

**Hidden Hurts, Healing from Within:
Restorative Justice for Victims & Convicted
Offenders in Bermuda**

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Abstract

This thesis sought to explore how restorative justice (RJ) could be implemented into the Bermuda Department of Corrections using action research. The aim was to explore how RJ can work for victims and incarcerated offenders in Bermuda in regards to the potential for reduction of harm, increasing empathy and as an addition to the existing CJS. Training was provided and partnerships established with the Bermuda Police Service and Prison Fellowship Bermuda for the specific purpose of the initiative. Phase-one involved the introduction of two prerequisite programmes (Victim Empathy and the Sycamore Tree) that offenders were invited to voluntarily participate in. Respectively, one programme delivered by Corrections staff and consisting of only prisoners and the other delivered by Prison Fellowship facilitators and involving 16 surrogate victim-participants.

A mixed-method approach was used to examine impact and process. These included questionnaires pre and post the phase-one programmes and the CRIME-PICS II psychometric to assess attitudinal change, participatory and non-participatory observations and a focus group. Both programmes increased the offenders' empathy while the Sycamore Tree programme involving participants from the community, helped create further positive attitudinal change on the main scales measured by the CRIME-PICS II. 93% of the Sycamore Tree victim-participants were 'very satisfied' overall and 'would definitely' recommend the programme to others. Qualitative findings indicated victim healing, with some referring to a sense of closure and forgiveness for themselves and the offender.

The second-phase introduced RJ conferencing, two conferences were held and the experience of participants was again very positive. The offenders considered trained conference facilitators from the Police and Corrections as being impartial. Overall benefits for both parties (offenders and victims) indicated a promising start to the initiative.

A number of previous findings from empirical research were found in the current study. Victims valued having a voice and rehabilitation; and offenders valued the 'victim's forgiveness and reintegration'. The social interconnectedness of Bermuda creates a need for RJ as the stigmatization

of criminality often extends beyond the offender to include their family. The pilot indicated the need in some cases for reparatory preparation work with offenders and their families before the offender feels comfortable, or able to call upon family members as conference supporters. Further the importance of community lay in the fact that the likelihood of victims coming into contact with the person who offended against them, once released is virtually inevitable.

The success of the action research pilot led to the Department of Corrections adopting the initiative and continuing with it and produced nine trained facilitators. The content of the Sycamore Tree Project was superior as a phase-one pre-requisite programme to RJ conferencing; however, an adaption to the programme would be needed to reduce the strong religious content. Victims and offenders benefitted from the initiative.

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Glossary of Terms

ATI	Alternatives to Incarceration
BPS	Bermuda Police Service
CJS	Criminal Justice System
DoC	Department of Corrections Bermuda Department of Corrections
FGC	Family Group Conferencing
IIRP	International Institute for Restorative Practices
MOJ	Ministry of Justice (UK)
NGO	Non-Governmental Organisations
NOMS	National Offender Management Service (UK)
PACE	Police & Criminal Evidence Act (UK)
RJ	Restorative Justice
RJC	Restorative justice Conferencing
STP	Sycamore Tree Project or Sycamore Tree programme
UN	United Nations
VEP	Victim Empathy Programme
VIS	Victim Impact Statement
VOM	Victim Offender Mediation

❖ CHAPTER 1 - INTRODUCTION

“The history of change in the area of law and justice is not a hopeful one. Efforts at change have often been co-opted and diverted from their original visions, sometimes in perverse and harmful ways.” (Zehr, 2005, p222)

Background & Rationale

In recent decades the restorative justice (RJ) movement has gained immense international momentum, with the UK Ministry of Justice commissioning research and change of legislation in a number of countries.

Key policy makers and NGOs have been discussing the potential benefits of RJ for Bermuda, which has seen an increase in violent crimes in recent years (Horton et al, 2011). With a Criminal Justice System (CJS) based on that of the UK, victims needs and rights have often been ignored or marginalised within judicial proceedings. Victim Impact Statements were not introduced into the law until the Criminal Code Amendment Act 2001.¹

Equally the stigmatization of those who offend operates within a tight network of social connections. Offenders often express neglect in their consideration of those harmed by their actions or view themselves as victims due to their own life experiences, or from what they perceive as unfair treatment by the CJS (Wachtel et al, 2010).

Currently, incarcerated-offenders of the Bermuda Department of Corrections (DoC) may have been ordered to pay fines and restitution. Reparation and restitution as covered by the law, and in line with fines, are limited to payment of money; there are no other forms of reparation.²

¹ The Bermuda Amendment Code 2001 also included provisions for fines, restitution and reparation.

² Taken from the Criminal Code Amendment Act 2001 p18-19:

“Restitution

70H (1) Where an offender –

- (a) deprives a person of property of which that person was in possession; and
- (b) is in possession of the property,

the court may order the offender to restore the property to the person who was in possession of it immediately before the commission of the offence.

(2) The court may enforce an order for restitution by –

- (a) imposing it as a condition in a probation order; or
- (b) by suspending the passing of sentence to allow the property to be restored before sentencing.

As with many other countries, the effectiveness of the CJS in Bermuda, to deter offending and reduce the harm caused to victims and communities are questioned. In 2011 the International Centre for Prison Studies reported “The United States has the highest prison population rate in the world 743 per 100,000 of the national population, followed by Rwanda (c. 595), Russia (568), Georgia (547), U.S. Virgin Is. (539), Seychelles (507), St Kitts & Nevis (495), British Virgin Is. (468), Belize (439), Dominica (431), Bermuda (428), Grenada (423) and Curacao (422). However, more than half the countries and territories (54%) have rates below 150 per 100,000.” (Walmsley, 2011). There would appear to have been quite a decrease in Bermuda’s position in more recent years based on exact numbers imprisoned, opposed to a direct comparison with the national population (International Centre for Prison Studies, 2014).³

There is no national crime survey in Bermuda, therefore the opinions and perceptions of the general public on the CJS are largely unknown.

This thesis focuses on the perceptions and experience of victims and incarcerated-offenders that participate in RJ interventions in Bermuda; therefore the aim and objectives were –

Aim

To explore how RJ can work for victims and incarcerated offenders in Bermuda in regards to the potential for reduction of harm, increasing empathy and as an addition to the existing CJS.

Reparation

70I (1) Where an offender is convicted or discharged, the court imposing sentence on or discharging the offender may, in the case of damage to or the loss or destruction of property of any persona as a result of the commission of an offence or the arrest or attempted arrest of the offender, make a reparation order requiring the offender to pay that person an amount not exceeding the replacement value of the property at the date the order is imposed less the value of any part of the property that is returned to that person at the date it is returned.

(2) Where bodily harm is caused to any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, the court may make a reparation order requiring the offender, to pay to that person out of pocket expenses directly incurred as a result of the bodily harm.”

³ Bermuda ranked at position 192 in the world for prison population; with the USA ranked in 1st position; UK at 17th; Cayman Islands 199th & Anguilla 213.

Objectives

1. To provide a synopsis of some theory on RJ.
2. To explore the existing research evidence that RJ is effective in meeting its aims.
3. To draw on research and policy guidance to clarify how RJ should be implemented within a corrections setting.
4. To describe the context of crime and culture in Bermuda.
5. To explore victims' and offenders' opinions generally, of the existing CJS, and specifically in the management of their cases.
6. To explore the experience and effects of an experimental programme of RJ for victims and convicted offenders in Bermuda.
7. To evaluate and contrast the programmes used in order to draw implications for future practice and policy in Bermuda, for inclusion of restorative justice.

Chapter Outlines

The remainder of chapter one (Restorative Justice: Theoretical & Philosophical Foundations) introduces the definition of RJ adopted by the research and briefly discusses critiques of the definition and others offered. The chapter gives a brief overview of the RJ core values, some theories and assumptions, along with some preliminary research findings. A description of RJ models is provided and information on the stages of judicial process when RJ can be used. This overview also begins to illustrate some of the questions that would be used in the study to research the opinions and experiences of victims and offenders, addressing the objective - To provide a synopsis of some theory that guides the research.

Chapter two – Empirical Research & Practice: What Works? What's Been Found! This chapter focuses on key up-to-date empirical research on 'what works' in RJ. This refers to the effectiveness of RJ to meet its primary aim of making justice more healing. By addressing the needs of victims and repairing the harm caused to them, by holding offenders accountable for the harm caused and providing opportunity for reparation that also involves and benefits the

community.⁴ The chapter will include findings from a number of countries, with some focus on guidance of how RJ should work with convicted offenders. In so doing, it sets out to achieve the following objectives:

- To explore the existing research evidence that RJ is effective in meeting its aims.
- To draw on research and policy guidance to clarify how RJ should be implemented within a corrections setting.

Chapter three provides information on Bermuda in terms of its history, demographics, crime and the CJS. This will include some discussion of the social factors linked to crime, claims of historical injustices, inequality and religion. It will offer an inside view of the DoC and its population; addressing the objective - To describe the context of crime and culture in Bermuda.

Chapter four describes the three interventions that are used as part of the experimental research programme – a Victim Empathy Programme (VEP), the Sycamore Tree Project (STP) and RJ Conferencing (RJC). A comparison of the two initial programmes (VEP and STP) is offered, which describes the aims and approach of each. It outlines the different levels of RJ orientation, which may account for any variations in the findings. This puts into perspective the appropriateness of the interventions and precedes the main methodology chapter.

The fifth chapter sets out the research methodology. This details the use of a mixed-method design within Action Research, how participants were selected, piloting of measures, description of questionnaires and planned data-analysis. It includes a section on the reflective position of the researcher and strategies to manage internal research, as well as ethics and approval. Whilst providing the above, this chapter further aims to meet the objective of drawing on guidance to inform implementation within a corrections setting. Ahead of the research findings, this chapter also provides a description of the research participants.

Chapter six presents the findings of the research, including quantitative data analysis and detailing of qualitative findings simultaneously, where it is useful to pair the two types of data. This will address in the most part objectives five and six:

⁴ Contrary to this is the greater emphasis often paid to reducing recidivism; something that has become unavoidable as RJ is increasingly being incorporated into the CJS. Albeit noted that, this may be an outcome objective for victims of the offender.

- To explore the experience and effects of an experimental programme of RJ for victims and offenders in Bermuda
- To explore victims’ and offenders’ opinions generally, of the existing CJS, and specifically in the management of their cases.

Chapter seven offers a critical analysis and discussion of the findings presented in chapter six. Including the relevance of the findings to the overall aim of the research and its implication for RJ in Bermuda, answering the objective:

- To evaluate and contrast the approaches used in order to draw implications for future practice and policy in Bermuda, for inclusion of RJ.

The final part of the chapter provides the conclusion. The conclusion to the research identifies the contribution to international debates on RJ and to the implementation of RJ in Bermuda. It makes recommendations for the inclusion of RJ in law, as an original piece of research specific to Bermuda. As a pioneering piece of research in this area and part of the world, it will also make recommendations for future evidence based research.

As detailed above the remainder of this chapter - chapter one addresses the following objective:

- To provide a synopsis of some theory on RJ

Restorative Justice (RJ): Theoretical & Philosophical Foundations

Defining Restorative Justice

A popular definition of RJ was offered by Marshall in 1996 “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.”(cited in Braithwaite, 2002, p. 11; & Daly, 2002, p. 57). Interestingly, the definition seemed to receive a critical dissection (Braithwaite, 2002; Daly, 2002). Braithwaite (2002) referring to fundamental principles of RJ, like the reparation of harm pointed out that Marshall’s definition did not state what exactly was to be restored and failed to define other core values such as “... moral learning, community participation, community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends.” (Nicholl, 1998, cited in Braithwaite, 2002, p. 11).

Nicholl's (1998) call for forgiveness to be part of a definition, is a highly controversial issue; one that will receive attention further on in this thesis. The definition was further criticized for focusing heavily on process, such as the 'coming together' advocating only face-to-face meetings (Daly, 2002), and for failing to include the potential need for coercion (Walgrave, 2000, in Daly, 2002). Doolin (2007) argues that the definition could potentially result in outcomes that degrade and humiliate. Presumably, because it does not state that the dialogue should be respectful. Over prescribing the process and 'parties' presentations (once an assessment of readiness has been conducted), could border on controlling and adverse. This criticism most of all, seems to stretch the function of a definition to such an extent that it is unclear how lengthy a workable definition Doolin seeks. She also fails to appreciate the difference between guidelines/standards of practice and a definition.

Notably by 1998 Marshall had offered a slightly amended definition "Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future" (p. 28). Albeit this did not differ greatly from the previously accused process-driven definition, it did eliminate the focus of the affected parties having to 'come together'. Marshall's 1998 definition was adopted by this research.

More importantly, whether defined or just implemented, is the core values of RJ. Seemingly the most central value being that crime causes harm to people, as opposed to the current CJS's focus on the violation of laws. It is this harm to people, that a retributive CJS is accused of ignoring. Another core value is the involvement of affected parties, and that both victim and offender are involved in a dialogical process (which need not be face-to-face) to identify how to repair the harm caused. The successful outcome is considered to be how much harm is repaired opposed to how much punishment can be extended.

"The philosophy behind restorative justice was to manage the harm done and to restore the offender and the victim to their original state as far as possible ... restorative justice [presents] alternative criminal justice options to established modes of trial and punishment and that it sought to include the community and society as a whole in the restorative process." (UN, 2002, p2).

Skepticism of others wishing to dominate an already revamped practice (Erbe, 2004; would likely agree with this perspective) could be excused as Marshall's earlier definition appears to be reflected in that of the UN's recent definition – "A restorative justice process is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator." (2006, p6).

Emphasis in a definition of RJ understandably translates as a definition of process. This appears to be in reaction to the declared deficiencies of the traditional criminal justice process that focuses on procedure.

Leading RJ Theorists and Practitioners: and the Restorative – Retributive Dichotomy

While Braithwaite (1989), Marshall (1989), Zehr (1985) and Umbreit (1997; in Umbreit & Armour, 2011) are considered the most prominent pioneering theorists of RJ in its contemporary conception, these leaders are cognizant of RJ principles stemming from indigenous cultures such as those of the Maori people of New Zealand and the First Nation people of Canada (Umbreit, 2000; Braithwaite, 1998 cited in Strang et al, 2013). Practices however have been adopted and evolved.

In 1990, Zehr's book entitled *Changing Lens: A New Focus for Crime and Justice* was first published; now in its third edition (2005), Zehr outlined a way in which crime and the impact of it should be viewed. Stating that justice following an act of crime should ask "What can be done to make things right?" Zehr argues that justice should begin to "...repair injuries and promote healing. Acts of restoration – not further harm – will counterbalance the harm of crime. We cannot guarantee full recovery, of course, but true justice would aim to provide a context in which the process can begin." (Zehr, 2005, p186). Zehr (2005) articulates that whether or not a relationship existed between the victim and offender prior to the offence, the crime creates a relationship between them. He further suggests that injuries caused by crime creates four dimensions of harm and therefore healing, that justice should seek to address – healing for victims (restitution); healing of the relationship between victim and offender (reconciliation); healing of the offender and the community.

What Is Justice? While advocates suggest that the aim of justice should be reparation, they tend not to prescribe what form that should take, opposed to how it can be achieved. It was

therefore an issue for exploration in this study. Participants would be asked about their interpretation of justice.

In the literature there is a dichotomy proposed by protagonists of RJ, between RJ and a retributive CJS. This has been described by a number of authors (e.g. Daly, 2000, 2002; Graef, 2001; Johnstone, 2002; Zehr, 2002). An overview is presented here -

Retributive justice is argued as being defined by process, the intent, past behaviour and deficits of the offender. Where RJ is defined by relationships and focuses on the harmful consequences of the offender's behaviour and their capacity to make reparation. Retributive justice is accused of being based on adversarial relationships, dependent on proxy professionals. Whereas RJ emphasises repair through dialogue and negotiation directly involving those affected.

It is argued that as historical reparative justice changed into the retributive system of most countries today, as a consequence of state control and punishment, social cohesion and social control began to diminish. Consequentially, communities became more individualistic fostering more egoistic interests. Further still, it is argued that a punitive legal system breeds violence, creating further disfranchisement of individuals and families. This loss of the family as a protective and social control, is said to breed more criminality and ostracising of offenders by means of stigmatization; a resemblance of how courts rigidly operate to separate victims from offenders (Shearer, 2010).

In 1989, John Braithwaite's book *Crime, Shame and Reintegration* presented the idea of reintegrative shaming in which he questioned 'why most people do the right thing most of the time' opposed to why people commit offences. He argued that stigmatizing those who offend or commit wrongdoing, further marginalises them in society and labels them as deviant; focusing heavily on the individual. Whereas reintegrative shaming shames the act of the offence/wrongdoing (opposed to the individual), holding the person accountable without ostracizing them from the community. The importance of this response to crime highlights a core value of RJ that crime be viewed as having both individual and social dimensions of responsibility with a focus on problem solving; not an individual act with individual responsibility and guilt (Graef, 2001; Zehr, 2002). The latter response considered reflective of a retributive criminal justice system, where crime is further viewed as a violation against the state; opposed to an act against the victim and community.

Victims are not considered as being vindicated (in the dichotic presentation by some RJ advocates), but rather excluded from the offence and position of having been wronged. Not only are victims denied the opportunity to tell their story, or as Zehr (1985) once emphasized, given the opportunity to experience forgiveness in order to move on. They can be further victimized by the proceedings, if even present. Equally the offender is often left in a position of defensiveness and self-preservation. “Our legal system tends to define justice not by the outcome but by the process itself and by the intention behind it.” (Zehr, 1985, p71). Zehr critiques the state legal system, arguing that whilst the intention may be to achieve equality of treatment for both victims and offenders, this is less important than the process. When examining the effectiveness of justice - “We see justice as a system of right rules. Were the rules followed? If so, justice has been done.” (Zehr, 1985, p71). He states that there are a number of cases in which questions of innocence and guilt remain unanswered, but appeals are denied on the basis that justice was served appropriately according to procedure. He further accuses the criminal justice system as finding guilt and then imposing pain. In an attempt to safeguard the severity of retribution, he argues that punishment proportionate to crime (the Enlightenment concept) does not alleviate the infliction of pain. As a preventive measure against abuse, Zehr argues that the fundamentals of the system still remain unquestioned – is retribution necessary? The suggestion of safeguarding retribution is discussed further in this chapter.

In relation to the dichotomy proposed between retributive and RJ, it is argued that offenders are viewed in purely legal terms, devoid of moral, social, economical or political dimensions; diametrically opposed to RJ that views the offender as a whole person, impacted by all the dimensions listed above. In a retributive system, the offender’s ‘debt’ is owed to the state (in abstract). With RJ the offenders’ ‘debt’ and liability to the victim is recognized. Some of these claims may be ‘proven’ in light of plea-bargaining and the reward for not wasting state time or expense by entering a guilty plea.

With retributive justice there is no encouragement of repentance or forgiveness; punishment prevails as a means of deterrence (recidivism rates speak to this!), and the stigma can be irreversible. With RJ it is argued that there are possibilities for repentance and forgiveness, as a means of restoring both parties in reconciliation and the stigma can be reversible through restorative action.

Close inspection of the dichotic descriptions can illuminate the significance of semantics – ‘an act’ versus ‘violation’. It has been argued that there are benefits to both RJ and punishment, in the amalgamation of restorative and retributive practices (Barr, 2013). “The evidence suggests that much can be gained from adopting an eclectic approach.” (Barr, 2013, p409). The UN (2002) states “One function of restorative justice is to provide a mechanism that can compensate for the defects in existing systems.” (p4).

Such an eclectic approach is needed as RJ is not suitable for all offenders and timing could be all important when seeking the willingness, much less preparedness of victims to participate. The dichotomy often presented is too stark and oppositional to be worthy of further attention.

However, social constructionism theory formed the epistemology of the research with its focus on the importance of language and knowledge constructed through social interactions with others. It therefore highlights the significance of dialogue, recognition of values and how change can be created.

“Restorative justice is more of an idea, philosophy, set of values, or sensibility than a single concrete and uniform set of practices or processes.” (Menkel-Meadow, 2007, p19). This perspective may be true in part and in other ways redundant. The chapter now moves on to review models and processes of RJ.

Models & Phases of RJ Application

RJ can be used at various stages in the criminal justice process, for example, at arrest/court diversion; post-conviction/pre-sentence; post-sentence and pre-release (Shearer, 2010; Shapland et al., 2004). Tickell & Akester (2004) suggest the following as ‘principal models’.

- “Victim empathy programmes,
- Victim-offender mediation,
- Restorative conferencing and cautioning,
- Family group conferencing, and
- Sentencing circles (also known as peacemaking or community circles).” (p21).

Despite the different methods and various stages of intervention, there are still attempts to homogenize RJ, not least evident in the debate around definition. Zehr (2002) considers the latter three models as the most dominate.⁵

A brief description of these 'principal models' will follow, where necessary with some discussion.

Victim empathy (or awareness) programmes (with or without) victims encourage offenders to reflect on their behavior and the impact of it on others, such as their own family, the victim's family and the community; as well as the direct victim. These programmes can be run in partnership with other organisations, such as victim support. This type of programme was used as the phase one preparatory programmes in the current research, one with victims (STP) and one without (VEP).

Victim-offender mediation (VOM) brings together either directly or indirectly the victim and offender in respectful dialogue to resolve issues related to the offence, which is facilitated by a mediator. The mediator undertakes work with each party separately before they are (or are not) brought in meeting together. Victims and offenders meet alone with a mediator; in other instances supporters may be present (e.g. family members). Indirect mediation is preferable when the offender lacks remorse or empathy, or instances when either party does not want a face-to-face meeting but still wish to communicate with the other.⁶

This is where mediation most strikingly differs from forms of conferencing (and circles). A larger number of individuals usually constitutes conferencing, and specifically involves people from the community as those also affected by the offence &/or as supporters. However, Shapland et al (2006) also found in their evaluation of three RJ schemes that "Mediation tended to be more backwards-looking (focusing on the offence), whilst conferencing had a major future-orientated element." (p4). Mediators also play a more active role than facilitators of RJC.

RJC can be facilitated with the aid of a script that follows a specific order and specific questions. Facilitators can be professionals, such as police, probation and youth-workers, or volunteers to

⁵ Umbreit (2000) refers to VOM, FGC, peacemaking/sentencing circles and reparative community boards as examples of RJC, and in the order they are listed as being "the order of there years of experience and frequency of use ...". (p2)

⁶ Mediation is not a term or process used by all advocates of RJ (including this author), as it invokes the connotation of conflict resolution and assumes equal responsibility of the parties involved (e.g. Zehr, 2002). With RJ the offender has to admit some degree of responsibility, which is not shared with the victim.

trained specialists. Conferences (like circles) can, also be facilitated by peers, such as students or prisoners. With conferencing all parties have an opportunity to tell their story and share their effects of the offence. The concluding aim is to reach a mutual agreement of how reparation can be made. After the formal part of the process, informal time is allowed for refreshments.

In restorative cautioning, the process is similar to that of conferencing however, victims are not present.

Family group conferencing (FGC) has largely been reserved for young people, operating in much the same way as conferences, to reach agreements that can include reparation, and with the aim of diverting young people away from the CJS and to minimize risk of reoffending. Professionals (e.g. youth-offending workers) are present and make contributions. Plans are constructed in different ways (depending on jurisdiction), for example, between the offender and their family members to the exclusion of others. However, courts, youth offender panels or similar agencies generally ratify plans.

Sentencing circles occur after a conviction and form part of the court process, as a community-based intervention. The remit being to develop a sentencing plan, based on all involved having the opportunity to contribute, this involves judges and support staff as well as those usually found in conferences (victim, offender, their family and supporters). Tickell & Akester (2004) note that unlike many other RJ processes past history is taken into account and convictions are recorded.

Bazemore & Umbreit (2005) undertook a study to compare and contrast four models of restorative justice for use with juvenile offending – victim-offender mediation; community reparative boards (youth panels, neighbourhood boards or community diversion); family group conferencing and sentencing circles. Their conclusion was that each model has its own strengths and weaknesses.⁷ They found that case needs were better managed by particular models, for example, reparation boards were most appropriate for low-risk non-violent offenders with few previous incidents, versus sentencing circles for more serious, chronic cases that may also involve dysfunctional relationships. They suggested that resources and costs could also lead to preferences in one jurisdiction over another, for example sentencing circles were found to be

⁷ Bazemore & Umbreit (2005) point out that the models share much in common as one was often developed out of another form of RJ or influenced in structure or content by another, e.g. family group conferencing influenced reparative boards and victim-offender mediation.

the most holistic of the four but also the most labour intensive. Others have also promoted a 'needs-led, multi-method approach' (Roberts, 2004).

Whatever the approach, it is argued that emphasis should be placed on the core values of RJ; otherwise a case-by-case approach could fail "... to address the underlying aetiological factors associated with crime, such as poverty, racism and cultural and social values." (UN, 2002, p5).

The latter quote highlights the social impact of crime. RJ also acknowledges communities as having been harmed by crime and not just the direct victims. Hence the inclusion of community in definitions and Zehr's (2002) postulation of the most dominate RJ methods being the ones that heavily involve 'others'.

The Restorative Justice Community

With a principle of RJ being reparation to the community, as harm is not limited to the direct victims, many have sought to clarify the meaning and parameters of community in modern day society. The claim being of most Western societies, that the pre-modern sense of community has been lost.

Many argue that community in RJ terms is not measured by geography, but should be defined (Dignan, 2005; McCold, 2004). Braithwaite (1989) for example, refers to 'communities of interest' as a shift in locus of interdependency away from neighbourhoods. In 'communities of interest' such as leisure activities, occupation and workplace, there can be a greater potential for proximal social control and support. He cites an example from research in which a probation/youth-offending officer requested representatives from a young offender's sports club to attend court, to state what they could contribute to rehabilitating and monitoring the youth in the future. In the same vein Braithwaite (1999) conceptualizes 'communities of care' as comprising of a group of people who would be committed to caring, encouraging and supporting an individual. The manifestation of these concepts of community could be viewed as translating into organisations such as 'circles of support'.

However, there is an acknowledgement that crime impacts the more macro-community, geographical community on the basis of a reduced sense of safety due to cumulative crime. Fear

of certain neighbourhoods, due to crime creates a reduction in public guardianship of those areas, which in turn leads to further crime and general neighbourhood decay (McCold, 2004).

So therein lays a distinction between a geographical community and a more relational community. McCold (2004) categorizes those affected by crime as falling into two groups; the micro-community made up of victims, offenders and their supporters as primary stakeholders and the macro-community as secondary stakeholders.

From a meeting in 1996 of prominent RJ advocates testing the degree of consensus on key concepts of RJ, only three concepts could be agreed: 1. “restorative justice views crime as a harm to people and relationships; 2. Offenders have an obligation to make things right to those affected; and 3. Victims and offenders are direct stakeholders, but others are affected as well.” (McCold, 2004, p.160). McCold (2004) suggests that RJ began to diverge, creating conflicting goals as the two perceptions of community were followed. According to McCold (2004) those following the micro-community perspective focus on reparation of harm to victims and their families, with a reduction in reoffending occurring as an extra benefit, not a goal.⁸ While the macro-community focus is reparation of the aggregated effect of crime, with the goal being a reduction of the threat posed to society by the offender. With the macro perspective, citizens and representatives of the macro-community manage RJ and it does not require an encounter between the offender and victim (community reparative boards). Further distinction is made of the community focus level, in that McCold (2004) suggests the macro-community paradigm operates by making general sanctions in cases where the criminal justice system guides the intervention and “From this perspective, such outcomes provide symbolic reparation to society and specific assistance to needy residents. Thus, offenders are collectively helping to rebuild neighbourhoods harmed by crime.” (p159). Conversely, micro-community level outcomes are determined case-by-case based on the victim’s needs and tend to be diverted away from the criminal justice system as less serious cases.

The RJ macro-community level very closely resembles rehabilitation; precisely indicative of this McCold lists youth-sentencing panels and youth offending teams as examples, after stating that those affected by the offence need not be involved. This further seems to bare extreme resemblance of the traditional criminal justice process.

⁸ The current research takes the perspective of the micro-community.

At this point it is totally comprehensible why Dignan (2000) made the statement that RJ could become "...an Alice Wonderland concept, in which it is made to mean whatever particular groups or individuals intend it to mean, irrespective of its defining characteristics." (p7).

Harm to primary stakeholders is viewed as direct, their needs specific and to repair harm their role should be active. The harm to secondary stakeholders is vicarious, with aggregated needs and to reduce/repair the harm their role should be supportive (McCold, 2004). A greater issue between the stakeholders or levels of community is that not only is it the case that reparation/healing for victims is most significant when they are involved (Marshall, 1998; McCold, 2004; Zehr, 2002) but there is also the issue of the crime committed against them being stolen by criminal justice professionals.

McCold (2004) argues that communities of care/micro-communities are vital to regulation and social control, with the increased opportunities for micro-community RJ the potential is built in for aggregated needs of the macro-community being served. This position supports the premise of reintegrative shaming.

However, the needs and healing of the macro community should not simply be ignored. Chapter one concludes with a discussion on the potential healing aspects of RJ. The macro-community perspective may be most appropriate for mass crimes, such as crimes against humanity. Like in the case of South Africa's Truth and Reconciliation Commission.

Reparation, Restoration & Restitution

Reparation of harm is the most central core value, as without it restoration cannot be founded. Restitution consistently takes second place of importance to the victim's opportunity to talk about the crime and meet with the offender (Coates & Gehm, 1989; Umbreit, 1994, in Bazemore & Umbreit, 2005).

What is Being Repaired? Victim's feelings/harm caused. The relationship. The community. All of the above!

Gromet & Darley (2006) conducted an experiment on the acceptance of RJ from a community perspective. It investigated how perceptions of crime severity and of the offender affected

judgments. Participants were asked to rate the seriousness of a number of crime scenarios ranging from vandalism to rape and attempted murder. They then allocated the offenders to go through a RJ conference, proceed through the traditional court process or a mixture of both. For the latter two options the participants could assign sentences; and were required to answer a number of questions. They found that participants opted for pure RJ when the offences were perceived as less serious, for serious offences the mixed and traditional punitive options were chosen. The level of punishment the participants recommended was affected by features of the offence and offender – such as the violence, moral offensiveness and seriousness of the offence, which were all highly correlated. Answers to questions yielded two clusters (crime & offender), with only one independent measure from each cluster predicting the option participants chose - the perceived seriousness of the offence, and the perceived likelihood that the offender could be rehabilitated. "...our data support the view of those who argue that to achieve perceptions of justice, at least for serious offences, both restorative and retributive measures should be available within the system (Barton, 1999; Daly, 2002; Duff, 2003; Robinson, 2003)." (Gromet & Daly, 2006, p422). In another trial, the success or unsuccessful outcome agreements, impacted people's perceptions, regardless of information about whether the lack of a successful outcome was the fault of the offender or both the offender and victim failing to reach an agreement for reparation. The offenders who successfully completed conferences from the mixed process were considered to have the same rehabilitation potential as those offenders who were sent to the pure RJ process. However, offenders from the mixed process, who had unsuccessful conference outcomes, were viewed as having less rehabilitative potential; but as having more potential than those they chose to put through the traditional court process.

Gromet & Daley (2006) suggest that participants still opting to send offenders of successful conferences to prison reflected the achievement of justice as having two goals – restoration of the victim and punishment of the offender. However, people also wanted to give the offender an opportunity for rehabilitation. "Both of these findings provide evidence that the concept of restorative justice and rehabilitation are closely associated with each other" (Gromet & Daley, 2006, p423). They cite Bilz's (2002) finding that those most supportive of sending cases for RJ procedures, also believe in the potential of rehabilitation. These findings illuminate a need to educate those who do not believe in the value of rehabilitation so as to increase willingness for RJ.

Moreover, while RJ procedures are viewed as effective with offences of low severity, it is claimed to be most effective with high severity cases (Wachtel et al, 2010; Umbreit & Vos, 2000; UN, 2006).⁹ Least, rehabilitation and RJ can create healing for the aggregated harm of macro-community. What of healing for the micro-community and the needs of victims?

Retaliation, Revenge & Retribution

Van Stokkom's (2013) undertook a study that looked specifically at the role of revenge and the 'zero sum rhetoric' - that in the suffering of the offender there is healing for the victim. It is often believed and advocated that there should be zero tolerance and stiff penalties, for those who commit serious crimes. A lack of such penalties, like long prison sentences, can often be experienced as a devaluation of the victim's worth and of the pain inflicted on the victim's family (Pratt, 2007; Zimring, 2003; in Van Stokkom, 2013). A prevailing assumption is that the rights and protection of an offender is at the expense of the victim, and vice versa (Elias, 1986; in Van Stokkom, 2013). Van Stokkom (2013) suggests however that victimologists do not seek harsher punishment but rather advocate for more attention to the needs and emotions of victims. For example, Van Dijk (2009; in Van Stokkom 2013) argues that victims should express vindictive feelings as they have a 'natural right' to be enraged. Furthermore, it is suggested that these feelings should be taken seriously and absorbed in the proceedings of the criminal justice system. This in accordance with protagonists of victim-impact statements (VIS), argue that victims should be free to express their hurtful experiences, and even have a say in the sentencing. Van Stokkom (2013) cites RJ protagonists such as Braithwaite (2003) who argue that natural retributive urges are not healthy. Yet, to the contrary such advocates of RJ talk about victims needing to be 'ready' to engage in respectful dialogue, which assumes the reality of negative emotions in victims. "One reason for doubts about the merits of revenge is that people often become obsessed with thoughts of revenge and may bring great harm to themselves and others in their quest for it. Another is that campaigns for revenge often escalate" (Govier, 2002; in Van Stokkom, 2013, p172). It may be argued that victim-impact statements qualify as only having partial restorative orientation (and already form part of existing criminal justice systems).

⁹ "Restorative justice's concern with less severe cases in most countries has meant that a fully restorative system has not been established." (Hagemann, 2003, p223).

Where, conferencing is offered as having win-win outcomes for all parties (e.g. Strang, 2002; in Van Stokkom, 2013) and possessing full restorative orientation.

Van Stokkom (2013) refers to vengeful fantasies and the sense of justice people experience from literature and films, when the heroes stands up for themselves or vindicates a wrong done to them. “The failure to respond to a perceived injustice can actually further diminish the victim, both in his or her own eyes, as the eyes of others.”(Miller, 2001; in Van Stokkom, 2013; p171). Van Stokkom (2013) references three distinct moral goals underlying motivation for revenge. One is the desire to ‘get even’ or ‘balance the scales’, re-equilibration of gains and losses, or power. The second is to restore the victim’s self-esteem, demonstrating an intolerance of mistreatment by others, which creates a sense of strength and saving face. Thirdly, it can serve an educative function to teach the offender a lesson - an instrumental aim of deterrence. Like the purpose of imprisonment and recidivism? Van Stokkom may fail to emphasize, or miss the true lesson as intended from one directly to another that - ‘I will teach you a lesson not to hurt me again’.

“According to Govier, revenge is morally objectionable because it consists of a deliberate effort to damage and diminish another person. ... to act as agents of revenge, we have to indulge and cultivate something evil in ourselves.” (Van Stokkom, 2013; p172). As a result, it would seem to be the very essence of this that most people would feel uncomfortable with, yet are accepting of imprisonment. This also accounts for a distinction between revenge and retribution. It is argued that whilst the emotional identification of revenge exists, the punitive measures such as imprisonment, functions to tame public outrage in more morally acceptable ways “... the task of retributive justice is to ‘tame’ vengeance and canalize vengeful desires in a legal framework of just deserts and proportionality.” (Van Stokkom, 2013; 172). This could suggest that a need for prisons could also be to protect the offender from the public. The inclusion and consideration of the ‘public’s needs’ shouts loud the call for interventions (such as RJ conferencing) to include the community (at least micro, if not macro), and to also recognize the needs and feelings of those indirectly or inadvertently affected by crime.

Van Stokkom (2013) provides a review of how little credence there is in a homogenous view of victim responses to crime; for example he reports on the research of Pemberton (2011) who found that victims suffering from high-levels of post-traumatic stress following serious crime were often disappointed at the point the judge announced the sentence. Whereas for some, the

length of sentence projected a message to the community about the victims' worth and social standing; as lenient sentences translated into the victim being undeserving of respect. Orth (2004) found that for victims of violent crime, punishment did satisfy feelings of revenge, but only in a transitory way; as four years post victimization had no influence on the intensity of vengeful feelings. Analysed further, it is reported that the punishment is insufficient to relieve vengeance if rumination continues. Ruminative thinking about the offence has with it associated feelings of anger.

As an introduction, chapter one set out some of the fundamental theories and principles of RJ that informed the current action research. This was provided along with the dichotomy that is often presented between a RJ approach and the traditional CJS, viewed as retributive by many RJ protagonists. With the polarized issues raised between the two forms of justice, the current study was concerned with how participants viewed the CJS. It would also attempt to explore if these views would be changed after participating in a RJC, and what their views would be of RJ after participating in an intervention. Some people make assumptions about victims' willingness to participate in RJ being motivated by revenge. To this end the chapter provided research on this issue. It also highlighted how the need for retribution is more closely associated with perceptions of the offenders' capacity for rehabilitation and by the severity of offences. Retribution is administered by neutral agents and called for by the macro-community; where revenge is personal and can be damaging for the individual. Punishment does not increase the victim's wellbeing but may affirm their social status and self-worth. If RJ is not limited to the victims and micro-community, it runs the risk of marginalizing those most affected. With no universally accepted definition and different forms of practices being labeled 'restorative', the chapter set out the definition adopted by this research and outlined the principal models of RJ.

Chapter 2 provides empirical research of RJ practice and guidance.

❖ CHAPTER 2 –EMPIRICAL RESEARCH & PRACTICE: WHAT WORKS? WHAT’S BEEN FOUND!

“Restorative justice realises shared social values, but does so through different culturally-based beliefs about human needs.” (Braithwaite, et al, 2013, p91).

Introduction

The UN (2006) advises that standards for RJ programmes, and even national standards guiding policies should be based on empirical research.

This chapter sets out to address the following objectives –

- To explore the existing research evidence that RJ is effective in meeting its aims.
- To draw on research and policy guidance to clarify how RJ should be implemented within a Corrections setting.

However, the chapter will start with consideration of the motivation for people to participate in RJ, including issues of timing and when the intervention is offered. It looks at whether RJ meets its aims and the satisfaction ratings of those that participate. The literature review highlights what is important for implementation based on the experiences and outcomes for participants. International research is examined with a focus on prison studies (including the Sycamore Tree programme) that would direct the intended action and research.

What’s the Evidence Regarding RJ Engagement?

There have been an extensive number of studies that provide empirical data on the reasons people are motivated to participate in RJ (e.g. Shapland et al, 2006, UK; Umbreit & Vos, 2000, USA). For both victims and offenders these reasons can usually be explained in two clusters – the self and the other.

For victims their reasons regarding the offender include – wanting to hear the offender take responsibility; wanting to help the offender to not reoffend/rehabilitate and out of a sense of duty to society. The reasons they participate for themselves is – to get information about what and why the offence happened; to receive reparation and restitution; to have their voice heard;

out of a belief that forgiveness will provide healing/for healing and to let the offender know how the offence impacted them.^{10 11}

Umbreit et al (2005) provide percentages for the chief reasons victims are motivated to participate in dialogue with offenders in cases of severe violence – to seek information 58%; to show the offender the impact of their actions 43% and to have contact with the person responsible 40%.

For offenders Umbreit et al (2005) found the chief reasons for offenders wanting to have dialogue with victims in cases of severe violence was – to apologize 38%; to help victims heal 38% and to do whatever would benefit victims 26%. For themselves, they hoped – the experience would benefit them 74%; that it would contribute to their own rehabilitation 33%; to change how the victims viewed them 21% and for spiritual reasons 18%. Even in the case of offenders on death row participating in RJ, their reasons did not differ from offenders with determinate sentences (Umbreit & Vos, 2000). They gave reasons such as – a process of self-examination, in turn being part of their ‘healing journey’ and as part of their religious faith. Umbreit & Vos noted that religion became important to these offenders. They felt the need to apologise; to help the victim’s healing; to give something back for the wrong done and out of a feeling of owing the victims.

Bolivar (2013) noted that preconceived ideas about victimization or other negative effects also influence victims’ willingness to participate in victim-offender mediation (VOM).¹² Limited literature on why people refuse to participate in RJ, points to three factors – the actual meeting, the offender and the influence of significant others (such studies are provided in Bolivar, 2013). The meeting refers to the lack of value given to the offence or the conference; negative evaluations of the meeting revolve around fear of one’s own capacity for a meeting or feelings

¹⁰ Bolivar (2013) would suggest that this latter reason is for the benefit of the offender.

¹¹ A study from the Netherlands found that self-orientated reasons pose the strongest determining influence (Laxminarayan et al, 2013; cited in Bolivar, 2013).

¹² It may also be useful to consider whether terminology affects victims’ willingness, terminology such as ‘mediation’ and what preconceived ideas that might conjure. Mediation as a term could give offenders the idea of some form of diminished responsibility and equally give victims a feeling of false responsibility.

of coercion. Issues related to the offender include, fear of the offender or negative evaluations about meeting them (like skepticism or refusal to entertain the idea of developing a relationship post-conference). The influence of significant others lies in advise that the victim not participate.

Bolivar (2013) conducted a study on VOM in Spain and Belgium,¹³ using a mixed-method design of both quantitative and qualitative measures (including the Post-Traumatic Growth Inventory). Victims of personal violence either agreed or declined to participate in - direct or indirect VOM. Bolivar set out to investigate the similarities and differences in victims' perceptions of the offender, the offence and their communities of care. Four main issues were found – the victims' perception of harm; the offence and the offender; reasons for notifying the police and other 'influencing factors'.

Regarding the victims' perceptions of harm, the three groups (direct, indirect-VOM and refusal) varied markedly of their evaluation of harm caused to them, like fear and feelings of isolation. Quantitative analysis showed that known-offender victims regarded 'damage' (victims' perception of their own level of victimization-restoration) more importantly than 'unknown-offender victims'. Although not statistically significant, those opting for VOM (direct or indirect) presented with higher scores of post-traumatic growth (e.g. personal growth and appreciation of life post-trauma).

Victim's perceptions of the offence and the offender, showed that of those participating in direct VOM - "... tended to pay attention to the circumstances that surrounded the offence or the role they themselves played in the offence. These victims also presented a more positive view of the offender, even when the offender was unknown to them." (Bolivar, 2013, p203). Bolivar reports that there were three victims who declined and six who accepted indirect VOM that had received threats during and after the offence. Both direct and indirect VOM victims,

¹³ Bolivar (2013) provides information on legislation in Spain and Belgium, stating that – "... the Spanish criminal code, introduced in 1995, establishes 'reparation of harm' as a mitigating factor within criminal procedure. In practice, mediation has become a tool for diversion of minor crimes, despite the fact that mediation may be offered at various stages of the criminal justice process. In Belgium, since 2005 (Article 553, Code of Criminal Procedure), victim-offender mediation for adult offenders is considered a public service that must be available for any person who has a stake in a crime. As a consequence, mediation for redress is available at different stages of the criminal procedure and tends to deal with serious crimes." (p195).

had questions about the offence and feelings of self-blame, much higher than the victims who refused (albeit not statistically significant). “Importantly, this also implies that victims need to understand the role they themselves played in the offence by elaborating self-blame feelings.” (Bolivar, 2013, p207).¹⁴ Those who refused VOM had developed their own explanation of the offence, with the offender being to blame and saw the offender in negative terms. Quantitative data supported the qualitative, for example, known and unknown-offender victims differed significantly on perceptions of the offender before meditation, with unknown-offender victims having a better perception of the offender.

Bolivar found other factors affecting victim participation, such as the individual’s ideology, need for psychological help, community of care and perceptions of social support. Community of care was as has previously been found that those participating viewed their social support positively – as accepting and supportive of their decisions.¹⁵ What would likely be of particular significance to the current research was Bolivar’s ‘ideological’ factor. Ideology, referred to some victims being active participants in social movements or organizations, which made them appreciative of mediation as a social strategy. Most of these victims were willing to participate in direct VOM.

Bolivar (2013) argues that the findings from her research contradict previous findings (citing Hoyle, 2002; Shapland et al, 2011) suggesting that people’s reluctance to engage in mediation is based on their stereotypes of the offender - based on social constructs when having had no previous contact with the offender. As Bolivar found that those willing to participate in direct VOM had no previous knowledge of the offender but tended to have more positive views about them and at least view them as less threatening. Bolivar may have underestimated the influence of social and cultural constructs; when she cites studies like Laxminarayan et al (2013) conducted in the Netherlands, as having majority known-offender victims participating in direct VOM. There could be a further dimension to this for Bermuda based on its size and the potential influence of social connectedness. While people may not know offenders personally, they are likely to know someone who does or to be aware of their offending.

¹⁴ It may also be that in assuming a degree of responsibility, victims interpret what they did or did not do, as having some semblance of control over their lives and what happens to them. Total acceptance of the offender having the control can leave people feeling vulnerable and easily open to re-victimization, whether reality or perception. That stage has possibly been set, with the use of ‘mediation’.

¹⁵ The victims participating in direct VOM had high scores on the Social Acknowledgement questionnaire.

In a postal survey conducted on 897 Australian and 461 Japanese respondents who had been a victim of violent crime or had a relative/friend who had been a victim, or offender of violent crime, differences in social values and beliefs were found between the two countries regarding RJ. “Within each culture, the differences between offenders and victims and their communities of support are less marked than cross-cultural differences.” (Braithwaite et al, 2013, p114). For Australians, value was placed on the ‘victims voice and amends’,¹⁶ plus offender reintegration and rehabilitation. For the Japanese, victims and offenders valued ‘victim forgiveness’¹⁷ and offender reintegration and rehabilitation respectively (Braithwaite et al, 2013). Braithwaite et al suggests the absence of individualistic needs of victims voice and amends in the Japanese population is reflective of the Japanese culture’s emphasis on apology and collective wellbeing; and how the use of RJ in Asia has been criticized.¹⁸ Braithwaite et al also cites criticisms raised of Australian RJ conferencing, as it has been argued that it is inadequate in protecting vulnerable groups, such as women in domestic violence cases and children in cases of child abuse. “Here the concern is that without the protection of rights from court-based justice, restorative justice leaves vulnerable groups (women and children) open to intimidation and being threatened by powerful others who refute their claims.” (Braithwaite et al, 2013, p117).

Presumably then, if a society values individual interests, then the RJ micro-community may be most appropriate. If the society values more the betterment of the collective community over individuals (as is theorized of Asian cultures with Confucianism in their past, Braithwaite et al, 2013), then the macro-community maybe more appropriate.

Bolivar’s (2013) and Braithwaite et al’s (2013) findings are not unrelated. Braithwaite et al stress how there is little variation in the values of victims and offenders (and that these values are

¹⁶ “... victims’ need to feel empowered, to have their say about the harm done to them, to ask for an explanation and seek reparation (*victim voice and amends*).” Braithwaite et al (2013, p96-97).

¹⁷ “... victims needed to forgive the offender and see the offender rehabilitated (*victim forgiveness*).” Braithwaite et al (2013, p96).

¹⁸ “Apology in restorative justice settings in Japan can be ritualistic and lack sincerity (Hosoi & Nishimura, 1999). In other instances, police and prosecutors use the widespread desire to avoid conflict and damaging relationships to elicit confessions and reparation with insufficient regard for due process and the truth (Yoshida, 2003). Goel (2005) provides a critical commentary on how harmony values, assumed to prevail in Asian cultures, lead to subservience and oppression in women experiencing domestic violence because self-sacrifice in women is linked to maintaining relational harmony.” (Braithwaite et al, 2013, p116).

linked to willingness to participate in RJ meetings), however cultural values do vary. Spain and Belgium may be more culturally similar (as in Bolivar's study). Maybe as Bolivar found, the greater impact was on whether or not victims had questions, as those that knew the offender had developed their own explanations of the offence. Bolivar's research however provides useful information. One thing that may have been ignored in cases of personal violence (aside from culture) could be the issue of time, combined with proximity, in 'the need to know'.

"Victims may be nervous about the offender's release, but many may have 'put the offence behind them' in some sense. What the conferences themselves, however, have shown is that the offender and the victim in these serious violent offences may well have some links, in terms of living nearby or knowing people in common, and that these are issues which people wish to have the opportunity of exploring." (Shapland et al, 2004, p33). This would then be expected to be the case in Bermuda.

In *Restorative Justice: What is it and does it Work?* Menkel-Meadow (2007) reports that participation rates range from 40-60% of victims referred. "Interestingly, participation rates for victims go up when more time elapses between referral and participation in cases involving personal injury (assault), but decrease when more time elapses in cases involving property (theft, vandalism) (Umbreit et al, 2005)" (cited in Menkel-Meadow, 2007, p14). Menkel-Meadow further highlights a curvilinear relationship of victim participation rates with the lowest rates of participation occurring with the least and most serious offences – where at one end of the curve victims may not feel bothered enough to participate for less serious crime and at the other end, fearful of the offender or of re-experiencing the trauma in serious cases of bodily harm (Coates & Gehm, 1985, Wyrick & Costanzo, 1999, cited in Menkel-Meadow, 2007).

The issue of time may also influence offenders' participation, in regards not just to their psychological preparedness but also the phase in the criminal justice process that RJ is offered.

Shapland et al (2004) in their Action Research (discussed further on in this chapter) suggested that "In a similar way, restorative justice can be part of a package of measures post-disposal, though here the focus is often more offender-orientated, designed to indicate to the offender the consequences of offending on victims, though with some reparative or restorative aims as well. What the first year of our schemes has shown, however, is that if the scheme is operating post-sentence/disposal, unless it is almost an 'automatic' component of such disposals (as

victim awareness elements of referral orders, or in final warnings), then there can be significant problems of offender refusal.” (p54).¹⁹ There is only partial support of this claim by De Mesmaecker (2013) who argues that offenders’ reasons for participating in RJ post-sentence will likely be far less based on instrumental reasons than pre-sentence, however, when offender involvement may have little or no impact on the sentence some are still willing to participate.²⁰

De Mesmaecker’s (2013) Belgium study was based on victims and defendants who were offered VOM pre-sentence and when charges against the defendant would not be dropped regardless of the VOM outcome. De Mesmaecker’s findings provide opportunity for discussion and reflection on what might be useful for consideration of RJ pre-conviction in Bermuda (and provides guidance – ‘what matters in implementation’).

Does RJ Meet its Aims?

Starting out De Mesmaecker defines reparation in the RJ world as constituting repair of psychological harm and harm to relationships, beyond financial compensation, implying a distinction between RJ conferencing and mediation.²¹ “Mediation with a view to arranging the financial settlement of damages is not the epitome of restorative justice scholars. Ideally, the parties leave the process not just with a financial agreement but with an understanding of each other’s situation and position (Daly, 2003).” (cited in De Mesmaecker, 2013, p353). In Belgium De Mesmaecker comments that, conferencing is limited for use with young offenders (further suggestive of different processes).

Focusing on three fundamental principles of RJ (voluntary participation, facilitator impartiality and confidentiality), De Mesmaecker (2013) investigated how participants’ perceptions of the principles might impact their satisfaction with the mediation process.

¹⁹ “Conferencing involving severe offences will require substantial preparation and will not occur until at least several years after the crime.” (Wachtel et al, 2010, p119).

²⁰ Again, the reasons for this difference could be cultural. Shapland et al’s study was conducted in the UK.

²¹ “The primary focus of VOM is often material restitution rather than emotional restoration or reconciliation (Umbreit et al, 1994).” (Strang et al, 2013, p13).

According to De Mesmaecker the principle of voluntary participation is not just about ensuring that people participate willingly to ensure that the process and exchange is genuine, but that it is also based on informed consent – that participants are aware of what the process entails and that it can be ended at anytime. That it can involve gentle persuasion of offenders but that victims should choose freely. “... it is acceptable that a certain degree of coercion on offenders is inevitable, but unfair inducements such as criminal justice officials pressuring defendants to participate should be banned from restorative justice (De Mesmaecker, 2011; Van Ness, 2003).” (De Mesmaecker, 2013, p338). Further, according to De Mesmaecker voluntary participation should also mean mutually agreed outcomes, however offender’s participation is often made against consideration of alternative criminal prosecution and, with victims’ awareness of implications for offenders if they chose not to participate.

With the use of scripts by facilitators (to direct the mediation) De Mesmaecker, questions participants’ sense of control, which was of great importance in her study and was also linked to the impartiality of the mediator. Circularly, she argues that knowing what the process entails forms part of informed consent. While recognizing that negotiations could be needed if the victims and offenders’ wishes were incompatible regarding the process; De Mesmaecker suggests future research investigate the impact on perceptions of facilitator impartiality and voluntariness if participants have little or no control on the process.²²

Confidentiality is an important principle for allowing participants to feel free to share in the knowledge that what is shared is not disclosed to third parties. De Mesmaecker refers to the use of police officers in Family Group Conferencing in Belgium and Australia and questions how open participants might be with police officers present, while also acknowledging that police presence can help to perpetuate a sense of seriousness and of physical safety. Impartiality refers to the perceived performance of the facilitators to “... refrain from taking sides in the conflict which they mediate ...” (De Mesmaecker, p341). According to De Mesmaecker impartiality was also linked to not overly steering the process and maintaining openness to each person’s perspective.

²² The use of scripts is to guide and structure the process opposed to muting participants’ expression and exploration. “... the script prescribes a series of open-ended questions that encourage people to respond “affectively”, that is, to express how they were affected by the issue that brought them together.” (Wachtel et al, 2010).

“Within the restorative justice movement it is assumed that the procedural guarantees of confidentiality, facilitator’s impartiality and voluntary participation are in large part responsible for participation satisfaction with restorative programmes. Yet little is known so far about how participants in restorative programmes perceive these three fundamental principles.” (De Mesmaecker, 2013, p357).

54 participants of property and violent offences were interviewed pre and post direct or shuttle mediation²³; this included victims and offenders that were both known and unknown to each other. De Mesmaecker found that participants had two issues with the principle of confidentiality – that the judge would not know the truth about the exact circumstances of the offence and it precluded them from informing the judge about the unwillingness of the other party to engage in mediation.

While literature tends to speak of offender’s admitting guilt in mediation and then denying it in court, De Mesmaecker found the opposite in her study - victims admitted their knowledge that the alleged offender was not guilty, but refused to sign agreements acknowledging this for the court. If both parties did not agree to share the mediation outcome with the court this could not happen.

De Mesmaecker writes of the impact that this can have on the legitimacy of the mediation process as procedurally unfair. Further, it was found that participants in the study were unfavourable of mediation replacing court prosecution, except in the case of minor offences. This would appear to speak to perceptions of justice. De Mesmaecker found two reasons given for why the participants felt the court should deal with cases. One, it was felt that in order for the offenders to learn from their mistake, they had to be face-to-face with the judge. Secondly, that the judge recognize the efforts made in the mediation process and the arguments resulting from it. “The reason people attach such importance to the formal acknowledgement of their activities within the framework of mediation is that participating in restorative interventions is not an easy task, neither for victims nor for offenders. Both have to face feelings of shame, guilt, anger, and so forth ... Once they have faced all these obstacles, people want a judge to show respect for this by referring to and acknowledging their efforts.” (De Mesmaecker, 2013, p356).

²³ Shuttle VOM involves the mediator going back and forth between the victim and offender.

The use of a script (related to impartiality) and Police involvement in facilitating conferences (further related to confidentiality) would be features of the current Action Research.

Ratings of satisfaction with RJ processes have proven to be a key measure of research, in determining whether RJ meets its aims and provides participants with what they want to gain. Factors revealed by these studies also indicate what matters in implementation to ensure success.

Satisfaction Ratings: Victim & Offender Experiences and Outcomes

It has been argued, "... perhaps those who are able to choose among justice options are more satisfied with their experiences." (Umbreit, Coates & Vos, 2004, pp287; cited in Bolivar 2013).

A number of studies have found that both victims and offenders experience high levels of satisfaction from participating in RJ processes, in comparison to the CJS (Poulson, 2003, in Menkel-Meadow, 2007).²⁴ This includes studies conducted in the US; Australia; Israel; Canada and the UK and that included diverse sets of victims (Menkel-Meadow, 2007). From a meta-analysis of seven studies, it was reported that victims participating in RJ processes were 50% less likely to be feel upset about the offence, than victims that went to court. Also, offenders were 6.9 times more likely to offer an apology to the victims in RJ; and it was suggested that this likely accounted for victims being more likely to forgive the offenders (Poulson, 2003, in Menkel-Meadow, 2007).

Satisfaction ratings have been measured in a number of ways, including psychological wellbeing, for example participants' satisfaction at getting the opportunity to tell their story or based on their perception of fair treatment by facilitators/mediators; in comparison to judges (Poulson, 2003, in Menkel-Meadow, 2007). Such findings are contrary to expectations of victims only seeking financial restitution.²⁵ A study from Australia found that victims, who participated in poorly handled RJ processes, or where processes did not take place, were less satisfied than

²⁴ It is predictable that if offenders of less serious offences participate in RJ processes that divert them away from the CJS, they are likely to find this more preferable (Menkel-Meadow, 2007).

²⁵ "Interestingly, victims frequently report that while restitution was the primary motivator for them to participate in VOM, what they appreciated most about the program was the opportunity to talk with the offender." (Umbreit et al, 2005, p271)

victims who went through the CJS or who had participated in successful RJ processes (Strang, 2001, in Menkel-Meadow, 2007).

Agreements for restitution following an RJ intervention are much more likely to be reached (90%) in face-to-face VOM (Umbreit et al, 2005; Umbreit, 2001, Umbreit & Coates, 1992, cited in Menkel-Meadow, 2007).

Compliance rates with agreements have also been found to be high ranging from 75-100% in studies with court control groups (e.g. Haley & Neugebauer, 1992, Marshall, 1998, Kuhn, 1987, McCold & Wachtel, 1998, cited in Menkel-Meadow, 2007). Latimer et al's (2001) meta-analysis of eight RJ studies found a 33% higher compliance rate with restitution in comparison to court case-control groups. In a comparison between RJ and court cases, US studies found compliance of 81% for RJ to 58% for courts; and with an evaluation study of six different programmes 89% RJ completion and 75% court case completions (Umbreit et al, 2005; Ervin & Schneider, 1990; respectively, cited in Menkel-Meadow, 2007).

Of a US and Canadian study on VOM, Umbreit et al (2005) found three variables could account for over 40% of the variance associated with victim satisfaction – the victim felt good about the mediator; restitution agreements were considered fair and they had a strong initial desire to meet the offender. Umbreit et al (2005) report on three studies that found over 90% of victims and offenders would recommend group conferencing programmes to other people.

In 2001 the UK Home Office (under their crime reduction programme) commissioned research of three RJ schemes largely focused on adult offenders, funded for two to three years. Across the schemes the RJ practices involved direct and indirect mediation and RJ conferencing (RJC). Of each scheme a control group was used to assess reconviction rates. Shapland and others provide four reports on the action research that ran from 2001-2006. Focusing on the third report and largely on the findings of the scheme that used only conferencing,²⁶ the findings also provide guidance. Shapland et al (2007) found that victims were approached in person at court, by letter or telephone and all methods of contact were found to be satisfactory to the victims. A face-to-face preparation meeting after initial contact was considered essential and victims were appreciative of the scheme staff being prepared to meet with them at their homes to answer

²⁶ The JRC (Justice Research Consortium) scheme provided conferencing to 152 offenders and 216 victims (with a control group of 118 offenders and 166 victims). The participants views were obtained just after the conferences and then were interviewed 8-9 months post conference.

questions (Shapland et al, 2007). It was noted that asking about preparation information after the conference, would allow participants to know if the information they had received had been adequate. The information they received should have also allowed them to make their decision to participate. Shapland et al (2007) found over 75% of the offenders and 86% of the victims felt they 'definitely' or 'probably' had enough information. Despite preparation, Shapland et al (2007) report that participants were still nervous, especially the offenders. However, of information provided after the conference only – 69% of offenders and 71% of victims said that were given any information about what would happen as a result of the conference. Ratings with regards to information about outcome agreements were even less (67% offenders and 64% victims) for the conference participants. Although the schemes were pilots with fixed terms of funding and the facilitators may have lacked experience and knowledge, Shapland et al (2007) suggested "None the less, we think it is important that schemes work out what outcomes are likely and that facilitators lay this out clearly to potential participants." (p13). Less than 3% of participants were not clear about the voluntary nature of participation or felt they had sufficient time to consider their decision to participate.

92% of victims and 86% of offenders said that the practical arrangements of the conference had been discussed, however 13% of the offenders said they had not been informed of the precise times. These were essentially from the prison groups, and Shapland et al (2007) suggest that the difficulties were likely more about the prisons than the Justice Research Consortium (JRC) scheme. Suggesting that the prisons often had difficulties allocating appropriate venues and times.

The conference participants were asked whom they thought the conference was for (and could provide more than one response) – 55% of offenders and 49% of victims said that they thought the conference was for them. 71% of offenders and 73% of victims thought that it was for the other party and 11% offenders and 20% victims thought it was for the community (Shapland et al, 2007).

Shapland et al (2007) report that most participants were satisfied with the conference, however there were a few that were not. When participants were dissatisfied it tended to be with one particular aspect opposed to overall dissatisfaction. One causal factor of dissatisfaction among offenders related to the absence of victims, in that there was a higher degree of dissatisfaction when victims were absent. From analysis of cases in which dissatisfaction was based on a

number of issues, Shapland et al concluded that – “If there is any common denominator here, it is that cases with a dispute between offender and victim as to the facts, particularly if the offender was drunk and could not remember much, may prove problematic.” (p28). They also found outcome agreements to be a major source of dissatisfaction.

32% of offenders and 20% of victims said that they were nervous before the conference. 64% and 66% of offenders and victims respectively, found the conference ‘very’ or ‘fairly’ emotional compared to 33% and 32% of offenders and victims respectively who found it ‘not at all’ or ‘not really’ emotional. Shapland et al (2007) found significant correlations between the level of nervousness and degree of emotionality experienced – with those who experienced it as most emotional, having been those that were most nervous. “Perhaps another proof of this is that the emotional scars from the offence had not, for most, healed completely by the time of the conference. Half the offenders and 31 percent of victims found it very (or to some extent) difficult or painful to go through the process.” (Shapland et al, 2007, p39)

Although dictated by the CJS, Shapland et al (2007) asked participants about whether or not they thought the timing between the offence and the conference was right; although there was great disparity in the intervening times for each case – 76% of offenders and 72% of victims thought the time was right. 17% of offenders and 22% of victims thought the time between the offence and the conference was too long.

Shapland et al (2007) recognized different aims of RJ and provided direct findings pertaining to these aims (similar to what De Mesmaecker (2013) had later set out to do). Such as RJ providing the opportunity for victims and their supporters to express the harm done to them – 83% of offenders and 60% of victims thought the conference made the offender realize the harm that was caused by the offence (accountability).

Finding Resolution: Victim & Offender Experiences and Outcomes

An aim of RJ is to allow the parties involved to “... collectively resolve how to deal with the aftermath” (Marshall, 1998)/solve problems caused by the crime. Shapland et al (2007) found – 51% of offenders and 38% of victims thought that the conference had ‘very much’ or ‘to some extent’ solved problems stemming from the offence.

“A different aim of restorative justice is to provide a sense of closure to the offence and to any conflict created ... Part of this is seen by some theorists as relevant to healing and reconciliation.” (Shapland et al, 2007, p39).

Of the Shapland et al study 80% of offenders felt they gained a better understanding of their offending and themselves. 69% of victims said they had a better understanding about the offence; while 19% reported gaining no understanding. 39% of victims felt more secure post-conference, 46% felt the conference had no effect on them and 9% felt less secure. Over 50% of victims felt that they gained a sense of closure, and a further 20% felt they had gained a sense of closure to some extent.

Overall 73% of offenders and 64% of victims thought that conferencing was a good way of dealing with the offence – “Given that few offenders and victims had any previous knowledge of restorative justice and this work had no statutory basis, these are quite high figures in terms of confidence in the process and what it had done for them.” (Shapland et al, 2007, p40).

74% of offenders and 78% of victims reported that they would ‘definitely’ or ‘probably’ recommend RJ to others of similar offences. “Conference victims and offenders were significantly more satisfied with what the criminal justice system had done with their case than control group participants, suggesting there is a positive effect of participating in restorative justice on confidence in criminal justice.” (Shapland et al, 2007, p4).

As part of the Campbell Systematic Reviews, Strang et al (2013) conducted a meta-analysis of RJ conferencing (RJC) studies that used face-to-face meetings and included random-assignment to control groups. The analysis consisted of 10 studies with a total of 1,879 offenders and 734 victims, from three continents.²⁷ The majority of the studies (9) used convicted offenders. They sought to review the effects on recidivism and victim satisfaction. For the purpose of the current research, greater attention is given to Strang et al’s findings regarding the latter. The review was limited to two consistent dimensions of victim satisfaction across the studies – material and emotional restoration; and was further limited by studies in which the RJC-assigned victims and control-group victims could be compared (essentially two experiments). They found that, less victims of RJC (38%) sought financial restitution compared to the court victim-group (47%) and

²⁷ The three continents were the Europe (London, UK), Australia (Canberra) and North America (Indianapolis, Indiana).

fewer victims received it in the court-group (12%) than the RJC-group (16%).

Strang et al (2013) highlight differences in dynamics when victims are present at conferences, than when they are not. They state that there is a requirement for victims to be present, citing qualitative research that has found far less emotional intensity and offender remorse, than in cases where personal victims are present. Regarding emotional reparation, they report in-depth data such as – 18% of court-assigned victims compared to 5% of the RJC-assigned victims believed that the offender would reoffend against them. When this was examined by offence – three times as many court-assigned victims (21%) than RJC-assigned victims (7%) of property crimes thought the offenders would reoffend against them. For victims of violence, five times as many of the court-assigned victims (11%) than the RJC-assigned victims (2%) thought that the offenders would reoffend against them. 90% of all the victims wanted an apology from the offender; 72% of the RJC-assigned victims compared to 19% of the court-assigned victims, said that actually received an apology (the apologies for court-assigned victims were not given as part of the court process, but rather as a separately negotiated outcome). In studies that looked at burglary and robbery (in the UK) Strang et al found – 96% of RJC burglary victims received an apology, compared to 7% of court-case burglary-victims. In robbery 100% of the RJC-victims received an apology, compared to 14% of the court-assigned victims. Victims' perceptions of the sincerity of the apologies they received by offence type yielded statistically significant results. For offences of violence RJC-victims and court-victims perceived the apology as 'sincere' or 'somewhat sincere' at rates of 58% and 11% respectively; for property offences 55% and 10% respectively; for burglary 57% and 7% respectively and for offences of robbery 79% and 11% respectively. "These findings confirm that courts often neglect the non-material dimensions of victimization, while RJC is moderately successful in delivering the emotional restoration victims seek, and especially in providing a forum for the transaction of apologies." (Strang et al, 2013, p39).

Of four studies (conducted in Canberra and London) in which Strang et al could compare victims' anger, which could be translated into vengeful desires, they found differences based on the offences. For example, in cases of burglary and robbery in two London experiments – 5% of control-group victims and 0% RJC-assigned victims said that they would harm the offender in cases of burglary, compared to 14% of the control-group victims and 3% RJC-assigned victims in cases of robbery. Strang et al (2013) were also able to report on post-traumatic stress symptoms

(PTSS) of the victims in the London studies involving offences of burglary and robbery. With tests carried out using the Weiss & Marmar, 1997 Impact of Events (Revised) Scale, once after disposal of the case (court or, court & RJC) and six-months later. They reported that the RJC-assigned victims had reduced PTSS compared to the control-assigned (court only) victims, concluding "... it appears likely RJC has a beneficial outcome for victims experiencing PTSS." (Strang et al, 2013, p44).

Overall, the results indicated (but lacked statistical significance) that RJC worked better for violent offences than property crimes; and RJC was more appropriate for adult-offenders than juvenile offenders (Strang et al, 2013). "If governments wish to fund Restorative Justice at all, this evidence suggests that the best return on investment will be with violent crimes, and also with offenders convicted after long prior histories of convictions." (Strang et al, 2013, p48).

This section has shown that the process works well for both victims and offenders, although offenders find most value when their victims are present. In comparison to the CJS, RJ provides victims with the opportunity for emotional restoration. Timing affects victims' engagement, with less time needed after property offences than violent offences.

What Is Known About How RJ Works in Prisons?

"The least developed but potentially one of the most valuable uses of conferencing is in corrections... Prisons and the parole system are ripe for innovation because, as currently constituted, they do not work." (Wachtel et al, 2010, p113).

In 2003 Hagemann wrote about a programme called 'Focus on Victims' that was introduced to a prison in Germany, with offenders of serious crimes such as homicide and robbery. "Our experience of this programme has confirmed our assumption that there are three relationships that must be restored." (p228). The first being the offender's internal relationship with themselves and what Hagemann referred to as two conflicting concepts of themselves as an offender on one-hand and a "normal" person on the other. The second relationship being the social relationship between the offender and society – essentially other prisoners, prison staff, the offender's relatives and friends. The third relationship is the relationship between the offender and victim.

While maintaining that the programme was restorative, after five-years and 150 prisoners participating no VOMs were held, despite this being the intention post-programme. Hagemann's assessment was limited to consideration of the offenders; suggesting the prisoners could only manage to restore the first two relationships (with self and society). "But prisoners who are able to cope with their offending will not be motivated to participate in such a strenuous process as long as the retributive aspect – that is, the sentence – is left out of focus. Such programmes as these conducted in prisons should not be classified restorative justice because the imposed punishment forms a structural impediment." (Hagemann, 2003, p231). However, subsequent research has demonstrated societal (including offenders and victims) perceptions of justice often include both retributive and restorative elements (De Mesmaecker, 2011). The absence of victim-participants might have also contributed. Hagemann argues that what the programme highlighted was the need for more pervasive practices to engage the whole society and prison community.

While some may argue, theoretically, that the promotion of restorative practices in custodial settings could be trying to legitimise punishment (Guidoni, 2003; Immarigen, 2004; Armstrong, 2004; cited in Barr, 2013) the benefits to victims and offenders in light of empirical data, at least is evident.

A number of international studies, have been conducted or reported on, that have involved prison programmes to raise the profile of victim harm and offender accountability, whether preceding victim-offender contact interventions; as part of an overall momentum to engender more RJ orientation within prisons or as stand alone programmes.²⁸ All the programmes involve emphasis on building empathy or sensitivity to victims' plight (e.g. Barr, 2013 (Northern Ireland); Dhami et al, 2009 (UK); Ellis, 2011 (Ohio); Hagemann, 2003 (Germany); Robert & Peters, 2003 (Belgium); Suttie, 2015 (California); Szego & Fellegi, 2013 (Hungary)).

In a review of interventions for adult-male violent offenders, Jolliffe & Farrington (2007) found that interventions employing empathy training resulted in lower effect sizes, than interventions

²⁸ Van Camp (2002) suggests that the success of RJ in prisons will likely be dependent on RJ being adapted by other agencies of the CJS (cited in Dhami et al, 2009).

that did not; with the intended effect being a reduction of general and violent reoffending.²⁹ Another NOMS study published in 2012 found that stand-alone victim empathy/awareness programmes did not reduce reoffending. However, ‘victim-offender conferencing’ was found to be effective in reducing reoffending with varying levels of risk for violent offences, robbery and acquisitive offences. Without any suggested explanation, the report stated that victim-impact panels with drunk drivers does not reduce offending and may even increase reconviction (NOMS, 2012).

Szego & Fellegi (2013) conducted Action Research as part of a pilot project on two prisons (one juvenile, one adult) in Hungary implementing restorative practices. They sought to use the practices to manage “inmate-inmate conflict”, ‘cell conflicts’ and restoration of family relations and victim reparations. For example, they used family group conferencing as preparation for permanent, conditional or temporary release, with the aim of exploring fears, desires and expectations of the inmates, inmates’ family and inmates’ local community. They report as preparation for the project, eighteen “inmates” participated in a two-day Sycamore Tree programme. However, Szego & Fellegi (2013) suggest a more pervasive use of restorative practices with prison populations beyond victim-offender meetings, and postulate positive benefits for staff. They found that the use of restorative practices had the potential to motivate staff beyond the maintenance of law and order, and suggest it can reduce staff burn-out. “... it is not only the prison conditions that affect restorative methods, but the techniques also similarly influence the relationship of inmates and the correctional education officers.” (Szego & Fellegi, 2013, p20).

Szego & Fellegi (2013) however advocate from their experience that the issue of facilitator impartiality is best managed by the corrections-facilitators not facilitating in their own establishments. This option is extremely limited in Bermuda, where Hungary would have a larger Corrections estate. “On the basis of our findings, the inmate is the most likely to be willing to accept the restorative approach and communication methods if he has *family relations beyond the prison, actual goals after becoming released*, and consequently, the inmate is *less affected by the process of prisonization* (Winfree, 2002, p.214).” (Szego & Fellegi, 2013, p19).

²⁹ Responsibly, Jolliffe & Farrington (2007) report “Interventions with violent offenders may work better with some ethnic groups rather than others due to different socio-economic backgrounds and cultures.” (p15).

Barr (2013) in his study entitled *'Putting Victims in Prison'* suggested, "... a compelling need exists to understand the dynamics of permitting victims of crime a 'voice' inside custodial settings." (p390). He looked at a prison in Northern Ireland (Magilligan Prison)³⁰ with all the political issues of the country, and set to find out if bringing the essential restorative element of giving victims a voice, could encourage more favourable perceptions of procedural fairness in the prison service for victims and their advocates' and, if it could increase the perceptions of legitimacy in sentences for offenders. He found both objectives were positively achieved, through VOM and a victim impact programme.

Prison officers were trained as facilitators of VOM and mediations largely took place in the prison conference rooms; or if victims were unwilling to attend the prison, at victim-support offices, police stations, probation offices or court buildings. The aim of the VOM was to improve perceptions of the other; decrease levels of fear and help people feel more in control of their lives. Prison officers and volunteers of victim-support agencies delivered the Victim Impact programme. It was a twelve-week programme, run two days per week, covering crime topics such as assault, hate-crime and gang- crime (Barr, 2013). The study used a 'multi-method' design, which will be described in conjunction with the hypothesis they appeared to address and findings associated with them.

26 victims were asked to complete a questionnaire on their personal experience and evaluation of VOM. Two dimensions of procedural justice were used – victims' voice and respect. Barr based this conceptualization of procedural justice on Wemmer & Cyr's (2006) postulation that victims experience mediation as fair because it offered them recognition (victims' voice) and respect,³¹ through the process. From this analysis Barr found – 73% of the victims reported being 'very satisfied' with the VOM process as a method of dealing with their case; 77% were very satisfied with the final outcome agreements; 96.2% felt that their voice had been recognized; 92.3% were very satisfied at having felt respected and all of the victims felt that the meeting had been beneficial. Having a voice was significantly correlated with outcome satisfaction and even more highly significant was the correlation between victims' perceptions of respect from prison staff and outcome satisfaction. "This would suggest that while victim's perceptions of the opportunity to express themselves were important to outcome satisfaction,

³⁰ A medium-secure adult male prison.

³¹ Victims being able to express themselves achieve recognition, and respect referred to the interpersonal treatment or quality of interaction between victims and the criminal justice authorities (Barr, 2013).

the quality of the relationship with prison staff contributed equally to their overall assessment.” (Barr, 2013, p401). The Victim Impact Programme also resulted in positive outcomes on victims’ views of procedural fairness.

A total of 31 pairs of offenders were able to be matched for index-offence and age and comprised the participant and control-groups.³² They were assessed before and after the Victim Impact programme on a 50-item Likert scale type questionnaire to measure for an increased sense of accountability and greater sensitivity to ‘victim’s plight’ (Barr, 2013). The participant-group showed significant positive attitudinal change compared to the control group, who showed no significant differences over the same time frame. The participant-group showed a large significant effect on sensitivity to ‘victims’ plight’ and a significant medium effect in relation to accountability (Barr, 2013).

Semi-structured interviews were held with 10 offenders who completed the Victim Impact programme and 10 victim-support volunteers and prison staff who facilitated the programme. “... having completed the programme, offenders had a clear sense of their crimes as harmful actions as opposed to legal wrongs.” (Barr, 2013, p406). Regarding the hypothesis testing that an increased sensitivity to victims’ plight and accountability would increase offenders’ perceptions of the legitimacy of their subsequent sentence, Barr concluded the null hypothesis false. This was based on – offenders’ having a sense of their sentence as lenient in comparison to the harm caused by their offences and that “Almost all the offenders interviewed believed that the contribution and relationships built up with volunteers had been critical in encouraging confidence to talk openly and honestly about their feelings.” (Barr, 2013, p407). The offenders expressed respect for the volunteers sharing their stories and of being actual victims. Barr reported improved understanding on the part of the offenders regarding the regime’s function to challenge offending behavior.

Barr’s study utilized two different RJ practices, one involving the direct victims and another that utilized community members as facilitators; and then assessed the offenders’ attitudinal change. Barr argued that while the Northern Ireland Prison Service supported RJ, with no policy it was reliant on volunteers and being confidential it – “... has no impact upon the offenders

³² Offenders were selected from a awaiting list for the programme, with the opportunity to participate (during the time of the pilot) given to those who were scheduled to complete the programme by that time.

progressions through the regime or resettlement planning targets. The process stands alone, unaligned with any other intervention.” (Barr, 2013, p390).

This section has shown that there is good evidence RJ works well in prison settings, that prison staff can lead and implement the process and that it can be positive for staff and visitors. One widely used RJ approach in prisons is the Sycamore Tree Project that has been used in the current study. Evidence of its effectiveness is described in the research below.

Sycamore Tree Project (STP)

Feasey & Williams (2009) report research data on the Sycamore Tree Programme (STP)³³ as a victim awareness programme (based on RJ principles) delivered in over fifty prison establishments throughout England and Wales since 1998. To assess for change pre and post-programme participation, offenders were required to complete the CRIME-PICS II psychometric questionnaire.³⁴ Of 5007 sets of questionnaires they found of prisoners (adult male, female and young-offenders) from all categories of establishments (high-security to remand centres) an overall positive attitudinal change (irrespective of gender, adult/young-offenders) post-programme on all measures of the CRIME-PICS II scales.³⁵ For example - “A key objective of the Sycamore Tree programme is to improve the programme participant’s attitude towards the victim(s) of their offending behavior. Therefore, the primary concern of this evaluation project is the analysis of attitudinal shifts between pre and post scores on the ‘*victim empathy*’ and ‘*anticipation of crime as worthwhile*’ scales.” (Feasey & Williams, 2009, p8). Referring to two distinctive aspects of empathy that have been suggested – “... ‘cognitive empathy’ refers to the ability to recognize and understand other perspectives, whilst ‘emotional’ or ‘affective’ empathy, relates to the capacity to vicariously experience the emotions of others. ... Crime Pics II primarily seeks to measure changes in cognitive empathy so that improved scores might indicate a greater awareness of the impact of their crimes on victims and recognition that they are responsible for inflicting harm on others.” (Feasey & Williams, 2009, p8). The findings by type of institution yielded interesting results. The Category D (low-risk) prisoners showed the lowest levels of pro-criminal attitudes post-programme on all scales except the victim-empathy

³³ Further description of the STP is provided in Chapter 4.

³⁴ The CRIME-PICS II is explained in more detail in Chapter 5.

³⁵ Anticipation of future offending (A-scale); General attitude towards offending (G-scale); Victim empathy (V-scale); Evaluation of crime as worthwhile (E-scale) and a Problem Inventory (P-scale).

(V) scale; on which prisoners of remand centres showed the greatest empathy for victims. “This may reflect the type of offences committed by those held within Remand Centres or the ‘unsentenced’ status of those participating on the programme.” (Feasey & Williams, 2009, p10).³⁶ However, the remand centre prisoners had the greatest level of empathy pre-programme, and in actual fact had the lowest degree of shift pre and post-programme than prisoners of other category prisons. “Given that those participants within remand centres demonstrate the weakest shifts in victim empathy, yet the strongest on the A-scale indicates that the relationship between the two scales are not clear.” (Feasey & Williams, 2009, p13).³⁷ As remand prisoners were included, Feasey & Williams did not explicitly report on whether or not these prisoners had accepted responsibility for their offending (as would be expected for programme participation). The data could indicate that remand prisoners have less empathic regard for their ‘alleged victims’, than their desire to avoid a similar predicament in the future while ‘anticipating’ a conviction or sentence. Feasey & Williams do not consider this possible explanation (especially in light of the fact that the STP is not a full RJ intervention with direct victims), rather evaluating the CRIME-PICS II tool over evaluation of the programme. They do recognize that in their evaluation of the programme there was no available data on static (i.e. age, previous convictions, index offence, sentence length and ethnicity) or dynamic factors (such as substance abuse and familial relationships). “Further evaluation of the programme would be enhanced by accessing profile information to inform upon offence related needs and risk levels.” (Feasey & Williams, 2009, p17).

What could be have been highly relevant to this thesis if recidivism were an intended outcome, would be the findings of the MOJ (2013b) regarding STP. The MOJ conducted an evaluation of the Sycamore Tree programme (STP) on re-offending. Of 192 offenders from five prisons matched on a number of characteristics³⁸ for various offences³⁹ during 2005-2008, there was

³⁶ They also found that the STP had a marginally greater impact on young-offenders than adults for the V and A scales (victim empathy and anticipation of future offending respectively) and marginally greater for females than males. Males had a marginally higher positive shift than females on the A-scale.

³⁷ If the scales were not measuring different attitudes then there would be no need for different scales. Feasey & Williams’ (2009) statement suggests that improvement in one attitude should create improvement in the other attitudes/scales.

³⁸ The characteristics of the offenders in the analysis included ethnicity, nationality, gender and age (at time of index offence and at first contact with the CJS). As well as index offence, length of sentence,

only a 2% difference between the STP treatment group and the control group on a one-year follow-up of reoffending post-release. This finding was not statistically significant, indicating that the STP had no real impact in reducing re-offending. A reduction of recidivism is often considered a primary aim of RJ; this author disagrees with this perspective, rather sharing the view of Wachtel et al (2010) that “Even if re-offense rates do not decline, the value to victims who want to face offenders is reason enough. We have to keep reminding ourselves that conferencing is, first and foremost, a service that we can offer to victims.” (p116).

What Further Evidence is there that RJ Improves Victim Empathy?

RJ principles have been used to deal with an array of issues and disputes in an equal array of contexts, such as school and workplace bullying. Whilst not the focus of the current thesis some evidence and research will be covered while introducing the human capacity for empathy.

Strang et al (2013) concluded from their review of RJ that “One way to interpret the results reported ... is to say that the effects of RJ on serious or frequent offenders was to make them hurt people less. That is just what the empathy-based theory of shared values emerging from effective interaction rituals (Collins, 2004, Rossner, 2013) would predict.” (p48).

Recent research is pointing to the discovery of neurogenesis of the amygdala that has been associated with empathy (Reisel, 2014). Zaki (2011) refers to a study by Konrath in the US of over 1,300 students that showed a decline in self-reported empathy (using the Interpersonal Reactivity Index) over a thirty-year period. “Konrath cites the increase in social isolation, which has coincided with the drop in empathy. In the past 30 years Americans have become more likely to live alone and less likely to join groups ... Several studies hint that this type of isolation can take a toll on people’s attitudes toward others.” (Zaki, 2011). The suggestion that when people are more socially integrated with others they are more open in their interactions with others, also speaks to Bolivar’s (2013) finding of RJ participants’ perception of social support and ‘ideology’. Converging disciplines provide evidence that the human ability to empathize can be

employment and benefit history and criminal history (e.g. previous - convictions, custodial sentences and court orders).

³⁹ Offences were violence (including robbery), burglary, theft and handling, fraud and forgery, motoring offences, criminal damage, drugs and an ‘other’ category which was not specified.

enhanced or reversely, eroded as a result of the environment. Or as it has been described – with the beginnings of human life, empathy is “soft-wired” and dependent on early attachments and experiences it can become “hard-wired”.⁴⁰ “The fact that empathy is declining means that there’s more fluidity to it than previously thought ... It means that empathy can change. It can go up.” (Konrath, quoted in Zaki, 2011). It has long been known that offenders have often been traumatized by life experiences, such as violent offenders having been exposed to violence or neglect during their formative years of development. Moreover, institutions such as prisons are further oppressive environments, isolating by design.

Models and Further Guidance

In Umbreit’s 2000 publication *Restorative Justice Conferencing: Guidelines for Victim Sensitive Practice: Adapting Conferences, Mediations, Circles and Reparation Boards to People, Communities, and Cultures* he provides guidance for assessing and facilitating conferences (using the term RJ quite globally). He outlines four key elements, under which, other guidelines will be succinctly presented in this chapter.

- 1) “All those directly affected by the crime are encouraged to participate.” (p2)

Safety as a fundamental principle of RJ means that the participants should feel safe, and if this is ever compromised, the facilitator should act immediately to provide options, terminate a conference and provide an escort for the victim to leave. Conferences should be conducted in locations that are safe for the victim, also aided by the accompaniment of supporters. Umbreit suggests that victims have a say in the arrangement of the room and seating of participants as a way of reassuring them; or at the very least, their wishes be given serious consideration. Others suggest facilitators plan the seating (e.g. Wachtel et al, 2010). Umbreit suggests that the offender’s feeling of safety is also important and that this is why they should not feel coerced. Facilitators should actively listen to the stories of both victims and offenders, and be mindful of their use of language, avoiding words that prescribe pressure, such as forgiveness and reconciliation. Umbreit points to victim’s rights’

⁴⁰ Soft and hard-wiring are terms used by Jeremy Rifkin *The Empathic Civilisation*. Available for viewing at <https://www.youtube.com/watch?v=l7AWnfRc7g>

as useful information that can be given to victims, as well as other resources and making referrals if requested.

- 2) “The victim and offender choose which, if any, family members or support persons are present.” (p2)

Both victims and offenders should have the option to be accompanied by family and friends. As communities of care and support, these individuals may assist the offender in their completion of the agreement or they may have also been impacted by the offence.

- 3) “The process of conferencing/dialogue is adapted to the expressed needs of the victim and offender.” (p2)

Facilitators are guided to provide choices and options to victims that can contribute to them feeling empowered, and further to their healing. This is very important if the victims feel disempowered by the CJS or have feelings of victimization. Victims should be given the option of whether or not to speak first – “In some cases, a judgment call may be required by the mediator/facilitator as to who should speak first, based on the age, needs and communication styles of the parties. ... Creating a safe place where both parties feel comfortable enough to engage in a genuine dialogue to the extent of their ability is ultimately the most important principle, regardless of who speaks first.” (Umbreit, 2000, p18). Aside from any legal limitations, victims should have the right to seek whatever kind of restitution meets their needs, however the final agreement is based on the offender’s willingness and ability to meet those needs.

- 4) “All of the primary parties are thoroughly prepared through in-person meetings prior to a joint conference.” (p2)

Victims and offenders should be provided with accurate information and support to make informed decisions about participation without time constraints – including a description of the RJC process; research findings on participant satisfaction; encouraging consideration of possible risks and benefits and structuring realistic expectations. That participation is based on ‘informed consent’. As described by De Mesmaecker above (2013), informed consent involves participants being advised that they can terminate the conference at any time. Umbreit urges facilitators to meet with offenders first, so as to avoid any potential feelings

of re-victimization, if the victim is seen first and then the offender refuses. The facilitators should seek consent before sharing any information between the parties. Umbreit suggests scheduling priority be based on convenience for the victim - for the actual conference and for pre-conference face-to-face meetings.

The guidance provided above is not an exhaustive list and further guidance is illustrated within chapters 4 and 5. Umbreit (2000) encourages practitioners to de-emphasize programme models over meeting the needs of the main stakeholders. He urges practitioners to “Remember, the central issue is how to create a safe place for people to engage in a genuine dialogue based on their needs, not the needs of the program advocates.” (p4) He suggests that as each case is unique, a multi-method approach would likely be more appropriate, based on the strengths and limitations of each practice (e.g. VOM or FGC) or such as a one-to-one meeting or a small conference ahead of a larger conference.

The international empirical research presented in the chapter points out a number of considerations, not least cultural differences. It would appear that how people view the CJS can influence their participation and satisfaction with RJ, as well as how RJ participation can influence opinions of the CJS. Yet the success of RJ in prisons will likely be dependent on the support of the CJS, as well as the public, victims, prisoners, prison staff and administration.

The research reviewed suggests that participants be provided with sufficient information about all stages of the process to inform consent to ensure voluntary participation. It has highlighted the potential impact of criminal justice agents as facilitators on participants’ perceptions of confidentiality, and impartiality with the use of conferencing scripts. The approach used to make initial contact is less of an issue than face-to-face meetings with participants after initial contact. Guidance stresses the issue of safety and adherence to the principles of RJ. Consideration is also given to evidence regarding stand-alone victim empathy programmes on recidivism, and evidence of RJ being most effective with violent offences over property crimes.

The UN (2006) highlights caution with victim-participants in small communities “There is a risk, particularly within small communities with close relationships between individuals, that some victims may be pressured into participating in a process with which they do not really agree.” (p66). It has also been reported that evidence of small homogeneous communities can increase

the risk of flight by adolescents from the community (Marshall, 1998, in Menkel-Meadow, 2007).

Chapters one and two sought to describe RJ theories and core principles, present empirical research, some guidelines and standards of practice, and pointed to how the literature influenced the current research. It ended with a cautionary note from the United Nations regarding use of RJ in small communities, of which Bermuda would constitute. The following chapter describes the context in which the research was conducted, focusing on the cultural climate and crime in Bermuda.

❖ **CHAPTER 3 - BERMUDA IN CONTEXT: CRIME & the CRIMINAL JUSTICE SYSTEM**

“Although locked facilities must be part of any public safety, safe communities require more than incapacitation.” (Umbreit, 2000, p2)

When one reads a report on the CJS in Bermuda (Tumim et al, 1992), written almost a quarter of a century ago, aspects of it, and even earlier reports scream for a RJ response, with comments and statements such as –

“It is a system: - which uses punishment, rather than social intervention, particularly financial and custodial punishment, as a primary response to a wide range of social behaviour...” (p43)

“The tasks set before the criminal justice system by the citizens and government are not easy ones. To accomplish the protection of citizens and assure justice, all parts of the system, including the citizens, must formally work together and share responsibility for the ultimate outcome.” (Report of the Bermuda Association of Helping Professions Committee on Prisons and Sentencing, 1983; cited in Tumim et al, 1992, p47).

“Many of our respondents emphasized that the criminal justice system in Bermuda was insufficiently sensitive to the real needs of those who became involved with it.” (p55).

This chapter focuses on Bermuda, its history and the relevance of this to crime and the CJS, to meet an objective of the research – to describe the context of crime and culture in Bermuda. The chapter provides a synopsis of the discovery and beginnings of the island, and then of the historical social and political climate. The relevance of this being, that some theorists argue RJ is insufficient in challenging systemic inequities. Focus is then placed on crime and the CJS; including the intended transition from custody to corrections and inclusion of Alternatives to Incarceration (ATI). Issues are brought up to date, by sharing the demographics of the 21st Century incarcerated population, and ending with a brief review on the distinction between RJ and rehabilitation.

Bermuda is a beautiful picturesque cluster of islands, most uninhabited; those inhabited are largely connected by bridges of all sizes and each unique⁴¹. It bares soft sandy beaches and bays that are accommodating of many and some intimately secluded. There are vantage points that

⁴¹ Somerset Bridge has a reputation for being the smallest working drawbridge in the world.

act as summits displaying breathtaking views. All who visit witness this. The researcher heard countless times from cruise ship tourists as she would exit the correctional facility, how they could not believe such a paradise would have need for a prison.

Often mistaken for being part of the Caribbean, Bermuda is sub-tropical 900 miles north of the Caribbean. Located in the North Atlantic Ocean, it is approximately 21sq miles with an estimated population of 68,000⁴² (Lawrence & Codrington, 2014).

Discovery and Beginnings

It is reported that the islands were first discovered by a Spanish Captain – Juan des Bermudez in 1505 (Packwood, 2012) and whom the islands eventually came to be named after. Settlement on the island was accidental, when on 29th July 1609 a ship (Sea Venture) destined for Virginia with settlers from the UK got wrecked on the east side of Bermuda. The Sea Venture's 150 crew and settlers included Sir George Somers, led to the island first being called Somers Isles and its first inhabitants. When all but three, that remained behind, continued on to Virginia in May of the following year (1610) further settlers did not arrive again until July 1612.

The island is divided into nine parishes – Devonshire, Hamilton, Paget, Pembroke, Sandy's, Smiths, Southampton, St Georges and Warwick.⁴³ From the settlement of 1612, Bermuda was claimed as a British colony and is the oldest self-governing UK overseas territory.

History and Colonisation

At the first inhabitation of Bermuda, hogs were found. The first settlers tried to grow various crops (potatoes, onions, melons and cotton to name a few) and source pearls (Packwood, 2012). Black and Indian indentured servants were imported for their skills in these areas, with the earliest recording of a Black and Indian person being in 1616 (Smith, 2006). Then still early in its history, enslaved Black and Indian people were brought to the island for the purpose of

⁴² The 2010 Census reported the population as 64,237 – available at http://unstats.un.org/unsd/demographic/sources/census/2010_phc/bermuda/Bermuda_new.pdf

⁴³ All of the parishes are named after British noblemen, directly e.g. James Hamilton or based on the territory they ruled as Earls e.g. Robert Rich Earl of Warwick.

agriculture and to ensure the success of the young colony. In 1617 slavery was also used as a form of punishment (Smith, 2006).

Packwood (2012) dedicates a chapter in his book to the early 'Crime and Punishment' of the enslaved, obtained from the Caribbean, Central America and pirate ships. He provides examples of crime (e.g. theft, fornication, rebellion) and, if found guilty, the penalties which could include lashes, hanging, the loss of limbs and banishment.⁴⁴ Smith (2006) provides examples of 'transportation' as a form of punishment for crimes (except murder) whereby an offender could be transported to another country, not to return for a period of time or for life.⁴⁵ Packwood also highlights Acts that came into force – "By 1622, Bermuda's population was about 1,200. The following year, blacks were numerous enough to merit a special Act (12) in the transactions of the Second Assembly, entitled "An Act to restrain the insolencies of the negroes."" (p25). Slave owners, in executing punishment to their slaves were protected by law, if their slave were "accidentally" killed as a result.

Another law Packwood (2012) highlights is the Act "against the ill keeping of the ferry" (p25). Before bridges were built, travel between the islands was by boat. The ferry connection between Coney Island to Bailey's Bay and St George's did not operate on Sundays; black slaves were using boats to provide this service. However, this would mean that slaves could accrue money. Packwood shares that such activity would be considered extortion and the rower could be whipped as punishment if found performing this service. Transportation would become an issue again in the future.

By the late 17th Century there was not enough employment for the number of slaves on the island, so laws were passed to limit importation of slaves. As the slaves had become expert in trades and were inexpensive, many white people were said to have left Bermuda. In 1701 a petition was sent to England requesting 500 black slaves be shipped to the Bahamas, so that white Bermudians could return to take up employment (Smith, 2006).

⁴⁴ When researching the punishment of slaves, the researcher was reminded of comments that suggested Bermudian offenders should be sent to places like Jamaica or Trinidad; however, not from those who had participated in the initiative.

⁴⁵ This form of punishment came into effect with the 1827 Act to "Ameliorate the Condition of the Slaves and The Free People of Colour" (Smith, 2006; p33).

In the early 1820's convicts began to arrive in Bermuda from the UK,⁴⁶ followed by others up until 1863 "... when the system of overseas penal labour was discounted by Great Britain." (Smith, 2006, p25). Over 9,000 convicts were brought to Bermuda, and after those that died from ill health, those remaining were forced to leave.

Interestingly, the British Slave Trade ended in 1807; not until 30th July 1827 did the Bermudian Assembly follow suit passing "An Act to Ameliorate the Condition of Slaves and Free Persons of Colour." (Smith, 2006). It became lawful for slaves or a 'person of colour' to pay for the freedom of others enslaved, like wives and children. It also became lawful for slaves to own property, but they remained segregated in church. Slaves could give testimony in court against other slaves and 'free people of colour' but only if provided with a certificate of good character from their parish vestry; the Chief Justice challenged this in 1828.

1st August 1834 brought the Emancipation Act scheduling abolition of slavery "... throughout Great Britain's colonial possessions... and provided for a system of apprenticeship... designed to provide a transition period" for the colonies to achieve a free labour force (Smith, 2006, p35). The British Government gave compensation to slave owners of the colonies, providing a portion of £20 million to be paid to those in Bermuda, who were to receive the lowest portion of all the colonies (Smith, 2006). A law presumably considered inhumane was overturned; yet there was a need to financially compensate those who had owned enslaved humans as property. It could be argued that this is RJ inverted, whereby reparations are made to the wrongdoer or offender, whether or not previously law-abiding prior to emancipation. It certainly speaks to how laws of the land can become outdated and arguably how laws can elucidate as immoral.

Emancipated black people were still burdened and disadvantaged, a situation further sustained by the "... political impotence induced by legislation..." (Smith, 2006, p51). The Pembroke Young Men's Friendly Institute founded in September 1832 and The St George's Friendly Union founded in January 1834, were two pioneering black lodges hailed by Smith (2006), as organizations that supported newly freed black 'citizens'. There were reportedly 1200 free black

⁴⁶ 300 people made up the first group of convicts (Smith, 2006).

people living in Bermuda just before emancipation; the black population was reported to have reduced by 1835 and the reason for this being emigration (Smith, 2006).

Employment for all was an issue, especially for sailors, however by 1851 the once rejected agricultural industry would produce enough onions and potatoes for exportation (Smith, 2006). Portuguese agricultural labourers were also brought to Bermuda in the late 1840's. With New York steamboats coming to Bermuda for produce, Smith highlights the beginnings of the tourist industry in the second half of the 19th Century. As the demand increased, hotels and guesthouses started to be built. Escaping the winter US seasons, the Bermuda tourist high season was the Christmas to Easter period, and as time went on, the tourism season grew into the summer months (Smith, 2006).

As a tradition to the current day, Smith (2006) suggests that the Gombey's likely emerged in the early 19th Century as part of the black population's holiday celebrations. Named after an African rustic drum called 'Gumba', Gombey's are colourfully, dressed dancers. Another tradition Smith (2006) reports on is Cup Match. Its origins are traced back to 1901 when black Bermudians at an anniversary picnic of emancipation, took part in a cricket match. The two teams drawn from the east and west divisions of the Oddfellows Lodge, agreed a friendly rematch the following year (1902). The tradition continues today with an official two-day public holiday accommodating the two-day cricket event.

Before emancipation, fears regarding the education of slaves were bore out of the belief that to provide education would create a state of rebellion; as well as other prejudices. Smith (2006) argues that the same issues were related to the dissemination of religion, albeit there were instances from across Bermudian history, where slaves were exposed to religious instruction.⁴⁷ Many Christians rites were denied the slave population, hence marriage between slaves involved jumping the broom; they were allotted separate burial grounds and assigned segregated seating in the church (Smith, 2006). "The church of England not only maintained segregated seating facilities until the mid 1960's but also had separate church organisations." (Manning, 1973; cited in Smith, 2006; p61).

⁴⁷ Methodist missionaries like John Stephenson in 1777 and Joshua Marsden in 1808 contributed gospel preaching amongst the black population (Smith, 2006).

A day school in St George's was built in 1811 for black children.⁴⁸ The Methodists continued with their promotion of education and by 1832 established nine schools employing both black and white teachers to white, 'free coloured' and black enslaved children (Smith, 2006).

At this time with the emancipation fast approaching, education and religion were likely seen as a way of tempering the perceived potentially volatile behaviour of those who had been enslaved. This perspective, arguably in line with how some offenders view rehabilitation. "... Emancipation and racial equality were not synonymous." (Smith, 2006, p63).

In Bermuda's 350th Anniversary year, boycotting of the island's segregated cinemas took place. June 15th 1959 (125 years after the Emancipation Act) saw the start of black Bermudians and some radical white Bermudians standing up against segregation. Boycotting caused temporary closures. On July 2nd the theatres reopened without segregation; desegregation also occurred in churches, hotels and restaurants (Jones, 2004).

The Legacy on the Criminal Justice System

Civil disorders declaring States of Emergency occurred in Bermuda in 1968 and 1977⁴⁹ that were found to be the direct result of resentments largely between young black males and the police, embedded in the history of Bermuda's society (Wooding et al, 1969). In summary this referred to the racial inequities of the society, despite the end of segregation and national economic development – "... rooted in the history of Bermudian society characterized by white supremacy..." (Pitt et al, 1977; p3).

The start of the 1968 disorders occurred on the 25th April,⁵⁰ when citizens attending the annual 'Fair For All' event in Hamilton, perceived police actions as racial favoritism; essentially

⁴⁸ The schools are accredited to the work of the Anglican Archdeacon - then Bishop Aubrey Spencer (Smith, 2006).

⁴⁹ Wooding et al led the Commission of Inquiry team for the 1968 disorders and Pitt et al the Royal Commission for the 1977 disorders.

⁵⁰ It is not considered coincidental that the disorders started in the same month that the civil rights leader Martin Luther King was assassinated (4th April 1968) in the US (Jones, 2004).

admitting white individuals and barring black individuals. This was followed by a police officer being assaulted as he tried to arrest a young black man and other incidents further fuelled the spontaneous disorder. The report on the incidents determined that the continued disorders for the following two days (26th & 27th April) were more planned, as a result of long held grievances.

Racial conflict, job opportunities, an 'artificial society', drink and drugs, and the 1968 Election campaign were considered to be the basic causes of the disorders. While issues of provocation, auxiliary cycles, drugs and a general dissatisfaction with the police were considered the immediate causes (Wooding et al, 1969).

Racial Conflict

In the report, Wooding et al (1969) pointed out laws enacted in 1963 that were considered to have had an influence on the state of affairs in Bermuda. As all Bermudians, including the previously excluded black Bermudians, had become eligible to vote, the voting age had been lifted to 25years from 21years of age⁵¹. The Prohibited Publications Act, Public Order Act and Emergency Powers Act had come into force. At the same time, the Progressive Labour Party (PLP) had been formed. The party, according to Wooding, campaigned for a united Bermuda but was quickly labeled as racist. Attention to these matters were drawn, to evidence how the move towards an integrated Bermuda had begun but was not moving at the pace young black Bermudians would have liked and was not unhindered. Leading to the statement that "... although there is token integration it is merely lip-service." (Wooding et al, 1969; p70).

Job Opportunities

Discrimination prevailed, as examples were evidenced in the area of job opportunities above certain levels. For example it was reported as commonplace for vacancies that could be filled promotionally by black workers becoming redundant, to later be advertised as a new post redesigned targeting whites, but essentially the same as the redundant post. Black Bermudians largely occupied manual and menial jobs, which impacted their lack of motivation to remain in education beyond the compulsory years. "So the generality of black Bermudians were conditioned to accept in the Bermudian economy a wholly inferior place." (Wooding et al, 1969; p74). Simultaneously, policemen, teachers, accountants and executives in business were being

⁵¹ The legal voting age was reverted back to 21years in 1965 (Wooding et al, 1969).

recruited from overseas. At the time of the 1968 Disorders, the police force was predominately white and expatriate. Wooding et al (1969) reported 65% were Englishmen, some of who had previously served in Nigeria, East Africa and Cyprus.

An Artificial Society

Wooding et al (1969) suggested the holiday life of Bermuda due to its reliance on tourism also played a part in the underlying/main causes of the disorders. He refers to the idea of 'keeping up with the Joneses' to explain the toil on families. However, the Joneses were not neighbours but 'affluent visitors'. He argued that the cost of living in Bermuda was expensive (and still is) consequently residents - and parents widely held two to three jobs leading to children lacking parental attention. Wooding et al (1969) suggested that this led to children taking to the streets and "The drift to so doing is all the greater in the overcrowded households." (p77). He implied the development of subcultures in the "Court Street boys" and among them Black Muslims and Black Power militants. Wooding et al emphasizes the young black men in Hamilton and the 'back of town' areas as having been in high numbers during the night of the disorders. The high levels of police scrutiny in 'back of town', traffic laws and police attitudes towards the young was found to be of relevance.

Although Wooding et al (1969) did not consider the terms of reference as giving authority to prescribe legislative policy for Bermuda, this did not stop the report drawing attention to the laws governing auxiliary cycle use; police stop and search powers; the prohibition of publications and laws governing responses to juvenile offending.

In 1977, Bermuda was marked again by disorders with underlying causes that did not differ drastically from those of the 1968 disturbances. Disorders triggered on December 1st through to the 3rd were sparked by what could be described as the governments disregard of the public opinion of a large section of the black population. Pitt et al's (1977) report provides clarity to the confusion that likely existed for many. Moreover, the report provides information that many may have been oblivious to; either way the consequences were determined, the black

community felt further marginalized and oppressed; and in Pitt et al's (1977) conclusion he urged Bermuda to seek independence.⁵²

The immediate cause of the disorders was identified as the public's reactions to the execution of two black Bermudian men, found guilty of murder. On 6th July 1976, Erskine Burrows was found guilty and sentenced to death, for the murder of the Police Commissioner in 1972 and the fatal shooting of the Governor and his ADC in March 1973. On 18th November 1976, Erskine Burrows and Larry Tacklyn⁵³ were both found guilty of the murder of two shopkeepers (shot April 1973) and sentenced to death. With the two fatal shootings in 1973, a ten-day amnesty was called for the surrendering of licensed and unlicensed firearms in Bermuda. A total of 1,440 guns were surrendered (Jones, 2004).

Early 1977 there was a public protest against capital punishment, from which things "... escalated dramatically following the announcement of the date for the hangings." (Pitt et al, 1977; p4). A petition from clemency from the UK was denied, along with court appeals for Tacklyn. There are a number of conspiracy theories, to this day about why the decision to execute was upheld. However, the men were executed on 2nd December 1977; prior to that the death penalty had not been used in Bermuda since 1943 (Pitt et al, 1977).

Pitt et al's (1977) report identified six long-term contributory factors that were believed to underlie the special characteristics of Bermuda in 1977 – a colonial society; the impact of past racial segregation; a particular pattern of capital accumulation; a selective tourist market; a distinctive taxation structure and economic growth dependent on imported labour. These are explained briefly, to put Pitt et al's report in context - as a small society, Pitt et al described the people of Bermuda, as having developed traits of "dependency complex", wherein there was a tendency to place responsibility for the country with the British Government. Regarding the segregated past – "... white people rarely understand how deep the wounds of discrimination can strike into an individual's personality. These wounds continue to bleed in the victim's heart

⁵² "We recognize that whereas many black Bermudians see independence as the final step in a process of emancipation, this argument has little appeal to white Bermudians, for they see themselves as already emancipated." (Pitt et al, 1977; p36).

⁵³ Tacklyn was never charged for the murder of the Police Commissioner and acquitted for the murder of the Governor and his ADC.

long after the person responsible has forgotten them.” (Pitt et al, 1977; p7).⁵⁴ Of pertinence to the current research is Pitt et al naming black people as victims of the society’s history, and implying persistent and pervasive victimization. Capital accumulation referred to how the white population was in a better starting position to take advantage of opportunities created by changes in the US market that had a knock-on effect. This included the purchase of land in Bermuda – “Land was brought from blacks at prices which may have seemed reasonable at the time but have subsequently proven to have been bargain prices for the purchasers and this still evokes resentment among blacks.” (Pitt et al, 1977; p7). Selective tourism was about the industry having been predominantly white, and how in the mid-1950s only one hotel allowed Jewish guests. Pitt et al refers to this fully extending the social gap between the tourists and the black Bermudians who served them. Ironically, the burden of taxation was placed largely on tourism. With no income taxation, Pitt et al argued couples took full advantage of earning high, without taxation and this in turn fuelled the expectation of a high standard of living. The further consequence of the latter, Pitt et al suggested, is that parents were not at home for their children; and there was a greater impact on the ego of black men having to serve white men. It was suggested that this consequence was less impacting for women, as historically women were used to serving. As a further consequence, it was considered that black men would need to exert their masculinity through other avenues of which women were likely to suffer the burden of. It was identified by Pitt et al (1977) that the final, main underlying cause of Bermuda’s social structure was how the economic growth could not have been as rapid without the input of expatriates. It was acknowledged how this contributed to Bermudians feeling as though they were second-class citizens in their own country. “The factors and influences we have discussed are bound to create special difficulties ...They make it much harder to achieve the objective of integration, and people become the more dissatisfied because goals that appear within reach seem to come no closer. Many of these problems come to a head in Bermuda’s schools, for in some respects a school is a microcosm of the society.” (Pitt et al, 1977; p8).

Pitt et al (1977) made a number of recommendations; those described herein are those most pertinent to the CJS. Pitt proposed alternative accommodation for female prisoners and for at least one full-time probation officer to be dedicated exclusively to work in the prisons. The need for a halfway house for young offenders was suggested for those who might be returning to

⁵⁴ There still exists the appointment of a British Governor in Bermuda.

dysfunctional homes and for social workers to engage in work with the families of young offenders before their release. The report recommended the establishment of a Police Authority; for the police service to become more ‘Bermudianised’⁵⁵ and for an independent element to the police complaints process. Alternative provisions for conducting matrimonial and domestic cases in private was advocated, to avoid public embarrassment that could lead to further detriments for those involved. Mandatory penalties for offences should be re-examined – the Commission team, including experienced non-Bermudian magistrates commented that they “... were surprised at the severity of punishments imposed by the courts of Bermuda for relatively trivial traffic offences.” (Pitt et al, 1977; p33). They provided examples such as the assault of a police officer resulting in a \$50 fine, while failing to stop at a stoplight generated a fine of \$60.⁵⁶

Racial Differences & the Criminal Justice System

In the latter part of the 20th Century, a report was commissioned by the government of the day to look into the CJS’s policies and procedures, and the continued perceptions that people of different races and backgrounds were treated differently.

In a review of previous reports such as Wooding et al’s (1969) and Pitt et al’s (1977) three consistent issues were found that were considered to be of contemporary significance (Tumim et al, 1992). Namely Bermuda’s traffic laws, drug related offences and the tumultuous relationship between the police and young people of Bermuda.⁵⁷

Taking a snapshot on 30th June 1992, to look at the main reasons for incarceration Tumim and the team reported on the rate of offence types. The top six offences could have been consolidated as drug or drug related (theft; drug importation; drug supply; breaking and

⁵⁵ The prison service was commended for having a high Bermudian staff population.

⁵⁶ Another example illustrated how a shoplifter might receive probation, where someone found in possession of 2 grams of cannabis could receive a fine of \$200 or 20days imprisonment.

⁵⁷ The Motor Car Act of 1976 and the Dangerous Drugs Act of 1936 and 1966 were cited as a cause of the 1977 disorders as they gave police the power to stop and search (Tumim et al, 1992).

entering; drug possession and conspiracy to import drugs) at 51% of all offences. The 7th highest single reason for conviction was driving disqualification.⁵⁸ On the same snapshot day, Tumim et al (1992) found that over 9% of the offences were minor, implying that they were offences that did not require imprisonment as a response. Moreover, in the preceding three years (1989-91) to the investigation, incarceration for minor offences ranged from 33% (1989) to 39% (1991); and over the same period traffic offences accounted for more than 21% of all receptions. Tumim et al (1992) argued that there was little use of non-custodial sanctions; which consisted largely of fines and rare use of compensation orders. They noted from observations in court, that fines were not set according to the financial circumstances of the offender, and failures to pay could lead to imprisonment. When, after non-payment, the young nervous offender was asked how long it would take them to pay, the offender's suggestion was also not based on any realistic assessment (Tumim et al, 1992).

The snapshot day of the prison population showed 40.9% of all those convicted and remanded were 22-30 years of age; with over 50% being aged 30 years and under.

True to the current day, Tumim et al (1992) highlighted the use of motorbikes in Bermuda as a right of passage for most young people. Laws governing road traffic was viewed as a source of contention between the young people who would often be found in violation and police being eager to enforce the law. Driving offences incurred periods of disqualification and additional disqualifications would be run consecutive, leaving many unable to drive legally for long periods (Tumim et al, 1992). Periods of disqualification would also be enforced after a person might have had to serve a term in prison. It was also considered difficult for people using cars to abide by the speeding limit of the land.

When in 1991, statistics showed a reduction in the courts use of fines in relation to drug offences, statistics showed an increase in custodial sentences (Tumim et al, 1992). The report noted the apparent reluctance of the courts to use non-custodial options that would require supervision. Also, probation orders were used to a much greater degree than community service orders; possibly not considered viable options as community rehabilitation services in Bermuda were limited (Tumim et al, 1992).

⁵⁸ The following top five (position 8-12) offences collectively thereafter were for violence (e.g. rape, assault, robbery, murder and GBH – 22%).

“If a community locks up too many citizens it may preserve order short-term but will lose respect. Over-confinement acts as a school of crime, and removes the shame of imprisonment, particularly amongst the young. ... It is a social problem ...” (Tumim et al, 1992, p2).

Tumim et al (1992) provided a synopsis of how young people came into contact with the CJS early. They first came into contact for fights at primary school – “Both parents and teachers use the police as a threat to misbehaving children ...” (p37). From the age of 12, Tumim et al suggests that teenagers become tired of their bicycles and start becoming interested in motorized transport. Around this time, he suggests that “There is a failure to bring the parents, as well as the child, to account for this charge and, thus, to take responsibility for the future behaviour of the child...” (p37).

Family Group Conferencing as a RJ response to young people getting involved in crime would have been, and could still be an ideal response as early intervention to address Tumim et al’s finding. It was further observed by the investigation team, that young black children were unsupported in the court, while children of white families had support as early as the police station to try and discourage advancement, but if not, were present in the court. According to Tumim et al, between the ages of 14-16 young people start joy riding on tourist vehicles, by 16 they have their own vehicles, and within three months become involved with the police because of this. At such early stages, police involvement reinforces attitudes towards the police as hostile. Tumim et al’s (1992) report urged for improvements in police training and for innovative police community work. They found a positive attitude of police to be involved in road traffic safety and training for the young, but that the police were uninterested to be involved with ATI and the Police & Criminal Evidence Act (PACE) of the UK, the latter promoting non-custodial sanctions when possible.

In conclusion the report found that education was still segregated in some places and this created different academic standards, which led to some schools having a reputation for poor schooling and police involvement. Minor drug offences against the young prevented them from travel to the US and therefore excluded the option of tertiary education. “The work of the magistrates and the police in Bermuda involves systematic criminalization of the young.” (Tumim et al, 1992; p41). The report made a number of recommendations.

While traffic offences may be unsuitable for RJ because of the lack of identifiable victims, there are other areas of criminality that could be addressed using RJ. However, theorists such as Lofton would disagree.

Lofton (2004) argues that RJ is limited in its ability to challenge systemic injustices on four counts –

1. As it does not address socio-economic roots of crime, and is therefore not preventative.
2. With crimes seen as violations against people and relationships, it does not address larger systemically perpetrated crimes, such as white-collar crimes.
3. It fails to recognize that offenders have often also been victims. Victims of structural violence; the type of things that have been highlighted as systemic racial inequity in Bermuda.
4. It is too piecemeal, dealing with isolated incidences of crime; which Lofton emphasizes is usually the disadvantaged offending against the disadvantaged. Conferencing/circles do not include government leaders and wealthy power brokers whom she suggests can affect change.

It could be argued, if applied to Bermuda,⁵⁹ that Lofton stretches the limitations, where point 3 could be considered an extension of point 1. To point one, RJ is recognized as reactive because it is used in response to a crime having been committed (restorative practices however, are viewed as proactive, and therefore potentially preventative). Also in regards to point 3, there are programmes that recognize offenders can be victims and vice versa; programmes such as the Sycamore Tree discussed in the following chapter. In the case of point 2, white-collar crime need not be excluded from RJ interventions. All that would be necessary is that there are identifiable victims; and that the offender were prepared to make restitution based on the requests of the victims, which in the case of white-collar crime might more readily be financial restitution. RJ can even be utilized to deal with cases of police complaints. With regards to Lofton's fourth point, that the disadvantaged usually commit crimes against other disadvantaged people would seem to imply that disadvantaged people do not need healing;

⁵⁹ Lofton's critique of RJ is focused on the US system.

whomever the harm is done to should be afforded the opportunity for healing and reparation from the very person that has directly harmed them. This is relational and why RJ focuses on the reparation of relationships. In the publication entitled *'Restorative Justice in Diverse and Unequal Societies'* Daly (2000) points out in the case of New Zealand, that conferencing emerged out of a combination of 'top-down' activism by judges and 'bottom-up' activism by Maori groups. Daly (2000) cites Cunneen who argues that in Australia the move of RJ into policy and legislation occurred through mid-level professionals and administrators, such as the police "largely sidestepping politics 'from below'." (p170).

More closely in Bermuda, Pitt et al (1978) stated that "...though regrettable ...civil disorders in Bermuda ... functioned as a kind of extra-parliamentary political action; some of them have expressed the anger of young black men about the country's laws and the way they are enforced ..." (p35). Moreover, Pitt et al's report highlighted the value of open dialogue "... public hearings in Bermuda served a cathartic function. They allowed people to voice grievances and sentiments that were otherwise bottled up, and the very opportunity to express them prompted an easing of tension." (p36).

Daly (2000) does contest however that any justice system has the potential to reproduce existing systemic inequities. In their review of the Bermudian CJS, Lawrence & Codrington (2014) bring to the fore, how systemic maintenance of racial inequality can also explain the internalization of this in the attitudes of those that are disadvantaged. "One particular challenge that social justice leaders face is reconciling structural causes of inequity with seemingly compelling evidence of "self-sabotage" by young black men, especially." (p25)

Offenders may have little control over social structures but they are active in their decisions about offending, joining subcultures (Braithwaite, 1989) and engaging in RJ. This assertion is not intended to minimize that Bermuda is one of the world's most punitive societies (Lawrence & Codrington, 2014) or that systematic inequities exist.⁶⁰

⁶⁰ "A perhaps more ambitious aim [of RJ conferencing] is that the process can help the offender to address problems behind the offending. Though victims were not always able to say whether this was occurring (not surprisingly, given the lack of feedback to victims about the progress of outcome agreements), offenders themselves felt the process had made them address these problems in 61 percent of cases." (Shapland et al (2007, p38)

Among other concerns, government recognized that the Tumim et al report recommendations had not been implemented and in 1999 introduced the 'Alternatives to Incarceration initiative'. It spoke to providing "A multi-faceted approach for a restorative justice system – legislation review, programs and services in and out of corrections." (Maybury, 2008; p3).

The Tumim et al (1992) report recommended changes to the law, such as the abolition of mandatory prison terms for road traffic offences and the use of consecutive periods of driving disqualification; adoption of the UK Criminal Justice Act 1991 and the PACE for greater accountability of police practice, along with an independent police complaints process. It was recommended that the Police Commissioner appoint a team to improve public relations and for all the criminal justice agencies to fall under the same ministry. They called for a review of the CJS policies and procedures to create ATI, such as greater use of community service orders and a move from custody to corrections. Training for prison staff with involvement of the training advisor from the Foreign Commonwealth Office, pre-release regime programmes and increased contact with other CJS agencies. They recommended the abolishment of corrective training, that no one under the age of sixteen be kept in prison and for an investigation on the feasibility of a Family Court system. It was also recommended that the Human Rights Commission develop a Race Relations Division; a working party be formed to look into social conditions within Bermuda and for the eradication of offences that discriminated on the basis of race and sex, which were outdated.

The 'ATI initiative' is concerned with the punitive approach of the CJS, prison overcrowding, and, not so cynically, the financial burden to the government. Further, for those policymakers and stakeholders concerned with cost, it is noteworthy that the cost of incarcerating a single offender in 1992 was estimated at \$36,500 (Tumim et al, 1992); at \$60,000 in 2006 (Maybury, 2008) and by 2014 estimated at \$85,000 (Lawrence & Codrington, 2014). Maybury (2008) puts the cost of community supervision at \$15,000 in 2006.

"The broad aim of these measures is to reduce the prison population, decrease criminalization and recidivism and further ensure that the emphasis for specified infractions shifts from a punitive approach to achieving voluntary compliance." (Wilson, 2011; p1).

While considered by some as part of a restorative approach, ATI speaks little to the needs of victims and relatedly, the redemption of offenders. However, a reduction in crime does benefit

the whole community. This issue can be better understood when measures or interventions are viewed in terms of their degree of restorative orientation; this is explored in the next chapter.

The remainder of the chapter focuses on some of the changes that have occurred, and consistencies that have remained within the CJS since the turn of the century. It reviews the up-to-date incarcerated population and practices that are reparative.

Crime in Bermuda & the 21st Century Criminal Justice System

A number of changes took place within the CJS. In 2001 the Drug Treatment Court Programme started; the success of the programme would be estimated at 75-80% 3 years later (Stevenson, 2014). Smith (2002) reports on the training given on ATI, quoting the Minister of Labour & Home Affairs "... the prisons system in Bermuda will from now on be known as the Department of Corrections, in a bid to change mindset." As an outcome of the initiatives, the prophecy was that Bermuda would see a reduction in crime and prison costs (Smith, 2002).

Victim Impact Statements (VIS) was (finally) entered into the Criminal Code Amendments Act 2001. Used for the first time in a Supreme Court case in 2002, with a 13 year-old victim, the presiding judge viewed the new legislation as empowering victims. "Prior to this they had no right or ability to speak to a Judge to let them know how the crime impacted them. It can definitely make a difference on the sentence." (Justice Simmons, quoted by Talbot, 2002). The newspaper article goes on to state, "In cases heard before the Supreme Court, there was seldom any mention of the victim's pain and suffering and whether or not they were being compensated for what they have endured. ... emotional trauma, stress or financial loss ...". (Talbot, 2002). Talbot notes that VISs are not used in trials as suffering caused to victims is revealed during the trial.⁶¹

⁶¹ The Bermuda Criminal Code Amendment Act 2001

"Victim Impact Statement

(3) At the request of a victim, the court may instruct the clerk of the court or registrar to read the statement into the record in open court.

(4) Where the victim impact statement discloses confidential or sensitive information or material that may cause embarrassment or distress to the victim or his family, the court may direct that the statement be dealt with *in camera*."

Recognized at the time of enactment, as a step in the right direction; the direction was still a punitive one. It is not always the case that the offender will even hear the VIS. However, even if they did some would likely perceive it as a punitive measure to impact their punishment. It does not promote dialogue, which would have greater impact for healing; likely acknowledged in the judge's final statement "... this legislation that will to some extent empower the victim." (Justice Simmons quoted by Talbot, 2002).

Funding was obtained in 2011 to pilot electronic monitoring – "... as a valuable tool to enhance public safety and offender rehabilitation." (Wilson, 2011; p1). Only time will tell if electronic monitoring in and of itself can enhance public safety. It could be argued that it is more of an aid for supervision, an aid that contributes to state control over social control. As an alternative however, it could be very valuable in reducing incarceration.

In 2014 the Mental Health Treatment Court pilot went operational, with the objective of providing; (limited to non-violent offending) a programme for offenders with mental health issues (Bell, 2015). The pursuit of legislation to support the court was included in the recent Governor's Thorne Speech (Fergusson, 2015).

At the turn of the 21st Century, Bermuda also saw an increase in violent offending (Horton et al, 2011; Strangeways, 2011; Lawrence & Codrington, 2014) and "...criminal activity ... an overwhelming concern to Bermudians." (Wilson, 2011; p1). According to the BPS Quarterly Crime Statistics of 2012, Bermuda's murder rate per capita was higher than New York and London.

In 2011 a parliamentary review was conducted on the causes of violent crime and gun violence (Horton et al, 2011). The committee identified a number of issues that needed to be addressed such as gang violence and gang recruitment; illicit drugs; dysfunctional homes and at-risk children; the educational system; and operational issues of the BPS and DoC. They essentially reported similar historical findings as had been identified in the past, related to Bermuda's social problems and inequities. They found that low educational attainment hindered employment opportunities that assisted recruitment by gangs. Economic disparities were found to create an underclass and rise in drug trafficking and anti-social behaviour. Police enforcement focused on minor drug players on the street and the suggestion made, was that there needed to be more aggressive border control.

Horton et al (2011) reported single-parent families as an issue contributing to the criminal climate. Children were affiliating with gangs before reaching middle school and students were selling drugs and experimenting through peer-pressure and bullying. When offenders were apprehended, Horton et al suggested “Convictions by juries are sometimes difficult to achieve in Bermuda because of our small population, which makes it more likely for jury members to know the accused or the suspects’ family.” (2011, p5).

One issue under the subtitle ‘prison service’ was that “Upon being released from prison, several black males have found it extremely difficult to find employment and to earn enough money to support their families, which creates a cycle of poverty, anger and frustration.” (Horton et al, 2011, p6).

A concern with some of the recommendations that Horton et al (2011) go on to make is that they create further exclusion of individuals/gang members as a form of state control. Potentially deepening the individuals’ sense of disenfranchisement. In 2014 Lawrence & Codrington argue that the widest racial disparities still occur in employment, educational access and the CJS. Despite a growing black middle-class, and studies that suggest black and white peoples’ educational attainment is on par (Lawrence & Codrington, 2014). There are still a disproportionate number of black males arrested and incarcerated compared to white (Lawrence & Codrington, 2014; Chief Justice Kawaley, 2014). Lawrence & Codrington (2014) argue, “... the old racial order may be really evolving into something more complex.” (p21). And again they contend, “The obvious challenge for equity reformers is reducing substantive racial disparities in these critical sectors. Less obvious, but equally urgent, may be understanding and grappling with the collective, social psychological effects of those disparities.” (p21).

It is important, with the focus of the current study, to take a closer look at the DoC.

Casemates & the Bermuda Department of Corrections (DoC)

In the Criminal Justice Review of 1992, the author referred to the construction of a new maximum-security prison (Tumim et al). Casemates built in 1830 served as a maximum-security prison from 1963 until September 1994, when Westgate opened (Harris, 2014). As a \$40 million facility (The Royal Gazette, 1993), it was viewed as a move “... from the 18th Century to the 21st

Century.” (Gibbons, quoted in the Royal Gazette, 1994). At the time of opening, the only intended additional staff recruited was to be a psychologist, social worker and vocational officer (The Royal Gazette, 1994). It was intended that Westgate Correctional Facility, unlike Casemates, would help create focus on rehabilitation and education for prisoners, which in turn was to lead to a reduction in reoffending. Westgate is one of three facilities that make up the DoC. A minimum-security facility for men (the ‘Farm’), and a female and young offenders facility (the ‘Coed’) exist at the east end of the island.

Inmate Population

A study conducted on the prison population of Bermuda in 2002, was repeated in 2012 (Riley, 2013). At the time of the survey in 2012, 58% of the inmates participated; compared to 52% in 2002. The study provides a number of interesting findings –

- 92% were Bermudian, with 89% being black and “... *virtually all of those are black males*” (Ridley, 2013, p5).⁶²
- Compared to 2002, in 2012 the prison population was ageing, from 32 years of age to 36 years of age, respectively.⁶³
- “*With three-quarters of crime being unplanned, this suggests that the public may be able to prevent certain kinds of crime, such as Breaking and Entering.*” (Riley, 2013, p25).
- With a 1% decline from 2002, 64% of inmates had previously been in prison. When recidivism refers to re-imprisonment within 3 years following release, the rate falls to 37%.⁶⁴
- In 2002, driving offences accounted for 5% of incarcerations; this was down to 1% in 2012 (the exact same pattern for “non-payment child” - Riley, 2013). This finding is promising when considering past criticisms of the CJS using imprisonment for minor offences.

⁶² In 1992 the ratio of black males was 15:2 (Tumim et al, 1992)

⁶³ In 1992 50% of the prison population were reported to be 30 years old and younger (Tumim et al, 1992).

⁶⁴ This percentage is less than the comparable UK and US recidivism rate of 43% (Riley, 2013).

- The report states *“Drug offences continue to be the single most reason for incarceration, up in 2012 (from 20% to 28%).”* (Riley, 2013, p6). 46% of respondents said that they were under the influence of legal or illegal drugs at the time of offending.

However, when grouped together violent offences accounted for 42% (in 2012) of the reasons for incarceration.⁶⁵ Reported violence within prison had also increased over the decade (2002-2012) rising from 21% to 26% respectively (Riley, 2013).⁶⁶ Referring to emerging results and evidence of best practice, the UN (2006) report that *“There is some evidence (United Kingdom and the United States) to suggest that restorative justice processes can assist in promoting a safer environment inside correctional institutions.”* (p88)

- In 2012, 14% of those incarcerated were serving sentences of one year or less (compared to 36% in 2002), 30% were serving at least 2 years but less than 5 years (28% in 2002); and 23% in 2012 were serving sentences of 10 years or greater (compared to 14% in 2002). *“Longer sentences have been reflected in the sharp fall-off in those incarcerated for one year or less, and large increases for those who had to serve five years or more. However, the median length of time to serve for both studies was 3½ years.”* (Riley, 2013, p27).
- *“Just 3% of inmates (5 individuals), stated that they belonged to an organised gang. Gathered intelligence, however, would indicate that that number is much higher”* (Riley, 2013, p47). With 77% of crimes reportedly committed alone (Riley, 2013), could further account for the low numbers admitting gang affiliation.
- 81% of inmates were unmarried (consistent with 2002).
- 27% of inmates reported to having had a parent who had been incarcerated. Parents of inmates had also increased in their use of drugs and alcohol (39% in 2002 – 48% in

⁶⁵ In 2012, violent offences separated out included robbery (12%), murder (8%), sexual assault (7%), assault (7%), grievous bodily harm (6%) and manslaughter (2%). These percentages were largely identical in 2002 with the exceptions being grievous bodily harm 4%; murder 6% and robbery 10%, all three having increased by 2012. The 42% calculation is not directly provided by Riley, but calculated based on the data he provides.

⁶⁶ It is highly possible that some violent offences are related to drug activity, inside and outside of prison.

2012); and the parents' participation in religious activities had decreased (78%-2002 – 71%-2012).

- 31% of inmates were without academic qualifications upon entering the prison (compared to 54% in 2002).⁶⁷
- 15% of inmates were unemployed prior to entering prison. Riley (2013) notes that this is “... nearly twice the national level of 8% in 2012.” (p7).

In summary, offences have become more violent, drug use prior to incarceration more prevalent, sentences longer, educational attainment greater, offenders older and black males still remain the largest group imprisoned.

More recent recidivism rates (based on a return within 3years of release) announced by the Commissioner of Corrections Colonel Lamb showed a decline from 24% in 2013 to 19% in 2014 (Jones, 2015). The decline accredited to “... a combination of factors ... programmes are working within Corrections. It is also a testament to the joint efforts of corrections and government agencies and the provision of alternatives to incarceration.” (Lamb, quoted in Jones, 2015).

As part of the rehabilitation programmes offered, the DoC provides a violence-reduction programme; the CALM (Controlling Anger and Learning to Manage it) programme; ‘Thinking for a Change’ (a cognitive-behavioural problem-solving and social skills course), drug education, treatment and relapse prevention. There are a range of educational classes including basic literacy; the General Education Diploma programme; business and computer studies. There are also opportunities for low-risk offenders (male and female) to attend the Bermuda College, obtaining qualifications along with students from the community. Social and vocational courses include programmes such as the Father’s Parenting programme; Life Skills (involving a number of modules like budgeting, resume writing and interview skills); sewing; art; auto-mechanics; culinary skills and horticulture. At the Farm facility prisoners grow produce and rear animals (such as goats and rabbits). Westgate has a metal workshop and both male facilities have carpentry workshops.

⁶⁷ It was further reported that 63% of the inmates reported having achieved their GED whilst incarcerated (Riley, 2013).

The Farm hosts the Right Living House, a separate residential structured programme for offenders with drug-misuse problems. Offenders join the programme and complete their sentences from the unit, usually having the opportunity to seek paid employment in the latter stages of the programme (employment that can be continued post-release). Low-risk offenders (some escorted, others unescorted) also do charity work in the community.

Charity Work as a Form of Macro-community Reparation⁶⁸

The charity work provided by the prisoners includes maintenance work at senior nursing homes, schools and charities, as well as preparatory work for major events such as Cup Match. At Westgate, a group of Life-sentenced prisoners formed a support group called Lifeline, and they regularly do work for charities, such as restoring old bikes and donating them to schoolchildren.

On 28th February 2014 the Bermuda Sun newspaper reported an exclusive front-page article entitled 'We're Not Monsters' (Jones, 2014). The story reported on eight life prisoners serving convictions for offences such as murder. In the continuation of the story on pages 4-5 the title read 'The Killers trying to change: Some of Bermuda's most recognisable criminals draw strength from Lifeline group'. The charitable work of the group was listed along with their hopes for the future. However, away from the eyes and ears of most readers, complaints were made to the DoC. Victims unaware of the article ahead of time were offended and outraged by what seemed to be received as an intrusion into their lives by those they perceived as locked away behind closed doors.

Rehabilitation & Restorative Justice

ATI initiatives were originally designed in the US, to reduce mass incarceration. However, two years into its introduction in Bermuda, the then Minister of Labour and Home Affairs stated "It is the intention of Government to move from a predominately punitive system for criminal justice offenders to one based upon rehabilitation and restorative justice. ... ATI is not to be a soft option to prison. In fact, prison reform is an integral component of the process and will require the development of tough and mandated programmes for inmates." (Smith, 2002). It is commendable that the government made a distinction between rehabilitation and RJ as the

⁶⁸ Referred to in chapter 1, as part of the RJ community debate (McCold, 2004).

author, with over 17 years of experience working in rehabilitation would consider them as distinct. It is argued most appropriately that - “We have to accept that ATI is really a management of risk.” (Police Commissioner Smith, quoted by Smith 2002). Restorative practices can be utilized to help prevent crime; as the old adage goes, prevention is better than cure.⁶⁹

If ‘fully-orientated’ RJ is kept voluntary, at all stages of the judicial process (e.g. pre, post-conviction), it avoids the danger of becoming adversarial – and less about the main stakeholders than the state. Some theorists would argue that RJ includes rehabilitation and even retribution (e.g. Daly, 2000).

Ward et al (2014) focus in their article on ‘*Restorative Justice, Offender Rehabilitation and Desistance*’. They refer to advocates of RJ either acknowledging and incorporating rehabilitation, or viewing rehabilitation as ineffective in reducing reoffending and adequately responding to crime. They cite McCold & Wachtel (2002 in Ward et al, 2014) as an example of the latter perspective, stating that they dismiss treatment programmes as failing to hold offenders accountable. Ironically, it is argued that rehabilitation focuses on reducing risk of reoffending/public safety and protection (community), however some RJ schemes are set up to include the goal of reducing offending. It is clear that there is a distinction between rehabilitation and RJ, in so far as, rehabilitation focuses on the offenders’ risk factors and skill acquisition, opposed to RJ being victim-centered. Rehabilitation of offenders benefits the wider community and desistance from offending also requires community acceptance of returning offenders to avoid continued shaming-stigmatization.

Therefore, the above examples of charity work may give back to the wider community and can be considered as a means of making amends; however, it can still be neglectful of the needs of the direct victims. “Perhaps the first step is to dismantle the polarized distinction between offenders and victims.” (Ward et al, 2014, p32). This very approach is adopted by the STP – covered in session one; and goes some way to acknowledge the effects of social disparities that disadvantage people, who are subsequently overrepresented in the CJS.

In the final conclusion point of the ‘Profile of the Prison Population’ presentation, Riley (2013) writes “Bermuda’s ranking as one of the world’s top incarcerators is perhaps something not to

⁶⁹ Restorative practices can be used in schools to manage an array of issues including gang affiliation and bullying.

be proud of, even as others in the region are doing similarly. The issues of alternatives to incarceration and restorative approaches to justice may have to be looked at again.” (p55).

This chapter provided information of the wider climate and culture within which the action and research would take place. Some theorists suggest that the use of RJ is ineffective in challenging social inequities. Further, in recognizing and attempting to address the excessive use of punishment for minor offences, ATI was introduced. However, this chapter has argued that ATIs are merely another form of state control and risk management, which likely does little to reduce the community’s fear or crime; and does nothing to repair the harm caused by crime to those directly affected.

The UN (2006) advise that the introduction of restorative programmes be progressive “... starting with more modest initiatives that have the potential to create the experience of success ... and prepare everyone for some more challenging initiatives.” (p.17) The current research was based on this premise, that starting small and developing incrementally – one, the level of RJ orientation in the programmes (phase one and two) and, two the gradual inclusion of more serious offences for the fully-orientated intervention of restorative justice conferencing. The programmes are described in the following chapter.

❖ CHAPTER 4 – THE INTERVENTION MODEL

“The least developed but potentially one of the most valuable uses of conferencing is in corrections... Prisons and the parole system are ripe for innovation because, as currently constituted, they do not work.” (Wachtel et al, 2010, p113).

Introduction: Restorative Orientation

This chapter describes the three initial interventions that were to be researched, the level of restorative orientation of each and briefly describes the differences between the programmes. It provides background information on the following objectives of the thesis and is part of the research methodology -

- To explore the experience and effects of an experimental programme of restorative justice for victims and offenders in Bermuda; and
- To evaluate and contrast the approaches used in order to draw implications for future practice and policy in Bermuda, for inclusion of restorative justice.

The chapter also provides information on how the whole initiative was constructed in accordance with past research and guidance of best practice.

As discussed in the opening chapter, this thesis adopts the definition provided by Marshall (1998) *“Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”* (p28).

Despite, the controversy that can arise with definitions or rejections of specific definitions to avoid restricting processes, McCold (2000) offers a very useful model. McCold’s Venn diagram (figure 1.1 below) distinguishes between practices of full, mostly or partial restorative orientation. The circles relate to the main stakeholders of an offence or wrongdoing and at the intersection of the three circles (- ‘victim reparation’ ‘offender responsibility’ and ‘communities of care reconciliation’), fully restorative practices are achieved.



Figure 1.1

Venn diagram illustrating McCold's (2000) theory on the degrees of restorative orientation in practices.

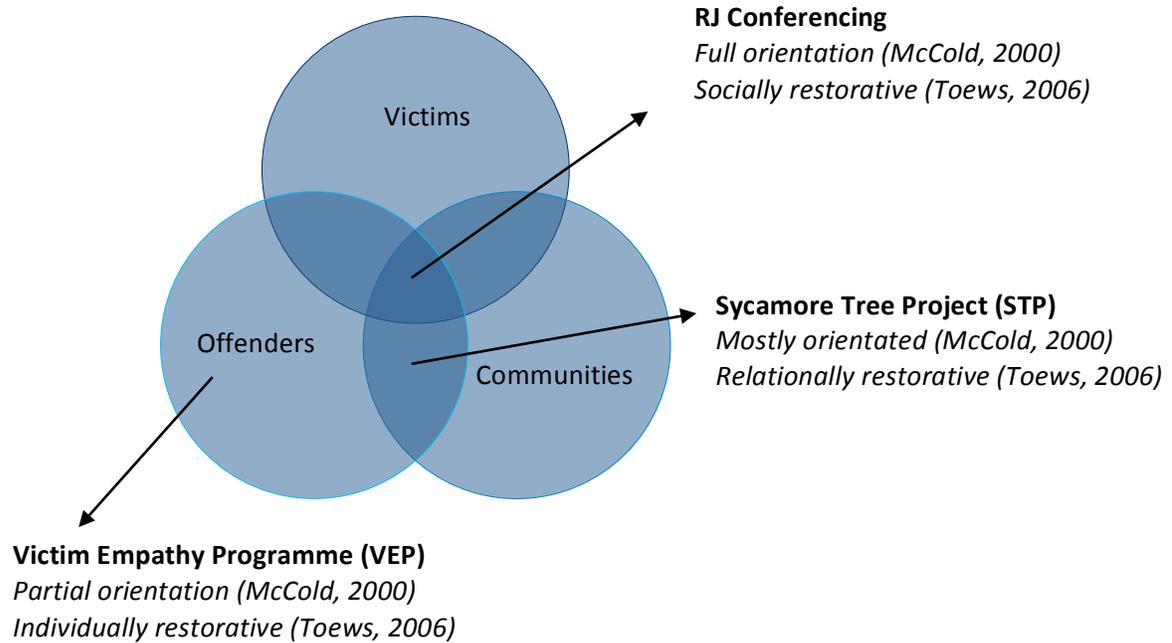
According to McCold full practices would include peace circles, sentencing circles and various forms of conferencing. Practices occurring outside the intersection are those labeled 'mostly' or 'partly' restorative. McCold (2000) views practices that are 'mostly' restorative including truth and reconciliation commissions and victim–offender mediation. 'Partial' practices would include reparation boards; youth aid panels and victim reparation.⁷⁰ Toews (2006) uses a very similar Venn diagram to that of McCold's (2000) but Toews claims to focus on restorative values and uses different labels – she refers to the intersection of the three circles as being 'socially restorative' giving opportunity for the social issues of crime to be dealt with. At the intersection of two circles Toews refers to as 'relationally restorative', responding to two sets of "justice participants", and practices within one circle as "individually restorative". The main difference between McCold's and Toews models are that Toews labels the three circles as "victim needs, offender family needs and offender needs"; then surrounding the entire Venn diagram is another circle which Toews labels community (Toews, 2006, p61). On the basis of the latter difference, Toews precise model is not adopted here as at face value it is weighted in favour of the offender. However, the relational terms used appear totally in keeping with restorative values.

The interventions that formed part of the experimental programme in Bermuda could be viewed as reflecting each of McCold's (2000) labeling of practices – RJ Conferencing having 'full' orientation (and as being socially restorative); the Sycamore Tree Project reflecting a 'mostly'

⁷⁰ Most 'alternatives to incarceration' would most appropriately fall under 'mostly' or 'partial' orientation. For example, community orders with a requirement to fulfill community service, could be considered 'partial' RJ orientation.

restorative orientation (and being relationally restorative) and the Victim Empathy programme providing partial orientation (and individually restorative). This is illustrated in the Venn diagram figure 1.2 below.

Figure 1.2 Illustrating the interventions’ level of restorative orientation.



The chapter moves on to provide a description of each of the three interventions.

Victim Empathy Programme (VEP)

Development of the Victim Empathy Programme (VEP) was commissioned by the British Overseas Territories Prison Reform Coordinator of the Foreign Commonwealth Office and was specifically adapted from a previous programme used in the UK. Constructed in 2012 it was being delivered in Turks & Caicos before it was first delivered in Bermuda in September 2014. Four facilitators were trained in the delivery of the programme in June 2014 by the programme author – Simon Drsydale.⁷¹

⁷¹ The four facilitators trained consisted of one of the Department of Corrections – Social Workers, Principal Officers, Case Managers and a Psychology Service Provider; the researcher had previously been trained. Funded by the Foreign & Commonwealth Office, representatives from the British Virgin Islands and Cayman Islands also attended the training in Bermuda.

With an optimal number of 8 participants, the programme consisted of 12 sessions delivered at a rate of 2-3 sessions per week for 2 hours per session (not including a break), with 2 facilitators. It was designed to look at the impact of offending from the perspective of the offender's victims and possible future victims. As a cognitive-behavioural programme it was influenced by Albert Ellis' 'Rational Emotive Behaviour Therapy' (REBT) developed in the mid-1950s and Aaron Beck's 'Cognitive Therapy' developed in the 1960s.

Regarding human behaviour REBT asserts, based on the ABC model, that it is not adversity or an external activating event (A) that determines emotional or behavioural responses/consequences (C) to these things, but rather the intervening belief (B) about the adversity/activating event. The theory suggests that adversities or activating events can be external situations or internal thought whether from the past, present or future (Dryden & Neenan, 2003). REBT views beliefs (B) about adversities that are dysfunctional as leading to emotional and behavioural consequences (C) that are self-destructive, irrational and negative. To the opposite, beliefs (B) about the adversity (A) that are rational and self-helping, lead to consequences (C) that are constructive, rational and flexible. The theory suggests that people have both innate rational and irrational beliefs and that whether or not these are from the past; core irrational beliefs are held onto and maintained in the present. The theory also suggests that people have a choice of whether or not to help themselves to feel better and healthier. The therapy works by helping people to identify and understand the mediating role of their beliefs (B) and develop ways to challenge their beliefs and subsequently change or modify the consequences. Therefore the therapy views people as the creators of their own problems.

Aaron Beck, who found from working with people suffering from depression that they would quite automatically express negative thoughts, shaped Cognitive Behavioural Therapy (CBT). These automatic thoughts reflected people's core beliefs, beliefs that were developed through life experiences. By encouraging people to identify their negative thoughts or distortions would allow them to develop more realistic thoughts (Beck, 1996).

The structure of the VEP comprises of three modules:

- Module 1 focuses on an exploration of the type of thought distortions (i.e. blaming, minimizing and denial) that reduce capacity for victim empathy and sets out to

motivate offenders to review and assess their own thinking. This is done through various exercises such as the use of vignettes, disclosure of their offending and the writing of a letter to their victim.

- Module 2 gives offenders the opportunity to apply perspective-taking skills, to objectively give an account of the offence and demonstrate victim empathy. This is largely done through an exercise in role-reversal; which each group member takes their turn in doing.

Wachtel et al (2010) described the role-play of an RJC in a maximum-security prison in Pennsylvania based on a real crime of gun violence and drug-dealing, and described it as “... a powerful emotional experience for all of us.” (p114). Because the conference volunteers were able to imagine the anger and disgust of a loved one being injured, or the shame of the loved one of the person responsible for such an act.

- Module 3 allows for an evaluation of skills learnt, a review of their earlier victim letters and a re-write of the letter, and an exploration of in-direct victims, through a Ripple Effect exercise.

The programme does not review in any depth the reasons why offenders offended, and would therefore be ‘individually’ restorative (or of partial orientation).

Group participants were limited to six (opposed to the suggested eight) to keep the number of offender-participants consistent with the number that would participate in the STP.

Sycamore Tree Project (STP)

“Sycamore Tree is taken from the Biblical story of Zacchaeus (Zac), the corrupt tax collector, who climbed a sycamore tree to see Jesus (Luke, 19:3-5). He becomes a symbolic offender. Jesus noticed him, called him down and they met over a meal. The meeting changed Zac’s life, which he demonstrated by making restitution to his victims giving half of his wealth to the poor.” (cited in Wilson, 2009, p1).

In its third edition Parker & Van Ness (2010) on behalf of Prison Fellowship International wrote the Sycamore Tree Project (STP). Trained facilitators of Prison Fellowship Bermuda delivered the programme.

The programme structure is illustrated in the table below (Parker & Van Ness, 2010, p23).

Session	Topic	Objective
Session 1	Introduction	To prepare offenders and victims to participate in STP?
Session 2	What is Crime?	To explore a restorative understanding of crime.
Session 3	Responsibility	To understand what it means to take responsibility for committing an offence.
Session 4	Confession and Repentance	To understand the meaning, power and importance of forgiveness.
Session 5	Forgiveness	To understand the meaning, power and importance of forgiveness.
Session 6	Making Amends	To understand making amends as a response to crime.
Session 7	Toward Reconciliation	To move toward healing and restoration by sharing letters and covenants prepared by both victim and offender participants.
Session 8	Celebration	To reflect on and celebrate the new awareness that group members have about crime and healing

Prison Fellowship ministries use the STP in six continents (Parker & Van Ness, 2010).

Designed as a programme to be conducted in prisons, the STP uses Biblical stories to discuss concepts such as responsibility and forgiveness. The table above illustrates the programme structure that consists of eight sessions delivered once a week (for 2 hours per session) with the final session being a celebration.

“... Sycamore Tree is based on Christian values such as truth, integrity, responsibility and affirmation. It is not a programme explicitly promoting the Christian faith. The focus of the Sycamore Tree is to challenge attitudes to offending behaviour, raise awareness of the impact of crime on victims and the communities, and teach the principles and application of restorative

justice and provide offenders with an opportunity to make an informed choice to change their behaviour.” (Cited in Parker & Van Ness, 2010, p31).

Recognized by this research as a ‘mostly’ restorative intervention, STP brings together offenders and unrelated/surrogate victims as group members.⁷² While it is not a requirement of the programme that victims and offenders are Christian, facilitators are expected to be. STP is usually delivered to six offenders and six victim-volunteers; it is limited to no more than fifteen participants (with an ideal ratio of victims and offenders being 1:1) (Parker & Van Ness, 2010).

The chapter will now outline the main differences between the STP and VEP.

Programme Differences

There are a number of differences between the two programmes beyond the most obvious difference being the inclusion of unrelated victims in the STP.

Prison Fellowship Bermuda and the STP adopted a different definition of RJ to that of Marshall (1998), adopted by the research and the VEP. Religious teachings and values (values not limited to the Christian faith) form the core principles of STP, while the VEP is based on REBT and CBT.

The VEP looks at crime from the perspective of the victims, indirect victims and the community; it does not focus on the reasons for offending. STP alternatively also seeks to explore the impact of crime on the offenders, which also gives offenders the opportunity to talk about offences or wrongdoing that have been committed against them. In STP, forgiveness is a specific topic, allocated a whole session. In VEP there is no explicit reference made to forgiveness; however it would not be uncommon for offenders to want to seek to be forgiven and offer an apology in letters to victims.

In the VEP, offenders are assigned (by the facilitators) which victims to write their letters to. This included direct victims, relatives of victims, relatives of the offenders and indirect victims who witnessed offences firsthand. In STP letters may be written at the end of the programme, while in the VEP, offenders write two letters to the victims one at the start of the programme and the other after the role-reversal exercise.

⁷² STP victims are volunteers that are not the direct victims of the offenders they participate in the group with; however, whether considered victims or community representatives, the RJ orientation could be considered ‘mostly’ or ‘relational’.

Upon completion of the VEP, offenders receive a report written by the facilitators, based on their participation, comprehension of the programme concepts, their distortions, development and application of skills. A certificate is presented to those that participate that could potentially be submitted to the parole board as part of the offender's dossier. The STP did not include reports at the end of the programme, however all participants also receive certificates.

With the STP, offenders are given the opportunity, at the end of the programme to offer symbolic acts of restitution (Parker & Van Ness, 2010). 'Symbolic restitution takes the form of writing letters to the offender's victims and sharing this with the victim-participants; drawing or painting pictures representing lessons learned or the offender's desire to change; offenders writing and performing songs related to the issues, or making gifts for the victims such as bookmarks, cards or paper flowers. The final session of the STP being a celebration ('breaking of the bread') of the work done, invitations are also extended to guests⁷³ - people that did not participate in the programme.

Of victim empathy programmes, which both the VEP and STP are, Tickell & Akester (2004) assert, "*These programmes prepare offenders to participate in restorative processes with or without victims.*" (p.21). In the experimental programme of this action research, all offenders had to participate in either the VEP or STP as phase one programmes, before being offered the opportunity, if they so chose, to meet with their direct victims in a restorative justice conference.

Restorative Justice Conferencing (RJC)

RJC involves representation from all those stakeholders affected by a crime – the victim, the offender and their supporters. One or two facilitators are also present and are required to be

⁷³ Guests of the STP celebrations included Correctional staff, members of Prison Fellowship, Witness Care Officers and Police personnel; as well as victims and offender-participants from previous groups. A reporter from the Royal Gazette attended one group's celebration and wrote a piece on the programme (published on 26th March 2015 – O. Johnston-Barnes 'Offenders and Victims Face to Face' p2) – this article can be found in Appendix 4. Only those participants consenting to be photographed were included.

equally supportive and respectful of all in attendance⁷⁴. Prior to the actual conference there is a lot of preparation that goes on.

Preparation for RJC is paramount. All parties (including supporters) are assessed for suitability to ensure readiness to participate before being brought together. This should be done in such a way that facilitators listen to the parties' story, gauge communication styles and the impact of the offence on them and their community of support. Parties should be prepared for the actual encounter by reducing anxieties and ensuring there are no surprises regarding the process. Umbreit (2000) urges however, that this "...is not meant to "script" the actual conference so that little genuine emotion, including anger, will emerge." (p.5). Rather, the facilitator should create a personal but impartial connection to ensure parties feel safe to engage in the dialogue with minimal intervention from the facilitator (Umbreit, 2000).

Further, to what could be referred to as a one-off RJC, where considered necessary or responsive to cultural or community needs, a multi-method approach is encouraged (Umbreit, 2000; Bazemore & Umbreit, 2005). Umbreit (2000) proposes use of two-phase conferencing. This process reflects a meeting between the direct or primary victims and the offender or offenders engaging in dialogue together; and then after a break the convening of a larger conference including supporters and community members. This method would be ideal for offences where there are a number of secondary-victims (for example community members affected by an offence or numerous family members of the primary victim).

The Script, Agreement & Gathering

The International Institute for Restorative Practices (IIRP) publish a script⁷⁵ for facilitator use which consists of a series of open-ended questions to encourage affective dialogue and generate opportunity for reparation. The script is developed specifically for conferences concerning criminal offences where the offender accepts responsibility and there are

⁷⁴ "Despite the proliferation of restorative justice programmes, relatively little attention has been given to the issue of accreditation or certification of facilitators and mediators." (UN 2006, p49). In the current research experiment, registered trainers' (of which the researcher was one) with the International Institute for Restorative Practices (IIRP) trained facilitators. Facilitators were staff personnel from the Bermuda DoC and Bermuda Police Service (BPS).

⁷⁵ Terry O'Connell 1991 – a community-policing sergeant in Australia devised the script (Wachtel et al, 2010).

identifiable victims (Wachtel et al, 2010). The script helps facilitators remain focused amidst the emotional processing of participants. Wachtel et al (2010) report on research that has been conducted and “... consistently demonstrated high rates of participant satisfaction, perceptions of fairness and offender compliance with conference agreements (McCold & Wachtel, 1998; Moore & Forsythe, 1995; Umbreit & Fercello, 1998, 1999).” (p.178) based on the use of the script.

The script separates the ‘deed from the doer’, first asking the offenders to state what happened, after the facilitator sets out the ultimate purpose of the conference to repair the harm caused. Emphasis is given to the incident that occurred specifying date, place and nature of the offence. It is made explicit in the script that the purpose of the conference is not to decide whether the offender is good or bad, but rather to explore how people were affected and how reparation can occur.

Offenders speaking first has a four-fold effect – it allows for the offender to take responsibility, mitigates any defensiveness or rescuing tendency of the offender-supporters, it can eliminate any preconceptions of those in attendance and help reduce the victim’s anxieties or anger (Wachtel, et al, 2010). After the offenders, victims are asked questions, then the victim-supporters and then the offenders-supporters. The focus then turns to the agreement phase.

The offender is asked if they have anything further they want to say – which offers them the opportunity to extend an apology if one has not been offered by this time. Then victims are asked what they would like from the conference. The offender is asked what they think about each request of reparation the victim requests. The agreement must be mutually agreed (the offender should not feel obligated to just accept the victims’ requests).

Before the conference is closed the facilitator offers the participants an opportunity for any final remarks; and then the conference is closed by the facilitator thanking everyone for their contributions and inviting them to partake in refreshments.⁷⁶ This gives the participants time to interact informally while the agreement is written up, and during which time the offender and other appropriate participants sign the agreement and receive copies.

⁷⁶ “1. Allow time at the end of the meeting for informal discussion between participants, and a time for reflection following the end of the formal meeting, ideally with refreshments available. 2. Remain present throughout ... be alert to significant further exchanges ... of restoration ... (for example, a request to stay in touch). (Restorative Justice Council, 2011, p18).

Implementation of the entire scheme is covered in the following section of this chapter, which meets the research objective –

- To draw on research and policy guidance to clarify how RJ should be implemented within a corrections setting.

Scheme Development and Best Practice Guidance

The scheme in Bermuda was set up using guidance of best practice from a number of sources.⁷⁷ Such considerations also informed the ethics application for the research.

The National Offender Management Service (NOMS) in their publication ‘Wait ‘Til Eight’ An Essential Start-up Guide to NOMS RJ Scheme Implementation (2013) provide guidance and materials for RJ implementation of conferencing practices. They advise, in accordance with the system in the UK that to establish a scheme, a management and planning group are established, that can become a multi-agency steering group. In Bermuda the researcher, took the lead in developing a programme with the assistance of other staff from the DoC. Once the first phase of the scheme was underway (delivery of the VEP and STP), with Prison Fellowship Bermuda contracted to provide their programme, the Bermuda Police Service (BPS) were invited to join the scheme. The DoC and BPS Commissioners signed a Memorandum of Understanding. Contact was made with NGOs in the community that could provide counselling to victims and supporters, if needed post-conference.⁷⁸ Contact was also made and advice sought from government and non-government agencies that could provide input to the rights and legislation for victims and offenders.⁷⁹

In accordance with guidance, a case flow chart was developed with consideration to assessments of eligibility and suitability and criteria for case identification (NOMS, 2013). As the

⁷⁷ Guidance of best practice was primarily taken from the Restorative Justice Council (2011); the United Nations (2006); the National Offender Management Service (2013); Wachtel et al (2010) and Umbreit (2000).

⁷⁸ The agencies contacted and agreeable to providing support to victims were the Women’s Resource Centre and the Centre Against Abuse. Support for inmates post-conference, would be provided by existing DoC staff – Social Workers, Psychologist and Chaplains.

⁷⁹ This included the Human Rights Commission, Centre for Justice and the Department of Public Prosecutions.

scheme being introduced was new to Bermuda, as a pilot study, certain offences were excluded (this is described further in the next chapter, under research participants). Needless to say, there are some relationships and offences that create power imbalances between victims and offenders, and this can give rise to repeat victimization. Obvious cases were excluded from the pilot phase of the research (e.g. sexual abuse and domestic violence).⁸⁰

Nonetheless, assessments were still made of potential power imbalances in each case for “presence of any complex issues of intimidation and vulnerability”. (Restorative Justice Council, 2011, p11). Protocols were developed and risk assessments were conducted, this included security checks of previous (criminal) history between people participating in the STP or conferences. As per guidance, any safety concerns were recorded and to be managed, if risks could not be managed face-to-face interventions would not be proceeded with (Restorative Justice Council, 2011; NOMS, 2013). However, alternative interventions would be offered.

The BPS trained conference facilitators would make the first contact with victims in the community by telephone; no mention would be made at this time of a face-to-face meeting with the offender (Wachtel, et al, 2010). If victims were agreeable a meeting would be arranged with the facilitators (and researcher). The Restorative Justice Council (2011) advise in preparation of RJ processes and facilitating a safe restorative process, that facilitators “Communicate with individuals throughout the process...” (p13). The scheme used leaflets, of which templates were provided by the ‘Wait til Eight’ publication (NOMS, 2013) to give out to participants of conferences, and the researcher prepared a Research Background Paper that could be given to all participants of the scheme (see Appendix 2 for a copy of the Research Background Paper). Clear information was provided to participants throughout the process; and participants’ opinions of the information they received would be gathered as part of the post-conference questionnaire (as well as post the VEP and STP programmes).

Guidance advises – “Assess the likelihood of strong emotions or conflict during the meeting, and ensure you have a plan in place for separate meetings, or time out during the meeting, should this be needed.” (Restorative Justice Council, 2011, p 15). The Council also advise on selecting an

⁸⁰ “Ministry of Justice guidance states that restorative justice should not normally be used in cases of: “Domestic violence due to the risk of ongoing harm ... sexual offences, unless a victim of such [an] offence requests a restorative justice activity and suitably experienced and skilled facilitators are available.” (Restorative Justice Council, 2015b, p8)

appropriate venue; informing and obtaining consent for observers. In the scheme all conferences during the pilot phase were to be held at the DoC as only convicted prisoners would participate and participants were informed of this. Permission was sought for the researcher to observe the conferences and any other personnel necessary for safety reasons, or requested, were discussed with all involved.

The Restorative Justice Council gives guidance for all stages of the process, as well as for indirect processes; all of which was taken into consideration in the development and implementation of the scheme.

This chapter provided information on the main interventions that formed part of the action research and highlighted the differences between the two (VEP and STP) phase one/prerequisite programmes for conferencing. Whilst the STP could be considered a relationally restorative intervention compared to the VEP because it brings (unrelated) victims from the community and offenders together, creating an immediate potential for reduction of harm; the VEP was expected to allow for an in-depth assessment of the actual crime and suitability of the offenders for conferencing. The differences between the two programmes was important as they were being examined to assess their effectiveness in preparing offenders – to take responsibility, increase empathy for their victims and be motivated to make reparation. In a small island such as Bermuda, the potential for unrelated victims to offenders would be unlikely to prevail for long. However, with the Christian faith being most dominant this was also expected to have an influence. It would be important to assess if the differences between the programmes were significant. The chapter ended with a synopsis of the overall development of the initiative and adherence to best practice, the next chapter sets out details on the methodology of the research.

❖ CHAPTER 5 – METHODOLOGY

“Often when restorative justice practices are used in prison, they’re initiated by people from the outside.” (Toews, 2006, p72)

Introduction

This thesis has discussed restorative justice (RJ) in light of the growing theoretical and empirical research. It has also brought Bermuda into focus on issues of crime, the social and political landscape and its criminal justice system (CJS). The objectives of this thesis necessitates empirical research in order to address the aim of how RJ can work for victims and offenders in Bermuda in regards to the potential for reduction of harm, increasing empathy and as an addition to the existing system. Can programmes designed to help increase empathy with incarcerated offenders achieve that aim; and can the overall initiative help victims to heal and feel safer. To do this the research evaluates three compatible but distinct interventions, (a Victim Empathy Programme (VEP), Sycamore Tree Project (STP) & RJ Conferencing) that were described in the preceding chapter and that could be said represent the three suggested degrees of restorative orientation in practices (partial, mostly and full, respectively - McCord, 2000) discussed in the previous chapter.

Specifically this chapter describes the methods used to obtain data for the following objectives of the research:

- To explore the experience and effects of an experimental programme of RJ for victims and offenders in Bermuda; and
- To explore victims’ and offenders’ opinions of the existing criminal justice system’s management of their cases, and in general.

The theoretical framework provides support for the chosen methodology employed and the specific importance of reflective reporting. This chapter sets out the rationale for the mixed-method approach that was taken and discusses some of the strengths and limitations of the methods chosen. The chapter makes reference to secondary data collected and provides information on ethical considerations. As such, research in prisons and the researcher’s position is elucidated, with reference to the usefulness of validation strategies. The chapter concludes

with a description of the selection and demographics of the participants, and details of the data analysis.

Theoretical Framework

Philosophical Basis & Research Framework

Constructionism formed the epistemology of the research, as the researcher also acknowledged their own constructs of their work (linked to the methodology). Recognising the importance of knowledge and reality being relational and therefore value-laden. Further, contingent on social experience, social relations and interactions. As an epistemology, its incorporation of pragmatism also encapsulated the researcher's intention with the study, as it was to focus on "what's works" (Cresswell, 2013). Specifically Social Constructionism, provided recognition of culture, history and societal impacts.

An optimistic (if not simplistic) statement of social constructionism in compatibility with the aims of RJ is that – "If the conversation could be changed [or even occur in the first instance], all that we construct as "problems" could be reconstructed as "opportunities". As we speak together, we can also bring new worlds into being." (Gergen, 2009, p4).

Social Constructionism recognizes that what is often taken for granted about the world need not be and that what is considered to be truths, including those truths presented by the scientific world, should be scrutinized. Those that make claims of fact to the world, not least scientists, often try and claim objectivity and that it is without values. Yet social constructionism argues that those values are conveyed even in the language used to make the claims (Gergen, 2009). Knowledge is received through language. Knowledge and language even of the general public is socially constructed meaning – "... what we take to be the world importantly depends on how we approach it, and how we approach to it depends on the social relationships of which we are a part." (Gergen, 2009, p2). When people lack knowledge or cannot understand the language of a subject matter, they tend to just accept what is offered by the experts. This can put the expert in very powerful positions and be a means of maintaining the positions of people, such as those disadvantaged within a society.

It is argued that social construction need not be dependent on tradition, history or 'what there is', as constructs could take many forms (Gergen, 2009). One divergence between social constructionists is what Burningham and Cooper (1999, in Andrews, 2012) term strict and contextual constructionism. The former accepts that there are alternative possibilities to constructs we use and all have equal meaningfulness (relativism). Andrews (2012) argues that strict constructionism is unhelpful, as it cannot guide knowledge or present social phenomenon because everything is considered possible. Contextual constructionism accepts objective reality – in other words there are things that exist outside of language. Andrews (2012) provides further clarity on the contextual (realist) division – “The idea that a disease can exist as an independent reality is compatible with the social constructionist view. The naming of disease and indeed what constitutes disease is arguably a different matter and has the potential to be socially constructed. This is not the same as claiming that it has no independent existence beyond language.” (p42). Andrews cites how Berger & Luckman (1991) limit the discussion of social construction of knowledge to epistemological claims and make no ontological claims.

However, the different branches of social constructionism bring with it discourse, which by virtue generates challenges, questions and alternatives. Such as the claim favoured by the current researcher - that individuals are not passive to the knowledge they acquire, but also possess psychological processes that influence how they use information and view the world (Burr, 2003). In such discourse lies the ability of social constructionism to create change, for example, to social inequities.

The Social Constructionism was appropriate as the epistemology also for the importance of constructs that people form of crime, punishment (Gergen, 2009) and justice. An important question asked in the study, of conferencing participants was - What does justice mean to you? This was important as the RJ literature and aims question how justice is constructed and petered out by the state system opposed to the stakeholders of a crime. This was fundamental to the study as an aim, was to explore victim and offenders opinions of the CJS in Bermuda and the management of their case.

Constructs are also important to how the offenders view themselves, as identified by Hagemann (2003) who found offenders needed to resolve three relationships with RJ. One of these relationships being their internal relationship with themselves which has two dimensions - their

identity as an offender and as a "normal" person. The constructs of what constitutes a crime, victims, harm, punishment, victimization, responsibility and reparation could all impact their experience of RJ. It was also expected that the essence of this potential discourse at an individual (and local) level is what could create change and healing, whilst also creating empathy as a result of perspective-taking and understanding.

As the theoretical perspective - Critical theory was most relevant to the study and the society in which the study was being conducted. As highlighted in chapter 3, social inequities persist in Bermuda. It was intended that the study could educate and create change for the betterment of the society. Warmoth (2000) writing on social constructionism argues that to deal with issues such as poverty and violence, there should be conscious and collaborative efforts to create new social institutions. Furthermore, such change calls for understanding of the values and motivations of individuals and of the dynamics of social and environmental systems these individuals live in.

The researcher was an agent of the constitution that change was hoped would be created in – the criminal justice system, and as such Action Research formed the methodology of this thesis.⁸¹ Action research recognizes the researcher as a subjective entity, which does not allow for objective interpretation. As a methodology, it has been used to investigate RJ in a number of studies in different countries (e.g. Robert & Peters, 2003; Shapland et al, 2008; Szego & Fellegi, 2013).

“Action research is concentrated on the development and evaluation of new practices and is also focused upon the fine tuning or restructuring of existing practices. ... At the same time, this method has also won approval due to its inclusive character. Action research allows several (all) parties to be actively involved in the (search for a) solution to the problem.” (Robert & Peters, 2003, p96).

This ‘inclusive character’ of action research appears to share commonalities with RJ. For example, Fricke defines action research as “... empathy and listening while meeting the other, it is a commitment to basic values like human creativity and democratic participation, it is based on the perception of social reality as a continuing process with individuals being subjects of their history ...” (cited in Brydon-Miller et al, 2003, p14). Wachtel et al’s (2010) Social Discipline

⁸¹ Crotty (1998) views action research as a methodology, Reason & Bradbury (2008, cited in Drake, 2014) consider action research as a method.

Window proposes that the most effective application of RJ to create social change is to work with people, opposed to for them. This is compatible with how action research recognizes and respects the knowledge people have of themselves and the issues within their communities (Brydon-Miller et al, 2003).

Mixed-Methods: Rational & Conceptual Framework

To adequately evaluate the intervention programmes as part of the research objective a mixed-method approach was adopted to work in hand with the methodology (McNiff & Whitehead, 2011). This then values the subjective experience of the subjects, acknowledged the impact of the researcher's motivation and biases, recognized the importance of political agendas, has an emphasis on change and evaluative essence of 'what works' and how.

At the centre of the 'what' and 'how' research question Mackenzie & Knipe (2006) suggest that "... data collection and analysis methods are chosen as those most likely to provide insights into the question ..." (p196). The methods employed must allow for first-hand accounts of the experience of restorative justice. As shown in chapter two, studies on restorative justice have used a range of methods from interviewing (e.g. Barr, 2013; Bolivar, 2013; De Mesmaecker, 2013; Umbreit & Vos, 2000), surveys and questionnaires (e.g. Barr, 2013; Bolivar, 2013; Feasey & Williams, 2009; Shapland et al; 2004; 2006; 2007;), focus groups (e.g. De Mesmaecker, 2013), case study (e.g. Umbreit & Vos, 2000), observation (e.g. Shapland, 2007); and even meta-analysis (Latimer et al, 2001; Strang et al, 2013; Umbreit, 2005). Dick (1993) suggests that the most important reason for choosing Action Research, should be that the situation under research requires responsiveness, whereby analysis of data should determine modifications as the next step. He further advocates multiple sources of data, which he refers to as dialectic, virtually equivalent to triangulation.

Triangulation is most commonly defined as the use of multiple methods to measure the same phenomena, or "... multiple and different sources, methods, investigators and theories to provide corroborating evidence." (Cresswell, 2013, p251). However, it has been argued that research claiming use of methodological triangulation has largely been inappropriate (Greene et al, 1989). Greene et al (1989) offer a conceptual framework for mixed-method evaluation designs and propose five purposes - triangulation, complementarity, development, initiation and expansion. Greene et al (1989) originally developed the framework for evaluation of social and

educational programmes. It was considered that this framework would also be relevant to the evaluation of restorative justice programmes/interventions.

The mixed-method design used for this research served primarily the purpose of triangulation and complementarity. The difference between the two purposes according to Greene et al (1989) relates to the phenomenon being studied. “In a complementarity mixed-method study, qualitative and quantitative methods are used to measure overlapping but also different facets of a phenomenon, yielding an enriched, elaborated understanding of that phenomenon. This differs from triangulation intent in that the logic of convergence requires that the different methods assess the same conceptual phenomenon.” (Greene, et al, 1989, p258). Greene et al acknowledge that research investigations can utilize more than one purpose. In other words, mixed-methods data can be used to complement each other by measuring different aspects of the same phenomenon (complementarity), or mixed-methods can be used to assess the same phenomenon (triangulation).

This research sought to explore the experience of RJ for victims and offenders, by evaluating the potential of three restorative justice programmes to increase victim empathy and reduce harm/aid healing. It also sought to explore victim and offenders’ opinions of the existing criminal justice system in Bermuda and management of their case; as a different but related facet of the phenomenon, the purpose of ‘complementarity’ was therefore appropriate.

“The complementarity intent can be illustrated by the use of a qualitative interview to measure the nature and level of program participants’ educational aspirations, as well as influences on these aspirations, combined with a quantitative questionnaire to measure the nature, level, and perceived ranking within peer group of participants’ educational aspirations. The two measures in this example are assessing similar, as well as different, aspects of the aspirations phenomenon.” (Greene, et al, 1989, p258).

In their analysis of theory and empirical research Greene et al (1989) also highlighted that not all studies employing mixed-method design followed through in the same vein at the stage of data analysis. In other words whilst employing mixed-method designs, investigations often separate qualitative from quantitative data and provide segregated reporting. Where appropriate specific triangulated and complementary data is analysed and reported simultaneously.

Ethics I - Consent

The London Metropolitan University's ethics committee granted ethical approval for the study. The researcher was granted permission to conduct the research by the Commissioner of the Department of Corrections (DoC) and the ministry responsible for the DoC – the Ministry of National Security (see Appendix 1 for a copy of the authorization letter). These were obtained before any contact was made with any of the participants. RJ guidance also informed on contact made with participants. DoC programmes staff/VEP facilitators approached the offenders that were offered the opportunity to participate in the VEP and STP programmes. These facilitators obtained informed consent from the offenders who agreed to participate in the programmes and separate consent for their inclusion in the research, before the researcher had any direct contact with them regarding the research. Prison Fellowship Bermuda recruited the victims that participated in the STP and gained their informed consent to participate in the programme. The latter was obtained before the researcher spoke to them directly about the research and requested their consent to be included.

The chapter now presents the methods that were used to collect data.

Research Methods

Chosen Methods

The methods used in the research include questionnaires, a psychometric, in-depth semi-structured interviews and observation. The questionnaires and observations were conducted with each of the three interventions for both victim and offender-participants, as was use of the psychometric questionnaire however this method was only administered to the offender-participants. In-depth interviewing was reserved for those who participated in the RJ conferencing; as only in this intervention would the offenders and their direct victims come together.

The table below illustrates the methods used with each intervention

Subjects ↓	Programme Interventions		
	Victim Empathy	Sycamore Tree	RJ Conferencing
Offender-participants	CRIME-PICS II Pre & Post Questionnaires	CRIME-PICS II Pre & Post Questionnaires	CRIME-PICS II Pre & Post Questionnaires Structured Interviews
Victim-participants		Pre & Post Questionnaires	Pre & Post Questionnaires Structured Interviews
Researcher	Nonparticipant-to-participatory Observation	Nonparticipant-to-participatory Observation	Nonparticipant-to-participatory Observation

Questionnaires

Questions & Design

One pair of questionnaires was designed for the offender-participants of the Victim Empathy and Sycamore Tree Project phase-one interventions (4 questionnaires). One pair designed for the victim-participants of the Sycamore Tree Project (2 questionnaires), and one set for the offenders and victims who participated in the RJ conferences (4 questionnaires). The majority of questionnaire items was reflected across all the questionnaires, and required both quantitative and qualitative responses.

The questionnaires also took into account time-intervals - pre-intervention and post-intervention. For example, a pre-intervention question asks – How do you feel about being contacted to participate in the programme? By the post-intervention stage, the item became – How do you feel now, about being asked to participate in the programme?

The table below illustrates the category of questions, pre and post each of the three interventions as they were described on the questionnaires.

Questionnaire Domains	
Pre	Section A - asks questions about your views and opinions of the Criminal Justice System. Section B - asks questions about your case and experience with the Criminal Justice System. Section C - asks questions about your knowledge of Restorative Justice and motivation to participate in the programme/conference.

Post	<p>Section A - asks questions about the preparation for the programme/conference.</p> <p>Section B - asks questions about the programme/conference itself.</p> <p>Section C – asks questions about your time since the programme/conference reflecting back; and your general views of restorative justice now you have participated in a programme/conference.</p>
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Many questionnaire items were adopted from past empirical research (e.g. Miers et al, 2001; Shapland et al, 2007) or based on theoretical discourse; which would allow for exploration of attitudes amongst a Bermudian population.

The quantitative questionnaire items used a five-point Likert response format (e.g. strongly agree, agree, neither agree or disagree, disagree, strongly disagree)⁸². Other items used less response categories (3, 4) and more dichotomous categories (i.e. yes, no) that are permissible if there is good rationale for reducing the number of responses (Dudley, 2005; Lewin, 2005). These items aimed to explore the opinions and views of the participants.

A number of open-ended items were included in the questionnaire, for the purpose of obtaining qualitative data from both sets of subjects (offenders and victims) across both time frames (pre and post-intervention). These questions aimed to explore participants’ motivation and subjective experience of the interventions.

Obtaining both quantitative and qualitative data from both participant groups would allow for triangulated and complementary analysis.

Administration and Consent

The questionnaires were completed by the participants but administrated by the programme facilitators of the VEP or, in the case of victim-participants by the researcher. The facilitators were provided with instructions and told to answer any questions that the participants may have had without prejudicing their responses. Offender-participants were also afforded the opportunity to withdraw from participating in the research if they so chose. Consent to

⁸² In the Carifio & Perla (2007) paper they present what they call, misunderstandings, myths and urban legends about Likert scales and Likert response formats. The questionnaires constructed for use in this thesis were essentially based on a Likert response format. However, Carifio & Perla argue that item-by-item Likert response formats should not be disembodied from the macro level measurement of Likert scales, despite this use having become commonplace practice.

participate in the research, was requested from the offenders following initial consent to participate in the programmes. There was therefore a lapse in time between the participants consenting to participate and actual completion of the questionnaires. This lapse meant that the offender-participants had time to reconsider their initial consent.

Administration of the questionnaires with the conferencing intervention followed a similar procedure although the researcher was more involved at this stage with all participants. The researcher administered the questionnaires with the victim-participants of the STP.

A research background paper was provided to the participants (see Appendix 2) and leaflets on each of the interventions (including the RJ conferencing - see Appendix 3)⁸³. All participants were advised that declining to be involved in the research would not prevent them being able to participate in the programmes.

Piloting

For the purpose of piloting the questionnaire the researcher selected two offenders, one of who had previously requested the opportunity to engage in a RJ conference with the victims of his offence.⁸⁴ Based on the first offender's feedback, some minor corrections were made.

After the first pilot, the researcher approached the second offender. Although this offender did not suggest any issues completing the questionnaire, the researcher noted his response to the question regarding motivation to participate in the programme. The offender stated their reasoning as being "Because I was asked to do the programme..." The researcher did not question the offender on their response but asked the programme facilitators to check out the offender's motivation when being assessed for suitability to participate. This second offender had been very keen to have the researcher facilitate the programme he would be in. When assessed by the facilitators, the second offender informed them that his main motivation for

⁸³ The VEP information leaflet was designed by the Psychology Intern; the STP leaflet by Prison Fellowship Bermuda and the RJ Conference leaflets by the researcher, based on examples provided in the 'Wait Til Eight' publication (NOMS, 2013).

⁸⁴ This offender-participant was allocated to the STP and the second pilot offender-participant was allocated to the VEP; these offenders were matched for the nature of their offence. The first pilot-offender, was the only offender of all those that participated in the action that the researcher had prior professional contact with.

participating in the programme was for the purpose of impressing the parole board. This can be a common extrinsic motivation for many incarcerated offenders. At this time the facilitators reminded the offender that participation was not to be used for the purpose of parole; the offender stated that he still wanted to participate.

The first group of six victim-participants identified for the STP acted as the pilot group for the victim-questionnaires. What had not first occurred to the researcher was that not all of the victims (identified for the STP) would have had a court case, as their offenders were never identified. On the basis of this a couple of amendments were made to the pre and post questionnaires for the victims.

Psychometrics: Measuring Empathy in Offenders

As the aim of the research was to explore the potential for RJ to increase empathy in offenders, this was measured quantitatively using the CRIME-PICS II psychometric questionnaire.

The CRIME-PICS II psychometric was developed by Frude et al in 1994 and is widely used as a standardized measure of change for agencies working with offenders. Since 2003 it was adopted in the UK as one of eight measures to evaluate nationally accredited offending behaviour programmes (Feasey & Williams, 2009). Feasey & Williams (2009) used the CRIME-PICS II in their assessment of the STP programme and found a significant attitudinal change in offenders post-programme.

It is used to measure change in offender's attitude to offending and is therefore used pre and post intervention. It consists of 20 questionnaire items and a 15-item problems inventory (the latter component was not used for purposes of the study). Responses to the items provide scores that translate into 5 scales, represented in the table below.

CRIME-PICS II	
	Scale Description
General Attitude to Offending (G Scale)	Measures the offender’s general attitude towards offending. Low scores indicating an attitude that offending is not an acceptable way of life.
Anticipation of Re-Offending (A Scale)	Measures the offender’s anticipation of re-offending in the future. Low scores indicating a resolve not to reoffend.
Victim Hurt Denial (V Scale)	Measures the degree to which the offender acknowledges the harm caused to the victim of their offence. Low scores indicate victim empathy, as an acceptance of harm caused to victims by offending.
Evaluation of Crime as Worthwhile (E Scale)	Measures the degree to which the offender views crime as worthwhile. A Low score indicates a view that the costs of crime outweigh the benefits.
Perception of Current Life Problems (P Scale)	Measures the number of problem areas the offender see’s themselves as having. The lower the score the less problem areas identified. However, higher post scores may reflect increased problem recognition.

Of most relevance to the research was the V scale of the CRIME-PICS II that measures victim empathy.

The 20 questionnaire items consist of statements that respondents are required to indicate whether they agree or disagree with, using a 5-point (Likert) scale (‘strongly agree’ to ‘strongly disagree’). The psychometric was administered by the programme facilitators (along with the questionnaires) using standardized instructions and self-completed by the offender-participants in groups. The facilitators assisted any participants that had literacy difficulties individually. The computerized CRIME-PICS II Scoring Program was utilized for each respondent’s questionnaire. Offender profiles using the CRIME-PICS II could also help determine selection of particular offenders to the type of programme most appropriate for them (Frude et al, 2013). The authors provide the alpha coefficient, which measures the internal reliability of each scale. With 0.70 and above indicative of good internal consistency the authors note that high alpha coefficients can be reflective of the number of items in each scale (Frude et al, 2013). The table below illustrates the number of items in each scale and alpha coefficient values.⁸⁵

⁸⁵ While Scale E does not meet the alpha “adequacy” criterion, the authors’ emphases that the four items significantly correlate; however results from this scale should be treated with caution (Frude et al, 2013).

CRIME-PICS II		
Scales	No. of Items	Alpha Coefficient
General Attitude to Offending (G Scale)	17	.76
Anticipation of Re-Offending (A Scale)	6	.75
Victim Hurt Denial (V Scale)	3	.73
Evaluation of Crime as Worthwhile (E Scale)	4	.55
Perception of Current Life Problems (P Scale)	15	.83

Test-Retest Reliability and Test Sensitivity are also met by all the scales, despite a change in scores between initial tests and re-test times being expected due to the impact of an intervention. The widespread use of CRIME-PICS II is evidence of its good face validity; and it has concurrent validity. For example, the authors point out that scales G, A & E are able to discriminate between offenders with higher risk scores for reoffending. Low scores in scale V (greater acknowledgment of harm caused to victims) which is of most relevance to this study, was found to be reported significantly more often with offenders who had experienced a custodial sentence. The authors highlight that this “... is of course likely to reflect the type of offence committed.” (Frude et al, 2013). Further the authors report that pertaining to the validity of CRIME-PICS II it shows differences in scores on all scales for three types of offending a) those against the person, b) property offences and c) motor vehicle related offences.

A reduction between pre and post scores indicates an improvement in the offender’s attitude (with the exclusion of the P scale).⁸⁶ The raw scores were utilized in this research to examine differences between the offenders’ pre and post intervention scores individually, and collectively between the programmes (VEP and STP). For those offenders that participated in a conference, they were also administered the psychometric for a third time – post-conference.

It was a requirement of programme participation (VEP & STP), as per most prison programmes, that the offenders complete pre and post psychometrics/questionnaires (i.e. CRIME-PICS II) as part of the programme and that the results remain on file as property of the DoC. This was

⁸⁶ Individual scale scores allow for particular facets to be targeted, while aggregated scores across groups of offenders can be used to evaluate general patterns of change, or used in the raw score form (Frude et al, 2013).

made explicit to the offender-participants however that they could refuse consent for their results to be used as part of the research. The offender-participants' were informed of this, as part of the instructions given at the time of completing the forms.

“It is important for future research to include qualitative measures of the amount of harm that offenders cause before and after they engage in an RJC [restorative justice conference]. ... As new places ... attempt to conduct experimental evaluations of RJs, the chance to measure the benefits in this way should not be missed.” (Strang et al, 2013).

Interviews

“We conduct qualitative research when we want to empower individuals to share their stories, hear their voices, and minimize the power relationships that often exist between a researcher and the participants in a study.” (Cresswell, 2013, p48).

The need for a qualitative measure such as interviewing was imperative to the study for the very reasons Cresswell highlights. There was every need to empower the participants, not just for research purposes, but also for the purpose of action. A central premise of RJ is to give a voice to victims, and offenders, where the conventional adversarial CJS can steal their cases. It was employed to also minimise the power relationship between the researcher and offenders. As guidance on RJ practice, the Restorative Justice Council (2011) also advise that practitioners – “Provide the parties with the opportunity to discuss openly and honestly their thoughts and feelings about the restorative justice process and its outcomes.” (p21).

Interview Design and Questions

Four interview schedules were designed using structured open-ended questions for those who participated in a conference. Two versions for the victims corresponded with the pre-conference (ISVPr) and post-conference (ISVPo) stages; with two similar versions designed for the offender-participants (ISOPr & ISOPo).

Kvale (1996) points out that questionnaires include questions about general opinions, which the interview does not, but rather elicits descriptions of specific situations and action sequences.

The victim interview schedules consisted of questions designed to investigate first-hand the opinions, motivation and experience of the participants from their perspective, such as: motivation for participating in a conference (which could also be used to inform on their readiness to participate); their understanding of the conference purpose (which could also inform practice) and their views and experience of the CJS. Two interviews allowed for comparison post intervention, with additional questions related to their experience of a RJ conference. Guidance on RJ practice highlights the need to check out victims' readiness to meet with the offenders of their case. The offender interview schedules consisted of similar questions as those for the victims, except with opposite focus (e.g. "How much, if at all, do you think about the person you harmed?"). Similarly to the questions included in the questionnaires, the interview questions were based on theoretical and empirical research (e.g. Miers et al, 2001; Shapland et al, 2007) and conducted face-to-face.

Advantages & Disadvantages of the Face-to-Face Interviewing Method

When considering a mixed-method design it is pointed out that all methods have biases, limitations (Greene, 1989), positives and negatives. Interviews can be conducted in a number of ways. This study utilized face-to-face interviewing for one main reason. The greatest benefit of face-to-face interviewing was the interviewer's opportunity to assess social cues as well as the verbal, occurring in time and place, in the sense that responses are more spontaneous and without extended deliberation (Opdenakker, 2006). This would be vital for the research, enabling the researcher to be able to access the participants' story as it naturally occurred in response to the questions asked. While victims may find it difficult to express their emotions, they may be open to the opportunity to have a voice and be heard. Opdenakker (2006) suggests from reviewing four modes of interviewing, that the other advantages of face-to-face interviewing are that a good ambience can be created and termination can be managed through social cues such as shifting papers and turning off the tape recorder. This is in addition to the explicit termination by thanking the interviewee and asking if they have any further remarks relevant to the topic or interview process. The invitation for remarks can also lead to the emergent of a whole new area of information (Wengraf, 2001, in Opdenakker, 2006). Equally, the researcher could be responsive to any displays of discomfort in the participants. Offenders

may have been guarded in their responses and try to disguise socially undesirable thoughts and feelings.

Openakker (2006) suggests that interviewer effects can be diminished with use of a protocol and interviewer awareness. Face-to-face interviewing is considered to be costly and time consuming where other methods can eliminate this (such as telephone interviewing). The study was conducted in the islands of Bermuda with a landmass of 21 sq. miles, which meant travelling to conduct interviews did not have to take place over a vast landmass. Offender-participants were all incarcerated, serving sentences for the offence that was subject to the interventions; across two correctional facilities at opposite ends of the main connected islands.

Data Collection – Audio Recording & Transcription

Interviews were recorded using a Phillips Voice Tracer digital recorder 1700, with informed written consent from the participants. The recordings were transcribed using the Dragon Naturally Speaking 12 – speech recognition software. Participants were informed that the recordings would be transcribed omitting any identifiable information (i.e. such as names) and that once transcribed audio recordings would be destroyed.

The major benefit of audio recording was accuracy of information. Openakker (2006) points out the disadvantage of audio recording as being a reduced likelihood of note taking, which could create serious problems if the recorder malfunctions or the interviewer forgets to turn it on. To reduce these potential issues the researcher printed at the top of the interview schedule two reminder notes 1) to reconfirm consent and 2) to ensure the recorder was turned on.

“... face-to-face interaction is the fullest condition of participating in the mind of another human being, and ... that you must participate in the mind of another human being ... to acquire social knowledge.” (Lofland & Lofland, 1995, p16)

As this chapter turns to consider the employed method of observation, it is argued that (participant) observation and intensive interviewing are the two most interrelated methods for achieving “naturalistic preference” and “the richest possible [qualitative] data.” (Lofland & Lofland, 1995).

Observation

In order to further evaluate the programmes and inform on pending reform and future policy, the researcher chose the method of observation as another rich source of data. In the article 'Setting Standards for Restorative Justice' Braithwaite (2002a) writes generally about the need for conferences (unlike court rooms) being closed to the public. This he argues helps avert stigmatization and dominated dialogue, however taking into consideration the need for accountability he states "... it seems especially important for researchers, critics, journalists, political leaders, judges, colleagues from restorative justice programmes in other places, to be able to sit in on conferences or circles (with the permission of the participants) so there can be informed public debate and exposure of inappropriate practices." (Braithwaite, 2002a, p567).

Also central to the research, observation would allow the researcher to gain data regarding the participants' experience of the intervention in the 'actual time' it played out. In other words, the questionnaires and interviews provided data before and after the intervention, where the method of observation would provide data during the intervention.

The researcher observed the interventions initially as a non-participant. "As a good qualitative observer, you may change your role during an observation, such as starting as a non-participant and then moving into the participant role, or vice versa." (Cresswell, 2013, p167). Cresswell (2013) further, refers to considering the time to make the change over. In the last session of the STP programmes and at the end of the conference, during the customary refreshment space, the researcher changed from non-participant to a participant observer, choosing this time to engage with the participants and listen to their expressions about the process and interpersonal exchanges.

It is important in the recording of field-notes that the researcher is discrete, and despite participants being aware that they are being observed their anxieties should not be increased. Lofland & Lofland (1995) refer to the act of inconspicuous jotting, and lay out the sequence of mental notes, jotted notes (including memories) and full field-notes – "... the fundamental concrete task of the observer is the taking of fieldnotes." (Lofland & Lofland, 1995, p89). This process was used in this study.

At the outset the researcher was interested to observe conversations between people; seating arrangements in the programmes; tardiness and attendance; gestures and expressions of

empathy and other emotions, remorse/regret, change/expansion, healing, harm and empowerment. The researcher was interested in the development and dynamics of the groups and repeated occurrences that occurred within and across the groups. An observational protocol was devised to record information like dates, times, attendees, the duration, seating plans and for jotted notes.

Focus Groups

From early observations of the first VEP and STP, the researcher was motivated to conduct a focus group with the offender-participants from each of the two programmes; and sought ethical permission from her supervisors to do this. Such changes are recognized amongst researchers. For example, Sutrop & Florea (2010) state, “Particularly qualitative research may need “flexible protocols”, where research is adapted according to a stepwise approach, depending on interim findings from focus groups, surveys, questionnaires etc.” (p24). This was also in keeping with the methodology.

The researcher was told that one of the STP offender-participants had asked the VEP facilitators if he could do the VEP after completing the STP. He told the facilitators that he had been hearing a lot about the VEP from the other group-members; he was apparently disappointed when informed by the facilitators that he could not do the VEP and had questioned why he could not.

5 offenders participated in the focus group – 2 participants from the VEP and 3 from the STP.⁸⁷ Each participant gave written consent to participate in the focus group and to the discussion being recorded. Data from the focus group was analysed along with all other data collected.

The Researcher & Research in Prisons

As this researcher read of tenacity being a common characteristic of action researchers (Brydon-Miller et al, 2003), she smiled and considered that this attribute was much of her make up. With a tenacity to reject some of the principles and politics in academia that gives favour to practices designed to be more “scientific” over the needs of the individuals it studies. This tenacity is

⁸⁷ A third VEP offender-participant randomly selected by the researcher had been escorted out of the establishment on a medical appointment.

similarly embraced by Umbreit's (2005) cry for practitioners of RJ to not be concerned with specific models to the point of neglecting stakeholders needs for safe dialogue.

It is argued that reflective researchers position themselves in a qualitative research study. Meaning that researchers convey their background in the methodology section of their study and how it informs their interpretation and what they have to gain (e.g. Cresswell, 2013; Sutton, 2011).⁸⁸

Sutton (2011) illustrated a related point in his paper when he referred to the earliest ethnographies of research into prison culture. Sutton refers to Clemmer's *The Prison Community* published in 1940 as the first comprehensive sociological study of prison culture and Clemmer's employment as the prison sociologist in a men's prison. Sutton talks more recently of Rhodes (2004, in Washington) and Crewe (2007, in the UK) as having immersed themselves into their respective prison environments, as employees in those institutions. The current researcher had extensive (over 16 years) experience working in prisons within three different countries full-time⁸⁹ and had been employed as a forensic psychologist with the Bermuda DoC ten months before data collection began. Over the years she had worked with every population – adult men, women and young-offenders; lifers, determinant sentenced and remand.

This researcher's motivation for venturing into a career as a forensic psychologist was to actively contribute to the reduction of victims of crime. With this impetus the researcher had long been interested in the practice of RJ as a means of empowering victims and holding offenders accountable in a way that reduced alienation. The researcher's main duties at the time of the action research were supervision and facilitation of the sex-offender treatment programme (an excluded population of the action research), conducting risk-assessments, providing one-to-one therapeutic interventions, staff training and recruitment.

Whilst the researcher viewed rehabilitation as necessary, she was always affected by offenders' perceptions of the importance of rehabilitation to her as being necessary for her employment.

⁸⁸ Sutton (2011) also advocates for quantitative researchers reflecting on their experiences working in prisons.

⁸⁹ The researcher had also been commissioned by the Foreign Commonwealth Office to conduct assessments and training in three additional British Overseas Territories whilst located permanently in the Cayman Islands.

Few offenders valued rehabilitation as a means of assisting them in reducing their risk of reoffending. Some would not want to repeat their offending, some did. Whatever the intrinsic motivation, there had been few offenders in the researcher's experience who wanted to be in prison. As a result it was usually extrinsic motivations (at least to start) of gaining parole or other privileges that reigned in prisoners' engagement with rehabilitation. With this often comes the prisoners' projection of responsibility for their incarceration onto "the system" or "authorities". In relation to the US, Noll (2003) talks about this in terms of constitutional protection requiring a plea of not guilty by an offender to be able to invoke constitutional rights; and the lawyers' focus and protection of those rights for their client against the power of the state. As such Noll argues that this also invokes deterrence from personal accountability. While social inequities, negative life experiences and other environmental factors contribute to offending; as Lofton (2004) asserts it is often a case of the disadvantaged offending against other disadvantaged people. In Bermuda it has been recognized that there is also "self-sabotage" at play (Lawrence & Codrington, 2014). In efforts to assist the rehabilitation process, the researcher was motivated to involve victims and the community in the process. Many offenders had also expressed to the researcher their past attempts at living law-abiding lives having been hindered by an unforgiving hostile community; not only in Bermuda but in her experience working as a psychologist in other countries.

The researcher was born and raised in South-East London as a first generation child, to Ghanaian parents of a working-class family. She grew up closely with a number of black men and women who as adolescents were involved in a range of criminal activities including drug use, dealing, theft, burglary, vandalism and violence. She was fortunately somewhat resilient to the claims by some of the black males especially, that as black people they would not be allowed to aspire. Much like the self-sabotage that Lawrence & Codrington speak of Bermudians, this being more pervasive to the psyche of the black males than females. This researcher, however not unaffected by the self-fulfilling prophecy of others stereotypes of her and experiences of racism, still felt that she could assist those that that get caught up in criminal activity, largely as a way of fulfilling others expectations of them. She also felt morally that one person's pain and

disadvantage was no justification (although explanatory) for hurting others. This was the energy for the work and the hope of the potential for RJ to help healing from crime.⁹⁰

The approach was then to heighten the awareness of offenders to the plight of those affected by their actions, and create the opportunity for them to give back. In this way their responsibility would not be diminished, however they could experience redemption and a greater understanding of how their own social constructs impact their view.

Noll (2003) in his paper *“Restorative Justice: Outlining a New Direction for Forensic Psychology”* calls for psychologists in courts and the community to be catalysts in establishing RJ in these areas. He advocates forensic psychologists as being well positioned and possessing skills such as programme development, supervision, and training, giving presentations and for being practitioners of RJ. The current researcher as a forensic psychologist in corrections was also motivated in the same way and was becoming increasingly frustrated by the shortcomings of her work. Work, which largely focused on the offender in isolation of other stakeholders.

The researcher as an insider had access to the establishment and information. It is argued that the insider-researcher lacks objectivity (Aguiler, 1981, cited in Greene, 2014) this was uncontested with regards to aspects of the Corrections environment that the researcher would overlook as customary. However, the environment was not under study. What was more compelling was the relational dynamics and perceived power imbalances, most significantly between the researcher and offender-participants. It was possible that the offenders might try to gain the favour of the researcher, in anticipation of future engagement.

The researcher was cognizant of not wanting DoC staff (including herself) to be excluded from facilitating conferences on the basis of suggested difficulties with impartiality (e.g. Szego & Fellegi, 2013). It was considered important to the validity of the research, based on the researcher’s perspective shared above, that measures were taken to reduce the effects of her position as an employer of the DoC, especially with the offender-participants; albeit, in action research, the researcher’s position is acknowledged.

⁹⁰ The researcher is also a chartered counselling psychologist.

Validation Strategies: Further Management of Researcher Bias & Effects

Cresswell (2013) cites and quotes “Glesne & Peshkin (1992) [who] question research that examines “your own backyard –within your own institution or agency, or among friends or colleagues” ... and they suggest that such information is “dangerous knowledge” that is political and risky for an “inside investigator”.” (p151). To manage this concern of ‘in-house’ or ‘own backyard research’, Cresswell (2013) recommends multiple strategies of validation (for qualitative research) to ensure accuracy and insight of the findings. He lists eight strategies, the first three of which he suggests are the easiest to employ, most popular and cost-effective – (1) triangulation; (2) member checking; (3) rich, thick description; (4) prolonged engagement and persistent observation; (5) peer-review or debriefing; (6) negative case analysis; (7) clarifying researcher bias and (8) external audits. He further suggests that at least two strategies should be employed; by and large the current research utilized all eight strategies of validation.

This chapter outlines, in turn, the strategies that Cresswell (2013) proposes, and how the author utilized these strategies.

Detailed above triangulation was employed at all stages of the study (design, data collection, analysis, interpretation and reporting). “Member checking [considered] the most critical technique for establishing credibility” (Lincoln & Guba, 1985, in Cresswell, 2013, p252) is the process of validation through solicited participants’ views of the credibility of findings and interpretation (Cresswell, 2013). Cresswell asserts the usefulness of convening focus groups of participants to review, not the transcripts or raw data, but rather the preliminary analysis of description and themes, as well as what might be missing. The researcher convened a focus group comprising of offender-participants from the first VEP and STP groups. The group discussed the findings and provided feedback on their experiences and thoughts on the programmes.

“Rich, thick description allows readers to make decisions regarding transferability ... because the writer describes in detail the participants or setting under study ... the researcher enables the readers ... to determine whether the findings can be transferred...” (Cresswell, 2013, p 252). In the analysis and reporting of findings, rich description is provided without jeopardizing anonymity of participants. A description of the setting under study was provided in Chapter 3.

‘Prolonged engagement and persistent observation’ is said to help build trust between participants and the researcher, and for the researcher to develop understanding of the culture, and provides opportunity to check out misinformation created by distortions of participants or researchers (Ely et al, 1991; Erlandson et al, 1993; Glesne & Peshkin, 1992; Lincoln & Guba, 1985; Merriam, 1988; cited in Cresswell, 2013). This research sought to achieve this method of validation through use of study design (mixed-method), ‘peer reviews’ and ‘member checking’. The researcher, by virtue of her employment was immersed in the prison; she sought cultural knowledge and understanding of Bermuda through her attendance at lectures (e.g. MP Walton Brown lecture on immigration at the Bermuda Industrial Union on 03.12.13 & a ‘Structural Racism Workshop’ at the Human Rights Commission – 22.01.14), reading and relationships (including friendships) with people in the community. The researcher attended the Restorative Justice Week workshops and panel presentations in October 2013 & 2014. As a non-Bermudian the researcher also sought critical feedback from two Bermudians on chapter 3, who were also familiar with the DoC. The researcher was conscious of wanting to be respectful of the island and its culture as an expatriate.

Another method of validation that would be employed was ‘negative case analysis’. The researcher reported on all data and made it explicit when specific data was excluded. ‘Clarifying Researcher Bias’ was partially achieved through the reflective account the researcher provides above in this chapter. For the purpose of validation it is vital that the reader understands the researcher’s position, biases and assumptions that could impact the inquiry (Merriam, 1988; in Cresswell, 2013). The researcher’s university supervisors provided the ‘external audit’.

The remainder of the chapter provides information on ethics, selection and participant demographics.

Ethics II – Action and Research

A concern of research ethics was whether or not research may lead to the disclosure of illegal activity or incriminating evidence. This was a very obvious concern as disclosure of criminal activity was central to the experimental programme. Only convicted offenders would be approached to participate in the initiative and research. The limits of confidentiality were made explicit on the consent forms and offenders were also reminded verbally to not disclose

detailed information for any offences they had committed but had not been convicted for. Victims were also requested not to ask such information of the offenders. There was also risk of participants experiencing distress by virtue of participating in the action being researched. Based on guidance, risk assessments were conducted to ensure the management of any potential risks to participants. All participants for the conferences were assessed for suitability to participate in conferencing.⁹¹ The researcher made contact with counselling services that could be accessed by victims, and DoC staff would be available to provide support to the offenders.

While face-to-face conferencing has been found to be the most satisfactory for participants, guidance advocates that when a face-to-face meeting is not appropriate alternatives should be offered such as shuttle mediation or an exchange of letters (Restorative Justice Council, 2011). This was to be part of the current action, and where the victim may decline or one of the parties opts out, an alternative would be offered.

“The guidance has been strengthened to make clear that, other than on safety grounds, participation is a participant’s choice, not that of the practitioner.” (Restorative Justice Council, 2011, p6). On the basis of this guidance, the facilitators and researcher would not make a judgment on who had been affected by the crime and who was not.⁹² Contact would be made with the direct victims first and dependent on their wishes and those of the offender, other community/witness victims would be consulted. Both victims and offenders were asked who they thought should be involved in their conference (Restorative Justice Council, 2011).

As the initiative was new and only convicted-offenders were participating, the conferences were to be held at the Westgate facility. However, whenever the risk assessment did not identify any safety concerns and the corrections security and facility Chief were in agreement, the conferences would be held in a unit external to the establishment building but within the facility

⁹¹ There is plenty of guidance on the elements that should form part of the assessment (e.g. NOMS, 2002; Restorative Justice Council, 2011; Umbreit, 2000; Wachtel et al, 2010) and these were followed.

⁹² However, the facilitators and researcher may “Assess who else in the participants’ circles has been harmed by the crime/incident and might benefit from being involved...” (Restorative Justice Council, 2011, p14) and suggest such individuals to the main stakeholders. “Facilitators may also invite individuals who do not clearly fall into the category of victim, victim-supporter or offender-supporter, but who have been affected by the incident in some way – perhaps someone who witnessed the incident or an investigating police officer.” (Wachtel et al, 2010, p188).

estate. With this set-up, the conference could also allow arrivals to be managed in such a way, that participants did not all wait in the same area, were not left alone and had access to support and information as per guidance (Restorative Justice Council, 2011).

Information Sharing with Stakeholders

The researcher extended information about the action research to a number of agencies and had meetings with a number of stakeholders including community agencies and non-governmental organizations, such as the Human Rights Commission, Centre for Justice, the Parole Board and Bermuda Police Service (BPS). The researcher also delivered a presentation to the DoC staff, and separately to the senior managers of the BPS.

In November 2015 the researcher and RJ team gave a free public presentation of the initiative at the Cathedral Hall in Hamilton as part of RJ week. At this time the researcher took the opportunity to put out a survey on RJ for those who attended (see Appendix 6 for the results of this survey)⁹³.

During the course of the action it became apparent that the public should be informed of the initiative. In an early newspaper article (2nd February 2015), the initiative was published as part of a series of articles that were being written about the work of the DoC (see Appendix 4 for newspaper articles written on the initiative).

Research Participants: Selection & Demographics

Sampling Techniques & Issues

Purposeful sampling was employed and specifically criterion sampling to select both incarcerated offender-participants and victim-participants. Criterion sampling is a common strategy for qualitative research as “... all individuals studied represent people who have experienced the phenomenon.” (Cresswell, 2013, p155). Offender-participants had to meet specific criteria in order to be suitable to participate in the programmes (e.g. no active mental health conditions; they had to admit the offence or their part in the offence and have

⁹³ This was adopted from a survey conducted by the Restorative Justice Council (UK) with the council’s permission.

identifiable victims). As per guidance (e.g. NOMS 2013; Restorative Justice Council, 2011) on implementation and delivery of RJ interventions cases involving sexual violence should be facilitated by those with specialist knowledge of this type of crime. Offenders with sexual offences as their index offence were excluded from participation in the programmes during the pilot phase in which the research was being conducted. There were also other exemptions that are not uncommon, identical to Jolliffe & Farrington's (2007) research on violent offending programmes - "Domestic violence, sexual offending and offending by persons with a personality disorder or mental disorder were treated as discrete groups, distinct from general offending, and therefore excluded." (Jolliffe & Farrington, 2007, piii). Strang (2001, in Menkel-Meadow, 2007) also points out that victimless crimes (for example, drink driving offences and drug-offences) are unlikely to be subject to RJ, as encounters with victims is minimal.

Offenders were allocated to either the VEP or STP, and matched for their index offences (and where possible for age and length of sentence). Victim-participants who engaged in the STP were not selected by the researcher, but rather recruited by the Prison Fellowship facilitators who delivered the programme. Direct victims, who voluntarily agreed to participate in conferences, and the research, were identified as the direct victims or witness/community-victims of the offenders who volunteered to participate in the conferences.

Description of Research Participants

Offender-Participants

It was intended for 36 offenders to participate in the study, with approximately 4-6 of these going onto participate in a conference. Table 1 illustrates the number of offenders who participated in the programmes. Of the offenders 28 were Bermudian, all of the offender-participants' ages are illustrated in Table 2.

Table 1 – Illustrates the retention data of offender-participants for each of the programmes.

	Treatment Intended n=36	Agreed to participate	Non-starters ⁹⁴	Dropouts ⁹⁵	Limited participation ⁹⁶	Completions
VEP	18	12	0	0	1	12 (100%)
STP	18	17	2 (12%)	1 (6%)	1	14 (82%)
Totals	36	29	2 (7%)	1 (3%)	2	26 (90%)

Completions included those, in the preceding column who did not fully participate, but completed; it excludes dropouts and non-starters.

Victim-Participants

It was intended for 18 victims to be recruited from the community to participate in the STP. 16 victims agreed to participate – 15 started; 1 dropped out (male) and 1 was a non-starter (female). The STP victims consisted of 13 females and 3 males; of these 15 were Bermudian and 1 was an expatriate; their ages are illustrated in Table 2. There were 2 primary conference victims and one witness-victim;⁹⁷ of these all were Bermudian.

Table 2 – Illustrates the age range, mean and median of all the participants across the interventions.

	STP Victims n= 16	Conference Victims n=3	STP Offenders n= 17	VEP Offenders n= 12	Conference Offenders ⁹⁸ n= 2
Age range	32 – 71		24 – 56	21 – 47	
Mean	59.62	65	39.2	33.6	32
Median	62.5		38	34	

⁹⁴ The total 3 non-starters were happy for their pre-questionnaire data to still be used as part of the research.

⁹⁵ Dropouts are those who start the programme/attend sessions and then chose to withdraw.

⁹⁶ ‘Limited participation’ refers to those participants who finished the programme but did not fully participate in all aspects of the programme, or were not present for the minimum number of sessions required for full completion.

⁹⁷ The term ‘primary victims’ was used to distinguish between the main victims and secondary victims or victim-supporters. The primary victims were those that were interviewed pre and post conference.

⁹⁸ The ages of ‘Conference Offenders’ were also represented in the STP and VEP columns, as they were required to participate in one of these programmes before participating on an RJ conference.

Data Analysis

As mentioned above, the research using a mixed-method design for the added purpose of triangulation and complementarity, also set out to analyse and report on the qualitative and quantitative data simultaneously, were appropriate.

During the period of the phase one programmes (1st September 2014 - 31st August 2015) the average daily convicted adult male population was 162. The offenders that participated in the programmes therefore accounted for 18% of the entire adult male population. However, the sample would not be sufficient for tests of significance.

A number of quantitative analyses were to be run on the data collected, specifically in relation to examining the effects of the programmes on the offenders' levels of empathy. The IBM SPSS (Statistical Packages for Social Sciences) software was used to obtain descriptive statistics. The NVivo software package was used to analyse qualitative data.

It was intended for the data to answer a number of questions, which fell into 5 broad domains (victim and offender views of the CJS and RJ; motivation & retention; empathy; programme evaluation; and the conference experience). The chapter provides a description of each of the domains.

Victim and Offender Views of the Criminal Justice System (CJS) & Restorative Justice (RJ)

As Bermuda does not conduct a national survey of confidence in the CJS, the researcher was interested to know, the participants' opinions of the CJS. A series of questions were asked about the participants' opinions of the courts, police and corrections department. This could inform on the participants' views of RJ and general satisfaction of the CJS and justice as a concept. Further, it could suggest how receptive people might be to RJ in Bermuda. Extreme RJ advocates suggest that RJ could replace the CJS, albeit that there are numerous reasons why this would not be feasible.

Motivation & Retention

The 'motivation and retention' domain was concerned with the participants motivation for participating in RJ; and could inform on ways of increasing participants motivation; methods of

contact and reasons for declining, fears and anxieties of those participating in the programmes. The data was to also inform future practice.

Empathy

It was an objective of the action research to explore whether participation in the two prerequisite programmes (VEP & STP) could increase the offender-participants level of empathy for their victims; as was found in research conducted on the STP⁹⁹. It was also necessary to see if there was a difference between the programmes potential to increase empathy, with the STP likely defined as a ‘mostly-orientated’/‘relational’ RJ programme and the VEP being defined as a ‘partially-orientated’/‘individual’ RJ programme (McCold, 2000; Toews, 2006; respectively). Based on previous empirical research, it was of further interest to see if there was a difference in empathy levels between the offender-participants convicted for violent offences and property offences.¹⁰⁰

Programme Evaluation

Programme evaluation was to cover the offender and STP victims opinions and experience of the two prerequisite programmes, including their evaluations of the facilitators skills and impartiality; how the programmes were managed – in terms of information received; corroboration and safety. It was considered crucial to the sustainability of RJ in the DoC, whether or not participants would recommend the programmes to others.

Victim and Offender Views of the Conferencing Experience

Analyses within in this domain would be concerned specifically with the experience and effects of a conference, as expressed by the victim and offenders.

This chapter explained how it was important to gather qualitative data such conducting interviews and focus group, to obtain clear meaning attributed to the views expressed by those

⁹⁹ Feasey & Williams (2009) An Evaluation of the Sycamore Tree Programme: Based on an Analysis of CRIME PICS II Data. Sheffield Hallam University: Hallam Centre for Community Justice.

¹⁰⁰ The developers of the CRIME-PICS II questionnaire (Frude et al, 2013), state that scores on all scales can discriminate between offences against the person (violence), property offences and motor offences.

that participated in the study. Member checking as a strategy of validity, also helped elucidate the participants' meanings and guide against any bias or social constructs of the researcher. This was further in keeping with the social constructionist perspective that underpinned the research. Although as a pilot the sample was small (involving 29 offenders and 4 primary or witness victims, from whom data was gathered), it was explained that some quantitative data would be useful. Quantitative data would be useful in shedding light on the possible changes in empathy shown by the offenders and the CRIME PICS II psychometric was selected as it has been in similar studies before (e.g. Feasey & Williams, 2009). Quantitative data was also used to gauge the participants' collective view of the island's CJS. The researcher as the prison psychologist would not conduct the questionnaires or interviews with the offenders before completion of the phase-one programmes, but wanted to explore how to improve practice in the prison, and between the prison and community, and this therefore was a piece of action research. Using triangulation, the research included offenders and victims from the community; interviews, psychometrics, questionnaires, observation and focus groups, that together would allow exploration of the participants experience of the experimental programme, the CJS and RJ. As a mixed-method study, the findings would be presented together in the next chapter (Chapter 6 – Findings).

❖ CHAPTER 6 – FINDINGS

“... it is for participants of restorative justice to choose the words and thereby develop the means for resolving the conflict.” (Shapland, 2013, p62)

“... outcomes, by themselves, are not the defining characteristic...” (Shapland, 2013, p63)

The current chapter provides the findings of the action research.

Analysis by Domain

Reporting of the findings will be presented in domains as highlighted in the previous chapter. Both qualitative and quantitative data was gathered, and in accordance with true mixed methodology, were analysed simultaneously (Greene, et al, 1989). This provided both complementary and triangulated data (Greene, et al, 1989).

The findings address the following objectives of the study –

- To explore victims’ and offenders’ opinions generally, of the existing CJS, and specifically in the management of their cases.
- To explore the experience and effects of an experimental programme of RJ for victims and convicted offenders in Bermuda.

Findings on the first aim are presented in the first domain ‘Victim and Offender Views of the CJS & RJ’. Findings on the second aim are covered over a further four domains, which focus on Motivation and Retention; Empathy; Programme Evaluation; and Victim-Offender Views of RJ and the Conferencing Experience.

Victim and Offender Views of the Criminal Justice System (CJS) & Restorative Justice (RJ)

As an aim of the thesis, the researcher was interested - to explore victims’ and offenders’ general opinions of the existing CJS in Bermuda, and specifically in the management of their cases. It was considered imperative, as a new initiative to Bermuda, that an indication of the receptiveness for RJ also be gauged. Domain one includes data from one victim pre-conference.

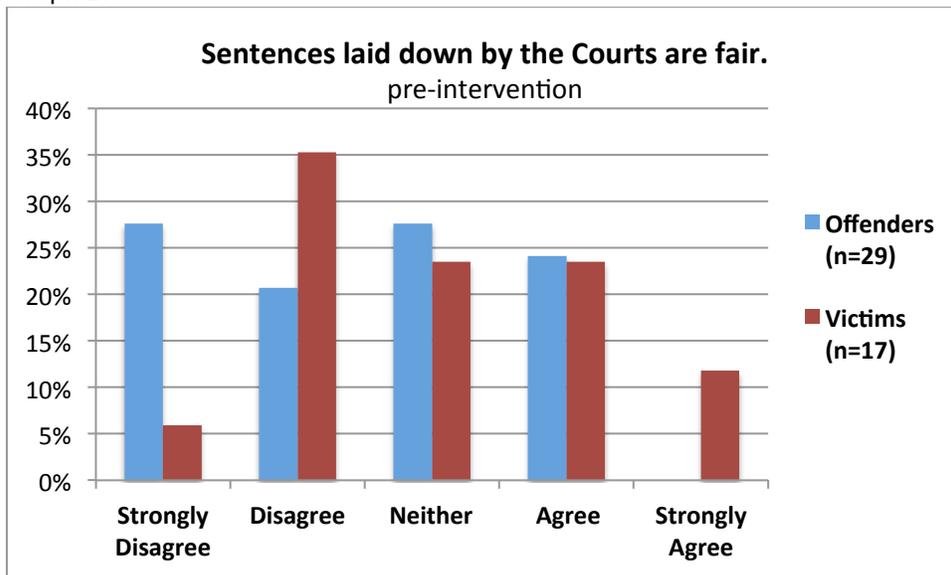
General Questions on the CJS

To explore general opinions of the CJS, seven main statements were presented as part of the pre-intervention questionnaires. All victim and offender-participants were asked to rate the statements using a five-point Likert-response format based on whether or not they ‘strongly agreed’; ‘agreed’; ‘neither agreed nor disagreed’; ‘disagreed’ or ‘strongly disagreed’ with each statement.

The results for each statement are presented below in graphs 1-7, along with relevant complementary and triangulated data whether at the pre or post-intervention stage.

46 participants gave a response to the statement – ‘Sentences handed down by the Courts are fair’. Graph 1 shows the responses by participant group.

Graph 1.



Participants were more likely to ‘disagree’ (especially victim-participants) or ‘strongly disagree’ with the statement, although a substantial proportion ‘neither agreed or disagreed’ that sentences handed down by the Courts is fair.

During a Sycamore Tree programme (STP) session when the group discussed the topic of ‘responsibility’, one of the offender-participants stated - *“I feel victimized by the courts.”* In

another STP session, offender-participants verbally disagreed as one offender suggested a prison sentence could be a form of restitution for some victims.

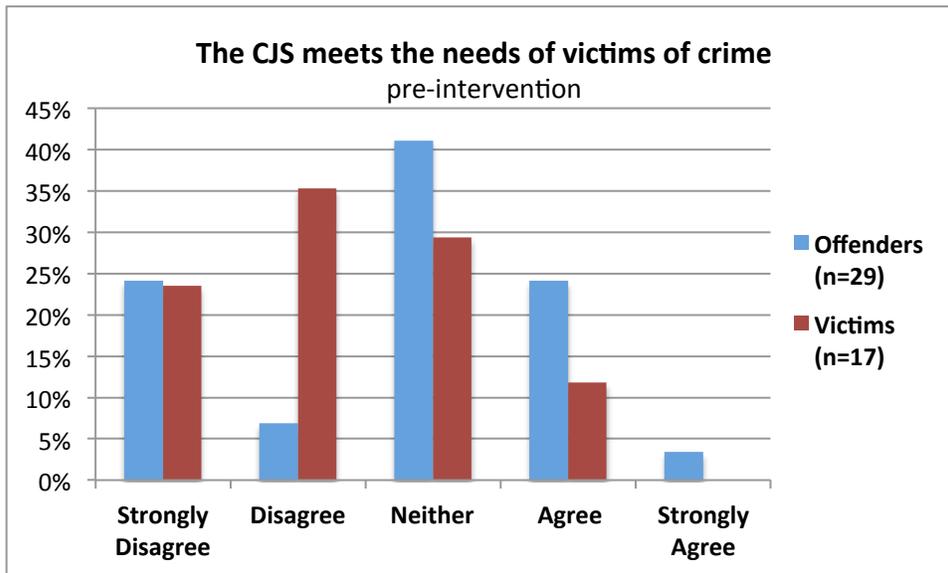
In the focus group (following completion of the first Victim Empathy programme (VEP) and STP), an STP offender-participant made the following statement –

“See the offender gets sentenced to time in jail, I don’t think that’s enough for a victim and I saw that, I saw that in that victim in that class, its not enough and I really felt for them its like okay judge sentenced you to time, okay what happens to me now, I’m happy now for the moment, but what happens after three years and your thinking about your loved one, or your thinking about what ... comes to restorative justice, victims need the same amount of help or more than the offenders get, you know we offenders we always get our Thinking for Change, we get this class we get that class that’s suppose to curb our thinking and our ways of offending but what is the victim getting, what is really there for a victim you know what I mean.”

This provided an insight into the thinking of offender-participants that was linked to the first and following statements, participants were asked to rate.

46 participants gave a response to the statement – ‘The Criminal Justice System meets the needs of victims of crime’; Graph 2 shows the responses by participant-group.

Graph 2.



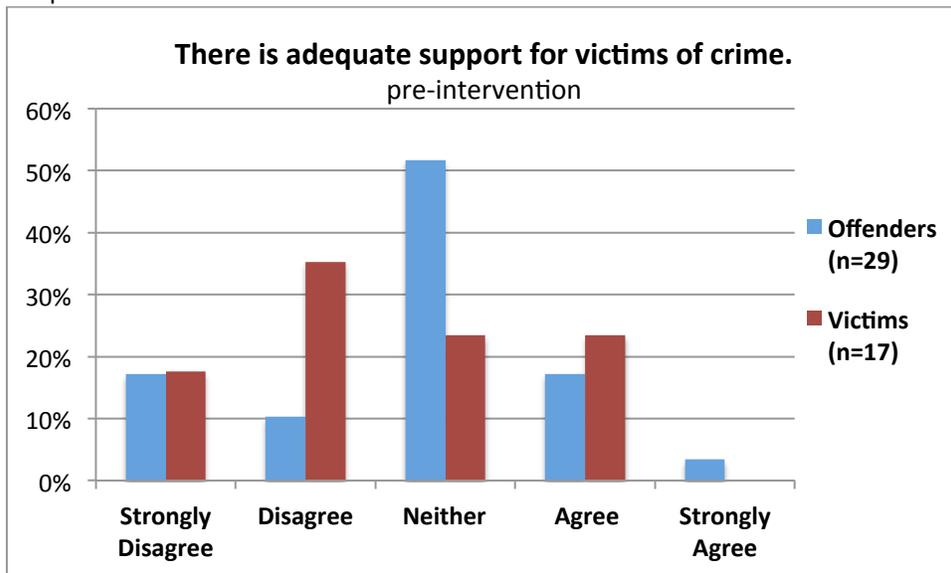
While some participants lacked knowledge of what victims might need, the majority of victim-participants ‘disagreed’ or ‘strongly disagreed’, with no victim-participant ‘strongly agreeing’.

A VEP offender-participant made the following statement with regards to victim needs during the focus group (post-programme), despite the absence of victim-participants in the programme

- “When you tap into a victim’s pain there ain’t no telling what you’re gonna get. Its gonna come at you, so um, what I feel is that victim’s should take some kind of twelve-step course, if you ask me you know what I mean, I believe victims ought to get together and talk about their pain, their hurt, what’s been done to them um, cause for them to walk around with that type of anger, is no telling what’s gonna be a trigger ... cause you ain’t had a chance to vent your frustrations about your hurt and what put you in that place.”

As an indicator of community resources, 46 participants gave a response to the statement – ‘There is adequate support for victims of crime in Bermuda’. The group responses are illustrated in Graph 3.

Graph 3.



Offender-participants were largely unsure, pre-programme, about the services available to victims in the community. However, twice as many victim-participants ‘disagreed’ and ‘strongly disagreed’, than those that ‘agreed’.

During the focus group of the first VEP and STP offender-participants, when asked what they felt they learnt about victims, one offender stated -

“And another note with our government right even, I’m sure they have programmes out there but how long do they last before they say okay you’re better now and then when you don’t feel better you gotta go pay for personal services, you know what I mean, that should just be something that I feel should be set aside in the budget ... just like you have drug counselling out

there and stuff, you need some serious victim, permanent victim counselling for crimes when people really think they need it and look into these people’s lives don’t let them just walk away and say I’m okay, a lot of people will say that, a lot of victims will say ‘I’m okay’ but deep down, okay so just because they said their okay what you just forget about them, I would say check up on em, check up on em for a period of two years if its gotta be ... yeah this is for the victims [another offender interjects ... like how the probation officer check up on their cases] yep exactly ...”

Before participating in any of the interventions, victims and offenders were also asked – ‘How respectful and considerate they thought agencies (Police & Courts) of the CJS are towards victims of crime? Table 3 shows the results for the Police and Table 4 shows the results for the Courts.

Table 3 – Shows the victim and offenders responses of how respectful they feel the *police* are towards victims of crime.

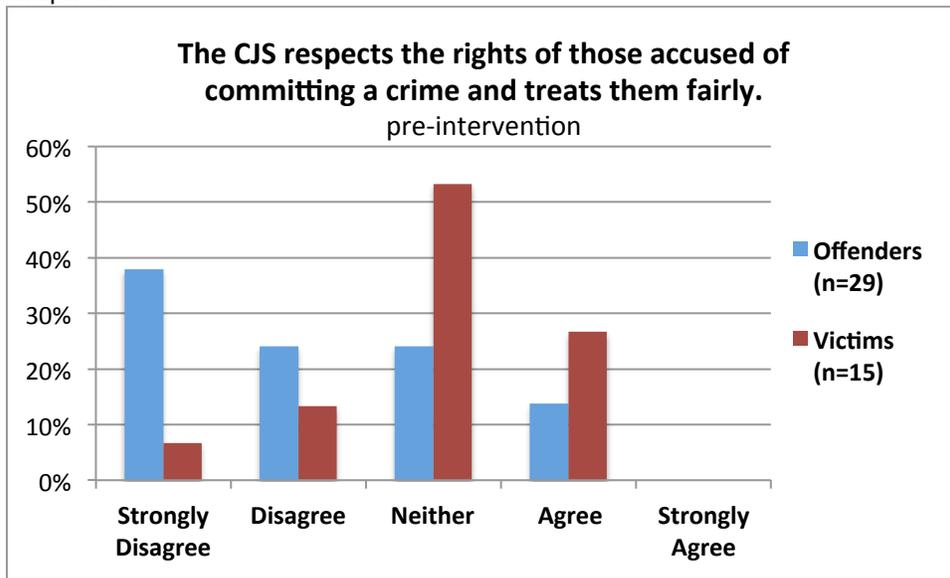
	Response Options			
of the POLICE	Very Respectful	Quite Respectful	A Little Respectful	Not At All Respectful
Victims (n=16)	2	5	8	1
Offenders (n=29)	3	11	11	4
<i>Totals (n=45)</i>	5 (11%)	16 (36%)	19 (42%)	5 (11%)

Table 4 – Shows the victim and offenders responses of how respectful they feel the *courts* are towards victims of crime.

	Response Options			
of the COURTS	Very Respectful	Quite Respectful	A Little Respectful	Not At All Respectful
Victims (n=16)	4	3	9	0
Offenders (n=29)	7	10	9	3
<i>Totals (n=45)</i>	11 (24%)	13 (29%)	18 (40%)	3 (7%)

44 participants clearly indicated a response to the statement – ‘The Criminal Justice System respects the rights of those accused of committing a crime and treats them fairly.’ Their responses are illustrated in Graph 4 by participant-group.

Graph 4.



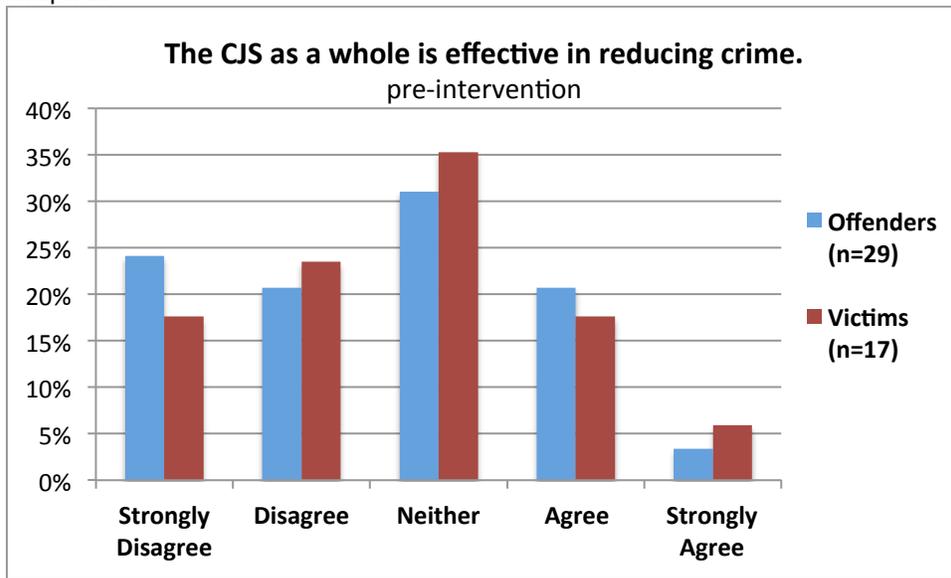
None of the participants ‘strongly agreed’ with this statement. While the majority of victims were unsure, close to two-thirds of the offender-participants either ‘disagreed’ or ‘strongly disagreed’ that the CJS respects the rights of accused offenders and treats them fairly.

Only the offender-participants were asked, pre-programme for their ratings on – ‘How respectful and considerate they thought agencies of the CJS (Police & Courts) are towards those accused of committing a crime?’ Table 5 shows the results for the Police and Courts.

Table 5	Response Options			
	Very Respectful	Quite Respectful	A Little Respectful	Not At All Respectful
POLICE	1 (3%)	5 (17%)	14 (48%)	9 (31%)
Offenders (n=29)				
COURTS	1 (3%)	9 (31%)	13 (45%)	6 (21%)

Turning to crime reduction, 46 participants gave a response to the statement – ‘The Criminal Justice System, as a whole is effective in reducing crime’. Their responses are illustrated in Graph 5 by participant-group.

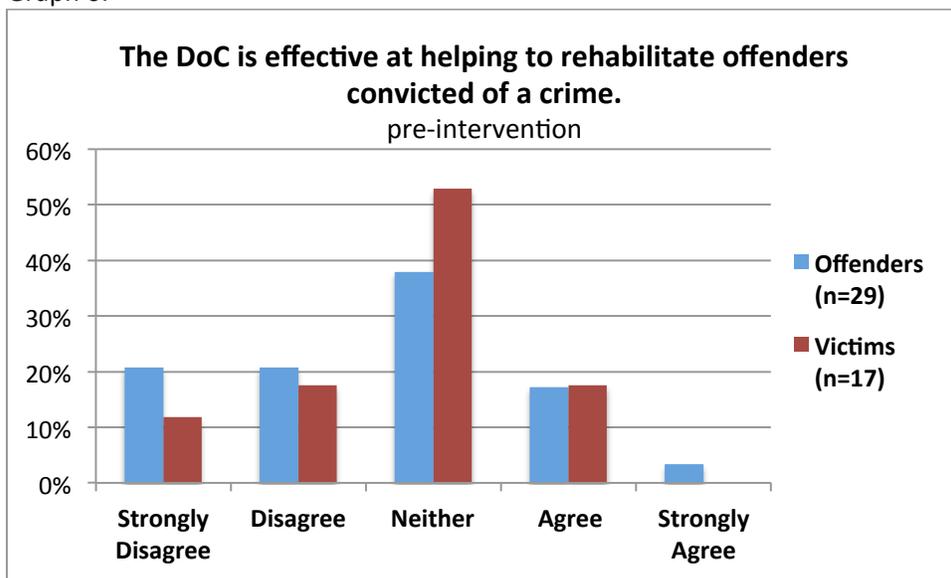
Graph 5.



Over a third of each participant-group ‘neither agreed nor disagreed’ with the statement. The rest of the participants largely leaned towards disagreement and strong disagreement with the statement.

46 participants gave a response to the statement – ‘The Department of Corrections is effective at helping to rehabilitate offenders convicted of a crime’. Their responses are illustrated in Graph 6 by participant-group.

Graph 6.



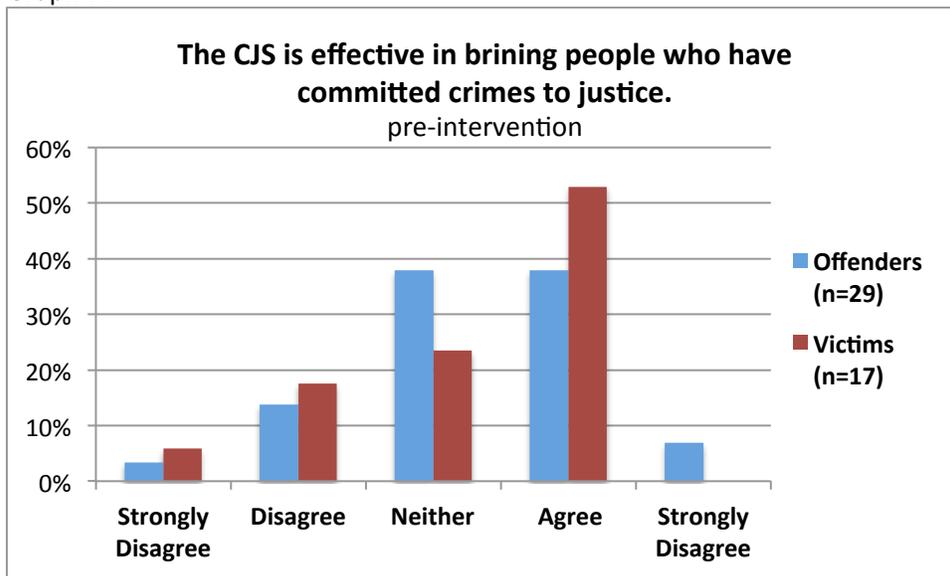
The majority of both participant-groups felt unable to provide definitive responses. However, a greater number of the offenders ‘disagreed’ or ‘strongly disagreed’ collectively; finding the DoC ineffective at helping to rehabilitate offenders.

Post-programme in the focus group, a VEP offender-participant made a statement about the programmes and Corrections regime –

“All I wanna say is that, I would really like to see, especially these two programmes restorative justice and victim empathy continue, and keep continuing for the years to come and that along with that they really look at since they brought those into the prison, they really look at training these Basic Officers, training Officers period, more, on what these programmes about and how they need to play their part too, as professionals in this correctional service.”

46 participants gave a response to the statement – ‘The Criminal Justice system is effective in bringing people who have committed crimes to justice’. Their responses are shown in Graph 7.

Graph 7.



One STP offender-participant stated during a session - *“Our justice system in Bermuda is retarded.”*

Questions Pertaining to Personal Cases & Experiences with the CJS

In relation to the personal cases and experiences of the CJS, victims and offenders were asked different questions –

Questions asked of **Victims** included –

Were you called to give evidence in your case?

Do you feel you got the opportunity to say what you wanted in court?

Were you asked to provide a Victim Impact Statement?

Of 17 victims who provided a response – 11 indicated that they were not called to give evidence in their case. The remaining 6 indicated that the question was not applicable to them; this tended to be for reasons such as the offenders were never apprehended; the offence against them had not occurred in Bermuda or they themselves did not report the offence to the Police.

2 victims indicated that they ‘somewhat’ got the opportunity to say what they wanted in Court. Based on a scale of ‘Totally’; ‘Somewhat’ and ‘Not at all’.

3 victims indicated that they were asked to provide a Victim Impact Statement (VIS) (in addition 1 other victim said that they got this opportunity, with their case having been heard in the UK). 5 stated that they were not given the opportunity to provide a VIS.

Questions asked of **Offenders** included –

Did you have an opportunity to address those who had been affected by your actions, when you were in court?

Would you have liked to speak to those affected by your actions, when you were in court? Did you speak to your victims in court?

Did you have an opportunity to write to the Judge?

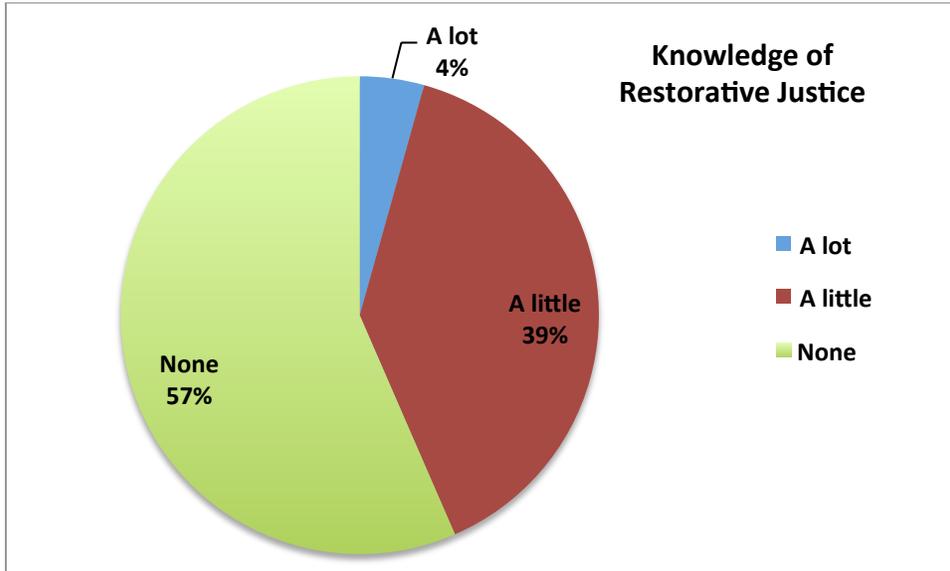
Of the 29 offenders that agreed to participate in the programmes – 34% (n=10) indicated that they had the opportunity to address the victims in Court.

59% (n=17) of the offenders indicated that they would have liked to speak with the victims of their case, with a further 14% (n=4) indicating that they did address the victims in court.

31% (n=9) offenders indicated that they had the opportunity to write to the judge.

General Motivation for, and Knowledge of Restorative Justice

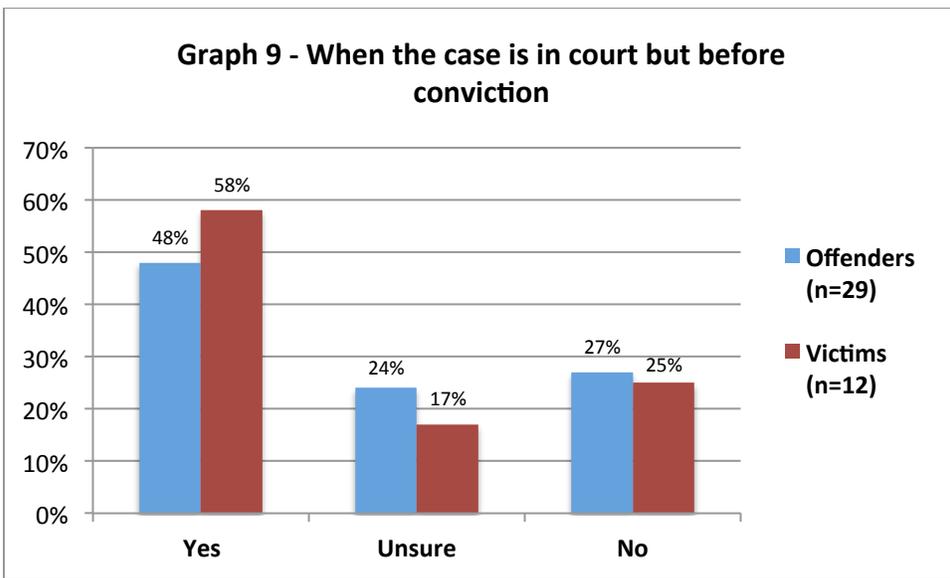
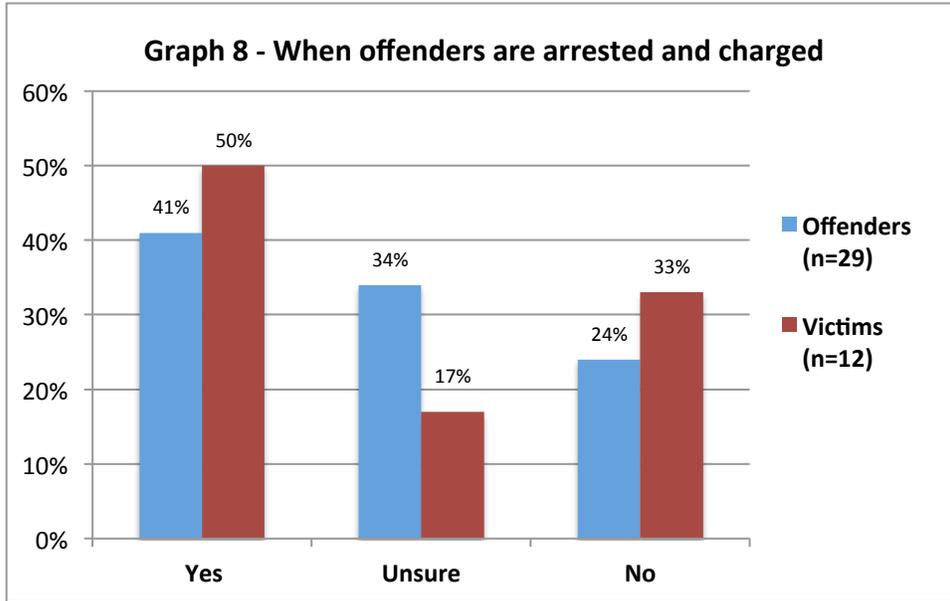
Before starting the programmes or conferencing, both victims and offenders (n=46) were asked if they had knowledge of RJ in Bermuda or elsewhere? The results are illustrated in the pie chart below.

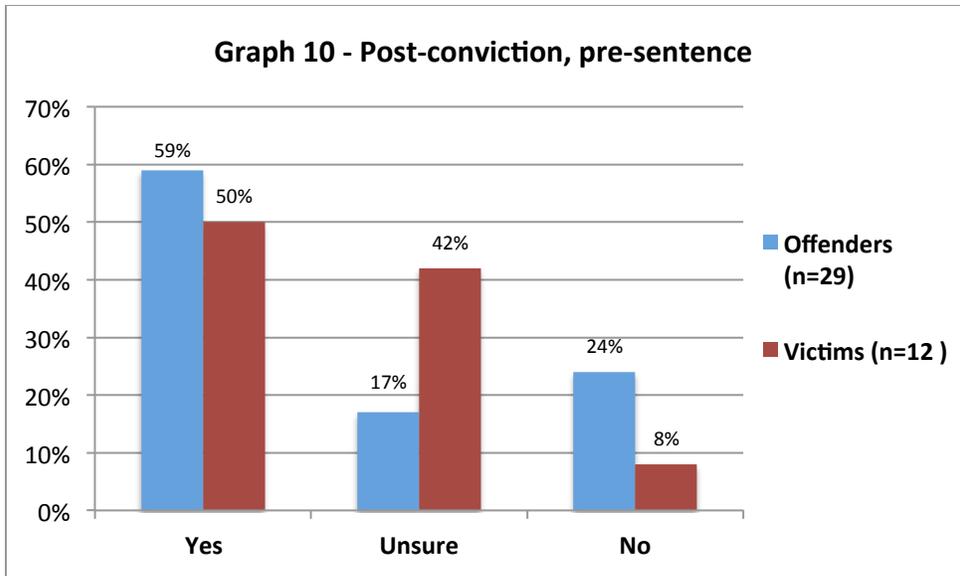


During the focus group, a discussion flowed between the offenders pertaining to RJ, the community and repair –

“You can take the classes up here and be striving for a goal like ... changing my life or understanding how you’re acting, and all that, the victim, you bump into them again and they don’t know that you took the step in the right direction, they’re still gonna look at you as the same person from before, so it feels like, as an offender your gonna feel as if your wasting your time and its easy for you to get like that ...” [another offender interrupts-] “That’s why I said earlier that you’re gonna have to make a more, bigger step ... as far as connecting the actual victim and the actual offender in some way it might be stages you have to implement to make it more transitional ... meaning you start light but its gotta be steps, as made, to make real restorative justice.”

Pre-intervention both victims and offenders were asked to consider, at different timeframes of a case, whether or not they would have been willing to be a part of an RJ intervention. Some victims did not feel that the questions being asked were applicable to their circumstances, for those that did respond their responses are illustrated in graphs 8-10 below, by participant-group.





At each timeframe (arrest, conviction, pre-sentence) most participants indicated a willingness to participate in an RJ intervention.

“Gives both offenders and victims an opportunity to share with each other: reasons for crimes for offenders; feelings of being victimised for victims. Both parties can hopefully grow from the process and be in a better place after.” (STP offender-participant)

“To help people face the things they haven’t been able to deal with on their own.” (STP victim-participant)

“I think the benefits are endless. Not only is the inmate or convicted person given second chance to redeem themselves, but they are spared the headaches that jail comes with. I do believe in punishment, but I also believe there are other solutions rather than locking up a person as the only option.” (VEP offender-participant)

“The main benefit is in bringing together “offenders” n “victims” It takes a lot of courage – for both sides – inmates must wonder if they’re going to be blamed & shamed & victims may worry they’ll be further victimised. And neither transpired! This helps to dilute the “us & them” divisiveness. Heading to more openness & an avenue to healing.” (STP victim-participant)

63% (n=10) of victims-participants provided a written response to the question - 2 of these stated *“The advantages far out way [any] negative consequence.”* and *“Negative? Really?”*
 Other responses included -

“Some offenders may not be prepared to accept personal responsibility. Victims may still be angry and unready to forgive, staying stuck and unable to move forward.”

“I don’t really think there were negative consequences however persons (some) may relive the experience. But they were given plenty of time to realise this could happen.”

Effects of RJ on Perceptions of the CJS

Offender-participants (n=4) who were to meet with their direct victims (after the phase-one programmes) were asked to complete a pre-conference questionnaire. This included the identical statements about the CJS, as were asked pre-phase one participation.

The table below shows their responses before the phase-one programmes (black stars) and their responses after the phase-one programme/pre-conferencing (red stars).

Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
Sentences handed down by the Courts are fair.				
	* **	* **		**
The Criminal Justice System meets the needs of victims of crime.				
	* **	* **		**
There is adequate support for victims of crime in Bermuda.				
	* *	** *	**	*

Strongly Agree	Agree	Neither	Disagree	Strongly Disagree
The Criminal Justice System respects the rights of those accused of committing a crime and treats them fairly.				
	*	* **	*	***
The Criminal Justice System as a whole is effective in reducing crime.				
*	*	* *	**	**
The Department of Corrections is effective at helping to rehabilitate offenders convicted of a crime.				
* *	* *	*	* *	*
The Criminal Justice System is effective in bringing people who have committed crimes to justice.				
* **	* *	* *	*	

Domain One Summary

The offenders and victims that started the programmes were very receptive to RJ before embarking on the programmes. This was further evidenced in participants being willing to engage in RJ interventions at different stages of a crime having been committed and with little knowledge of RJ before participating in the programmes. There was a marked perception of the existing CJS as being ineffective to meet the needs of victims; uphold the rights of people accused of offending; to proactively reduce crime or rehabilitate those convicted of crimes. The most positive perception of the CJS was that it was somewhat effective in ‘bringing those who have committed crimes to justice’.

Post-programme, participants spoke more readily of the perceived benefits of RJ, than the possible negative effects. Similarly, offender-participants (who were to engage in conferencing) indicated more positive perceptions of the CJS post-programme.

In cases of crimes, committed and dealt with in Bermuda, the victim-participants indicated that they were largely excluded from giving evidence at court, and of those that indicated they had been involved in the case, none felt that they had full opportunity to say what they wanted as part of the judicial process. Interestingly, despite a significant number of the offender-participants indicating that they had the opportunity to address the victims in court, a greater number indicated that they would have liked to address the victim in court and very few stated that they actually did.

Motivation to participate in the DoC's RJ initiative and the retention of participants would be crucial to the sustainability of the project. For this to happen it would be important to explore whether or not the programmes could begin to address the needs of victims' and offenders. Such information would also help to inform future practice and policy. This is covered in the next section of the chapter.

Motivation & Retention

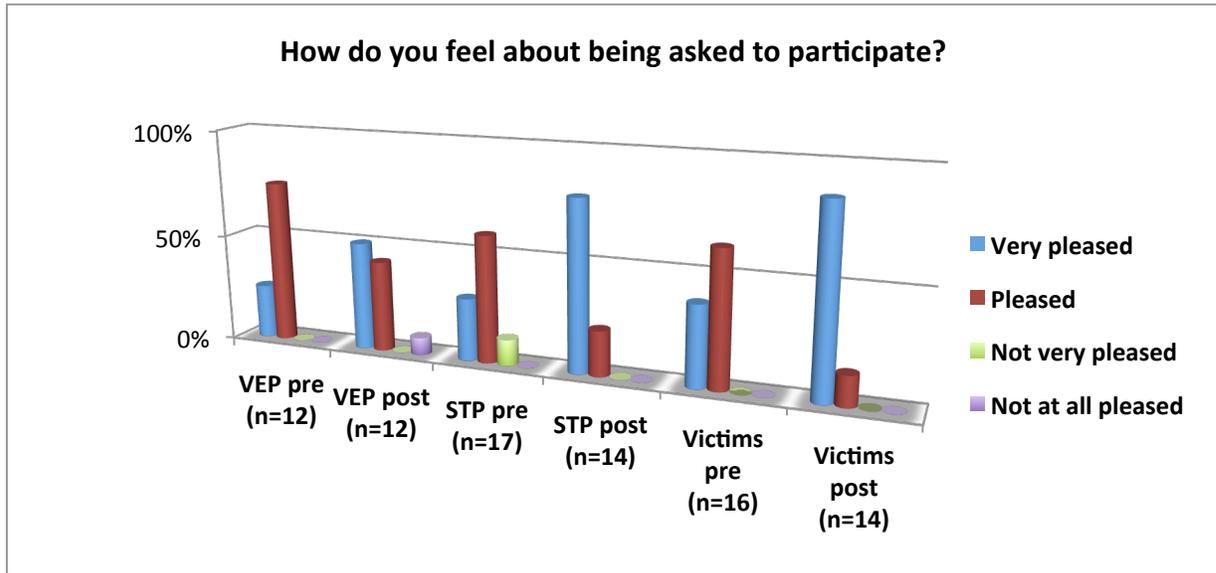
Motivation

In the initial assessment of suitability for the offender-participants, they were asked to rate how motivated they were to participate in the programmes (VEP & STP) on a scale of 1-5, where 1 = 'Not at all motivated' and 5 = 'Very motivated'. Of the 26 offenders that participated in the programmes 100% rated their motivation 3 and above; 83% 4 and above; 55% rated their motivation as 5 – very motivated. The average rating of motivation for the VEP offenders was 4.42 and the average for STP was 4.35.

Pre and post-programme participation, both victims and offenders were asked to indicate how they felt about being asked to participate in the programmes. The graph below [graph 11] shows the pre and post ratings for each separated group of participants (VEP offender-participants; STP offender-participants and the STP victims-participants).¹⁰¹

¹⁰¹ Differences in the pre and post numbers for the STP offender and victim-participants, is due to drop-outs, non-starters and participants failing to answer the question.

Graph 11



Across each of the participant groups, the number of participants that were ‘very pleased’ to have been asked to participate increased post-programme. For example, of the two STP offender-participants who were ‘not very pleased’ pre-programme, both rated their feelings on participation as ‘very pleased’ post-programme. The one VEP offender-participant, who indicated being ‘not at all pleased’ post-programme, was the one VEP offender who did not fully participate in the programme. However, he had rated his initial level of motivation as 3.

During the focus group, held with a selection of offender-participants from the first VEP and STP programmes that agreed to meet, they raised concerns regarding the assessment of offender suitability for programme participation. These excerpts came out in response to the question – ‘Prior to going into the group and hearing about it, what were you most fearful of?’

“Well for me ... confidential type of stuff like um I had um I wanna say something about um screening and picking the right guys for the classes because I think that’s very important, you know when your doing your screening process like, to take people that are really serious and really wanna help themselves instead of people to just make up the numbers you know ...”

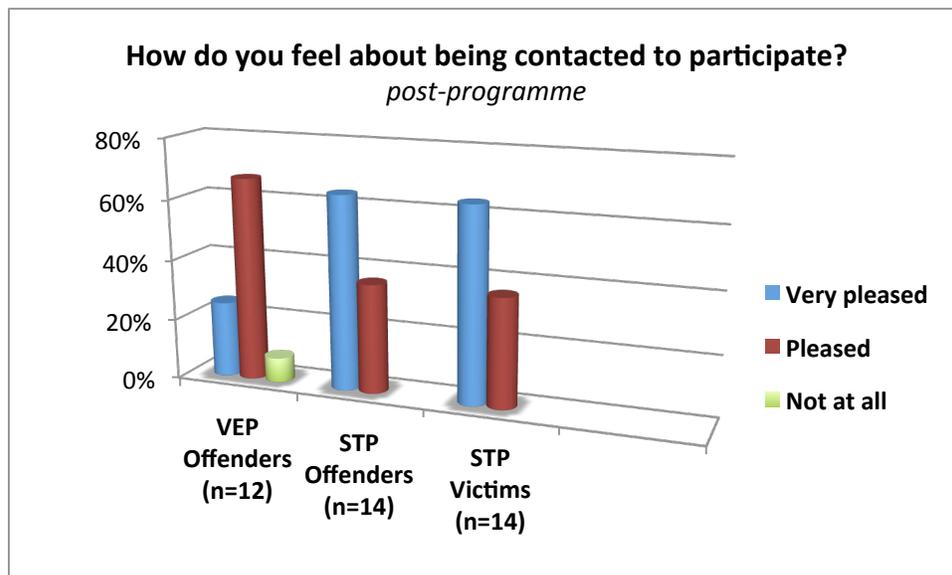
*“That was the biggest fear right there because the first thing that I asked was um Ms ***** at the start of the class was um was who was gonna be in the class with me because you don’t wanna open up to somebody whose immature you know cause its very confidential information and you don’t want them to go around and blabber about what we’re talking about in class ... if we’re all trying to help each other out, that was my biggest fear right there.”*

*“I was more worried about what you were going to do with the information that you got out of the class, where was this information gonna go? what purpose were you going to use the information for ... that was the greatest fear I had because your asking inmates from different backgrounds you know what I mean, to come together so you threw us all in one pot and lets see what we can get out of this ... I wasn’t so worried about who was gonna be in the classroom, its either your gonna be a man big enough, strong enough to stand on your own two feet and whatever happen in the past if you felt that the rest of the population [inmate population] needed to hear it that’s on your shoulders, see what I’m saying ... and I’m gonna tell you like I tell everybody else ***** has his own cross to carry and I have my own cross to carry but what ***** does what ***** dont, that aint got nothing to do with me see, its not my business, so they say ‘hey you know what that boy done’ ... that’s not what this, this class was for....”*

The focus-group offenders were referring to the VEP offender-participant who rated his feelings as ‘not at all pleased’ post-programme and who did not fully participate. This also spoke to the recruitment of the participants and their awareness of the programmes being researched.

Similarly, post-programme all participants were asked – ‘How do you feel now about having been contacted to participate?’ [Graph 12], the findings confirm the results above (pertaining to how they felt about being asked to participate pre and post).

Graph 12



Two victim-participants reported their motivation as wanting - *“To get a better understanding of the convicted person and their thoughts on how or why it happened. To heal from the incident.”* *“To understand the mind and reasoning of someone who commits a crime. To see if they realize or know the impact of their actions have on other people i.e. the victims, and the consequences of their actions.”*

Retention

As illustrated in the previous chapter, some participants agreed to participate in the programmes but then failed to start the programme or chose to drop-out part way through. The tables below set out the number of participants it was hoped would participate; those that started dropped-out and completed. The table is split into offender-participants and victim-participants.

Offenders	Treatment Intended n=36	Agreed to participate	Non-starters	Dropouts	Limited participation ¹⁰²	Completions
VEP	18	12	0	0	1	12 (100%)
STP	18	17	2 (12%)	1 (6%)	1	14 (82%)
Totals	36	29	2 (7%)	1 (3%)	2	26 (90%)

Victims	Treatment Intended n=18	Agreed to participate	Non-starters	Dropouts	Limited participation	Completions
STP	18	16	1 (6%)	1 (6%)	1	14 (88%)

One of the STP offender-participant non-starters and the one dropout, were two offenders very close to release. The victim-participant that dropped out did so due to work obligations that began to conflict with the start time of the programme. The one victim-participant, who did not start the programme, failed to start because of their fear of going into a prison and disenfranchised grief. The latter victim-participant raised these issues during the pre-programme assessment, although they had maintained a desire to participate.

¹⁰² Limited participation referred to those that finished the programme, but did not attend the minimum number of sessions to be considered a full completion.

Post-programme, the STP participants were asked – How appropriate the prison was as a setting?

‘Very Appropriate’ - 43% of victims (n=6) and 50% STP offender-participants

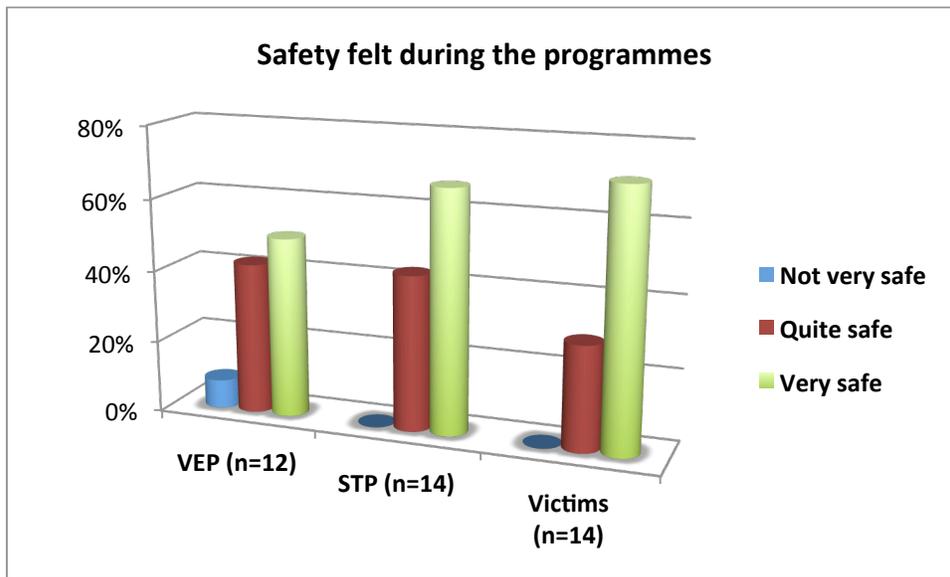
‘Appropriate’ - 57% of victims (n=8) and 36% of the STP offenders (n=5)

‘Neutral’ - 14% of the offenders (n=2).

None of the participants felt that the prison was ‘not very appropriate’ or ‘not at all appropriate’.

Regarding their sense of safety, all participants were asked post-programme - How safe they felt during the programme? The results are illustrated in graph 13 below. Safety was not defined and was likely interpreted differently by the different participants. The offenders were more concerned about confidentiality and disclosure, while the victims interpreted safety in terms of the potential for conflict and physical safety.

Graph 13



During session two of an STP, one of the victim-participants said - *“Being in this atmosphere has taken the fear right out of me.”*

During the focus group physical safety was raised as a potential issue for victims. Referring to where conferences should be held -

“I’m saying I think it should because let me show you the reason why I suggested this here, I said it should be done up here (referring to the prison) because you know what, you can sit behind

that glass up there and you know they can say what they want, act how they really want ... without feeling intimidated, you know that glass you can't break it, you feel what I'm saying. [another offender questions – "your talking about glass"] up in visits." The second offender argues - "Its not even about intimidation like, I think its more about healing, I'm talking about one-on-one with the offender."

Post-programme, the offender-participants (n=26) were asked - If they felt supported by those in the programme with them?

77% (n=20) reported to feeling 'a lot' of support; 19% (n=5) felt 'a little' support and 4% (n=1) reported to feeling 'not at all' supported (the latter, an offender who did not fully participate).

Of the victim-participants (n=14) -

64% (n=9) reported feeling 'plenty' of support, while the remaining 36% (n=5) felt 'enough' support.

Motivation for RJ Conferencing

During the focus group the researcher asked the offenders – What they learnt about victims on the programmes. During rapid contributions, one offender stated -

*"I agree with what ***** said as far as victims, you know, cause I saw that myself and I know you asked this question first but I had to think about it a little bit and what I did learn from the class was that I have the ability to forgive, you know what I mean so, and that's the thing like, its hard for these people that's been victimised to, to just forgive someone off the whim, that's why I feel that this class is, I mean it's a good start as far as in the direction of restorative justice but at a certain date more is gonna needed, need to be done as far as bringing about real restorative justice to the actual victims and the actual offenders."*

As the contributions continued, other offenders spoke on the comments of those before them – *"That's why I said earlier that you're gonna have to make a more, bigger step ... as far as connecting the actual victim and the actual offender in some way it might be stages you have to implement to make it more transitional ... meaning you start light but its gotta be steps as made to make real restorative justice."*

Post-programme all of the offender-participants were asked if they would like to meet with the victim(s) of their offence? (Graph 14)



Based on their participation, an initial selection of offenders was asked if they would actually like to meet with their direct victims. If the offenders were willing to participate in a conference, a referral was made to the Bermuda Police Service for initial contact to be made with the direct victims to invite them to a meeting about RJ. Each of the offenders approached, had indicated their willingness to meet with the victim(s) of their offence. Table 6 shows the number of offenders asked - by programme, and the willingness of the victims to participate in a conference.

	Offenders asked	Offenders agreeing	Contact with Victims	Meetings with Victims	Victims agreeing	Conference/ Intervention
VEP	3	2	2	2	1	1
STP	2	2	2	2	2	1
Totals	5	4	4	4	3	2

The one VEP offender-participant that did not want to meet with their victim declined as the primary victim (of stealing) was a family member. The victim that declined to participate in a conference after meeting with a facilitator stated that they felt too much time had passed since the offence (burglary).

¹⁰³ The numbers under columns pertaining to victims, refer to the number of cases opposed to the number of victims. For example, one victim of an offender may decline to meet with conference facilitators, where another victim or three, of the same offender may agree to meet.

Domain Two Summary

Motivation and retention for the offender-participants was high for both programmes – 92-100% completion for the VEP, 76-82% completion for the STP and 82-88% completion for the STP victim-participants. Post-programme all participants (n=40) except one was either ‘pleased’ or ‘very pleased’ about having been asked to participate in the programmes. Only 3 participants failed to start the programme after first agreeing to participate. One offender-participant’s removal was due to administrative issues. The other offender-participant was very close to release and the victim-participant wrestled with issues of disenfranchised grief. Dropouts were also very low (4%), with the vast majority of participants feeling supported by other participants. Themes that arose which affected motivation and retention were the participants’ sense of safety and the selection process of offender-participants. However, the STP victims expressed feeling safe during the programme, to an even greater extent than the offenders. Moreover, the DoC was viewed as an appropriate setting for the programmes. It was apparent from observation that the offenders were more concerned with issues of confidentiality, when considering safety. The offenders also questioned the selection of offender-participants and this occurred largely in one VEP programme where the offender-participants were unhappy with the inclusion of a particular offender.

The vast majority of offender-participants reported a willingness to meet with the direct victims of their offences, post-programme. A major objective of the study was to explore whether or not the phase-one programmes could decrease the offender-participants’ denial of harm caused to victims of crime, essentially increasing victim empathy; this is the focus of the next section of the chapter.

Empathy (and the CRIME-PICS II Questionnaire)

As an expected effect of the programmes, it was important to explore the effects of empathy on the offender participants. This was to see if their empathy could increase for the people that have been affected by their actions. Having regard for the people affected by their actions would be important before considering whether or not they would be suitable to meet with their direct victims.

Statistical analysis would not be appropriate based on the purposeful selection of participants that would violate the required condition of normal distribution; therefore tests of significance could not be conducted. Descriptive statistics were used to analyse the data.

The CRIME-PICS II psychometric was administered to offender-participants before and after their participation in the phase-one programmes, and after a conference for those that participated in a further intervention with their direct victims. The main scale of interest to the study was the V-scale that assesses the degree to which the offender-participants acknowledge the harm caused to victims. Decreased scores post-programme show greater acknowledgement.

Victim Empathy Scale

Analysing the mean scores pre and post for all the offender-participants (n=26) that completed the programmes yielded the following scores –

n=26	Pre-score	Post-score	Difference
	M = 5.15 (SE = 0.49)	M = 4.27 (SE = 0.4)	0.88

This difference in the scores pre and post indicates an increased acknowledgement of the harm caused to the victims of their crime.

When the same analysis was conducted minus the two offender-participants (n = 24) who had not fully participated in the programmes, of which there was one from each programme, the analysis showed a greater difference –

n=24	Pre-score	Post-score	Difference
	M = 5.17 (SE = 0.51)	M = 4.08 (SE = 0.35)	1.09

The difference/reduction in average scores was greater, indicating greater acknowledgement of the harm caused to the victims of their crime in the desired direction.

During the focus group when asked what they felt they learnt about victims, a VEP offender-participant shared a part of his learning, which was extended by an STP participant -

“For me, like I said um, victim empathy, I’m not stupid or nothing I know what I did was wrong but really like, to put myself in the victim’s shoes it got me in touch with feelings that I weren’t aware of, you know, if you understand what I mean... but victims go wider than there because you got people in the community to [another offender-participant interrupts] “sure yeah that’s why I said the Ripple Effect goes to everybody ...”

Phase-One Programme Comparison

As there was a substantial difference in the mean scores, once the two offender-participants who had not fully participated had been excluded, these individuals were excluded from further analysis. As an aim of the study was to evaluate and contrast the programmes used in order to draw implications for future practice, the means of each programme on the V-scale was analysed.

The mean scores on the V-scale were analysed for the two phase-one programmes -

	Pre-score	Post-score	Difference
VEP (n=11)	M = 4.64 (SE = 0.49)	M = 4.00 (SE = 0.49)	0.636
STP (n=13)	M = 5.62 (SE = 0.851)	M = 4.15 (SE = 0.517)	1.462

The results showed that there was the favourable reduction in scores post-programme for each intervention, with a greater difference for the STP. Noteworthy, however is that the STP pre-scores were much higher than that of the VEP scores, and the VEP scores post-programme were lower than that of the STP; where the lower the score the more positive the outcome.

For this reason, it would be useful to examine the average scores of the STP and VEP, if an equal number of offenders were analysed and matched for offences, as had originally been intended.

In order to assess whether or not there was a difference in empathy scores between those who had participated in the STP and those that participated in the VEP, 7 pairs of offender-participants were matched for their index offences. Offences included wounding, burglary, aggravated burglary, murder, robbery and robbery with firearm charges.

Because of the actual offender-participants that completed the programme, an analysis of difference between those offenders convicted for offences against a person and property offences, was not possible. The vast majority had committed offences of violence against a person.

The mean scores were analysed for the 7-paired offenders on the V-scale -

	Pre-score	Post-score	Difference
VEP (n=7)	M = 5.00 (SE = 0.84)	M = 4.57 (SE = 0.76)	0.43
STP (n=7)	M = 4.14 (SE = 0.54)	M = 4.29 (SE = 0.88)	- 0.15

The scores for the VEP offenders showed favourable change post-programme, although this change was not as great as it was for the group collectively. This was also the case for the STP offender-participants, to the extent that there was a minimal negative impact on this very small number of participants.

The G, A & E CRIME-PICS II Scales

The other scales measured by the CRIME-PICS II psychometrics were analysed. The G-scale for general attitude toward offending; the A-scale assesses the offenders’ anticipation of future offending and the E-scale assessing the offender’s evaluation of crime as worth while.

The following table shows the mean scores for the offenders collectively; per programme minus the two offenders who did not fully complete the programmes and the 7 matched-pairs of offender-participants.

G-scale – General Attitude Toward Offending

	Pre-score	Post-score	Difference
Collectively (n=24)	M = 34.29 (SE = 1.52)	M = 31.9 (SE = 1.45)	2.37
VEP (n=11)	M = 36.36 (SE = 2.05)	M = 36.91 (SE = 1.26)	- 0.54
STP (n=13)	M = 32.08 (SE = 2.23)	M = 27.08 (SE = 1.72)	5
Matched VEP (n=7)	M = 35.86 (SE = 3.16)	M = 36.57 (SE = 1.87)	- 0.71
Matched STP (n=7)	M = 31 (SE = 2.28)	M = 25 (SE = 2.01)	6

Collectively, there was a decrease in the average scores post-programme compared to pre-programme, indicative of improvement post-programme in the desired direction. However, when the scores were examined across the individual programmes, the VEP failed to produce a positive change.

Interestingly, it was in one STP session, when the offenders were sharing examples of crimes that they laughed at some of the examples being given.

A similar pattern was found with the analyses of scores for the A & E-scales as displayed in the tables below.

A-scale – Anticipation of Future Re-Offending

	Pre-score	Post-score	Difference
Collectively (n=24)	M = 11 (SE = 0.79)	M = 10.21 (SE = 0.67)	0.792
VEP (n=11)	M = 9.55 (SE = 0.61)	M = 10.64 (SE = 0.92)	- 1.09
STP (n=13)	M = 12.3 (SE = 1.29)	M = 9.54 (SE = 0.93)	2.77
Matched VEP (n=7)	M = 9.57 (SE = 1.34)	M = 10.29 (SE = 1.34)	- 0.72
Matched STP (n=7)	M = 12.86 (SE = 1.34)	M = 9.43 (SE = 1.34)	3.43

An STP offender-participant made the following statement during a session - *“I have the right to apologise. It doesn’t mean I have to come to your face and say sorry, I can apologise by not doing what I did again.”*

E-scale – Evaluation of Crime as Worthwhile

	Pre-score	Post-score	Difference
Collectively (n=24)	M = 9.08 (SE = 0.7)	M = 8.54 (SE = 0.56)	0.54
VEP (n=11)	M = 10.45 (SE = 1.06)	M = 10.64 (SE = 0.56)	-.182
STP (n=13)	M = 7.54 (SE = 0.87)	M = 6.62 (SE = 0.61)	0.92
Matched VEP (n=7)	M = 9.57 (SE = 1.51)	M = 10.71 (SE = 0.78)	-1.14
Matched STP (n=7)	M = 7.14 (SE = 0.8)	M = 6 (SE = 0.65)	1.14

Domain Three Summary

Of main concern to the study, was the offender-participants’ acknowledgement of harm caused to those affected by their actions (V-scale). There was a positive change post-intervention for both programmes, but to a much greater extent for the STP. In contrast to the VEP, the STP also provided positive change on three of the other CRIME-PICS II scales (G, A & E). Interestingly, when a limited number of offenders were matched for index offence across the programmes, VEP showed greater positive attitudinal change on victim empathy than the STP.

It is important to note that the study was based on a very small number albeit the number of offender-participants was 18% of the average convicted male population during Sept 2014- Aug 2015. As a pilot of the initiative and with such small numbers, the qualitative data was invaluable. Findings from the participants’ evaluations of the programmes follow in the next section of the chapter.

Programme Evaluation

This section is divided into a number of sections that covers – programme preparation; collaborative consultation; facilitator skills and practice; experiences; outcome and evaluations.

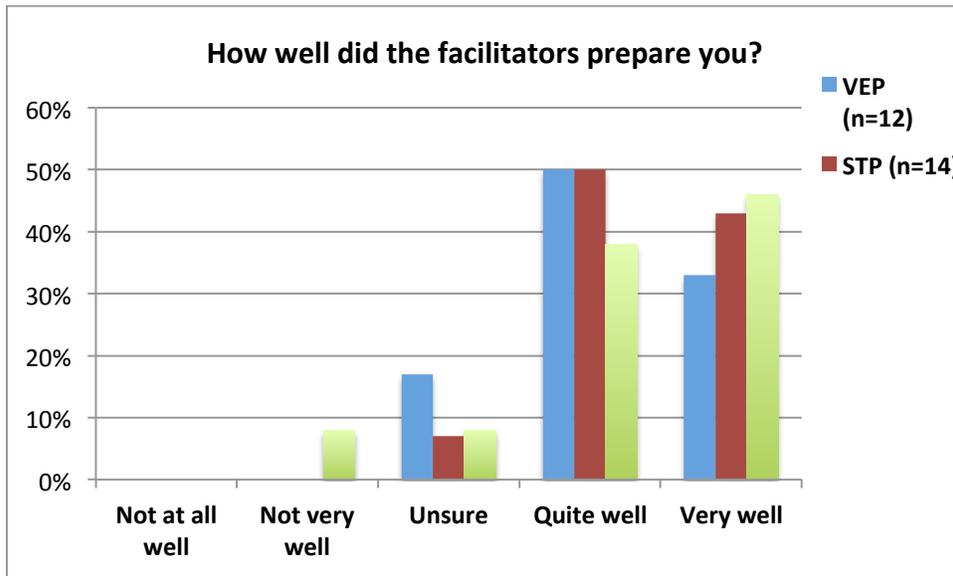
Preparation

Post-programme the participants were asked a number of questions about the preparation they received before participating.

Collectively with n=40 participants answering the question - 57.5% (n=23) of participants felt that they had ‘enough’ time to think about their decision to participate; 42.5% (n=17) felt they had ‘plenty’ time to consider.

All participants were asked how well they were prepared for the programme, with n=39 responding. Graph 15 shows the responses by participant group.

Graph 15

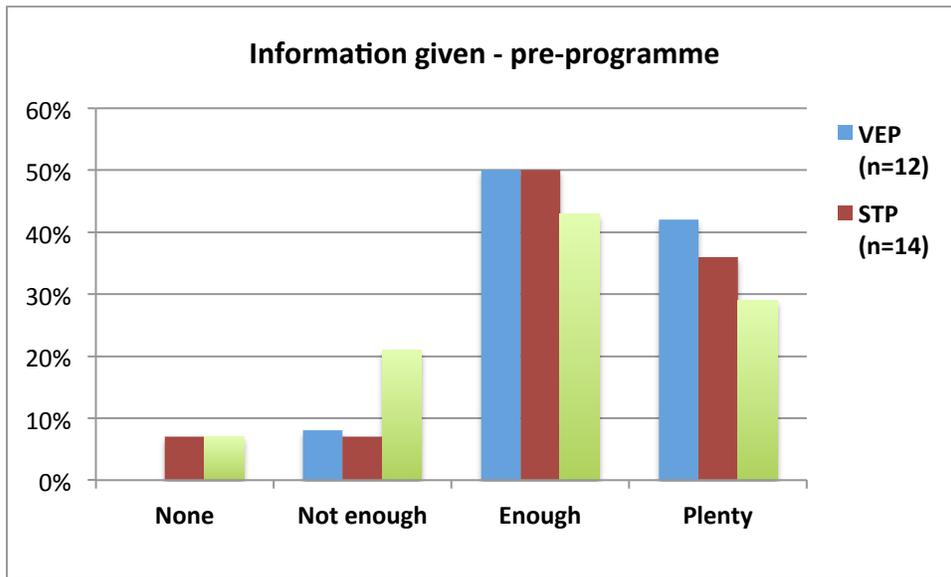


50% of each of the offender-participant groups felt that they were prepared ‘quite well’ before the programme started; while the greatest number of victims (46%) felt they were ‘very well’ prepared for the programme.

One STP victim-participant, in their final comments – as a post-programme questionnaire item wrote - “The facilitators and the researcher were just great – so prepared. So respectful. So encouraging.”

At the end of the programmes, participants were also asked to rate the amount of information they received before the start of the programme, and at the end. The results, by participant groups, are illustrated below in graphs 16 & 17.

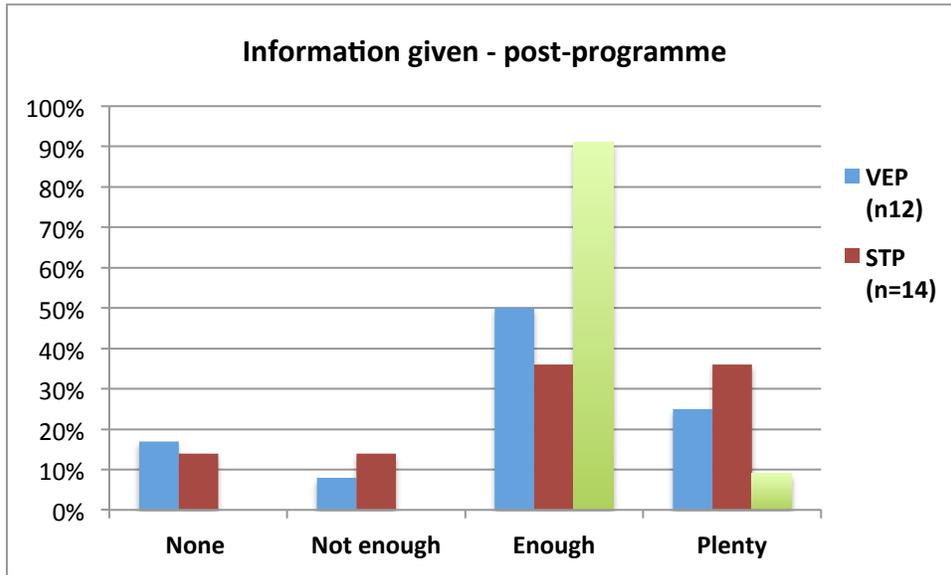
Graph 16



Again, 50% of the STP and VEP offender-participants felt that they received ‘enough’ information before the start of the programme. While 43% of STP victim-participants felt they received ‘enough’ information. Overall, the VEP offender-participants felt the most informed.

In response to the question - what would you change about the programme, one STP victim-participant stated – “*More information about the programme before starting it – perhaps even the workbook in advance?*”

Graph 17



91% of victim-participants felt as though they received ‘enough’ information post-programme. 50% of the VEP offender-participants maintained that they received ‘enough’ information post-programme. 36% of STP offender-participants felt they received ‘enough’ and 36% ‘plenty’ information post-programme.

Consultation

Victims of the STP were asked a similar question pre and post-programme about what their preferred method of contact by the Prison Fellowship facilitators would have been. Pre-programme of those that responded (n=15) to the question -

47% (n= 7) indicated that they were okay being contacted by phone;
 40% (n=6) indicated that would have preferred to have been contacted in person, and
 13% (n= 2) indicated that they would have preferred to be contacted initially by letter.

Post-programme the victims (n=14) responses indicated a slight change –
 86% (n=12) opted for the preferred method of contact by phone, with the remaining
 14% (n=2) opting for contact to have been made in person.

This marked changed suggested that the victim-participants felt even more comfortable with the whole process post-programme.

Post-programme participants were asked whether or not they felt the facilitators consulted with them, as an indication of how collaborative they found the process to be. Table 7 shows the results of each participant-group of each programme.

Table 7				
	Totally	Somewhat	Not really	Not at all
VEP offenders (n=12)	8	3	1	-
STP offenders (n=14)	8	5	1	-
STP Victims (n=14)	9	4	1	-
<i>Totals (n=40)</i>	25 (62.5%)	12 (30%)	3 (7.5%)	0%

Participants were asked to consider if there was anything that they would liked to have been asked, by the facilitators or researcher that they were not asked? Most suggested that there was not (75%).

Two STP offender-participants suggested -

“Bout me getting to know me more but there wasn’t enough time to get things rolling we had 2hours.” “How did the offence effect the offender personally and vice versa.”

One STP victim-participants suggested -

“1. How do I cope years later. 2. How has my loss changed my life. 3. How did I get to the point I could forgive.”

Comments made by the VEP offender-participants to this question, have all been included, in more relevant sections of the chapter.

Facilitator Skills & Practice

57% of the STP victim-participants and 57% of the STP offender-participants rated the facilitators as being ‘very skilled’, the remaining 43% of each participant group, rated the facilitators as ‘adequately skilled’.

In response to a post-programme questionnaire item asking about perceived possible negative consequences of RJ, one STP offender wrote - *“There can be some I believe only if offender, victim or mediator is not equipped well for the process.”*

Of the VEP – 25% of the offender-participants rated the facilitators as ‘very skilled’, 67% rated them as ‘adequately skilled’ and 8% were undecided or unsure of their opinion.

When asked post-programme to rate how judgmental the facilitators were the STP participants

Victims (n=11)	Not at all Judgmental	Victims (n=3)	Not Very Judgmental
Offenders (n=12)	82%	Offenders (n=2)	18%

The VEP facilitators did not fair as well, offender ratings were more varied -

Not at all Judgmental	Not Very Judgmental	Quite Judgmental	Very Judgmental
8%	25%	50%	2%

Complementary data did not clearly explain the reasons for ratings of the VEP facilitators. As a response, to the question about what participants would change about the programme, one VEP participant stated –

“First I would get rid of the red chair and stop asking questions like your interrogating somebody.” This offender rated the facilitators as ‘not very judgmental’. Another VEP offender stated – *“I believe the program was good. I would not change anything really. I believe the task we had to complete were quite simple. Me and my fellow students were able to express ourselves completely. So it was good.”* This offender-participant rated the facilitators ‘quite judgmental’.

Experiences

All of the participants from each of the programmes felt that they ‘totally’ (n=30) or ‘somewhat’ (n=9) had the opportunity to say and ask what they wanted to during the programme, except 1 VEP offender-participant who felt that he did ‘not at all’ have the opportunity to express himself. This individual was the same individual who did not fully participate in the programme. Interestingly this individual felt that they were ‘somewhat’ listened to.

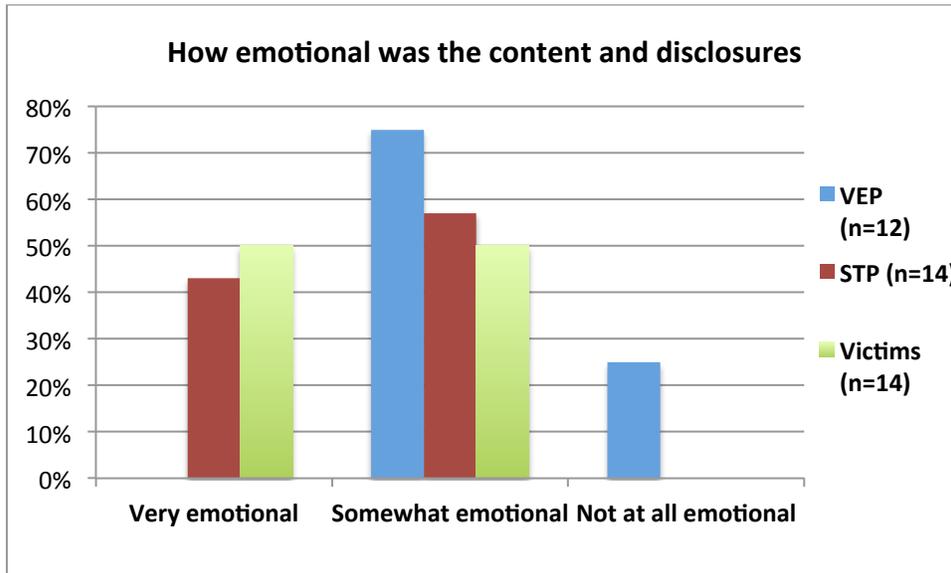
In response to an item in the post-programme questionnaire, participants were asked if there was anything that they were not asked by the facilitators or researcher, that they would like to have been asked. One STP victim-participant wrote –

“None. I was very glad that I was asked a question by one of the facilitators as I was not going to speak and was glad I was encouraged to use my voice.”

85% (n=33) of participants felt that they were listened to ‘totally’ during their time on the programmes, with 15% (n=6) feeling they were ‘somewhat’ listened to. The majority of the 6 –

83% that felt ‘somewhat’ listened to were offender-participants. None of the participants felt they were ‘not really’ or ‘not at all’ listened to.

Post-programme, participants were asked how emotional they found the content and disclosures. The responses, by participant group are reflected below in the graph (18).



Both offender and victim STP participants experienced their programme as more emotional than the VEP offender-participants. STP victim-participants wrote - *“I don’t even know what it was, I just know where it took me.”* *“It’s helped me learn to forgive.”*

An STP offender-participant talking during the focus group said - *“I learnt that victims carry a lot of pain, and mask a lot of hurt and pain ... the effect that whatever crime was placed upon them gets passed on to others you know ... I saw in my class, I saw a victim get real angry one day and I saw her pain and her hurt and through that made me see wow ... the way it came out it sort ... for a second I felt ... not violated but vex I was angry the way they came at me but all it was, was just their hurt and pain as being victims and talking about it right with actual offenders you know and hearing offenders talk about their punishment it wasn’t enough for this victim you know, so it showed me that you know sometimes a victim sees their offenders being punished but that’s still not enough, so then their masking a lot of hurt and a lot of pain and they carry it from day to day, and there’s only, I’m almost sure that that energy’s being passed along into a victim’s [another offender interrupts].”*

The researcher observed how the participants started to challenge each other. In one STP session an offender-participant stated how he was beginning to become angry at “the [Corrections] administration.” Another offender-participant used the Biblical story used in the

STP to state how Zacchaeus started to find others to blame. Another, offender tried to advise the first offender that really he was saying that he was tired of 'coming to jail' –

“Show me your company and I’ll show you who you are. Am I my brother’s keeper, if I was his real friend, I wouldn’t let him lie to himself.”

One STP offender-participant stated that offending was *“... starting to feel inhuman ... excuses, I used to go out there and do the things I was doing ... same time finding that my thinking is I’m opening wounds and there staying open ... difference is now I’m willing to go through it ...”* the same offender later stated *“... we create a victim stance, carry it with us and use it for our own advantage and make ourselves feel better ...”*

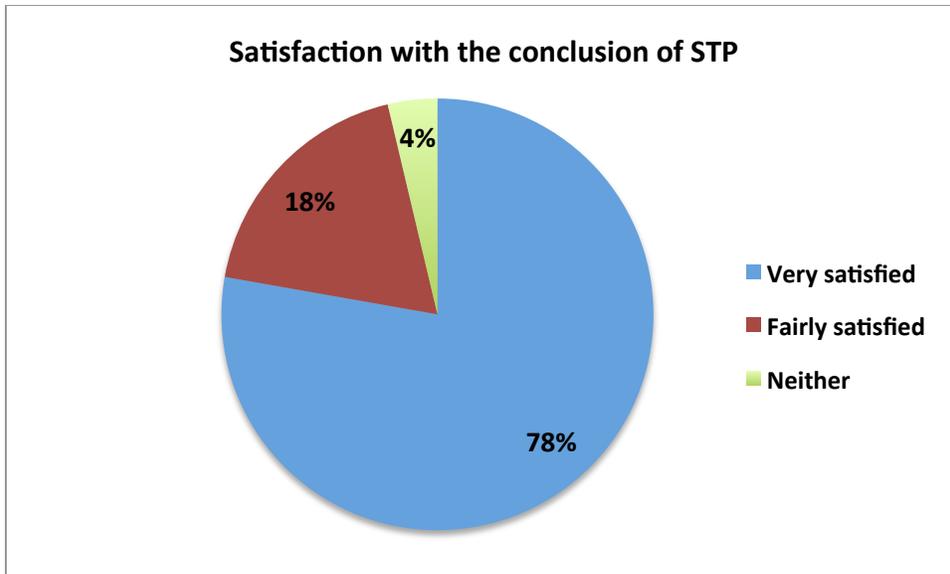
The researcher observed the VEP offender-participants looking at each other in disbelief as they watched another offender participating in the role-shift exercise. During this session, a number of the offenders cried tears as they listened to a victim’s perspective (played by an offender) of a crime.

An observation made by the researcher concerned the influence of others in the programmes. One STP offender repeatedly stated, and seemed to believe that his offence was victimless. His peers challenged his view, pointing out for him who the victims of his offence were. However, this did not have as convincing an impact on the offender, as when the victim-participants challenged him. It was also observed that the offenders were genuinely thanking each other for making honest disclosures.

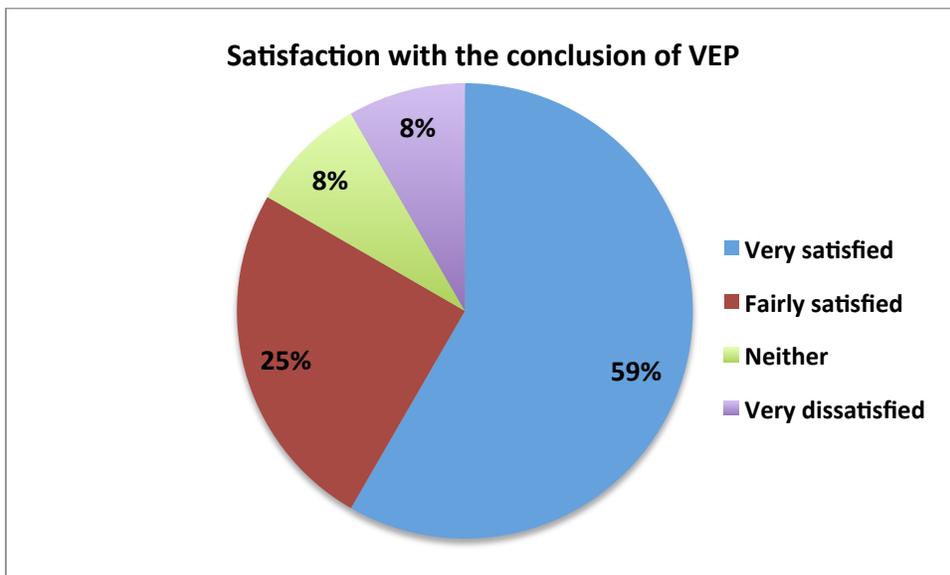
This also occurred in the VEP programme, when one offender suggested that the other group-members should *“Just tell them what they want to hear.”* Another offender stated *“The only way I can heal is by putting out everything I have done ... get to the root of any problem ... I just encourage you, for us to heal ... better ourselves in anyway, gotta be honest.”*

Outcome & Evaluations

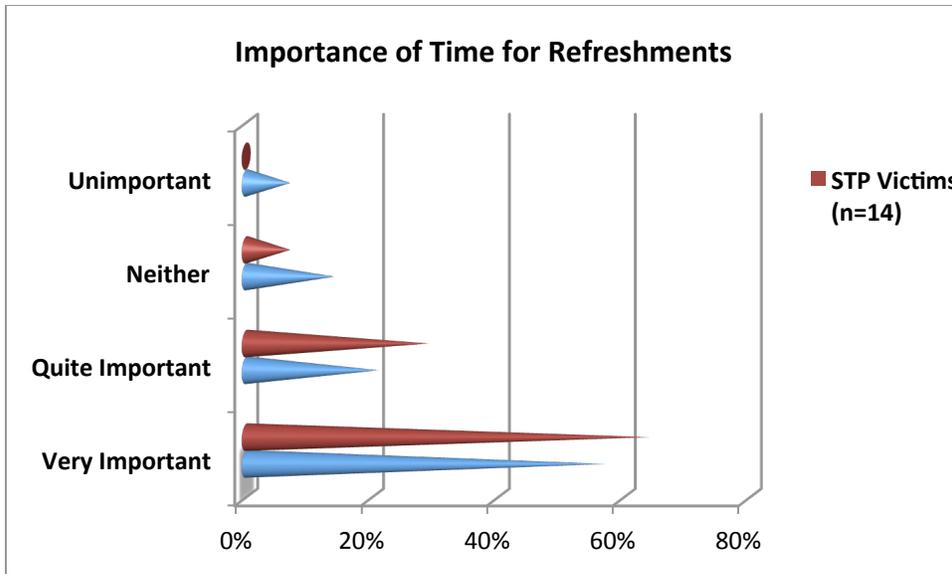
Both the STP offender (n=14) and victim-participants (n=13) rated their satisfaction with the conclusion of the programme; the collective ratings are presented in the pie chart below



The VEP offender-participants (n=12) rated their satisfaction with the conclusion of the programme; results of which are presented in the following pie chart.



One of the differences between the programmes is the final celebration session of the STP, at which guests join the group-participants and refreshments are enjoyed. The STP participants were asked to rate how important they felt the refreshments time, at the end of the programme was. Surprisingly, the victim-participants rated this time slightly higher than the offender-participants.



All participants (96%) of the STP except 1 offender-participant (who was ‘unsure’) said ‘yes’ that they would participate in a similar programme again.

67% of the VEP offender-participants said ‘yes’ that they would participate in a similar programme again, with the remaining 33% reporting that they were ‘unsure’.

93% of STP victim-participants (n=13) reported that they ‘would definitely’ recommend the programme to other people who had been affected by crime; 7% (n=1) reported that they would ‘more than likely’ recommend the programme.

86% of STP offender-participants (n=12) reported that they ‘would definitely’ recommend the programme to other people who had offended; the remaining 14% (n=2) said they would ‘more than likely’ recommend the programme.

50% of VEP offenders (n=6) said that they would ‘more than likely’ recommend the programme to others who had offended; 33% (n=4) said they ‘would definitely’ and 17% (n=2) were ‘not sure’.

During the focus group the offender-participants were asked what they thought was the most important element of the programme –

STP Offender-participants

“Mine was just hearing from other people that I’ve never met ... actually hearing em and feeling their pain ... struck a main core for me.”

*“That’s, I’m agreeing with what **** said in a sense that, as far as interacting with people from the outside, being able to hear their stories and share my story with them was one of the most important factors making me understand ... there’s a difference between court justice and also society justice because the courts just hand out the punishment but there’s no restorative justice being done after that ... the offender’s gone to jail and the ones that have been offended are still out there, there’s no clarity but in this instance its been a form of clarity to the one that has offended and the one that’s been offended on ...”*

VEP Offender-Participants

“For me like I said ... we sat down and we went through telling our story and then we had to come back and sit down and be the victim and tell the story, so for me, putting myself in that situation I think was a humbling experience although like I said what I done to compensate was like kinda like what if it was my child, how would I feel ... so for me ... that roleplaying thing was it for me.”

“I’ll say for me um in the victim empathy class ... what I learnt was ... how I minimize a lot and I played down a lot of things where I’d say oh it was just this, or it was just that and its funny when you recognize it, when you’re there in front of a group of other people and that’s what their looking for and you recognize you use it a lot, like I heard a lot of guys use it already today ... minimizing how big of a thing it is, so that really brought a lot, opened my eyes really for that class, mostly.”

In response to programme changes that participants would make, the following responses were given for each of the programmes –

VEP

42% of participants stated there was “*nothing*” that they would change about the programme.

“Its my first time being in a programme like this and I would not change anything I would like to see the class go longer.”

“I would like for the Officers to be more communicative with facilitators and inmates.”

“Better screening for candidates.”

“The only thing I would change is, to put people of similar offences together in a class, so they can relate a little better.”

STP – Offender-participant responses

50% of the participants stated that they “*would not change a thing.*” (or words to this effect).

“The amount of time spent with the meat of the matter, the ice-breakers take up too much time. They are needed however.”

“More time. Twice weekly to go into more depth and discussion. Support after classes.”

“More victims.”

“At least twice a week. I think once a week may not be enough.”

“The Length”.

“More speaking about more inside problems within and less of a book program.”

“I don’t think there’s anything that should change about the course, but I would love to continue some type of support system.”

Victim-Participant responses

43% made comments such as “*Can’t think of anything at [this] time.*” (or sentiments to this effect).

“May be the time.”

“It was to short time.”

“I think perhaps a bit more time towards the end. Perhaps a way to engage reluctant inmate.”

“Nothing because I observed that there is flexibility. The facilitators are open to offender concerns and comments, but will later get back on track.”

“More time.”

Table 8 shows the overall satisfaction ratings for each programme by each group of participants.

Table 8				
VEP offender-participants	67% 25% 8%	(n=8) (n=3) (n=1)	'Very Satisfied' 'Fairly Satisfied' 'Very Dissatisfied'	<i>"I believe the programme is a very successful class."</i>
STP offender-participants	86% 14%	(n=12) (n=2)	'Very Satisfied' 'Fairly Satisfied'	<i>"The program was excellent."</i>
STP victim-participants	93% 7%	(n=13) (n=1)	'Very Satisfied' 'Fairly Satisfied'	<i>"A great program!!"</i>

During the focus group in response to what the offenders liked least about the programmes only two comments were made, the following from an STP offender-participant -

"For me what I liked the least in the Sycamore Tree ... was too much emphasis on the Bible, too much emphasis on religion ... I found more time could have been used with we guys talking about our personal experiences ... they gave the examples of some stories in the Bible but like they were just dwelling on those stories and we could have just used that example and got on ... because its gonna come a time where there's gonna be guys in them groups, there gonna get there because they feel they need to be there and what not, but there not really religious people, they don't know one thing about the Bible ... their gonna be in this group and forced to listen to these Bible stories, you know and all this emphasis on this Bible stories, it can become boring you know, it can become boring to some, so I think more emphasis ... I wanna talk about me, I wanna talk about what's on my chest , what happened to me in that situation ... how that's had an effect on my life' ... so I really didn't like that too much."

Domain Four Summary

The participants' evaluations of the phase-one programmes were positive. All participants felt 'quite well' or 'very well' prepared, with 'enough' or 'plenty' time to have considered their decision to participate. The participants felt they were provided with 'enough', if not 'plenty' of information before and after the programme; and that they were consulted with and listened to during the programmes. Victims expressed healing, forgiveness for their offenders and for themselves, as a result of their participation.

There were differences in the participants' evaluation of their individual programmes. The STP-participants (victims and offenders) were far more satisfied with the conclusion of the

programme and experienced their facilitators as more skilled and less judgmental than the VEP-participants. With high-levels of overall satisfaction across the board, the STP-participants were more inclined to participate in another programme of the same nature in the future and more likely to recommend the programme to others. However, as reported in this first domain, the VEP offender-participants reported being more willing to meet with their direct victims, than the STP offender-participants.

Victim and Offender Views of RJ & the Conferencing Experience

During September and November 2015 two restorative justice conferences (RJCs) were held, that in total included 2 direct victims, 1 witness-victim, 2 offenders and 3 supporters.

Data was obtained from - 4 pre-conference questionnaires (3 offenders & 1 victim); 4 pre-conference interviews (with 3 offenders and 1 victim); 2 post-conference questionnaires (completed by offenders) and 2 post-conference interviews (conducted with offenders).

Pre-Conference

Of 4 offender-participants who initially agreed to meet with their direct victims in a conference – 3 felt that the phase-one programme would have prepared them ‘fairly well’ for the conference and 1 ‘very well’.

In response to what ‘justice’ meant to the participants – the offenders spoke of correcting “*bad*” behaviour, finding “*resolution*” and compensating victims so that they find “*closure*”. Two mentioned punishment, while the victim spoke of imprisonment for “*the appropriate amount of time and hopefully getting some rehabilitation...*”

What do you think is the appropriate time for RJ?

3 participants (including the victim) felt that RJ should occur after imprisonment of the offender. Two offenders spoke of having “*some time to think*” and to become “*enlightened ... accept it, what they have done wrong.*” The victim spoke of having “*time after*” the offence. Only one offender spoke of RJ use during “*court proceedings*” at the “*pre-sentencing*” stage.

What do you think is the purpose of a RJC?

“For the victims to address the offender” (stated by 1 offender and 1 victim)

For the victims’ questions to be answered – *“... to sort of give closure ... and clarity to why you done things, then people can understand and come to terms with it ...”* (an offender)

To receive forgiveness

Why did you agree to participate, and what are your needs?

Victim – *“... to make the offender aware of the long-term impact their crimes have, not just on the victim, on all the members of their family and friends. ... I think if there had been more support after the incident, I felt that there was a lot more concentrated on him [the offender], not on myself”*

The victim felt that the offender received an appropriate sentence, however did not feel – *“...just locking people away and throwing away the key is a solution.”*

Offenders – *“I basically agreed to participate because I generally run away from my problems and I thought that this would be a good opportunity ... face up as ... challenging and as frightening or as scary as it might seem ... I can gain some tools and some wisdom for the future by going through this process.”*

“... initially in the beginning ... to get parole, that's being truthful, but now I can see ... one of my victims actually agreed to talk to me, it made me feel like oh all right cool ... yes I wanna do it because it won't hurt ... to address my problems ...”

“I don't think I know all my needs I'm learning ... but what I have learnt is that I need to listen, I need to try to understand and respect ... I can say that from when I was a little child I've been through a lot myself and I always used excuses for why I am where I am ...”

Thoughts of the other party -

Thoughts of the offence and the offender caused the victim to feel *“nervous”* and to be *“very scared of men now in general.”*

The offenders largely shared in interview how they tried not to think about their victims. One stated however, that since participating in the phase-one programme, he had thought about his victims.

Post-Conference

Both offenders felt that the phase-one programme prepared them well for the conference –

“The Sycamore Tree ... helped me to become more accountable, being open, just meeting victims in general ... it opened up my eyes to some of the things that I never really thought about before.”

Both felt that the conference was for both parties –

“... like meeting a perfect stranger and sharing the same experience that we went through and I guess it's pretty much sharing the thoughts, see how it affected them, see how it affected myself to and to just get some clarity.”

“ ... I think it was about a lot of different things, you know it was a chance for me to explain to my victims what was I doing ... I think it was a chance for them to get something off of their chest, to express some of their feelings and some of their emotions towards me and I think overall, the meeting was to better help both parties be able to move on so to speak.”

To the question - When do you think is the best time for a restorative justice conference? Both offenders held the same opinion as pre-conference – one felt it would be best after “*thinking time*” in prison. The other maintained pre-sentence – “*... even like pre-adult ... let's try it out for somebody young too. [Asked why] I just, I really feel like it really impacted me so much sometimes, that ... I wonder if I would've met some of these people like this long time ago and sat down and spoke with them ... could it have changed some of the things that I did, so I really do think it's a positive thing for people to just hear victim's share ... the tragedies they've been through, it gives a better, a better sense of sympathy or empathy it just paints a better picture.”*

Both offenders felt they had ‘plenty’ of time to make their decision to participate and both felt it was the ‘right’ time between their offence and the conference (questionnaire data).

Asked about their main reasons for participating –

“My main reasons ... was, the fact that I still see these people once I get out, and that way, once it's all put on the table I don't have to see them and still live [in] darkness ... so now with this new victory I have created a friendship instead of hatred.”

“Okay originally I mean I just wanted to do it because, you know normally I would have run from it, so originally I think I just kind of forced myself to ... face them ... being more accountable for my crimes, and even just giving those people an opportunity to let me have it, if that's what they wanted to do.”

Asked what was most positive about participating in the conference?

“Honestly, the best thing was probably being accepted by the victims and being I gave them a hug that was, that was a highlight, yeah.”

“I think it lifts a burden off my shoulders ... a big burden, I wish I would have had more victims ... for the simple fact of, if I want to go back ... I know that there's not going to be animosity towards me. I know that we will be able to talk freely, had we not met we wouldn't have been able to talk, that's the positive right there.”

1 offender indicated feeling ‘very pleased’ the other, ‘pleased’ about meeting the victims of their offence; both were ‘very pleased’ about being asked to meet with their victim (questionnaire data).

Asked what was most negative about participating?

“That would have been [the] walk out there. Yep just the nerves leading up to it I would say, not knowing exactly how it was going to go, yeah.”

“I didn't get any negative out of it. Not at all there was no negative.”

On the questionnaire, the offenders were asked if knowing what they knew, having been through a conference, if they would still agree to participate – both indicated ‘yes’. They were both ‘very satisfied’ overall and with the outcome agreement; they both found the conference ‘somewhat emotional’ and that they ‘totally’ had the opportunity to say what they wanted. They felt they were ‘totally’ listened to, consulted with and both felt ‘very safe’.

Asked about the difference they felt RJ could have on crime in Bermuda? (and separately)

What difference do you think RJ could have for victims and offenders in Bermuda?

“I think it could lessen crime ... because it makes you think about others with the restorative justice programs, I think it could actually make less crime in Bermuda. ... I don't think it make anybody worse, so I think only good could out of restorative justice ...”

“... could stop the revolving door ... it may help with job and housing ... sometimes money is the problem, sometimes where you stay is the problem... an offender can do something and be out, and you can see that person again and, you could still live in fear for the rest of your life depending on the crime... if you, go through the victim empathy program, restorative justice I believe that it ... would ease the victims mind a lot...”

“I think that it could help to lessen crime if it is implemented, like I said before in the schools and things like that ...”

“I think that it could have a difference, one way, you never really get an opportunity to sit down and address somebody who has victimised you, so I think that can open a lot of doors and some positive things could come out of it, it might not be for everybody, but I think that it could aid in the young ... aid in trusting more ... communicating with people about different things, and victims could learn some stuff about the offender and vice versa.”

Asked for any final comments that they might wish to make at the end of the interview?

“I would just like to say that I thoroughly enjoyed the whole process, the start of it the Sycamore class and as I've never done anything like this before I do think that it's probably one of the best things around, the highlight of my rehabilitation in general that's all.”

“... I enjoyed the conference I just wish there were more victims, not wish, but it would have been nice now I've been through it I know what it's like so, there's plenty victims in my case, if another [victim would like to meet with me] I would do it.”

One offender felt that the prison was 'very appropriate' as a setting for the conference, the other felt it was 'appropriate' (questionnaire data). They felt they had 'plenty' or 'enough' information both before and after the conference and were 'quite well' prepared by the facilitator. The facilitators were rated as 'very skilled' and 'very impartial'. One offender felt that the informal refreshments time was 'very important', the other 'neither' important or unimportant.

The offenders showed no further increase in victim empathy after participating in a conference; however this was due to them having achieved maximum (cognitive) empathy at the end of their phase-one participation.

Domain Five Summary

The offenders that participated in the conferences were pleased they engaged and felt that they gained from the experience. For one, the most uncomfortable aspect was his nervousness when going into the conference. The other was disappointed not to have had more people present. Neither of the conferences resulted in reparation agreements, as neither of the victims required anything more of the offenders than the dialogue.

This chapter set out to achieve the aims of – exploring victims' and offenders' opinions generally of the CJS and specifically of their own cases; and to explore the experience and effects of the experimental pilot programme for both victims and offenders. In so doing, both the quantitative and qualitative data examined simultaneously (where possible) yielded positive effects for both of the main stakeholders. The data indicated different degrees of effect for each phase-one programme regarding the offenders' level of victim empathy post-programme. This further suggested different degrees of restorative orientation in each phase-one programme – which will be discussed further in the next chapter. The richness of the data, expressed by all the participants, reduced any potential effects of the researcher and pointed to implications for future practice and policy. These matters are discussed in detail in the following chapter (7) – Discussion & Conclusions.

❖ CHAPTER 7 – DISCUSSION & CONCLUSIONS

“On the basis of our findings, the inmate is the most likely to be willing to accept the restorative approach ... if he has family relations beyond the prison, actual goals after becoming released, and consequently, the inmate is less affected by the process of prisonization ...”
(Szego & Fellegi, 2013, p19).

Bermuda has seen high rates of incarceration in its short history having fostered a punitive response to crime. As a British Overseas Territory the existence of social inequities have permeated from one century into the next despite rapid economic growth and self-governance. As the international movement towards the inclusion of restorative justice (RJ) into established adversarial criminal justice systems (CJS) has been taking place, this action research sought to explore how RJ might help to repair the harm caused by crime with Bermuda’s convicted population. Precedence was given to the reparation of relationships, healing of victims and increased empathy of offenders, with a reduction in recidivism an anticipated consequential outcome of the primary goals (recognized by McCold, 2004).

As a small country with pervasive interconnectedness of its population, it was expected, as the findings begin to indicate, that RJ could be useful to creating a healthier society when harm has been caused by crime. This chapter sets out to discuss the main findings of the action research in relation to past empirical research, theory and with consideration of RJ aims. In so doing it addresses the final objective - To evaluate and contrast the programmes used in order to draw implications for future practice and policy in Bermuda, for inclusion of RJ.

Theorists of RJ have urged practitioners to reject one form of practice over the needs of the stakeholders in individual cases (e.g. Bazemore & Umbreit, 2005; Roberts, 2004; Umbreit, 2000) and ensure focus on the core values/aims of RJ (e.g. De Mesmaecker, 2011; Menkel-Meadow, 2007; Shapland et al, 2007; UN, 2002). As such restorative justice conferencing (RJC) was adopted as an umbrella term for practice in the second phase of the current action. This further adhered to the advise of the UN (2002), drawing attention to the importance of the social impact of crime, as RJC encourages the involvement of all stakeholders (e.g. Umbreit, 2000; UN, 2006) including secondary victims and community members. Victim’s support systems can also impact the victim’s decision to engage with RJ (e.g. Bolivar, 2013).

Empirical research has found high-rates of satisfaction for RJ among victims and offenders (e.g. Poulson, 2003, in Menkel-Meadow, 2007; NOMS, 2012; Strang et al, 2013; Umbreit et al, 2005), although for offenders satisfaction was further dependent on victims being present (e.g. Strang et al, 2013). Timing is a complex issue, as it has been found that there are low-rates of participation with less serious offences where victims are simply no longer bothered, and more serious offences when there can be fear of re-victimisation (e.g. Coates & Gehm, 1985, Wyrick & Costanzo, 1999, cited in Menkel-Meadow, 2007; Umbreit et al, 2005). Yet, RJ has been found to be most effective with serious cases (e.g. Hagemann, 2003; Strang et al, 2013; Umbreit et al, 2005; Umbreit & Vos, 2000; UN, 2006; Wachtel et al, 2010); and the time between offence and RJ has been considered right for those that participate (e.g. Shapland et al, 2007).

In prisons, the use of victim awareness programmes in preparation of direct victim-offender dialogue has been found to be beneficial (Szego & Fellegi, 2013; Barr, 2013) – the approach adapted by the current action research. The UN (2006) also advise incremental development of RJ when it is being introduced. Empirical research on the use of RJ practices in prisons has found that it can produce improved perceptions of procedural fairness for prisoners and visitors, increase the legitimacy of sentences amongst prisoners and understanding of the regime's function to challenge offending behaviour (Barr, 2013). It has been reported to improve relationships between staff and prisoners (Szego & Fellegi, 2013; Barr, 2013) and produce positive benefits for staff, by increasing motivation for the work and reducing burnout (Szego & Fellegi, 2013). As an aim of RJ, increased victim empathy (Feasey & Williams, 2009) or 'sensitivity to victims' plight' (Barr, 2013) can establish accountability for offending beyond legality.

It is important from the outset of this chapter to state that the number of people involved in the action research was small. There is no extrapolation intended, however as a pilot of a RJ initiative in Bermuda the findings provide evidence of those who actually participated, and pointers for future practice in small, highly interconnected societies. It also effectively demonstrates the feasibility of introducing a RJ approach to corrections, and to exploring attitudes among offenders and victims.

Views of RJ & the Criminal Justice System (CJS) in Bermuda

As a result of the dichotomy often portrayed in the literature between the CJS and RJ, the current research sought to explore opinions of the existing CJS and for RJ. Opinions were generally critical of the CJS, with the most consistent positive perception being that – the CJS was effective in bringing people who have committed crimes to justice. There was an overwhelming receptiveness to RJ in Bermuda amongst those participating in the research. This was reflected not only in their satisfaction with the current action initiative, but also with the participants reported willingness to have participated in RJ, if they had been given the opportunity, at different stages of the criminal justice process pre-conviction. Nonetheless, qualitative data indicated a desire for both restorative and criminal justice responses to crime, amongst the offenders and victims. Analysis of the offenders' perceptions of the CJS post phase-one/pre-conference began to show how RJ participation could improve confidence in the CJS in Bermuda. Shapland et al (2007) obtained similar findings in their action research using randomised control trials, where victim and offenders who participated in conferencing had more confidence in the CJS, than those that had not. Barr (2013) found that after prisoners had participated in RJ, they had an increased perception in the legitimacy of their sentences. This was reflected in the current study through qualitative and quantitative data, as the offender-participants spoke of their incarceration having little comfort or compensation for the victims of crime, and reflected in the pre-conference data where the offenders' opinions of statements such as – 'Sentences handed down by the Courts are fair' and 'The CJS respects the rights of those accused of committing a crime and treats them fairly' - became more positive. The least positive perception of offenders post phase-one/pre-conference was that – There is adequate support for victims of crime in Bermuda.

In personal cases of crime, the vast majority of victims reported to not having had the opportunity to give evidence in court or provide a Victim Impact Statement (VIS) (it could have been the case that some offences occurred before VIS were legislated). Only two victims reported having 'somewhat' got the opportunity to say what they wanted to in court. The (STP) victim-participants were the highest rating (93%) group of participants that would 'definitely' recommend the programme to other people affected by crime.

The Experimental Model: Phase-One Programmes (STP & VEP)

The action research set out to implement RJC within the Department of Corrections (DoC) as a new initiative and without offenders being permitted to use their engagement for purposes of parole. Two new programmes were introduced to act as prerequisites for conferencing. It was intended that the programmes would raise awareness of the harm caused by crime from the perspective of victims and encourage accountability on the part of the offenders by increasing victim empathy. The two programmes had both similarities and differences. A major difference was the inclusion of unrelated victims in the Sycamore Tree Programme (STP), reflective of a 'relational' level of restorative practice (Toews, 2006); whereas the Victim Empathy programme (VEP) had offenders working together, with the only additional interaction being with the DoC facilitators. Both programmes produced positive attitudinal change in regards to victim empathy (as measured by the CRIME-PICS II). However, there was a marked difference between the programmes in the degree of attitudinal shift achieved. The STP showed the greater shift for all the offender-participants ($n=13$; 1.46), in comparison to the VEP ($n=11$; 0.64). However, when a small sample of offender-participants was matched for index offence from each programme, the VEP indicated positive change ($n=7$; 0.43) where the STP offender-participants scores showed a negative change ($n=7$; -0.15). Further still, on all the other scales measured by the CRIME-PICS II (e.g. A-scale - anticipation of re-offending) for all of the offender-participants, the VEP showed negative post-programme change, where the STP scores all yielded positive change. The positive attitudinal change on all scales measured by the CRIME-PICS II for the STP was similar to that found by Feasey & Williams (2009). They found overall positive attitudinal shifts for 4,439 male offenders who participated in the STP to be statistically significant (amongst all levels of prison security).

The contradiction in findings could be indicative of the VEP resembling a rehabilitative programme more than a restorative programme. Where the heavy focus on victim empathy ignored any other factors that could impact the offenders' recognition of accountability and need for change.

An advantage of group-work is that questions and challenges from peers are more readily accepted than from the facilitators. The VEP offender-participants viewed the facilitators as judgmental, as the facilitator's role was to guide the offenders' exploration; objections or

discomfort of which was most observed during the role-reversal exercise. For some in the VEP, opposed to recognising their responsibility they more readily deflected this onto the facilitators as DoC staff. This was evident in one VEP offender-participant's comment observed in a session – “Just tell them what they want to hear.” However, with the inclusion of victim-participants in the STP, it was observed that the offenders were willing to take challenges from the victim-participants more readily than their peers.

The CRIME-PICS II measures the cognitive aspect of empathy (“... the ability to recognize and understand other perspectives ...” - Feasey & Williams, 2009, p8) and while the same psychometrics was used for both programmes, the additional element of unrelated/surrogate victims working together with the offenders in the STP may have also created an affective (“... vicariously experience the emotions of others.” - Feasey & Williams, 2009, p8) development of empathy that could have had an influence on the other attitudinal scales measured by the CRIME-PICS II. Feasey & Williams (2009) also found, despite positive shifts on all scales, that the relationship between scales were not always clear¹⁰⁴. The finding in the current research could further reflect Hagemann's (2003) findings, where in a prison programme focused on victim harm but void of victim-participants, Hagemann suggested offenders were only able to restore their relationship with themselves and their (immediate) society (-friends, family, prison staff and other offenders). The degree of emotion experienced in the phase-one programmes was less for the VEP offender-participants, than the STP offenders, and was generally experienced as more emotional for the victims-participants than the offenders. Albeit, not their direct victims, the STP offender-participants were likely able to develop/restore the third relationship highlighted by Hagemann (2003) that being - the relationship between self as offender and ‘the victim’. Disclosures made during STP sessions revealed that some of the offenders and victim-participants were distant relatives. Other commonalities included victim- and offender-participants having experienced the same severe medical conditions and other shared traumatic experiences, which brought them closer together. It also seemed to provide the victim-participants with a greater understanding of the offenders' life experiences that would have contributed to their functioning and offending behaviour.

¹⁰⁴ Such as one particular group (remand prisoners) showing the greatest amount of positive change in comparison to other prisoner-groups on all scales except the victim-empathy scale.

Yet despite these findings and indicators, slightly more VEP offender-participants (83%) than STP offender-participants (77%) indicated a willingness to meet with their direct victims post-programme. Of course with such small numbers it is unclear whether this outcome might be attributable to the programme or occurred by chance. It is also possible that the VEP offender-participants had a need for the same social exchange (Maruna & McNeil, 2008) experienced by the STP offender-participants who worked with committee members. What was apparent was that if the phase-one programmes were to act as suitability assessments for conferencing, this would be more easily gauged from the VEP because, as with rehabilitative programmes, the focus is entirely on the offender. Whilst objectively considered a valid statement, at face value, the researcher is reminded of their own potential biases, as a forensic psychologist working with rehabilitation within a corrections facility and therefore essentially an agent of the CJS. However, as one in the same person, the action researcher was also motivated to incorporate RJ into the corrections system.

Not initially a focus of attention for the current research, Feasey & Williams (2009) in their study of prisoners participating in the STP using the CRIME-PICS II psychometrics, found different degrees of attitudinal shift amongst the prisoners they examined based on the security category of establishments the prisoners were held in. At this juncture, the current researcher also sought to look at differences on CRIME-PIC II scores by category of establishment-security. Only the STP was conducted in the Westgate maximum-medium-security establishment and the minimum-security Farm facility¹⁰⁵. As could be expected, overall, the offenders from the Farm facility had larger degrees of positive attitudinal change than the offender-participants at Westgate (see Appendix 5 - for the CRIME-PICS II pre and post scores of the Farm and Westgate STP offender-participants). This could suggest that the STP is best run at the Farm facility, however this brings additional issues. As the Farm facility is based at the East end of the island, it may prove difficult to recruit sufficient victim-participants, as those residing to the West maybe discouraged.¹⁰⁶ Also, the vast majority of offenders at the Farm facility are generally closer to release, than those at Westgate.

¹⁰⁵ This was because the establishment regime and facilitator resources were more amenable – VEP was delivered during the day when many prisoners at the Farm facility would be out engaged in external activities, such as charity work and STP was delivered in the evenings.

¹⁰⁶ During recruitment the Prison Fellowship facilitators were mindful of the victim-participants area of residence when allocating them to the programmes held at the different facilities.

Retention for both programmes was high (VEP 100%; STP 82%) however of the two offender-participants that did not complete (1 non-starter & 1 dropped out) both were very close to their release date. This could indicate, as Shapland et al (2007) suggested from their study, that convicted offenders close to release are less motivated to participate in any form of RJ process. However, inline with De Mesmaecker's (2013) postulation that RJ participation is based less on instrumental reasons post-sentence than pre-sentence; in the current study the offenders were advised that their participation in the programmes would not be included in their dossier for parole, but were still motivated. The two offenders mentioned above, were being released at the end of their sentence.

Retention for the STP victim-participants was also high (88%) with only one dropout and one non-starter. The one victim-participant that failed to start the STP, appeared to the researcher to be experiencing disenfranchised grief,¹⁰⁷ based on the victim's disclosure during assessment with the Prison Fellowship facilitator (in the presence of the researcher). The individual expressed concerns of judgment at being the parent of an offender and feelings of sadness and self-judged hypocrisy regarding victimization. There was also apprehension about entering a prison. Unfortunately as this individual failed to attend, it was assumed that their conflict and or fear kept them away. Interestingly, a victim-participant wrote the following, post-programme as a question they wished they had been asked - "Have you had a family member incarcerated or involved in serious/fatal crimes?" The one victim-participant that dropped-out after attending the first two sessions, informed the facilitators that they were having to withdraw because of unforeseen increased work responsibilities.

The STP community-participants were victims of burglary, childhood sexual abuse, robbery, domestic violence, violence (i.e. assault, wounding) and surviving family victims of murder; some had experienced multi-incidents of victimization.

¹⁰⁷ Under the subtitle 'Disenfranchised Victims, Disenfranchised Grief' Miller (2008) describes how "Families of murder victims who were involved in drugs, prostitution, domestic violence, or other criminal activity, or who may be members of ethnically, economically, or socially marginalized groups, may suffer disenfranchised grief ... Such disenfranchised mourners may receive little or no support from the community." (p144).

Effects for STP Victim-Participants

Barr (2013) found a 'compelling need for victims to be permitted to enter correctional facilities, however, Feasey & Williams' (2009) study of the STP did not include any data on victim-participants. In the current action research data was collected on the opinions and experiences of victim-participants.

Victim-participants reported feeling 'very' (71%) or 'quite' safe (related to physical safety) during their participation and found the prison 'very appropriate' (43%) or 'appropriate' (57%) as a setting for the programme. Based on pre-programme questionnaire data, 53% of victims 'disagreed' or 'strongly disagreed' that there was adequate support for victims of crime, or that the 'CJS meets the needs of victims' (52% disagreed or strongly disagreed).

For each of the three STPs during the action research phase, the researcher was able to administer the post-programme questionnaires to the victim-participants at their collective debriefing sessions with the facilitators (conducted 1-2 weeks after completion of the programme). Further comments were also made during these meetings and directly to the researcher. From these discussions and data collected (including observations), the vast majority of victim-participants expressed having experienced healing and closure. While unrelated to the offenders they participated in the programme with, the victim-participants still had motivations and experienced outcomes similar to direct victims that participate in full RJ interventions with the direct offender. For example, research has shown that victims often want to have contact with the offender, and to express the impact of the offence on them (Umbreit et al, 2005; De Mesmaecker, 2013). These motivations were evident for the STP victim-participants in the disclosures they shared and questions they asked of the offenders hypothetically or sometimes from a by proxy position. It was also evident in the questionnaire data with statements such as –

"Gives perspective of crime and people who commit crime, breaks the fear factor and separation from offenders and victims."

"It gives an opportunity to listen and speak true feelings."

"It was a very good programme I think not for the inmates only, for myself as well. One often wonders why people commit crime, without realizing where they come from (background, etc)."

Bolivar (2013) found that victims who agreed to participate in direct victim-offender mediation (VOM) often “... tended to pay attention to the circumstances that surrounded the offence or the role they themselves played in the offence. ... even when the offender was unknown to them.” (p203). Although the offenders were not those responsible for the crimes against them, the STP victim-participants still gained a sense of why their offence may have happened. This was evident from their comments and feedback they got from the offender-participants when they worked in pairs on the programme, and written statements such as -

“An opportunity to look within. An opportunity to forgive ... Helps you look at your role.”

“It gives a voice to the hurt and pain and allows both victim and offender to take responsibility.”

“It allows you to see both sides of the situation.”

Of direct RJ conferencing, Shapland et al (2007) found that 69% of victims said they had a better understanding of the offence.

As a whole session on the STP is focused on forgiveness, the victim-participants also expressed a lot about releasing ‘*something*’ almost spiritual and intangible; they sometimes struggled to articulate precisely what they felt was released, but valued it –

“I don’t even know what it was, I just know where it took me.”

“I came into the programme to do it for me. I received far more benefits than I expected to receive. I felt a fundamental shift in my internal world. I found it far more beneficial than I expected it to be. It was a great gift.”

There were also direct references to forgiveness, that in turn resonated with Bolivar’s research of VOM in which it was also noted in regards to victims desire to understand the circumstances of the offence and their role that –

“Importantly, this also implies that victims need to understand the role they themselves played in the offence by elaborating self-blame feelings.” (p207).

“And it also helps me as a victim to learn how to forgive.”

“It takes the judgment and condemnation out of the equation and opens the door to forgiveness and self-forgiveness. “

An implicit assumption or oversight made by the researcher at the start of the initiative was that the offenders of people victimized within the community would have been apprehended.¹⁰⁸

However, an additional benefit of the STP was that those victims whose offenders were never identified could still gain healing from participating in the programme. De Mesmaecker (2013) highlighted the epitome of RJ being the repair of psychological harm and harm to relationships. Shapland et al (2007) found from their research of conferencing, that over 50% of victims gained a sense of closure following participation. The STP victim-participants expressed the benefits that they received from the programme. Their expressions were most condense during the final sessions, when their gratitude for the programme and for providing the opportunity for their healing was shared with those on the programme and to the invited guests as part of the session 8 celebration -

“Programmes like the Sycamore Tree are needed so closure can take place...”

“To help people face the things they haven’t been able to deal with on their own.”

“I enjoyed this program I learned a lot about myself.”

93% of the victim-participants reported to being ‘very satisfied’ with the programme overall. At a live-televised conference (12.11.14) on RJ in Bermuda’s City Hall (independent of the action research), a victim-participant of the first STP publicly declared her involvement in the programme and how positive the experience was for her. Such testimonies could aid change of attitudes in the community; and was why recognition of a need to disseminate information about the scheme became incorporated into the action-research.

While not a direct aim of the action research, the outcomes lend themselves well (see Bazemore & Maruna, 2009) to what research is showing about how desistance from criminal behavior works. Maruna & McNeil (2008) in their chapter reviewing the research, layout the factors that contribute to ex-offenders desisting from crime. They note that it is a process, age with mediating factors such as stable intimate relationships, parenting and employment provide protective elements, as things that often occur in mid-adulthood. However, the opportunity to

¹⁰⁸ A lack of consideration likely exists for victims of deceased offenders who have not had the opportunity for reparation, but remain affected by the incident. This was not known to be the case for victims in the current study, but is a point for reflection if the primary aim of a RJ initiative is the reparation of harm.

give back to their community or society helps ex-offenders to establish a new positive personal and public identity (Bazemore & Maruna, 2009); and RJ can help in providing this opportunity. Maruna & McNeil (2008) point out that in helping others, offenders/ex-offenders gain intrinsic reward and social respectability. They explain that such types of activities and experiences build social capital, relationships and networks that fill a void for the ex-offender; it helps them develop a sense of purpose, means for redemption and legitimizes their claim to change. All of this encourages desistance and social inclusion for the often-disadvantaged ex-offender who previously experienced their community hostile, unforgiving and ostracizing.

Community Healing

Reparation of relationships can be achieved with full RJ interventions. Whether or not victims and offenders are known to each other before an offence occurs, it is argued that they are brought into a relationship with each other by virtue of the offence and the shared experience.

In Bermuda the need to repair relationships can be further compounded beyond reparation of harm to the direct stakeholders, but also vital because of stakeholder proximity and because of the social and familial interconnectedness. Relatedly, Van Stokkom (2013) theorized that it can be the (macro) community that hold malice or vengeful feelings towards offenders. The STP seemed to address a couple of these issues, if unintentionally. In the first session participants discuss how they will work together (almost drawing up an agreement of ground rules) and brainstorm/thought-shower the effects of crime on victims and offenders separately. This essentially led to the conclusion that offenders have also been victims; which began to create bonds among the participants (which consistently did not fully materialise overtly until around session 4). Reflected in a reoccurring criticism (largely, but not exclusively by the offenders) that the programme was too short and there was not enough unstructured time allowed for dialogue between the participants. However, it was further evident in the continued relationships that were formed, as at least 25% (known to the researcher) of the victim-participants started to visit

the offenders they had worked with in the programme, after the programme was over.¹⁰⁹ This occurrence was also reflected in the benefits victim-participants saw -

“Creating new connections – bonds between victims and offenders.”

“The main benefit is in bringing together “offenders” n “victims” It takes a lot of courage – for both sides – inmates must wonder if they’re going to be blamed & shamed & victims may worry they’ll be further victimised. And neither transpired! This helps to dilute the “us & them” divisiveness. Heading to more openness & an avenue to healing.”

Researching VOM, Bolivar (2013) found that one reason victims refuse to participate in RJ (with direct offenders) revolves around a fear of the offender or negative evaluations of a meeting such as refusal to entertain the development of relationships with the offender post-intervention. The victim-participants talked about having shared their experiences on the programme with friends and family. It was hopeful that this could start to have an effect on perceptions within the community. Of the STP victim-participants – 93% said that they would ‘definitely’ recommend the programme to other people who had been affected by crime, the remaining 7% said that they would ‘more than likely’ recommend the programme.

While many of the STP victim-participants expressed feeling better about their experience of victimization after the programme; at least one spoke candidly about still carrying negative emotions (not as a result of the programme, but about their actual experience of victimization). This individual of childhood trauma spoke more readily about the neglect or denial of not being recognized as a victim and not being provided with appropriate support, than of negative feelings toward the actual offender or offence. This could indicate as Van Stokkom (2013) suggests, that failing to respond to injustice (or marginalized recognition of extended victim impact) can diminish victims or devalue their pain. Similarly, it would also be unjust to negate the offenders’ own experience of victimhood in an unequal society, where young black men remain disadvantaged. As previously mentioned, the STP acknowledged that offenders have also been victims, which the VEP did not do.

¹⁰⁹ Neither the facilitators nor researcher had any input in the establishment of these relationships; they neither encouraged nor discouraged them once they became aware. Seemingly, all the relationships were platonic.

Participant Recruitment

Another interesting finding with the victim-participants in Bermuda was the prevalence of Bolivar's (2013) concept of 'ideology'. This concept seemed to play a major role with the recruitment of victim-participants for the STP (and a sense of duty when it came to conferencing). The majority of the victim-participants were members of Prison Fellowship or community activists – people committed and involved with organizations that worked for the betterment of the society. This partly spoke to the social and cultural values of the island. However a related issue for future practice is that in such a small country the continued availability of unrelated victims to incarcerated offenders would likely become unachievable. This may further necessitate the need for conferencing.

It was anticipated that there might be some resistance on the part of the offenders to engage in the initiative, especially as they were advised that their participation could not be used for purposes of parole and was totally voluntary. Surprisingly this was not found to be the case, and was likely assisted by the promotion of the programmes by the first offenders that participated. Of the STP offender-participants 86% said that they would 'definitely' recommend the programme to others and the remaining 14% would 'more than likely'. This did occur, as offenders began to ask if they could be a part of the STP and would disclose to the DoC programmes staff that they had been told about the programme by other prisoners. Recommendation was less forthcoming for the VEP, with only 33% saying that they would 'definitely' recommend the programme, 50% reporting that they would 'more than likely' recommend the programme and 17% being 'unsure'.

Of 5 offenders initially approached to see if they were willing to meet with their direct victims post phase-one participation, 80% were agreeable.¹¹⁰ The one offender, who declined after indicating a willingness to meet with his direct victims after completion of the phase-one programme, disclosed that the direct victim of his current offence had been an extended family member and for this reason did not wish to pursue to conferencing.

¹¹⁰ Engagement with offenders first, is advocated in the guidance for victim sensitive practice (Umbreit, 2000).

Progression onto Restorative Justice Conferencing (RJC)

Between September and November 2014, two conferences were held, one with a witness-victim and offender, the other with 2 victims, 3 supporters and the offender. The first conference had one facilitator, the second involved two; the researcher observed both.¹¹¹ Once victims were identified the Police (BPS) facilitators made telephone contact with them, inviting them to a meeting about RJ in relation to the offence against them. Initial phone contact was acceptable to the victims as has been found with previous research (e.g. Shapland et al, 2007). A total of four separate case meetings were held.

Of the other two cases that did not result in a conference, one victim declined to participate; and in the other, the victim agreed however, during the preparation/assessment phase the offender decided to withdraw, this is discussed further on in this chapter. Of the initial 4 cases data was obtained from the four offenders and one direct victim pre-conference, and the two offenders post-conference.

All of the conference participants interviewed and/or completed questionnaires pre-conference felt that justice (as a response to crime) should include both punitive and restorative aspects. Two offenders and the victim felt that RJ should not be considered until after imprisonment when the offender has had some “thinking time” and the victim has been afforded some recovery time. Only one offender thought that RJ should be used as part of the court process and made available for juvenile/young offenders.

The participants’ views of what the purpose of conferencing was, did not markedly differ from their reasons for agreeing to participate pre-conference. Both parties thought that it was for themselves and the other party. The victim’s reasons for participating were – to show the offender the impact of their actions, and to be heard (to have a voice). Umbreit et al (2005) identified the first point here, as the second chief reason victims participate in cases of serious violence. The victim specifically expressed how at the time of the court case minimal support was received and all focus was concentrated on the offender.

¹¹¹ The increase of conference participants was beneficial for one the facilitator’s development and confidence, but coincidental.

The offenders' (n=4) reasons for agreeing to participate (pre-conference) presented as seven themes – to help the victim (29%); to be held accountable (18%); to contribute to their rehabilitation (18%); to apologize (12%); for forgiveness (12%); to change how the victims viewed them (6%) and to repair relationships (6%). The chief reasons Umbreit et al (2005) found for violent offenders agreeing to participate in dialogue with their victims, were similar to the current offenders reasons, but included reasons regarding spirituality. Violent offending accounted for 75% of the current conferencing offender sample.

In interview post-conference, the offenders' (n=2) reasons for participating became reduced to three themes – being held accountable; to help the victims; proximity and relationship repair. It was expected that the latter reason would be particularly important in Bermuda. Shapland et al (2007) found in their study of conferencing that victims and offenders of serious violent cases welcomed the opportunity to discuss issues on the basis of having links such as mutual relationships or living close by each other. One offender made the following written statement -

“My main reasons ... was, the fact that I still see these people once I get out, and that way ... I don't have to see them and still live [in] darkness ... I have created a friendship instead of hatred.”

In the post-conference questionnaires the offenders also wrote about gains such as - “victims [gaining] closure”; creating “an environment of empathy and understanding” “relief and acceptance” and “a chance to reflect on the situation you are incarcerated for...”

Both offenders were ‘very pleased’ to have been asked to participate in a conference; however as has been found in previous research (e.g. Shapland et al, 2007) the presence of victims can make a difference to the offender’s level of satisfaction with the process. When asked how they felt about having been asked to meet with the victims (complementary data), one offender indicated feeling ‘very pleased’ the other, ‘pleased’. The latter offender commented in the post-conference questionnaire and in interview about his disappointment of not having had more of his victims present – “... *I enjoyed the conference I just wish there were more victims, not wish, but it would have been nice now I've been through it I know what it's like so, there's plenty victims in my case, if another [victim would like to meet with me] I would do it.*” The positive in this was that the offender recognized the ripple effect of his crime and the number of people it likely impacted.

Both offenders in interview post-conference made reference to recidivism. One felt that had he participated in RJ earlier in his life, he might have ceased to commit as many crimes as he did. The other felt that RJ could help prevent others from reoffending and reduce crime in Bermuda.

From observation of the conferences and follow-up conversations with the conference-victims, they were largely satisfied with the process. They felt that they were provided with sufficient information and preparation before the conference and welcomed the follow-up discussion. Each conference went well, in terms of the honest and open dialogue that was had and all participants remaining until the end, including the informal refreshment section, in which more informal dialogue continued naturally. The offences against the direct victims were committed in their home. As such their initial main interest was to know that they had not been targeted. Receiving the answers to their questions appeared to provide a sense of relief. In both conferences after some initial dialogue, and verbal expressions of anger (in one case), the victims seemed to become more concerned with the offender's rehabilitation and genuinely concerned for the offender's future - for the offender, the offender's family and for the community. There were physical embraces following one conference (at the offender's request but reciprocated) and a pledge to provide support and encouragement to the offender once released in the other (see Appendix 4, for the newspaper article (29th Dec 2015) on the latter conference). There were no requests for reparation beyond the encouragement of the offender to refrain from reoffending once released and to continue engagement with rehabilitation. The offenders in both conferences extended apologies.

What seemed to be required most for the victims, was understanding of the circumstances of the offence; knowledge of the offender and their circumstances, and an opportunity to address the offender. As one offender-supporter said – "This is the missing piece." Referring to the society's response to crime, rehabilitation and reparation. Braithwaite et al (2013) found cultural differences between Australia and Japan in terms of social values (less so than between victims and offenders intra-culturally) regarding RJ. With a limited number of actual conferences, the values of those interviewed - victims and offenders (whether or not agreeing to participate), begins to suggest that much value is placed on 'victim's voice and rehabilitation', and 'victim's forgiveness and reintegration' respectively.

Withdrawals & Refusals

There were relatively few refusals from victims,¹¹² but the reasons for these seemed consistent with past research. Two victims of property crime that declined to participate in a conference after meeting with a facilitator (and the researcher) both stated that they would confer with their families before making a final decision. It was deduced that their decision not to participate (confirmed by one) was due to them being dissuaded by their family (Bolivar (2013) reports on this phenomenon). However, this was also in line with previous research regarding property crime (e.g. Umbreit et al, 2005) that participation rates decrease over time. This was evident by the decline of victims from earlier offences and acceptance by more recent victims, of the same offender.

In another case, as Bolivar's (2013) findings profiled, the victim felt that they had resolved the incident for themselves concluding that the offender was solely to blame, and viewing the offender negatively. The victim also felt that too much time had passed since the offence, and commented that had the offer been made closer to the time of the offence they would have likely participated. Timing has been found to effect victims' willingness to participate, related to motivation to participate because of the less serious nature of an offence and the degree of physical injury incurred (Umbreit et al, 2005). It could be remiss for the facilitator and researcher to suggest that the victim had not resolved the offence, however their evaluation of the victim's expression was not suggestive of someone having reconciled or as having resolved the aftermath of their victimization. Other information suggested that there might have been more to the offence than was being disclosed in the interviews by the main stakeholders (i.e. that the offender and victim were known to each other), which may or may not have been revealed at the time of the court case. Circumstances that are not illuminated during the court process could, in cases of post-sentence RJ, allow for full open dialogue that could redeem and assist the reparation of all involved, if those involved are willing.

As the majority of offenders incarcerated were black males (Riley, 2013), this was also the case with the total number of conferences that were nearly held during the period in which the action was researched. In preparation for conferences one pattern that began to emerge was

¹¹² One of the actual conference cases had multiple victims.

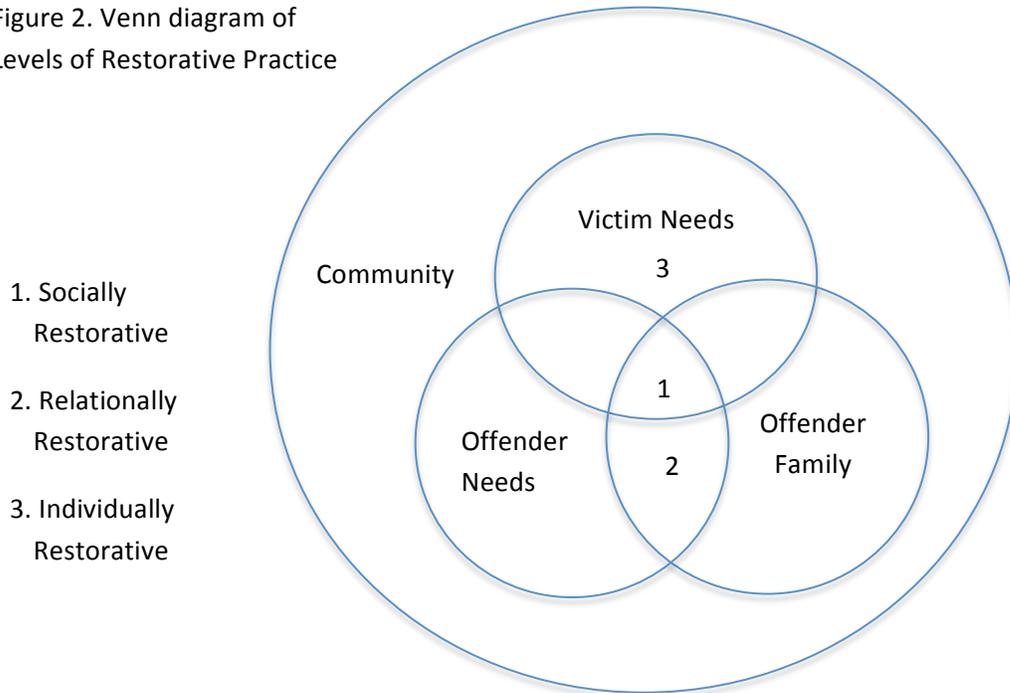
the need for some form of family reparation conferencing. Pre-existing family dynamics influenced the offenders' decision-making and motives for having conferences and/or family members as supporters. In one case the offender requested a conference/meeting with their parents before the conference with their victims. The offender stated that he had offended/taken advantage of his family despite their continued support and expressed a need for dialogue with them that he felt he would avoid if he had to wait until he was released. In another case, after initially agreeing to meet with the victim, the offender withdrew because of family issues that he wanted to resolve. In the latter case it also became apparent to the assessing-facilitator and researcher that the offender might use the conference to try and address familial wounds from the past that could have been offensive to the victim. These occurrences were also indicative of Tumin et al's (1992) finding regarding the absence and lack of support of black parents in the criminal justice process of their children. As adults, the offenders still had issues seeking or with family support. In being responsive, the initiative began incorporating additional preparatory interventions as required to meet the needs of the offenders and their supporters, in line with the type of guidance proposed by Umbreit (2000).

Braithwaite (1989) highlighted the distinction between stigmatising-shaming and reintegrative-shaming; with the latter involving a rejection of the behaviour (offence) opposed to the person, and a welcoming back into the fold. If the offenders' significant others are involved, as important people to the offender, this can create more accountability for the offender and these people can help monitor the offender's behaviour once reintegrated into society.

In a small place such as Bermuda, the stigmatisation of criminal behaviour weights heavily, not only on the offender but also their family. As such, consideration of Toews (2006) 'Levels of Restorative Practice' may be more appropriate for conceptualisation in Bermuda than McCold's (2000). With the focus on relationships, Toews Venn diagram incorporates three groups – victims, offenders and the offender's family, surrounded by an outer circle representative of the community (illustrated in the diagram below). The initial rejection of Toews theory was based on it appearing to give too much emphasis on offenders, above and beyond the victims. What the evidence of the current research began to show was that a lack of family support, possibly continued lack of support, could hinder offenders' motivation to participate in RJ.

Toews (2006)

Figure 2. Venn diagram of Levels of Restorative Practice



During the writing of this thesis, family members of the offenders that had participated in the STP were requesting or being identified by Prison Fellowship Bermuda to participate in the STP as victim-participants. Identifying themselves as victims of the crimes committed by their sons or of others. This could suggest the need for a programme that involves offenders and their families, or one that recognises disenfranchised grief.

Recommendations: Issues for RJ Practice & Policy

This action research was also conducted to inform practice and policy in Bermuda for the inclusion of RJ. This is addressed in the remainder of this chapter.

Continued use of the STP within the Department of Corrections as a phase-one intervention is recommended for a number of reasons, not least because it can provide healing for victims in the community affected by crime, but also as a means of greater accountability for offenders. It can help offenders assess their preparedness and will to engage in dialogue with their direct

victims. It is useful for those victims whose offenders have never been identified¹¹³ or as an alternative option of victim support when the offender refuses to meet with the victim of their crime. As found in Barr's (2013) study, the offenders in the current study appreciated contact and honest dialogue with community members affected by crime; and any new programme development should include this aspect.

It is also recommended that the DoC in partnership with the BPS, continue to offer victims and offenders the opportunity for direct dialogue, in the form of conferencing that can involve all stakeholders affected by the crime.

Practice

The STP yielded positive attitudinal change in the offender-participants, on all the scales measured (with the exclusion of the 'problem inventory') by the CRIME-PICS II. While used by the action research, the CRIME-PICS was to remain the property of the DoC, and it is recommended that the assessment continue to form part of the programme evaluation.

What this research suggests is that it is imperative to ensure that offender's relationships with their intended supporters are adequate for conferencing before approaching the victims. It may be necessary to offer family reparation intervention before an RJC. Alternatively, one-to-one conferencing may be more appropriate. Further based on the key role played by the family to ensuring offender participation, it is recommended that the offenders and victims of the STP have the opportunity to invite their family members to take part in the final celebration session.

One concern with the STP was the potential for the facilitators, directly or indirectly (by not managing the discussions) to evangelise. This is discouraged by Prison Fellowship International and should be noted. The first STP offender-participants warned that as younger offenders would participate they would likely be deterred by the religious content if this were not appropriately monitored. It should also be recognised that the values of the biblical stories

¹¹³ Facilitators would always need to be mindful that unidentified offenders could still be incarcerated for different offences, and inadvertently come into contact with the victims. Offenders are cautioned about the disclosure of offences for which they have not been convicted and the responsibility of facilitators to report any such disclosures.

portrayed are not limited to the Christian faith. Caution is urged that RJ does not become synonymous with religion.

Both conference-offenders rated the facilitators as 'very impartial'. The DoC facilitator who facilitated the two conferences was also a facilitator of the VEP.¹¹⁴ This is suggestive of the process being most influential in how the offenders viewed the staff, than the individual staff member's personally; as agents of the CJS or symbolic of authority. This further suggests contrary to Szego & Fellegi's (2013) recommendation, that prison staff working in their own facilities can facilitate conferences without issues of impartiality being raised.¹¹⁵ Further, the involvement of DoC and BPS personnel can help to foster better relationships, including those with the community members (as found in Szego & Fellegi's (2013) study). It could further encourage the development of other RJ practices within the agencies. Hagemann (2003) asserted that the sustained use of RJ in corrections would likely be dependent on buy in from other criminal justice agencies. During the writing of the thesis, one of the DoC facilitators had started an initiative conducting family group conferencing with families, the community and offenders soon to be released.

Policy

What would be invaluable, and began to occur just before the research was completing, was victims from the community directly or indirectly (through a third party) approaching the DoC wishing to explore the opportunity of meeting with the inmate of the offence against them. It was apparent that the newspaper articles covering the initiative (and presentations given) were reaching the public. The added benefit was that these approaches from the community were for very serious offences, as they were surviving family members of murder victims. It would not be appropriate for facilitators to reach out to these victims directly (albeit one benefit of a small community again is the interconnectedness that could facilitate acceptable direct contacts from the 'right' people); but it would be perfectly acceptable for them to make the approach if they were aware of the opportunity. Therefore, dissemination of information and promotion of the scheme, and future schemes is vital to raise public awareness.

¹¹⁴ The second facilitator was from the BPS and this was known to all involved in the conference including the offender.

¹¹⁵ This could also be another product of the level of social interconnectedness of Bermuda.

Since the introduction of Alternatives to Incarceration (AtI) to Bermuda, a concept used to reduce mass incarceration, such methods have been hailed as restorative. These methods adopted by government operate to reduce the punitive responses towards offenders, by reducing the use of incarceration (e.g. mental health and drug court; electronic monitoring) but do nothing to address the harm caused to the other main stakeholder – the victim. These methods maintain focus on the offender and as such remain rehabilitative and based on state control. It is on the basis of this that the current research advocates for the implementation of full restorative justice practice. As suggested by Umbreit (2000) referring to all forms of victim-offender dialogue as ‘conferencing’ could enable practices to be more ‘dialogue driven’ than ‘process- or settlement-driven’ and engender the ethos of being most responsive to the needs of those most affected by an offence. “We are proposing the use of “restorative justice conferencing” as an umbrella term to include all forms of direct restorative communication between crime victims and offenders that is facilitated by one or more impartial third parties. ... all the different forms and “models” have strengths and limitations. By embracing a multi-method approach ... we will be far more likely to draw upon the strengths of all while minimising their limitations. Most importantly, a multi-method approach ... is more likely to respond to the unique needs of individuals, communities and their culture.” (Umbreit, 2000, p23).

The importance of families, to offenders and victims, and issues around stigmatisation highlighted in this research, also speaks to the need for community involvement. The micro-community referring to the support systems of the main stakeholders and witness or secondary victims to crimes should not be excluded or marginalised in the practice of RJ, or by any agencies of the CJS. In recognition of this, whilst maintaining first regard for direct victims, the current action research advocates the use of a definition for RJ that acknowledges the community involvement such as Marshall’s (1998) –

“Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future” (p. 28).

Based on the findings of the current research, victims are largely dissatisfied with the CJS in Bermuda and it is recommended that consideration be given to the significance of developing a Victim’s Charter, to legislate the rights and entitlements of those people affected by crime. If RJ

is to become incorporated into the existing process, the offer of RJ could be included in this charter.

In light of existing inequities that exist in Bermuda, it is highly recommended that any implementation of restorative justice practices are not based on any criteria that could lead to the exclusion (or discrimination) of any sectors of the population; unless individual exclusions are based on risk assessments indicative of potential re-victimization of those harmed by crime. Equally, as the population of Bermuda is too small to yield numbers necessary for analysis of statistical significance and randomised control trials, without a protracted period of time, alternatives should be considered. Future Research could more rigorously examine victim and offenders perceptions of the CJS and RJ between those that participate in conferencing and those who refuse. Offenders can also be tracked post-release to assess the nature and rates of re-convictions, post-conference involvement compared to non-RJ involvement. It would also be highly beneficial for future research to measure the psychological (traumatic) effects of crime on victims' pre and post-intervention, as a way of qualitatively examining the positive effects; which can also determine costs considered as tangible for policy makers.

Can RJ bring people (victims, offenders and a harmed community) closer together into shared responsibility and accountability? Certainly, the current research has provided examples of how this can be achieved. As such it could also engender a great sense of social control. As RJ begins to grow in Bermuda, future research could examine how such examples of patriotism can be fostered. With the endorsement of the Commissioner, the DoC will continue to provide RJ interventions.

Conclusion

From a review of the literature, the current study appears to be the first conducted examining RJ in a corrections setting within a small dependent territory. While RJ has been discussed in Bermuda for some time, this action research has been the first systematic application of any form of fully orientated restorative intervention. It may not be coincidental that since the action started and has been publicised a greater momentum has been generated, with other CJS agencies becoming more proactive in their pursuit of restorative justice implementation. The current thesis has contributed to the research with focus on the differential needs of a small

community with a high level of social connectedness, systemic inequities and the idiosyncrasies of dependent territories. Although the research involved relatively small numbers, the start of the initiative yielded positive results for those involved, and could have further pervasive impact on the community.

Statutes

Bermuda Code Amendment Act 2001

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APPENDIX 1 – Research Authorization Letter



GOVERNMENT OF BERMUDA
Ministry of National Security

Department of Corrections

MEMO

TO: Ms Aidoo, D
cc: A/ACOC Cann, K
FROM: Lt Col Lamb, E 
DATE: 17 February 2014

RE: REQUEST FOR RESTORATIVE JUSTICE RESEARCH

This is to formally respond to your request for permission to conduct research on Restorative Justice and to eventually deliver programmes for inmates and their victims. I am a very strong supporter of Restorative Justice and therefore, I am very pleased to grant permission for you to pursue your research on this topic.

Given the wider spectrum of this matter, I wrote to our Permanent Secretary for feedback from Ministry Headquarters as well. I am pleased to inform you that I have acquired the assent of our Permanent Secretary for this research.

I have no doubt that you will be successful in your Doctoral Studies and I look forward to your delivering these programmes to our Department.





APPENDIX 2 – Research Background Paper

Research Background Paper

STUDY AIM

Restorative Justice has been practiced in a number of countries for many years and is becoming increasingly high profile internationally.

This study aims to explore how well restorative justice can work for victims and convicted offenders in Bermuda with regards to its potential for reducing the harm caused by crime and increasing empathy; it also aims to inform policy.

The study will use reported research and existing policy guidance to inform how restorative justice should be used within the Bermuda Department of Corrections.

It will explore the experience and effects of three restorative justice programmes for victims and offenders.

It will also explore victim and offender opinions of the Criminal Justice System generally, and in the management of their cases.

“Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.” (Marshall, 1998).



Repairing Harm, Rebuilding Communities

Davina Aidoo
Psychologist & Researcher
Phone: 441-234-0555
Department of Corrections

Davina Aidoo C.Psych is a student of the London Metropolitan University on the Professional Doctorate programme in Policing, Security & Community Safety.



This study has ethical approval from the London Metropolitan University and is authorized by the Bermuda Department of Corrections & Ministry of National Security.

EXISTING RESEARCH FINDINGS

Restorative Justice Conferencing has the potential to achieve:

- Victim satisfaction levels of 75-85%
 - Reduction in re-offending of 14-27%
- (UK National Offender Management Service 2012)

Of crime victims and criminal justice professionals surveyed in Nigeria - 4 out of 5 people (81.8%) supported the use of Restorative Justice. (Omale, 2009).

Restorative justice programmes for prisoners of violent and serious offending in the USA found that

- 82% of prisoners & 62% of victims & families reported a sense of personal growth and healing
- 58% of victims reported better feelings towards the offender.

(Umbreit et al, 2003)

An evaluation of the Sycamore Tree Project (offered by Prison Fellowship) in England & Wales found a positive difference in attitudes for all types of prisoners. (Feasey & Williams, 2009).

How can you help in the study?

You do not have to agree to be involved in the study in order to participate in the Victim Empathy Programme, Sycamore Tree Project or Restorative Justice Conferencing. However your opinions and experience are what matter!

Your signed consent would be needed in order for your contributions to be used in the study – however you would remain anonymous and you would have the right to withdraw consent at any time.

You are being asked to be involved in the study by agreeing to -

- *Complete a questionnaire before and after the intervention programme.*
- *Give consent for what you say during the programmes to be used (remember everything is anonymous).*

And in the case of RJ Conferencing –

- *To be interviewed by the researcher, before and after the conference.*

How will your information be handled?

You will not be asked to give your name on any questionnaires; all written information will be assigned a number for identification purposes, which will only be known to the researcher.

All information will be stored in lockable cabinets.

Audio recordings of interviews will be written up (transcribed) as soon as is feasible after the interview. Any identifying information (such as names) will be left out from the write up and recordings will be wiped immediately thereafter.

All paper information such as questionnaires, transcripts and observation notes collected solely for the purpose of the research will be shredded within two years of being collected.



APPENDIX 3 – Restorative Justice Conferencing

Participants Information Leaflets

WHAT HAPPENS NEXT?

After this meeting the RJ facilitators will offer to:

- Start the preparations for an RJ Conference with the offender.
- Or, leave you to think about what you want to happen.
- Plan with you a way to be involved that is helpful to you.

What is RJ?

Who is suitable?

What does it involve?

Who makes it happen?

What happens next?

How do I find out more?

PLEASE REMEMBER

You are in control of the process we will not proceed without your agreement

HOW DO I FIND OUT MORE?

Phone using the details below for:

Department of Corrections Restorative Justice Programme

A multi-agency partnership working with the Dept. of Corrections to provide restorations for victims and offenders in Bermuda.



To find out more contact:

*Davina Aidoo
Psychologist*

Phone: 234-0555ext 226

DoC Restorative Justice Programme

giving victims a choice

INFORMATION FOR VICTIMS

This leaflet describes how you could have your say and meet with the person who offended against you as a way of repairing harm caused by crime.

Department of Corrections Restorative Justice Programme

What is RJ?

Who is suitable?

What does it involve?

Who makes it happen?

What happens next?

How do I find out more?

WHAT IS RJ?

Restorative Justice is the opportunity for you to have your say, to ask questions and to see if anything can be done to put right the harm that was caused by the offence. It may involve meeting the offender to talk about:

- What happened.
- Who was affected, and how.
- What can be done to make things better.

If you do not want to take part, you are not obliged to.

WHO IS SUITABLE?

If you have experienced an offence as a personal victim (not domestic violence) you are eligible to take part. The offender has agreed to meet with you, and they will be expected to:

- Accept responsibility for causing harm.
- To explore ways of making amends for the harm caused.

DoC Restorative Justice Programme

WHAT DOES IT INVOLVE?

The programme involves you meeting with a Restorative Justice Facilitator who will talk to you about:

- What happened in the offence.
- How you and others were affected by what happened.
- What questions and concerns you are left with following the offence and its aftermath.
- Whether there are things that can be done by the offender that would make things better.

At the end of that meeting you would be asked to decide about whether to meet with the offender, or identify another way in which he/she could make amends.

After that, a meeting, or some other event would take place with the offender. At the meeting the offender may come to a voluntary agreement with you to further repair the harm in some way, but that is not a requirement of his/her sentence.

Sometime later the offender would be involved in a review about whether he/she has complied with the agreement and what has been achieved.

WHO WILL BENEFIT?

Victims often want to know why the crime happened to them. They also want to play some part in the process of what happens to the person who committed the crime.

Victims want to know that they are not likely to be harmed by the same person again. This process gives you the chance to ask those questions, to play a part and to be clear about the offender's future intentions. At all points in the process your welfare will be the most important concern of the facilitator.

RJ can help offenders work towards positive outcomes for those harmed and themselves. RJ means that offenders have the chance not just to say sorry and feel sorry, but to do something about it.

WHO MAKES IT HAPPEN?

RJ is delivered by trained facilitators. Training is provided by licensed trainers with the International Institute of Restorative Practices. RJ is being run in a number of countries with success in providing victim satisfaction. This programme is currently run only with those offenders who are serving a custodial sentence. They have also participated in a victim awareness programme.

DoC Restorative Justice Programme

What Happens Next?

As you have participated in a programme you have already completed the first step.

Your programme facilitator can talk to you about the conference process.

You will be interviewed and given the opportunity to ask any questions you may have.

If you are willing, the person harmed by your offence will be contacted and offered the opportunity to meet with you.

HOW DO I FIND OUT MORE?

Speak with your programme facilitator, Case Manger or Social Worker

Who is suitable?

What does it involve?

Who makes it happen?

Department of Corrections

Restorative Justice Programme

A multi-agency partnership working with the Dept. of Corrections to provide restorations for victims and offenders in Bermuda.



To find out more speak to your group facilitator, or put in an app to meet with your Case Manager or Social Worker

Department of Corrections
Restorative Justice Programme

making Amends

Information for Inmates

This leaflet describes how you could meet with the victim of your offence to deal with the harm caused by crime and work towards restoration and healing.

Department of Corrections
Restorative Justice
Programme

What is RJ?

Who is suitable?

What does it involve?

Who makes it happen?

What happens next?

How do I find out more?

Your Questions Answered

What is RJ?

Restorative

Justice is the

chance for you

to put right the

harm you have

caused. It may

involve

meeting with

the victim to

talk about

If the victim does not want to meet you, other ways will be explored to repair the harm.

WHO IS SUITABLE?

You are suitable if you have committed a violent offence or an offence of household burglary.

- Accept some responsibility for causing harm.
- Be willing to meet the victim, if the victim chooses to meet you.
- To explore ways of making amends for the harm caused.

Repairing Harm, Rebuilding Communities

WHAT DOES IT INVOLVE?

It will involve taking part in at least four meetings which will include:

1. Meeting to find out what you think about what happened and what you can do about it.
2. Helping you prepare and decide who you want to attend.
3. Meeting the victim or another activity such as writing a letter of apology.
4. A review meeting with your RJ Facilitator, Social Worker &/or Case Manager.

You may come to a voluntary agreement with the victim to further repair the harm in some way.

WHY DO IT?

RJ gives you the chance to make a real difference to the person to whom you have caused harm. Victims often want to understand why the crime happened to them. They also want to have their say. Victims want to know that they are not likely to be harmed by the same person again.

By helping you face up to the consequences of what you have done RJ can help you to feel better about what happened and enable you to put it behind you. You can use your sentence to achieve a positive outcome for yourself and the victim. RJ means that you have the chance not just to say sorry and feel sorry, but to do something about it.

WHO MAKES IT HAPPEN?

RJ is organized by a person from the Department of Corrections Restorative Justice Team who is a trained RJ facilitator. The facilitator and a member of the Programmes Team will work closely with you to make sure that the process works best for both you and the victim.

What is RJ?

Who is suitable?

What does it involve?

Who makes it happen?

What happens next?

How do I find out more?



APPENDIX 4 – Newspaper Articles on the RJ Initiative

2nd February 2015 – ‘Pioneering Scheme Reaps Rewards’

First report on the Restorative Justice initiative.

26th March 2015 – ‘Offenders and Victims Face to Face’

Report on the completion of the second Sycamore Tree programme celebration.

26th September 2015 – ‘CRIME AND HEALING: Pioneering Project sees Inmates Come Face-to-Face with Victims’.

Interviews held with offender and victim-participants of the Victim Empathy and Sycamore Tree programmes.

29th December 2015 – ‘Face to Face with Bar Gunman’

Report on the first restorative justice conference.

One Dollar



■ **PRISONS** Restorative justice

Pioneering scheme reaps rewards

By Simon Jones

The pioneering restorative justice programme is already beginning to reap rewards in Bermuda's prisons, according to psychologist Davina Aidoo.

The Sycamore Tree initiative, in which inmates come face to face with a victim of crime, was piloted at Westgate Correction Facility last September. Six inmates success-

The Royal Gazette met Commissioner of Corrections, Colonel Edward Lamb, and his senior team to discuss the challenges of running the prison system. The three-part series looks at community partnerships, upcoming initiatives and projects to help inmates reintegrate into society. This final report focuses on restorative justice.

fully took part in the scheme, which is designed to help victims deal with their ordeal and offenders understand the harm they have caused. Next

week, five more inmates from The Farm will embark on the same initiative.

The final stage of the programme will see prisoners

and the victims of the crimes they have perpetrated introduced to each other during Restorative Justice Conferencing.

"The first programme went very well, to the point that certain victims wanted to maintain contact with the inmates they were in the programme with," said Ms Aidoo.

"The programmes that are **Continued on Page 2**

Royal

Monday, February 2, 2015

Page 2

■ **PRISONS** Restorative justice

Pioneering programme is reaping rewards

Continued from Page 1

on offer at Westgate and the other correctional facilities have helped inmates to develop a sense of immense pride in what they do.

"That is different from where I have worked before and it is encouraging.

"It seems to me that inmates really want the opportunity to give back."

Prison bosses hope that the first Restorative Justice Conferencing sessions will begin later this year.

Ms Aidoo added: "Inmates participate in either the victim empathy programme or the Sycamore Tree programme before they might meet with their direct victim, if the person or persons offended against are willing.

"The overall scheme is designed to help repair the harm caused by crime to victims, families and the community.

"The programmes are designed to help increase victim empathy and understanding of the impact of offending, for those who have committed crimes and those who have been affected by it.

"Conferencing is about giving victims the opportunity to meet the person who offended against them, as many victims can be left with a lot of unanswered questions, even after a court case and a conviction.

"It also gives the inmates an opportunity to make



(File photo by Akil Simmons)

Ground work: Commissioner of Corrections, Colonel Edward Lamb, says the scheme is another step towards rehabilitation

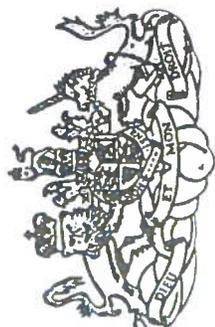
amends, as far as is possible, for the harm caused by their actions."

The new restorative justice programmes will all be assessed and evaluated to ensure that they meet the aims of both prisoners and victims taking part in them.

Commissioner of Corrections, Colonel Edward Lamb, told *The Royal Gazette*: "We have done a lot of ground work on this initiative.

"There were a lot of legal challenges to get it off the ground and a great deal of research needed to be done.

"We have been talking about doing something like this for some time, and it is one more step towards the rehabilitation of the inmates."



The Royal Gazette

www.royalgazette.com

Dollar

Thursday, March 26, 2015

Today's High 68°F

Doctoral Thesis by Davina Aidoo

Hidden Hurts, Healing from Within: Restorative Justice for Victims and Convicted Offenders in Bermuda.

Offenders and victims face to face

By Owain Johnston-Barnes

Inmates and victims of crime were congratulated yesterday for completing the Sycamore Tree Programme.

The initiative, launched in Bermuda last September, brings inmates face to face with the victims of crime to both help the victims deal with their ordeal and the offenders understand the impact their actions have had.

Sheridan Scotton of the Prison Fellowship said: "It's really about human relationships, so it's very foundational.

"We talk about what is crime, we talk about responsibility and then we discuss admitting and turning around from your behaviour. Then we talk about forgiveness, which is key for moving on for the victim. We then think of ways to make amends for the offence, and finally towards reconciliation, which is the goal of the Sycamore Tree.

During the brief ceremony a total of eight inmates and victims were honoured for completing the programme, praising the initiative for giving them an opportunity to share their experiences.

One inmate, who asked not to be identified, said: "I came into this class an unforgiving person, but this class helped me to

learn how to forgive. You have to learn to forgive yourself before you can forgive others."

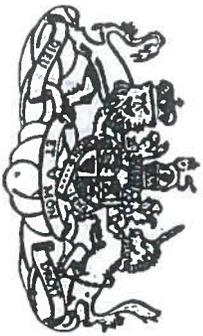
Another prisoner said the class was enlightening, giving him a reason to stop and reflect on himself.

"It has enabled me to let down my barriers. I really didn't let people in. It's enabled me to look into myself and realise that I can share myself with others, that I can open up and share my story, which is something usually don't do.

"Most importantly, it has helped me to learn how to listen, because sometimes I only hear what I want to hear."

Commissioner of Corrections, Lt Col Edward Lamb, also sang the programme praises, saying: "I think this is an excellent part of what we in Corrections are all about. Yes, on one hand there is custody and providing a secure environment, but that has to be balanced with restoration and redemption."

He added: "We expect people that commit an offence to carry that offence around the neck like a millstone for the rest of their lives, and that's not healthy for anybody. At some point there has to be forgiveness, and there has to be some healing."



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Today's High 83°F

RESTORATIVE JUSTICE: SPECIAL REPORT

CRIME AND HEALING

By Simon Jones

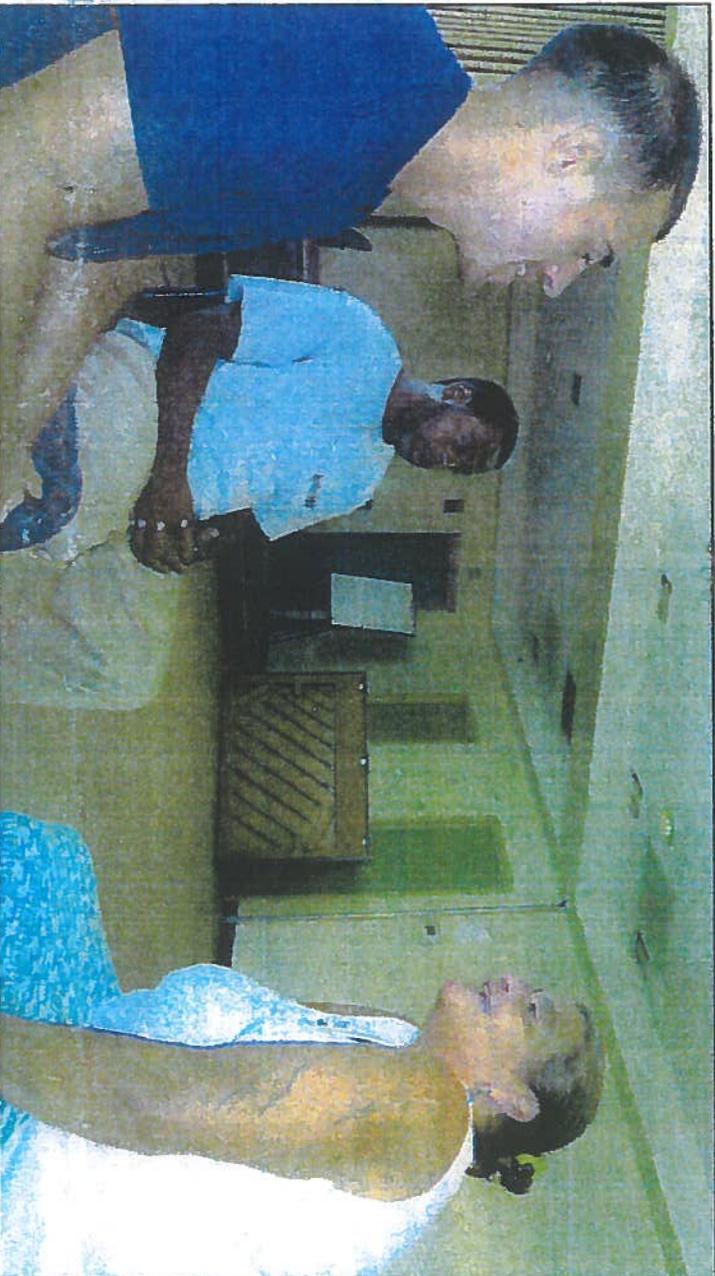
A groundbreaking new initiative that pairs prisoners with victims of crime is helping inmates turn their lives around and victims come to terms with their ordeal.

The Sycamore Tree Project has seen 16 prisoners complete the eight-week-long series of classroom sessions where inmates come face-to-face with victims of a range of crimes and talk candidly about their experiences.

Just this week — for the first time in Bermuda — a conferencing session saw a convicted gunman sit down with one of the men who witnessed the shooting as part of an initiative to provide the inmate with more insight into the consequences of his crime and some sense of closure for the victim.

The restorative justice programme is having significant and positive effects for both prisoners and victims taking part in the initiative, according to Davina Aidoo, forensic psychologist at Westgate and restorative

Pioneering project sees inmates come face-to-face with victims



The Island's first Sycamore Tree Project, which is facilitated by the Prison Fellowship, was launched at Westgate last September. There have been two more programmes since then, the last of which ended just before Cup Match.

One 39-year-old inmate, who is serving life for pre-meditated murder, was part of the first group to take part in the Sycamore Tree Project that involved eight prisoners and eight victims.

He said: "Sycamore takes away the excuses. It made me realise that some people have been through the same as me, and yet they did not commit a crime.

"It's about me and how my actions are affecting others. But it does not give me the right to step on the world and kick it in the face."

Aggravated burglary victim Laura Smith was one of five victims of crime that agreed to take part in the most recent Sycamore Tree project. She told *The Royal Gazette*: "Although we are seen as 'victims and offenders' I felt there was a lot more common ground than

of this crime and some sense of closure for the victim.

The restorative justice programme is having significant and positive effects for both prisoners and victims taking part in the initiative, according to Davina Aidoo, forensic psychologist at Westgate and restorative justice coordinator.

"Since the start of the department's restorative justice initiative the majority of inmates have been receptive and the benefits to them and members of the community affected by crime has been very promising," she said.

"The process of moving



Photograph by Shireen Jones

Reaching out: Pictured, from left, inmates at the Westgate Corrections Facility, Steven O'Neill, 30, and Kimiá Webb, 47, meet with Laura Smith, victim of aggravated burglary. The restorative justice project is having a positive impact

onto conferences with direct and proper preparation is and victim, with a couple victims has been slow, how- more in the planning.

ever this was to be expected "A year later we have had ber of inmates that have our first meeting of offender per cent have agreed."

Aggravated burglary victim Laura Smith was one of five victims of crime that agreed to take part in the most recent Sycamore Tree project. She told *The Royal Gazette*: "Although we are seen as 'victims and offenders' I felt there was a lot more common ground than we may have thought before.

"I got a great deal of support from the group. It made me really think about what I am going to do with the anger I feel about what happened. I don't have an answer to that yet, but I felt that the project really helped."

Page 2: SYCAMORE TREE PROJECT PARTICIPANTS SPEAK ABOUT THEIR EXPERIENCES



THE SYCAMORE TREE PROJECT



Bridging a crime divide

Victims and offenders emerge from meetings with greater empathy for each other

By Simon Jones

The men and women who have suffered at the hands of criminals are perhaps the last kind of visitor you would expect to pass through the succession of bolted doors and corridors of Westgate.

But for eight weeks this summer five victims of crime travelled to the western end of the Island every Wednesday evening to meet with a small group of prisoners.

The "offenders" — some convicted murderers, some serial burglars — did not know what to expect from the restorative justice sessions they had voluntarily signed up to, while for the "victims" this also represented a step into the unknown and for some meant confronting their deepest fears.

But individuals on both sides of the prison walls emerged from the experience stronger and with a greater empathy and understanding — some even forged friendships.

It was sad when the programme finished," said Laura Smith, a victim of a serious aggravated burglary some years ago. "I developed friendships



Sign of justice: The entrance to the Westgate Correctional Facility in Dockyard has an austere, even bleak, appearance

I'm just like you like you

By Steven O'Neill

I'm just like you in many ways, I made some erroneous choices during some not good days, Even though I know better I still made the wrong turn, Had to ask myself question "are you going to learn?"

I'm just like you in many ways, Don't write me off just before you see the whole page, You've only had a small glimpse of what I have share, But if you give me a chance I'll show you really do care.

I'm just like you in many ways, Experimented with drugs in my adolescence



Sign of Justice: The entrance to the Westgate Correctional Facility in Dockyard has an austere, even bleak, appearance

represented a step into the town and for some meant routing their deepest fears. At individuals on both sides of the prison walls aged from the experience they and with a greater one even forged friend-

was sad when the programme finished," said Laura Smith, a victim of serious aggravated burglary years ago.

developed friendships by the end I felt we were alike than different," he added. "The course we realise how we can the impact of a crime affects your choices and ons in your life without knowing it.

initially it was my inter- restorative justice rather in the need for personal g that got me involved this project. But what awesome was experi- this with people I did now and from different of life.

have always believed ost people in prison are people who have done ings. That was rein- by meeting the prison- et."

aven O'Neill, 30, who as served two years of 16-year sentence for g and entering, also irt in the most recent re Tree Project.

wanted to help some- e and for them to see re as a human than e who just broke into a he said.

ially as a group we around the issues but sessions progressed pened up more. Hear- victims talk right to it what they had been gave me perspective I had done and the ne prima created

I have always believed that most people in prison are good people who have done bad things. That was reinforced by meeting the prisoners I met

- Laura Smith

It made me want to reach out to the victims of my offence and express my feelings to them, to explain why I did what I did and what I was going through at the time

- Triston Burgess

THE VIEW OF THE COMMISSIONER OF PRISONS



Eddie Lamb, the Commissioner of Prisons, gave his opinion on the Sycamore Tree Project:

I believe that restorative justice is an excellent tool in redeeming those who have been injured — both physically and emotionally — and affected by criminal activity.

I especially like the focus on restoring all concerned, which include the offenders and their victims.

I have seen firsthand the healing that restorative justice has taken place for victims of crime and I am certain that there will be long term benefits to our whole community as a result of our restorative justice programme.

I am very appreciative of the efforts of our staff members, along with other agencies like Prison Fellowship, who are making this programme so successful.

about what happened to her I just wanted to help her. I have never experienced that and have always been quite a guarded person.

"It is hard to open up, you don't want to be judged by what other people think about your situation and your crime. "I wanted to see how

cause I represent the perpetrator.

"The programme helped us all. It keeps me cognisant of the things victims and their families go through. Prison protects us from all that and we don't understand what society is feeling because we are

"I did not really have any idea at the beginning of the course, it was the second week when I started to understand

I'm just like you in so many ways. Don't write me off too fast before you see the whole page. You've only had a small glimpse of what I have to share,

But if you give me a chance I'll show you I really do care.

I'm just like you in so many ways, Experimented with drugs in my adolescent stage,

My social skills were dormant I thought it was just a phase,

But I soon need that sniff just to get me through the maze.

Physical dependence is not a joke on an expensive class A drug.

I apologise for my carnage, but I'm not your everyday thug.

I'm just like you in so many ways,

Reaching that point in my life, that oh so critical age,

It took me longer than most, but some don't make it all,

It's not too late for my chances; my vision, my call,

I view this time as a blessing, so God can show me the way to go,

I view this time as a gift, God willing in the end it will show.

He said: "It made me want to reach out to the victims of my offence and express my feelings to them, to explain why I did what I did and what I was going through at the time.

"I would ask them for forgiveness.

took part in the most recent Sycamore Tree Project.

"I wanted to help someone else and for them to see me more as a human than someone who just broke into a house," he said.

"Initially as a group we skirted around the issues but as the sessions progressed people opened up more. Hearing the victims talk right to me about what they had been through gave me perspective on what I had done and the impact my crime created.

"I began to understand the ripple effect my crimes had on others. There were some emotional moments of realisation and it has made me want to speak to the people I have affected."

Another inmate to sign up for this summer's restorative justice sessions was a 47-year-old convicted murderer.

He admits to initially being "nonplussed" by the idea, but maintains the sessions taught him empathy and made him feel connected to the outside world. He said: "When I heard what Laura had to say



about what happened to her I just wanted to help her. I have never experienced that and have always been quite a guarded person.

"It is hard to open up, you don't want to be judged by what other people think about your situation and your crime.

"I ended it feeling pretty good and hoping that I had helped someone.

"The most important thing for me was realising I had hurt someone. When I first got in this situation, I felt it was not my fault. I was not willing to take the blame. But I have come to realise I have to own up to what I have done and the effects it has had."

The latest restorative justice course at Westgate is the third such programme to take place since the initiative was launched in September 2014.

One 39-year-old inmate, who is serving life for premeditated murder,

was part of the first group to take part in the Sycamore Tree initiative that involved eight prisoners and eight victims.

He said: "It was scary walking into the room that first time. I had a good group and we just clicked. I remember after one session I went down to my cell and cried.

"The impact of our crimes is so huge and to realise that I did this and caused all these problems weighs heavy. But it spurred me to take a firm hold on my life and make something better.

"Two of the victims in our class had family members who were murdered and it gave me experience of the things my victim's family went through.

"I'm still in touch with two ladies from our group. We exchange letters and we still speak.

"But I now remind them of the other side and sometimes it's a tricky relationship be-

cause I represent the perpetrator.

I am very appreciative of the efforts of our staff members, along with other agencies like Prison Fellowship, who are making this programme so successful.

community as a result of our restorative justice programme.

"The programme helped us all. It keeps me cognisant of the things victims and their families go through. Prison protects us from all that and we don't understand what society is feeling because we are removed from it."

So far 16 inmates have completed the restorative justice programmes, while a further 12 have taken part in the Victim Empathy course. Both programmes are designed to provide inmates with a better understanding of how their actions affect victims and their families.

Kimlo Webb, 47, who is three years into a 13-year sentence for attempted murder, signed up to the Victim Empathy programme last year.

He said: "For me the big part was knowing the effect of

what I had done on the victim, their family, people around me and people in society. I never thought about that at the time.

"I did not really have any idea at the beginning of the course, it was the second week when I started to understand things like minimising, denial and blame.

"This class is all about change, and it's a good class for people like me as a repeat offender.

"I was surprised by just how much it did affect me. It really made me think about things for the first time. It's made me want to apologise to the people I have affected."

Triston Burgess, 22, who is three years into a 12-year sentence for armed robbery also recently took part in the Victim Empathy programme that consists of seven sessions over five weeks with trained professionals.

I view this time as a gift, God willing in the end it will show.

He said: "It made me want to reach out to the victims of my offence and express my feelings to them, to explain why I did what I did and what I was going through at the time.

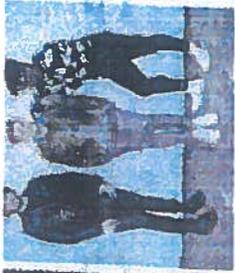
"I would ask them for forgiveness.

"I think that maybe if I could explain to them then maybe that would give them a little peace.

"I really did not know what I was doing back then, and I did not think about the impact my actions had.

"I have a better understanding of myself now, and what I did, and I want to try and help other young men in society that do not have the help they need.

"Everything in here is a change for me, but the class helped me open up more in the right way, in verbal ways, instead of showing it through negative actions.



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RESTORATIVE JUSTICE

Face to face with bar gunman

Simon Jones

Ross Furbert had no qualms about coming face to face with the man who opened fire in a busy bar where he and his daughter were enjoying a night out.

He remembers the shot ringing out and the terror in the room as he tried to get his daughter out of harm's way.

But the memories did not prevent him from walking into Westgate Cor-

rectional Facility for the first time to meet the inmate responsible for the shooting that resulted in a young man being seriously injured.

Their meeting was the first conferencing session — when a prisoner meets a person who has been affected by his crime — to take place in Bermuda as part of the prison's restorative justice programme.

It proved to be “an incredibly positive” experience for both men, with

“I thought about what had happened and how unbelievable the situation was, but it did not stop me wanting to do this

— Ross Furbert, prison conferencing participant

the inmate left feeling that he had gone some way towards repairing a relationship in the community.

“When I heard about the programme I did not hesitate and I tried to encourage others who were present

to do the same,” Mr Furbert told *The Royal Gazette*. “At the time of the shooting, I was more concerned about getting my daughter out of danger, so I did not suffer any long-term effects. I thought about what had happened and how un-

believable the situation was, but it did not stop me wanting to do this.

“I knew that only good could come out of meeting him and I came out with a different opinion of this man.”

Mr Furbert met the inmate at the end of September at Westgate in the presence of the prison psychologist, Davina Aidoo, and they spoke for nearly an hour.

Continued on Page 2

RESTORATIVE JUSTICE

Inmates meeting those affected by crimes

Continued from Page 1

Since that time, a second conferencing session has taken place in the prison and there are plans for more in the future.

Mr Furbert said: "Now I have met him I understand him better, and what he was going through back when this happened."

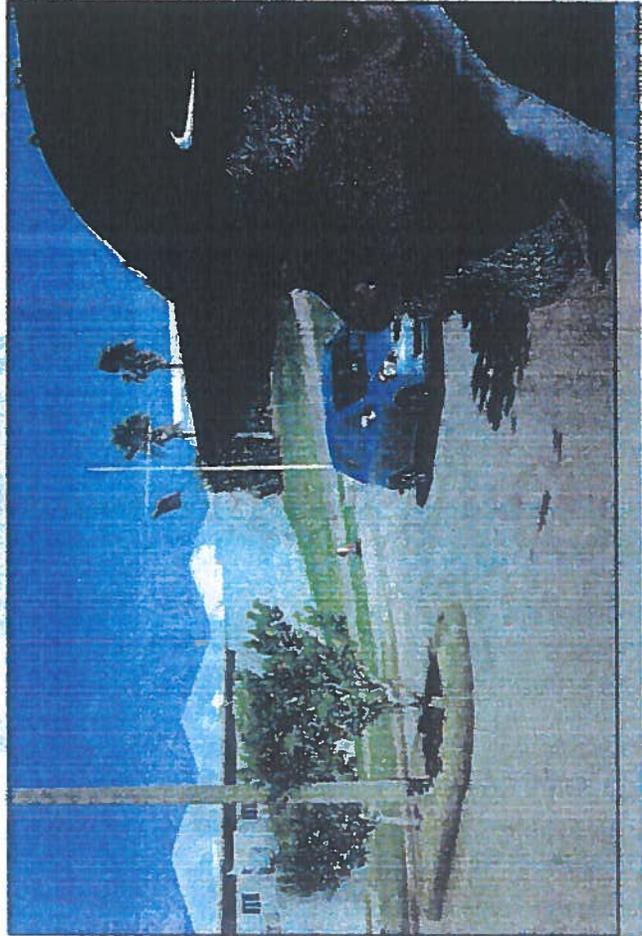
"Once you meet that individual it becomes personal and you get an insight into the true facts."

"He apologised to me and was extremely remorseful. He also expressed great sadness that he had let down his family and his young son. I have told him that when he is released he can come and see me and talk to me again if he wants."

"I encourage him to be positive when he gets out, because there are going to be people who have already judged him and have their own views."

"He must steer clear of those negative influences and be positive in his approach. If I can help him do that, I will."

Although restorative justice programmes are common in other jurisdictions, the ap-



Photograph by Simon Jones

Heartfelt apology: Clarence Furbert says the prisoner he met was "extremely remorseful"

proach has only been rolled out in Bermuda over the past year. Westgate offers victim empathy courses as well as the Sycamore Tree Project, which pairs pris-

oners with unrelated victims of crime to provide inmates with insight into the effects of their crimes.

Mr Furbert added: "If inmates are willing to sit down with their victims or the people they have affected, then that person should try and sit down with the inmate. It benefits both

parties. People wrongly think that inmates who take part in this programme receive a reward or a reduction in sentence — that is not correct.

"For him to know there is someone on the outside willing to help him and listen to him has to be a positive thing."

Ms Aido explained that the restorative justice and conferencing sessions were an entirely voluntary programme.

"If an inmate expresses an interest in taking part in these conferencing sessions, we put through a referral to the police and the police make contact with the victim of the person affected, and we take it from there," she said.

"This first conferencing session went very well. The inmate said he had hoped to meet with more people and said he would be prepared to do it again."

"The response we have had so far in the community has been pretty positive."

"Of the four cases we have looked at, only one victim has declined and we hope that we will get to a stage where victims may even approach us."

Poll results

A survey was conducted at the Cathedral Hall after a Department of Corrections presentation on restorative justice in November. The results showed that:

- 92 per cent believed that victims should have the right to meet an offender and tell them the impact of the crime;
- 57 per cent said that if they were a victim of crime and an offender pleaded guilty, they would want to meet the offender;
- 95 per cent agreed that offenders needed to see the real impact of their crimes and the faces of the people they had harmed;
- 65 per cent agreed that restorative justice was suitable for all types of crime;
- 57 per cent disagreed that offenders taking part in restorative justice programmes should receive lighter sentences.

Bermuda's Rudolph delivers lost treasures

ARMED ROBBERY Thief with knife flees Four Star Pizza with \$300 Public urged to speak up to combat crimes



APPENDIX 5 – Pre & Post CRIME-PICS II scores for the

STP Offender-Participants by Establishment Security Classification

V-Scale – Measures the degree to which the offender acknowledges the harm caused to the victim of their offence. Low scores indicate victim empathy, as an acceptance of harm caused to victims by offending.

	Pre-score	Post-score	Difference
Farm (n=4)	M = 5	M = 3	2
Westgate (n=10)	M = 5.6	M = 4.5	1.1

A-Scale - Measures the offender’s anticipation of re-offending in the future. Low scores indicating a resolve not to reoffend.

	Pre-score	Post-score	Difference
Farm (n=4)	M = 11.25	M = 8.75	2.5
Westgate (n=10)	M = 12.4	M = 10.3	2.1

E-Scale - Measures the degree to which the offender views/evaluates crime as worthwhile. A Low score indicates a view that the costs of crime outweigh the benefits.

	Pre-score	Post-score	Difference
Farm (n=4)	M = 9	M = 7.25	1.75
Westgate (n=10)	M = 7.1	M = 6.3	0.8

G- Scale - Measures the offender’s general attitude towards offending. Low scores indicating an attitude that offending is not an acceptable way of life.

	Pre-score	Post-score	Difference
Farm (n=4)	M = 33.5	M = 28	5.5
Westgate (n=10)	M = 31.4	M = 27.3	4.1



APPENDIX 6 – Public Survey Findings

Survey

Conducted on 17th November at the Cathedral Hall following the Department of Corrections presentation of the Restorative Justice Initiative in partnership with the Bermuda Police Department and Prison Fellowship Bermuda.

Questions were based on those asked by the Restorative Justice Council in the UK, as part of their annual “research on the public awareness of and attitudes to restorative justice.”

Key questions

1) Should victims of crime have the right, if they want to meet the offender and tell them the impact of the crime?

- Yes 92%
- No 8%
- Don't know -

1a) If 'Yes' to Q1, why should victims of crime have the right to meet the offender?

- Victims might want to tell the offender about the impact of the crime 88%
- It might stop offenders carrying out further crime 84%
- It would help victims to get some closure 84%
- It will help offenders see what their crime does to victims 83%
- Victims might want to understand why they had been a victim/targeted 68%
- Don't know -
- Other 8%

1b) If 'No' to Q1, why should victims of crime not have the right to meet the offender?

- I do not know enough about what would be involved 4%
- It would not be suitable in all circumstances 4%
- It does not help victim -
- The process is too soft on offenders -
- Offenders are only in it for themselves -
- Don't know -
- Other -

- 2) If you became the victim of a crime, and the offender pleaded guilty or accepted responsibility, would you want to meet the offender?
- Yes 57%
 - No 5%
 - Don't Know 38%
- 3) To what extent do you agree or disagree, if at all, that offenders need to see the real impact of their crimes and face the people they have harmed?
- Agree 95%
 - Disagree -
 - Neither -
 - Don't Know 5%
- 4) To what extent do you agree or disagree, if at all, that restorative justice is suitable for all types of crime?
- Agree 65%
 - Disagree 9%
 - Neither -
 - Don't Know 26%
- 5) To what extent do you agree or disagree, if at all, that if an offender takes part in restorative justice pre-sentence, that they should receive a lighter sentence?
- Agree 24%
 - Disagree 57%
 - Neither 14%
 - Don't Know 5%
- 6) To what extent do you agree or disagree, if at all, that victims should be able to meet their offender even if the crime took place many years ago?
- Agree 86%
 - Disagree 5%
 - Neither 5%
 - Don't Know 5%

NB – where figures do not sum 100%, this is due to the computer rounding up the individual responses.