usually being directly funded to do. The Forum itself is said to face its own funding challenges, and its future is uncertain considering that there has not been any commitment to support it.

### **Case Study from Oregon, US – Post September 11th Hate Crime**

This case study concerns an incident that took place when an individual twice phoned the Islamic Cultural Centre in Eugene, Oregon, US proclaiming death on the Muslim community in retaliation for the September 11th terrorist attacks.

The police were able to trace the call and arrested the individual. The man who first received the messages at the Islamic Cultural Centre, Mr. Adi, feared for his and his family's safety and thus a police officer was assigned to protect them. The police officer looked after the family's wellbeing, opened their mail, and routinely checked their car for suspicious activity. In the wake of the attacks, Mrs. Adi gave up wearing her traditional head scarf, and her daughter was harassed by a boy who claimed all Muslims should be shot.

After negotiations with the police, the offender indicated a desire to apologize for his actions and make amends. The prosecuting attorney, who had previous experience with the Community Accountability Board that operated in the offender's neighbourhood, initiated efforts to seek a mediated dialogue. Three mediators first met with the offender. He acknowledged that he had been enraged by the pictures and stories of the Twin Towers attack and had made the threatening phone calls to scare the Muslim leader. After the calls, he claimed that he was mortified by his actions and wanted to restore what was done. A week later, the mediators met with Adis who had expressed interest in meeting the individual who had upset their lives. In addition to wanting to know why the man had committed the hateful act, they voiced concern for the pain caused to the entire Muslim community.

Soon thereafter, the Adis met the offender face-to-face. The Adis wanted the dialogue to take place in a public way in order to educate and promote healing across the broader community. In addition to the mediators, over 20 persons were present representing the community and the justice system. The meeting lasted for roughly two and a half hours, in which the offender made an apology followed by an attempt to explain his emotions and his ongoing anger issues. The Adis asked questions about why the offender had made the calls; and pointed out that death threats in Middle Eastern culture are very serious. Throughout the meeting, Mr. Adi was aware that the offender never made eye contact with him. Community participants expressed sympathy for the Adis and

made clear their willingness to help hold the offender accountable while supporting his efforts to change. Tension prevailed at the meeting's conclusion. Although the Adis remained unsatisfied with the offender's level of candour, they agreed to carry out the initial plan of meeting a second time. Mr. Adi believed there was still potential for healing.

During a debriefing, a mediator learned that the offender had felt "overwhelmed" by the District Attorney's presence, and under extreme pressure to provide the right response. Also, the offender said that he had been deeply offended by a community member's comment that he wasn't fit to raise children. What people did not know is that the man had lost a baby son. His grief remained turbulent and he had experienced bouts of depression. Therefore, the mediator encouraged him to share his story at the next dialogue session.

The second meeting began with the Adis asking their questions. They received clear assurance that the man would never commit the act again. Community members detailed the ongoing impact of the crime on the larger community. Further, the offender informed the group of his counselling progress and of his new job. He also spoke directly about his own loss of his baby son. Sharing that grief developed a connection with the victims, and the man became more humane and genuine. After a series of additional questions, Mr. Adi was satisfied with the progress, and explained that they were ready to move forward. At the Adis' request, the offender agreed to make a public apology. If that action jeopardized the man's job, Mr. Adi was prepared to speak to the man's employer. The Adis also wanted the offender to attend two upcoming lectures on Islam. He was also encouraged to cooperate with news coverage of the case, continue his counselling, and speak about his experience to teens at a juvenile detention centre. As the meeting ended, Mr. Adi reached across the table and shook the man's hand.

The offender's apology letter to the Adis and the Muslim community appeared on the editorial page of the Register-Guardian on November 18th. A front page story also appeared covering the Adi's story. After attending the first two lectures on Islam, the offender decided to attend more. In this case, RJ served to humanize both the victim and the offender. If the man was punitively sanctioned, it is unlikely that there would have been an understanding as to why the crime happened. The community, the offender, and the victim were satisfied by the use of restorative justice to address the initial hate crime

### **Case Study from Slough, England – Aik Saath**

Following racial tensions between Sikh and Muslim communities in the mid-1990s in Slough, the local council set up a project whereby a mediator/ peacemaker brought the perpetrators together for mediation or conflict resolution sessions. This led to the setting up of Aik Saath, a programme that provides conflict resolution training for young people through peer education. The project aims to promote racial harmony and encourage young people to understand each other in a positive way.

Referrals are usually achieved through a variety of agencies including schools, youth offending teams and youth clubs. These involve groups of young people among whom conflict is identified as a problem. Sometimes the requests come from the young people themselves who have seen the Aik Saath in action through films and fliers. The project is based in the locality and hence young people who watch the informative films can identify with the locations, with the characters in the film as well as with the conflict.

The outcome of their work can be best appreciated in an anecdotal rather than a purely quantitative way. There are clear signs of changes in attitudes by some young people after just a few weeks of working with the organisation. Monitoring comes in the form of a questionnaire given to young people, asking what the sessions do for them. The project is funded by the Big Lottery Fund, but faces serious capacity issues and core funding challenges.

### **Case Study from Southwark, England – Police, Partners and Community Together in Southwark (PPACTS)**

PPACTS was set up as a Targeted Policing Initiative to look at innovative policing. It is a multi-agency partnership of both statutory and voluntary organisations with the aim of reducing racist and homophobic crime and incidents in a particular area of Southwark that had been identified by the police as a hotspot. This project brought together the local Police Force, Victim Support, a Youth Project from the area and various local mediation services that were offered by community-based organisations.

The project used both a problem-solving and a partnership model to tackle racism and homophobia in the area. The partnership model involved taking time to build strong linkages between different agencies and the Black-Asian and minority communities in the area. The problem-solving approach involved asking all partners in the project to look at what they could do in relation to three intervention strands: supporting the victims, dealing with the perpetrators and impacting on the location.

This approach allowed for the different agencies involved to share intelligence and examine the incidents in a wider context. For

example, the project found that the young people it engaged with, in response to their racist attitudes, were already known to the police for other non-racially motivated crimes and anti-social behaviour. Such information was vital in successfully working with the perpetrators. Also, such open support for victims of racist violence and harassment and their families, in a particular setting, acted as a deterrent to perpetrators and potential offenders.

Following this project, the Police recorded a large reduction of racist incidents in the area. Although these figures are always treated with caution, community intelligence developed by the partnership model pointed to the conclusion that there had been a tangible reduction in incidents. The project received Demonstration Status from the Home Office, a sign that this was an example of good practice that should be replicated in other settings.

### **Case Study from Lambeth, England – Restorative Approaches in Schools Project**

The Restorative Approaches in Schools is designed to introduce and support the introduction of restorative approaches into Lambeth Schools. This has evolved from the evidence of the Youth Justice Board evaluation of RJ in schools.

The project works in three key ways:

1. To train members of the school community in restorative approaches to help reduce or minimise conflict in the school community.
2. The RJ in Schools Co-ordinator works with schools responding to a particular conflict situation.
3. To work with various partners at Local Authority level to develop a restorative approach across the authority.

The project uses a range of restorative approaches, including Peer Mediation, staff mediation and the restorative conference in schools, to help reduce bullying and conflict. The main aim of restorative approaches is to develop systems that focus on the inter-personal and social network damage that occurs when bullying takes place. This has meant facilitating a number of meetings in a restorative way to support pupils, parents and staff when in conflict. The role has meant working with Police, Youth Offending Team's Educational psychologists, Education consultants and advisors, voluntary organisations and Health specialists.

In their submission to the House of Commons Select Committee on Education and Skills the Project noted: "The nature of racist bullying has moved on from white to black bullying as was prevalent with the influx of Caribbean's, it is worth mentioning at this point that a lot of parents in Lambeth still carry the scares of

racist bullying from their own time in school and schools that do not recognise this can inflame a already volatile situation. Racist bullying in a diverse borough such as Lambeth, often falls on the latest emigrant group such as Eastern Europeans, or groups that have remained closed for example the Somali groups in Lambeth are often seen as distinct from other African groups” (Roberts 2006).

The Government's policy on bullying has focused on exclusion as the means of addressing this type of behaviour in schools. With the introduction of the *Every Child Matters* agenda, both local authorities and schools have consequently had to implement a holistic approach to support both victim and bully, as well as inquiring into the underlying causes of the situation. Unlike the Youth Justice Board, the DfES has not formally endorsed restorative justice as a means of supporting pupils in conflict. A document from the DfES, offering guidance on restorative approaches (and the models which could be implemented in schools with case studies) is necessary to give schools support.

## Findings and Recommendations from the Wieldwork

### **Hate Offences and Violence: a Special Category of Anti-social Behaviour**

- Hate crime falls within a special category of criminological interest due to the complex sociological, psychological, biological and economic reasons that create it. Its impact on victims and the community, and the methods that are employed to address it make it distinct to other types of crime.
- Hate crime has appeared relatively late on the policy agenda, and then onto the agenda of various statutory agencies, and it is not until recently that criminologists started to seriously think about the definitional issues surrounding it. Its definitional ambiguity has led to inconsistency in public policy and judicial decisions. Research on hate crime is relatively underdeveloped and the way it is being recorded needs to be improved. Further research needs to be carried out in relation to potential perpetrators. For instance, no information exists on race-related violence between different Black, Asian and minority ethnic (BAME) communities or the hostility directed towards recently arrived migrants and asylum-seekers. Legislation deals with hate crime on a piecemeal basis and existing policies do not appear to be linked-up.

*“There are definitional problems around hate crime because of the way they are reported. Someone ringing the police who has experienced many incidents will only report the last incident and not the whole catalogue of incidents. This is a problem evidentially for the CPS when building a case”[interview, RJ practitioner 2007].*

*“The reality is that in the community the breeding ground for hate crime, a community that is suffering from high levels of deprivation, with little integration, any of those communities could be a breeding ground for hate crime” (interview, RJ practitioner, 2007)*

*“Firstly its around having better definitions that are more focused on a common understanding; definitions can be so specific – the Macpherson definition is so simple. Also, how do particular groups that are suffering from hate crime – faith etc..., have their views validated within the systems that are supposed to be supporting them. Are there institutional prejudices? Are the processes being victim led? With any of the groups are they aware of what support is on offer and do they determine what is the best route?” (Interview, RJ practitioner 2007)*

- Recent UK reports show that the criminal justice system often fails victims of hate crime, while statutory criminal justice agencies are usually faced with unfamiliar questions.

*What we do know is that hate crime is grossly underreported. We need to support the wider community to ensure that they report hate crime, that they understand what a hate crime is and that when it is recorded that something will happen, they will get what they seek, that the statutory agencies will conduct their duties properly, and also to promote what they do in terms of the learning, and equally the specific good practice that they have adopted is shared with the community.*

### **Using Restorative Justice to Address Hate Crime**

- Criminal justice practitioners and victim support workers are keen to explore the prospects of restorative justice with more serious crimes such as hate crime to complement existing methodologies

*“I certainly would recommend restorative justice in dealing with and challenging hate crime; the only reservation I would have is that if RJ really needs to be put in place, it must be one of the considerations/options at the very beginning – it needs to be at the start of what has customarily been termed ‘low level offending’. I think what you lose if it’s not considered at the earliest opportunity is the potential engagement of the victims who may have sustained a number of incidents of hate crime, then to be offered RJ or mediation may not want to engage because of the number of experiences that they have had. ... The challenge would be to integrate restorative practices into day to day existence and keep them targeted as a way that may challenge individual cultural differences. To mainstream RJ would be the best option. But that would be a significant challenge. We could look at education as a longer term solution – school curriculum from an early age” (interview, policymaker 2007)*

- However, little legislative or political support has been given for the use of restorative practices with hate crime cases. There are fears that its practices could expose victims to further victimisation and trauma. The ability of hate crime perpetrators to engage in an honest dialogue has also been questioned. The reluctance on the part of victims and offenders to participate in restorative justice is also seen as another challenge, while there may be limitations with dealing with cross-cultural orientations where decidedly different ideas of what is required for restoration continue to prevail. The unlikelihood of inspiring moral reflection and development is also considered problematic as well as the fact that restorative justice may not have the capacity to address public interest in the way criminal law would.

*Restorative justice is relatively new; the challenge would be having it accepted as a response – we need to convince people it is an appropriate response. RJ is a bit limited but aspects of RJ approaches are spreading in schools and mainstream justice system – victim impact statements, more serious crimes have impact statement. A lot of projects in council are keen to use RJ especially with young people (interview, practitioner 2007)*

- This paper identifies a number of case studies which portray a framework within which hate crime was addressed successfully in a restorative justice way. The majority of these success stories come from the community and are implemented by voluntary and community sector organisations. Most often they are practised in the shadow of the law and without the support of statutory agencies. Evaluation has shown that they do work and that when partnerships are formed between mainstream criminal justice agencies and community groups the results are even more encouraging.

*What we need to do is engage more with the voluntary and community sector organisations. We do need to make sure that we have regular input from the community perspective. If we only take the point of view of the statutory perspectives, statutory organisations do not want to be seen to be missing out and not performing their duties effectively. Whilst many of them will have in place a number of strategic objectives and aims, policies and processes, what we're experiencing through our process of scrutiny, on many occasions those process aren't joined up sufficiently. What helps us in our processes of scrutiny is our contact with voluntary and community based organisations – that's our reality check (interview, policy maker 2007)*

- With particular reference to restorative justice programmes run by community organisations that focus on young people, both in and outside schools and other educational institutions, the effects can be life changing, targeting directly the root of the biases that lead to hate crime.

*“Schools are a microcosm of society... RJ in schools is about getting people into a room to find out what happened and resolve the situation, and what has happened to their relationships; this gradually has an impact on their educational chances. School’s ultimate sanction is to exclude someone, but that person could still be waiting at the school gates and so it becomes a matter for the police etc... but schools won’t know of that external issue. Schools’ using their ultimate sanction it won’t be enough. The fantastic thing about RJ is that it looks at the inter dependencies that happen when conflict occurs. It looks at what is the emotional impact, impact on families, impact on community or wider community – anyone who has an interest in the conflict. One of the key processes is that the conflict is about learning rather than something to be avoided. You want a learning outcome (interview, RJ practitioner 2007).*

- The various types of intervention (mainstream or other) that play a role in preventing hate crime come from a variety of sources. Guidance is needed in order to link their work effectively, adopting a multi-agency approach. Some models of effective partnership between public, private and voluntary organisations have been identified in this paper. Guidance is needed on forging, building and maintaining successful cross-sector, and inter-agency partnerships to address hate crime. Emphasis should also be given on increasing awareness about existing restorative justice schemes addressing hate crime.

*A major challenge is where organisations do not join up their work effectively and do not engage appropriately with community based organisations that have the expertise and knowledge of various community groups and have an awareness of what their needs are – we are missing a huge opportunity to ensure that we are not only engaging and sharing that learning that with the wider community – so that it improves understanding and improves issues of community cohesion and reassurance, but we as statutory agencies aren’t able to put in place the requirements in order for us to meet our statutory duty. One of the things that we are experiencing is that there is lack of joined up working and where there are joined up strategies, what we tend to find that there is less of an issue within the community, and if there are issues, because there is an awareness of how seriously information is regarded then there’s a belief that things will be done, but where that isn’t there we lose out on a lot of information gathering opportunities. People don’t believe that things will be done and that things aren’t taken seriously (interview, policy maker 2007).*

*The third challenge would be in ensuring that there is sufficient training for those that are involved in the criminal justice process so that they know specifically what role they play and what contribution they make in addressing issues of hate crime in our community (interview, policy maker 2007).*

- Funding for work to bring about attitude change should be long-term as the government supports for the voluntary and community sector, in order to allow for the change in attitudes to take root. Restorative justice does not offer quick-fix solutions. It is a long-term process which can gradually lead to healing and restoration. Successful intervention projects, therefore, should be able to access ongoing funding beyond the short term. A firm political commitment is needed to direct work and policy more explicitly towards prevention and long-term solutions that heal the victim and the community and educate offenders.

“Working with the voluntary sector is generally considered alien. The voluntary sector is misunderstood, and because of a lack of funds there is difficulty in publishing work and findings” (interview, RJ practitioner 2007)

*“The current challenge is the continuation of the forum, another would be to explore the other areas of hate crime – our capacity to do so at the moment is fairly limited to race and faith hate crime – the other areas of hate crime has to come on board, without losing the specificity of what’s there now. The third challenge would be in ensuring that there is sufficient training for those that are involved in the criminal justice process so that they know specifically what role they play and what contribution they make in addressing issues of hate crime in our community” (interview, practitioner 2007)*

## CONCLUDING REMARKS

To win the battle against hate crime and its consequences there must be a break down of the stereotypes, attitudes and world views that foster it in the first place. This battle is being fought on a daily basis within schools, places of worship, families, person-to-person relationships and voluntary and community organisations. The criminal justice system has set up mechanisms to facilitate this fight but its limited retributive and punitive approach does not encourage the process of dialogue which appears to be one of the means for combating hate crime. Restorative justice is one form of this dialogue.

Evidence from the in-depth face to face interviews with practitioners from the UK as well as findings from international desk research indicate that when properly applied RJ can successfully address hate offences. The chapter reinforces the findings of Survey I and II by identifying factors that encourage a gap between RJ’s potential and its actual implementation through policy and practice. Misunderstanding, lack of funding, mistrust in the voluntary sector, training, lack of coordination and competitiveness were some of the reasons that were mentioned by the participants of Survey III.

As one interviewee put it: *“If RJ is going to be rolled out then there has to be a very clear idea of what its practice is and how it is going to be evaluated and the qualitative elements”*. Someone else said: *“Views need changing. For many cases its about challenging people’s prejudice which can be done better through RJ. Increasing people’s understanding and making people aware of the successes will help them realise that RJ is a soft option”*. Finally, as one policy maker put it: *“Hate crime is not about colour, it’s about diversity in it’s biggest capacity – there will always be hate crime of some description. The further we can get to mainstreaming RJ will help understand our differences, engage with each other and realise that we are not a threat to each other. RJ can allay fears and concerns and reduce them as much as possible”*.

## RESTORATIVE JUSTICE AND SEXUAL OFFENDING: RESOLVING THE CATHOLIC CHURCH’S SEXUAL SCANDALS THROUGH RESTORATIVE JUSTICE

Dr. Theo Gavrielides and Dale Coker

The fourth survey of this book looked into the use of RJ with sexual offending cases. Similarly with hate crime offences, sexual offences constitute another grey area of RJ policy and practice. Despite strong theoretical positions on RJ’s potential in dealing with these cases, strong opposition exists on behalf of public bodies and victim support groups. An apparent gap between the RJ theory and practice is therefore created. The strong retributive culture in which RJ is implemented, lack of funding, inadequate training, mistrust in the voluntary sector, fear of re-victimisation and lack of understanding were some of the reasons that were recorded by Survey I, II and III.

This Chapter will provide complementary evidence to test these findings by looking at the use of RJ with the sexual offending cases that occurred within the Catholic Church. The impact of these scandals has been devastating. They have destroyed many relationships once held to be sacred, disillusioned some of the faithful, and bankrupted many parishes. In the US, the Washington Post reported that Boston area priests have been concerned about the decline in church attendance and the plight of disillusioned Catholics for some time, and the scandals seem to have driven away even more parishioners (McGrory 2004). The violation of the sacrosanct relationship between priest and youth, or priest and the laity, has helped to undermine a rapport that once embodied ultimate trust.

On the other hand, many victims of these cases, unable to ease their minds, have wrestled for years with depression and drug abuse with some of them choosing suicide as the best way out of

their pain (Florida Times-Union 5/13/88; Chicago 8/7/97). Others responded to the harm that was done to them by repeating it against others, contributing in this way to the ever-rising numbers of incarcerated criminals (Johnson 5/15/2002; US Congress 1984).

The exodus from the Church has wrought serious practical, financial consequences too. Only between January 2001 and December 2002, the Archdiocese of Boston faced more than 500 lawsuits. The Archdiocese paid out over US \$40m. Some Catholic dioceses are now on the verge of bankruptcy due to settlement claims and legal fees (Paulson 1/30/2003). Moreover, both the criminal as well as the civil court systems have devoted a great amount of their resources to resolving these cases. Many state officials and private bodies (insurance companies, law firms and real estate agents) have also become embroiled in the controversies. Despite these never-ending court cases, there has not been an appropriate emotional or psychological aid for many victims, whose real concerns and fears have yet to be addressed. Devoted church leaders who have sought the best path towards forgiveness and reconciliation have succeeded only marginally.

The Chapter will argue that with regard to the sex abuse crisis, the Roman Catholic Church has moved through two identifiable phases and may be entering a third. The first stage included the series of hidden crimes and their cover-up by the hierarchy. The second began with the entrée of traditional criminal justice investigation in specific cases. As the results of these punitive procedures focus on monetary compensation rather than psychological and emotional restoration other alternatives are being sought. More importantly, having been forced to accept responsibility publicly, the Catholic Church may be entering a phase of open dialogue and constructive shaming. This leaves open the door for restorative justice.

The findings of this Chapter are based on international desk research and fieldwork. The fieldwork was carried out in 2006-7 and involved interviews and discussions with practitioners and policy makers from different parts of the world. The chapter will provide an account of different international restorative programmes and research projects that have been implemented within the context of sexual offending. In particular, the first section of the paper will provide a brief account of the first two identifiable phases through which the Catholic Church has moved with regard to the sex abuse crisis. This descriptive account will be achieved by providing a case digest of some of the most important litigation processes that have dealt with these events. This case history will also establish the platform for a discussion about the critical matters that these methodologies failed to address, but constitute sine qua non ingredients of the notion of justice and equity. Then the second section of the paper will explain how the principles and practice of restorative justice may be engaged in disentangling this

crisis. Finally, the third section will provide three examples where restorative justice was used within the context of sexual offending and rendered positive results for all its targeted audiences: victims, offenders and the community. All in all, the chapter aims to provide evidence to address the myth about RJ's inappropriateness with serious crimes and especially sexual offences. As it will become apparent, this myth is the result of the gap between RJ's theoretical proclamations and empirical application. The chapter will conclude that although RJ is not a panacea, when applied according to its core principles (e.g. voluntariness, confidentiality, empowerment), the theoretical promises can successfully be realised. However, to bridge the gap, there needs to be an acknowledgement of the problems that this book identifies and conscious steps will need to be taken to address them.

## SEXUAL SCANDALS IN THE CATHOLIC CHURCH: A CASE DIGEST

The majority of sexual offending cases that occurred within the Catholic Church have been dealt with either through criminal or civil court proceedings. The limited scope of this paper does not allow a detailed account of all the cases that have so far been processed through the traditional justice system. Therefore, a selection of these cases will be attempted with the sole objective of providing a clear understanding as to what exactly happened and what the response has been so far.

### The Case of Gilbert Gauthé

The first well-known American case in the 1980's was that of Louisiana-based Catholic priest Gilbert Gauthé. Church authorities transferred the priest from parish<sup>183</sup> to parish, where he sexually abused minors repeatedly despite hierarchs' awareness of his reprobate behavior. Angry parents eventually brought Gauthé and the Church to trial and after tremendous pressure, the Diocese of Lafayette, Louisiana removed Gauthé from his ministry in 1983.

In 1985, local courts sentenced Gauthé to 20 years in prison, but he was released after 10 years. He was later arrested in Texas on charges of fondling a 3-year old boy and was finally re-released from prison again in 2000 (Paulson 6/12/2002). Catholic scholar William Jenkins writes: "The Gauthé case also established the precedent that such failure to intervene should result in financial penalties, payment for therapy for the victims and compensatory damages for their families. Following Gauthé's conviction in 1985, a group of concerned clergy and laity submitted a confidential report on abuse to the Catholic hierarchy. This document warned of the need to take urgent action in the face of such scandals, and

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183 An administrative part of a diocese that has its own church in Anglican, Roman Catholic, and some other churches.

suggested that legal liability payments could run into billions of dollars. It also warned that the Church could no longer rely on the friendship and sympathy of Catholic politicians, judges, and professionals within the criminal justice system..." (Jenkins 1989).

The Gauthé case put both Catholic clergy and the U.S. judicial system on alert, but the American public had only captured a glimpse of the iceberg. News reports coupled with a television drama about Gauthé's molestation of children stirred some public concern. But neither the Church ecclesiastical authorities nor the judicial system found an effective, efficient way to resolve the problem. Rather, both moved Gauthé around although the victims' parents certainly favored incarceration. Loss of faith in the church hierarchy and cynicism about the defrocked cleric's movement through the prison system beleaguered some parents. The hierarchy could have invited the laity to discuss the scandals openly before they hit the courts. This might have salvaged some faith in the hierarchs' ability to lead and also prevented such a grand loss of faith. Such sensitive issues as sexual abuse should have been handled in more sensitive ways.

#### The Case of Bruce Ritter and Covenant House

Notwithstanding these 'prophetic' legal warnings, the disgraces in the U.S. Church progressed unabated. Priests were charged with over 40 cases of sexual abuse between 1985 and 1987 (Paulson 6/12/2002). These tensions culminated in an attack on the management of New York City-based Covenant House, a world-renown shelter for adolescent runaways. Former House residents claimed that the priest director – Father Bruce Ritter - had seduced them and offered money and favors in exchange. The risk-consulting firm Kroll investigated the allegations against Father Ritter and found evidence against the priest. "The Report further states that, even if one were to accept Father Ritter's explanation of events, the same conclusion [the termination of Father Ritter's relationship with Covenant House] would have been justified solely on the basis that Father Ritter exercised unacceptably poor judgment in his relations with certain residents" (Denny Hatch Associates 8/19/2004).

Financial improprieties underscored the severity of the sexual ones. Father Ritter had established a charitable trust to which Covenant House paid US \$60,000 annually. The Trust made loans to two Covenant House Directors, Father Ritter's sister, and one former House resident. Covenant House also made direct loans to Father Ritter and two other senior staff members. These loans were viewed with suspicion. Ritter eventually resigned from his post, and his accusers did not pursue him with any publicly visible vengeance. The allegations and subsequent departure of Ritter almost destroyed Covenant House. Although Ritter's main accuser did not prosecute, Ritter's reputation declined along with that of

Covenant House. Both mediation and Ritter's resignation might have helped mitigate Covenant House's decline, especially if such procedures had started before the case went public.

### The Archdiocese of Chicago's Reaction

This ongoing turmoil led some North American dioceses to take pre-emptive action. In the wake of its own sexual scandals in the early 1990's, the Archdiocese of Chicago decided to employ social science methodology to grasp the extent of the crisis. The Archdiocese opened the records of 2,252 priests who had served there over a 40-year period. Statistically, less than 2% had been accused of sexual misconduct with a minor. Amongst those, there was one paedophile (Burger and Jean Lopez 5/7/2002). The Archdiocese was able to route out some potentially problematic priests and also see that the crisis did not entail a large number of clergy. However, the Biblical adage about one sin blotting out many good deeds should not have gone unheeded. Offering a balm to the devout in Chicago necessitated an open dialogue that could have reassured troubled parishioners.

### The Case of James R. Porter

Bad publicity turned nightmarish when the public spotlight was cast onto the macabre case of Father James R. Porter. Starting in the 1960's, Porter had molested 125 children of both sexes in 5 different states. Repeated accusations and even confessions from Porter did not rouse Catholic leaders to dismiss the priest, rather various hierarchs transferred Porter around the country.

Rev. Porter gained a reputation for adoring children in his first parish, St. Mary's Church in North Attleboro, Massachusetts. He spent a great deal of time and money doting on the children, but soon dozens of accusations against him started to mount. Testimony later revealed that his fellow parish priest, Fr. Armando Annunziato, discovered Porter sodomizing young John Robitaille but simply left the room and did not intervene. Nor did Annunziato interfere in later attacks either. Fall River Diocesan Bishop James Connolly reassured St. Mary's parishioners that Porter would be placed in counselling but in fact sent the priest home to his parents to contemplate and pray for the forgiveness of his sins.

According to Michael Newton, Monsignor Humberto Medeiros and Bishop Connolly knew that Porter had molested over 30 children during his years at St. Mary's but did nothing to prevent this from happening again. However, the State police in New Hampshire finally arrested Porter for molesting a 13-year old boy. The Church asked the State Police to escort Porter to the Massachusetts border, where officers set him free. "Bishop Connolly, for his part, made a note in Porter's file that the latest

victim was non-Catholic, suggesting that Church influence might be unable to bury the case” (Newton 8/20/2004).

The Church saw fit to send Porter to Wiswall Hospital in Wellesley, Massachusetts for 13 months of psychotherapy and electro convulsive shock treatments. Porter avowed substantial improvements and was again reassigned to parish duties, this time at Sacred Heart Church in New Bedford, Massachusetts. Church officials warned the resident priests of Porter’s tendencies, but no special precautions were taken. As a result, complaints began to roll in again.

This cycle continued. Bishop Connolly sent Porter home once more, where he got involved with a local parish and started molesting children all over again. The Church finally sent Fr. Porter to New Mexico to spend time with the Catholic Order whose mission was to cure priests of diverse forms of psychological brokenness, the Servants of the Paraclete. Upon graduation from the Paraclete programme, Porter served in a New Mexico Church and committed the same infractions against children. Shuffled off to Houston, Texas, the priest was still not able to break his destructive habits. He returned to New Mexico to commit even more offences and was consequentially brought back to the Servants of the Paraclete. The Order ‘graduated’ Porter for a second time and sent him to serve at St. Philip’s Parish in Bemidji, Minnesota. A bill of good health accompanied him, stating that, “During the throes of his illness [a nervous breakdown] he [Porter] did have some moral problems which were, from all appearances, the results of his illness, something for which he was not responsible. Now, having recovered, he gives every sign of having the former problems under control” (Newton 8/20/2004). Porter allegedly abused another 24 Minnesota children, including a night of serial attacks at a farmhouse sleepover party. The Bemidji parish leaders promptly sent Porter back to the Paracletes, where a therapist finally recommended that Porter leave the priesthood. James Porter waited another 3 years before submitting his resignation to the Vatican. After leaving the priesthood and settling in Minnesota, Porter married and fathered four children. But the sickness that gripped him did not desist. He continued to molest neighbourhood boys and in due course assaulted his children’s babysitter and her sister.

Stirred to try to understand his own confusing sexual feelings, one of Porter’s victims – Frank Fitzpatrick – uncovered a past that led back to abuse by the priest. Fitzpatrick’s skill as a private detective assisted him in gathering evidence and rallying other victims in a developing legal case against Father Porter. Television stints in Boston and on ‘Prime Time Live’ with Diane Sawyer drew more victims into the fold against Porter. A total of 222 victims alleged sexual abuse, with 97 filing civil or criminal complaints against the former priest and the church leaders who had sheltered

him. Settlements with Porter and the Servants of the Paraclete in Minnesota, Texas, and New Mexico totalled more than US \$23m. Porter is still serving an 18-20 year prison sentence in Massachusetts.

One restorative justice intervention at some point in Fr. Porter's career might have brought healing to a victim and a parish community. Agreement upon definite legal injunctions might also have prevented Porter from repeating his crimes. Support groups for Porter's victims might still consider restorative justice programmes in order to re-establish a dialogue with a Church that ignored their cries or complaints for such an extended period.

### The Case of Rudy Kos

Financial awards to victims seemed to mushroom over time. In 1998, the District Court of Dallas County, Texas awarded U.S. \$119m to plaintiffs who declared that Catholic priest Rudy Kos had abused them over many years<sup>184</sup>. Ros supposedly abused 11 boys within the diocese over a 10-year period. The lawyer representing the victims, Windle Turley, stated at the close of the case that, "I'm convinced they [the Diocese] have done all that they can do... The diocese is scared to death of any future litigation" (Housewright 7/11/1998).

Bishop Grahmann of Dallas reiterated extensive plans to prevent future abuses. There is little doubt that the diocese is mortified of future litigation, but is it merely absolute legal force that will prevent future mishaps and restore victims to wholeness and their local communities? It seems that more interpersonal dialogue leading to concrete, parish-level programmes is needed as much as legal injunctions.

### The Cases of Bishops J. Keith Symons and Anthony O'Connell

Indictments continued to climb up the compensation scale and the hierarchical ladder too. Two South Florida Bishops resigned due to accurate charges. Bishop J. Keith Symons of Palm Beach resigned in 1999 due to his sexual involvement with boys. Even more tragically, the new Bishop Anthony J. O'Connell left his post in 2002 after admitting to inappropriately touching a teenager at a Roman Catholic seminary in Missouri almost 25 years prior. O'Connell agreed to a U.S. \$125,000 settlement with Christopher Dixon<sup>185</sup> (Associated Press 9/20/2004). Mary Jo Malone of the St. Petersburg Times writes, "If ever there was an instance to illustrate how far-reaching sexual misconduct is in the Catholic clergy, this is it. For O'Connell had taken over the diocese from another abuser, then Bishop J. Keith Symons... Christopher Dixon had turned to O'Connell when he was a teenager, looking for advice because

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184 This was later reduced to around U.S. \$23m.

185 The former seminary student whom O'Connell molested.

another priest had fondled him. O'Connell's response was only more of the same, under the ruse of showing Dixon that nothing was wrong with his body" (Malone 3/12/2002).

Open dialogue about personal histories, or at least careful record keeping, has so badly eluded some quadrants of the Church that even the bishop sent to clean up after another bishop had been involved in the same kind of questionable affair. A different kind of internal dialogue and record-keeping system within the hierarchy is needed. Church leaders should rest assured that a reasonable degree of confidentiality could be maintained as long as voluntary mediation is agreed to soon after an incident happens.

### The Case of Paul Shanley

The crisis evolved into a dark but seemingly never-ending story. On 2 May, 2002, Father Paul Shanley was arrested in San Diego, California and charged with 3 counts of child rape. One of the alleged rapes even took place in a Church confessional. Shanley had served most of his tenure in the Archdiocese of Boston, and Archdiocesan documents released upon order to the Massachusetts courts revealed that Church authorities were aware of the allegations made against Shanley – and had been for years. The priest was even on record as having advocated sex between men and boys. One of Shanley's diaries revealed that he had been treated at a venereal disease clinic and had even helped youth to use drugs. These revelations tarnished Shanley's image as a friendly but renegade priest yearning to help street children, runaways and other adolescent social rejects (CNN 5/2/2002).

The case against Shanley is still in progress. Prosecutors have removed 2 of Shanley's accusers from their case because the other plaintiffs' testimonies are stronger and more coherent (Lindsay 7/7/2004). Again, as in previous cases, there was a terrible lack of a healthy dialogue between Church authorities, local parish priests, and parishioners on sensitive matters. This case also left two plaintiffs out of a prosecution simply because their testimonies could be more easily dismantled by defence lawyers than those of their counterparts. The fact that the case might have brought them some degree of satisfaction and reconciliation did not matter.

### The Case of James Talbot

The academically elite order, the Jesuits, did not escape prosecution either. The Jesuit Reverend James Talbot faced charges in March of 2002, dating back to his 1972 to 1980 stretch as both a high school teacher and soccer coach at Boston College High School. The Society of Jesus (Jesuits) transferred Talbot to Cheverus Catholic High School in Maine in the 1990's, where the priest was accused of assaulting a 15 year-old student in 1998. A confidential settlement concluded that case (Weinstein 3/6/2002).

The pattern of transferring problematic priests around the country and concluding settlements surreptitiously had been clearly established. How much pain could have been prevented if transparent procedures had led to semi-public mediation sessions in the first place.

#### The Case of Robert Meffan

The sexual abuse within the Church, although statistically primarily involved boys, included women too. Documents released on 3rd December 2002 revealed that Father Robert Meffan had sexually assaulted young women studying to become nuns. He attacked them both in his private office and at a cottage on the Cape in Massachusetts. Church papers also show that the cleric believed himself to be the return of Christ.

Despite the implications of such behaviour, Cardinal Bernard Law continued to praise Meffan, stating, “Your examples of the joyful ministry to a parish priest and your agony at being deprived of that ministry were most touching” (TheBostonChannel.com 12/3/2002). The redundant theme thus far is the need for the disclosure of priests’ personnel records to the laity, regular performance appraisals of priests that include the laity’s input, and finally a Church that is willing to discuss troubles openly and resolve serious difficulties by choosing the higher, moral path.

#### The Case of Richard Buntel

Sexual abuse spilled over into drug abuse in the case of Reverend Richard Buntel of St. Joseph’s Church in Malden, Massachusetts. The priest introduced his 15-year old victim to cocaine in his private office. Father Buntel acquired cocaine for his prey to snort whenever he visited the cleric’s office and, after getting high, sex would follow (TheBostonChannel.com 12/3/2002).

### A NEW UNDERSTANDING: THE RESTORATIVE WAY

The above list of cases was not meant to be exhaustive but rather illustrative of the way the traditional criminal justice system has responded so far to the sexual offending cases that occurred within the Catholic Church. As hundreds of new cases are filed every month by victims who slowly begin to ‘come out of their closet’ to tell their stories, more and more demonstrations take place by genuine believers asking for a “Change in the church”, to “Take back our church” or to “let us end our silence”. The question that echoes most loudly in the ears of criminal justice reformers, the judiciary, policymakers, legislators and the government is: “Can’t there be another way to deal with these cases”?

So far, these acts have been dealt with either as criminal offences or torts. Traditional criminal law defines sexual offences as crimes comprising two elements. First, the actus reus varies depending on whether the offence involves rape, sexual assault, assault by penetration, rape or assault of a child, abuse of a position of trust, sexual activity with a family member or with a person with a mental disorder. The mens rea requirement is completed once the perpetrator intends these outcomes or accepts them as a natural consequence of his/her action. The challenge for the prosecution is to prove that the accused has satisfied both of these elements so that he/she can face the retributive or utilitarian penalty, hoping that in this way the sense of justice will be restored.

However, this legally positivistic approach of our criminal justice system fails to address a number of other elements comprising sexual offences. These may extend beyond what the law understands as 'deviant' and 'punishable'. For example, they may include emotions such as despair, anger, shame and great disappointment. Such seemingly esoteric pathos does not usually interest the prosecuting authorities or the court system in its entirety. How then should a victim digest this angst? Vigilantism is not the answer nor is apathy.

The participants of Survey IV suggested that the answer may indeed be found in the normative and practical concept of restorative justice. Restorative approaches do not distinguish criminal acts from torts, but deal with them collectively with an emphasis on amending rather than imposing pain of any kind.

Arguably, restorative justice, if properly understood and applied, can offer an alternative route that may allow the restoration of a true (or at least a better) sense of justice (Chapter 1). Before we are able to take the implementation step, a concrete theoretical understanding of the principles that need to be respected while dealing with sexual offending cases is imperative. The deficiencies of past litigation processes can become lessons to be learned in this attempt.

This part of the Chapter will pinpoint five ingredients that were identified by the Survey IV participants as necessary for the construction of a practical schema for the future implementation of restorative justice with sexual offending cases.

► **Victims, offenders and communities are equally important parties in the implementation of restorative practices.** In order to grasp the nature and scope of any dispute, there needs to be a clear understanding of the interests at stake. These constitute the needs and desires that motivate the parties to act, and that is why the appropriateness and potential effectiveness of any dispute resolution mechanism depends on how well these interests fit with the features of the mechanism. In theory, restorative justice is not meant to give precedence to any of the three key parties. That is

why the welfare of the victims in these cases, the concerns and fears of the priests in concreto and of the Church in abstracto, as well as the interest of the community at large should be equally weighted and addressed.

From what we already know, victims of sexual offences want to be heard and get assurances that the offender is accountable and remorseful, even if that involves meeting him/her face to face (Erez 1994; Strang and Sherman 1997). They also want to ensure that what happened to them will not reoccur, and that there is appropriate treatment for their offender so that their report and painful litigation process was not in vain (Miers 1992). Others want practical assistance that will help them heal. Most victims want to know the whereabouts of their offenders. Overall, victims need information and should not be left in the dark to deal with their pain alone. They need empowerment to feel endowed with a true sense of justice.

Sexual offenders, on the other hand, have always been treated as a special category of deviant. This is partly due to the relentless nature of their crimes as well as their difficult rehabilitation. In general, they are usually individuals who seek to manifest power and control through sexual acts. Research has indicated that although the majority of them suffer from personality disorders, only a very small number show evidence of mental illness (Pratt, Patel, Greydanus, Dannison, Walcott, and Sloane 2001). Factors usually involve prior abuse, family dysfunction, substance abuse and exposure to erotica (Pratt et al. 2001). Research evidence has also shown that incarceration and stigmatization are often insufficient in helping them to acknowledge the wrongfulness of their actions, and can even be counterproductive - especially to juveniles (Berliner 1998; Farrington 2000). Recent evaluations of restorative projects have shown that effective and honest dialogue can make a difference in the reformation of sex offenders, but they need first to approach their victims as individuals and not as objects of their anger and frustration (Barnes 1997; Schiff 1999).

Accountable for these events, however, were not only the individual priests/ sex offenders. The Catholic Church was also found to be both ethically and legally responsible on various occasions. According to the doctrine of vicarious liability, a corporation that exposes society to crimes committed through its representatives or employees may also be found directly responsible for these acts<sup>186</sup>. To give an example, in *John Doe v. Bennett*<sup>187</sup>, the Supreme Court of Canada held a Roman Catholic Episcopal corporation both directly and vicariously liable for sexual

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186 "Vicarious liability is based on the rationale that the person who puts a risky enterprise into the community may fairly be held responsible when those risks emerge and cause loss or injury to members of the public" (Supreme Court of Canada, *John Doe v Bennett*, 2004 SCC 17.)

187 *Id.*

assaults committed against boys by one of its priests. Separately, the Church's policy in dealing with these cases has also been critiqued. This involved a failure to report to the prosecuting authorities any criminal acts that occurred under its administration. In fact, it seems that every effort was made to cover up these events by putting pressure on victims, their families and independent witnesses to conceal important evidence. All in all, the priority that the Catholic Church has given to canon law over criminal law led some of its leaders to be accused of "perverting the course of justice"<sup>188</sup>. Subsequently, the Church's interests as a party in this dispute need also be considered.

Finally, equally important in a restorative process is the community and the representation of its interests. Many claim that it is the community that owns the problem of sexual offending (Duff 2000; Yantzi 1998). The facilitator, therefore, is bestowed with an extra responsibility in helping the community function as an integrated system that balances its members' interests equally and fairly.

► **Confidentiality:** Restorative justice is by definition carried out behind closed doors, and that is the only way participants can be truly honest with themselves and others. Therefore, disclosure of the detailed events and the discussion that take place in the mediation room is not fodder for the media, but is intended only for the primary and secondary parties of a restorative process.

Confidentiality, however, is not synonymous with secrecy. The community needs to be educated from these events and must learn how to anticipate them. Consequently, restorative justice cannot be used as a cover up. Discussions, however, need to be carried out not with an intention to stigmatize or condemn the offenders, but with an honest interest in making them understand the wrongfulness of their actions. This is the only way they can be reintegrated into the community, who can monitor their later behaviour and set up mechanisms to protect its members from unexpected events.

Discussions can also take place between unrelated victims and offenders to achieve a better understanding of the nature of a crime, giving parties a chance to ask questions. Not all restorative justice practices aim to divert criminal cases from traditional proceedings. Many programmes simply aim at educating community members and particularly individuals who have been affected by crime in a direct or indirect way. Through a controlled

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188 In applying this doctrine to the offence of assault of children, the Supreme Court employed its test in *Bazley v Curry*, [1992] 2 SCR 534, *Jacobi v Griffiths*, [1992] 2 SCR 570 and *KLB v British Columbia*, [2003] SCC 51. It also clarified that in the *Jacobi* case the Court of Appeal erred by suggesting that non-profit organizations should not be held vicariously liable for sexual assaults by their employees or agents.

and honest dialogue, the society can learn from these events, be educated or informed about them. Uncontrolled media coverage often serves foreign goals and agendas that stigmatize and aggravate the offender and any healing process. The advantages for both victims and the Church in observing the restorative principle of confidentiality in regards to the sexual scandals are obvious.

► **Restorative justice offers a diversionary system.** Restorative practices are not meant to reduce the options of victims, but increase them. Therefore, if a party does not wish to proceed with a restorative programme, then they should be able to pursue justice through the traditional criminal justice system. Likewise, if at any point of the restorative process any party decides to opt out, then again traditional criminal justice mechanisms should be ready to take up their case. Restorative processes can also function outside the justice system altogether, offering general social support and a chance for a discussion when wanted. Restorative justice could be a first option for victims of abuser priests, but victims could always fall back on the traditional criminal justice system too.

► **Voluntariness:** Restorative practices should be founded upon RJ's principle of 'voluntariness'. The parties (victim, offender and the community) need to decide for themselves to take part in the process, and even if they do agree to participate, they should have the right to withdraw at any time.

► **Sexual offending is a special category of crime.** As with hate offences, this type of crime is also comprised of a number of characteristics which make its handling by restorative or even traditional criminal justice processes very difficult. For example, it carries an inherent danger of re-victimizing victims. The imbalance of power between the victim and the offender is an intrinsic component of the victimisation, preventing victims from ever being able to exercise free choice. As described in the previous section of this paper, in many of these events there was a pre-existing relationship in which abuse of power had been a long-term feature. Contact between the victim and the offender in these cases is particularly problematic because the restorative process itself can provide a means by which the offender can further manipulate and undermine the victim. The facilitator therefore needs to be particularly careful when attempting such a task, and only professional and properly trained staff should be considered appropriate. The option of indirect mediation becomes particularly helpful, especially in cases in which the victim may not be psychologically ready to meet the offender face to face but still wants to follow a restorative procedure.

Furthermore, not all sexual offenders are ready to be heard, meet their victims or even engage in a discussion about their actions. More importantly, research has indicated that apart from

sociological factors, sexual offending can also occur due to biological causes such as high levels of androgens (Pratt et al. 2001). Such cases cannot fall within the scope of restorative justice. In a word, restorative justice is definitely not for everyone.

► **A change in focus:** Restorative practices do not follow the adversarial or inquisitorial models of criminal procedure. Therefore, the restorative process is neither a contest between the parties nor an inquest into events. On the contrary, restorative justice aims to repair the damage done through an honest dialogue. The focus is not on proving that events happened, but on reaching an agreement on what can be done to amend them. That is why offenders need to accept these events prior to entering the process. This news could come as a relief both to victims who only want resolution and not a painful re-hashing of events, and also to offenders who might prefer honest mediation to adversarial court procedures that pit them against their victim all over again. Existing mechanisms can ensure that offenders' confessions, as well as anything said during the restorative process, will not be used against them in the case that the restorative route fails and the criminal justice system takes over.

### THREE SUCCESSFUL CASE STUDIES FROM SURVEY IV

The last section of this chapter will use the findings from Survey IV to present three examples where sexual offending cases were addressed using restorative justice.

#### The Mount Cashel Orphanage, St. Joseph's Training School for Boys, and St. John's Training School for Boys, Canada

Between 1962 and 1990, ten members of the Catholic Christian Brothers Order sexually abused 30 or more boys in their care at the Mount Cashel Orphanage in Newfoundland, Canada. Additionally, members of the same Order who were running St. Joseph's Training School for Boys in Alfred, Ontario and St. John's Training School for Boys in Uxbridge, Ontario also faced criminal charges of child sexual and physical abuse that occurred starting in the 1930's. The remarkable nature of mass abuse, especially of orphans, provoked the direct intervention of Canadian courts and the legislatures of Ontario and Newfoundland.

The Canadian provincial governments doled out Can \$11m in settlement fees to victims of the Mount Cashel Orphanage and Can \$23m to the victims of the 2 Ontario schools. Financial consequences were far reaching for the Christian Brothers communities that ran these schools. Only in August of 2002, two Christian Brothers' educational institutions legally connected to the Mount Cashel Orphanage – Vancouver College and St. Thomas Moore Collegiate – reached an out-of-court settlement with victims

in order to avert the Vancouver schools' liquidation. Christian Brothers Order members managed to garner Can \$19m in bank loans to compensate Mount Cashel victims (Dawes 8/12/2002). Paying the money back seems impossible. To accentuate the somber mood surrounding the crises, the Canadian Broadcasting Corporation's television drama, the Boys of St. Vincent, brought the Mount Cashel tragedy into Canadian living rooms via television.<sup>189</sup>

Where were Church authorities and Ontario's and Newfoundland's child protection services officials for almost 30 years? According to Darcy Henton "Archival documents showed that provincial officials had quietly investigated a raft of allegations of abuse at the schools, but never alerted police or prosecuted school staff" (Henton 1/20/2002). Although it is not possible to objectively state that victims lacked trust in the Church's and the provincial governments' abilities to tackle this disaster, still over 700 former St. Joseph's and St. John's Training Schools students came forward to allege abuse.

Four hundred of these students formed a union to pursue their legal options. However, instead of opting for traditional criminal justice procedures, they chose mediation. According to Robinson, the former students perceived that mediation could offer a number of advantages, which they considered crucial in reaching true justice. For example (a) "It [mediation] avoids the adversarial process of conventional litigation, with its emotional and financial costs. (b) It allows for a broader, more creative range of solutions than are possible in a legal settlement. (c) Past relationships have a chance of being preserved – particularly those between the student victims and their church. (d) Successful mediation can empower the victims. (e) Mediation is perceived as being more cost effective" (Robinson 7/25/2002).

In 1992, the students reached an agreement with the Brothers of the Christian Schools of Ottawa, the government of Ontario, the Roman Catholic Archdiocese of Ottawa and the Roman Catholic Archdiocese of Toronto. Inter alia successful outcomes included: "(a) Facilitation of apologies by those responsible for physical and sexual abuse. (b) Financial compensation for pain and suffering. (c) Financial advances for medical/ dental services, vocational rehabilitation, educational upgrading, and literacy training. (d) Provision of counselling services. (e) Payment to ex-students who had not been paid for farm work and menial work while they were at the schools. (f) A commitment by the participants to work towards the eradication of child abuse" (Robinson 7/25/2002).

Additional highlights of this settlement included the willingness of former students from one school to share part of their compensation with abuse victims from the other school. Comparing

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189 CBC.CA, "Flesh and the Devil: the Church Faces a Sexual Crisis," 9 June 2004

the scandals in Canada with previous cases falters due to the differences in magnitude, but the internal dynamics of the mediation processes and the results in the Canadian cases left victims more satisfied than the adversarial approaches and inconsistent punishments in some of the other cases. For a summary of all these cases and their conclusions, refer to Appendix V.

This case differed significantly from the previous ones in at least two ways. First, it did not involve merely one molester in a confined setting, but many clerics taking advantage of boys in dire need of care. Therefore, the perpetrators as well as the criminal acts and liability were all on a much greater scale. Second, in part due to the extent of the case, an alternative approach was sought to address it. This approach was based on restorative principles, and can serve as a good example of its potential. Although research on the long and short term impact of the restorative process on the specific victims and offenders of this case has not been carried out – at least to our knowledge – the outcome and the process itself was much more inclusive and meaningful. The third example provided in this section should provide evidence that support our argument.

#### The Fraser Region Community Justice Initiatives Association (FRCJIA), Canada

This is a community based non-profit organization in British Columbia, Canada, which uses restorative processes with severe forms of violence including sexual offending. This is believed to be the first government authorized and funded victim-offender mediation programme designed for use in severe crimes. It has been running for almost two decades, while various evaluations have been carried out measuring its impact over the last 15 years. These findings are encouraging as they report a significant positive impact on all participants. “Victims frequently report that this approach has contributed to their trauma recovery in profound ways, including a diminishing of severe symptoms of Post-Traumatic Stress Disorder. Offender participants also describe the process as deeply ‘healing’. Therapists and prison programme facilitators have reported seeing significant increases in victim empathy and a commitment to relapse prevention in those who have participated” (Gustafson 2005).

A case study involving a male victim of sexual abuse might help to understand this programme better. At the time of the abuse the young victim was only 10 years old. He had just lost his mother who had divorced his father when the victim was 6 years old. His two young sisters often left him in the care of a trusted family friend who for 6 years kept sexually abusing him. At the age of 19, the victim decided to report the case which was investigated and finally led to the conviction of the perpetrator in 3 years incarceration. The

victim had to endure long and difficult therapy sessions. He was amenable to a suggestion to prepare a video with several questions that could be addressed to his perpetrator. David Gustafson, Co-Director of FRCJIA, reported on a letter prepared by the victim: "...When D and E brought [the] video taped response back I determined to go through with the next step: a face-to-face meeting... I remember that morning thinking... I am walking into a room with this person that has dominated so much of my life, that is almost this mythical figure because of the power that he had over me and the ways that he has affected my life... I really didn't want to get my hopes up too much because I wasn't really sure what would come out of it, but what I wanted to do, basically, is just cleanse myself... it is a cleansing process... And, at the end of it I found that we had gone through so much that I was at a point where I could forgive him, and that was the one thing that surprised me beyond anything: that I had this ability in me, all of a sudden, to forgive this person and to say, I am done with this"<sup>190</sup> (Gustafson 2005).

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

The last example does not involve a restorative programme, but an evaluation project that has been running for some years in Griffith University. This research project is led by Professor Kathleen Daly, and collects evidence through fieldwork carried out with qualitative methodologies with victims and perpetrators of sexual crimes. Due to the limited space of this paper only two of its questions will be described.

Are restorative conferences an appropriate way to respond to sexual violence? Or do court proceedings deliver greater justice for victims? The project, which publishes its findings on a regular basis<sup>191</sup>, having examined 387 cases (227 court, 119 restorative conferences and 41 formal cautions) during a 6.5 years period (1 January 1995-1 July 2001) concluded with the following findings:

- Victims believe that they are better off if their case is handled restoratively
- If a sexual offending case goes to court the chances of being proved is half (51%). This has severe consequences on the victim including deep psychological and emotional stress, depression and personality disorders
- It appears that the potential problems of a restorative process may be less victimizing than the formal legal process

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<sup>190</sup> In a recent communication with Professor Gustafson we were told that the project has not gone national

<sup>191</sup> [www.griffith.edu.au/school/ccj/kdaly/kdaly.html](http://www.griffith.edu.au/school/ccj/kdaly/kdaly.html)

- The traditional criminal justice process has proved to do very little for victims as long as offenders can deny they have done anything wrong
- Restorative processes can open a window for those who have offended to admit to what they have done.

## CONCLUDING REMARKS

This paper has presented a case study where the RJ paradigm was used to address sexual offending cases including domestic violence. It becomes apparent that the RJ principles do not simply provide material for philosophical thinking, but also a concrete basis for practical solutions and resolution of sensitive and complicated offending cases. Therefore, the scepticism that has surrounded RJ practices and their use with sexual offending incidents is to some extent unjustified. This provides additional evidence to the study's underlying hypothesis about a gap between RJ's theoretical proclamations and actual delivery.

This paper will conclude with a quote from a letter by Lisa Rea, president of the Justice and Reconciliation Project (JRP)<sup>192</sup>. The letter was sent to the Archbishop of St. Paul/Minneapolis, Harry J. Flynn, DD. This also sums up IARS philosophy in the way a comprehensive practical model could be constructed to deal with sexual offending cases that occurred within the Catholic Church. "I had one conversation with a sister at the Los Angeles Archdiocese... she was intrigued by this possibility [of restorative justice]... During our phone conversation a natural question arose: 'How would you start to do this?'...My response was 'one by one'. I believe you start applying these principles case by case. Perhaps only begin with one case where there is an interested victim and an interested offender. Each has a willingness to move toward healing. Each one is broken and hurting" (Rea and JRP August 2002).

Rea is right in not making big promises. It is with small steps that we make big changes. As this book has repeatedly pointed out, despite its manifold advantages, restorative justice is not a panacea. Innovation can mean multiple pitfalls until new procedures are made smooth. Through the various types of its programmes, however, restorative justice offers the possibility of merging justice proceedings with healing processes in an effective and constructive way. Core values such as honesty and openness, discipline and restoration are primary ingredients of these procedures - that aim to make a shift from shrouding victims and sexual abuse in secrecy to remembering, repenting, forgiving and

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<sup>192</sup> The Justice and Reconciliation Project is a not-for-profit organisation dedicated to bringing restoration, reconciliation and healing to crime victims and offenders.

moving on. Restorative justice's rootedness in theology and the Christian themes of forgiveness and reconciliation should make it particularly attractive to a Church craving reunion with its followers and a higher moral road not offered by the traditional criminal justice system.

**PART FOUR:  
CRITICAL REFLECTIONS**

## MIND THE GAP BETWEEN THE RESTORATIVE JUSTICE THEORY AND PRACTICE

One danger that was visible from the conception of the book was the possible lack of any practical significance of its conclusions. Its usefulness and feasibility could also be questioned as one may ask: Isn't it normal for socio-legal discourses to experience inconsistencies in the development of their theory and practice? How often do we find fields of study whose normative values develop in absolute agreement with their practices? Should we even be talking about the existence of a gap between RJ's theory and practice?

It has been argued that 'gap studies' do not have a place in any kind of socio-legal research. Take Richard Abel, for instance, who spoke critically about any attempt to understand alleged gaps in socio-legal disciplines. He claimed that "studies of impact, efficacy, the gap between ideals and practice, image and reality" were the result of a "forced adoption of a debunking posture" by legal realists and social scientists (Abel 1980, 808, 821). He talked about an increasing need for a shift away from an instrumental model of law, "where effectiveness is construed in a narrowly instrumental fashion as an examination of whether the declared goals of a law or legal institution (usually one that is new or reformed) have been attained" (Abel 1980, 828). Abel claimed that these normative, 'declared' goals can never be reached. Therefore, the examination of any possible gap between them and actual implementation becomes meaningless. That is why, he said: "We should ask instead: what are its [the gap's] inadvertent consequences or symbolic meanings? What are its costs? From whom does it work? What are the fundamental structural reasons? Why it does not work"? (Abel 1980, 828)

Is then the hypothesis of this research only a phenomenal one? If, according to Abel, the 'declared goals' of RJ can never be attained, then why did we engage in a discussion around the existence of a possible discrepancy between these normative goals and the restorative practice? The answer possibly lies in the identification of the practical problems that appear to exist in the application of RJ and which seem to be related to the discussed discrepancy. The discussion around the particular dimensions of these problems, the ways in which they affect practice, the various factors that may be causing them as well as the different measures that can be taken to address them put the examined hypothesis in context. They also add a practical dimension to the research question, which now appears to involve real issues of implementation. Nelken said: "There is nothing invalid about a focus on the discrepancy between legislative [policy, practical or other] promise and performance, provided that both the claims and

the evidence are treated as data worthy of investigation in their own right” (Nelken 1981, 45).

Put another way, no one should be surprised or satisfied with findings that simply discover gaps in norms and practices. Research findings that identify such gaps can never be deemed complete, or even adequate, if they merely disclose a gap and call to mind it. These studies need to ask why that space is there. In Daly’s words: “Gaps may signal something more profound that meets the eye” (Daly 2003, 220). To conclude, the examination of the existence of a possible discrepancy between theoretical and practical development of RJ was not attempted for the sake of some abstract reason that would have liked to launch theoretical criticisms about how inconsistent restorative practitioners and policymakers have been in the implementation of the RJ norm. On the contrary, the research aimed to examine why the gap is there, what has created it and what the possible dangers might be, if we continue to ignore it.

#### LOOKING DOWN INTO THE GAP

Admittedly, in the fast-growing RJ literature, there have been a few writings that spoke about the investigated gap. Without doubt, the most representative sample is Daly’s *Mind the Gap: Restorative Justice in Theory and Practice* (Daly 2003). However, like Daly’s paper, these writings tended to focus only on a particular RJ practice or on a certain RJ principle, which might have been misapplied. To speak with examples, Daly focused on showing how family-group conferences in Australia departed from the principles that had been produced by the organisations that were set up to implement them. The need for a more wide-ranging approach that would treat the matter in a holistic way is therefore needed.

The book’s holistic approach to the problem may have put it in a distinctive position compared to the few studies that preceded, but it also exposed it to a number of dangers, including the risk of generalisation and ambition. This danger was overcome with qualitative fieldwork, and careful analysis of the extant literature. This process was long and lasted from 2000 to 2007. It involved four surveys and several methodologies including face-to-face interviews, telephone interviews, questionnaires, meetings and various types of events and seminars.

This chapter aims to summarise the findings in a manner that illustrates the different dimensions of the gap between the RJ theory and practice, and the dangers that are associated with them should we consider to ignore them.

## How conceptual tensions manifest themselves in practice

RJ is being applied around the world in various shapes and forms. It is only recently, however, that practitioners, victims, offenders and the wider community including policy makers started to refer to its practices using the term “restorative justice”. Awareness of what RJ means and what its practices entail is still low despite the increasing academic work in the field, which does not seem to resonate with most practitioners and the general public. On the contrary, the term restorative justice has often been attacked by tabloids as a soft option that was created by clever politicians who did not know what to do with the increasing incarceration numbers. These sources seem to have a far more important role to play in spreading the message about RJ rather than the very elaborate and well respected academic writings.

Evidence from the four surveys seem to conclude that conceptual conflicts in the restorative movement have been an important catalyst in the way RJ practices are introduced into the criminal justice system. The conceptual tensions manifest themselves in a number of ways. For instance, they affect communication between different types of practitioners (e.g. victim-offender mediation and family-group conference facilitators) and between practitioners and their organisations/employers. The same was observed regarding communication between programme-designers and their organisations/employers (e.g. they tended to change the designed programme to fit in with their agenda). Past research by Hoyle et al. and Wilcox et al. seem to agree with these findings (Hoyle et al. 2002 and Wilcox et al. 2004). According to the participants of the surveys due to these tensions, the same restorative programme could be put in practice by different organisations of the same criminal justice system and still bear enormous differences (e.g. victim-offender mediation by ‘Mediation UK’ and victim-offender mediation by ‘Crime Concern’<sup>193</sup>).

A number of participants also claimed that conceptual misunderstandings seem to affect funding applications (e.g. they claimed that funding bodies tended to misunderstand the purpose, extent or character of proposed restorative projects). Moreover, evaluation and research seemed also to be affected (e.g. evaluators tend to follow funding bodies’ understanding of RJ, aiming to reach the targets that were set according to their priorities). The evidence suggested that: “Rather than insisting on rigid academic conditions for ‘proper’ evaluation, researchers are forced to develop modes of investigation that address success while accommodating to the motile reality of what they are assessing” (Marshall and Merry 1990, 17).

The extant literature also agrees that the nexus revealed by this study between misconceptions and the parties’ level and quality of

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193 E.g. MARS project in Southampton, UK.

participation is real (e.g. false hopes about the process, disappointment, unwillingness to participate).

Furthermore, the participants argued that the contribution of most national (e.g. Restorative Justice Consortium) and international (e.g. United Nations) documents on RJ principles has been negatively influenced by conceptual tensions. In fact, they thought that due to their controversial and sometimes abstract nature, these principles were difficult to be identified in practice, and vice versa, to see practice reflected in them<sup>194</sup>. On the other hand, definitions that have been developed to address these conceptual conflicts seem to have faced their own deficiencies, falling within one of the conceptual fault-lines identified in Chapter 2.

Relevant were also the surveys' findings on the political and social environments' impact on RJ. In particular, evidence was provided to suggest that since its introduction into the modern criminal justice agenda, RJ has had a close relationship with the various environments in which it is implemented. Although this should not necessarily be interpreted in a negative way, a certain degree of scepticism needs to be maintained. According to this study, this impact helps RJ practices to adapt to the various peculiarities of the justice systems in which it is applied. This is good news for RJ, as it appears to be characterised by malleability by its environments, an element that can make it a theory and practice 'for all seasons'. However, the participants also pointed out that although this malleability seems to have benefited RJ's implementation (as it aided adaptation to the different cultural, historical, societal and other peculiarities of justice systems), it also allowed the original restorative values to be 'infected' with ideas of a 'foreign nature'<sup>195</sup>. The extent of this influence upon RJ's principles was thought to be particularly disconcerting.

### **How training manifests itself in practice**

Undoubtedly, during implementation, a number of limits unavoidably have to be placed upon the RJ norm. These may stem in part from organisational constraints on what can or should be achieved within the existing punitive operational framework of our criminal justice system, and in part from popular understandings of what criminal justice means for the offender, the victim and their communities.

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194 See Introduction, where the study asked: "Are practitioners aware of the many writings, principles and statements that exist in the field?", "Why have they not been using them"? The answers now seem clear. Practitioners are indeed aware of them, but simply do not trust them or find them workable in practical terms.

195 For a descriptive analysis of the RJ norm see Chapter 2; for a list of the dominant studies outlining RJ's normative principles and definitions see Chapter 3.

There is no reason to believe that the training and accreditation of RJ practitioners falls outside these organisational constraints. However, the evidence suggests that the problem of training has already been extended far beyond this commonly acceptable level of pragmatism. According to this study, the lack of uniformity of training courses seems to have resulted in a range of different quality levels of restorative practices. These may differ in the way they are carried out, their effectiveness and outcomes. More importantly, they can vary in the level of their 'restorativeness'. This encourages different tensions in the field. The lack of uniformity also seems to allow practices to be gradually exposed to 'foreign agendas' that are often used to 'enhance their efficiency' and improve their target measurement. Data from the extant literature that have been presented in previous sections of this book seem to largely support this conclusion.

Furthermore, the participants were concerned about the lack of widely accepted training standards and procedures. According to this finding, the way the RJ concept was originally approached by trainers and practitioners did not show the need for the introduction of comprehensive standards that would have guided implementation. However, it now appears that this has led to a number of implications including inconsistency. Past attempts to address this problem showed that it might have become more complicated than it was thought to be. One question that this entails is how and who will bring implementation back in line with the normative principles. The other danger is thinning down the principles to fit current models of practice. The examples of Thames Valley Police training (Hoyle et al. 2002) and the results of studies such as the 2007 Youth Justice Board national evaluation (Youth Justice Board 2007) suggest that practice most often precedes training and that during application many facilitators are found to be unqualified or needing additional training. As the evidence suggests, this is usually done in a fashion that serves the immediate needs of the given employer or funder.

The study also suggested that most training courses seem to teach very little about the normative RJ principles. Even where such teaching is provided, most often it is inadequate, as trainers are not clear about the theory and its significance. In consequence, many trainees are left unaware of the theoretical framework in which they need to place their practices. As more programmes are facilitated by unqualified/ untrained practitioners, the character of RJ practices is affected. The surveys of this study suggest that when facilitators adhered to RJ normative rules, effectiveness of the examined programmes was increased<sup>196</sup>. However, on various occasions facilitators tended to deviate from these norms, engaging in activities that are closer to the spirit of the current criminal justice system (e.g. the Thames-Valley Police officers tended to ask

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196 See for example Hoyle et al. 2002; McCold and Wachtel 1998.

illegitimate questions of investigative nature, while the Bethlehem practitioners often encouraged an 'authoritarian tone to the conferences').

Directly related to the last problem was the identified lack of widely accepted or nationally provided training books. It was observed that in the best occasion, trainers produce their own manuals. However, this encouraged more inconsistency between training, practice and principles.

Finally, while both studies found accreditation to be a good idea and a possible way out of this problem, it was pointed out that this process might also involve a number of dangers, which can result as by-products of this inconsistency. For example, participants feared that accreditation processes might not always reflect the RJ ethos due to bureaucratic or standardised procedures. Concerns were also expressed about a number of other pitfalls such as not taking into account the already established traditions of practice.

### **How funding manifests itself in practice**

It can hardly be argued that reaching justice ideals can be costly both organisationally and economically. In fact, it would be naïve to believe that ideals of any origin (punitive or restorative) can ever come first in organisational routines and professional interests. This seems to be particularly relevant to restorative practices where the time and labour to organise a meeting is even greater than the construction and disposal of criminal cases by traditional procedures. Finally, in a high-volume jurisdiction that uses conferences as a matter of routine, the effectuation of an ideal RJ practice sounds unrealistic. Organisational shortcuts are therefore inevitable. Similarly with the issue of training, a certain degree of realism has to be maintained.

Funding RJ demands both commitment and trust in its theoretical potentials. RJ practices are mainly implemented by the voluntary and community sector, community groups and enthusiastic individuals. Most of the time they start on a voluntary basis and when they do receive financial support it does not reflect their contribution. The findings from the surveys also seem to suggest that funders' priorities are not always consistent with RJ's normative principles as these are understood by its extensive theoretical literature (see Chapter 1). This was found to be particularly relevant to governmental funding. For example, the study suggested that the bulk of the interest is mainly in reducing re-offending, while less significance is given to increasing victims' satisfaction, healing and reintegration. While a certain level of impact is always to be expected from the uneven relationship between RJ and traditional punitive traditions of criminal procedure, this however cannot alter the practices' central character. This concern was mainly attributed to the control that funding bodies

often want to have over the nature and process of programmes. As funders control resources, many practitioners are given fixed target agendas which they need to satisfy, even if that means adapting their practices. All in all, according to this study, the promotion and gradual expansion of schemes that primarily concern recidivism and goals that are deemed by the literature to be primary in the RJ agenda will result in practice being adapted to needs and priorities that not only are secondary, but also identical to the current criminal justice system's ones.

Many practitioners also reported that they often received pressure from their funders to deliver within timeframes that were not consistent with RJ's principles. In particular, funding bodies appeared to have demanded immediate results, and introduced timescales and performance measurement targets, which were difficult to reach. RJ, participants said, has a slow delivery, and cannot be forced in any way. Nonetheless, RJ is often used as a 'quick fix tool'. This alienates current practice from the principles and normative application of the concept. As one interviewee put it "in no way the RJ ethos is being funded". As Marshall and Merry concluded from their own research: "Potential funding bodies will continue to insist on some measure of success or failure at a reasonably early stage, which is almost well short of the time needed to develop firm and efficient strategies of work" (Marshall and Merry 1990, 17).

The problem of funding was also thought to affect the way evaluation of RJ programmes is carried out. A number of participants claimed that research can be hampered, as funders are most often interested in seeing results that, according to the literature, should have been of secondary importance (see Chapter 1). As pointed out by the study, most participants chose to apply RJ in such a way that it addresses the funders' priorities, moving away from its normative framework. Various research studies support this finding (e.g. Miers 2001; Hoyle et al. 2002).

Funding is often rejected due to definitional misconceptions. According to some practitioners and researchers of the study, some funders rejected their applications, because they were confused about the real strengths, potentials or dangers associated with RJ programmes. For example, applications were turned down because funders would take RJ to be a religious practice or a radical concept that supposedly aims to bring fundamental revolution to the criminal justice system. The conceptual fault-lines described in Chapter 2 are relevant. This comes as no surprise as Miers' international research warned about the danger of definitional problems.

According to the surveys, applications were also rejected because funders were not aware that RJ could be used for adult offenders and serious crimes. Arguably, this can serve as an

example where the theoretical capabilities of RJ are reflected in its delivery. RJ has, for so long, been applied solely for juveniles and minor crimes, which made people believe that these are its only potentials. This, however, does not appear to be in accordance with its theory, which presents it as a complete paradigm capable of addressing most criminal justice issues. The case studies on RJ's application with hate crime and sexual offences brought further evidence to this.

Finally, a number of participants claimed that various practices label themselves 'restorative' in order to attract funding from bodies that have resources specifically allocated to RJ. According to these respondents, many of these schemes succeed in getting this funding, mainly because a number of organisations are not equipped with the necessary tools to identify abuse of the concept. There can be two consequences from this confusion. First, less funding may become available for truly restorative practices. Second, practices that falsely receive RJ funding gradually may undermine the overall image, expectations and nature of genuine restorative programmes. This could ultimately create a gap between RJ's principles and schemes, which move away from each other as more non-truly restorative practices are allocated funding to do supposedly restorative work.

### **How the misapplication of the RJ victim-related principles manifests itself in practice**

According to the RJ theory, restorative practices should not give precedence to any of the parties, but focus on establishing an honest communication and understanding between them. This should eventually allow healing and restoration of both victim and offender. Over the last two decades a number of evaluations were carried out to measure RJ's effectiveness on victims. The findings test the extent to which RJ's victim-related theoretical proclamations are reflected in practice although there are a number of benefits that will always remain immeasurable. These are usually related to what Van Ness calls "shalom"; the ability of RJ to deliver grace (Van Ness 1993, 125).

The participants of this study seem to share a common fear that recidivism targets often overshadow RJ's normative aspirations such as empowerment, reintegration, healing, forgiveness, rehabilitation and inclusion. The participants also claimed that the sentencing stage of restorative meetings can often be completed without any substantial victim participation. At the same time, offenders may also be forgotten in this process. Many practitioners pointed out that parties may agree to attend a restorative meeting but still not know what it entails. Their participation is rarely a conscious choice. Healing can only be achieved if the victims are given the opportunity to engage in a dialogue that would lead to

understanding and forgiveness. However, according to many practitioners who participated in the surveys, many practices may fail to empower victims, inform them about the process and include them in a constructive and protective manner. In fact, many argue that false hopes are often created as unrealistic promises are given to them and their families.

This leads RJ practices to fall back into the vicious circle of traditional criminal proceedings in which offenders are not aware of the reasons they were convicted for and victims are not included. The sentence of reparation by the courts was given as an example. In conclusion, outcomes might indeed sound to be 'restorative', but in the end, procedures can be far from it.

On the other hand, victim support groups and criminal justice agents are adamant that RJ practices should not be used for offences that may entail a power relationship between the victim and the offender. However, evidence particularly from Survey III and IV suggest that if properly applied, RJ can successfully address serious crimes such as hate and sexual offences.

### **How the misapplication of the principle of voluntariness manifests itself in practice**

According to the RJ theory, the parties should be forced to participate in a restorative meeting, and even when they agree to take part, they have the right to withdraw at any time. This is arguably one of the strongest features of restorative processes. It is a principle that makes them stand out from the rest of the criminal justice procedures, which (most of the time) are triggered automatically once a case is reported. However, the restorative movement seems to be in disagreement on the rigidity of this particular principle, particularly the extent to which coercion can be employed so that procedures may retain their restorative character. The fault-line 'principles and flexibility' described in Part I is particularly relevant.

The views around the application of this particular principle have divided the restorative movement into two groups. On the one hand are those who seem to claim that a certain level of coercion is acceptable if RJ is to work side by side with the current criminal justice system. On the other hand are those who believe that if the principle is not fully respected, then the practice cannot be restorative.

According to research evidence, if any of the parties feel forced to participate, this is likely to lead to a counterproductive process (Hoyle et al. 2002; Miers et al. 2001; Roberts 1995). On the other hand, many claim that a certain degree of pressure can and always has to be put on offenders (Home Office 2003). At the same time, practitioners seem to be sceptical about extending application of this principle to all RJ audiences, as this could exacerbate the

problem of not having enough cases diverted from the criminal justice system (referrals). Some others claimed that RJ practices can not be truly voluntary as offenders know that failure to participate will result in the traditional criminal justice procedure being triggered. In a nutshell, the findings of this study seem to argue that the lack of agreement around the rigidity of this principle has resulted in a number of different practices. Some of these do not allow coercion in any form, others allow this only in relation to the offender, while others allow it for both parties.

## CONCLUDING REMARKS

The problems, which have been discussed by the four surveys, put the study's underlying hypothesis in context, interpreting it in practical terms. This section will be brought to a close with a number of selected quotations from the surveys, giving a small vignette of the gap.

"I am very unhappy with the way theory and practice have developed in the RJ field... For instance, the theoretical concept of Reintegrative Shaming is far more complex and far less benevolent in restorative meetings (practice) than many theorists claim. For example... victims might not be willing to allow offenders to reintegrate [back to the community], while there are times they want them to suffer by living with their stigma for the rest of their lives, not being able to close the box and move on. So, in other words, I don't think that a lot of people who agree to go to a restorative meeting (or even to carry it out) are aware of what the RJ ethos is. Arguably, some practitioners do have this understanding, but do not demand it from the parties. This is usually because they don't have that kind of power relationship [with them], nor they can control what they want.

"I am very concerned, because the traditional dynamic of feeling guilty before a judge and wanting punishment still predominates among the parties, and the practitioners are reluctant or haven't thought it through well or haven't been given enough money from the funders to actually do the level of preparatory work that would enable the process and the outcomes to be truly restorative. I know one or two practitioners who work over timeframes and with personal commitment, and this helps the parties to come much more prepared in the meetings. However, given what the Government is trying to achieve with RJ, that is a low cost quick fix agenda, practitioners bring people together who have no clear idea about what that process really involves and therefore do not respond restoratively... falling back to old models of how wrongdoing was handled".

"My understanding is that the theory of RJ speaks about victim, offender and community, but the practice that has been developed

and the way that it's been worded by the Government and the Home Office is more about preventing re-offending, and we need to keep saying that the practice should also be about victims. And I remember that recently, when we came from a meeting, the Youth-Justice Board finally said that RJ is indeed about victims as well, and since then, they have kept this in their application. And this is also reflected in the National Strategy document that the Government released a couple of days ago. So... maybe, the practice is getting back towards the theory, but definitely my feeling is that there is still a long way... it is still more about reducing re-offending and not having to do with the idea of helping the victim and the community”.

“People talk about imbalances in RJ all the time, but no one does anything about them. There is an enormous number of theoreticians, and when they come up with a new idea we work from theory to practice. This is the logical sequence. To see whether [theory] works [or not]. However, ...in this country, we have been aware of the concept of RJ for the last 20 years, but it actually started to happen when new legislation took place... And we don't do evaluation on a practical basis. So, those working on theory ought to be able to identify what happens with the practice... So, if you like, the theory doesn't suit practice. And it is not my job to refuse the theory, it's my job to adapt it and get people up to speed with what is happening”.

## A WAY FORWARD: RECOMMENDATIONS FOR THE RESTORATIVE JUSTICE MOVEMENT

“I think the challenge right now is that there are lots of ‘movements’ within the RJ field, lots of research, people such as yourself that are trying to reconcile all these different aspects of RJ, and this, I think, is crucial. All these people are moving, but not together. ...People are grappling with their research [to find] where and how RJ [can] fit in the criminal justice system, what kind of offenders [it can engage], [what] type of offences [it can deal with], periods of time [needed]... etc and there needs to be a real joined thinking about all these matters ...In fact, we are all grappling with where, and who, and for what RJ should be used, and I think there needs to be a pulling together. We still don't have all the answers, but this step should help to bridge the gap... Besides, this was one of the reasons I was attracted to this field... and I think this should be the next step for RJ, to pull it all together...” (interview, RJ practitioner 2005).

Restorative justice is not an easy concept. It encompasses a range of practices and can be applied in a variety of contexts both in and outside the criminal justice system. It is not easy to be applied either. A number of difficulties such as lack of funding, lack

of faith and commitment, suspicion and competitiveness put practitioners off. However, when it is applied it accrues a number of benefits for victims, offenders and community. This conclusion is not arbitrary. In Sherman's terms: "The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out" (Sherman and Strang 2007).

However, when applied, RJ often seems to lose from its normative potential, and gradually appears to be more similar to the current criminal justice system. This book embarked on an original study that would test through new research and evidence from the extant literature a gap that seems to exist between the RJ theory and practice. The problems that were identified by the practitioners, policymakers and researchers who took part in the four surveys of the study brought evidence to this gap and illustrated how it is manifested in practice.

This study aims to serve as a whistleblower and as a waking call for the restorative movement. Seven years after the book's underlying hypothesis was first put to test, it is now safe to claim that if these problems are not addressed, it will be too late to reclaim RJ's original values. The value of this study is also found in the evidence base that it creates to posit policy recommendations on how to address the identified problems and in this way bridge the gap.

#### ADDRESSING THE CONCEPTUAL CONFLICTS OF RESTORATIVE JUSTICE AT THE MICRO-LEVEL

A great extent of this study's research was dedicated to examining whether a definition or the drafting of national or international principles could offer the solution to the negative effects of the various conceptual conflicts on RJ's implementation. This investigation included one of the most widely cited RJ definitions (Tony Marshall) as well as principles that have been endorsed by various NGOs (Restorative Justice Consortium, United Nations).

At least two things are now certain. First, it seems that the problem is not really one of definition, but of understanding. In other words, the lack of a clear and comprehensive definition for RJ is not what has contributed to the creation of the conceptual fault-lines, which appear to affect implementation in the ways discussed by this book. The principal cause that brought them about is the confusion that exists around RJ's practice standards and normative principles.

Second, the results of this research have shown that to address this problem, the following three steps will need to be taken. First, there has to be an acknowledgement that the problem of understanding is multidimensional. This is reflected in the different

types of conceptual fault-lines that were identified in Chapter 2. By accepting this, we may become able to advance individual treatments for each one of these fault-lines. The way in which the problem has so far been treated did not allow an examination of the individual implications of each of these fault-lines.

The second step will involve the establishment of a commonly accepted starting point in the characterisation of RJ. This does not need to take the form of a definition or even a statement. As Miers pointed out there has to be, at least, an agreement on the key phrase that describes RJ's essence (Miers 2001, 88). People need to be able to respond when asked what RJ is. As already argued, a narrow terminology (e.g. the word 'process' used by Tony Marshall) can create more problems than the ones it intends to solve. As the findings of this book have suggested, RJ comprises both theoretical and practical elements. These have to be reflected in the term that will characterise RJ's core nature. More importantly, any attempt to achieve this will have to avoid the fault-line of 'process-based vs. outcome-based' definitions described in Chapter 2. This study concluded that the word 'ethos' is the most appropriate.

However, these two steps should not be considered sufficient in dealing with the discussed problem. An additional third step will be needed. Here, the principal aim should be the creation of a consensual conceptual framework within which RJ can safely be placed. In practical terms, this means setting up minimum standards that no one who deals with RJ (practitioners, theoreticians, policymakers etc) will be able to infringe. This, of course, will not mean that RJ will have to be confined within the narrow limits of a certain definition, but only within a certain conceptual framework. This needs to be the outcome of a wide-ranging, comprehensive procedure, which will lead to mutual agreement.

The study investigated how this project could be realised. Through its working definition, it provided a list of provisional standards that could constitute the basis of discussion for this project. It also pointed out a number of essential RJ elements that could be used to build this conceptual framework. Twenty practitioners and researchers expressed interest in participating in this potential project, while many others expressed their support. It also pointed out that the chosen sample will have to be representative. To achieve this, special care will need to be taken so that all professional cultures within the restorative movement are represented. The identified interest battle will also need to be taken into account.

However, there is a caveat. It seems from the surveys' responses that the drafting of principles is unlikely to offer the parameters to build the aforementioned necessary conceptual framework. The interviews provided a detailed analysis of the

factors, which, according to the participants, led existing national and international principles to impracticality. These principles can often become additional sources of confusion and disagreements among practitioners. What the sample seemed to be in favour of was the drafting of consensual standards. The carrying out of a consultation process was suggested as the most appropriate methodology. The process should include representatives of all groups and stakeholders in the restorative movement.

The difference between having a list of standards<sup>197</sup> and not principles<sup>198</sup> is that the former will merely set the lowest level that someone who is practising, theorising or reading about RJ will not be allowed to drop below, but will still have the discretionary power to exceed. As one interviewee said: “Maybe then it comes down to terminology and the distinction between the words ‘standards’ and ‘principles’. The first is something you don’t want to drop below, but you can exceed, whereas the latter is not something you think of dropping below; it is something you either apply or not, either you have or not. In the same vein, another organisation claimed: “...To ‘operationalise’ such a set of principles, it needs those principles to become standards that practices and performances will not be able to drop below”. These standards, however, need to correspond to RJ’s commonly accepted central normative and practical elements. Then, in this way disagreements and confusion as to what they might mean will be avoided. Finally, standards are generally more easily applied and respected.

The following caveat also needs to be kept in mind. Standards might not indeed be open to interpretation or adjustment by anyone who wishes to abuse them, but should be vulnerable to time. To explain, according to this study, one of RJ’s strengths is its malleability and the fact that it is a living notion that expands or limits its application and normative understanding depending on the given historical, geographical and cultural changes that are taking place in the environments in which it is implemented. This was a point that was discussed extensively among this study’s participants. Therefore, it would be a mistake to deny this strength of RJ. Adaptation, therefore, to the given realities and necessities of our times is necessary. RJ needs to ‘listen’ to the calls of practical reality and be receptive and adaptable. More importantly, as pointed out by the data, a certain level of realism always has to be maintained when dealing with this problem. Nevertheless, this should not be without limits. Certain parameters have to be

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197 An example of an RJ *standard* could be: Participation can only be valid, if both parties have voluntarily agreed to it, as a result of informed and honest decision making process. It can be considered as standard because without it the RJ theoretical or practical concepts fall apart.

198 An example of an RJ *principle* is “Commitment to the accreditation of training, services and practitioners” (Fattah 1998). Both theory and practice can stand without this principle, which enhances them but not creates them.

respected if we are to avoid diluting the RJ central normative ideals.

To conclude, this study is in favour of creating a list of conceptual standards through an open consultation process from as many stakeholders as possible (theoreticians, practitioners, researchers, evaluators, policymakers, politicians and community members). The responsibility should be given to an independent, recognised authority. The need for an international Restorative Justice Board to create, protect and update RJ conceptual standards was discussed.

The scale of this project might sound considerable or even unfeasible. Surely, it will be time-consuming, costly and rather complex. However, the many examples of past attempts to define the restorative principles both at national and international levels suggest that it is not unachievable (see Chapter 2).

One final point that cannot be stressed enough is that all the aforementioned three steps towards a resolution of RJ's conceptual conflicts at the micro level can only be appreciated as contributions functioning at the normative level. When it comes to measuring the importance of a concrete understanding of RJ for its implementation and practical outcomes, the research is almost non-existent. That is why it is important that new studies are funded to measure this impact. It is advisable that the practical development of RJ is not guided only by theoretical principles of good intentions, but also by evidence of real-world effects. Only then the aforementioned three steps can effectively and appropriately address the discussed problem. Empirical evidence is also the only way to be sure there is no conflict between the norms themselves. In the end, the empirically tested standards may be endorsed with legislation to ensure uniformity and simultaneous application.

## ADDRESSING THE CONCEPTUAL CONFLICTS OF RESTORATIVE JUSTICE AT THE MACRO-LEVEL

Apart from addressing RJ's conceptual problems at the micro level (i.e. restorative movement), the study repeatedly pointed out the importance of increasing awareness of RJ at the macro level (i.e. public, the community). This is particularly important for victims and offenders as it may enable them to take a more active role in the restorative process should they decide to be part of it. According to the surveys, increased public awareness can also lead to public support and consequently political commitment. To this end, more information and education is warranted.

## **The Role of the Media**

Admittedly, the role of the press in offering contextualisation for RJ has not been particularly helpful. However, the US Department of Justice noted: “Journalists have a significant role in educating the public about crime, contributing to crime prevention and community safety efforts, and publicizing major policy initiatives that affect crime and victimization. Historically, much public safety/crime reporting has been negative... Some exceptions - including poignant stories of crime victims’ struggles and innovative programmes that incorporate community members to fight crime – exist; RJ can be such an exception” (US Department of Justice 1998, 1).

Best practice examples such as the US ‘National Institute of Justice’ can be used to guide practice. Moreover, participants seem to agree that national governments need to take a more active role in promoting understanding around RJ’s concept and practice. The authority and credibility of public authorities was thought necessary for increasing confidence in RJ. This involvement is desirable by RJ practitioners because it does not concern defining RJ’s standards, but promoting them among community members.

“There has been little new media coverage of RJ. Several factors account for this fact: (1) RJ cannot be reduced to a ‘sound bite’ and, as such, can be difficult to define in terms to which the news media are accustomed. (2) Many restorative practices are best defined for the news media in their programme context, as opposed to the general principles upon which they are based. (3) Some RJ practitioners lack strong news media contacts, and/or experience in dealing with journalists. (4) The media may be suspect of new approaches to justice, particularly those that lack evidence of success that is provided by longitudinal programme evaluation. Many RJ practices and programmes are too new to be declared successful” (US Department of Justice 1998).

A question for further research relates to these matters. In particular, follow-up studies could evaluate the presentation of RJ in the international, national and local press especially with regard to: (i) the drafting and publishing of press reports and releases for RJ (e.g. to what extent do traditional frames apply? Are the press open to the difference RJ represents?) (ii) the ways in which RJ schemes are communicated to the media by the police and participants (iii) how communication between practitioners, researchers, and policymakers can be better facilitated (iv) how practitioners and researchers identify the media, particularly since they seem to face a number of difficulties when attempting to do so (US Department of Justice 1998)

Further to the fourth point, it seems that most of the time the media does not come to the source, but the source has to go to them. From what this study has shown, RJ professionals know

little, or nothing at all, about the media and the ways in which they can be identified. News media consist of a variety of entities and individuals, each serving different needs and targets. Print and electronic media constitute the most traditional types, but RJ professionals need to look beyond these and search for other media venues such as the World Wide Web.

The media world is also very fast moving and to a great extent unreliable. What interests them today might be 'old news' by tomorrow and vice versa. However, as the US Department of Justice advised RJ practitioners: "It is essential to remember that while you and your organization need the media, the media also need you! When these ideas are presented in a timely, professional and accurate manner, the opportunities for building strong, ongoing relationships with the news media to enhance public education and community outreach efforts are endless" (US Department of Justice 1998, 7).

However, opening RJ up to the world of the media can be a very dangerous process. Many pitfalls seem to be associated with this step, particularly due to the intensely personal nature of restorative practices. No doubt, the media's expectations can be unrealistic in the sense that mediation rooms and family-group conferences do not always offer suitable material for broadcasting. The media also tend to limit or refuse editorial control to the facilitators, and are most often interested in the gossipy side of the stories rather than the real effect of the events. Various other practical problems may arise such as location and choice of appropriate venues, adequate staff or staff and participants who are willing to participate in a restorative process that will be under the microscope of a camera.

Lawrence Clossick, a mediator for Mediation UK facilitated a meeting while the BBC cameras were recording for their 'Streets of Crime' series. He said: "Like others, I have mixed experiences of working with the media...These concerns were mainly around any tinkering with the conduct of the face-to-face mediation which had to be as natural as possible with no interference, directions or scripting.... On a personal level, I found the experience worthwhile but demanding though I think this was more to do with the case itself rather than the fact it was being filmed. The planning is time consuming and keeping everybody on board can be difficult. Schedules get revised, but it really is worth sticking with it" (Caverly 2003).

Another practical difficulty in employing the media is confidentiality. The irony in increasing public awareness is that restorative practices are meant to be confidential. Restorative programmes are closed from public view and by invitation only. This is, of course, understandable and has to be respected if practice is going to retain its restorative character. This is particularly relevant to young offender under the age of 18 whose

defamation by the media is protected by basic legislation. So, how can one overcome this difficulty and make real cases be heard? How can facilitators keep to their confidentiality agreements and at the same time educate citizens about what really happened in the mediation room, telling them that there are other ways they can settle their dispute?

The significance and complexity of these questions become even more apparent, if we consider that a number of other issues are also related to confidentiality matters. For example, although personal disclosure plainly needs to be respected by all parties, it appears that a number of other aspects may need to be shared with others. For example, Victim Support has claimed that victims should not be prevented from seeking support by speaking to family and friends about what took place in the meeting. Similarly, 'Victims' Voice' argued that victims should be allowed information about the offender's history relevant to the crime so that they can become able to decide whether to go forward or not. In addition, issues such as these will also arise from the offender's plans for the future. The Strategy Document acknowledges the importance of integrating RJ with sentence and supervision planning, claiming that it is essential that outcome agreements reached in conferences be disclosed to prison and probation staff, so that assistance can be given in making these undertakings a reality.

Confidentiality is therefore an issue that should attract the more careful attention of both service and training providers. Its inclusion in the review of standards and accreditation mechanisms becomes even more apparent. The key point to remember while engaging in restorative meetings is to avoid publicly naming a person. Does it really matter if we publicise a victim-offender mediation as a case of T and J instead of as a case of Tim and John?

On the other hand, parties that wish for their name to be disclosed should be free to do so. Surprisingly enough, parties are often willing to share their experiences and invite others to choose restorative meetings. Andrew Jones, an offender who had agreed to participate in one of the victim-offender mediation programmes that were filmed by BBC said: "My first thoughts were 'oh my God', but after serious thinking to myself, I thought something good may come of it. My first concern about being filmed was being seen on TV as a burglar but hopefully I would be able to put across that I only stole to feed my habit and I am not an habitual thief..." (Caverly 2003).

On the other hand, the victim of the story, Susan Hebden, said: "I initially felt concerned that a large number of people would witness what I knew would be an emotional experience for me. These initial concerns were soon replaced by the realisation that this was an opportunity to reach out to more criminals; in other words more offenders would become aware of the human side to

their actions. I also felt that there must be more people who would welcome the opportunity to confront their oppressors but who are not aware of the work of mediation groups” (Caverly 2003).

The above issues can constitute the basis for further research. This could produce specific guidelines for RJ professionals in how to find the relevant media, how to contact them, what to say and what to avoid. Future research can also look into the facilitators’ concerns about running RJ programmes under the watchful eye of the media, as well as the fears and apprehensions of the parties regarding confidentiality.

### **The Role of Educational Institutions and Joined up Thinking**

It is evident from the study’s findings that educational institutions such as schools and universities have a significant role to play in addressing RJ’s conceptual conflicts at the macro level. As the volumes of academic books and articles on RJ are increasing, more and more universities introduce postgraduate degrees on RJ. Undergraduates are also taught about RJ through their criminal law and criminology modules. This needs to be encouraged and supported by more universities.

Evidence from the interviews also suggested that RJ really shows its potential when introduced into schools through the curriculum and skill based activities. Several practitioners, particularly from Survey III, indicated that RJ has proved to be a successful approach to bullying particularly when introduced as a whole school ethos whereby pupils are recruited as peer mediators. In particular, the following models have been tested and collectively they can provide a comprehensive framework for introducing RJ in schools as a cognitive and skills based concept.

- Restorative Conference: used for high level incidents, work with peer groups and parents and pupils facing exclusion.
- Staff mediation: where staff are able to mediate a situation between two pupils.
- Peer mediation: young people who have been taught mediation skills and are able to use them at lunch or play times.
- Restorative incident form: this has been piloted at two primary schools which allow staff to use reflective questions to find facts and feeling from pupils around an incident and identify pupil led solutions.

Moreover, teaching parents conflict-resolution-techniques is vital, so that they can role-model different strategies for dealing with conflict. Several case studies have been presented by this book to help understanding.

Finally, a consistent message from all interviews was the need for more joined up thinking and work. This is particularly true for

educational institutions such as schools. Interviewees talked about the value of schools working closely with criminal justice agencies, central and local government as well as transport services and social services. Joined up thinking not only helps to devise effective strategies for crime prevention and control but also a better understanding for RJ and community based approaches.

This strategic thinking has to be carried out with community based organisations as this is where RJ happens. As pointed out by one practitioner *“A major challenge is where organisations do not join up their work effectively and do not engage appropriately with community based organisations that have the expertise and knowledge of various community groups and have an awareness of what their needs are – we are missing a huge opportunity to ensure that we are not only engaging and sharing that learning with the wider community – so that it improves understanding and improves issues of community cohesion and reassurance, but we as statutory agencies aren’t able to put in place the requirements in order for us to meet our statutory duty. One of the things that we are experiencing is that there is lack of joined up working and where there are joined up strategies, what we tend to find that there is less of an issue within the community, and if there are issues, because there is an awareness of how seriously information is regarded then there’s a belief that things will be done, but where that isn’t there we lose out on a lot of information gathering opportunities”*.

## ACCREDITATION – TRAINING – GUIDANCE

The study discussed the idea of establishing national accreditation processes to supervise: delivery of training, accreditation services, manuals/textbooks and training standards. The latter needs to be distinguished from conceptual standards for two reasons. Firstly, standards may involve side issues of application, procedure and methodological appropriateness. Secondly, they are not concerned with matters falling outside the practical field *strictu sensu*.

The benefits of establishing national accreditation procedures were analysed by the participants. However, it was also stressed that this step entails a number of pitfalls. This study agrees that the establishment of bodies to monitor accreditation and safeguard training standards can provide a significant aid in overcoming the discussed anticipated problems. However, the creation of bodies such as these should be approached with extreme care particularly due to the existence of the discussed power/interest conflicts and cultural differences within the restorative movement. The newly established National Commission on Restorative Justice which sits within the Irish Department of Justice provides the RJ movement with unique learning opportunities.

As some interviewees pointed out "...Initially, there was a need to rely on theory for direction. However, the real expertise now lies with those working in the field. Indeed there have been pioneers operating in this country for some twenty years ...Theory is holding RJ back... practice should be informed by previous or additional practice....", "...We should have a body with an ongoing experience from practice... we should be learning from the practice..." Finally, "...Both expertise and authority can only come from those with working experience...". The absence of nationally accepted training standards makes the establishment of the aforementioned body even more difficult. As illustrated by the practitioners, researchers and policymakers of the two surveys, this lack creates a problem in itself.

One needs to be particularly careful when choosing theory or practice for these purposes. In fact, exchange of information from these fields is imperative. This association, therefore, should be particularly careful (a) when choosing the founding members of its board to include experts from both theory and practice (b) when evaluating practice and training to respect the central values that characterise RJ. Therefore, the findings of this research become particularly relevant.

Using the example of England and Wales and how victim-offender mediation training developed, the first practice standards were produced in 1989 by Mediation UK, and their latest revision took place in 1998 (Liebmann and Masters 2001). The revised edition included sections on ethical values, principles of mediation and guidelines for putting principles into practice, before, during and after mediation. The big change, however, took place in 2003, when Mediation UK was again instrumental in developing the 'Community Legal Service Quality Mark in Community Mediation'. After this, mediation services that attain the Quality Mark can operate to nationally recognised quality standards<sup>199</sup>. However, this has not been endorsed by any legislative or governmental action.

Nevertheless, there should be no doubt that the 'Quality Mark' brings order to what might otherwise be chaos. It enables mediation services to locate and orientate themselves, their performance and development within the organisation as a whole. It will inform future service development and even assist relevant funding applications by providing a structured means of reflection (Shaw 2003). The entire evaluative process makes it possible for human performance to be objectively evaluated against a set of criteria. Various programmes' ethical development is thereby safeguarded. Therefore, in this respect, it can serve as a model for other countries.

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199 According to Mediation UK, their mediators are trained on nationally approved training courses and assessed as 'competent to practice'.

However, as one mediator asked: “what is the difference between the principles which govern the legal process and those which drive the Quality Mark” (Shaw 2003)? Recognising and incorporating this difference will be essential in the development process of mediation services. Marian Liebmann and Guy Masters noted: “standards have been a key issue for mediation services and mediators”. Undoubtedly, Mediation UK has been extremely helpful in this respect, but nonetheless “there is still a lot to be done” (Liebmann and Masters 2001, 349).

In brief, there has been no governmental initiative to formalise procedures as credit for any progress made can only be given to the voluntary and community sector. A more active involvement of the Government in accreditation procedures was thought by the interviewees to be desirable. As pointed out by an interviewed trainer “Very few people in the criminal justice system have a clear idea of how much training is really needed before the courts, the police and everyone who has a role in processing offenders and victims become able to understand the RJ ethos and consciously choose to go by it”.

## EVALUATING THE EVALUATION OF RESTORATIVE JUSTICE

Data from the fieldwork showed that evaluation of RJ programmes can often be hampered. Some of the reasons were thought to be associated with the role that has been bestowed on RJ and the impact of the retributive and utilitarian traditions of justice. Others were thought to be associated with the general confusion that exists in the RJ field and beyond, regarding the use and meaning of RJ, or the lack of commonly accepted standards and accreditation processes. These findings are reflected in a number of recent evaluation and research studies. “Funding bodies need to be more specific about the nature of the interviews they are funding, or else they risk funding non-restorative activities” (Wilcox and Hoyle 2004, 54).

The truth is that evaluation has traditionally been associated with the question of ‘what works’, and therefore it generally aims to prove or disprove the predefined targets of the given organisation that is funding it (let that be public or private). However, this question is relative and to a great extent misleading, as it can involve virtually anything in the appropriate conditions. That is why many researchers like Marshall and Merry have insisted that “the approach should change from ‘what works’ to ‘what exactly happened’ (in certain specific instances)” (Marshall and Merry 1990, 20)

As a rule of thumb, evaluators are not concerned with the policy decision that will eventually follow their work on whether to continue with the given programme or action. This is primarily a political

decision that involves a number of moral and ideological factors that the researcher may attempt to clarify but cannot decide. That is why a good evaluator focuses on collecting information relevant to all the identifiable aims, which different parties may have. Especially in the case of RJ evaluations, researchers need to include all its targeted audiences: victims, offenders and communities.

According to this study, most often evaluators are supplied with predefined tasks that are set out to prove or disprove, having to move within the retributivist and utilitarian understanding of the given funding bodies. These tasks usually involve the reduction of re-offending, saving police time, the reduction of costs and prison population. This narrows the scope of the evaluation and its chances of reflecting practical reality.

The challenge posed by this problem is one of foremost significance for RJ's future development. It is also one of the most difficult to address, since it requires a certain level of transformation of the culture that is currently inherent in criminal justice policy agendas. This demands a slow and long process. It also needs to persuade funders and policymakers about the usefulness and significance of these 'other' targets that are set by RJ. If practitioners and researchers can show that through their completion these targets may lead to an outcome that is fairer, more efficient, less time-consuming and less cost-effective than the one pursued through punitive targets set up by the traditional criminal justice system, then this pitfall might be overcome.

However, focusing solely on the targets and outcomes of a restorative programme cannot be enough in bringing a change to the aforementioned culture. In fact, and this is where the heart of the problem lies, evaluation needs to embrace a range of other factors apart from programmes' outcomes. The RISE experiments in Australia have set an example, while the following variants need to be considered at all times:

- (i) **Participant satisfaction:** In victim-offender mediation, this should refer to both victims and offenders. In family-group conferences, circles and boards, this could also extend to secondary and tertiary participants. Satisfaction, on the other hand, should be measured not only in terms of the process in the narrow sense, but also in terms of the whole restorative experience (e.g. overall satisfaction with the facilitator, the preparation, the venue, timing, procedural features strictu sensu, etc). It could also include questions such as recommending the process to others or choosing to participate again.
- (v) **Outcomes:** These need not only be the ability of the programme to reduce re-offending and save police time or financial resources, but could include the effects on victims

and offenders and their families. For example, reduced anger and fear, improved quality of life, benefits to the community.

- (vi) **'Restorativeness' of the process:** Undoubtedly, this factor will constitute one of the greatest challenges for future evaluation particularly since its measurement will require a certain level of agreement around the essential restorative values. These could include, for example, expressions of feelings, genuine remorse and asking/giving of apology, consensus and understanding, honest and productive dialogue, sense and willingness of reintegration.
- (vii) **Delivery:** This could just focus on the ability and competence of facilitators to carry out meetings according to the generally accepted restorative values and the nationally established training standards. The establishment of the accreditation procedure and committee as well as the introduction of nationally accepted manuals, books, standards and other quality criteria that have been suggested in other parts of the book will assist in this measurement.

On the other hand, the evaluators themselves also carry an enormous amount of responsibility in this long-term process of cultural transformation. Most often, while in theory the measurement of outcomes is important to evaluation, in practice this significance is over stressed. "In the struggle for shares in limited budgets, advocates of particular innovations are liable to be forced into claiming more for their ideas than in the face of other inimical social forces can be attained" (Marshall and Merry 1990, 24). Arguably, it is too early to safely promise that all restorative programmes can reduce crime, enhance community relationships, prevent offending or build better societies. As Chapter 5 and the findings of this research have shown RJ is indeed a promising ground for further investigation. As the evidence is still accumulating, generalisation and dangerous assumptions need to be avoided.

Finally, evaluation has so far focused only on individual-level outcomes or types of programmes. More importantly, it has used measures and techniques that are typical in the measurement of traditional criminal justice procedures. The need to develop more innovative measures that would allow the evaluation of a more wide-ranging RJ and more accurate data on the quality and effectiveness of its outcomes and procedures is therefore identified. In the UK, the Government has recently shown an unprecedented interest in finding out more about RJ's potentials. This opportunity should be explored further. One of the research teams funded under this initiative is the Justice Research Consortium, which has been discussed in Part I<sup>200</sup>. With its innovative research in finding

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200 The other two projects are: REMEDI (South Yorkshire Victim-Offender Mediation Service) and NACRO/London Probation Area.

ways to insert RJ at various points in this criminal justice system for both adult offenders and youths, the Consortium is hoped to open up more research potentials and show the way to overcome some of the aforementioned pitfalls<sup>201</sup>.

To conclude, it is important that future research reflects both the outcomes of the evaluated programmes as well as those features that quantify what Braithwaite has called “grace, shalom” (Braithwaite 2002, 53). Trish Stewart reported one who said in the closing round of a conference: “Today I have observed and taken part in justice administered with love” (Steward 1993, 49).

While taking care that the right balance between these two targets is achieved, evaluators need also to make sure that a distinction is made between the ultimate objectives of the process and its intermediate outcomes. As Marshall and Merry put it: “Almost any scheme associated with criminal justice will invite the majority of observers to identify the reduction of crime as the prime aim. The dominance of this criterion has probably led to the demise of many promising ideas” (Marshall and Merry 1990).

These ‘other’ objectives of restorative practices need to address at least two needs. First, they need to show to the given parties that the process is indeed worthwhile and effective. Therefore, they have to meet the needs and expectations of the primary participants. Second, if RJ is to be acceptable as a social policy it has to show that in its new ultimate objectives there are benefits not only for the individual participants, but also for the wider social and economic circles. There must also be a feeling that “the provision of such services is obligatory upon society” (Marshall and Merry 1990, 31).

## FUNDING RESTORATIVE JUSTICE

It is evident from the fieldwork and the desk research that the way RJ is being funded affects the structure and priorities of its practices, as well as its philosophy and values. This is true for its evaluation, application and theoretical development.

For RJ programmes to justify their existence and funding, they have to appeal to the persuasive power of utilitarian or economic rationalism. This means that they have to show that (i) they will decrease court caseloads, the prisoner population, and recidivism rates; and (ii) they will increase the percentage of restitution settlements and victim/offender satisfaction. This study concludes that if RJ projects continue to be funded according to these criteria then its original values and principles will be skewed and possibly

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201 “I am keen to find out whether such an approach would be equally successful with older offenders as part of, not an alternative to, the criminal justice system”, Home Office Minister, Keith Bradley.

merged with the retributive and utilitarian objectives of the traditional criminal justice system.

RJ is principally provided by community based organisations as there still hasn't been commitment by national government to apply it consistently across their jurisdictions. Voluntary and community based organisation rely on funders to carry out their work, and are most of the times understaffed. In theory, the sector's independence keeps RJ practices firmly grounded in the norm's original values but as it was repeatedly reported by the practitioners of the four surveys this is not always true. The following recommendations focus on seven aspects that were considered paramount in the way funding is allocated for RJ practice, research and evaluation.

### **1. The Funding Implications of Misconceptions**

"...RJ is not an easy concept to comprehend or accept. It is difficult to get it across within a short period of time" (interviewee, second survey).

The funding of RJ practices, evaluation and research seems to be affected by what funders and stakeholders conceive to be "restorative practices". Misunderstanding has led funders to:

- think that RJ practice and practitioners are against the traditional criminal justice system – some may even believe that RJ was introduced to lead to a fundamental transformation of the justice system;
- associate RJ practices with religious beliefs;
- confuse RJ with individual practices such as victim-offender mediation and FGG;
- believe that RJ is something "new" that is too risky or cumbersome to support;
- take RJ to be "radical idea";
- believe that RJ is a soft option which should be used only for minor crimes and juveniles.

"Funding bodies need to be more specific about the nature of the interventions they are funding, or else they risk funding non-restorative activities. There was a considerable amount of 'drift' from the aims stated in the bids, reflected by the fact that over 50% of interventions involved either community reparation or victim awareness only" (Wilcox and Hoyle 2004, 54).

The recommendations on how to address RJ's conceptual conflicts both at the macro and micro levels are relevant and therefore no further analysis will be attempted here.

## **2. A Non-retributive Practice: Keeping Close to the Restorative Values**

“So, when you get money from the Government, then it is likely that you get their agenda, and this affects how to measure the value of RJ and its outcomes” (interviewee, second survey).

The sample seems to believe that the predominance of utilitarian and retributive goals in the criminal justice system in combination with the secondary role that has been bestowed on restorative practices expose the concept to a ‘no-win’ process, where restorative ideals are called to compete with the already deep-rooted beliefs of ‘law and order’ to which most policymakers and politicians adhere

“The Home Office tends to give prime importance to reducing re-offending, and although this might not be problematic as such, the way RJ has so far been used suggests that it has been treated as a ‘means to an end’. This is because the reduction of re-offending is not theoretically considered as one of its primary interests, but only a welcome side-effect of healing, forgiving and re-integration. This point becomes clearer if we consider that it is the funder who more or less controls the way programmes are put into practice” (participant, Survey I).

RJ needs to be treated and appreciated as a practice and an ethos that is based on different principles from the ones that characterise the traditional criminal justice system. Although the objective is indeed the same (i.e. bring balance to the community and restore justice), the road that leads to this end is different. Addressing the conceptual fault lines described in Chapter 2, should provide a good starting point in dispelling the myths and boosting confidence in RJ.

## **3. Victims vs Offenders’ Funding: the Middle Way**

The findings from the fieldwork indicate that the prioritisation of funding resources according to groups of parties involved in a crime affects the sponsoring of RJ schemes as the restorative principles place equal significance on all communities of interest. For example, funding specifically allocated to rehabilitating offenders may not consider RJ schemes to be fit for that purpose. Likewise, funding for victim support programmes may treat RJ as something for the offender and indeed dangerous for the victim.

Funders and stakeholders need to either remain open-minded when assessing funding applications for money allocated to specific parties, or introduce new funding streams for restorative methodologies that focus on all communities of interests. Before this is achieved, however, the conceptual conflicts around RJ’s notion need to be addressed; hence the recommendations on both macro and micro levels of misunderstanding are relevant.

#### **4. Hijacking Funding: Spot the Difference**

“...the term RJ is currently being used to label things that are in no means restorative for either party involved. And there are a lot of reasons for this, and one of them is money ... some people came along with their punitive practices and labelled them RJ in order to get this money. Hijacking funding by non genuine RJ programmes” (participant, Survey I).

In the absence of a regulatory authority that checks the quality of RJ practices, the question for funders is how to assure that the funded practice is one that is based on the norm's values and principles. Funders are not experts in RJ; therefore it should not be expected that they will be able to spot the difference between what is a practice that is indeed based on the values of RJ and what is not.

The findings from the research seem to suggest the following in relation to this problem:

- the compilation of a list of core standards for RJ practices. This should be used to set up new programmes and evaluate existing ones.
- the introduction of a 'checklist' that funders could apply during the assessment and monitoring stages.

#### **5. Being Patient vs Performance Measurement**

“When it comes to asking money, the problem is that RJ has a slow time delivery ... this is especially the case with the Government where the money usually comes from. Funders, in general, want to see results now, and treat RJ as a 'quick fix tool'; this often leads to disappointments and misunderstanding about what RJ really is and what it can offer” (interviewee, second survey).

Funding bodies introduce time scales and performance measurement into funded practices, and, according to the interviewees, these usually undermine their effectiveness. Moreover, evaluation needs to be large scale, and conducted at a sufficient length of time following an intervention to accommodate re-offending data. Scheme co-operation must be a condition of any funding arrangements.

“Potential funding bodies will continue to insist on some measure of success or failure at a reasonably early stage, which is almost well short of the time needed to develop firm and efficient strategies of work....Rather than insisting on rigid academic conditions for 'proper' evaluation, researchers are forced to develop modes of investigation that address success while accommodating to the motile reality of what they are assessing”.

If progress is to be made in assessing the outcomes of RJ projects and in finding genuine restorative practices, resources

would be better spent on implementing well-designed projects with clearly defined aims and methods, and with evaluation built in from the start.

## **6. The War on Media: Dispelling the Myths**

“Although restorative programmes have been running for at least three decades, only recently have they come to the media’s eye. Consequently, the public is still not aware of it. More importantly, when occasionally there is some interest from journalists their report is rarely accurate, while it most commonly jumps to conclusions aiming only to manipulate the public’s general attitude” (participant, Survey I).

The community as a whole knows very little, or nothing at all, about RJ’s alternatives. Therefore, more information needs to be disseminated. Some respondents suggested using the media (television, radio, newspapers etc) to enhance RJ’s profile. Some insisted on using examples of real life to show the real positive outcomes that RJ has on victims and offenders’ lives. In their words, RJ has the inner ability to be able to speak to the hearts of people, and this can be achieved by presenting real case-studies that have been processed restoratively.

Finally, the participants suggested that (i) the lead of this profile campaign and (ii) the establishment of the aforementioned independent evaluation committee/procedure could be taken up by the Government.

## **7. The Role of the Voluntary and Community Sector**

From the evidence collected it appears that most RJ practices are run in the community by voluntary and community sector organisations and groups. Although this allows a considerable level of flexibility into the development and management of these schemes, it also adds a number of challenges. Voluntary and community sector groups are most of the time under-resourced and understaffed while most of the time are not seen by statisticians, criminal justice officials and governmental bodies as contributing to crime prevention.

Commentators have repeatedly stressed the important role of the voluntary and community sector in promoting a feeling of empowerment and belonging in community groups. Organisations working in the voluntary and community sector help maintain a balance between community groups often feeling isolated and let down by public services and government. The voluntary and community sector establishes communication channels between individuals and government bodies, and enable small and large minority groups to have a say in policymaking, legislation and regulation of the country’s affairs.

The vast majority of voluntary and community sector activity takes place at a local level, often addressing the needs of society's most disadvantaged groups. As partners, providers and advocates, voluntary and community sector organisations are ideally placed to work with local authorities to achieve results for local people - improving the quality of life and the quality of services in every area and encouraging strong and cohesive local communities. Therefore, regional governance bodies and strategic structures are increasingly relying on the voluntary and community sector to help deliver on their crime reduction agendas. Statistics also show that the public trusts the voluntary and community sector more than other sectors particularly in relation to crime work. However, according to the study's evidence government bodies do not engage with the voluntary and community sector adequately. And there is low level of their work and contribution. Funders and other stakeholders should see the voluntary and community sector as a key partner for restoring justice in the community.

## CONCLUSION

*"I recall that I had heard the term 'Restorative Justice', and had a very rudimentary understanding of it. But when my life was rocked by violent crime my need to meet the perpetrator simply came from my gut – not what little I knew of the mechanisms for alternative approaches to justice. Being married to a lawyer, and having an inside track on the justice system for many years made me a somewhat 'biased' consumer of legal services. I initially expected that I would be treated with 'kid gloves', and that I would come away feeling well served. I was satisfied with the way in which the police, the crown and the courts dealt with the murderer of my husband, given the evidence they had to work with. But the process offered me nothing in the way of hope, healing or confidence that the perpetrator understood the devastation he had caused and that he would not go on to repeat offend.*

*When I knew the arrest was imminent I simply wanted to talk to him. I thought a face-to-face meeting would do far more for both of us than what lay ahead in the judicial proceedings. The police were taken back by my request, but initially relented and had me videotape the conversation I would have if I had been given the opportunity to meet with the perpetrator. After his arrest he was shown the tape and promptly confessed. Then, acting from his gut, the perpetrator asked to meet me. That encounter was, without a doubt, one of the most heart wrenching and human experiences of my life. On one hand it was the end of the five years waiting for resolution, and on the other it was the beginning of time of hope and possibility for both of us.*

*Since those early days, I have had the privilege of working more formally on this victim offender reconciliation with Canadian pioneers in the field .... I was amazed at how closely my own grassroots effort at empowering both the perpetrator and myself mirrored their methods of practice. However, I have also seen RJ practices that have been far less compatible with my personal experience. There have been court imposed time limitations that have rushed the very necessary preparation for a face-to-face meeting. There have been scenarios that I believe stood a high likelihood of re-traumatizing the victim, the offender or both parties. There have been cases where insufficient funding has been in place to ensure that the most highly trained experts in facilitation are available. And there has been a lack of true commitment to the realities of RJ in the face of public criticism of a 'too-soft' judicial system. I have spoken to tens of thousands of young people about my personal journey. I am constantly amazed that their first impulse in hearing my story is to be angry. We need to understand what a 'dead-end anger' is. It is my desire to help shift the perspective of our community towards the restorative model. Forgiveness truly sets us free".*

Like Ms. Hutchison, many other victims for different reasons and irrespective of the type of crime that happened to them are left with a feeling of disappointment and an unexplained urge to meet face-to-face with the realities of their crime<sup>202</sup>. To this end, some victims are even willing to confront the person who harmed them. This is true even in cases which the traditional criminal justice system considers 'properly' and 'effectively' processed. The same applies for a number of offenders irrespective of their age, the crime they committed or their background<sup>203</sup>.

Arguably, this urge to settle conflicts at a personal level - or at least at a more personal level - is innate in all individuals. Probably, this is why RJ practitioners claim that parties need not be aware of RJ to 'crave' for this type of resolution. A number of historical sources suggest that RJ is grounded in ancient traditions of justice, and this is by no coincidence. Many have even called it "natural justice" or "community justice".

Due to the enthusiastic work of committed practitioners, mainly working within the voluntary and community sector, RJ is now on the criminal justice agenda worldwide. However, factors such as inconsistency in its application, power-interest battles within the movement and lack of state and legislative support have created fears of a discrepancy between the way the RJ theory and practice have developed. This book looked into this gap to understand its implications for practice and RJ's future development. The research

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202 See for example H. M. Inspectorate of Probation 2000; Home Office 2003; Moore et al. 1995.

203 See for example McCold and Wachtel 1998; McCold and Wachtel 2000.

did not focus on any particular criminal justice system, as the conclusions and recommendations were intended to benefit the wider restorative movement.

Chapter 1 got to grips with the contemporary concept of RJ and constructed the study's conceptual framework. This account was broken down to two parts. The first put the term 'RJ theory' in context and illustrated the core abstract aspects of the concept as these are interpreted by some of the most prominent writers in the field. The second section descriptively approached four classical examples of RJ practice. However, the chapter asked: is this conceptual framework shared by everyone within the restorative movement? If the answer is negative, then what is the significance of these conceptual disagreements? Can any consensus be reached, and if yes, will this advance RJ in any way? More importantly, are these tensions related to the examined gap?

These questions constituted the focus of Chapter 2, which detected a discrepancy in the RJ conception. It then proceeded to describe the substance of this variety by identifying six conceptual fault-lines in the restorative movement. It was concluded that the issue of RJ's conceptual confusion is multidimensional, and that in order to address it there needs to be acknowledgement of the various fault-lines' individual implications. Subsequently, the second section attempted to complement these findings with a critical analysis of international attempts to define RJ's principles and concept. Some of the most pertinent questions raised by the chapter included: Have these conceptual fault-lines affected RJ's implementation? What are the main factors that brought them about, and how can they be addressed? Again, are these tensions related to the examined gap?

To address these questions, the first section of Chapter 3 aimed to translate some claims of the book into practical terms, moving the discussion from the 'theoretic' to the 'pragmatic'. The investigation focused on statutory and policy developments that took place in four criminal justice systems (Australia, Canada, New Zealand and England and Wales). The description illustrated the significance of RJ for policymaking and jurisprudence. However, it also brought evidence of misapplication and misinterpretation of the restorative normative goals as well as examples of some of the implications of RJ's conceptual conflicts. Subsequently, the second section of the chapter discussed the trans-national dimension of RJ by providing examples of regional and international significance. The description showed that contemporary RJ has broken through national borders and that its application at the international level is interlinked with national and local understandings of justice.

Subsequently, the findings from the desk research were used to draft the discussion guides for the fieldwork. The four surveys that were carried out to test the book's hypothesis aimed at recording

the views of people who had experienced RJ in practice either through implementation and/or 'action research'. Chapter 4 presented the crude evidence from Survey I, which was carried out with practitioners from around the world. Chapter 5 then constructed an evaluation framework within which these new findings were placed. This framework was created through the use of data from the extant literature and evaluations of restorative practices from around the world. Chapter 6 organised these findings into thematic groups that corresponded to concrete practical problems in RJ's theoretical and practical development. These were boiled down to: Confusion around the use and meaning of RJ, issues of training, education and accreditation and funding of RJ.

Subsequently, the findings of the international survey were followed up by Chapter 7 which reported on interviews that were carried out with some of the most important policymaking organisations in England and Wales. Two additional problematic areas in RJ's development were reported: the implementation of the RJ victim-related principles and the application of the principle of voluntariness.

Chapter 8 and 9 then focused on two case studies that shed further light on the book's underlying hypothesis. In particular, Chapter 8 analysed the findings from Survey III on the use of RJ with hate crime. Chapter 9 then presented evidence from Survey IV with practitioners who had experienced the value and dangers of using RJ for sexual offending cases.

The findings from the desk research and the four surveys were collated in Chapter 10 which draws links with the study's underlying hypothesis. The analysis showed why the gap matters, and how it affects current implementation. This addressed the initial fears of this research, which sought to look down into the examined gap and not to theoretically observe the space it creates. Chapter 11 concluded the study with evidence-based recommendations which, although not prescriptive, when appropriately utilised, under certain conditions, may increase the chances of enhancing performance by limiting the negative effects of the examined gap.

The findings and recommendations of this seven year study will hopefully provide the restorative justice movement with enough evidence for an appropriate action plan to bring practice in line with the original RJ values. It will hopefully become a waking call for criminal justice reformers and policymakers who seek a genuine change in the system. More importantly it will hopefully raise awareness of the important role of practitioners in bringing RJ to the lives of many victims and offenders.

RJ was brought back not by politicians or policymakers, but by passionate practitioners working in the voluntary and community sector in the hope of bringing balance and justice where the

traditional criminal justice system failed. The work of academics helped the movement to advance and the joint efforts have now put RJ onto the statute book and policy agendas around the world. As further development of RJ is desirable and indeed necessary, the conceptual and other tensions within the restorative movement have to be addressed. The restorative principles need to be protected and the notion needs to be understood and embraced while acknowledging the practical challenges such as funding, training, accreditation. I hope that this book has taken a step towards this direction.

## APPENDIX I

### ORIGINAL SAMPLE OF SURVEY I (INTERNATIONAL)

\* The survey was carried out in 2002-2003. Therefore, some details may be out of date.

	NAME	RJ ROLE	OCCUPATION	LOCATION
1	ANDREI Pascu	Practitioner	Prison social worker	General Directorate for Penitentiaries, Romania
2	ARMS Rochelle	Practitioner	RJ coordinator	Transformation House, USA
3	BEGLEY Christina	Practitioner	Practitioner	Institute for Study of ADR, USA
4	BLAKELEY Steve	Practitioner	RJ coordinator	Youth Offending Team, Kirkless, UK
5	BRADSHAW William	Researcher Practitioner	Associate Professor	Centre for RJ and Peacemaking, USA
6	BOLITHO Jane	Researcher	Research Fellow	South Wales University, Australia
7	BOWERS Kate	Researcher	Lecturer	Liverpool University, UK
8	BRAITHWAITE Stephanie	Researcher Practitioner	Researcher Practitioner	Crime Concern, Mediation and Reparation Service, UK
9	BROWNING Ruth	Researcher	Researcher	Plymouth University, UK
10	BUONATESTA Antonio	Practitioner	Mediator	Mediation for Redress Mediante, Belgium
11	CHANKOVA Ivanova	Researcher	Executive Director	Institute for Conflict Resolution, Bulgaria
12	CHRISTIAN Peg	Practitioner	Director	Braided River Peace Project, USA
13	COATES Robert	Practitioner Researcher	Senior Research Associate	Centre for RJ and Peacemaking, USA
14	COPPOLA Gioia	Practitioner	Mediator	Bari Mediation, Italy
15	CRISP Jayne	Practitioner	Consultant	Training and Technical Assistance Centre, Office for Victims of Crime, US Department of Justice, USA
16	De la Camara de Delas Belen	Practitioner	Director General	Mesures Penals Alternatives de Justicia Juvenil, Spain
17	DISSEL Amanda	Practitioner	Manager	Centre for the Study of violence and Reconciliation, South Africa
18	DOERFFLER David	Practitioner	Practitioner	Centre for RJ and Peacemaking, USA
19	DROGIN Eric	Practitioner	Psychologist	Louisville University, USA
20	EAGLE Harley	Practitioner Researcher	instructor, Circle Facilitator	Wapaha Ska First Nations Reserve, in Saskatchewan,

				Canada
21	ELLIOT Robin	Researcher	Researcher	Research Directorate, Home Office, UK
22	EVERSON Steve	Researcher	Researcher	Huddersfield University, UK
23	FORGET Marc	Practitioner	Partner	Deep Humanity Institute, Canada
24	GALLAGHER Catherine	Researcher	Professor	George Mason University, USA
25	GELSTHORPE Loraine	Researcher	Senior Lecturer	Cambridge University, UK
26	GOLDIE Shelagh	Practitioner	Consultant	Freelance, UK
27	GRAY Patricia	Researcher	Senior Lecturer	Plymouth University, UK
28	GREEN Ross	Practitioner	Member	Saskatchewan Legal Aid Commission, Canada
29	GRENIER Carol-Anne	Practitioner	Project officer	Correctional Service, RJ and dispute resolution, Canada
30	GORDILLO Luis	Practitioner	Victim Support worker	Victim Support, La Rioja government, Italy
31	GROBEN Sylvie	Researcher	Researcher	Goldsmiths College, London University, UK
32	HAIDER Stephanie	Practitioner	Coordinator	Victim Restoration programme in Minnesota's Dakota County Community Corrections, USA
33	HALYAMA Julie	Practitioner	Executive assistant	Department of Rehabilitation and Correction, community justice, USA
34	HARVEY Linda	Practitioner Researcher	Mediator, social worker	Restorative Justice Council, USA
35	HARRIS Scott	Practitioner	Practitioner	RJ and Dispute Resolution Unit, Canada
36	HILL Roderick	Researcher	Research Fellow	Oxford University, UK
37	HODGSON Beth	Researcher	Research Fellow	Police Station, Kirkburton, UK
38	HOPKINS Belinda	Practitioner Researcher	Director	Transforming Conflict, UK
39	HRONEK Stephanie	Practitioner	Practitioner	RJ and Dispute Resolution Unit, Canada
40	IIVARI Juhani	Practitioner Researcher	Research Director	National Research and Development Centre for Welfare and Health, Finland
41	JOAO Lazaro	Practitioner	Secretary General	Association for Victim Support, Portugal
42	JULLION Daniel	Practitioner	Mediator, trainer	AIV Grenoble INAVEM France
43	JOHNSON Shane	Researcher	Senior Lecturer	Liverpool University, UK
44	KATEIVA Jodi	Researcher	Researcher	Institute for Study of ADR, USA

45	KIFF Paul	Researcher	Administrator	British Society of Criminology, UK
46	LABELLE Ray	Practitioner	Practitioner	RJ and Dispute Resolution Unit, Canada
47	LAYCOCK Gloria	Researcher	Director, Professor	Jill Dando Institute of Crime Science, UCL, London University, UK
48	LEDWIDGE Mike	Practitioner	Head of youth affairs and RJ	Surrey Police, UK
49	LEVY Deborah	Practitioner	Practitioner	Juvenile Justice Evaluation Centre, USA
50	LIEBMANN Marian	Practitioner Researcher	Ex Director of Mediation UK	Mediation UK, Victim Support, Probation, UK
51	LIGHTFOOT Elizabeth	Researcher	Assistant Professor	Minnesota University, USA
52	LINTHORST Robin	Researcher	Researcher	IMG Interdisciplinaire Mediation Groep, Netherlands
53	MASTERS Guy	Practitioner Researcher	Senior Practitioner	Essex Family-Group Conference Service, UK
54	MCCOLD Paul	Researcher Practitioner	Director	International Institute for RJ practices, USA
55	MCLEOD Carolyn	Practitioner	Manager,	Community Justice, Washington Court Court Services, USA
56	MERCER Vincent	Practitioner	Project Coordinator	Greater Manchester FG Meetings Project, Justice Trust, UK
57	MIA Claes	Practitioner	Mediator	Redress for Juveniles at Oikoten, Belgium
58	MILLER-ASHTON Jane	Practitioner Researcher	Policy coordinator	Correctional Service of Canada
59	MORGAN Kerry	Researcher	Senior Research Officer	Criminal Justice Research Branch, Scottish Executive, UK
60	MOSELEY Jo	Researcher	Research Officer	Plymouth University, UK
61	NEHLIN Christina	Practitioner	Consultant	Mediation Service, Uppsala, Sweden
62	NELLIS Ashley	Researcher	Researcher	Juvenile Justice Evaluation Centre, USA
63	O'CONNELL Terry	Practitioner Researcher	Director	Real Justice, Australia
64	OLALDE Alberto José	Practitioner	Worker	BILDU Conflict management centre and mediation, Spain
65	PEASE Ken	Researcher	Professor	Huddersfield University, UK
66	PELIKAN Christa	Researcher	Research Officer	Institut für Rechts & Kriminalsoziologie, Austria
67	POULIN Mary	Practitioner Researcher	Practitioner	Juvenile Justice Evaluation Centre, USA

68	POWELL Richard	Practitioner	Mediator	MN Association of Black Psychologists, USA
69	PRANIS Kay	Practitioner	RJ Planner	Minnesota Department of Corrections, USA
70	PRASHAW Rick	Practitioner	communications director	Church Council on Justice and Corrections, Canada
71	RADOLFF Brooke	Practitioner	Researcher	Institute for Study of ADR, USA
72	RANE Claudine	Practitioner	Manager	Referral Order & Reparation, Youth Offending Team, Haringey, UK
73	REA Lisa	Practitioner	President	Justice and Reconciliation Project, USA
74	REED Oscar	Practitioner	Director	Minneapolis Community Empowerment and Prevention Programme USA
75	REX Sue	Researcher	Senior Research Associate	Cambridge University, UK
76	ROBERTS Ann Warner	Researcher Practitioner	Research Fellow	Centre for RJ & Peacemaking, RJ Council, USA
77	ROCHE Declan	Researcher	Lecturer	LSE, University of London, UK
78	ROGER Smith	Practitioner Researcher	Probation Officer, Lecturer	Former manager of Juvenile Diversion Project, Leicester University, UK
79	SHINER Michael	Researcher	Researcher	Public Policy Research Unit, Goldsmiths College, UK
80	SHROEDER Robyn	Practitioner	Researcher	Institute for Study of ADR, USA
81	SIMMONDS Lesley	Researcher	Research Officer	Plymouth University, UK
82	SKELLINGTON Kate	Researcher	Research Officer	Criminal Justice Research Branch, Scottish Executive, UK
83	SKELTON Ann	Researcher Practitioner	Research Officer	Child Justice Project, Department of Justice, South Africa
84	THAO Neal	Practitioner	Instructor	Social work programme, Minneapolis, USA
85	TENBEAR Gary	Practitioner	Chemical Dependency Director, Circle Facilitator	Minneapolis American Indian Centre, USA
86	TOWNSLEY Michael	Researcher	Researcher	Liverpool University, UK
87	TRUJILLO Jesus	Practitioner	Mediator	Residencia Juvenil La Monataneta, Spain

88	UMBREIT Mark	Practitioner Researcher	Executive Director, Professor	Centre for RJ and Peacemaking, USA
89	VANDROOGEN BROECK Bram	Practitioner	Mediator	Mediation Services, Heverlee, Belgium
90	WACHTEL Ted	Practitioner Researcher	President	International Institute for RJ practices, USA
91	WALKLATE Sandra	Researcher	Professor	Manchester Metropolitan University, UK
92	WALLIS Peter	Practitioner	Coordinator	Reparation, Youth Offending Team, Oxford, UK
93	WATSON Elizabeth	Practitioner	Co-Director	Institute for Study of ADR, USA
94	WILLIAMS Jamie	Practitioner	Circle Keeper	Seward Neighbourhood Restorative Justice Initiative, USA
95	WILSON Sheryl	Practitioner	Practitioner	Centre for RJ and Mediation, USA
96	WOUTER Decuyper	Researcher	Researcher	Catholic University of Leuven, Belgium
97	WRIGHT Martin	Researcher Practitioner	Mediator, consultant	Lambeth Mediation service, European Forum for RJ, UK
98	WYNNE Jean	Practitioner Researcher	Coordinator	Leeds victim offender unit, UK
99	YELLOWHAW K Ruth	Practitioner	Co-Director	Indigenous Issues Forms Rural Alliance Inc, USA
100	YOUNG Tara	Researcher	Researcher	Goldsmiths College, London University, UK

## APPENDIX II

### FINAL SAMPLE OF SURVEY I (INTERNATIONAL)

	NAME	RJ ROLE <sup>204</sup>	OCCUPATION	LOCATION
1	ARMS Rochelle	Practitioner	RJ coordinator	Transformation House, USA
2	BLAKELE Y Steve	Practitioner	RJ coordinator	Youth Offending Team, Kirkless, UK
3	BOLITHO Jane	Researcher	Research Fellow	South Wales University, Australia
4	CHRISTIA N Peg	Practitioner	Director	Braided River Peace Project, USA
5	COPPOLA Gioia	Practitioner	Mediator	Bari Mediation service, Italy
6	DISSEL Amanda	Practitioner	Manager	Centre for the Study of violence and Reconciliation, South Africa
7	DROGIN Eric	Practitioner Researcher	Psychologist	Louisville University, USA
8	FORGET Marc	Practitioner	Partner	Deep Humanity Institute, Canada
9	GELSTHOR PE Loraine	Researcher	Senior Lecturer	Institute of Criminology, Cambridge University, UK
10	GOLDIE Shelagh	Practitioner	Consultant	Freelance, UK
11	GREEN Ross	Practitioner Researcher	Member	Saskatchewan Legal Aid Commission, Canada
12	GRENIER Carol-Anne	Practitioner Researcher	Project officer	Correctional Service, RJ and dispute resolution, Canada
13	GORDILLO Luis	Practitioner	Victim Support worker	Victim Support, La Rioja government, Italy
14	HALYAMA Julie	Practitioner	Executive assistant	Department of Rehabilitation and Correction, community justice, USA
15	HARVEY Linda	Practitioner Researcher	Mediator, social worker	Restorative Justice Council, USA
16	HILL Roderick	Researcher	Research Fellow	Oxford University, UK
17	HODGSON Beth	Researcher	Research Fellow	Police Station, Kirkburton, UK
18	HOPKINS Belinda	Practitioner Researcher	Director	Transforming Conflict, UK

204 All respondents had experienced RJ in practice either through: (1) implementation (2) design (3) 'action research' including evaluation and research. The term 'practitioner' is used to refer to the sample that gained the required RJ practical experience through the first two ways. The term 'researcher' referred to the sample that gained this experience through the third way.

19	KIFF Paul	Researcher	Administrator	British Society of Criminology, UK
20	LEDWIDG E Mike	Practitioner Researcher	Head of youth affairs and RJ	Surrey Police, UK
21	LIEBMAN N Marian	Practitioner Researcher	Ex Director of Mediation UK	Mediation UK, Victim Support, Probation, UK
22	MCCOLD Paul	Researcher Practitioner	Director	International Institute for RJ practices, USA
23	MCLEOD Carolyn	Practitioner Researcher	Manager, Community Justice programme	Washington Count Court Services, USA
24	MORGAN Kerry	Researcher	Senior Research Officer	Criminal Justice Research Branch, Scottish Executive, UK
25	MOSELEY Jo	Researcher	Research Officer	Plymouth University, UK
26	O'CONNEL L Terry	Practitioner Researcher	Director	Real Justice, Australia
27	OLALDE Alberto José	Practitioner	Worker	BILDU Conflict management centre and mediation, Spain
28	PELIKAN Christa	Researcher	Research Officer	Institut fuer Rechts & Kriminalsoziologie, Austria
29	PRANIS Kay	Practitioner	RJ Planner	Minnesota Department of Corrections, USA
30	RANE Claudine	Practitioner	Manager	Referral Order & Reparation, Youth Offending Team, Haringey, UK
31	REA Lisa	Practitioner Researcher	President	Justice and Reconciliation Project, USA
32	ROBERTS Ann Warner	Researcher Practitioner	Research Fellow	Centre for RJ & Peacemaking, RJ Council, USA
33	ROCHE Declan	Researcher	Lecturer	LSE, University of London, UK
34	ROGER Smith	Practitioner Researcher	Probation Officer, Lecturer	Former manager of Juvenile Diversion Project, Leicester Uni, UK
35	SIMMOND S Lesley	Researcher	Research Officer	Plymouth University, UK
36	SKELTON Ann	Researcher Practitioner	Research Officer	Child Justice Project, Department of Justice, South Africa
37	WALLIS Peter	Practitioner	Coordinator	Reparation, Youth Offending Team, Oxford, UK
38	WACHTEL Ted	Practitioner Researcher	President	International Institute for RJ practices, USA
39	WRIGHT Martin	Researcher Practitioner	Mediator, consultant	Lambeth Mediation service, European Forum for RJ, UK
40	WYNNE Jean	Practitioner Researcher	Coordinator	Leeds victim offender unit, UK

## APPENDIX III

### SAMPLE OF SURVEY II (ENGLAND AND WALES)

\* The survey was carried out in 2003-2004. Therefore, some details may be out of date.

Interviewed organisations	Sector	Representative interviewed
Home Office, Restorative Justice policy team <sup>205</sup>	Public Authority.	Alex Crowe, Head of the team
The Youth Justice Board for England and Wales	Non-governmental, public body. Statutory.	Roger Cullen, Policy Adviser on RJ
Mediation UK	Voluntary Sector	Paul Crosland, RJ Co-ordinator
Restorative Justice Consortium	Voluntary Sector	Debra Clothier, Chief Executive
Victim Support England	Voluntary Sector.	Debora Singer, Policy Manager
Justice Research Consortium	Government funded project <sup>206</sup>	Nova Inkpen and Sarah Bennet, Research Managers
NACRO/CONNECT <sup>207</sup>	Government funded project <sup>208</sup>	Ben Lyon <sup>209</sup> , Director
Prison Reform Trust <sup>210</sup>	Voluntary Sector	Kimmett Edgar <sup>211</sup> , Research Manager
Thames Valley Police	Public Authority	David Bowes, Research Officer
Southwark Mediation Centre	Voluntary Sector	Noel, Elena, Hate Crime Project Manager

205 The RJ policy team was set up in April 2002 as part of the 'Juvenile Offenders Unit'. In January 2003, it was moved to the 'Adult Offenders and Rehabilitation Unit'. The unit has now been dismissed.

206 They received a grant of 2.34 million GBP from the Home Office 'Crime Reduction Programme' to complete their project.

207 NACRO stands for the National Association for the Care and Resettlement of Offenders. NACRO/CONNECT is a project working with adults offenders convicted at Camberwell and Tower Bridge Magistrates Courts, and the victims of their crimes. It involves developing policies and key protocols, publicity preparatory seminars for key partner agencies and recruitment and training of staff. The primary restorative approach used by NACRO/CONNECT is the group conference. If successful, a restorative plan is agreed by all parties, carried out by the offender and verified by the project facilitators/mediators.

208 NACRO/CONNECT is funded under the Home Office Research Department's 'Crime Reduction Programme'.

209 Ben Lyon is also president of the 'Association of Practitioners in Restorative Justice'.

210 Prison Reform Trust is a registered charity, founded in 1981. Their work is aimed at creating a just, humane and effective penal system by inquiring into the workings of the system, informing prisoners, staff, and the wider public, and by influencing Government and officials towards reform.

211 Kimmett Edgar is also the representative of Prison Reform Trust on the Restorative Justice Consortium, executive of the Restorative Justice Consortium, and the representative of the 'Friends World Committee for Consultation' on the United Nations crime commission.

Metropolitan Police Authority	Public Authority	Obong, Bennett, Manager London-wide Hate crime Forum
Lambeth Children and Young People's Service	Public Authority	Roberts, Luke, RJ Practitioner, Restorative Approaches Co-ordinator
Lothian and Borders Police	Public Authority	Capewell, Kenneth, RJ Co-ordinator

## APPENDIX IV

### SAMPLE OF SURVEY III

The survey was carried out in 2007

<b>Organisation</b>	<b>Post</b>
Lothian and Borders Police, Scotland	RJ Co-ordinator
National Association for Care and Resettlement of Offenders (NACRO)	Chief Executive
Youth Justice Board for England and Wales	Senior policy advisor on RJ
National Probation Service	
Camden LGBT Forum, England	Director
Calm Mediation, England	RJ Co-ordinator
Transforming Conflict, UK	RJ Practitioner, Director
Commission for Equality and Human Rights	Commissioner
Southwark Youth Offending Team, England	RJ Practitioners
Restorative Justice Training Foundation, UK	RJ Practitioner, Director
Enfield Council, England	Community Safety Unit
Southwark Mediation Centre, England	RJ Practitioner, Mediator
Metropolitan Police Authority/ London Wide Race Hate Crime Forum	Manager
Youth Justice Board for England and Wales	Chair
Lambeth Children and Young People's Service	RJ Practitioner, Restorative Approaches Co-ordinator
West Midlands Probation	RJ Practitioner/ Manager
Safer London Foundation, England	CEO
Commission For Racial Equality	Senior Policy Manager
Community Cohesion Unit, Government Office for London	Head
Slough Aik Saath	Facilitator
London Councils Equalities Forum	Chair

## SAMPLE OF SURVEY IV

<b>Organisation</b>	<b>Post</b>
Justice and Reconciliation Project, USA	President
Restorative Justice Council on Sexual Misconduct in Faith Communities of the Non-Profit Center for Policy, Planning and Performance, USA	Programme Director
Pepperdine University, USA	Professor Negotiation, Conflict Resolution, and Peacebuilding
Centre for Victims of Sexual Assault Copenhagen, Denmark	Researcher
Fraser Region Community Justice Initiatives Association, Canada	Director
Ramapo College of New Jersey, USA	Assistant Professor Social Science and Human Services Law and Society Program
West Midlands Probation	RJ Practitioner/ Manager
School of Criminology and Criminal Justice Griffith University, Australia	Professor



## APPENDIX V

### Chronology of Sexual Abuse Cases Against the North American Catholic Church

<b>Dates</b>	<b>Accused Priest</b>	<b>Case Specifics</b>	<b>Results of Case</b>
1984 Indictment 1985 Conviction	Gilbert Gauthé, parish priest in Lafayette, Louisiana	Molested young boys Transferred from parish to parish since the 1960s	Removed from priesthood Sentenced to 20 years in prison, released after 10 years Imprisoned again in Texas and released again in 2000 Financial settlement, US \$18m
1990 Indictment 1996 and later Convictions	10 Christian Brothers Order members, Mount Cashel Orphanage	Sexually abused young boys in an orphanage Between 1962 and 1990	Various prison sentences for different Order members Newfoundland government pays victims Can \$11m Christian Brothers Order settlement with victims for \$19 m
1991 Police Indictment 1994 Victims’ Indictment 1992 Mediation and 2004 Settle	The Christian Brothers Order members, St. John’s and St. Joseph’s Training Schools for Boys	Sexually and physically abused students Between 1930 and 1974, including some incidents in the 1980s	Various prison sentences for different Order members Joint settlement between the government of Ontario, the Christian Brothers, and victims for Can \$23m
1989 Accusation of Sexual Relationship  1990-1991 later inquiry	Bruce Ritter, Director of Covenant House	Accused of seducing young men in exchange for money and favors – charges not proven Financial improprieties, including loans to family and Board members	Ritter resigns from his post Drop in donations to Covenant House, bringing the organization to near-collapse Investigation by private risk- consulting company, Kroll, confirmed some of the allegations
Videotapes discovered in 1988  1991 Charged	Dino Cinel	Made homemade videotapes while having sex with teenage boys Possessed child pornography	Acquitted of possession of child pornography Defrocked

1992 Charged 1993 Indicted	James R. Porter	As a priest, molested an estimated 125 children of both genders in 5 states Continued since the 1960s. After leaving the priesthood, molested another 7 children	Prison sentence of 18-20 years in Massachusetts US \$23m settlement for victims
Accusations in 1994	Cardinal Joseph Bernardin	Steven Cook accuses the Cardinal of previous sexual abuse Cook recalls incident while under hypnosis	Cook withdraws charges because he is unsure about his recollection Media blitz taking sides for and against Cardinal
Sentenced in 1998	Rudy Kos	11 plaintiffs accuse Kos of sexual abuse Abuse took place over a decade in Dallas	Kos sentenced to life in prison Victims awarded US \$119m settlement; reduced to \$23.4m because original amount would have bankrupted diocese
Resigned in June 1998	Bishop J. Keith Symons	Admitted to abusing at least 5 boys years earlier	Resignation from position as Bishop of Palm Beach, Florida
Resigned in 2002	Bishop Anthony O'Connell	Molestation of underage seminary student, Dixon Occurred 25 yrs earlier	Resignation from position as Bishop of Palm Beach, Florida Settlement of US \$125,000
Convicted in January of 2002	John Geoghan	Accused of sexually abusing over 130 children Abuse spanned a 30-year period in Boston	Sentenced to 9-10 yrs in prison Church settlement of US \$10 m Geoghan defrocked More cases pending
Arrested May of 2002	Paul Shanley	Charged with 3 counts of child rape Accused of molesting more children On record as having advocated sex between men and boys Supposedly helped some youth use drugs	Trial still in progress, but likely that Shanley will be sentenced to life in prison Some accusers agreed to undisclosed settlements with the Church
1998 case settled, but 2002 case still in progress	James Talbot	Accused of assaulting a 15-year old student in 1998 Later charged with sexually abusing students at Boston High School	1998 case concluded with a confidential settlement 2002 case in progress

Incriminating documents released 3 December 2002	Robert Meffan	Accused of assaulting young women studying to become nuns On record as saying that he is the return of Christ	Case in progress
Documents released 4 December 2002	Richard Buntel	Use of cocaine with other boys, 1978 to 1983 Provided cocaine to a 15-year old in exchange for oral sex	Settled in the past But case has been re-enacted

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