

# **The Institutionalization of Restorative Justice: A Canadian Perspective**

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## **Abstract**

Restorative justice emerged in the western world as an alternative to the existing retributive penal system. An alternative that no longer relied on lawyers and judges to resolve criminal matters and community disputes, but rather empowered victims, offenders, and community members to do justice themselves. Throughout the past thirty years restorative justice has distanced itself from the traditional criminal justice system by focusing on repairing the harm caused by an offence rather than charging an offender for committing a crime against the state.

This study focuses on the institutionalization of restorative justice. Specifically, this thesis conducts a content analysis of five Canada institutionalized restorative justice programs with the purpose of answering one primary research question. This question asks: are institutionalized restorative justice programs within Canada structured to reflect the core values of restorative justice? In order to answer this question, this thesis analyzes all the available textual documents pertaining to the five selected restorative justice programs for evidence of core restorative justice values and values associated with the co-opting institution, the retributive criminal justice system.

This thesis concludes that yes, the five analyzed restorative programs are structured to reflect the core values of restorative justice. Although, the programs are also structured to reflect the core values of the current political ideology of neo-liberalism.

## **Introduction**

This thesis is an examination into the institutionalization of restorative justice in Canada. Restorative justice emerged in the western world as an alternative to the existing penal system. An alternative that no longer relied on lawyers and judges to resolve criminal matters and community disputes, but rather empowered victims, offenders, and community members to do justice themselves (Braithwaite, 2003). Throughout the past thirty years, restorative justice has distanced itself from the traditional criminal justice system by focusing on repairing the harm caused by an offence rather than charging an offender for committing a crime against the state.

Recent changes in political ideologies and the state of governance have set in motion a transformation in the structure and functioning of crime control strategies. This includes the rise of risk technologies (Beck, 1992; O'Malley, 2009), the introduction of private policing (Johnston 1999), the responsabilization of communities for crime prevention purposes (Crawford, 1997; O'Malley, 2009), and the institutionalization of restorative justice within the retributive penal system.

Recently, a number of scholars (Faget, 2006; Jaccoud, 2007; O'Malley, 2006; Woolford and Ratner, 2001) have noted and made reference to the fact that the institutionalization of restorative justice, and other forms of penal mediation, has brought about a transformation within institutionalized restorative justice programs. Mainly, that the act of institutionalization has forced these programs to make a compromise between their traditional restorative values and values associated with the co-opting retributive justice institution. The aim of this thesis is to examine this compromise. The primary research question guiding this examination is, are institutionalized restorative justice

programs within Canada structured to reflect the core values of restorative justice? The secondary research question is: has the institutionalization of restorative justice in Canada changed the nature of restorative justice so as to diminish its integrity and purity?

In order to answer these questions, this thesis conducts a content analysis of five Canadian institutionalized governmental restorative justice programs. They are: the Collaborative Justice Project, the Community Justice Society, Restorative Opportunities, Restorative Resolutions, and the Mediation and Restorative Justice Centre. This thesis will analyze the program documents of these five restorative justice programs for the existence core restorative justice values and values associated with the retributive justice institution.

This thesis is structured as follows. The first chapter is a literature review. This chapter details the birth, the values, the principles, and the tenants of restorative justice. Following this is a review of the literature pertaining to the institutionalization of restorative justice with a focus on Canada.

Chapter two describes the theoretical contribution to this thesis. This includes a description of the concepts of institution and institutionalization, a look at Mathiesen's (1990) techniques of neutralization, and finally a glance at a number of theoretical discussions on the institutionalization and co-optation of restorative justice (Coy and Hedeem, 2006; Faget, 2006; Jaccoud, 2007; Woolford and Ratner, 2002,2007).

Chapter three details the methodological approach undertaken within this thesis. This includes defining the research objectives of this thesis, explaining the methodological procedure of content analysis, and a detailed description of the methodological procedure undertaken within this thesis.

Chapter four is the analysis chapter. The analysis includes the results of the content analysis methodological procedure. This includes a detailed examination of the restorative values and retributive values found within the documents of the analyzed institutionalized restorative programs.

Chapter five is the discussion chapter. Here this thesis returns to the primary and secondary research questions and attempts to answer them with the information gained through the analysis procedure.

## **Chapter One: Literature Review**

### ***Introduction***

The purpose of this chapter is to provide an academic review of all relevant literature pertaining to the topic of restorative justice. Literature reviews not only provide readers with a summary of the selected topic but also assist the researcher in establishing research questions, defining key terms, and identifying a theoretical framework.

#### ***1. Roots of Restorative Justice***

Although restorative justice is a fairly new concept in the Western world, it has existed in other societies for centuries. The following section will look at both the ancient and contemporary roots of restorative justice.

A number of scholars argue that restorative justice, as a form of conflict resolution, has existed for centuries (Richards, 2004). Weitekamp (1999), citing numerous ancient communities and practices states that, “restorative justice has existed since human beings began forming communities” (:81). Similarly, Braithwaite (1999) argues that, “restorative justice has been the dominant model of criminal justice throughout most of human history for all the world’s people” (:2). These scholars state that conflict resolution methods were utilized to keep the peace and order within the community (Johnstone, 2002:40). Although, there are also scholars who refute these statements, arguing that these claims are only meant to legitimize restorative initiatives in the present (Richards, 2004:3).

The rise of the sovereign or central state saw the demise of conflict resolution strategies as the main form of crime control. According to Johnstone (2002), restorative justice in the Western world was marginalized and suppressed during the twelfth century.

“The tasks of controlling crime and dispensing criminal justice became monopolized by an emerging central power in society, i.e. the state” (Johnstone, 2002:36). By the Nineteenth century “the worldwide shift from communal restorative justice to state punitive justice as the routine response to those wrongs officially classified as crimes, was almost complete” (Johnstone, 2002:36). The state or the king became the victim of all crimes and held the responsibility of dispensing justice. Although, it needs to be recognized that some forms of restorative justice still continued to exist within society but remained hidden and were not formal procedures (Braithwaite, 2003).

In the Twentieth century, restorative justice in the Western world emerged and began to gain popularity in response to a number of demands made by academic, social and political movements. Some of these movements came from the academic and political field and promoted the rise of a new form of justice that was less punitive, other movements promoted the acknowledgment of the victim’s rights.

The rise of academics in the discipline of social science brought forth new critical studies that criticized the inefficiency of the traditional penal system.

Dutch scholar Louk Hulsman and Norwegian criminologist Nils Christie, both avid abolitionists, have presented numerous critiques of the current criminal justice system. One major critique that both scholars discuss is in regards to the treatment of victims. Hulsman (1991) argues that the criminal justice system and the juridical process places victims in a difficult position. It transforms them from victims of an event to a tool/witness of the justice system. Control of the situation is stolen away from the victim and placed in the hands of the justice system. Similarly, Christie, in an article in 1977

entitled “Conflicts as Property”, argues that the state has taken away the conflict from the people through the creation of a formalized justice system. Christie (1977) states:

In a modern criminal trial, two important things have happened. First, the parties are being represented. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena (:3).

Thus the victim becomes what Christie (1977) terms a double loser, first through the crime, and second through the criminal trial.

Two more critiques of the criminal justice system studied by Hulsman (1991) are as follows. First, warehousing and segregating prisoners from the general public creates a negative image of the offenders in prison (Hulsman 1991:693). This places criminals in a separate category of persons from non-criminals and has the effect of individualizing them. Secondly, the formal justice system diminishes the creative responses of people operating within the justice system such as the police and courts to deal with, respond, and learn from events (Hulsman 1991:694).

As both of these critical scholars are abolitionists, they argue for alternatives to the existing criminal justice system. Christie (1977) argues for a victim-oriented court. Here, the victim plays an integral role in the bringing about of justice. Every particular detail regarding what occurred during the crime would be brought to the courts attention. There would also be a “detailed consideration regarding what could be done for him, first and foremost by the offender, secondly by the local neighborhood, thirdly by the state” (Christie, 1977:10). Christie (1977) also notes that this court process would have a lack of specialized individuals as “specialization in conflict solution is the major enemy; specialization that in due-or undue-time leads to professionalization” (:11). Christie’s

(1977) belief is that this ideal court system would allow the conflict to remain the property of the victim, offender, and community.

Hulsman (1991), on the topic of penal alternatives states that we should be seeking alternatives that not only address alternative sanctions and alternative answers to criminal behaviour, but rather alternatives to the entire criminal justice system as a whole. Hulsman argues that these alternatives can be either legal or non-legal or a combination of the two. It is these sorts of radical ideas that laid the foundation for the creation of restorative justice.

French critical scholar and philosopher Foucault, like Christie and Hulsman also took a critical approach in the examination of the penal system. Although, unlike Christie and Hulsman who focus on more recent shortcomings of the penal system, Foucault chooses to critically follow the use of punishment and its transformation from the sixteenth century to the birth of the modern prison.

Foucault's seminal book for many sociologists and criminologists is *Discipline and Punish: The Birth of the Prison* (1975). Here Foucault discusses the transformation, and the reasons behind the transformation of punishment as the focus shifts from the public and theatrical torture of the physical body to the torturing of the philosophical soul. According to Jackson (2002), Foucault "traces the principles of surveillance and discipline that underpin modern penal institutions, focusing upon the technologies of penal power and the language in which they operate" (:25). Foucault (1975) argues that this transformation of the penal system has led to an institution that is no longer focused on corrective and punitive punishment but rather one focused on producing normal, 'docile', and law abiding individuals. It is Foucault's belief that this new form of

disciplinary power not only resides within the prison system but also other institutions such as the military, schools, and hospitals (Foucault, 1975). In terms of critiquing the modern prison system, Foucault cites that prison does not diminish the crime rate, prison creates re-offending, and fosters the organization of delinquent groups (Lalande, 2000:8).

Not only have independent scholars criticized and found flaws within the criminal justice system but so too have government funded inquiries. According to Garland (1996), “official reports from the 1960s onwards began to register doubts about the efficiency of criminal justice institutions” (:447). One example of these reports is the Canadian Committee on Corrections or the Ouimet Report (1969) which specified that the prison and the prison atmosphere enhance the chance of re-offending and diminishes the chance of reintegration within the community. A second report is the Canadian Commission on Sentencing (1987). This commission argued that possible alternatives to imprisonment should be used when punishing offenders. A third example is the Law Reform Commission of Canada (1971-2006). This committee questioned the use of imprisonment and specified that it should only be used in exceptional cases (Lalande, 2000).

One of the more recent and ongoing reports of the Canadian penal system is the Law Commission of Canada (1997). This commission serves the purpose of monitoring the renewal of the penal system according to new, innovative values. The commission also sees a role for restorative justice within the formal justice system and thus publishes two annual reports on the operation of restorative justice in Canada (Lalande, 2000).

It has been the accumulation of these critical perspectives on the penal system that brought forth the idea of reforming justice.

According to Van Ness and Strong (2002) one of the key precursors to the paradigm of restorative justice was the victims' movement. Van Ness and Strong (2002) state the victims' movement consisted of three broad thrusts. They are:

- (1) increasing services to the victims in the aftermath of the crime,
- (2) increasing the likelihood of financial reimbursement for the harm done,
- and (3) expanding victims' opportunities to intervene during the course of the criminal justice process (Van Ness and Strong 2002:20).

It was from this victims' movement that scholars and criminal justice practitioners began to realize that victims have needs when engaged in a criminal trial<sup>1</sup>. This realization allowed the topic of victimization to emerge as its own discourse.

Howard Zehr (2002), states that, "of special concern to restorative justice are the needs of crime victims that are not adequately met by the criminal justice system. Victims often feel ignored, neglected, or even abused by the justice process" (:14). Zehr (2002) argues that during a criminal trial four basic needs are usually neglected. The first is information. "Victims need answers to questions they have about the offence – what happened and what has happened since" (:14). The second neglected need is truth telling. "An important element in healing [...] is an opportunity to tell the story of what happened" (:14). The third neglected need is empowerment. Victims need to be involved in their own case in order for empowerment to be achieved (:15). The final neglected need is restitution. "Restitution by offenders is often important to victims, sometimes because of the actual losses, but just as importantly, because of the symbolic recognition restitution implies" (:15).

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<sup>1</sup> It was not only the victims' rights movement but also the womens' rights movement and religious movements that brought forth the discourse of victimology.

Similar to Zehr (2002), Morris (1998) also notes that victims have basic needs that must be met: One of them is that victims need “to find significance in what they have experienced” (Morris, 1998:2). Looking at the literature on retributive justice it is evident that many of these needs required by victims are not met within a traditional criminal trial (Morris, 1998).

## *2. Defining Restorative Justice*

Restorative justice as defined by Howard Zehr states:

Crime is a violation of people and relationships. It creates obligations to make things right. This form of justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance (Zehr 1990:181).

Restorative justice is a philosophy, a set of principles aimed at addressing the needs and limitations associated with the traditional criminal justice system (Zehr, 2002).

In recent years, much has been written on the topic of restorative justice (Daly, 2002). This includes community justice, transformative justice, and peacemaking. In fact, so much academic literature, as well as empirical findings, have been published that it has become difficult for researchers and scholars alike to agree upon a single definition. It seems the only things that can be agreed upon are that restorative justice involves a different way to define ‘crime’, a different way to react to ‘crime’, and is not retributive justice (Daly, 2002; Walgrave 2000).

One may ask, “why is it important to come to an agreed upon definition of restorative justice?” The answer is quite simple: as more and more programs continue to label themselves as restorative, it becomes increasingly important to be able to separate those that predominantly correspond to restorative principles or seek restorative outcomes from those that do not.

According to Daly (2006), this “lack of agreement on definition means that restorative justice has not one but many identities and referents; and this can create theoretical, empirical, and policy confusion” (:135). Other restorative theorists share this view and emphasize the negative effects of such a situation (Braithwaite, 2006; Walgrave, 2000). Although this definitional dispute has the effect of creating confusion, “it reflects a diversity of interests and ideologies that people bring to the table when ideas of justice are discussed” (Daly 2006:135). This generation of many restorative justice ideas may have its benefits, but it also makes it difficult to come to a general consensus on what restorative justice should look like.

### *2.1. A Different Way to Define ‘Crime’*

In the field of restorative justice, ‘crime’ is a concept which should not be used. Rather, restorative justice advocates prefer the term ‘harm’<sup>2</sup>. The reasoning for this is that the term ‘crime’ specifically relates to the formal criminal justice system which is centered around formal procedures, the rule of law, and the accompanying vocabulary of the court system (Christie, 1977; Zehr, 2002). The term ‘crime’ denotes that an illegal act has been committed against the state, leaving no room for others such as the victim and community to be involved in the process.

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<sup>2</sup> Using a restorative justice framework rather than a retributive justice framework requires a shift in terminology. Specifically, the elimination of the terms ‘crime’, ‘victim’, and ‘offender’ and the introduction of the terms ‘harm’, ‘harmed individual’, and the ‘individual responsible for the harm’. Doing so allows restorative initiative to move beyond the traditional understanding of crime and the justice system. In this literature review I have chosen to utilize the terms ‘crime’, ‘victim’, and ‘offender’ rather than the restorative terminology. This is due to the fact that most, if not all, literature reviewed for this paper uses the terminology associated with the traditional criminal justice system.

Harm, rather than crime is a central pillar of restorative justice. Zehr (2002) states, “restorative justice understands crime first of all as harm done to people and communities. Our legal system, with its focus on rules and laws, and with its view that the state is the victim, often loses sight of this reality” (:22). Focusing on harms rather than crimes implies a concern for not only the roles and needs of victims of harm, but also the surrounding community.

When the term crime is used in reference to restorative justice, it no longer refers to the criminal justice system’s definition of crime. Rather, as stated by Van Ness and Strong (2002):

Restorative justice advocates view crime as more than simply law breaking – an offence against governmental authority. Crime is understood also to cause multiple injuries to victims, the community, and even the offender – injuries that must be repaired (:37).

Focusing on the concept of harm allows one to shift the focus from the state to that of the victim, community and offender. Thus restorative justice “seeks to repair the harm as much as possible, both concretely and symbolically” (Zehr, 2002:23). At the same time, it attempts to diminish the possibility of future harms (Van Ness and Strong, 2002:96).

## *2.2. A Different Reaction to ‘Crime’*

In the formal court system the traditional reaction to a crime is retributive punishment through a criminal trial. Restorative justice on the other hand, reacts to harms committed quite differently, through the use of restoration. According to Zehr (2002), “this implies a responsibility on the part of the offender to, as much as possible, take active steps to repair the harm to the victim (and perhaps the impacted community)”

(:28). Although, this restoration process by no means involves punishment<sup>3</sup>. Available restorative models in the Western world include circles, group conferences, and victim-offender mediation.

Although it is mainly the offender's responsibility to make amends through restitution, the community and other key stakeholders such as family members, mediators, and facilitators may also have responsibilities to assist both the victim and offender through the restoration process (Zehr, 2002:29). It is through this restoration that harms committed should be healed and relationships should be restored.

It needs to be recognized that many restorative justice initiatives were first introduced not as a potential alternative to the penal system but rather as a new form of justice, one able to function outside the penal system. Progressively, some restorative programs have been adopted into the traditional, non-restorative penal system (Woolford and Ratner, 2001).

### 2.3. *Theoretical Debates*

Among the numerous debates and theoretical tensions about restorative justice, two main models are in conflict: the purist model and the maximalist model. The three main issues of conflict are the definition of restorative justice, the use of coercion, and the role of the state.

Many purists, when defining restorative justice, choose to use a definition provided by Tony Marshall. Marshall's (1996) definition states that restorative justice is, "a process whereby all the parties with a stake in a particular offence come together to resolve collectively to deal with the aftermath of the offence and its implications for the

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<sup>3</sup> See Lode Walgrave regarding the use of punishment within a restorative justice setting.

future” (:37). Maximalists such as Lode Walgrave see this definition as being too narrow and limited. Walgrave (2000) states that a definition such as Marshall’s “confines restorative justice practices where the parties with a stake in the offence agree to come together [...] and it excludes the great amount of difficult cases where this voluntary cooperation is not reached” (:420). A maximalist definition states that restorative justice is “every action that is primarily oriented towards doing justice by repairing the harm that has been caused by crime” (Bazemore and Walgrave, 1999:48). Purists argue that a maximalist definition allows non-restorative initiatives to label themselves restorative due to its broadness.

The use of coercion is the second conflict between purists and maximalists. The purists believe that restorative justice and coercion are opposites of each other; that the two cannot coexist. This group believes that allowing coercion to invade restorative practices would go against the whole purpose of the restorative paradigm. The maximalists, on the other hand, see a role for punishment and coercion within restorative justice practices (Walgrave, 2000).

Walgrave (2000) argues that coercion can be an integral component of restorative justice. He states, “we [maximalists] opt for accepting coercion when voluntariness is not achieved and when it is deemed necessary to respond to the offence” (:422). Maximalists believe that offenders require structure and have no problem completing this through coercion.

The role of the state and the institutionalization of restorative justice is the third conflict between purists and maximalists. On the one hand there are the purist theorists who view “the incorporation of the traditional legal system into restorative justice for the

purpose of ensuring procedural safeguards and maintaining standards [...] as potential degradation to the core value of the personal, informal encounter between victim and offender” (London, 2003:177).

On the other hand, maximalists believe that it is in the best interest of restorative justice practices to align itself with the formal justice system. They believe that restorative justice would be more effective and fair if it were to partner up with traditional justice. Walgrave (2000) argues that “formalized proceedings are indispensable to achieve the strict and controllable conditions in which citizens can be deprived of their liberty” (:421). Thus maximalists aim to align their restorative practices with the formal justice system.

Scholars such as Woolford and Ratner (2002) argue that within Canada, maximalist models are more predominant than minimalist models as they are part of the penal system. This institutionalization of the maximalist model allows for a greater chance of co-optation and integration within the system than with a minimalist model.

#### *2.4. Critiques of Restorative Justice*

Although hailed as the new paradigm of the criminal justice system, restorative justice is not without its critiques. Scholars have come forth and identified what they deem to be shortcomings within the restorative process. Here this thesis provides what appear to be the more prominent criticisms of restorative justice.

One of the more common criticisms of restorative justice and other diversionary practices is that it widens the net of social control. According to Morris (2002), when coupled with the penal system, restorative programs tend to focus on handing down incursive penalties on youth and minor offences that would normally be diverted out of

the criminal justice system. Morris notes that although this claim does hold some validity, it is not true for many restorative justice programs, especially those programs operating out of New Zealand that only focus on serious offences (Morris, 2002:602).

A second criticism of restorative justice is that it fails to completely restore offenders and victims (Morris, 2002). Many victims in terms of restoration are more interested in security, sense of control and dignity rather than monetary compensation. Each one of these reparations is difficult to achieve especially with the limited resources that are available to offenders and victims.

Related to the failure of restoration is the lack of a sincere apology. According to Daly (2002), most victims require some form of vindication for the harm committed to them (:139). Daly (2002) states that a sincere apology has the ability to be a starting point for said vindication but unfortunately, a sincere apology is difficult to attain as many offenders apologize in hopes of receiving a lesser sentence (:139).

A third criticism states that restorative justice programs are reserved for communities and individuals of middle-class. According to Morris (2002):

Critics here claim that affluent communities are more likely to have the resources to develop restorative justice alternatives and that restorative justice reinforces existing race and class biases in the criminal justice system by excluding certain types of offenders from restorative justice process (:607).

Morris argues that this claim cannot be made to restorative justice generally. Morris (2002) cites the example of New Zealand where restorative justice is nation wide and offenders have to be referred. This eliminates the chance of both racial and monetary bias.

A fourth criticism states that restorative justice trivializes crime. According to Morris (2002):

This claim is most frequently mentioned with respect to violence against women. Critics tend to see restorative justice processes as decriminalizing men's violence against their partners and as returning it to the status of a 'private' matter (:603).

These critics argue that traditional criminal law is a necessity "as a signifier and denouncer" (Morris, 2002:603).

Related to the previous criticism is that restorative justice will not work with dangerous offenders. According to Van Ness and Strong (2002) this limitation is supported by three key ideas:

The first is that there are offenders who pose substantial risks to others and must be confined. The second is that those dangerous offenders cannot participate in restorative encounters with their victims. The third is that restorative justice programs will not work in prisons or other places of confinement (:186).

Thus, dangerous offenders who need to be imprisoned for the protection of the public cannot engage in restorative justice programs. Although, Van Ness and Strong (2002) note that there have been cases where dangerous offenders have benefited from the use of restorative justice (:187).

### *3. Restorative Values*

Scholars writing on the topic of restorative justice offer a number of values and principles that are essential to minimizing harms caused by crimes. Although these academics argue for different values, there appear to be a number of common principles.

#### *3.1. Responsibility*

The most common value provided is that of responsibility (Braithwaite, 2003:8; Braithwaite and Roach, 2001:64; Pranis, 2002:25). According to Pranis (2002)

“restorative justice has at its core the concept of mutual responsibility and independence. Individuals are responsible for their impact on others and the larger whole of which they are part” (:25). Not only are individuals held responsible but so are communities. Geographical communities and communities of care are responsible for the well being of each member (Pranis 2002:25).

Braithwaite and Roche (2001) argue that restorative justice fosters a new kind of responsibility, that of active responsibility (:64). They define active responsibility as “the virtue of taking responsibility when something needs to be done to deal with a problem or put things right” (Braithwaite and Roche, 2001:64). Braithwaite and Roche (2001) claim that this concept of active responsibility is part of what makes restorative justice appealing to current politics (:63).

### *3.2. Respect*

Zehr (2002) argues that the most important value within restorative justice is respect (:36). He states, “if I had to put restorative justice into one word, I would choose respect: respect for all, even those who are different from us, even those who seem to be our enemies” (Zehr 2002:36). Zehr (2002) believes that with respect comes restorative justice, but without respect, justice is not done restoratively (36). Respect in reference to restorative justice refers to respecting the needs of all persons involved within the restorative process. All human beings are accorded the same rights according to restorative values.

According to Zehr (2002), victims, offenders and communities all have different needs that must be respected for a successful restorative process to occur. The needs of victims include information as to why the harm occurred, truthful story telling from all

persons involved, emotional and physical empowerment, and some form of restitution (Zehr, 2002:14-15). Offenders on the other hand require encouragement to experience personal transformation, encouragement for integration within the community, and accountability that addresses the experienced harms, encourages responsibility, and transforms shame (Zehr, 2002:17). The needs of communities include attention to their requirements as possible victims, opportunities to construct an understanding of community, and encouragement to assist the welfare of other community members (Zehr, 2002:18).

### *3.3. Community*

Within the restorative process, communities should play an integral role. According to Umbreit, Coates, and Vos (2007) the purpose of including the community within the restorative process is an “attempt to help offenders understand that their actions not only impacted a real person who was hurt but also negatively impacted the broader community in which they lived – that is, that the community itself was also a victim” (:28). It needs to be recognized that a community can include more than a geographic community. Van Ness and Strong (2002) state, “with increased mobility and transience [...] some have suggested that a more useful definition should be nongeographic, emphasizing instead the presence of connectedness and relationships: a community of care” (:39). Thus the definition of community shifts away from the local community to one that is interconnected.

The community can also be responsible for assisting the offender to reintegrate within the community. This reintegration process has the ability to place new demands that may seem unusual to the community.

### *3.4. Collaboration and Communication*

Collaboration and communication within restorative justice refer to the need for all parties involved with the restorative process to communicate effectively and work together. Those participating in the restorative initiative must be respected and listened to carefully. This includes breaking down power imbalances between the victim and offender or between the mediator and offender. The effectiveness of restorative justice is diminished when key stakeholders and participants do not work together for a common solution (Braithwaite, 2003; Zehr, 2002).

### *4. Restorative Justice Models*

Within the restorative justice literature, there exist three main restorative models: victim-offender mediation, group conferences, and circles (Daly, 2006; Roberts and Roach, 2003; Van Ness and Strong, 2002). The common theme between these three models is the incorporation of key stakeholders – victim, offender, and community. This thesis will briefly offer a definition of each model. Each one of the models detailed is presently utilized within the formal justice system of numerous countries. Thus the structure and restorative nature of each model and program can differ depending on the specific penal system.

#### *4.1. Victim-Offender Mediation*

Victim-offender mediation programs first gained popularity in North America during the 1970s and since then have quickly spread to other countries around the world, including Canada. In fact, scholars regard Canada as the site of the first victim-offender reconciliation program (Roberts and Roach, 2003:237). This experimental program took place in Kitchener, Ontario in 1974. “This program began after a [criminal] trial judge

remanded a case of two offenders charged with vandalism in order to allow them to make restitution to the victims” (Roberts and Roach, 2003:239). With the assistance of the Mennonite Church and a probation officer, the offenders met with the twenty-two victims and together they devised restitution payments (ibid).

Victim-offender mediation programs “offer victims and offenders the opportunity to meet one another with the assistance of a trained mediator to talk about the crime and come to an agreement on steps toward justice” (Van Ness and Strong, 2002:57). White (2002) states that with this model “offenders are held directly accountable for their behaviour and must provide assistance to victims in an agreed upon manner” (:382). These programs empower the participants and allow them to resolve the conflict on their own.

#### *4.2. Family and Group Conferences*

These conferences are similar to victim-offender mediation but also include families and support groups to assist the victim and offender. This “approach encourages participation by community members (including and especially the friends and family of the victims and offenders) in a meeting, which has the purpose of revealing and discussing the impact of the crime on the various parties” (White, 2002:383). The parties as a whole decide how the offender, community and the victim can work together to repair the harm committed. Zehr (2002) describes it as a “family empowerment model” (:49).

According to Van Ness and Strong (2002), conferences follow a detailed process. First, the offender, followed by the victim, tell their personal story of the harm committed. During this phase the victim has the opportunity to express his or her feelings

and poses questions to the offender (:62). Following this, the family members of both the victim and offender are given their chance to add their thoughts and feelings (Van Ness and Strong, 2002:62).

The second phase is a discussion about possible solutions to repair the harm committed. “The victims and their families and friends have an opportunity to state their expectations, and the offenders and their families and friends respond” (Vann Ness and Strong. 2002:62). This phase continues until an agreed upon solution is recorded.

The modern family and group conference emerged through the Maori traditional practices in New Zealand (Van Ness and Strong, 2002:22). According to Zehr (2002):

Responding to a crisis in the welfare and justice system for juveniles, and criticized by the indigenous Maori population for using and imposed, alien, colonial system, New Zealand revolutionized its juvenile justice system in 1989 (:48).

While the New Zealand court system lingers as a fall back, nearly all juveniles charged with committing a serious offence are referred to family group conferences (Zehr, (2002:48). They have become part of the formal justice system.

#### *4.3. Circles*

According to Van Ness and Strong (2002), “the basic model used for circles is derived from aboriginal peacemaking practices in North America, group consensus decision-making principles, and insights gained from mediation programs” (:63). Those involved in circles include victims, offenders, families, friends, community members, and representatives of the criminal justice system (Roberts and Roach, 2003:242). These participants sit in an arranged circle and “pass a talking peace [...] to assure that each person speaks, one at a time, in the order in which each is seated in the circle” (Zehr,

2002:51). The focus of the circle is creating a constructive outcome where the needs of the victim, community, and offender are mutually understood (Van Ness and Strong, 2002:64).

McCold (2006) distinguishes between two variations of circles. They are healing circles and sentencing circles. Healing circles, traditionally used by local tribal leaders, dispose of 'situations' (:29). These circles involve the community, tribal elder, victim, offender and concerned family members meeting to create a common solution. Their purpose is to heal conflict. Sentencing circles on the other hand, although using the same structure as traditional circles are often held in courtrooms. Also, in addition to the involvement of key stakeholders, employees of the criminal justice system such as lawyers and judges are included in creating a sentencing plan for the accused (McCold, 2006:29).

Canada is the site of some of the first aboriginal healing circles. This restorative justice initiative gained popularity in 1992 with the well-known case of *R v Moses*. According to Roberts and Roach (2003), "aboriginal forms of justice, like many restorative justice initiatives, are often practiced in circles, although the circle carries particular spiritual significance for many aboriginal peoples" (:240). This form of aboriginal justice has played an important role in the formation of restorative justice within Canada.

Although, there are scholars such as Jaccoud (1999), a specialist in the study and structure of circles, who argue that certain varieties of circles such as sentencing circles are not restorative as this process involves a penal sanction. In doing so, according to

Jaccoud (1999), sentencing circles should not be labeled as neither a restorative process nor an alternative justice procedure.

##### *5. The Institutionalization of Restorative Justice: A Canadian Perspective*

The story of restorative justice in Canada is one of transformation. Although initially an alternative and separate entity to the punitive justice system, some restorative justice programs and restorative concepts have recently been amalgamated and institutionalized within the current criminal justice system (O'Malley, 2006; Roach, 2006; Woolford and Ratner, 2002). According to Woolford and Ratner (2002), these restorative concepts and alternative practices were introduced to address complaints regarding the inability of the retributive justice system to effectively combat crime (:4).

Examples of the institutionalization of restorative justice can be found in two places. First, directly within documents such as the Criminal Code of Canada. Second, at the programming level where restorative initiatives are implemented. At the national level and within the Criminal Code, institutionalized restorative concepts can be found in three documents. The first two are the Young Offenders Act (YOA) of 1982 and the Youth Criminal Justice Act (YCJA) of 2003. Both of these Acts placed an emphasis on diverting youths away from criminal justice sanctions. Furthermore, the YCJA attempts to promote a sense of accountability and responsibility from accused youths.

The third document is the Criminal Code of Canada. Here restorative concepts can be traced back to 1996 where section 718 of the Criminal Code of Canada was amended to include items (e) and (f). These amendments were included as new purposes of sentencing. Specifically they state, “ (e) to provide reparations for harm done to victims or to the community; and (f) to promote a sense of responsibility in offenders,

and acknowledgment of the harm done to victims and to the community”. Furthermore, section 718.2 of the Criminal Code was also edited to include item (e). This states “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders”. These modifications made alternative measures such as diversion programs a legal possibility.

According to Roach (2006), these amendments to the Criminal Code of Canada are problematic in that they attempt to introduce restorative outcomes through sentencing procedures. Roach states, that “sentencing is a bi-polar, adversarial and inherently coercive process that does not engage restorative processes and may only reach restorative outcomes occasionally” (Roach, 2006:174). Thus for Roach (2006) the sentencing structure of the punitive system places a hindrance on the proper functioning of restorative concepts.

Evidence of institutionalization can also be found at the programming level, within restorative justice initiatives. Currently restorative initiatives can be classified into two categories, those that are institutionalized and those that are not, or what Woolford and Ratner (2002) call communitarian and governmentalist programs. These two categories are not meant to be viewed as rigid and exclusive, but rather as a continuum. This means that although some restorative justice programs may be exclusively communitarian (non-institutionalized) or governmentalist (institutionalized) there are also programs that fall in between these two categories.

Generally, programs that fall into the institutionalized (governmentalist) category have a number of common features. First, they receive the majority of their funding from

governmental resources rather than appealing to the public for funding (Faget, 2006). Second, the majority of the providers of the programs are paid professionals such as police and courtroom professional employees rather than volunteers (Faget, 2006; Noreau, 2003). Third, the goals of many institutionalized programs resemble the social control techniques of the neo-liberal state such as self-responsibilization, self regulation, governing at a distance, and economic savings through market rationality (Woolford and Ratner, 2002:6). This is in contrast to the goals of traditional restorative justice which are more closely adhered to in communitarian programs.

But why have the government and the criminal justice system decided to institutionalize restorative justice within a retributive system? As previously stated, faced with the predicament of a failing criminal justice system and the loss of public support in the system, the government, under neo-liberal rule, endorsed and institutionalized restorative justice as one of their solutions (Woolford and Ratner, 2002).

This initially appears to be a bold move on the government's behalf as restorative justice has few commonalities with the current retributive system. In fact, numerous scholars define restorative justice as being the opposite of retributive justice. However, restorative justice does have many thematic commonalities with the current neo-liberal forms of governance. (O'Malley, 2006; Shearing, 2001; Woolford and Ratner, 2002). It is these commonalities that have allowed a 'smooth' institutionalization of restorative justice into the retributive system.

The institutionalization of restorative justice has brought forth an abundance of critical opinions. These opinions, many stemming from communitarians, centre around the belief that institutionalizing restorative justice within a retributive system will force a

compromise between restorative and retributive values (Faget 2006; Jaccoud, 2007; Woolford and Ratner, 2002). This means that although institutionalized restorative justice programs will operate under the title of a restorative program, some of their restorative values may have been replaced with values associated with the retributive justice system, such as the use of punishment.

This trend has been noted by multiple scholars, two of whom being Dr. Veronique Strimelle (2007) and Justin Piche (2006). Both of these individuals completed evaluations of specific institutionalized restorative justice programs. The initiatives studied were the Collaborative Justice Project in Ottawa Canada and Grand Cache Institution's Restorative Justice Unit. Both researchers conclude that the programs, although defining themselves as restorative in nature, were diluted of restorative elements. The researchers attributed this to the programs' attempts to meet the needs of the existing system it has been absorbed into. In this case, the existing and co-opting institution is the retributive criminal justice system.

The following chapter will go into more detail on the concepts of institutionalization and absorption of restorative justice into the existing retributive criminal justice system.

##### *5. Neo-liberalism*

Generally, neo-liberalism can be described as the political philosophy in charge of governing society and its institutions. According to Dean (1999), the main characteristics of the neo-liberal approach to governance include “the problemization of the welfare state”, “the extension of market rationality to all spheres”, and a new reliance placed upon entrepreneurialism and individual responsibility (:210). It is a form of governance

that offers minimal state intervention, increases monetary funds through the use of a 'free market' and increased competition, and requires individuals to become accountable and responsible for new aspects of society, such as their own safety.

Crime control policies have also undergone a transformation due to the shift from the welfare state to a neo-liberal one. These transformations include the rise of risk technologies, community crime control partnerships through responsabilization techniques, private policing, and the warehousing of prisoners (Garland, 1999). These examples all follow the economic rationality of the neo-liberal ethos.

## **Chapter Two: Theoretical Contribution**

### ***Introduction***

This chapter will describe a number of theoretical discussions on the topic of the institutionalization, cooptation, appropriation, and integration of legal alternatives, such as restorative justice, to the existing criminal justice system. The theoretical information gained through these discussions will provide valuable insight when answering both primary and secondary research questions in the subsequent chapters.

The structure of this chapter is as follows. First, a look at the term theory and how this thesis defines it. Second is an introduction to the concepts of institutionalization institutions. Finally, a glance the institutionalization and cooptation of restorative justice.

#### ***1. Defining Theory***

The terms theory and theoretical approach are widely utilized within the social sciences. Although at times, their definitions often contradict each other (Danermark et. al, 1997). The definition of theory to be used within this thesis comes from Peter Kraska. Theory, according to Kraska (2006), is an essential aspect of the social sciences. “It defines the parameters for how we think about our objects of study, and provides us the lenses through which we filter our subject matter in order to make sense of complex phenomena” (Kraska, 2006:167). Kraska (2006) continues to state that theory “gives us our organizing concepts, frames our research questions, guides our scholarly interpretations, and is an unavoidable presence in crime control policy, practice, and decision-making” (:168).

## *2. Defining Institutions*

As the institutionalization of restorative justice is the main focus of this thesis, it seems appropriate to go into some detail on the concepts of institution and institutionalization.

Within the social world there are numerous entities that can be defined as institutions. Hodgson (2006) defines an institution as “a special type of social structure that involves potentially codifiable and (evidently or immanently) normative rules of interpretation and behavior” (:4). Similarly, Scott (2008) argues that “institutions are comprised of regulative, normative and cultural – cognitive elements that, together with associated activities and resources, provide stability and meaning to social life” (:48). Institutions in their basic form are established social rules that guide, structure, and govern social interactions (Hodgson, 2006:2). They have the ability to be both informal and formal or some combination of both. Examples of institutions include marriages, families, religion, the military, education and legal systems.

Many discussions centered on the topic of institutions tend to focus on their ability to restrain and control behavior through the creation of moral, cultural, and legal boundaries. However, Scott (2008) emphasizes that although institutions do have a capacity to control, they also provide the resources to empower and support both actors and activities that would not exist without this assistance (:50).

Institutionalization refers to the process of a non-institutional entity becoming part of an institutional system. In the context of restorative justice, institutionalization refers to the process of restorative justice being amalgamated, co-opted, and integrated into the

previously well-established hegemonic institution of the traditional criminal justice system.

### *3. A 'Semi-Military' Prison System*

From the birth of the prison system there have been dissenting voices challenging the hegemonic powers of the justice system by rallying for prison reform and the introduction of legal alternatives. All have been met with resistance (Foucault, 1979). Examples of movements met with resistance include the abolishment of torture and the death penalty, the introduction of prisoner's rights, the introduction of outside control as opposed to institutional control, and alternatives to the criminal justice system such as mediation and restorative justice.

According to Mathiesen (1990), the prison system has structured itself in such a way that it has the ability and power to dispose of proposals, competing ideas, and suggestions that appear to run counter to the justice systems interests. Mathiesen (1990) notes that this 'semi-military' system accomplishes this goal through two strategies. The first strategy is to strangle all opposing interests through the application of sheer power from upper level individuals and management (Mathiesen, 1990:37). Although, this strategy sometimes runs counter productive as it often leaves prison employees with no option to express their opposition but through a strike (Mathiesen, 1990:37).

The prison system's second strategy for deflecting competing ideas is through what Mathiesen (1990) terms 'neutralization techniques'. Mathiesen (1990) notes that these techniques were established through a two-year observational study he conducted at a Norwegian prison. These are techniques, utilized by individuals responsible for

maintaining 'system interests', and have to ability to neutralize opposing ideas. "The techniques vary from the more or less open dismissal of ideas which are in conflict with the prevailing system interests to techniques which more subtly and unnoticeably delete them from the agenda" (Mathiesen, 1990:37). In total there are six techniques.

The first neutralization technique employed by the prison system is to 'reference' orders and demands from outside the penal system. This technique places accountability and responsibility outside the prison system (Mathiesen, 1990:37). The second neutralization technique is to simply define the ideas in conflict as too complex and 'irrelevant' (Mathiesen, 1990:38). Mathiesen (1990) states that this was one of the techniques used to dismiss community and group therapy (:38).

The third neutralization technique, similar to the second, is to define opposing ideas as 'impossible to implement' (Mathiesen, 1990:38). This involves excuses such as 'lack of resources'. The fourth technique is to 'postpone' the conflicting interests for 'the time being' (Mathiesen, 1990:38). This is in order to give the opposing ideas time to 'fully develop'. Mathiesen's (1990) fifth neutralization technique is the 'puncturing' of initiatives and opposing interests. This involves diminishing the practical significance of the new idea while putting up a front of interest and understanding.

The final neutralization technique, according to Mathiesen (1990), is titled 'absorption'. The use of absorption allows the prison system to accept and implement the opposing idea in such a way that through subtle changes the new idea fits within the prevailing prison structure without threatening its structure (Mathiesen, 1990:39).

In short, these 'power' and 'neutralization techniques' have allowed the penal system to present itself as the only way to deal with a conflict while at the same time

dismissing all conflicting and alternative ideas. According to Matheisen (1990), change within the prison system is next to impossible. “The conservatism of the prison society is a basic feature of the prison as an institution” (Mathiesen, 1990:39).

#### *4. Institutionalization of Restorative Justice: Theoretical Perspectives*

According to Coy and Hedeem (2005) “over the past quarter century, community mediation has become increasingly institutionalized and has undergone various degrees of co-optation in its evolving relationship with the court system” (Coy and Hedeem, 2005:405). In order to understand the institutionalization process, this section will first look at the different theoretical stages involved in the institutionalization and co-optation of restorative justice, followed by a discussion of the predicaments and benefits of institutionalization.

##### *4.1. Stages of Institutionalization and Co-optation of Restorative Justice*

Institutionalization and co-optation are relatively similar concepts but are ultimately different from one another. As stated earlier, institutionalization refers to the process of a non-institutional entity becoming part of an institutional system. According to Faget (2006) there are six stages in the institutionalization of restorative justice, they are as follows.

1. “Everything begins with the initiative of a handful of people inspired by a collective reflection or experiments from abroad” (Faget, 2006:155). Through trial and error these individuals attempt to create a “practical model that attempts to reconcile the initial utopia with the surrounding social context” (Faget, 2006:155). In terms of restorative justice or penal mediation, this refers to the introduction of victim-offender reconciliation programs.

2. “The establishment of the practical rules of the art brings about a codification and a normalization of procedures at the same time as a ritualization of the activity” (Faget, 2006:156). Principles to guide the innovative practice are created. This phase also includes the creation of a new discourse that serves the purpose of legitimating the activity. This usually consists of critiquing the previous methods and discourse. In reference to restorative justice this includes all critiques against the traditional retributive criminal justice system.
3. “This phase is generally concomitant with a request for private or public funding which guarantees the perpetuation of the experiment but gives it at the same time an institutional legitimacy” (Faget, 2006:156).
4. “A phase of identity construction then imposes itself through the creation of more structured professional organizations” (Faget, 2006:156).
5. “The next phase of institutionalization is the legalization of practices. In a democracy this is the outcome of an interaction between various types of actors, representatives of the state, the elect, technocrats, legal academics” and so on. (Faget, 2006:157)
6. “The outcome of the process of institutionalization is generally the professionalization of the activity” (Faget, 2006:157).

Faget (2006) notes that these six-stages of institutionalization are neither quick nor unilateral. Institutionalization is a slow process that follows no schedules or timetables.

Sometimes involved in institutionalization is the process of co-optation. Tosi (2009) states that co-optation is a coping or adjustment mechanism that increases the survival chances of an institution or organization. It is a way of avoiding threats to the

institutions existence and stability. Co-optation is institutionalization for the purpose of survival.<sup>4</sup>

Coy and Hedeem (2005) theorize that the co-optation of restorative justice involves four phases. The first phase is inception. This involves the creation of a social movement that partly arises do to an unfulfilled need of the population. In terms of restorative justice, this refers to the creation of victim-offender mediation (Faget, 2006). According to Coy and Hedeem (2006), this stage is only completed when vested interests and the state, respond to internal and external pressures, and begin to see a need for legal policy reform (:412). This policy reform involves seeing promise in the new restorative justice movement.

Coy and Hedeem's (2005) second stage of co-optation is appropriation. This involves two steps. First is the appropriation of the language associated with the restorative movement. This language, using terms such as mediation and problem-solving, becomes common language within the court system while the restorative movement associated with the language is largely discounted (Coy and Hedeem, 2005:414). Thus the justice system, through co-optation, accepts and utilizes restorative terminology while at the same time disassociates itself with values associated with the

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<sup>4</sup> A small note needs to be made here. Restorative justice is an institution in itself, thus, it has previously undergone a process of institutionalization. From now on, when this thesis refers to the institutionalization of restorative justice, it is referring to the institution of restorative justice becoming part of the criminal justice system. Furthermore, this thesis views the processes of institutionalization and co-optation as being different and separate from one another. Institutionalization is the process of one institution joining with another institution. Here, both institutions continue to operate and hold onto their core values. It holds no negative connotation. Co-optation on the other hand is one institution absorbing another institution while at the same time forcing the absorbed institution to structure itself according to the absorbing institution. Here, the absorbed institution may be forced to replace some of its core values with ones associated with the absorbing institution. This process, according to this thesis holds negative connotations.

restorative justice movement. This makes it appear that the entire restorative structure was amalgamated and co-opted when this is not the case.

The second step of appropriation is the appropriation of actors and participants of the arising social movement. Appropriating these persons allows them to become part of the policy-making committees while at the same time restraining them from enacting more substantive challenges (Coy and Hedeem, 2005:416). This is what Coy and Hedeem (2005) terms the paradox of collaboration. “When a challenging movement gains entry into policy-making and oversight and implementation bodies, continued participation may become a goal in and of itself” (Coy and Hedeem, 2005:417). This means that appropriated actors begin to identify with the system and become more focused on maintenance and survival rather than alternative procedures.

Coy and Hedeem’s (2005) third phase is the assimilation of the challenging movements leaders and their goals. This involves siphoning off leaders of the restorative movement and giving them employment within the new State run restorative program. Removing the leaders of the activist movement lessens the amount and the power of dissenting voices against the criminal justice system. This phase also involves the transformation of the challenging movements goals. These goals are restructured to meet the goals required by the state and other vested interests rather than the goals of restorative justice.

The final phase of Coy and Hedeem’s (2005) co-optation model is regulation and response. This phase involves the state and other vested interests standardizing and routinizing restorative programming. Here, sub-institutions are established to maintain and support the goals associated with the state.

Coy and Hedeem (2005), in their discussion of the co-optation of restorative justice cite DiMaggio and Powell's (1983) concept of coercive isomorphism. "Coercive isomorphism refers to the influential role of powerful exogenous institutions and resource providers, particularly the state, in fostering or imposing the reproduction of organizational patterns and values that reinforce the status quo" (Coy and Hedeem, 2005:408). Thus, coercive isomorphism could be used to explain the ability of the state and the criminal justice system to co-opt and institutionalize a legal alternative such as restorative justice while at the same time forcing restorative justice to lose their community focus and retain an organizational structure associated with the retributive system<sup>5</sup>.

#### *4.2. Predicaments of Institutionalization*

As stated earlier, numerous scholars, such as Coy and Hedeem (2005), Faget (2006), Jaccoud (2007), and Woolford and Ratner (2002;2007) who write on and research the topic of the institutionalization and co-optation of restorative justice argue that institutionalization could create a number of predicaments for the movement of restorative justice.

According to Faget (2006), the main predicament, caused by the meeting of two different logics – that of the traditional penal system and that of mediation – is that they appear to be opposed to each other (:158). This opposition, according to Faget (2006), Jaccoud (2007), Woolford and Ratner (2002;2007), Noreau (2003) and Coy and Hedeem (2005) often times forces a compromise between restorative and retributive values. As

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<sup>5</sup> It is important to mention here that retributivism is not the sole value underlying the structure of the criminal justice system. That is to say that the penal system is not only in the business of punishment. Elements of rehabilitation are also found throughout the penal system.

restorative justice is being institutionalized into a system of retributive logic, and due to the 'coercive isomorphic' nature of the retributive system, it is usually the restorative values that are forced to compromise.

Jaccoud (2007), Faget, (2006), and Woolford and Ratner (2002; 2007) state that this compromise and opposition of values (juridical and retributive vs. restorative) has caused a fragmentation of restorative practices. This fragmentation has led to the creation of three distinct models of restorative justice. Although each scholar uses different titles for their models, their model descriptions are very similar.

The first model is titled 'governmentalist' or 'evaluative' by Woolford and Ratner (2002; 2007), 'legal' by Faget (2006), 'maximalist' by Walgrave (2000), and as a model focused on 'goals' by Jaccoud (2007). Citing evidence from France, Faget (2006) states that this model is "more often located in the courts or in a centre for justice and law [...] where penal mediation is carried out by practicing or retired lawyers who have not been specially trained in mediation" (Faget, 2006:160-161). The logic utilized within this model is mainly characterized as juridical. Similarly, Woolford and Ratner (2002; 2007) argue that this 'utilitarian' model, congruent with the legal status quo, helps and supplements the criminal justice system. In this model, restorative values are often replaced with penal oriented values associated with the juridical system (Woolford and Ratner, 20007).

The second model is titled 'transformative' or 'communitarian' by Woolford and Ratner (2002; 2007), 'restorative' by Faget, (2006), 'minimalist' by Walgrave (2000), and as a model focused on the 'purposes and negotiated process' by Jaccoud (2007). In this model, juridical logic is replaced by restorative logic (Faget, 2006) and it stands in

opposition to the culture of the legal system (Woolford and Ratner, 2002). This model is not so much focused on forging ‘utilitarian’ agreements but rather to provide participants with an opportunity to come to new realizations through open dialogue (Woolford and Ratner, 2002). Jaccoud (2007) states that proponents of this model argue that institutionalization of state ownership undermines the core values and foundations of restorative justice. Thus this model of restorative justice, in order to function properly, must remain an exclusive alternative to the criminal justice system and function within the community.

The third model is titled ‘facilitative’ by Woolford and Ratner (2002) and as a model focused on the ‘process’ of restorative justice by Jaccoud (2007). This model, although using the processual dimensions of justice, is more focused on disputant satisfaction than settlement rates and is “intended to reform and humanize the formal justice system” (Woolford and Ratner, 2002). This model uses restorative justice concepts throughout the trial process but many of the end goals are not restorative in nature.

Here Jaccoud (2007) cites the example of the Canada’s sentencing circles. This process, although using the community, victim and offender to come to a consensus on what action should be taken does not have restorative goals in mind. In fact the consensus is forwarded to a criminal judge who has the ability to modify the agreed upon decision. The judge even has the ability to sentence the offender to a stay in prison. Jaccoud (2007) states that this model can by no means be identified as the paradigm shift of restorative justice. It is simply a way to re-legitimate the criminal justice system.

These three models can be looked at as a continuum of restorative justice practices. On the one side of the continuum are restorative justice models and programs that have been institutionalized and co-opted and thus forgo many of the restorative justice core values. On the other side of the continuum are restorative justice models that remain outside the penal system, function within the community, and hold on to the basic restorative core values.

According to Coy and Hedeem (2005), “Woolford and Ratner have persuasively argued that the hegemonic power of the legal system is such that the facilitative and transformative practices of community mediation will eventually drift toward the evaluative and directive approach to mediation that predominates the legal system” (Coy and Hedeem, 2005:415). Furthermore, in reference to Canada, specifically British Columbia, Woolford and Ratner (2007) note that governmentalist restorative programs are beginning to outnumber communitarian programs.

Woolford and Ratner (2007), as well as Faget (2006) attribute the rise of governmentalist and evaluative restorative programs to the lack of funding available to non-institutionalized restorative initiatives. More and more restorative programs turn to the assistance of the ‘hegemonic’ criminal justice system for their survival. Without the funding provided by the penal system many restorative programs would be unable to operate. This reliance on the criminal justice system is what often times replaces restorative values with penal ones.

Interestingly, although much of these authors discussion’s centers on the negative possibilities of the institutionalization of restorative justice, they also recognize that the opposite could be true - that restorative justice could in fact flourish once

institutionalized. Institutionalized programs gain funding, legitimacy, and access to case loads through their alignment with the criminal justice system. These benefits allow the continuance of the restorative program and of some restorative values.

### *5. Institutionalization Justified*

As stated before, the primary research question guiding this thesis is are institutionalized governmental restorative justice programs within Canada structured to reflect the core values of restorative justice? The objective of this thesis is to analyze five institutionalized Canadian restorative justice programs to examine their structural values in order to determine whether their institutionalization within a retributive system has caused a shift away from traditional restorative ideology.

In order to complete the previous objective, this thesis first needs to be able to select five Canadian ‘institutionalized’ restorative justice programs out of the hundreds of programs that label themselves as restorative. To do so, this thesis will use the theoretical discussions of the institutionalization of restorative justice in order to compile a list of characteristics that differentiate institutionalized programs from non-institutionalized programs. These characteristics will be used to create an analytical grid that will ensure that institutionalized programs are selected for analysis. Generally, an institutionalized program is one that receives the majority of their funding from government resources, receives the majority of their caseload from government resources, and utilizes more professionals rather than volunteers and non-professionals.

As this thesis has as its topic the institutionalization of restorative justice, the selected textual data for analysis is institutionalized restorative justice programs and not non-institutionalized (communitarian) programs. This thesis is interested in finding out

whether institutionalized programs have in any way diverted away from the traditional values associated with restorative justice. In order to find this out only institutionalized programs are needed for analysis.

## **Chapter Three: Methodological Approach**

### ***Introduction***

The function of this chapter is to describe the methodological approach undertaken within this thesis. This chapter defines and justifies the use of a qualitative content analysis, describes the chosen epistemological position, and outlines the methodological procedure. Following this are the stated benefits and limitations associated with the methodological approach as a whole.

#### ***1. Research Objectives***

The purpose of this thesis is to analyze five Canadian institutionalized restorative justice programs for the existence of both retributive justice values and restorative justice values. Specifically, the primary research question is: Are institutionalized governmental restorative justice programs within Canada structured to reflect the core values of restorative justice?

The secondary research question is as follows. Has the institutionalization of restorative justice in Canada changed the nature of restorative justice so as to diminish its integrity and purity?

#### ***2. Epistemological Position***

Epistemology is a branch of philosophy concerned with the acquiring and justification of human knowledge. Generally, this thesis is structured to reflect a positivist epistemology. Positivism argues that the ‘methods of the natural sciences’ are the most objective and best way of acquiring knowledge (Davison and Layder, 1994:21) Rather than relying on common sense thinking, positivism asserts that scientific thinking is the only way to reveal truths and facts about the social and natural world (Davison and

Layder, 1994:21). Scientific thinking, and in turn positivism, is based on hypothesis testing and empirical observation. It is a value-free and objective way to uncover and describe social facts (Davison and Layder, 1994:21).

According to Bryman and Teevan (2005), positivism is the application of the scientific methods to the study of society and social reality (:9). They argue that there are five general principles of the positivist position. First, only regularities and phenomena confirmed by the natural senses can be warranted and considered true knowledge (Bryman and Teevan, 2005:9). Second, the main purpose of theory is to create hypothesis' that have the ability to be tested (Bryman and Teevan, 2005:9). Third, knowledge is acquired through the gathering of information and facts for the purpose of providing generalizations (Bryman and Teevan, 2005:9). Fourth, scientific research must (if possible) be conducted in a value-free way (Bryman and Teevan, 2005:9). Many researchers refer to this as objectivity or intersubjectivity. Finally, the fifth principle is that there is a distinction between normative statements and scientific statements; scientific statements being the true domain of science (Bryman and Teevan, 2005:9).

As most epistemologies and theories of knowledge, positivism is not without criticisms. The main criticism, held by those arguing for epistemologies such as realism and interpretivism is the use of the scientific method. They argue that a social scientific research strategy must respect the differences between the objects of study in the natural sciences and the subjects studied in the social world (Bryman and Teevan, 2005:10).

Using a positivistic paradigm this thesis aims to produce a socially scientific analysis of institutionalized restorative justice programs that is mostly objective and value free. This will be completed through the creation of a research question, the

formulation of a hypothesis, and the scientific evaluation of empirical evidence through a content analysis.

### *3. Defining Content Analysis*

The methodology selected for this thesis is content analysis. According to Huckin (2004),

Content analysis is the identifying, quantifying, and analyzing of specific words, phrases, concepts, or other observable semantic data in a text or body of texts with the aim of uncovering some underlying thematic or rhetorical pattern running through these texts (:14).

Generally, there are two types of content analysis, qualitative and quantitative (Huckin, 2004). This thesis utilizes a qualitative analysis.

Quantitative content analysis approaches tend to focus only on explicit phrases and words that can be tabulated through computers and overlooks implicit meanings. Qualitative approaches on the other hand focus on both the implicit and explicit concepts (Huckin, 2004). Explicit content, also termed latent content, extends the analysis to more of an “interpretive reading of the symbolism underlying the physical data” (Neuman, 2006:344). It is an examination of the ‘deep structural’ meaning portrayed by the text (Neuman, 2006). Qualitative content analysis’, rather than quantitative ones empower the researcher to use their own judgment in deciding whether a particular textual token “references a particular concept in the given context” (Huckin, 2004:15).

This thesis has selected a qualitative approach rather than a quantitative approach for two reasons. First, rather than seeking causal explanations through a

quantitative approach, the intentions are to gain meaning and in-depth understanding of a specific event within its own context. This event is the existence of retributive crime control values within institutionalized restorative justice programs.

Second, this thesis is interested in analyzing values that are socially created, such as equality, respect, and responsabilization. These are all qualitative values that have different meanings within different settings. In order to gain meaning from these values within the restorative justice context a qualitative approach is necessary.

#### *4. Methodological Procedure*

The methodological procedure chosen for this thesis is borrowed from Huckin (2004). Here, Huckin (2004) describes the six stages involved in a content analysis procedure. Although the stages are listed in a numerical order, Huckin (2004) notes that most researchers rarely follow the stages in a linear fashion, rather many researchers find it necessary to recycle through the stages, often numerous times in light of discoveries found in subsequent stages (:16).

##### *4.1. Stage One: Pose a Research Question*

Huckin's (2004) first stage involves the creation of a research question. A question that: (a) addresses an issue or topic that is of interest within the researchers discipline, and (b) is a novel claim in regards to the issue or topic (Huckin, 2004:16). The research question for this thesis is: Are institutionalized governmental restorative justice programs within Canada structured to reflect the core values of restorative justice? The hypothesis for this question is that although Canadian institutionalized restorative justice programs will contain core values of restorative justice, they will also contain values associated with the co-opting retributive system.

#### *4.2. Stage Two: Define Appropriate Constructs*

Huckin's (2004) second stage is the defining of appropriate 'constructs of interest'. The two constructs selected for this thesis are 'restorative justice' and 'retributive justice'. These two constructs emerged from the primary research question and the literature review. Stage four will go into more description of these constructs and will define their units of analysis.

#### *4.3. Stage 3: Select Appropriate Text or Body of Text*

The third stage is the selection of a body of texts to serve as the 'study corpus' (Huckin, 2004:17). According to Huckin (2004), "an appropriate study corpus is one that will provide a good test of the research question" (:17). This means (a) that the selected texts, in some clear manner, correspond to the research question, and (b) that the selected texts are representative of a larger body of texts (Huckin, 2004:17).

The selected texts to serve as the 'study corpus' for this thesis are Canadian institutionalized restorative justice programs. Using purposive sampling five restorative justice programs were selected as 'study corpus' for the thesis. "This type of sampling involves the researcher making a decision as to what units he or she deems appropriate to include in the sample" (Neuendorf, 2002:88). Non-random purposive sampling was selected as the sampling method for this thesis for two reasons. First, qualitative research is not focused on concepts like statistical representativity, which requires random sampling methods and large samples. Rather, it is focused on rational choices which help create a more qualitative sample.

Second, purposive sampling will allow this thesis to use a characteristically guided sampling procedure. This means that it should be possible to select a sample – in this case

a sample of Canadian institutionalized restorative justice programs – that all embody specific characteristics. Specifically, characteristics that relate to institutionalized restorative justice programs. It is only through this purposive sampling procedure that this thesis is able to select institutionalized restorative justice programs while keeping the number of programs for analysis at a reasonable number.

Furthermore, purposive sampling was selected as it allows for a selection of programs that represent all the regions of Canada. This means that it is possible to select an institutionalized program from each separate region. Doing so will allow for a better understanding of the ‘whole picture’ of the institutionalization of restorative justice in Canada.

Although the programs for analysis are selected through purposive sampling, it does not mean that they have selected in order to prove the hypothesis correct. Rather, the programs have been selected simply because they are institutionalized restorative justice programs.

To ensure that only Canadian governmental / institutionalized restorative justice programs were selected as data sources, three criteria were selected: (1) programs must be Canadian, (2), programs must be operational, and (3) conform to an institutionalized / non-institutionalized grid which was briefly explained within the previous chapter. This grid was created using components from Noreau’s (2003), Jaccoud’s (2007), Faget’s (2006), and Woolford and Ratner’s (2002) theoretical discussion of the institutionalization of restorative justice. The grid is as follows:

	<b><i>Institutionalized (Governmental)</i></b>	<b><i>Non-institutionalized (Communitarian)</i></b>
Actors in the restorative process	The use of professionals rather than volunteers in the mediation process (Faget, 2006; Noreau, 2003).	The use of trained volunteers rather than professionals in the mediation process (Faget, 2006).
Financing	The use of government funding rather than public support (Faget, 2006).	The use of public or private funding – not from government (Woolford and Ratner, 2002).
Restorative process	Centered around the rule of law and often takes place within a court setting (Faget, 2006).	Centered around distancing itself from the rule of law and the traditional court setting (Faget, 2006).
Imprisonment	Possible use of punitive prison sanctions for the offender (Jaccoud, 2007).	No use of prison sanctions (or ‘punitive punishment’ Jaccoud, 2007).
Main Goal	Main goal is the responsabilization of offenders (Woolford and Ratner, 2002).	Main goal is to repair the harm experienced by the victim and community (Jaccoud, 2007).
Case referral sources	Majority of case referrals are from the criminal justice system (Woolford and Ratner, 2002).	Majority of case referrals are from alternative sources such as the community and schools (Woolford and Ratner, 2002).

All programs selected conformed to the institutionalized column rather than the non-institutionalized column.

The following contains a brief description of each of the five restorative justice programs chosen for this thesis. These five programs are only a sample of institutionalized restorative justice programs in Canada. These five were selected as they conform to the data gathering criteria, were easily accessible, and can be seen as a representation of Canada in that each program represents a different region of Canada. Each program was selected from a list of Restorative Justice programs published by the Correctional Service of Canada (CSC).

Two limitations of such a selection are, (a) the programs were selected from a list of restorative justice programs published by the Correctional Services of Canada. This rules out the selection all other programs not defined as restorative by the Correctional Service of Canada. And (b), the decision not to analyze communitarian restorative programs means that this thesis cannot make generalizations in regards to restorative justice in Canada as a whole, but rather only in regards to institutionalized programs.

The information presented here has been taken from the selected programs official websites.

The first program is the Collaborative Justice Program (CJP). The CJP is an Ottawa based restorative justice program that was established September 1, 1998. The program caters to both adult and youth offenders and accepts post-charge/pre-sentence cases. The CJP, although sponsored by the Church Council on Justice and Corrections (CCJC), receives the majority of its funding through the Ministry of Children and Youth Services. The program offers both face-to-face meetings and shuttle communications through letters and video taped messages.

This is not the first time the CJP has been analyzed for academic purposes. In 2005, the program was evaluated by the Ministry of Safety and concluded that the CJP provided a successful approach to restorative justice. Furthermore, Piché and Strimelle (2007) conducted their own evaluation of the CJP and came to a different conclusion. They found that the program was in fact diluted of restorative elements.

From the CJP, six documents were selected for further analysis. These documents were not selected according to a sampling procedure. Rather, every document published by the restorative justice program that discussed the ‘doing of justice’ was selected. The

majority these documents can be found on the CJP official website. Although, two of documents were obtained through email contact with employees of the CJP. The documents are titled *About the Collaborative Justice Program, Our Process, Have You Been Victimized by a Crime, Have You Been Charged With a Crime, and Philosophy Statement and Operating Principles, and Exploring the Case Phase.*

The second program is the Mediation and Restorative Justice Centre (MRJC). The Mediation and Restorative Justice Centre (MRJC) has been operating out of Edmonton, Alberta since in creation in May 2000. It was created through the amalgamation of the Edmonton Community Mediation Society and the Edmonton Victim Offender Society and receives the majority of its funding through various government grants. The program accepts cases at all stages including no charge, pre-charge, and post sentence, and only offers face-to-face meetings.

From the MRJC, six documents were selected for further analysis. All six documents were obtained through the MRJC official website. The titles of the documents are as follows: *About the Mediation and Restorative Justice Centre, Helping People Have Difficult Conversations, Victim Offender Restorative Dialogue, The Restorative Dialogue Program, Restorative Dialogue Principles, and Restorative Dialogue Frequently Asked Questions.*

The third restorative justice program is Restorative Resolutions (RR). Restorative Resolutions is a restorative justice program offered by the John Howard Society of the Central Okanogan and South Okanogan in British Columbia. The program is described as an alternative to the traditional court process for RCMP referred adults involved in a first time minor chargeable conflict. The majority of the program's funding is received

through the various governmental sources. The program offers both face-to-face meetings and shuttle communication.

Four documents were chosen from Restorative Resolutions for the content analysis procedure. All of the six documents were obtained from the John Howard Society of the Central Okanogan and South Okanogan official website. The titles of the selected documents are *Adult Restorative Resolutions*, *Adult Restorative Justice – Restorative Resolutions*, *About Us: Mission Statement*, and *Facts and Information*.

The fourth program is the Community Justice Society (CJS). The Community Justice Society of Halifax and Dartmouth, Nova Scotia was established in 1999 and is a provider of Nova Scotia's Provincial Restorative Justice program. The program accepts youth aged 12 to 17 from four different points in the judicial system. They are pre-charge, post-charge/pre-conviction, post-conviction/pre-sentence, and post sentence. The majority of funding for this program is through the Nova Scotia Department of Justice. This program only offers face-to-face meetings.

Five documents from the CJS were selected for analysis. All five were obtained through the CJS official website. The titles of the selected documents are *Community Justice Society – Vision Statement and Mission Statement*, *About Us*, *Volunteers*, *Community Programming*, and *Department of justice*

The fifth program the Restorative Opportunities (RO). Restorative Opportunities is a Canada-wide restorative justice program modeled on victim-offender mediation and has been in operation since 2004. Funded by the Correctional Service of Canada (CSC), Restorative Opportunities is a post-sentence program for serious crimes. Restorative Opportunities only offers face-to-face meetings.

Five documents were selected for further analysis from Restorative Opportunities. All Five documents were obtained from the Correctional Service of Canada website. The titles of the documents are as follows: *Victim Offender Mediation – A Brief Overview*, *Restorative Opportunities – Fact Sheet for Victims*, *Restorative Opportunities – Fact Sheet for People Who Work With Offenders*, *Restorative Opportunities Case Referral Protocol Document*, and *Interim Direction Regarding the VOM Services Provided by the Restorative Opportunities Program*.

The texts selected for the analysis are program documents of the five selected restorative justice programs. The purpose of these documents is to describe the programs purpose, their understanding of restorative justice, and structure and function of the restorative process. These documents selected as the study corpus were taken directly from the restorative justice program's respective websites. Where documents could not be obtained through online resources (as in the CJP), they were gathered through email correspondence with employees of the restorative justice programs.

This thesis uses documents as the study corpus for this thesis for two reasons. First, it is only through documentary resources that empirical evidence will be found that will assist in the answering of the primary research question. The only other available option was in-depth interviews, but this idea was abandoned upon realization of the difficulty in gaining access to necessary interviewees. Thus, other than through official documents, there is no other empirical evidence for analysis

The second reason for the selection of documents is that although they are mute and cannot directly communicate with the reader, their content is produced by an individual with specific purposes. This content holds meaning that can be uncovered and

understood through careful analysis. It is the analysis of this content that will assist in answering the proposed research questions.

The information contained within documents is valuable to this thesis for two reasons. First, these documents provide readers with values of a society at a specific moment in time. These values can be political, economical, moral or any other variation. Specifically, this thesis is searching for both restorative justice and retributive justice values.

Second, official documents like the sample being analyzed for this thesis were created with a specific purpose: to describe the restorative justice program to the public. In doing so, these documents emphasize many restorative justice values such as harm reduction, respect, and accountability. But, as these programs are institutionalized and funded through government resources, the program description and the program itself may be subjected to certain values associated with the neo-liberal government and their retributive crime control policies. Thus, this thesis argues that the information gained through a qualitative content analysis will hold the information needed to answer the research questions.

#### *4.4. Stage 4: Determine Appropriate Units of Analysis*

The fourth stage of Huckin's (2004) content analysis is the selection of 'appropriate units of analysis'. According to Huckin (2004) the "units of analysis, or text features, to be quantified for content analysis must be those that emerge logically from the research question" (:17). Furthermore, they must have "a direct bearing on the question, in the sense that the incidence of a feature will constitute either direct support or direct non-support for it" (Huckin, 2004:17). The text features chosen for this analysis

emerged through a deductive process rather than an inductive process. This means that the text features were selected prior to analysis (from the literature and theoretical review) rather than through the analysis itself.

The text features chosen to represent the construct of restorative justice, and their operationalization is as follows.

<b>Repairing Harm (Action)</b>	The text feature ‘repairing harm’ refers to the program documents referencing the focus of the program being the repairing, reduction, or healing of harms committed during an offence.
<b>Active and Voluntary Participation (Action)</b>	The text feature ‘active and voluntary participation’ refers to the need for all participants (victim, offender, and community) within the restorative process to actively participate through communication. This participation must be voluntary rather than coerced.
<b>Responding to the Needs of all Parties (Action)</b>	The text feature ‘responding to the needs of all parties’ is a key element in restorative practices. It refers the restorative programs ability to recognize that and pay attention to the specific needs of all parties.
<b>Accountability <sup>6</sup> (Action)</b>	Accountability refers to offender taking the responsibility and becoming accountable for the harms committed.
<b>Equality and Respect (Concept)</b>	The text feature ‘equality and respect’ refers to the need for all parties (victim, offender, and community) to be treated equally and with respect during the restorative process. Creating respectful equality also involves being aware of the different power relationships between victims, offenders, communities, and restorative justice mediators.

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<sup>6</sup> The text feature ‘accountability’ and in turn the concept of responsabilization holds a different meaning and purpose depending what philosophy or ideology is using the term. When the restorative philosophy refers to accountability and responsibility it is referring to restorative justice requiring offenders to admit that they are accountable. Furthermore, restorative justice responsabilizes its participants to do justice themselves as it makes the process more meaningful. On the other hand, when retributive justice and neo-liberalism refer to responsabilization they are referring to the political strategy of making people responsible to doing justice themselves. Not because it is more meaningful, but rather because it is more cost efficient.

The text features chosen to represent the construct of retributive justice, and their operationalization is as follows.

<b>Coercion</b>	The text feature ‘coercion’ refers to offenders, victims, and community members being coerced and forced into being involved with the justice process.
<b>Punitive Punishment - Imprisonment</b>	The text feature ‘punishment’ refers to the offender of a harm, being punitively punished for the committed harm. In many cases this refers to the use of imprisonment.
<b>Use of traditional penal staff</b>	The text feature ‘use of traditional penal staff’ refers to the use of professional penal employees such as lawyers, judges, and other penal staff through the justice process.

Huckin’s (2004) subsequent fifth and sixth stages, titled ‘gather data’ and ‘interpret the findings’ will be presented in the following analysis and discussion chapters.

### *5. Benefits and Limitations*

This section examines the benefits and limitations of the selected methodological procedure. This includes threats to reliability, validity, and ethical considerations.

The first limitation of this methodology is that it uses a non-random sample. Non-random samples lower the study’s generalizability. For this Master’s thesis it was impossible to use a random sample of Canadian restorative justice programs as it would produce a sample size much too large. In lieu of this, non-random purposive sampling was selected as the data collecting method.

The second limitation also relates to the sample of this study. Only a small number of documents were selected as the data sample for this methodology. This will

have the effect of making generalizations beyond the scope of this study impossible. Results yielded from this study will only make reference to this particular data set.

A third limitation is that this thesis only analyzes institutionalized programs while abstaining from non-institutionalized programs. Doing so makes it impossible to make any sort of generalizations regarding restorative justice in Canada as a whole.

The fourth limitation of this thesis is the selection of documents as the study corpus for analysis. Documents, unlike other data sources such as in-depth interviews are mute and do not tell the reader anything. It is the researcher's job to attempt to understand the message within the content of the document. The problem with this is that each and every person has been created through a different collective action and thus has different view- points and biases. Therefore different researchers will gain different understandings of the message contained within the documents content

The final limitation of the study is that data from the 'study corpus' is coded and analyzed by a single coder. This diminishes the inter-rater reliability of the study.

Gray *et. al.* (2007) argue that one of the most prominent benefits of a content analysis is that it is a thoroughly unobtrusive method because the subjects of the investigation are not directly questioned or observed (:297). It is a non-reactive method.

A second benefit of this study is that with the creation of a consistent coding scheme and proper conceptualization, this analysis has a high degree of repeatability. This means that this study can be repeated by other researchers who wish to examine different restorative justice programs but with the same methodological approach as this thesis. The final benefit of this study is that it was cost effective. No monetary expenses were needed for the completion of this thesis.

## **Chapter Four: Analysis**

### ***Introduction***

The purpose of this chapter is to detail and describe the results of the analysis process. This is Huckin's (2004) fifth stage in his proposed content analysis procedure. Unsure of the best way to present these results, this thesis has opted to first provide two separate grids that show either the presence or absence of the text features within the different institutionalized restorative justice programs. Second is a more in depth analysis of each individual text feature.

#### ***1. Text Feature Grids***

	Restorative Justice Text Features				
	C.J.P.	C.J.S.	R.O.	R.R.	M.R.J.C.
Repairing and Healing Harm	yes	yes	yes	yes	Yes
Active and Voluntary Participation	yes	yes	yes	yes	Yes
Responding to Needs of all Parties (Zehr, 2002)	yes	yes	yes	no	Yes
Responsibilization and Accountability	yes	yes	yes	yes	Yes
Equality and Respect	yes	no	no	yes	Yes

	Retributive Justice Text Features				
	C.J.P.	C.J.S.	R.O.	R.R.	M.R.J.C.
Coercion	no	no	no	no	No
Punitive Punishment – Imprisonment	yes	no	yes	yes	No
Use of Traditional Penal Staff	no	no	no	no	No

## *2. Text Feature Analysis*

The following section offers a more detailed examination of the individual text features and discusses how the text features are presented within the analyzed documents of the five selected restorative justice programs. The textual evidence presented in this section is only a portion of the evidence collected through the content analysis procedure. There was simply too much evidence collected through the analysis to be presented in this chapter. Thus, only the strongest and most pertinent evidence was selected for presentation.

### *2.1. Repairing Harm (Restorative Justice Text Feature)*

As stated in the literature review, the repairing of harm is a central feature of restorative justice. In fact, it is the core objective of restorative justice. This is in contrast to the central value of traditional penal justice, which is to charge the offender for committing a crime against the state. Repairing harm within the restorative justice literature refers to healing the harm done to victims, communities, relationships, and the offender caused by the offence in question. This means that if the five analyzed institutionalized restorative justice programs are to remain true to restorative justice

philosophy, they should have the restorative justice text feature of repairing and healing harm as their primary objective.

After analyzing the selected documents from each restorative justice program it became evident that the text feature repairing harm was present within all five programs. In fact, it was the most prominent text feature found within the documents out of all the selected restorative justice text features. What follows is some textual evidence.

The Collaborative Justice Project states that their approach to justice is one that “focuses on repairing harm caused by the crime” (C.J.P. Document A). Furthermore, the documents state that the goal of the program “is to facilitate a healing process” (C.J.P. Document A). Similarly, the Community Justice Society declares their mission statement as “offering meaningful ways to repair the harms caused by youth crime and restoring positive relationships” (C.J.S. Document A). The Restorative Opportunities documents state that the program provides opportunities for persons “affected by serious crime to communicate with the other party and try to address the harms caused with the help of professional mediators” (R.O. Document A). Restorative Resolutions has as their primary goal to “provide a dispute resolution process that is effective and efficient in resolving conflict and repairing harm across a range of settings/issues, both criminal and non-criminal” (R.R. Document D). And finally the Mediation and Restorative Justice Centre states that the principles of their restorative dialogue are aimed to “redress the harm caused by crime through the voluntary participation of those most impacted – the victim and offender” (M.R.J.C. Document B).

Does this evidence prove that repairing harm is the central feature of the institutionalized restorative justice programs? This is unlikely. But it does show that

although these programs have been institutionalized through co-optation and absorption techniques, they have been able to maintain and promote the text feature repairing harm within their discourse leading one to hypothesize that repairing harm is a major feature in maintaining a restorative identity.

Three chapters ago in the literature review, this thesis made reference to the fact that restorative justice has a different understanding of the concept ‘crime’ than the traditional retributive system. Interestingly, two of the restorative programs (Collaborative Justice Project and Restorative Resolutions) mention this distinction. First, Restorative Resolutions defines crime as the violation of people and relationships and can be healed/repared through the participation of all key stakeholders (R.R. Document A). Second, the Collaborative Justice Project states that crime is a disruption of people and relationships and of peace within the community (C.J.P. Document E). This is in line with the teachings of Howard Zehr ‘ the grandfather of restorative justice’ who states that, “restorative justice understands crime first of all as harm done to people and communities” (Zehr, 2002:22). As mentioned, this is discussed in greater detail in the literature review.

## *2.2. Active and Voluntary Participation (Restorative Justice Text Feature)*

Active and voluntary participation, generally through forms of communication, is an essential aspect of all restorative processes. Without the key stakeholders participation in the restorative justice process, the healing of harms is impossible and the ‘doing of justice’ begins to resemble a traditional courtroom trial where the conflict is stolen from the victim and placed in the hands of the state. Furthermore, in order to align oneself with

traditional restorative justice philosophy, the active participation must be voluntary rather than coerced.

Contained within each of the five restorative justice programs is evidence of the text feature active and voluntary participation. All five programs claim to structure their operation around the incorporation and participation of all stakeholders. For example, the Collaborative Justice program states that their process is “collaborative and inclusive” (C.J.P. Document B), and “involves the participation of victims, offenders and the community affected by the crime” (C.J.P. Document E). Similarly, the Community Justice society, through voluntary measures, encourages the stakeholders to be “active participants” in the justice process (C.J.S. Document B). Furthermore, both Restorative Resolutions and the Mediation and Restorative Justice Centre have voluntary participation as one of their operating principles (M.R.J.C. Document B; R.R. Document A).

The active and voluntary participation of stakeholders within the restorative process is one of the key characteristics of restorative justice that sets it apart from the traditional retributive justice system. It is through this empowerment of the participants that the restorative process is able to become more meaningful than the retributive process. This evidence of the text feature active and voluntary participation distances the five restorative justice programs from their counter part, the retributive justice system.

Although all five programs state that they are voluntary, the actual level or degree of voluntary participation within each program is difficult to evaluate. For example, offenders participating in programs such as the Collaborative Justice Project and Restorative Resolutions are still involved with the penal system and if they refuse to

participate in the restorative process they are diverted back to the punitive system. Thus, although defined as voluntary, offenders are forced to participate in order to avoid punitive measures.

### *2.3. Responding to the Needs of All Parties (Restorative Justice Text Feature)*

Addressing, respecting, and acknowledging the needs of all parties involved within the restorative process is a core feature of restorative justice. Restorative justice, unlike the traditional penal system believes that community members, victims, offenders, and support persons all require different and specific needs that are not currently met with the existing criminal justice system (Zehr, 2002).

Contained within all five analyzed programs is evidence of the theme needs of all parties. Four of the programs directly discuss focusing on the ‘needs of all parties’, this includes the Collaborative Justice Project, the Community Justice Society, Restorative Opportunities, and the Mediation and Restorative Justice Centre. For example, the Collaborative Justice Project’s philosophy states,

The goal is to facilitate a healing process which includes providing opportunities for support, information, safety, accountability, reparation and reintegration with a focus on the needs and responses of the victim, the accused and the community (C.J.P. Document E).

It is clearly visible within the text that the Collaborative Justice Project recognizes that all persons involved with the justice process have specific needs that must be met. Similarly, Restorative Opportunities states that their program “seeks to address the harms caused by the crime by focusing on the needs and issues of the people affected” (R.O. Document A), and the Mediation and Restorative Justice Centre argues that their program offers a “focus that tends to the needs created when harm has been done” (M.R.J.C. Document A).

Also mentioned within the program documents are references to the specific needs of victims, offenders, and communities. In order to look at these needs more closely, this thesis turns to the assistance of Zehr (2002). Zehr (2002) lists the needs (detailed in the literature review) required by each party involved within the restorative process. The following three grids present which of Zehr's (2002) needs were present within the five separate programs. Their presence was counted when either the documents explicitly stated the specific needs or they were implicitly found within the documents.

Needs of Victims					
	C.J.P.	C.J.S.	R.O.	R.R.	M.R.J.C.
Information	yes	yes	yes	yes	yes
Truthful Story Telling	yes	yes	yes	yes	yes
Empowerment	yes	yes	yes	yes	yes
Restitution	yes	yes	no	no	no

Needs of Offenders					
	C.J.P.	C.J.S.	R.O.	R.R.	M.R.J.C.
Encouragement for Personal Transformation	yes	yes	yes	yes	yes
Encouragement for Community Integration	no	yes	no	yes	yes
Accountability	yes	yes	yes	yes	yes

Needs of Communities					
	C.J.P.	C.J.S.	R.O.	R.R.	M.R.J.C.
To be Viewed as a Possible Victim	yes	yes	yes	yes	yes
Opportunities to Construct an Understanding of Community	no	yes	no	yes	yes
Encouragement to Assist Other Community Members	no	yes	no	yes	yes

From looking at this grid a number of things become apparent. First, victims and offenders appear to have more of Zehr's (2002) needs met by the programs than communities. This can be seen in the Collaborative Justice Project and Restorative Opportunities where the primary focus of the program is on the healing of harms between the victim and offender rather than focusing on the community and their needs. This makes sense as, as stated in the literature review, restorative justice emerged as a product of the victim's movement and the failures of the current penal system. One such failure being the poor treatment of victims and offenders of crime and the re-victimization of persons harmed.

Second, only two of the five programs discuss the concept of restitution, and the two that do, do not explicitly state how they define restitution. In general, the concept of restitution is difficult to define as restitution means something different to each victim. Some victims may require money or for the accused to partake in community service. While others may only require an apology or an explanation as to the reasons behind the harm committed. If this is the case then all programs offer restitution as they all offer offenders the chance to apologize to their victim.

#### *2.4. Accountability (Restorative Justice Text Feature)*

Accountability is a term that holds great significance to restorative justice advocates. Restorative justice asks offenders to admit accountability for the harms they have committed. It is argued that this form of accountability makes the justice process more meaningful for all participants involved. Restorative accountability stands in stark contrast to the traditional retributive system which, instead of asking the offender to admit accountability, spends thousands of dollars in attempting to prove the offender's guilt.

The text feature accountability was found within the documents of all five restorative justice programs. That is, all programs require offenders to admit responsibility for the harm committed. The five different programs also discussed the text feature in a relatively similar format and language. Restorative Opportunities states that their program “focuses on having the offender take responsibility for his or her action” (R.O. Document A). In very similar language, Restorative Opportunities promotes that they provide “an opportunity [for the offender] to take full responsibility for his/her actions and to make amends to those who were harmed” (R.R. Document A). One more example, from the Mediation and Restorative Justice Centre documents, states that through their program “the offender has the opportunity to take responsibility for the crime, answer the victims questions [and become] accountable in a meaningful way” (M.R.J.C. Document B).

Interestingly, the prominent existence of the text feature accountability not only signifies the existence of a restorative value but also something entirely different. This will be detailed in the following discussion chapter.

## *2.5. Equality and Respect (Restorative Justice Text Feature)*

Equality and respect are both core elements of the restorative justice procedure. Restorative advocates argue that in order for a successful restorative justice process to be completed all parties involved must be treated equally and with respect. This also involves paying attention to the power imbalances created through the ‘doing of justice’. Equality and respect are values often ignored within the traditional retributive system as their main goal is not the healing of harms but rather the punishing of an offender. Also ignored in the retributive system is the existence of power imbalances, this often leaves the participants unsatisfied with the justice process.

Evidence of the text feature equality and respect was found within three of the five restorative justice programs. The Collaborative Justice Project has the text feature equality as their number one operating principle. It states, “all parties are worthy of respect and dignity” (C.J.P. Document E). Furthermore, the documents also make reference to the program creating an environment of ‘neutrality’ with the absence of power imbalances (C.J.P. Document E). Restorative Resolutions argues that their program treats “each client with dignity and respect in a non-judgmental manner (R.R. Document B). This is completed in a ‘non-tyrannical’ environment where “all opinions are considered” and “no one dominates” (R.R. Document A). Lastly, the Mediation and Restorative Justice Centre states that their restorative process takes “into account power imbalances, cultural and diversity factors” (M.R.J.C. Document B), and treats each party with “dignity and respect” (M.R.J.C. Document B). This text feature was absent from both Restorative Opportunities and the Community Justice Society.

## *2.6. Coercion (Retributive justice Text Feature)*

The remaining text features are the ones representing retributive justice. Generally, when compared to the text feature evidence of restorative justice, the text feature evidence of retributive justice found within the documents of the five restorative justice programs is relatively small. The following is the evidence collected.

Within the retributive system, offenders, victims, and witnesses are forced and coerced to participate within the justice process. They do not have a choice. If they refuse they may be fined or even placed in prison. Restorative justice on the other hand, as mentioned in the literature review, has two strands of thought concerning coercion. Minimalists, who argue against institutionalization and argue against coercion, while maximalists, who argue for institutionalization also agree for certain forms of coercion within the restorative process (Walgrave, 2000; Woolford and Ratner, 2002). Following this logic, one could assume that the majority of the institutionalized programs analyzed for this thesis would incorporate some form of coercion. This was not the case in this analysis.

Within the documents of the five selected restorative justice programs was no evidence of the text feature coercion. All programs are voluntary for victims, offenders, and community members. This means that either party can refuse to participate in the restorative process and may also drop out of the program at any time throughout the process. Furthermore, the Collaborative Justice Program is the only program that physically uses the term coercion. The documents state, “participation in a restorative process should be voluntary, without coercion” (C.J.P. Document E).

Although there is no direct evidence of coercion, the fact that offenders participating in programs such as the Collaborative Justice Project and Restorative Resolutions are forced to participate in order to avoid some form of punitive measures can be viewed as indirect evidence of coercion.

### *2.7. Punitive Punishment – Imprisonment (Retributive justice Text Feature)*

The use of punitive punishment, mainly through imprisonment, is one of the defining characteristics of the current retributive penal system. If an individual commits a crime against the state there is a good chance they will be incarcerated within some form of carceral institution. Traditional restorative justice on the other hand argues against the use of punitive punishments and imprisonment. Instead, restorative justice uses techniques such as apologizing, community service, and restitution through monetary reimbursement.

Within the documents of the analyzed restorative justice programs there is no ‘direct’ evidence of the text feature punitive punishment. This means that the outcome of the restorative process, sometimes termed a resolution agreement, does not involve punitively punishing the offender for the harms committed. Although, three of the programs, the Collaborative Justice Project, Restorative Resolutions, and Restorative Opportunities do have a loose affiliation with the use of imprisonment.

First, the Collaborative Justice Project; Although the program requests that the key participants and stakeholders work together to create a ‘Resolution Agreement’ that outlines how the harms committed will be healed and relationships restored, the offender still has a chance of ending up behind bars. The documents state, “if a Resolution Agreement is developed and agreed by all parties, it is submitted to the court for

consideration on the date of sentencing” (C.J.P. Document B). It is a judge, employed by the retributive system that has the responsibility of sentencing the offender (C.J.P. Document B). Thus, the Resolution Agreement, and in turn the restorative process have little authority in deciding the fate of the offender. Rather it remains in the hands of the retributive system.

Restorative Resolutions, similar to the Collaborative Justice Project, request that the participants and stakeholders work together to create a Resolution Agreement. This agreement outlines how the harms committed will be rectified. According to the Restorative Resolutions documents, if the offender accepts and successfully completes the stipulations outlined in the Resolution Agreement then they will not be punitively punished through the retributive system nor will they receive any form of criminal record (R.R. Document D). Although, if the offender is unsuccessful at completing the Resolution Agreement or does not agree with the stipulations, they are referred to the Royal Canadian Mounted Police (RCMP) where they will be officially charged and forced to go through the retributive process.

The final program to discuss an affiliation with punitive punishment and imprisonment is Restorative Opportunities. Restorative Opportunities only accepts cases where the offender has already been sentenced. This means that that the offender may have already been sentenced to a stay in prison before the beginning of the restorative process. Moreover, just like Collaborative Justice Project, the offender’s participation in the restorative process does not affect their sentence or parole decision (R.O. Document B).

Looking at these three programs together, in terms of incarceration, it appears that their main purpose is not so much to keep offenders out of prison (which is a goal of traditional restorative justice theory) but rather to bring offenders and victims together in an attempt to restore relationships and heal harms committed. In doing this, the programs are able to make the justice process more meaningful for all participants while at the same time leaving the option for incarceration and punitive punishment open. This is clearly a blend of both restorative and retributive justice. Why? Simply due to the fact that these programs incorporate the primary goals of both ideologies; they attempt to heal harms through the participation of all stakeholders and incarcerate the offender if the justice system requires it.

#### *2.8. Use of Tradition Penal Staff (Retributive justice Text Feature)*

One of the main characteristics of the traditional retributive penal system is the use of professionally trained penal and juridical staff. This includes but is not limited to lawyers, judges, probation officers, correctional officers and police, all of whom have been trained within the structure of the retributive system. Traditional restorative justice on the other hand prefers the use of volunteers and individuals trained in restorative mediation techniques.

None of the analyzed institutionalized restorative justice programs directly use traditional penal and correctional staff within their restorative programs. Although, each of the five programs do provide textual evidence that shows traditional correctional staff do play a small role in the restorative programs. First, all five programs receive the majority, if not all of their case referrals from traditional penal and juridical staff (C.J.P. Document D; C.J.S. Document B; R.O. Document C; R.R. Document A; M.R.J.C.

Document F). This includes crown attorneys and defense lawyers, police officers, probation officers and judges.

Second, the community Justice society states as one of their “Who We Work With Criteria” as “the offender has been advised of his/her right to counsel without delay and is given a reasonable opportunity to retain and instruct counsel” (C.J.P. Document B). Not only is this written in juridical language but it also implies that the offender is given the opportunity to obtain a lawyer for the restorative process. Professional lawyers give legal advice for the retributive system and are not part of traditional restorative philosophy.

Even if these traditional penal staff actors are not directly present within the restorative process, they do play a significant role in the justice process. This evidence can be seen in the Collaborative Justice Project. First, it is a judge, rather than the restorative participants who makes the final sentencing decision. So, although there is a restorative process there is no power to impose the restorative decision. Second, it is corrections actors such as lawyers who have the power to decide which cases go through the restorative process and which go through the retributive process (Strimelle, 2007).

Can these two examples be taken as evidence of the text feature use of traditional penal staff? Probably not as these two examples are not of traditional penal staff directly working with the restorative process. Rather these are most likely due to the fact that the programs are institutionalized within a retributive system. Thus, their caseloads are referred by the retributive system and there are juridical and penal staff working on the fringes of the programs.

Looking at the analysis presented here it appears that there is very little textual evidence of retributive text features within the institutionalized restorative justice program. This appears strange as according to Mathiesen (1990), when a program becomes absorbed by an institution such as the criminal justice system, that program becomes restructured to reflect the goals of the institution, in this case the retributive criminal justice system. This should mean that institutionalized restorative justice programs become restructured according to retributive justice. This is apparently not the case.

Furthermore, all five programs contain prominent textual evidence of the restorative justice text features. This is strange as many of the restorative core values are in direct opposition of core retributive values. Does this mean that although these restorative justice programs have been institutionalized within a retributive system they have been able to hold onto their traditional values while at the same time abstaining from values associated with the retributive system? No. It may appear so, but this is not the case.

When this thesis first began, it hypothesized that as the five institutionalized restorative programs were institutionalized within a retributive system, the restorative programs would contain text features of retributive justice. Although there was some evidence of this it was a rather small amount. Instead, found within the restorative programs was evidence of an entirely different ideology, neo-liberalism. This will be further discussed in the following discussion chapter.

## **Chapter Five: Discussion**

### ***Introduction***

The purpose of this chapter is to return to the primary and secondary research questions and use the data collected through the analysis in an attempt to answer them. Answering the research questions is Huckin's (2004) final stage in his content analysis procedure.

#### ***1. Primary Research Question***

As previously stated, the primary research question guiding this thesis is are institutionalized governmental restorative justice programs within Canada structured to reflect the core values of restorative justice? This thesis hypothesized that institutionalized programs are structured to reflect the core values of restorative justice, while at the same time, also be structured to reflect the values of the institution, the retributive criminal justice system.

With the completion of the analysis it is possible to answer this question. Yes, the institutionalized programs analyzed for this thesis are structured to reflect the core values of restorative justice. Additionally, there was little direct evidence, if any at all, of the programs also being structured to reflect values associated with the retributive system. Granted, the programs do have affiliations with different departments of the criminal justice system, such as where the funding comes from, how case referrals are obtained, and the use of lawyers and judges. Yes these are retributive values of the criminal justice system, but, they are not direct evidence of the institutionalized programs being structured to reflect values of the retributive system. However, these programs are part of the penal process even if retributive values are not visibly present.

Does this mean that the five analyzed programs can be considered ‘pure’ restorative justice programs?<sup>7</sup> Not really. Although, looking at the programs’ documents in their entirety, they appear to be written in a language that not only reflects restorative value but also neo-liberal values.

What does this mean? It means that within the analyzed documents is evidence of neo-liberal values. These values do not initially stand out as retributive values would, because, as mentioned towards the end of the literature review, restorative justice shares many commonalities with neo-liberalism. These commonalities include responsabilization, accountability, cost saving, and crime prevention.

According to Woolford (2010), institutionalized programs, in order to maintain a reliable and steady flow of referrals and funding are forced to speak in a language, that appeals to, and makes sense to, those in power (:129). Therefore, institutionalized programs may focus less on idealistic values of restorative justice and more on how to promote themselves in a dialect that appeals to the neo-liberal power. This is the reason behind institutionalized programs stressing that they force offenders to become accountable, responsabilize all participants, prevent future crimes, and reduce risk all at a fraction of what it would cost the retributive system.

This association with neo-liberal ideology could also explain the reason behind the five analyzed programs affiliation with punishment and imprisonment. Although neo-liberals currently appear to value restorative justice, they also continue to value the intensification of punishment (Woolford, 2010:129). This can be seen in the warehousing of ‘risky’ offenders and the increase in for-profit institutions in the United States. Thus, if

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<sup>7</sup> By ‘pure’, this thesis means that the programs remain true to traditional justice philosophy and are absent of competing values.

institutionalized programs are dependent on governmental resources, it is not surprising to see them have an affiliation with imprisonment or some form of punitive punishment.

What is it about restorative justice that allows it to be so appealing to the neo-liberal governing body. According to Woolford (2010), restorative justice is suited for co-optation by neoliberal regimes because it can be used for these sort affirmative purposes. Restorative justice can siphon off criticisms and anxieties toward the courts. It can provide a less costly venue for dealing with minor crimes so the retributive system can direct its energies and punitive resources toward what neo-liberals consider more serious criminal violations. Thus, restorative justice does not replace the punitive violence of the state; instead, it serves to supplement and help focus this violence on the cases deemed most deserving (:155). This allows the neo-liberal government to simultaneously rule with both the left and right hand.

What does this all mean in regards to Mathiesen's (1990) neutralization techniques discussed in the previous chapters. Looking at his different techniques, Mathiesen (1990) would argue that the neutralization technique used on restorative justice would be 'absorption'. In absorption, the opposing idea, in this case restorative justice, is not punctured but rather picked up. Picked up in such a way that that it "fits into the prevailing structure without threatening it" (Mathiesen, 1990:39), while at the same time maintaining the name of restorative justice. This is similar to Coy and Heeden's (2005) second stage of co-optation. They state that through appropriation, the language and name of restorative justice is maintained while certain values associated with the restorative movement are largely discounted.

The fact that the criminal justice system has used ‘absorption’ rather than one of Mathiesen’s (1990) other neutralization techniques means one of two things. First, it could mean that restorative justice as a social movement was simply unresponsive to the softer neutralization techniques and the justice system was forced to absorb restorative justice within the retributive system. Second, it could mean that the retributive system choose, on their own free will, to absorb and co-opt restorative justice for their own benefit. These benefits include but are not limited to cost saving, the extension of social control, the responsabilization of citizens, and the increase of public confidence in the criminal justice system.

So, the answer to this thesis’ primary research question is yes, Canadian institutionalized restorative justice programs are structured to reflect the core values of restorative justice, although, they are also structured to reflect values associated with the governing neo-liberal ideology.

## *2. Secondary Research Question*

The secondary research question for this thesis is, has the institutionalization of restorative justice changed the nature/purity of the program? Or as Faget (2006) states, “if mediation is reinterpreted by legal logic, does it then become a little like a false nose stuck onto the face of legal institutions or does it actually result in the production of a new model of justice” (Faget, 2006:162). Similarly Noreau (2003) asks if institutionalization within the justice system is achieved at the cost of changes to the underpinnings of the social event does it lose its integrity?

This is really a question of perspectives. A minimalist would probably argue that once a restorative justice program has been institutionalized within the retributive

criminal justice system it loses its integrity and its ability to be a 'pure' program.

Maximalists on the other hand would most likely argue that once a program is institutionalized it gains integrity through its proximity to aspects of the justice system such as due process.

Strictly looking at the evidence gained through this thesis, it does not appear that the five programs analyzed have lost their restorative integrity. Most, if not all restorative core values are present within the documents of the analyzed programs and there is a lack of evidence of retributive values. The most prominent text feature being the program's affiliation with imprisonment and punitive punishment. Furthermore, the neo-liberal values found within the programs such as accountability, responsabilization, crime prevention, and cost saving all correspond with restorative values already present within the programs. Thus there is no real introduction of a competing value that might diminish the existence of a restorative value.

Does this mean that the programs are 'pure' restorative programs? Probably not simply due to their absorption by the criminal justice system, but this thesis argues that this absorption has not diminished their integrity. Although these programs have been absorbed by a competing ideology they have been able to hold on to the majority of their core values. This is a feat in itself considering the semi-military structure of the criminal justice system. Additionally, this thesis argues that these programs did not lose their integrity through the choice of becoming absorbed by the criminal justice system.

Aligning themselves with the retributive system was most likely their only way to gain funding for the continuance of the program. Moreover, absorption was their only way to

have a steady flow of case referrals. Thus it appears that these programs, in order to secure their survival were forced to become a subsidiary of the criminal justice system.

## **Conclusion**

The purpose of this thesis has been to examine the institutionalization of restorative justice within Canada. Specifically, this thesis has attempted to answer one major research question, are institutionalized restorative justice programs within Canada structured to reflect the core values of restorative justice?

In order to answer this question this thesis conducted an extensive literature review, included theoretical components, constructed a content analysis methodology, and completed an analysis and discussion. These steps guided this thesis through the research process and have produced an answer to the research question. Yes, institutionalized restorative programs are structured to reflect to reflect the core values of traditional restorative justice rather than those associated with retributive justice. Although, ingrained within the programs documents is also evidence of values associated with the current political and governing ideology of neo-liberalism. Do these values change the purity of the restorative programs? This thesis argues that it does not as all five programs are still committed to repairing harms through community involvement.

The institutionalization of restorative justice in Canada is relatively new and it is difficult to see what the final product will be. According to Woolford and Ratner (2002), institutionalized programs within Canada are beginning to out number non-institutionalized programs. Whether this is due to lack of monetary funding or some other factor, Woolford and Ratner (2002) do not hypothesize. What is notable though is that restorative justice in Canada currently appears to be going through a major transformation. This transformation is shifting restorative justice from its previous status

as an alternative autonomous justice program to one with more affiliations with the ruling government and its traditional justice system.

Have these transformations within the justice system made it possible to say that there is a neo-liberal way of doing justice? Just as there was a welfare way of doing justice. Is there now a new way of doing restorative justice or is it simply now a neo-liberal form of doing justice? This thesis argues that yes, there is a new form of justice, a neo-liberal model of justice. A form of justice that has the ability to incorporate both restorative and retributive ideologies alongside with neo-liberal political strategies.

These changes and their consequences have already been questioned by researchers. Considering that restorative justice is no longer an alternative solution, some researchers such as Jaccoud are presently focusing on new forms of social mediation (Jaccoud, 2009). Other researchers favor the development of new forms of crime analysis focusing on harm more than crime. This trend, called *zemiology* (the study of harms) criticizes the concept of “crime” and questions the incapacity of penal law to deal with serious social harms (committed by corporations, state agencies, powerful groups and people). These individuals argue that restorative justice would have an important role to play as a form of sanction against social harms and should function with no references to the penal values, but they do not give further details about its practical implementation (Hillyard *et al.*, 2004).

If the institutionalization of restorative justice raises questions and critiques in Canada and the Western world, it appears as a potential solution in other countries. For instance, the present experiment of traditional *Gacaca* in post-genocidal Rwanda clearly

shows that without a minimal form of institutionalization, this program would be incapable to properly function and foster national reconciliation (Clark, 2010).

This thesis is only a tiny glimpse into the institutionalization of restorative justice in Canada. This thesis believes that more research programs should be developed in order to follow and analyze more deeply the transformations of restorative justice, its survival and its future in Canada.

## References

- Bazemore, G. & Walgrave, L. (1999). "Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systematic Reform", in Bazemore, G. et. al. (eds), Restorative Juvenile Justice: Repairing the Harm of Youth Crime, Criminal Justice Press, New York, pp.45-74.
- Braithwaite, J. (2003). "Principles of Restorative Justice", in Von Hirsch, A, et. al. (eds), Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?, Hart Publishing, Oxford, pp.1-20.
- Braithwaite, J. & Roach, D. (2001). "Responsibility and Restorative Justice", in Bazemore, G. et. al. (eds), Restorative Community Justice: Repairing Harm and Transforming Communities, Anderson Publishing, Cincinnati, pp.63-84.
- Bryman, A. & Teevan, J. (2005). Social Research Methods, Oxford University Press, New York, 409 pages.
- Christie, N. (1977). "Conflicts as Property", in The British Journal of Criminology, vol.17, n.1, pp.1-15.
- Coy, P. & Hedeem, T. (2005), "A Stage Model of Social Movement Co-optation: Community Mediation in the United States", in The Sociological Quarterly, vol.46, n.3, pp.405-435.
- Daly, K. (2002). "Restorative Justice: The Real Story", in Punishment and Society, vol.4, n.1, pp.55-79.
- Daly, K. (2006). "The Limits Of Restorative Justice", in Sullivan, D. and Tifft, L. (eds), Handbook of Restorative Justice: A Global Perspective, Routledge, New York, pp. 134-146.
- Danermark, B. et. al. (1997). Explaining Society: Critical Realism in the Social Sciences, Routledge, New York, 240 pages.
- Davidson, J. & Layder, D. (1994). Methods, Sex and Madness, Routledge, New York, 240 pages.
- Dean, M. (1999). Governmentality: Power and Rule in Modern Society, Sage Publications, London, 229 pages.
- Faget, J. (2006). "The French Phantoms of Restorative Justice: The Institutionalization of Penal Mediation", in Aertsen, I. et. al. (eds), Institutionalizing Restorative Justice, Willan Publishing, U.K., pp. 151-166.

Foucault, M. (1979). Discipline and Punish: The Birth of the Prison, New York, Vintage Books, 333 pages.

Garland, D. (1996). "The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society", in The British Journal of Criminology, vol.36, n.4, pp.445-471.

Garland, D. (1999). "Governmentality and the Problem of Crime", in Smandych, R. (eds), Governable Places, Ashgate, Virginia, pp.15-38.

Hodgson, G. (2006). "What are Institutions?" in , Journal of Economic Issues, vol.XL , n.1, pp.1-25.

Huckin, T. (2004). "Content Analysis: What Texts Talk About", in Bazerman, C. and Prior, P. (eds), What Writing Does and How it Does it: An Introduction to Analyzing Texts and Textual Practices, Lawrence Erlbaum Associates, Mahwah, N.J. pp.13-33.

Hulsman, L. (1991). "The Abolitionist Case: Alternative Crime Policies", Israel Law Review, vol.25, n.2-4, pp.681-709.

Jaccoud, M. (1999). "Les Circles de Guérison et les Circles de Sentence Autochtones au Canada", Criminologie, vol.32, n.1, pp.79-105.

Jaccoud, M. (2007). "Innovations Pénales et Justice Réparatrice", Champ Penal, vol.4, pp.65-87.

Jackson, M. (2002). Justice Behind the Walls: Human Rights in Canadian Prisons, Douglas and McIntyre, Vancouver, 636 pages.

Johnstone, G. (2002). Restorative Justice: Ideas, Values, Debates, Willan Publishing, U.K., 190 pages.

Kraska, P. (2006). "Criminal Justice Theory: Toward Legitimacy and an Infrastructure", Justice Quarterly, vol.23, n.2, pp.167-181.

Lalonde, P. (2003). "La Médiation Pénale et la Justice Réparatrice: A Toutes Fins Que De Droit?", in Jaccouds, M. Justice Réparatrice et Médiation Pénale: convergences ou Divergences, L'Harmattan, Paris, pp.97-118

Lalonde, P. (2000). "Evolution des Politiques Pénales et du Discours à Propos de l'emprisonnement au Canada et au Québec de 1969 à 1999". Retrieved on October 24, 2010, from [securitepublique.gouv.qc.ca/.../Politiques\\_penales/politiques\\_penales.pdf](http://securitepublique.gouv.qc.ca/.../Politiques_penales/politiques_penales.pdf)

London, D. R. (2003). "The Restoration of Truth: Bringing Restorative Justice From the Margins to the Mainstream", in Criminal Justice Studies, vol.16, n.3, pp.175-195.

- Marshall, T. (1996). "The Evolution of Restorative Justice in Britain", in European Journal of Criminal Policy and Research, vol.4, n. 4, pp.21-43.
- Mathiesen, T. (1990). Prisons on Trials: A Critical Assessment, Sage Publications, California, 184 pages.
- Mccold, P. (2006). "The Recent History of Restorative Justice", in Sullivan, D. et. al. (eds), Handbook of Restorative Justice; A Global Perspective, Routledge, London, pp.23-51.
- Morris, A. (2002). "Critiquing the Critics: A Brief Response to Critics of Restorative Justice", in British Journal of Criminology, vol 42, pp. 596-615.
- Morris, R. (1998). "Two Kinds of Victims: Meeting Their Needs", in Journal of Prisoners on Prisons, vol.9, n.2, pp.93-98.
- Neuendorf, K. (2002). The Content Analysis Guidebook, London, Sage Publications, 300 pages.
- Neuman, L. (2006). Social Research Methods: Qualitative and Quantitative Approaches, Boston, Pearson Education, 592 pages.
- Noreau, P. (2003). "L'institutionnalisation de la Justice Reparatrice", in Jaccoud, M. (eds), Justice Reparatrice et Mediation Penale: Convergences ou Divergences?, L'Harmattan, France, pp. 209-225.
- O'Malley, P. (2006). "Risk and Restorative Justice: Governing Through the Democratic Minimization of Harms", in Aertsen, I. et. al. (eds), Institutionalizing Restorative Justice, Willan Publishing, Canada, pp.216-236.
- Piche, J. (2006). Restorative Prisons (Masters Thesis), University of Ottawa, Canada.
- Pranis, K. (2002). "Restorative Values and Confronting Family Violence", in Strang, H. et. al. (eds), Restorative Justice and Family Violence, Cambridge University Press, U.K., pp.23-41.
- Richards, K. (2004). "Exploring the History of the Restorative Justice Movement", presented at the 5<sup>th</sup> International Conference on Conferencing and Circles, Vancouver, B.C., December.
- Roach, K. (2006). "The Institutionalization of Restorative Justice in Canada: Effective Reform or Limited and Limiting Add-on?" in Aertsen, I. et. al. (eds), Institutionalizing Restorative Justice, Willan Publishing, Canada, pp.167-193.
- Roberts, J. V. & Roach, K. (2003). "Restorative Justice in Canada: From Sentencing Circles to Sentencing Principles". in Von Hirsch, A, et. al. (eds), Restorative Justice and

Criminal Justice: Competing or Reconcilable Paradigms?, Hart Publishing, Oxford, pp. 249-280.

Scott, R. (2008). Institutions and Organizations: Ideas and Interests, Sage Publications, California, 266 pages.

Shearing, C. (2001). "Punishment and the Changing Face of Governance", Punishment and Society, vol.3, n.2, pp.203-220.

Strimelle, V. (2007). "La Justice Restaurative: Une Innovation du Pénal?", Champ Penal, vol. 4.

Piché, J. and V. Strimelle. (2007). "Restorative Justice Program Evaluation Frameworks: A Site of Pitfalls and Opportunities", International Journal of Restorative Justice , vol.3, n.4. pp.40-56.

Tosi, L. (2004). Theories of Organization, Sage, United States of America, 235 pages.

Umbreit, M., Robert, C. & Vos. B. (2007). "Restorative Justice Dialogue: A Multi-Dimensional, Evidence-Based Practice Theory", Contemporary Justice Review, vol.10, n.1, pp.23-41.

Van Ness, D. & Strong, K. H. (2002). Restoring Justice, Anderson Publishing, Cincinnati, 313 pages.

Walgrave, L. (2000). "How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist", Contemporary Justice Review, vol. 1, n.4, pp.415-432.

Weitekamp, E. (1999). "The History of Restorative Justice" in Bazemore, G. et. al. (eds), Restorative Juvenile Justice: Repairing the Harm of Youth Crime, Criminal Justice Press, New York, pp.75-102.

White. R. (2002). "Restorative Justice and Social Inequality", in Schiessel, B. et. al. (eds), Marginality and Condemnation: An Introduction to Critical Criminology, Fernwood Publishing, Halifax, pp.381-395.

Woolford, A. & Ratner, R. (2002). "Nomadic Justice? Restorative Justice on the Margins of Law", presented at the Joint Meetings of the Law and Society Association and the Canadian Law and Society Association, Sheraton Wall Centre, Vancouver, BC., June.

Zehr, H. (1990). Changing Lenses, Herald Press, Scottsdale, PA., 280 Pages.

Zehr, H. (2002). The Little Book of Restorative Justice, Good Books, Intercourse, PA., 76 Pages.

## Programs Analyzed

C.J.P. Document A – “About the Collaborative Justice Program (CJP)”,  
[http://www.collaborativejustice.ca/about\\_e.php](http://www.collaborativejustice.ca/about_e.php). Retrieved On March 13, 2011.

C.J.P. Document B – “Our Process”,  
[http://www.collaborativejustice.ca/our\\_e.php](http://www.collaborativejustice.ca/our_e.php). Retrieved On March 13, 2011.

C.J.P. Document C – “have You Been Victimized by a Crime”,  
[http://www.collaborativejustice.ca/victimized\\_e.php](http://www.collaborativejustice.ca/victimized_e.php). Retrieved On March 13, 2011.

C.J.P. Document D – “Have You Been Charged With a Crime”,  
[http://www.collaborativejustice.ca/charged\\_e.php](http://www.collaborativejustice.ca/charged_e.php). Retrieved On March 13, 2011

C.J.P. Document E – “Philosophy Statement and Operating Principles”,  
Retrieved On March 13, 2011

C.J.P. Document F – “Exploring the Case Phase”  
Retrieved On March 13, 2011

C.J.S. Document A “Community Justice Society – Vision Statement and Mission Statement”,  
<http://www.communityjusticesociety.org/>. Retrieved On March 13, 2011.

C.J.S. Document B – “About Us”,  
<http://www.communityjusticesociety.org/aboutus.html>. Retrieved On March 13, 2011.

C.J.S. Document C – “Volunteers”,  
<http://www.communityjusticesociety.org/aboutus.html>. Retrieved On March 13, 2011.

C.J.S. Document D – “Community Programming”,  
[http://www.communityjusticesociety.org/community\\_programming.html](http://www.communityjusticesociety.org/community_programming.html). Retrieved On March 13, 2011.

C.J.S. Document E – “Department of Justice”,  
[http://www.communityjusticesociety.org/department\\_of\\_justice.html](http://www.communityjusticesociety.org/department_of_justice.html). Retrieved On March 13, 2011.

R.O. Document A – “Victim-Offender Mediation: A Brief Overview”,  
<http://www.csc-scc.gc.ca/text/rj/vom-eng.shtml>. Retrieved On March 13, 2011.

R.O. Document B – “Fact Sheet for Victims”,  
<http://www.csc-scc.gc.ca/text/rj/fsvctms-eng.shtml>. Retrieved On March 13, 2011.

R.O. Document C – “Fact Sheet for People Who Work With Offenders”,  
<http://www.csc-scc.gc.ca/text/rj/fspwwwo-eng.shtml>. Retrieved On March 13, 2011.

R.O. Document D – “Restorative Opportunities Case Referral Protocol Document”  
<http://www.csc-scc.gc.ca/text/rj/rstrtvopprcsrfpr-eng.shtml>. Retrieved On March 13, 2011.

R.O. Document E – “Interim Direction Regarding Victim Offender Mediation Services Provided by the Restorative Opportunities Program”  
<http://www.csc-scc.gc.ca/text/rj/intrmdrctn-emg.shtml>. Retrieved On March 13, 2011.

R.R. Document A – “Adult Restorative Resolutions”,  
<http://www.jhscso.bc.ca/programs/rr.html>. Retrieved On March 13, 2011.

R.R. Document B – “About Us – Mission Statement”,  
[http://www.jhscso.bc.ca/about\\_us.html](http://www.jhscso.bc.ca/about_us.html). Retrieved On March 13, 2011.

R.R. Document C – “About US – Fun Facts and Information”,  
<http://www.jhscso.bc.ca/facts.html>. Retrieved On March 13, 2011.

R.R. Document D – “Adult Restorative Justice – Restorative Resolutions”,  
[http://www.jhscso.bc.ca/adult\\_restorative\\_resolutions.html](http://www.jhscso.bc.ca/adult_restorative_resolutions.html). Retrieved On March 13, 2011.

M.R.J.C. Document A – “About MRJC”,  
<http://www.mrjc.ca/about-us/>. Retrieved On March 13, 2011.

M.R.J.C. Document B – “Victim Offender Dialogue”,  
<http://mrjc.ca/restorative-justice/services/victim-offender-restorative-dialogue/>. Retrieved On March 13, 2011.

M.R.J.C. Document C – “Restorative Dialogue Program”,  
<http://mrjc.ca/restorative-justice/restorative-dialogue-program/>. Retrieved On March 13, 2011.

M.R.J.C. Document D – “Restorative Dialogue Principles”,  
<http://mrjc.ca/restorative-justice/restorative-dialogue-principles/>. Retrieved On March 13, 2011.

M.R.J.C. Document E – “Restorative Dialogue: FAQ”,  
<http://mrjc.ca/restorative-justice/restorative-dialogue-frequently-asked-questions/>. Retrieved On March 13, 2011.

M.R.J.C. Document F – “Helping People Have Difficult Conversations”  
<http://mrjc.ca/>. Retrieved On March 13, 2011.