

Institutionalizing Restorative Justice:  
A Case Study of the Nova Scotia Restorative Justice Program

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A Thesis Submitted to  
Saint Mary's University, Halifax, Nova Scotia  
in Partial Fulfillment of the Requirements for  
the Degree of Master of Arts – Criminology

June, 2019, Halifax, Nova Scotia

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Date: June 13, 2019

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## **ABSTRACT**

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This thesis aimed at examining the institutionalization process through a case study of the Nova Scotia Restorative Justice Program (NSRJP) by exploring how the state involvement with a restorative justice program may affect the way in which power is mobilized when a program becomes institutionalized. Additionally, as the existing literature providing concrete examples to confirm the claims regarding the institutionalization of restorative justice and how it can lead to discrepancies is limited, this thesis aimed to provide a concrete example exploring the disjuncture as it is hypothesized that the institutionalization of restorative justice compromises the core values and principles of restorative justice based on the mobilization of the power of the state. Ultimately, this hypothesis was not supported given the fluid, dynamic, and collaborative working relationship between the state, the referral sources, and the restorative justice agencies in Nova Scotia.

June 13, 2019

## INTRODUCTION

### Introduction

Originally, the restorative justice movement: “began as an effort to rethink the needs which crime create, as well as the roles implicit in crimes” (Zehr, 2015, p. 9). The movement began as a way to rethink the traditional criminal justice system focusing less on punishment and more on expanding the circle of stakeholders as restorative justice advocates believed the traditional criminal justice system was too restrictive (Zehr, 2015). Restorative justice aims to involve all those impacted by the act in an attempt to restore harm and promote accountability.

Restorative justice theorists and practitioners cannot avoid the influence of the state or government as: “the state’s role in restorative justice hovers over almost every form of practice, at least in the criminal justice arena” (Zehr & Toews, 2004, p. 185). Thus, the state or government and its related systems cannot be entirely eliminated from restorative justice. The question, therefore, “is not whether the state has a role, but rather what its role should be” (Jantzi, 2004, p. 190). This question has received a growing amount of attention within the literature surrounding restorative justice as the role of the state fuels a debate between theorists and practitioners. Questions surrounding the role of the state in restorative justice also fuels this thesis as a number of academic scholars have suggested that the institutionalization of restorative justice, which typically involves a significant amount of state involvement, has forced restorative justice programs to compromise core values and principles associated with restorative justice (Faget, 2006; Jaccoud, 2007; Johnstone, 2002; O’Malley, 2006; Woolford & Ratner, 2001). This thesis examines the institutionalization process through a case study of the Nova Scotia Restorative Justice Program (NSRJP). I will explore how the state involvement into a

restorative justice program affects the way in which power is mobilized when a program becomes institutionalized.

The NSRJP is one of the oldest comprehensive restorative justice programs in Canada and has operated under a partnership between the state and several community agencies from the outset of the program (Nova Scotia Department of Justice, 2013; Archibald & Llewellyn, 2006; NSRJ-CURA, n.d.). Initially, the program was limited to four-communities within the province but was subsequently expanded province-wide (NSRJ-CURA, n.d.). Similarly, the program was initially only targeted for youth but expanded to include adults in 2016 (Nova Scotia Department of Justice, 2016).

I have conducted a content analysis of the documents produced by the NSRJP including meeting minutes, the Best Practice Standards, volunteer training and development notes, and other relevant administrative data. I have analyzed the documents covering the period from 2001 to 2008.<sup>1</sup> Based on the partnership between the state and communities, the broad alignment with the traditional values of restorative justice, and the availability of the data, the NSRJP appears to be a logical and interesting source for a case study.

I organize the analysis of these documents around six conceptual fault-lines as suggested by Gavrielides (2008). The fault-lines are useful in the analysis of the NSRJP documents as they help to identify issues relating to the effects of implementation and “the complexity of the overall problem of RJ’s ambiguity” (Gavrielides, 2008, p. 168).

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<sup>1</sup> The analysis will be limited between 2001 and 2008 as the program initially expanded across the province of Nova Scotia in 2001 and the Best Practice Standards were implemented in 2008 through the involvement of the government (Archibald & Llewellyn, 2006; NSRJ-CURA, n.d.). Therefore, the data obtained between 2001 and 2008 will provide the richest data for conducting an examination into the institutionalization process.

The existing literature fails to provide concrete examples to confirm the claims regarding the institutionalization of restorative justice and how it can lead to discrepancies between theories of restorative justice and practices. While many scholars have identified concerns with the institutionalization compromising the core values of restorative justice, no empirical research has documented the effects of the institutionalization process. This thesis uses a case study to examine the institutionalization process and exploring two research questions and sub-questions:

1. As the literature suggests a dependence on the criminal justice system and governance from the state, how does the institutionalization of restorative justice programs contribute to their ability to resist discrepancies between the core values and principles of restorative justice and its practice?
  - a. Given how the relationship between the state and restorative justice agencies has been defined in Nova Scotia, have the core values of restorative justice been supported or compromised?
  - b. Given the institutionalization process, how do the Best Practice Standards of the Nova Scotia Restorative Justice Program work as a protective factor for the core values of restorative justice?

And

2. How can Foucault's general notion of power, including governmentality, be utilized to provide insight into the institutionalization of restorative justice?
  - a. How does the institutionalization process reveal Foucault's notion of power and can restorative justice be a form of resistance?

In answering these questions, this thesis will provide empirical evidence relating to the hypothesis that the institutionalization of restorative justice compromises the core values and principles of restorative justice due to the mobilization of the power of the state.

To examine the effects of the institutionalization process, I will use a Foucauldian framework for my research project. Specifically, I will draw from Foucault's work on power, including governmentality, to examine the institutionalization process.

Foucault's work on governmentality will shed light on questions regarding the institutionalization of restorative justice. Furthermore, I will apply Foucault's notion of power to understand the institutionalization process and the subsequent effects the process has had on the NSRJP.

Restorative justice can be viewed as: "complicit in a project of self control" (Woolford, 2009, p. 141). The state, through criminal law, governs the behaviours and will of those involved in restorative justice. The governmental instinct of the state may allow it to maintain control and power over restorative justice programs instead of ceding power and control to the victims, offenders, and communities. As a consequence, the core values of restorative justice may be skewed and manipulated. This exposes the dependence of restorative justice on the current criminal justice system. The state, therefore, dictates the policies and procedures that are utilized based on institutionalizing restorative justice within the criminal justice system rather than within the community. Therefore, the government controls the restorative justice program, which may lead to a compromise in the traditional values and principles of restorative justice. My case study will offer insights into how this process occurs.

### **Chapter Outline**

My thesis is organized as follows. The subsequent chapter consists of two parts: a review of the existing literature and background information. This chapter will detail the values and principles of restorative justice, the concerns and critiques of restorative justice, information surrounding restorative justice in Canada, and background information on the NSRJP.

Chapter Three describes the theoretical framework and contribution to this thesis project. This includes an exploration into Foucault's concepts of governmentality and power. Specifically, this chapter will discuss how these concepts can be utilized to understand the institutionalization process and provide insight into the impact of the intersection with restorative justice programs and state involvement

The methodological approach undertaken in this thesis project will be outlined in Chapter Four. The justification for the research design and method will be provided, along with the rationale for the data chosen. This chapter also includes an exploration and description of the methodological procedure, including coding protocols, undertaken within this thesis.

Chapter Five involves the description of the findings. This includes the results of the content analysis organized around six conceptual fault-lines as suggested by Gavrielides (2008). This chapter provides an exploration of each fault-line while demonstrating the impacts of those fault-lines on the implementation of the NSRJP. The fault-lines help to guide the theoretical analysis that follows in chapter six.

Chapter Six is the analysis chapter, which involves revisiting several of the findings found within the description chapter and contextualizing those findings within the broader analytical framework associated with this project. Specifically, this involves making sense of those findings while revisiting the primary and secondary research questions in an attempt to answer them with the information gained throughout the analysis process.

Chapter Seven is the interpretation chapter. This chapter involves a discussion of the findings, as well as "what is to be made of them" (Wolcott, 2004, p. 36).

The final chapter provides a summary of the main points of my thesis.  
Additionally, the importance of future research is identified and discussed.

## **CHAPTER TWO: LITERATURE REVIEW**

### **Introduction**

This chapter provides an in-depth review of relevant literature about restorative justice starting with a brief history and highlighting core values of restorative justice. The existing literature provides an understanding of restorative justice, as well as the current issues faced by the alternative to the formal criminal justice system. In this chapter, I show how the literature has guided the development of my research questions and the theoretical framework I use to answer them.

### **History of Restorative Justice**

Braithwaite (2002) argues that restorative justice values have ancient roots, grounded in both Greek and Roman traditions of justice. Weitekamp suggests that restorative justice existed even earlier: “restorative justice has existed since humans began forming communities” (1999, p. 81). Weitekamp’s work on conflict resolution in numerous ancient communities and societies establishes the grounds for his claim (1999). The adoption of sentencing circles and conferences by Indigenous communities in both South and North America exemplifies the claim for ancient restorative roots. Specifically, “mediation, circles, and conferencing were used to respond to criminal cases before there was an understanding that these practices were restorative justice” (McCold, 2006, p. 24). The practice of restorative justice therefore preceded the theory of restorative justice.

The term itself dates back to 1958 when Albert Eglash coined the term to distinguish between three different approaches to justice: retributive justice, distributive justice, and restorative justice (Van Ness & Strong, 2010). While Eglash may have been the first to use the term restorative justice, Howard Zehr has been called the “grandfather” of restorative justice due to his articulation of restorative justice theory in

the 1990's (Van Ness & Strong, 2010). Over time, the work of many writers has led to the development of the ideas and principles of restorative justice (Van Ness & Strong, 2010; Roche, 2006).

Although restorative justice has ancient roots and multiple birthplaces, the modern restorative justice movement in North America originated in Kitchener, Ontario in 1977 (Van Ness, Morris, & Maxwell, 2001; Roche, 2006). A probation officer used mediation on a case involving two young people vandalizing a number of properties in a small town (Van Ness, Morris, & Maxwell, 2001; Roche, 2006). The police officer sought permission to have the two young people meet the victims to inquire about restitution possibilities (Van Ness, Morris, & Maxwell, 2001; Roche, 2006). Around the same time, activists in the United States initiated an experiment: "to build a system of justice administered by local communities rather than the state" (Roche, 2006, p. 219; Zehr, 1990). In the mid 1990's, several authors including Howard Zehr, Daniel Van Ness, and Karen Strong grouped these projects under the term of restorative justice (Daly & Immarigeon, 1998; Roche, 2006). According to Roche: "these and other authors articulated the concept of restorative justice as one based around recognition of the personal dimension of crime" (2006, p. 219). They argued that the personal dimension of crime demands an individualized process that included the involvement of all parties. Their work sparked interest in restorative justice.

### **Defining Restorative Justice**

As John Braithwaite (1999, p. 4) suggests: "restorative justice is most commonly defined as what it is an alternative to." Contrary to the penal and retributive models of justice, restorative justice embraces the notion that justice should address the needs of victims,

offenders, and community (Van Ness & Strong, 2002; Zehr, 2002; Morris, 1998). The existing literature suggests that restorative justice provides a philosophy, a set of principles, and a form of justice that involves the offender, the victim, and the community. Together participants negotiate solutions and outcomes in a process that promotes repair and reconciliation (Zehr, 2002). The assumption that crime violates each party and their relationships underlies the process (Zehr, 2002; Sullivan & Tifft, 2006). Restorative justice aims for those responsible for a harm to acknowledge the impact of their actions on the community and the person or people that they have harmed. Participants may develop an agreement that takes into account the needs of the harmed individuals (Sullivan & Tifft, 2006).

The literature suggests that three principles and four key values must be incorporated into any restorative justice system or practice (Van Ness, 2002). Van Ness suggests the following three principles:

- (1) justice requires that we work to restore victims, offenders and communities who have been injured by crime;
- (2) victims, offenders and communities should have opportunities for active involvement in the restorative justice process as early and as fully as possible;
- (3) in promoting justice, the government is responsible for preserving order and the community for establishing peace (2002, p. 2)

Furthermore, Van Ness suggests that the following four key values must be maintained: encounters, amends, reintegration, and inclusion (2002). According to the literature, fully restorative systems will involve these principles and values (Van Ness, 2002).

According to Van Ness, encounters include meetings with active participation and empowerment, narratives, emotions, understanding, and agreements (Van Ness, 2002). Encounters allow the involved parties and supports to meet in person and talk about what happened (Van Ness, 2002; Woolford, 2009). The involved parties and supports are

afforded the opportunity to display emotions contributing to the understanding of the incident while understanding each other, and designing an agreement or outcome that is specific to their situation and satisfies the needs of each party involved (Van Ness, 2002; Woolford, 2009). Van Ness suggests that encounters involve three components: the meeting, the communication, and the resulting agreement (2002).

The second feature of restorative justice, amends, includes apologies, generosity, changes in behaviour, restitution or repaying the victim and/or community (Van Ness, 2002). By making amends, the offender, or wrongdoer, takes steps to give back in tangible ways (Van Ness, 2002). The parties involved in the restorative process must agree on how the offender, or wrongdoer, will make the amends. According to Van Ness, the amends must be: “voluntarily undertaken by the offender rather than being imposed by a court” (2002, p. 4). Often in the process of making amends, the wrongdoer apologizes first, provides restitution, and then changes the behaviour (Van Ness, 2002). This process demonstrates the sincerity of the amends.

Building on the second feature, the third feature of restorative justice, reintegration, involves respect, the avoidance of shame, assistance when necessary, and moral or spiritual direction (Van Ness, 2002). Respect helps ensure that the offender can rejoin the community as a member of full standing, rather than one of lesser standing, while avoiding stigmatization (Van Ness, 2002). Material assistance ensures support to help those affected (Van Ness, 2002). Finally, moral/spiritual direction involves offering religious programmes, emotional support, and/or spiritual nurturing (Van Ness, 2002; Van Ness & Strong, 2010).

The fourth and final key value of restorative justice involves the notion of inclusion (Van Ness, 2002). Inclusive processes invite those affected by an action to acknowledge the interests of both parties and accept alternative approaches to addressing the wrongdoing (Van Ness, 2002). An inclusive approach provides an alternative to the contemporary criminal justice system and allows for restorative justice to occur. Inclusion offers the victim, the offender, and the affected community the opportunity to engage in a meaningful process of justice (Van Ness, 2002). Inclusion may arguably be the most important component or value of restorative justice. It helps ensure that the interests of the state do not “become the only focus of the processes established” (Van Ness, 2002, p. 6).

Restorative justice offers a distinct alternative to the contemporary criminal justice system by empowering the community, the people affected, and the offender to resolve the conflict, repair the harm, and restore the community to the condition prior to the harm being committed. As Braithwaite (2003) suggests:

Restorative justice is not simply a way of reforming the criminal justice system, it is a way of transforming the entire legal system, our family lives, our conduct in the workplace, our practice of politics, its vision is of a holistic change in the way we do justice in the world. (p. 1)

The notion of community plays a central role in the process of restorative justice as restorative justice empowers communities to resolve conflicts (Walgrave, 2002; Bazemore & Schiff, 2001; Zehr, 2002; Woolford, 2009). According to Walgrave, community refers to: “the social environment of informal interactions based on spontaneous human understanding, as opposed to the formal institutionalized society (‘the government’ or ‘the state’) with its rules and rigid communication channels” (Walgrave, 2002, p. 72).

The existing literature suggests an intrinsic link between the notion of community and both restorative justice theory and practice (Walgrave, 2002). This link presumably exists due to restorative justice empowering communities and local actors to resolve the conflicts and problems that arise from the specific community (Woolford, 2009). Empowering communities and social actors to resolve their own conflicts allows those parties to address the crime, conflict, or problem on their own terms in their own times and thus suggests a more effective method of resolution as opposed to the state dictating the way in which the harm should be resolved.

Community involvement remains a key component as the restorative justice model suggests that the offender involved needs to make amends to the community as well as the direct victim (Walgrave, 2004; Farrier, et al., 2009). Community involvement increases the effectiveness of restorative justice programs because community volunteers participate in conferencing, promote positive youth development, and reconnect the youth to the community through programming, sports, and art-based initiatives (Bogenschneider, 1996; Daniels, 2013; Farrier, et al., 2009; Stephens, 1997; Bergseth & Bouffard, 2007; Abramson, 2003). Through this process, communities come to recognize youth as resources as opposed to viewing them as a problem (Bogenschneider, 1996). Youth see themselves as able to contribute to the community and, as a result, they desist engaging in crime (Bogenschneider, 1996).

While restorative justice advocates argue on the importance of community involvement, they do not always agree on how to define community (Walgrave, 2002; Woolford, 2009, Hogeveen, 2005; Crawford & Clear, 2001; Pavlich, 2001; Walgrave 2004). Some argue that the notion of community is too vague and broad. The lack of

precise definition, they argue, creates difficulty in identifying relevant communities.

Woolford identifies the problematic nature relating to the lack of a precise definition . He argues that:

when restorative justice practioners claim community is an essential pillar of their practice, the obvious critical response to this claim is to ask: what community? Where do such communities exist? Certainly not in contemporary urban settings. . . We no longer possess shared belief systems, we no longer depend as immediately upon one another for our daily survival, and we no longer remain settled in the same communities for extended periods of time (2009, p. 105-106).

Woolford argues that communities have become fragmented and they are no longer easily identifiable.

In addition to concerns about defining community, some commentators suggest that the role of the community can negatively impact the wrongdoers or offenders involved (Kling, Ludwig, & Katz, 2005). Community values may negatively impact a restorative justice process. For example, the community may hold to rigid views of gender roles and this may affect how community participants respond (Elis, 2005). The community may not support an outcome of restorative justice if the outcome falls outside of the gender norms supported by the community. Furthermore, communities may play a negative role based on the statistics that poverty areas increase involvement in the criminal justice system. Community involvement in these areas may therefore not contribute to decreased rates of recidivism (Kling, Ludwig, & Katz, 2005). Instead, community involvement may encourage further criminal justice involvement.

While the literature suggests that community involvement is vital to align programs with the core values and principles of restorative justice and offers different options for the involvement of the community and the formal justice processes, it does not, however, adequately explore the relationship between restorative justice, the state,

and the community. Instead, while offering different options, the literature suggests a dichotomous relationship between the state and restorative justice. The intrinsic link between the notion of community and both the theory and practice of restorative justice remains understudied due to the complex relationship between restorative justice, the state, and the community. Further research is required in order to explore how restorative justice can be implemented within the community or with increased community involvement rather than solely through the governing of the state in an institutionalized space.

### **“Justice” and Relational Theory**

According to Sharpe (2004), the rapid growth of restorative justice has led to mass confusion as practitioners and theorists struggle to agree on what constitutes restorative justice and: “how much variety it can accommodate without losing its identity or integrity” (p. 18). The question alludes to both the need to determine what programs or processes are restorative in nature and the broader question of what kind of “justice” results from restorative justice.

Llewellyn argues that: “prevailing conceptions of justice that underlie and animate contemporary justice systems. . . are rooted in a particular set of assumptions about selves and ideal social conditions drawn from the liberal tradition” (2012, p. 91). In Western culture, justice refers to an intervention used to correct wrongdoing via punishment (Sharpe, 2004). Unfortunately, this limits our view of what constitutes justice and thus restorative justice remains: “trapped in Western rational thought, constrained by unexamined assumptions” (Napoleon, 2004, p. 34; Sharpe, 2004). Napoleon suggests that the assumptions made in Western culture must be challenged in regards to human nature,

harmony, and relationships (2004): “if we view human beings as essentially individualistic and in need of coercive social control to suppress an innate warlike and competitive nature, then we will relate to one another, structure our institutions, and define justice – and restorative justice – accordingly” (2004, p. 34). Therefore, restorative justice must be contextualized politically, socially, and economically in order to become a force for positive social change free from the unexamined assumptions based on Western rational thought (Napoleon, 2004).

Challenging Western assumptions relating to human nature, harmony, and relationships is essential for restorative justice programs to become a positive force free of the constraints of Western rational thought and the grips of the formal criminal justice system. Napoleon argues that:

Restorative justice work needs to be situated against the broader goal of creating positive social change. This does not mean that the everyday, practical work in which we are engaged in must stop while we develop a political consciousness. Rather, our work must be conducted in the light of a vision toward what is possible for our communities and society. And we must learn to see double – the individual and the collective, and the personal and the political (2004, p. 42).

Relational theory, according to Llewellyn, “suggests a different starting point from which to understand the world. It compels us to take the fact of relationship, of connectedness as our starting assumption” (2012, p. 90). Viewing restorative justice with a relational lens allows for restorative justice to break free of the limitations imposed on it by viewing it as merely an alternative method of justice framed within the liberal notion of justice. A relational approach allows for an illumination of the broader implications of a relational conception of the self and the world to be explored instead (Llewellyn, 2012). Relationality, therefore, must inform all aspects that shape interactions and processes.

According to Llewellyn, a different starting point is required for thinking about the meaning of justice (2012). Instead of justice being an abstract idea, justice needs to take into account relationality in order to make it meaningful and relevant. In terms of relationality:

Justice... is concerned with the nature of the connections between and among people, groups, communities, and even nations. Justice aims at realizing the conditions of relationship required for well-being and flourishing. It identifies as wrong those acts or circumstances that prevent or harm such conditions... Justice conceived relationally seeks... 'equality of relationship' (Llewellyn, 2012, p. 91).

Justice, under a relational approach, works to establish connectedness and relationships that promote the well-being and flourishing of all involved parties with equal respect, consideration, and concern.

From a relational perspective, injustice or wrongdoing: "reflects the existence of inequality of relationship between and among individuals, groups, and communities" (Llewellyn, 2012). Noticeably, a relational approach to justice contrasts sharply with the traditional approach to justice defining wrongdoing as law breaking. However, "relational justice is not an account of justice outside of, or hostile to, the law but rather, creates an opportunity to consider and deepen the relationship between justice and law" (Llewellyn, 2012, p. 96). Understanding justice with a relational lens changes the relationship between the law and justice as it illuminates the understanding that wrong causes harm to the broader fabric of society and communities in addition to the individual offenders and victims (Llewellyn, 2012).

According to Llewellyn (2012), restorative justice exemplifies a relational approach to justice. Similar to challenging Western assumptions of justice as a whole, applying a relational approach to restorative justice is "not only helpful insofar as it

assists advocates of restorative justice to extol its virtues to the secular world but also because it provides a basis to assess, challenge, and develop current restorative justice practices and theories, some of which have been unwittingly influenced by a liberal individualist approach” (Llewellyn, 2012, p. 100). Therefore, Llewellyn argues that restorative justice is relational as it differs from the traditional criminal justice system and is thus a fundamentally different concept of justice.

### **Styles of Restorative Justice**

According to Woolford, “when put into practice, restorative justice seeks to guide us in the development of new conflict resolution dispositions based upon the restorative justice ethos that lead us toward improved communication and creativity” (Woolford, 2009, p. 58). Several primary forms of restorative justice aimed at conflict resolution continue to be used within the modern restorative justice movement. These include: mediation and community mediation, victim-offender reconciliation and victim-offender mediation, family group conferencing, circles, and truth and reconciliation commissions. While this list is not exhaustive, it illustrates the abundance of restorative justice styles and options available to address harms caused by crimes. From this list, three exist as the main models of restorative justice: victim-offender mediation, family group conferencing, and circles (Daly, 2006; Van Ness & Strong, 2002).

The terms victim-offender mediation (VOM) or victim-offender reconciliation (VOR) are often used interchangeably to refer to programs embracing the style of restorative justice (Woolford, 2009). VOM or VOR have origins dating back to the 1970’s following their first use in Kitchener, Ontario between two young offenders involved in a series of vandalism incidents (McCold, 2006; Woolford, 2009; Roche,

2006). A victim-offender reconciliation program was developed in 1974 when a probation officer felt that all parties involved would benefit if the two young offenders reconciled with their community (Woolford, 2009). The probation officer approached the judge and suggested that, as part of the sentence, the young offenders should be required to offer restitution to the victims via reparations (Woolford, 2009). According to Peachey (2003), a post-sentencing reconciliation program was created due to the success of the endeavor.

According to McCold, VOM and VOR involve: “a neutral third party... [facilitating] a dialogue between victim and offender who (1) talk about how the crime affected them; (2) share information; (3) develop a mutually satisfactory written restitution agreement; and (4) develop a follow-up plan” (2006, p. 24). The process, therefore, involves establishing a safe environment, voluntary participation for all parties involved, and face to face encounters. This gives the victim and the offender an opportunity to meet while empowering the participants to resolve the conflict with an appropriate course of action for all parties involved.

Prior to an encounter between the victim and offender, a significant amount of preparation occurs. According to Woolford, “the activities that precede... [the] encounter are central to the encounter’s success” (2009, p. 61). During the preparation stage, rapport is developed between the mediator and all parties, which helps to develop trust and a sense of safety (Woolford, 2009). Once rapport is established, the mediator begins to work with both parties to develop an understanding of the process and what to expect (Woolford, 2009). The voluntariness of the process is reiterated and stressed throughout the preparation phase, as well as continues to be reiterated throughout the entire process

to avoid feelings of coercion and re-victimization (Woolford, 2009). Once preparations are complete, the participants should be ready to meet each other in order to work towards conflict resolution and, if applicable, an agreement.

The origins of family group conferences, the second main model of restorative justice, can be traced back to the traditional justice practices of New Zealand's Maori people (Woolford, 2009). In the 1980's, the New Zealand Parliament enacted legislation to address the overrepresentation of Maori youth in the justice system by involving the families of the youth (Woolford, 2009). In this process, family group conferences were created to resolve conflict by bringing together the affected parties including the families and supporters of both the offenders and victims (Woolford, 2009). A state-appointed facilitator organized the conferences and supported the parties in developing a consensual agreement (Woolford, 2009).

Family group conferences include additional people to support and assist the victim and offender. These additional parties include the family and supports for the victim and offender, as well as a facilitator (Woolford, 2009). Family group conferencing encourages community participation by including community representatives (White, 2002; McCold, 2006). The parties meet to reveal and discuss the impact of the crime or incident and how best to repair the harm and restore justice to the affected parties. Models of conferencing vary in involvement of the parties, who facilitates the conference, and who is involved in the decision making processes (McCold, 2006; Marsh & Crow, 1998; Warner-Roberts & Masters, 1999; McCold, 2001).

Regardless of the model, family group conferences involve a detailed process (Van Ness & Strong, 2002). After the preparation phase, which is similar to the

preparation phase utilized in VOM and VOR, the next phase of conferencing involves the offender followed by the victim sharing their personal account of the harm while allowing the victim to pose questions to the offender (Van Ness & Strong, 2002). The support members for both the victim and offender are given the chance to discuss the harm or crime (Van Ness & Strong, 2002). The final phase involves a discussion about the solutions, reparations, and ways to restore justice following the harm (Van Ness & Strong, 2002). The process for family group conferencing allows for all parties involved to discuss the incident or crime and agree upon a solution to address repairing the harm.

Circles are the third main model of restorative justice. The roots of restorative circles can be traced back to the traditional practices of indigenous people (Woolford, 2009). Circles are often associated with the method used by the indigenous population in North American to solve various conflicts. According to Woolford, “in the most basic terms, a circle is an occasion where a community is assembled to discuss matters related to and a possible resolution for an injustice that took place in their midst” (2009, p. 63). In traditional circles, all participants were given the right to speak, which was signified by the passing of an eagle feather or other sacred object (Woolford, 2009). This process allowed all participants to share their thoughts and feelings in regards to the harm while the other parties listened intently.

Restorative circles involve a detailed process (Stuart & Pranis, 2006; Woolford, 2009). The first step begins with determining whether or not the incident or harm caused is suitable for a restorative circle process (Woolford, 2009). This step includes assessing accountability of the offender, as well as whether the community is able to support both the victim and offender (Woolford, 2009). Following this, a facilitator works to prepare

all parties involved for the circle process and ensures that everyone understands the process and what the other parties may have to say (Woolford, 2009). This preparation helps participants avoid becoming defensive during the process. At this point, a full circle gathering can be held. This stage can be time-consuming due to the potential of having multiple participants present and require commitment from the participants to ensure that the process is not rushed or forced to end prematurely (Woolford, 2009). Upon completion of the ceremony, the facilitator must follow up with the participants to ensure the agreement is adhered too (Woolford, 2009). Despite the detailed process, circles do not have to follow a simple linear process. They can follow multiple paths to ensure the harm is addressed and the harm is healed.

### **The Role of the State**

The role of the state in relation to restorative justice emerges as a question because of concerns that restorative justice programs will sacrifice core values and principles when they become embedded in the state apparatus (Woolford, 2009). According to Sullivan and Tift, “one of the glaring ironies of restorative justice is that its wide array of programs are dependent upon the state for their funding, development, assessment, and continuation” (2006, p. 3). Therefore, questions about institutionalization concern the role of the state and the relationship between the criminal justice system and restorative justice programs.

Although a number of arguments fuel the debate regarding the influence and role of the state, commentators seem to agree that the state cannot be completely removed from the restorative process (Zehr & Toews, 2004). To some degree, every restorative justice program has to be institutionalized. The state, according to the existing literature,

plays several key roles in relation to restorative justice: state as enabler, state as resourcer, state as implementor, state as guarantor of quality practice, and state as offending party (Jantzi, 2004).

The role of the state as enabler demonstrates the facilitating role of the state as it “provides legal frameworks for restorative justice alternatives and structures to develop a certain level of responsibilities to communities for addressing wrongdoing” (Jantzi, 2004, p. 191). In this role, the state provides the structure or legislation to enact restorative justice while providing the community or restorative justice agency the power to address the wrongdoing or crime. While the power to address wrongdoing or crime is afforded to the community, restorative justice remains overseen by the state. Restorative justice programs, thus exist because the state allows them to.

In addition to providing a structure, the state can also act as a resource provider. Jantzi suggests that: “the advantage of nation-level legislation is that the legislation frequently carries funding with it for program implementation” (2004, p. 193). Through funding, the state can maintain a significant level of influence and power within the restorative justice programs (Jantzi, 2004). The state can provide direct financing or contract external agencies to deliver restorative justice programs (Jantzi, 2004). Therefore, although the state plays a major role in developing and implementing restorative legislation, the state can enable the community to deal with restorative matters (Jantzi, 2004). Despite programs being state-funded, the employees of the program do not necessarily need to represent the state or be state employed (Jantzi, 2004). Instead, practitioners can be contracted by local service groups to facilitate restorative justice programs (Jantzi, 2004). By contracting practitioners who are not employed by the state,

and thus not primarily responsible to the state, restorative justice programs might be more easily able to adhere to the restorative justice principles than if the state ran the programs.

Combining several components of the enabling and resource provider roles, the state as an implementor suggests that the state plays a role which provides financial support to restorative justice programs (Jantzi, 2004). Additionally, the state provides assistance in the implementation of the program from the projected goals to the aim of the program. Restorative justice programs are implemented by the state, but maintained by local agencies and the greater community. The state acts as an implementor by providing assistance, resources, and support while influencing the goals of the authorized program.

In addition to providing structure, resources, support, and funding, the state can also act as a guarantor of quality. While restorative justice continually adapts to the needs of communities and the challenges faced, the state can ensure that community agencies apply best practices (Jantzi, 2004). The state, therefore, can oversee the operation of a restorative justice program to ensure that the program operates under acceptable standards. However, this does not mean that the state must impose the standards. The state can play the guarantor role without having to actually impose the best practice standards by supporting the restorative justice community to develop mutually agreed upon standards (Jantzi, 2004). Involving the state as a guarantor of quality practice can benefit restorative justice programs. The state can provide standards for the programs, which help to promote restorative practices through activities or encouraging conversations to be had regarding the impact on the community and how restorative justice can affect practice (Jantzi, 2004). The state can provide support, and address

broad issues of practice and policy while also creating “a venue where alternative justice matters, particularly restorative justice, can be discussed by practitioners who work at very different points on the degree-of-restorativeness continuum” (Jantzi, 2004). This venue allows for new insight to be obtained, as well as increased exposure to restorative justice programs.

The final state role identified in regards to restorative justice is the role of the state as the offending party. According to Jantzi: “history has amply documented that the state is frequently an offender. . . Nations typically recognize the facts, but rarely offer appropriate repentance or restitution, thereby insuring that the harm becomes a negative national legacy” (2004, p. 195; Biggar, 2001; Rigby, 2001). In the circumstances, the state is in the difficult position of being the party doing the wrongdoing while also the facilitating party within restorative justice (Jantzi, 2004). In this role, therefore, the legislation is required to stress: “reparational and symbolic elements in addition to economic restitution” in order for restorative justice to be implemented (Jantzi, 2004, p. 197). A prime example of the state as the offending party attempting to take the steps to face the issue can be seen in the Maori land claims in New Zealand, where the government of New Zealand attempts to recognize: “past wrongs by the state against Maori ancestors during the colonial era and the disenfranchisement of various groups in later history” (Jantzi, 2004, p. 196; Gilling, 1993).

In terms of state involvement with restorative justice more generally, Woolford and Ratner suggest that restorative justice programs fall on a continuum between two categories: governmentalist programs and communitarian programs (2002). These categories are neither rigid nor fixed, but rather are fluid and thus programs can embrace

both philosophies and fall between the categories on the continuum (Woolford & Ratner, 2002). Programs that fall towards the governmentalist end of the spectrum embrace the state and governmental resources, whereas the communitarian programs involve less state involvement (Woolford & Ratner, 2002; Faget, 2006). Where a program falls on the continuum, may impact the potential for a compromise in the core values of restorative justice to occur based on the influence of the state in the program.

Despite the state being able to occupy different roles, not all of the roles suggested by Jantzi (2004) are of interest to this thesis. This thesis aims to explore how the institutionalization of restorative justice can contribute to gaps between theory and practice. The NSRJP is an institutionalized restorative justice program, and thus the state provides the structure, funding, resources, legislation, and support for the programs while enabling community involvement. As a result, I will explore how the state has been enabler, resource, and implementor in my case study. Additionally, the role of the state as a guarantor of practice applies to this research project because the state participated in the development of practice standards with local restorative justice agencies. Ultimately, the four roles play an important part in this thesis as the state's involvement needs to be analyzed in regards to these specific roles in order to explore whether the institutionalization of restorative justice influences the creation of or contribution to a disjuncture with the core values of restorative justice.

### **The Role of the State in Canadian Restorative Justice**

In Canada, restorative justice has been operationalized in several ways. At the legislative level, Parliament amended the Criminal Code of Canada in 1996 to include restorative justice in the new purpose and principles of sentencing. According to the Criminal Code,

RSC 1985, c. 23, s. 718, “the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives.” Additionally, the Criminal Code, RSC 1985, c.23, s.718(e)(f) relate to providing reparations to the victims or the community harmed, and promoting a sense of responsibility in the offender. The Criminal Code, RSC 1985, c. 23, s. 718.2(e) states that: “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.”

The Youth Criminal Justice Act (YCJA) also provides provisions for the delivery of restorative justice in Canada. Enacted in 2003, the Youth Criminal Justice Act, SC 2002 emphasizes the diversion of youth away from the traditional criminal justice system through extrajudicial measures and addressing the underlying circumstances that led to the offence, and involving the victims of crime. The Youth Criminal Justice Act, SC 2002 focuses on ensuring the youth experience meaningful consequences while promoting increased accountability and reparations to the victim and communities harmed. Restorative justice in Canada is therefore incorporated directly into the YCJA as part of the criminal justice legislation.

In Canada, provinces are responsible for the administration of justice and they have authorized and supported restorative justice programs in different ways (Department of Justice, 2000). According to the Department of Justice (2017), there are over four-hundred programs among the provinces as depicted in Table 1.1 including provincial restorative justice programs and services, as well as regional restorative justice programs and services. There are an additional located across the country (Department of Justice,

2017). Due to the variability in the framework and foundation of the programs across Canada, the level of state involvement, or institutionalization, also varies from program to program.

**Table 1.1**

**RJ Programs in Canada**

<b>Province</b>	<b>Number of Programs in 2017</b>
Nova Scotia	32
New Brunswick	22
Quebec	74
Ontario	65
Manitoba	20
Saskatchewan	39
Alberta	35
Northwest Territories	29
Yukon	9
British Columbia	91

Across Canada, the state has acted in all five roles described by Jantzi (2004). As restorative justice falls under the jurisdiction of both the federal and provincial governments in Canada, the state: “provides [a] legal framework for restorative justice alternatives and structures to devolve a certain level of responsibility to communities for addressing wrongdoing” (Jantzi, 2004, p. 191). Therefore, the state provides the legal framework for restorative justice to exist, but allows for communities to share the responsibility of executing restorative justice. While the state may enact legislation that affects the way in which restorative justice is executed in the community, restorative

justice programs are afforded flexibility in the ways they are operated due to the shared jurisdiction between the federal and provincial governments in Canada.

Due to the national-level legislation, the state also occupies both the resourcer role and the implementor role in Canada. A number of restorative justice programs in Canada are allotted federal funding for their implementation in Canada (Department of Justice, 2000). Additionally, many programs receive provincial funding, including the NSRJP (Department of Justice, 2000). While this could pave the way for the state to hold a significant amount of power and influence over the programs, the amount of funding allotted varies from program to program as does the level of state involvement.

### **Institutionalization of Restorative Justice**

The restorative justice movement in the Twentieth century was accompanied by a rise in critiques of the current criminal justice system. Christie (1977) identifies the problematic nature of the current criminal justice system by suggesting that the state has removed conflict from the hands of those involved and placed it within the justice system. Christie not only highlights the problematic nature of the parties involved being represented, but also that the victim, who is often represented by the state, is pushed out of the proceedings (1977). According to Christie, the victim becomes a “double loser; first, vis-à-vis the offender, but secondly and often in a more crippling manner by being denied rights to full participation... the victim has lost the case to the state” (1977, p. 3). Rather than removing the victim, Christie (1977) argues for a victim-oriented court suggesting minimal state involvement to allow the parties involved to achieve justice.

Building off of the critiques surrounding state and victim involvement as presented by Christie (1977), there has been an abundance of controversy regarding the

institutionalization of restorative justice. Commentators worry that too much state involvement will leave restorative justice susceptible to adopting retributive values and practices (Woolford & Ratner, 2002; Faget, 2006; Boyes-Watson, 2004). Boyes-Watson argue that “there is no denying the fundamental incompatibility between the state system of doing justice and the principle of restorative justice” (2004, p. 215). The state operates through impersonal and rational procedures that are geared to punish and manage people in order to maintain law and order (Boyes-Watson, 2004). Conversely, restorative justice operates through delegating the decision making and control to the offender, victim, and community (Boyes-Watson, 2004).

Restorative justice programs may try to adopt restorative values along with mainstream criminal justice values. Some argue that this is problematic because “we cannot call any correctional process restorative... [as] it helps re-establish or reaffirms power-based, hierarchal, non-participatory, need-depriving relationships (Tifft & Sullivan, 1980). Many advocates for restorative justice see state-run programs as “the functional equivalent of an individual-offender-focused accountability process” (Sullivan & Tifft, 2006, p. 2). Unfortunately, this often results in restorative justice programs failing to align with the traditional values, philosophies, traditions, and theories of restorative justice.

The involvement of the state in restorative justice programs can be viewed as both a benefit and a hindrance to the programs. The involvement of the state can “presumably guarantee a legitimate criminal justice system” (Jantzi, 2004, p. 189). This includes the assurance that proceedings are being conducted in a manner that promotes public norms such as fairness and non-discrimination (Roach, 2000). It also includes the guarantee of

the development of and the adherence to standards outlining best practices. Furthermore, state involvement ensures funding, resource allocation, and additional support from the state, thereby preventing pressures associated with efficiency, cost, and the effectiveness of the programs (Jantzi, 2004). Some restorative justice theorists, therefore, suggest that restorative justice should align with the formal criminal justice system in order to be more effective in administering justice due to funding, guidelines, and support from the formal criminal justice system (Jantzi, 2004; Walgrave, 2000).

Despite restorative justice being implemented as an alternative to the traditional or formal criminal justice system, a number of restorative justice concepts and programs have both been institutionalized within the contemporary criminal justice system (Woolford & Ratner, 2002; O'Malley, 2006; Sullivan & Tift, 2006). Sullivan and Tift (2006) suggest that institutionalization creates problems because: "many restorative justice programs quickly find themselves narrowed in focus and scope, soon evolving into little more than correctional alternatives such as probation and other forms of community supervision" (p. 3). This may be partially due to restorative justice's entrenchment in the criminal justice system as it relies on the traditional system for referrals, funds, and terminology (Woolford, 2009). Therefore, the institutionalization and reliance on the state often leaves restorative justice vulnerable to criticisms.

Woolford (2009) raises several other concerns about restorative justice programs that are entrenched within the mainstream criminal justice system. Specifically, he argues that restorative justice relies on the contemporary criminal justice system for referrals, funds, and terminology such as: crime, victim, and offender (2009). Due to relying on the contemporary criminal justice system for funds and referrals, restorative justice programs

or agencies often make compromises in their programming and idealism in order to cater to the needs or desires of those in power or those with existing funds (Woolford, 2009). This may result in the core principles of restorative justice being compromised and exchanged for the principles of those with power and monetary resources. Additionally, “with these sort of pressures at play, the core principles and practices of restorative justice are likely to drift toward corruption, or to be wholly or partially co-opted by state agents” (Woolford, 2009, p. 141; Levrant, Cullen, Fulton, & Wozniak, 1999; Mika & Zehr, 2003).

Likewise, Erbe suggests that: “centralized mechanisms of power, which criminal justice systems are, stifle creativity and make those who work within it blind to the goal of maintaining their power” (2004, p. 301). In his view, for restorative justice programs to remain true to the principles of restorative justice, they must primarily be housed and exist outside of the mainstream criminal justice system (Erbe, 2004). Instead of being institutionalized then, restorative justice programs should be operated, implemented, and facilitated within the community. Thus, the power will be given to the community rather than the state. Those involved in restorative justice would be the sole educators and facilitators as doing so requires more than simple textbook knowledge regarding restorative justice (Erbe, 2004). Instead, educating and facilitating restorative justice requires lived experience and interpersonal skills to convey that experience to others (Erbe, 2004). The state, according to Erbe and other like-minded theorists, cannot play this role.

Jantzi (2004) has suggested a number of policies to systematically reflect on the practice implications and allow for programs to remain true to the values of restorative

justice. First, the state should devolve responsibility to the community and larger civil society through legislation and financial allocations (Jantzi, 2004). The state should allow restorative justice programs to not only deal with crime, but strengthen communities and civil society (Jantzi, 2004). Second, the resources for restorative justice should be generated by both the public and private sectors to implement restorative justice within society (Jantzi, 2004). Rather than the state holding a monopoly on the resources afforded for restorative justice, resources can be generated at all levels both privately and publically. Third, in order to be successful, restorative justice requires the collaboration among different levels on the continuum of restorative justice, as well as with the state (Jantzi, 2004). Instead of restorative justice being implemented by the state, it can also occur in the community via grassroots initiatives. Restorative justice programs would therefore not be at a static location on the continuum between governmentalist and communitarian, but rather move freely among the continuum. Finally, restorative justice can occur in cases where the state is the offending party (Jantzi, 2004). In these cases, reparations, restitution, and formally enacted apologies must occur (Jantzi, 2004).

While restorative justice programs may contain some level of institutionalization, there is concern with the level of state involvement. The literature provides many suggestions for: “curb[ing] the influence of professionals on the development of restorative justice” (Erbe, 2004, p. 302). By curbing the influence of professionals in the restorative process, programs are more likely to remain true to the core values of restorative justice. The literature suggests that the power of restorative justice must remain in the hands of the community in order to remain a true unorthodox alternative to the mainstream criminal justice system (Erbe, 2004). In order to do so, the literature

suggests the benefits of a co-operation between the state and community partners in order to align the core values of restorative justice while recognizing the inability to completely abolish state involvement from restorative justice. This would allow for restorative justice programs to have a guarantor of practice, and obtain funding, resources, and support from the state while allocating power to the community and restorative justice programs to uphold the core values of restorative justice.

While the co-operation between the state and the greater community often involves praise, the co-option often also involves great criticism. Jantzi argues that:

Financially, programs are more likely to be sustainable when directly administered by the state. However, a common criticism is that restorative justice programs simply become another tool available to the state in the administration of justice and leads to the marginalization of non-state actors. (2004, p. 194).

Furthermore, the co-option arrangement often faces criticism as the arrangement does the least to: “prepare, involve and strengthen civil society” (Jantzi, 2004, p. 194). The programs often face difficulty in addressing some of the social causes of crime because of the inability to achieve balance between the state and the community social forces (Jantzi, 2004). Therefore, the co-option often involves similar argument outlined in both the benefits of state involvement, as well as the hindrances of state involvement.

Gavrielides provides the only study I could find that explores the effects of the institutionalization process on restorative justice. The study involved a process of data triangulation from both analytical literature research on restorative justice and four surveys sent out to restorative justice practitioners in order to explore the gap between the theory and practice of restorative justice (Gavrielides, 2007). During this process, Gavrielides researched the conceptual conflicts identified in the existing literature and developed questions to ask during face to face surveys (2007). Gavrielides explored how

the gap affects the current implementation of restorative justice, and why the gap is an important issue (2007). Furthermore, Gavrielides highlights the effects of the environment on the implementation (2007). From the study, Gavrielides concluded that there was a gap between the traditional theory of restorative justice and its current practice based on a disconnect between the theoretical development of restorative justice and its implementation (2007). Gavrielides explained that the institutionalization process may lead to compromise due to the focus on promoting the criminal justice system (2007). Based on the information in his study, Gavrielides provided suggestions for reducing the gap and bringing about change in order to align the traditional theory of restorative justice with its practice.

However, the majority of the remaining existing literature merely provides a conceptual critique suggesting that the institutionalizing of restorative justice within the mainstream criminal justice system will result in compromises of values and principles (Woolford, 2009; Levrant, et al., 1999; Faget, 2006; Woolford & Ratner, 2002; Boyes-Watson, 2004). These claims were predominantly not tested empirically and thus remain: “either assumptions of various theoretical writings or observations of practitioners that were never validated” (Gavrielides, 2007, p. 15).

In this thesis, I aim to provide empirical evidence supporting the notion that the relationship between the state and the community remains far more complex than suggested in the existing literature. In order to do this, I developed a case study to explore the ways in which power becomes mobilized within the NSRJP, and the ways in which the state’s roles affect the implementation of the NSRJP. Moreover, this research project addresses the effects of the institutionalization process on restorative justice, including

the impact on the core values of restorative justice. This study provides empirical evidence to solidify the claims made or offer evidence to oppose the claims made while testing the hypothesis that the institutionalizing process does impact restorative justice programs by creating or contributing to a disjuncture with the core values of restorative justice.

## **CHAPTER THREE: THEORETICAL FRAMEWORK**

### **Introduction**

This chapter describes the two conceptual ideas applied in this research project.

Specifically, I will discuss how Foucault's notions of governmentality and power can be mobilized in the exploration of the institutionalization of restorative justice. On the one hand, Foucault's notion of governmentality, as a form of power, raises serious questions about having restorative justice institutionalized within the criminal justice system. On the other hand, a different reading reveals the potential for community-based restorative justice agencies to mobilize power as a form of resistance against state control. The theoretical discussion provided in this chapter will provide the parameters necessary for answering the primary and secondary research questions that this thesis aims to address.

### **Governmentality and Power**

Governmentality involves shaping behaviours, with some degree of deliberation, to conform to a particular set of norms (Foucault, 1991; Dean, 1999; Woolford, 2009). A set of norms maintains the "common good" which, according to Foucault, refers to the state of affairs where all individuals are equal under the law and must obey all laws, without exception (Foucault, 1991). While obeying the laws, individuals must accomplish the tasks expected of them, and respect the established order. They must adhere to the definition of the common good (Foucault, 1991). Government is established to regulate the common good and ensure a convenient end (Foucault, 1991).

For Foucault, the word "government" does not refer only to the state. It includes other bodies or groups committed to maintaining the common good of society. The state merely provides a vehicle for governmentality employed to govern the behaviours and

will of the members of society while promoting the common good (Bratich, Packer, & McCarthy, 2003). According to Foucault, government is concerned with governing people not territory (Foucault, 1991). Therefore, the notion of governmentality is concerned with governing the will and behaviours of the members of society according to the common good. Governmentality, therefore, includes a multiplicity of techniques used to shape the conduct of the members of society to promote the common good or promote the conduct that is desired by the governing body.

For Foucault, governmentality refers to the formation and exercise of power (1991). However, governmentality does not mean that the state is all-consuming. Rather the state coordinates and attempts to reformulate the governor-governed relationship into one of collaboration (Bratich et al., 2003). This means that the state mainly serves as a vehicle to coordinate and employ governmental technologies and rationalities. Therefore, according to Woolford, Foucault argues that governance: “occurs not simply through the might of the state, but, rather, through the proliferation of ways of thinking that serve as background assumptions to guide our individual choices” (Woolford, 2009, p. 141).

As a central component of the notion of governmentality, the definition of government is relatively significant. Dean defines government as:

Any more or less calculated and rational activity, undertaken by the multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seeks to shape conduct by working through our desires, aspirations, interests and beliefs, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects and outcomes (Dean, 1999, p. 10).

Therefore, government refers to the intentional effort to rationally shape and direct the conduct of the members of society. Dean suggests that government can be referred to as the conduct of conduct (Dean, 1999). It is the behaviours, thoughts, and actions, which

are referred to as human conduct, that need to be: “regulated, controlled, shaped and turned to specific ends” (Dean, 1999, p. 11). There is an attempt to shape and regulate the bodies, personalities, and inclinations of the members of society. Dean explains this as an attempt to: “shape in some way who and what we are and should be” (Dean, 1999, p. 12). Through the governance of conduct, there is a presupposition of the freedom of the members of society and a limitation on the capacity of those members to act and think freely (Dean, 1999). As a result, the governmentality associated with advanced neoliberal democracies narrows what is thinkable so as to fit the decisions of individuals into the set of desired norms and how the members of a society can act appropriately.

Governmentality suggests a limitation of the freedom of the members of society. However, the state, as a vehicle for governmentality, actually uses the concept of freedom to govern its members. Despite Garland’s claim that: “the conventional idea of freedom contrasts sharply with the notion of being dominated or ruled” (Garland, 1999, p. 29), he also argues that individuals may actually be governed through freedom (Garland, 1999). Garland suggests that the contrast is problematic as the: “underlying claims about ‘governing through freedom’ and the notion of ‘power supposes freedom’ is a punning conflation between two ideas which are actually quite distinct: the concept of agency and the concept of freedom” (Garland, 1999, p. 29). Drawing from Foucault’s idea of governmentality, Garland argues that the concepts of agency and freedom are typically used interchangeably despite their drastic differences (Garland, 1999). Garland further explains that Foucault suggests: “the exercise of directive power in the social sphere is. . . dependent on this human capacity for action, as are the various techniques of rule-at-a-distance, which depend on the calculative actions of dispersed decision-makers”

(Garland, 1999, p. 29). Therefore, the government is able to govern the conduct of others based on calculative actions. The government relies on and stimulates the sense of agency of individuals while reconfiguring, rather than removing, the freedom of choice of the agent (Garland, 1999).

Embracing the sense of agency of individuals, the phrase ‘governance of crime’ has been used to describe the effects on crime control in recent decades of a shift away from a welfare style government towards a neo-liberal style of government (Garland, 1999). According to Dean, neoliberalism, as a form of governance, involves an increase in monetary funds through the use of a ‘free market’ while simultaneously involving less state involvement as the individuals within society download greater responsibilities (Dean, 1999). The neoliberal shift involves a move towards economic forms of reasoning rather than the social and legal forms of reasoning associated with the welfare style government (Garland, 1999). The economic form of reasoning is characterized by: increasing objectives such as compensation, cost control, harm reduction, economy, efficiency, and effectiveness (Garland, 1999). In addition, this shift is characterized by the resort to technologies to control penal decision-making, the rise in the use of risk technologies, and crime control partnerships characterized by shifting the responsibility of crime control to the community rather than the state (Garland, 1999).

Crime is viewed as a routine phenomenon, under this shift, and therefore, crime control is aimed at governing social and economic routines (Garland, 1999). By moving away from the view that crime disrupts normality, crime control implements a neutral gaze, rather than a hostile one aimed at the offender (Garland, 1999). Therefore, the government relies on governing through crime by addressing the social and economic

routines of individuals in an attempt to: “preserve ‘normal life’ and ‘business as usual’ . . . involve[s] the implantation of non-intrusive controls. . . or else attempts to modify the interests and incentives of the actors involved” (Garland, 1999, p. 20). Thus, the government attempts to govern through crime in an attempt to align the interests and objectives of the actors with those of the governing body.

Ultimately, this shift towards crime control partnerships characterized by shifting the responsibility of crime control to the community rather than the state affords community agencies power rather than having the state hold all of the power. This power may not be uncommon as, according to Lynch (2011), Foucault suggests that power is omnipresent and can be found in all social interactions. No single individual can be outside of it (Foucault, 1980). Furthermore, according to Lynch, Foucault argues that, “power is co-extensive with the field of social relations; that power is interwoven with and revealed in other kinds of social relations – does not mean that power functions as a trap or cage, only that it is present in all of our social relations, even our most intimate and egalitarian” (Lynch, 2011, p. 15).

From a Foucauldian perspective, power needs to be viewed as a positive and productive social force. Foucault argues that “what makes power hold good, what makes it accepted, is simply the fact that it doesn’t only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse” (Foucault, 1977, p. 119). Foucault asserts that power is not static, but rather a fluid feature that is not reserved to a single individual, institution, or state (Foucault, 1978). Therefore, power can be exerted at all levels within a society and not just through

the state. Power cannot be reserved for a hierarchal structure, but rather is decentralized (Foucault, 1978).

Foucault asserts that “power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization” (Foucault, 1990, p. 92). This means that regardless of where power originates, there will be considerable overlap and intersection of power within the social interactions. Furthermore, as power originates from social interactions, it cannot be possessed by a sovereign individual, and thus it is not a reducible to a binary relationship (Lynch, 2011). From this, Lynch asserts that, for Foucault, power:

develops in the first instance in specific, local, individual choices, behaviours and interactions. These combine in myriad ways to constitute larger social patterns, and eventually yield macroforms, which one typically thinks of when one thinks of ‘power’  
. . . we thus have a micro-level of individuals. . . and a macro-level of populations (Lynch, 2011, p. 22).

Therefore, given its decentralized nature and multiplicity of relations, power can either exist in a top-down structure or come from the bottom up.

While Foucault argued that power can be negative or positive, he believed that the state typically mobilized negative power (May, 2011). The negative power associated with the state serves as an external constraint to individuals and groups, and power that exists closer to the ground “inhabits our daily practices, moulding us into particular kinds of compliant beings” (May, 2011, p. 78). Therefore, power from the ground up does not necessarily involve repressive, external agents, but rather involves an internal constraint that moulds behaviour and action. Power can be viewed as positive because “it enables certain subject-positions (or certain actions or capacities for the individual) [therefore it]

permits political mobilization, solidarity, mutual identification, the creation of social spaces, and so on” (Heyes, 2011, p. 160).

Power that exists closer to the ground often gets associated with resistance. Foucault focused on resistance as an expression of power rather than something that simply resists the effects of power (Felder, 2011). He argued that power produces resistance and therefore, resistance is an expression of power (Nealon, 2008). For Foucault, “resistance is more effective when it is directed at a ‘technique’ of power rather than at ‘power’ in general. It is techniques which allow for the exercise of power and the production of knowledge; resistance consists of ‘refusing’ these techniques” (McHoul & Grace, 1993, p. 86). Foucault further argued that for “resistance to be effective, it requires the active interrogation of the tactics employed in a struggle. But this means one must acknowledge in the first place that tactics are being used” (McHoul & Grace, 1993).

Ultimately, while the concept of governmentality raises those serious questions about having restorative justice institutionalized within the criminal justice system, Foucault’s more general notion of power provides the opportunity for community-based restorative justice agencies to mobilize power as a form of resistance against state control.

### **Restorative Justice, Governmentality, and Power**

Several scholars have examined restorative justice through a governmentality lens. They have focussed on exploring restorative justice as a disciplinary technique and a technology of the self (Andersen, 1999; Pavlich, 2005; Woolford & Ratner, 2008; Woolford, 2009). Pavlich (2005) focuses on a number of governmentalities that restorative justice engages with. Similarly, Andersen argues “that ‘peaceful’ or ‘non-

disputary' subjects are created in the context of Aboriginal restorative justice projects through their 'agreement' to accept responsibility for their actions" (1999, p. 304).

These analyses expose the potential negative consequence of having restorative justice agencies dependent on the formal criminal justice system. Dependence risks resulting in limitations in how restorative justice programs can be implemented. Neo-liberal governmentality may be rooted in restorative justice through its institutionalization in the formal criminal justice system. As a result, restorative justice may not offer a true alternative to the criminal justice system. Restorative justice can end up being "locked into the conceptual and practical tendencies of the criminal justice system" (Woolford, 2009, p. 142) and its core values can be sacrificed to suit state governmental imperatives.

According to Woolford and Ratner:

the combination of disciplinary techniques and technologies of the self in restorative justice connects it to the ethos of neoliberal governmentality. In particular, restorative justice provides a potential vehicle for carrying governmentality into localities and responsabilising individuals, through the force of their own decisions to make themselves as peaceful and accepting community members (Woolford & Ratner, 2008, p. 80).

This leads to one of the substantive criticisms that critical criminologists have of restorative justice as being "complicit in a project of self control" (Woolford, 2009, p. 141). According to both Woolford, "the logic of governmental rule takes shape within individual 'mentalities' and circumscribes thought and action, thereby effecting a 'responsibilisation corresponding to the new forms in which the governed are encouraged, freely and rationally, to conduct themselves'" (Woolford, 2009, p. 141). Through the restorative justice process, the government may implement training, education, or legislation, which passes the responsibility of self-governance to those being governed. The state may govern restorative justice programs by setting up

legislation, as well as policies and procedures to stimulate a sense of agency within the program. The state, therefore, does not directly control restorative justice, but influences the ways in which restorative justice operates via the education, training, and legislation.

Similarly, Pavlich (2005) argues that restorative justice participates in a number of governmentalities. Pavlich (2005) argues that these governmentalities exist at a micro level including fashioning a way in which individuals change their understanding of the world and crime, in general. This results in restorative justice appearing more ideal and rational to those involved (Pavlich, 2005). According to Woolford, restorative justice “does this by reframing or redefining core components of criminal justice” (Woolford, 2009, p. 142). The reframing and redefining core components and concepts by the state for the purpose of restorative justice helps individuals become more accepting of restorative justice values and processes. Similarly, restorative justice “encourages participants in restorative justice meetings to examine and reshape their conduct in relation to their experience of crime and justice” (Woolford, 2009, p. 141). This not only changes their behaviour during the restorative justice session, but is also intended to influence future behaviour via self-governance (Woolford, 2009). While the work of the government is lessened with the promotion of self-governance for future behaviour due to promoting the sense of self-agency while reducing the role of the state, these governmentalities suggest that the state, through law, governs the behaviours and will of those involved in restorative justice at an institutional level.

According to Woolford, “if restorative justice is to govern our behaviour, it must first change how we think about crime and criminal justice” (Woolford, 2009, p. 142). Restorative justice does this by redefining and reframing the core components of criminal

justice for restorative justice based on the needs of the state. The redefining and reframing process involves addressing the governance within restorative justice including: what is governed, who is governed, who is doing the governing, and what is appropriate governing (Pavlich, 2005; Woolford, 2009). Core components of criminal justice are altered to address harms rather than crimes, include the victims and community members rather than just the offender, empower those involved in the process over those involved with the criminal justice system, and focus on future behaviour while repairing the harm and encouraging the avoidance of similar behaviour in the future (Pavlich 2005; Woolford, 2009). Changing the way in which crime and criminal justice are thought of allows for restorative justice to be accepted and thus paves the way for governance.

However, this argument can also be presented differently. Specifically, this difference can suggest that it is the governmentalities of the criminal justice system that require restorative justice to become dependent on it. Either way, Woolford suggests that for many scholars,

this amounts to more than the problem that restorative justice tends to misrepresent both its relationship with and the workings of the criminal justice system. . . more importantly, it means restorative justice is locked into the conceptual and practical tendencies of the criminal justice system and therefore fails to provide a true alternative to its dominance (Woolford, 2009, p. 142).

The governmentalities discussed above are also problematic as they pave the way for restorative justice being complicit in a project of self-control as suggested by Woolford (2009).

When restorative justice becomes institutionalized by the state, it may become a technique of the government, and the state may then impose policies and procedures that

contradict restorative justice's core aspirations. If we take the critique by Garland (1999) of neo-liberalism seriously, then this can happen even if restorative justice programs are run by community-based agencies. In this instance, the state may be governing through community. The state, as a vehicle for governmentality, in advanced neoliberal democracies, downloads the responsibility of restorative justice onto the community and also at an individual level. Essentially, this embraces the notion of governing through freedom, as suggested by Garland (1999). While the responsibility for restorative justice is handed to the community and the individual therefore stimulating a sense of agency, the state may be exercising a method of 'rule-at-a-distance' (Garland, 1999).

As part of exercising a method of rule-at-a-distance, the state may govern the objectives and interests of the individuals or actors involved in restorative justice. Furthermore, the behaviour of those involved in restorative justice is intended to carry on beyond the process of restorative justice via the concept of self-governing. The aforementioned governmentalities associated with restorative justice are problematic as "they do not represent a true alternative to the criminal justice system. Instead, restorative justice is fundamentally dependent on the criminal justice system and criminal law" (Woolford, 2009, p. 142). Therefore, by institutionalizing restorative justice within the legal realm of criminal justice, restorative justice programs are limited in capacity. This limitation includes the ability to act freely and embrace the traditional theories and core values of restorative justice based on the vulnerability to be controlled via the governance of the formal criminal justice system. Additionally, harms that are not considered harmful or wrong within the criminal justice system or outlined by the criminal code, are

overlooked and therefore not addressed thus further compromising the core values of restorative justice.

Therefore, if the notion of governmentality suggests that the state, as a technique of government, governs members of society, it would be logical to assume that the state has the power to shape the values of restorative justice programs that are institutionalized within the formal criminal justice system. However, Foucault argues that this assumption places limitations on the concept of power. Foucault suggests that describing power as dependant on the state apparatus, creates limitations and leads to the repression of power (Foucault, 1977). This is problematic as:

The notion of repression is quite inadequate for capturing what is precisely the productive aspect of power. In defining the effects of power as repression, one adopts a purely juridical conception of such power, one identifies power with a law which says no, power is taken above all as carrying the force of a prohibition (Foucault, 1977, p. 119).

Power, according to Foucault, therefore extends beyond the limitations of the state as:

“the State can only operate on the basis of other, already existing power relations”

(Foucault, 1977, p. 122). Ultimately, Foucault argues that power is not limited to the state apparatus as the state can only operate on other existing power relations, thus suggesting that power exists beyond that of the state. Therefore, power is not centralized or reserved only for the state, which enables resistance to occur.

By acknowledging that tactics are at play, resistance can be exerted, and power can be mobilized from the bottom up as dominant forces do not hold on to the monopoly on power and resistance allows for the decentralization of power. Therefore, in terms of restorative justice, the community can mobilize their power to resist power being executed by the state. Specifically, the power exerted by the state and the

governmentalities present in the programs can be resisted while mobilizing and asserting power from the ground up rather than the top-down in a hierarchal structure. Resistance of the state's power is particularly effective within restorative justice as resistance directed at a technique is the most powerful. According to Feder, Foucault argues that "power/knowledge. . . is a persuasive apparatus from which there is no escape, but. . . at the same time. . . [can] be resisted or 'reversed'" (Feder, 2011, p. 66). Therefore, while the state's interests cannot be completely removed from restorative justice programs, the community need not become subservient to the state and can instead exercise its own power. Foucault's notion of power allows for the problematization of the idea that working with the state will inevitably lead to the co-option of restorative justice by the state. Community agencies may actually be able to resist the power of the state. This may lead to a lessened degree in the compromise of restorative justice values for those favoured by the formal criminal justice system.

Foucault's notions of governmentality and power are therefore both relevant to my research project. Specifically, my project builds on the critiques offered by Woolford (2009) and other critical criminologists. I use Foucault's notion of governmentality to explore Woolford's critique to see if the institutionalizing process of the NSRJP resulted in the program being "complicit in a project of self-control" (Woolford, 2009, p. 141) or whether restorative justice serves as a form of resistance to governmentality using Foucault's notion of power.

Ultimately, as the NSRJP has been contracted by the state to deal with criminal matters relating to youth in Nova Scotia, my project uses the concepts of governmentality and power to explore the relationship between the restorative justice agencies and the

state within the NSRJP as upon receiving a referral, restorative justice agencies in Nova Scotia deal with each case from start to finish. This appears to be a major ceding of power that may allow agencies to resist the governmental goals of the justice system. The resistance is possible as Foucault does not suggest that power is a type of force, but rather a: “set of practices that have come to influence over our behaviour” (May, 2011, p. 77). Foucault further suggests that if there is an understanding of the forces or historical legacy that constrains people, there is no reason not to believe that people have the power to evoke change (May, 2011). Therefore, by recognizing the constraints and identifying institutionalization or the adherence to the traditional criminal justice system, restorative justice programs can be changed to reflect the values of restorative justice practices. The ceding of power allows for resistance of the state to influence the goals of restorative justice, paving the way for a drift away from adhering to the goals of the state and towards adhering to the core values of restorative justice and the goals associated with those values.

### **Summary and Conclusion**

In sum, I explained how Foucault’s notions of governmentality and power allowed me to critically examine the institutionalization process and were able to provide the parameters and insight necessary for answering the primary and secondary research questions that this thesis aims to address. Specifically, I addressed how Foucault’s work on governmentality provides insight into how the institutionalization process contributes, or not, to restorative justice being complicit in the project of self-control as suggested by Woolford (2009). While Foucault’s work on power highlights how power is revealed through the institutionalization process of the NSRJP.

The theoretical discussions in this chapter provided the parameters and insight necessary for answering the following primary and secondary research questions that this thesis will continue to explore in later chapters:

1. As the literature suggests a dependence on the criminal justice system and governance from the state, how does the institutionalization of restorative justice contribute to their ability to resist discrepancies between the core values and principles of restorative justice and its practice?
  - a. Given how the relationship between the state and restorative justice agencies has been defined in Nova Scotia, have the core values of restorative justice be compromised or supported?
  - b. Given the institutionalization process, how do the best practice standards of the Nova Scotia Restorative Justice Program work as a protective factor to protect the values of restorative justice?

And

2. How can Foucault's general notion of power, including governmentality, be utilized to provide insight into the institutionalization of restorative justice?
  - a. How does the institutionalization process reveal Foucault's notion of power and can restorative justice be a form of resistance?

## CHAPTER FOUR: METHODOLOGY

### The Case Study

A qualitative case study involves: “an in-depth, multifaceted investigation, using qualitative research methods, of a single phenomenon. The study is conducted in great detail and often relies on the use of several data sources” (Orum, Feagin, & Sjoberg, 1991, p. 2). Researchers often prefer case study research when answering ‘how’ or ‘why’ research questions (Yin, 2009; Schwandt, 2007; Orum, et al., 1991). Case studies can shed light on many social phenomenon including structures, organizations, cities, roles, or entire groups of people (Orum, et al., 1991). Case studies can focus on a fixed period of time or they can study a social phenomenon over time (Dixon, Bouma, & Atkinson, 1987). Despite only focusing on a single case, case studies can provide an abundance of rich data that can be used to explore social phenomena in depth and with great detail.

According to Thomas (2011), there are two different types of case studies: snapshot and diachronic. The snapshot case study involves information relating to a case at a particular point in time, capturing the whole picture defined in the period of time despite being limited to a month, day, or week (Thomas, 2011). The information gathered from a snapshot case study helps explore a particular aspect of social life or a specific theory (Thomas, 2011). The diachronic case study applies a longitudinal approach collecting data from various points throughout the designated time (Thomas, 2011). Researchers use the data to look for patterns, trends, or other exploratory, descriptive, or explanatory purposes (Neuman, 2011).

I designed a diachronic case study to examine administrative documents produced by the NSRJP between 2001 and 2008.<sup>2</sup> The case study method allowed me to examine the NSRJP in great detail in specific regard to the policies, meeting minutes, and other sources of textual information based on the administrative data relating to the program. I collected the administrative documents during the allotted time frame to explore the impact of institutionalization, whether the core values of restorative justice were visible, whether the core values of restorative justice were compromised, how power was mobilized within the NSRJP, and the relationship between the NSRJP and the government or state. The single case study allowed for me, as the researcher, to gain a deeper understanding of the concepts at play within the NSRJP over a specific period of time.

### **Content Analysis**

While case studies can include quantitative research and data, case studies have predominantly relied on qualitative methods to acquire the data and produce knowledge regarding the social phenomenon (Yin, 2009; Orum, et al., 1991). A content analysis involves the: “the identifying. . . 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” (Huckin, 2004, p. 14). Despite being predominantly used in qualitative research, content analysis can be employed in both qualitative and quantitative research (Huckin, 2004). Qualitative

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<sup>2</sup> The analysis will be limited between 2001 and 2008 as the program initially expanded across the province of Nova Scotia in 2001 and Best Practice Standards were implemented in 2008 (Archibald & Llewellyn, 2006; NSRJ-CURA, n.d.). Therefore, the data obtained between 2001 and 2008 will provide the richest data for conducting an examination into the institutionalization process.

content analysis concerns both the implicit and explicit concepts outlined within the text thus allowing the researcher to utilize their own judgement in interpreting the text (Huckin, 2004; Neumann, 2006; O'Connell & Davis, 1994). Conversely, quantitative content analysis concerns quantifying themes and patterns that emerge from the analysis (Huckin, 2004).

Content analysis: “describes a family of analytic approaches ranging from impressionistic, intuitive, interpretive analyses to systematic strict textual analysis” (Hsieh & Shannon, 2005, p. 1277). The type of content analysis conducted depends heavily on the nature of the research and the individual researcher. However, regardless of the type, content analysis typically involves a process of collecting documents and systematically reading or interpreting those documents while recording similar features and consistencies, while drawing inferences about them (Hall & Wright, 2008). This methodological technique allows for a relatively objective understanding of a large number of documents sharing similar values or commonalities to be obtained (Hall & Wright, 2008).

Qualitative content analysis has become recognized as an important method of analysis thus leading to an increase in application (Hsieh & Shannon, 2005). It goes beyond counting words and quantifying the content. Qualitative content analysis focuses on the characteristics of language, themes and patterns, and examining those themes, patterns or language for the purpose of classifying it into categories among others with similar characteristics (Hsieh & Shannon, 2005). Throughout this process, the researcher gains knowledge and understanding about the phenomenon being studied.

Hsieh and Shannon (2005) identify three main types of qualitative content analysis: conventional, directed, and summative. While conventional content analysis generally describes a phenomenon and employs inductive methods, the directed content analysis involves categories to be pre-determined or influenced while employing deductive methods (Hsieh & Shannon, 2005). Summative content analysis fundamentally differs from the other two as it involves analyzing pieces of the content to interpret the contextual meaning of the single words, terms, or content (Hsieh & Shannon, 2005).

Regardless of the type of content analysis, Hsieh and Shannon (2005) suggest that content analysis involves seven classic steps:

Formulating the research questions to be answered, selecting the sample to be analyzed, defining the categories to be applied, outlining the coding process and the coder training, implementing the coding process, determining trustworthiness, and analyzing the results of the coding process. (p. 1285).

They point out that the success of the content analysis depends predominantly on the coding process (Hsieh & Shannon, 2005). Miles, Huberman, and Saldana (2014), suggest that codes are:

labels that assign symbolic meaning to the descriptive or inferential information compiled during a study. Codes usually are attached to data 'chunks' of varying size and can take the form of a straightforward, descriptive label or a more evocative and complex one. (p. 71-72).

Therefore, coding involves and employs both analysis and interpretation. According to Miles, et al. (2014):

Codes are first assigned to data chunks to detect reoccurring patterns. From these patterns, similar codes are clustered together to create a smaller number of categories or pattern codes. The interrelationships of the categories with each other are then constructed to develop higher level analytic meanings for assertion, proposition, hypothesis, and/or theory development. (p. 73).

Thus, coding involves cycles or steps. The first cycle or step involves codes initially being assigned to the chunks of data, while the second cycle or step typically builds and works with the codes developed within the first cycle (Miles, et al., 2014). Themes, patterns, and constructs emerge from the second cycle in the process of grouping the codes from the first cycle into smaller categories. Coupled together, the first and second cycles of coding allows for further in depth analysis into the content of the data.

According to Saldana, “coding is the transitional process between data collection and more extensive data analysis” (2013, p. 5). The process involves both decoding and encoding. Decoding involves reflecting on a passage of data and deciphering the core meaning behind the passage, whereas upon coding and labeling the data, the process is referred to as encoding (Saldana, 2013). Passages may be coded multiple ways, depending on the core meaning, in a method referred to as simultaneous coding (Saldana, 2013).

Coding moves beyond labelling data and enables the organization of similarly coded data to be grouped together based on shared characteristics. Passages may be grouped together under a category or family despite being fundamentally different due to sharing something in common, which links the two passages or pieces of data together (Saldana, 2013). This is part of the method of pattern coding and a pattern can be characterized by: similarity, difference, frequency, sequence, correspondence, or causation (Saldana, 2013).

The method of coding, the number of codes and whether the project should be inductive or deductive, among other decisions related to coding, are dependent on the individual research project (Saldana, 2013; Miles & Huberman, 1994). While having a

list of codes prior to analyzing any of the documents may be useful, working inductively can produce more empirically driven labels (Miles & Huberman, 1994). While there is no single right way to do analysis, this thesis relied on the frameworks suggested by Miles & Huberman (1994), Saldana (2013), and Miles, Huberman, & Saldana (2014) to structure the methodological technique of coding.

### **The Documents**

For the purpose of this research, I completed an analysis of the administrative documents produced by the NSRJP between 2001 and 2008. The documents include: monthly narrative reports and quarterly agency reports, committees, annual reports, practice standards, statistical reports, and miscellaneous documents.

From 2001-2003, the NSRJP produced monthly narrative reports, which consisted of “qualitative summaries submitted most often by the executive director of the agency.” These reports include notes about meetings/contacts with criminal justice stakeholders, upcoming events, volunteer training developments, and notes about community contacts and public education. The reports also include information about issues with Restorative Justice Information System, the program database, such as “still having problems with system freezing. In case activity sections, not enough options as to whom we had contact with.” The reports provide detailed notes about casework. For example, they include issues or concerns experienced throughout the casework process relating to each individual restorative justice agency such as a lack of community representatives or a lack of training opportunities, highlights relating to successful case management, challenges relating to overall operations as well as case management, and best practices. A monthly report in 2002 detailed “concern if we are equipped enough to deal with the

very serious offences with high level of harm.” The monthly reports also include details about specific cases: “great hostility during all pre-session work with parents of a young assault victim. During meeting parents changed attitudes.” An example of a challenge from a monthly report in 2001 involves “police officers are still insisting that RJ is or should be ‘one shot deal’.” Lastly, an example of the best practices from monthly reports is highlighted in a report from 2001 and demonstrates how the agency “have approached police over our concern that several referrals appeared shaky at best (net widening).” While the monthly narrative report vary, they tend to follow a similar format. While some agencies filled the form out thoroughly, a number of sections were inconsistently left blank including the Best Practices section, the Highlights Section, and the Issues section, among others. The monthly reports also included a section for a story sheet, but these were usually missing.

In 2003, according to the documents, the NSRJP “began including narrative reports in a revised quarterly agency report format.” The quarterly agency report replaced the monthly narrative report entirely by 2004. The new format includes the same information as the monthly report, but details the information in a more comprehensive format. The new format focuses less on quantitative information and more on qualitative narratives. The documents appear to shift from focusing on producing statistics and tables to a focus on case studies and description. The monthly narrative reports and quarterly agency reports, include the following the information: monthly traffic reports, restorative justice referral accounts, restorative justice sessions/processes reports, victim preparation sessions held, community service order program information, and non-completion

analysis. Table 1.2 provides a breakdown of the descriptions of the information found within the Monthly Narrative Reports and the Quarterly Agency Reports.

**Table 1.2**

**Information contained within Monthly Reports**

<b>Type of Information</b>	<b>Description</b>
Monthly Traffic Reports	These reports began appearing in 2004 and “account for caseload traffic in the agencies.” The information includes: referral source, statistics relating to referrals received and accepted, the number of successful completions and non-completions, the number of pre-sessions, sessions and post-sessions, as well as the number of cases at the beginning and end of the month.
RJ Referral Accounts	These reports contain quantitative information regarding the type of referrals received including an offense profile. The information includes the monthly total of referred cases, as well as breakdown including the referral type.
RJ Sessions/ Processes Report	These reports contain quantitative information highlighting the type of restorative method used and the participating parties. Starting in 2004, the quantitative report was also accompanied by a qualitative section, which includes comments on “issues, challenges, strategies, and highlights of the sessions.”
Victim Preparation Sessions	These reports contain quantitative information on the types of victims, as well as a quantitative total for the sessions held. Information regarding any communication (pre and post session) with the victims is reported.
Community Service Order Program	This information is presented in a quantitative chart and includes: opening caseloads, referrals received, completion and non-completion, and month-end caseloads. Some agencies include information on Alternative Measures Programs in these reports as well.
Non-completion Analysis	The information contained in this section revolves around cases which were unable to be completed within the restorative process. Information includes: cases that were not accepted, pre-session non-completions, session non-completions, and post-session non-completions. Additionally, the referral source is also documented within the analysis.

The format of the monthly reports varies considerably from agency to agency. Between 2002 and 2003, some agencies included a second phase of the monthly report to detail information regarding meetings with justice stakeholders, community groups, or other relevant agency activities. Between 2007 and 2008, the Island Community Justice Society included an restorative justice program goals review report, which outlines an analysis of recidivism reduction, victim satisfaction, and an increase in public confidence in the justice system. In 2005, the Island Community Justice Society included a full version of their annual report, but excluded the report in subsequent years. In some cases, participant evaluations, memos, emails, and promotional material were included as part of the monthly reports. Along with differences in the material included, some agencies presented more formally than others. Some agencies presented formal, typed reports, while others submitted handwritten notes.

In addition to the information from the agencies, the documents also include information relating to the Nova Scotia Restorative Justice Program Steering Committee (2002-2004, 2007), the Restorative Justice Program Management Committee (2002-2008), information regarding the Nova Scotia Restorative Justice Program Activity Report including summaries and updates, Best Practices and Standards, and miscellaneous documents such as background notes, and information and excerpts from pilot projects. The majority of this information is documented in the form of meeting minutes and modules as part of the Best Practice Standard Learning Companion; however, some information is found within the Restorative Justice Steering Committee Coordinator Reports from 2001 and 2007.

Information about the Nova Scotia Restorative Justice Program Steering Committee includes outlining the committee's role and mandate, as well as specific individual roles and membership in the committee. The information includes meeting agendas, notes, and minutes for the meetings held within 2001-2003. The information from the meeting agendas, notes, and minutes document program strengthening, news based on the practice standards, and discussions surrounding a variety of relevant topics such as resources, service delivery protocols, projects, and the scope of services.

The documents relating to the Restorative Justice Program Management Committee contains information relating to the role and mandate, as well as meeting minutes and agendas, regional meeting summaries, protocol reviews, and Coordinator's Activity Reports. The information contained in the meeting minutes, agendas, and notes details discussions based on service delivery, feedback, news about the program, the joint working group, year-end reviews, program policies and protocols, and relevant discussions based on current issues brought up by members of the committee. The documents include in-depth information relating to the Draft of the Year End Review, which involves the breakdown of quantitative referral profiles and details the breakdown of the restorative justice cases processed by the program over the year.

The information contained within the Nova Scotia Restorative Justice Program Activity Reports, Summaries and Updates section predominantly includes documents from 2002-2003 and 2003-2004. The information in the documents varies from an overview of the NSRJP, referral profiles and breakdowns, notes relating to victims, processes presented in the program and information relating to the processes, updates on the program in terms of development and trainings, background information on the

Mi'kmaq Youth Options Program, and post findings of guilt referrals to the NSRJP. The documents in this section also outline summaries from regional meetings.

Despite the similarities in the information presented about the NSRJP Steering Committee and Management Committee, the minutes clearly reflect the different mandates of the two committees. On one hand, the meeting minutes for the NSRJP Steering Committee reflect conversations had among the members in attendance. In several places, the documents refer to discussions, ideas, collaborative recommendations, suggestions, and “think tanks.” On the other hand, while the meeting minutes for the NSRJP Management Committee reflects conversations and discussions as well, they also reflect information being presented and reported. In several places, the documents refer to information being presented or reported, providing overviews of information, and highlighting issues coupled with discussions, suggestions, ideas, and brainstorming. Ultimately, the meeting minutes for the NSRJP Management Committee appear to be more formalized and structured while the meeting minutes for the NSRJP Steering Committee appear to be structured in a way that reflect conversations and collaborative efforts, which are reported in point form.

The Best Practice Standards consist of three parts. The first part consists of a number of modules, which serves as an introduction to restorative justice in Nova Scotia. It includes an outline of basic restorative values and concepts including a module about victims of harm, as well as a module relating to the challenges within the restorative process. The first part of the Best Practice Standards also addresses diversity, gender-based harm and cultural competency. The second part of the Best Practice Standards discusses information relating to the rationale and justification behind developing and

implementing the Best Practice Standards within the NSRJP. Finally, the third part highlights the Best Practice Standard itself. The information within the documents on the Best Practice Standards includes proposed revisions to the practice standards, the Practice Standards of Conduct and Ethics, a Proposal for Development of Case Management Practice Standards, and a guide for discussion and collaboration relating to the Best Practice Standards.

The NSRJP documents include the Restorative Justice Information System Provincial Statistical Reports. These reports are generated by the database utilized by the NSRJP. These statistical reports from 2001-2008 involve traffic reports, agreements reached, offender profiles, referral sources, and victims in the cases. The information is quantitative and presented in tables and charts. Given the nature of this project, these documents were not analyzed. However, it is important to note their existence.

Finally, it is also important to document the existence of miscellaneous information scattered throughout the binders. This information relates to projects, background notes for the Foundational Discussion Day, and an overview of conversations about “the front lines.” This information involves the documentation of overviews of projects, project goals, project summaries, project outcomes/deliverables, evaluation strategies, and project work plans. Similarly to the statistical reports, this information was not analyzed given the nature of this project.

Using these documents, I conducted a qualitative content analysis to analyze the documents relating to the NSRJP. Specifically, I analyzed the presence of the principles and values associated with restorative justice and any apparent discrepancies. I also analyzed the best practice standard and the roles of the state in the NSRJP. While I used a

hybrid of the types of content analysis suggested by Heish and Shannon (2005), I mainly deployed a deductive approach. I felt that this was most appropriate because I aimed to test a hypothesis regarding the institutionalization process. Furthermore, I emphasized the directed method as this research project consisted of a number of pre-determined categories and codes. At the same time, some codes were reached inductively as part of the conventional method and therefore, this research utilized both methods.

According to Saldana, “depending on the qualitative coding method(s) you employ, the choice may have numeric conversion and transformation possibilities” (2013, p. 63). This allowed for a mixed method to be employed within this thesis and also allowed me to conduct my analysis in a deductive manner while also allowing me to develop new codes as I analyzed the documents in depth. Furthermore, this allowed me, as the researcher, to apply my own judgement in order to determine if the text that I analyzed from the administrative data follows that of the core values of restorative justice or those associated with the institutionalization process while also analyzing from a researcher-generated list of codes aimed at testing my hypothesis.

### **Coding the Data**

As noted, I coded and categorized the documents based on the language used, the patterns that emerged, and the list of pre-generated codes I developed prior to analysis. According to Saldana (2013), coding methods are not limited to a single method for a single purpose; there is a plural option that is dependent on the qualitative study. Furthermore, the majority of coding methods described by Saldana (2013) demonstrated considerable overlap and the ability to be matched with other methods easily. Therefore, this thesis utilized an analytic approach that included multiple first cycle coding methods.

Descriptive coding involves the assignment of labels to summarize the data in a short phrase or word, whereas in vivo coding utilizes words or phrases from the participants own language as the data labels (Miles, et al., 2014). For this project, the words or phrases came directly from the administrative data for the in vivo coding, whereas the descriptive codes were researcher generated or developed inductively as they appeared during the analysis of the documents. According to Miles, Huberman, and Saldana (2014), descriptive coding and in vivo coding methods can supplement further coding or may be applied to the other coding methods. Hypothesis coding involves the application of predetermined codes to assess a researcher-generated hypothesis (Miles, et al., 2014). However, instead of being developed based on previous research or investigations, the codes in hypothesis coding are developed based on a specific theory or prediction about what may be found in the data (Miles, et al., 2014). Therefore, the researcher-generated list of predetermined codes was developed based on the Foucauldian lens associated with this project coupled with codes specifically intended to test the hypothesis of this project.

During the first cycle of coding, I utilized descriptive coding and hypothesis coding in a deductive manner as I applied a Foucauldian lens to my research project. Additionally, I used minimal amounts of in-vivo coding as I took words or phrases directly from the administrative data and utilized them as my codes prior to categorizing the codes further. The aforementioned coding techniques allowed for an in-depth and multifaceted analysis of the administrative data for the NSRJP. I looked for constructs relating to the core values of restorative justice, as well as institutionalization and the relationship between the government and the NSRJP. For example: I looked for the use

of restorative terms, patterns, and language rather than those of a retributive or punitive nature associated with the formal criminal justice system. I looked for the three key principles and four values outlined in the literature in order to explore whether the core values were reflected in the NSRJP or compromised. Similarly, I looked for the goals and objectives related specifically to the NSRJP in order to determine if the program held true to its restorative roots. Additionally, I looked for patterns and constructs relating to the core values of community, victim, and offender involvement along with the contrasting involvement of the state. I looked for the ways in which power was mobilized within the NSRJP in relation to both the state power and the power of the NSRJP. During this, I also flagged instances where there was a dependence of the NSRJP on the state or government. Finally, I highlighted constructs that suggested a complex partnership between the NSRJP and the state as the existing literature notes a dichotomous relationship between the two without empirical research to provide concrete evidence backing the claim.

During the coding process, there were instances where the data was coded under two different labels. As noted, according to Saldana, this process is referred to as simultaneous coding (2013). Therefore, there were instances where a piece of data fell under multiple categories and therefore was coded accordingly.

During the second cycle of coding, additional codes were developed to allow for a greater in-depth analysis to occur. The data, including both the original codes and newly developed codes, were categorized into similar groups based on the characteristics of the data. During this cycle, data was re-coded to condense the number of codes into a more compact manner in order to conduct an in-depth analysis. According to Saldana (2013), a

researcher does not necessarily need to follow a specific second cycle coding method in order to reorganize or reanalyze the data coded during the first cycle. Instead, this is dependent on the individual research project and individual researcher. For this thesis, I chose to re-code, organize, and reanalyze the data without utilizing a formal second cycle method due to the nature of the project as second cycle methods are not necessary in all research projects.

Throughout the coding process, marginal remarks were made directly on the administrative documents in addition to a number of notes kept on a separate notepad. According to Miles and Huberman, keeping both marginal notes and field notes allows the researcher to reflect on the ideas and reactions encountered in the data, which can then later be used in the coding process (1994). This was useful for this thesis as I was able to keep a running log of important thoughts, ideas, and reactions as I worked through the coding process.

### **Limitations**

The first limitation with this research project is the limitation surrounding the ability to generalize the results of the study. As this research project provides a case study of the NSRJP, I will be unable to generalize to other restorative justice programs. Therefore, this research project may benefit from future research conducted on other restorative justice programs in Canada.

A second limitation associated with this research project involves a limitation associated with the data. This is because the data was not collected for the purpose of this research. Therefore, the data is limited to what is available to be analyzed. Furthermore, as the data came in the form of several documents, the analysis is limited to the

documents and the researcher's interpretation. Specifically, unlike with interviews or ethnographic research, documents cannot explain or elaborate on the meaning of something, but rather are left to be interpreted by the researcher.

A third limitation is closely related to the interpretation of the researcher as this project involved the analysis and coding of a single researcher as opposed to several researchers. This diminishes the reliability of the project as it is likely it cannot be reproduced due to interpretive bias; however, multiple researchers would likely be beyond the scope of a Master's thesis.

Finally, the last limitation associated with this project involves the methodological technique utilized in this research project. However, while this project would benefit from multiple methodological techniques encompassing several other data sources, this too is beyond the scope of a Master's thesis and therefore the qualitative and quantitative approach utilized in this project will produce results sufficient for a Master's level thesis.

## **CHAPTER FIVE: DESCRIPTION OF FINDINGS**

### **Introduction**

This chapter begins with a description of the NSRJP and its Best Practice Standards. I organize my discussion around six conceptual fault-lines that Gavrielides (2008) suggests “will help to reach a better understanding of the complexity of the overall problem of RJ’s ambiguity” (Gavrielides, 2008, p. 168). The fault-lines mark various points of debate about what constitutes restorative justice and how it should be done. They also reveal much about the power dynamics associated with debates about the meaning of restorative justice and how the debates played out in the NSRJP. Ultimately, they provide a way to organize my findings and lead me to answer my research questions. The chapter continues provides an exploration of each fault-line to demonstrate their impact on the implementation of the NSRJP.

The fault-lines are useful in the analysis of the NSRJP documents as they help to identify issues relating to the effects of implementation on restorative justice programs. Specifically, the fault-lines provide a useful vantage point for exploring the debates surrounding the meaning of restorative justice and how programs should be implemented, as well as the effects of implementation. Furthermore, the fault-lines are relevant because they align with the research questions posed in this thesis. Ultimately, the fault-lines provide an outline to organize my description of the data and guide the theoretical analysis that follows in the next chapter.

### **The Case: The Nova Scotia Restorative Justice Program (NSRJP)**

The Department of Justice initiated the NSRJP in 1997, making it one of the oldest restorative justice programs in Canada (Archibald & Llewellyn, 2006; Nova Scotia

Department of Justice, 2013; NSRJ-CURA, n.d.). The program developers aimed to create a system-wide restorative justice program to address shortcomings in mainstream criminal justice (Nova Scotia Department of Justice, 2013; NSRJ-CURA, n.d.). These shortcomings, according to the Nova Scotia Department of Justice, included the concern that offenders were not being held accountable for their actions and that neither victims nor communities influenced criminal justice (2013). According to the Nova Scotia Department of Justice,

reducing recidivism, increasing victim satisfaction and public confidence in the system will take enormous effort over many years. It will require rethinking, and perhaps a retooling, of not only our justice system, but of our education, health and social services

. . . A promising road toward improvement is in a way of thinking about conflict and crime that has been captured by the modern phrase ‘restorative justice’

The Nova Scotia Department of Justice identified the need for a “comprehensive, multi-disciplinary, multi-departmental, and even multi-governmental strategy to prevent crime” (2013, p. 1).

Initially implemented in four communities in 1999, the program quickly expanded across the province (Archibald & Llewellyn, 2006; NSRJ-CURA, n.d.). By 2001, eight community-based agencies across the province were doing restorative justice with young people (Archibald & Llewellyn, 2006; NSRJ-CURA, n.d.). Run by community boards, these agencies continue provide various restorative justice services throughout the province based on geographical areas. In addition to the eight communities, the Mi’kmaq Customary Law Program delivers community justice processes to any Aboriginal young person involved with restorative justice throughout the province. While these programs all operate under the NSRJP, according to the NSRJP, “each community program has an

independent sense of mission and sensibility and enjoys the support of a volunteer board of directors from their defined community.”

### ***NSRJP Goals and Operations***

The NSRJP program goals reflect the conceptual underpinnings of restorative justice theory. The NSRJP embodies: “a broadly conceived restorative theory of justice with potentially far reaching implications not only for offenders, victims and their families, but also for communities at large” (Archibald & Llewellyn, 2006). The NSRJP structure aligns with the core values, goals, and theories of restorative justice.

The NSRJP has several principles and values that underpin the delivery of restorative justice in the province. Included in those principles and values are the goals and objectives of the program. The NSRJP has four main goals: to reduce recidivism, to increase victim satisfaction, to strengthen communities, and to increase public confidence in the justice system. Four additional objectives compliment the goals: to provide a voice and an opportunity for victims and communities to participate, to repair harms caused by offences, to reintegrate offenders, and to hold offenders accountable in meaningful ways. The goals and objectives reflect those outlined in the literature surrounding restorative justice and thus suggest the program’s goals are structured towards providing an alternative to the traditional criminal justice system. However, despite this, the conceptual framework suggests that the NSRJP is not geared towards opposing the traditional criminal justice system. Instead, the NSRJP is structured to compliment the formal system.

Since its implementation, the NSRJP has aimed: “at becoming a comprehensive alternative to the mainstream punitive and/or rehabilitative criminal justice system for

both youth and adult offenders” (Archibald & Llewellyn, 2006, p. 299). During the time frame associated with my research project, the NSRJP only focused only on youth with the ultimate goal of further expansion into adult criminal justice realm as well (NSRJ-CURA, n.d.). Since then, however, the province expanded the program to include adults in 2016 (Nova Scotia Department of Justice, 2013).

With the focus on youth, during the timeframe associated with this project, the program operates through referrals that come from a variety of sources. Specifically, the NSRJP operates on a four point entry system: police entry point, crown entry point, court entry point, and corrections entry point. The police referral can occur only prior to a charge, while the crown referral can occur from post-charge until pre-conviction (Nova Scotia Department of Justice, 2013). The court referral then can occur from post-conviction to pre-sentence, while the corrections referral can only occur post-sentence (Nova Scotia Department of Justice, 2013).

The offence level dictates the referral point for each case. Offences are classified based on seriousness and categorized within four levels (Nova Scotia Department of Justice, 1998). Level four offences are the most serious and include offences such as murder (Archibald & Llewellyn, 2006). These offences are only referable at the corrections entry point after sentencing has occurred (Nova Scotia Department of Justice, 1998). Level three offences include the following: fraud and theft over \$20 000, aggravated assault, kidnapping and like offences, criminal negligence/dangerous driving causing death, manslaughter, spousal/partner violence cases, criminal harassment, and impaired driving offences (Archibald & Llewellyn, 2006). These offences can be referred at both the court and the corrections entry points (Nova Scotia Department of Justice,

1998). Based on the ineligibility to be referred prior to the court or corrections entry point, level three and four offences do not qualify for diversion from the formal trial. In contrast, level two offences can be referred at all four entry points and contains all offences not reserved for levels three or four (Nova Scotia Department of Justice, 1998). Lastly, level one comprises all offences eligible for a formal pre-charge caution by police Nova Scotia Department of Justice, 1998). This includes mischief, minor property offences, and minor assaults with no bodily injury (Archibald & Llewellyn, 2006).

To be referred to the youth NSRJP, a case must meet several mandatory minimum statutory conditions. According to the program documents surrounding eligibility, a young person must accept responsibility for the act that was committed and must freely and fully consent to participation in the process. Lastly, as part of the mandatory minimum statutory conditions, “there must be ‘sufficient evidence to proceed with the prosecution of the offence’; and the prosecution must not be ‘in any way barred at law’” (Archibald & Llewellyn, 2006, p. 313). Ultimately, the conditions establish that the process is entirely voluntary and prohibits the process from occurring if the offender does not accept responsibility for their actions.

According to the NSRJP, in addition to the mandatory minimum statutory conditions, a number of discretionary factors guide the referral process. Archibald & Llewellyn suggest that these factors

include, but are not limited to: the cooperation of the offender, the willingness of the victim to participate in the process; the community desire/need for restorative process; the motive behind the offence; the seriousness of the offence and the degree of the offender’s involvement in it; any previous relationship between victim and offender; the offender’s apparent ability to learn from the process and follow through on an agreement the significance of a potential agreement to the victim the nature of the harm done to the victim; whether the offender has previously been referred to a similar program; possible conflict with other

government or prosecutorial policies; and other exceptional factors which the decision maker may deem appropriate. (Archibald & Llewellyn, 2006, p. 314).

These discretionary factors are outlined in the Restorative Justice Protocol as part of a Restorative Justice Checklist in order to serve as a reminder for restorative justice to be used whenever possible.<sup>3</sup> Since the timeframe associated with this project, there has been work completed to update these discretionary factors; however, these remain relevant to this research project as they were relevant to the timeframe this project covers.

The Restorative Justice Checklist allows the referral sources within the NSRJP to assess whether a referral should be made to restorative justice. According to the NSRJP, the checklist outlines the relevant factors and enables the referral source to decide whether or not a referral should be made. Additionally, the checklist prompts the referral source to explain the rationale behind why a referral did not occur if the referral source decides not to pursue restorative justice as an option. According to the NSRJP, this helps ensure that referrals to restorative justice are made as often as possible.

The NSRJP handles an average of 1600 cases across the province annually<sup>4</sup>. A large majority, 70%, of those cases are referred by police as the young person enters the system. Out of the remaining cases processed, 27% are referred by the crown prosecutors prior to the young person participating in a trial. Both of these referrals typically ensure the young person is held accountable in meaningful ways through restorative justice and frequently result in no criminal record. The remaining 4% of referred cases come from the courts and corrections. Llewellyn (2009) suggests that the low number of cases from courts and corrections is due to unfamiliarity with restorative justice and the program;

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<sup>3</sup> The Restorative Justice Checklist can be found attached to the “RJ Protocol.” For more information, visit <https://novascotia.ca/just/rj/documents/Restorative%20Justice%20Protocol%20Eng%20Web.pdf>

<sup>4</sup> Restorative Justice Information System data as analyzed by D. Crocker

however, the number of referrals from the courts and corrections has been steadily increasing over the years.

In terms of practices, the NSRJP does not restrict itself to victim-offender mediation. The restorative agencies within the NSRJP offer a range of services and session types to the young person, the young person's family, the victims of crime, the families of the victims, and the communities. The sessions offered by the NSRJP include victim-offender/group/family conferences, circle processes, sentencing circles, media exchanges, Mik'maq Community Justice, RCMP community forums, reintegration conferences, and individual and group accountability conferences for victimless crimes.

Between 2003 and 2010, the family/group conference sessions accounted for the majority, 52%, of the cases processed by the NSRJP. Accountability sessions accounted for the second highest number of sessions, 26%, while group accountability sessions accounted for 11% of the total cases processed. Victim-offender conferences accounted for only 8%.<sup>5</sup>

### ***NSRJP Partnership***

According to the documents I analyzed for the timeframe associated with this project,

the early days of the Restorative Justice Program were marked by an intense period of collaboration between the Department of Justice Steering Committee, criminal justice stakeholders such as the police, crown and correctional officials and community members and agencies throughout the province delivering the Alternative Measures program. The strongest recommendation that emerged from the initial stakeholder symposium that was held in September of 1997 was that the government should adopt the role of a "facilitator" in any future provincial restorative justice program and that individual communities should be empowered to shape their own vision of restorative justice within the context of government support and leadership.

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<sup>5</sup> Restorative Justice Information System data as analyzed by D. Crocker

From the outset, therefore, the NSRJP operated as a partnership between the state and several community based agencies (Archibald & Llewellyn, 2006). Having said that, the state initiated the development of the program and remained at the forefront its implementation (Archibald & Llewellyn, 2006). Archibald and Llewellyn suggest that,

although there was a desire to enhance community empowerment, rhetoric about the state having ‘stolen the conflict’ from the victim and the offender had little purchase. Thus, the common conceptual triad at the basis of much restorative justice literature which posits a relationship between offender, victim and community (which is typically narrowly conceived), is an inadequate conceptual schema for restorative justice in Nova Scotia insofar as it excludes a formal acknowledgement of the role of the state. (Archibald & Llewellyn, 2006 p. 303).

The NSRJP operates with the funding provided by the state while partnering with the community to achieve community goals and provide a holistic approach to restorative justice for the province of Nova Scotia (Llewellyn, 2009). The NSRJP outlines that “the Department of Justice has maintained the full time position of Restorative Justice Coordinator at the provincial level to support the work of the program through training, skill development and policy initiatives.” However, at the same time, the documents also outline how “each community has an independent sense of mission and sensibility” and “shape[s] their own vision of restorative justice within the context of government support and leadership.” This allows the community-based agencies to execute restorative justice in their respective communities while addressing individual needs rather than merely being controlled by the criminal justice system.

Two committees that comprise the Nova Scotia Restorative Justice Program demonstrate the partnership: the Nova Scotia Restorative Justice Steering Committee and the Restorative Justice Program Management Committee. The Steering Committee is

accountable to the Minister of Justice while comprising the “program management structure.” The NSRJP Steering Committee document from 2002 suggests that the:

this committee is comprised of members of senior management as well as agency representatives. Its task is to guide the broad direction for the Program, and it will meet twice annually to review and provide planning leadership for the Program.

According to the document, revised in 2002, the committee is also responsible for providing “guidance to government regarding the optimum allocation of resources for the Program” and ensuring “the institutionalization of the Program.” The Restorative Justice Management Committee is:

the operational management body overseeing the detail of the program strengthening/institutionalizing. [It is] comprised of representatives from the key referral entry points and the community, its focus will be collaborative program solving and program amelioration.

The documents outline the role of this committee as “developing strategic and business plans to strengthen program” and guiding in program development. Therefore, the two committees work strategically to ensure the institutionalization of the program and that it maintains accountability to the Minister of Justice and, while also ensuring that all parties are represented and have an influence on the operational management of the program. Based on the presence, structure, and function, the committees suggests a collaborative working relationship between the state, the referral sources, the restorative justice agencies, and the community.

### **Best Practice Standards**

The collaborative working relationship between the parties involved in the NSRJP is further exemplified through the creation of the Best Practice Standards as the Standards themselves encourage the community agencies to create policies and training curriculums

based on the protocols outlined by the state. According to the documents, the Standards are:

a statement of the minimum requirements and best practices for restorative justice workers in Nova Scotia. The Best Practice Standard is also a statement of the Community Agencies' responsibility for the recruitment, training, supervision and support of the restorative justice worker and the community.

The Best Practice Standard involves two parts: the worker standards and the community agency standards. The two parts outline:

the qualities of a restorative justice worker who is well prepared for the challenges of restorative justice case management and facilitation. . . [and] the specific administrative responsibilities of community agencies overseeing the provision of restorative justice programming in their communities.

The documents outline how the Best Practice Standard is an attempt to meet the needs of each of the community justice agencies in the province. The Best Practice Standards, therefore, provide standards and state recommendations for the responsibilities of community agencies and individual restorative justice workers.

According to the documents, the Best Practice Standards not only ensure the goals and objectives of the NSRJP are met, but also ensure that each community agency adheres to the same standards while meeting the unique needs of each client and community. The community agencies are "encouraged to use the Best Practice Standard. . . in the creation of in-house case management policies and training curriculums." Based on this, the individual restorative justice agencies within the NSRJP are afforded the opportunity to create their own policies and training curriculums; however, these are based on the Best Practice Standard, which are based on the policies dictated by the state via seven distinct protocols outlined by the state. Therefore, the state is afforded the overarching ability to control the NSRJP as a whole, but the restorative agencies

implement restorative justice on the ground and control the restorative justice processes almost entirely.

The documents outline “the delicate balancing act that is required in order to negotiate between conventional criminal justice thinking and restorative processes in the mainstream.” In order to do this, according to the documents, the needs of those involved must be met including the young person, the victim, and the community. The Best Practice Standards detail the importance of a standard as,

without a standard of practice and guidelines for service delivery the challenge for the restorative justice service provider becomes the impossible task of safeguarding the rights and needs of clients on an individual and case by case basis.

The Best Practice Standards, therefore, provide that safeguard for both victims and offenders in terms of the acceptance of responsibility, the assurance that re-victimization will not occur, and increasing satisfaction for the offender, victim, and community alike.

The documents also highlight the difference between the NSRJP Program Protocols and the Best Practice Standard. According to the documents,

provincial protocols set the code for the official dealings with the Nova Scotia Restorative Justice program and the Best Practice Standard defines the usual case management and administrative actions for use within the scope of the code. More simply, the protocols are the language and the Best Practice Standard determines the way that the language is spoken. In this way, the Best Practice Standard animates the goals and objectives of the Nova Scotia Restorative Justice program within the operations of a community agency.

From my understanding, the state developed the protocols, which creates the structure or the “language” for the Best Practice Standards or for which the Best Practice Standards determine how to speak the given language; however, it is the collaboration between the state and the NSRJP that creates the Best Practice Standards.

The information presented in this section demonstrates that the state has played an important role in the NSRJP. For this reason, the NSRJP cannot be defined as a purely communitarian program on Woolford's continuum (2009). Additionally, due to the partnership and collaborative working relationship between the state, several communities, and the referral sources, the NSRJP cannot be defined as a purely governmentalist program on the continuum either. Instead, the NSRJP rests more towards the centre of the continuum.

### **Restorative Justice: A New Paradigm or a Complimentary Model?**

Gavrielides argues that the first fault-lines surround determining the relationship between that restorative justice and the formal criminal justice system (2008). On one hand, one of the fault-lines suggests that restorative justice is a completely independent justice paradigm and should thus replace the current criminal justice paradigm (Gavrielides, 2008). On the other hand, another fault-line posits that restorative justice can exist and succeed only with support from the mainstream criminal justice paradigm (Gavrielides, 2008). The tension between these fault lines leads us to questions about whether restorative justice is distinct paradigm or a complimentary model.

The tension between these fault lines is exemplified by the differences between how Zehr (1990) and Braithwaite (1999; 2003) present the relationship between restorative justice and the criminal justice system. Zehr (1990) views restorative justice as a fully distinct justice paradigm. Braithwaite argues that the values and practices of restorative justice should be integrated into the current criminal justice system (1999; 2003).

The administrative documents produced by the NSRJP, demonstrate how the NSRJP has not produced a paradigm shift, nor did the program aspire to do so. The motives for the program, the goals and objectives of the NSRJP, and the Best Practice Standards, support this conclusion. The NSRJP has adopted a pragmatic approach to restorative justice that aligns with Braithwaite's approach (1996; 1999; 2003).

The motives associated with the NSRJP reflect addressing the shortcomings of the current criminal justice system in a way that changes the way crime is viewed and addressed, but not in a way that offers a paradigm shift away from the current criminal justice system. For example, the documents outline that once a referral is accepted, the restorative agencies are able to educate youth in meaningful ways that cannot occur within the formal criminal justice system. In a Referral and Case Processing Analysis section of a Quarterly Agency Report in 2006, a motor vehicle referral case was highlighted due to the power of restorative justice to facilitate learning experiences in meaningful ways. Specifically, "the sentencing judge commented that the goal of making the [restorative justice] referral was to educate the youth and facilitate the goals of sentencing in a way the Court was unable to come up with on its own." The documents outline the ability of restorative justice to impose conditions and handle cases in ways that would not be possible within the formal criminal justice system such as education, anger management, addictions services, and letters of apology rather than simply incarceration, probation, or another form of extrajudicial sanctions such as the education surrounding motor vehicles and the impact of motor vehicle accidents.

The goals and objectives of the program also reveal how the NSRJP does not aim to create a paradigm shift. According to the documents, the goals of the NSRJP are "to

reduce recidivism; increase victim satisfaction; strengthen communities; and increase public confidence in the justice system.” According to the documents, the objectives serve as ways of achieving the program goals. The documents outline the objectives as “to achieve a sense of healing for the victim and community; repair the harm caused by the offence; reintegrate the offender; and hold the offender accountable in more meaningful ways.” While the NSRJP embraces the notion of empowerment for the harm to be addressed in a manner that is not possible in the current criminal justice system, the goals and objectives of the program reflect similar goals and objectives of the current criminal justice system. For example, the goal of reducing recidivism mirror an important goal held by the current criminal justice system. Additionally, the current criminal justice system and the NSRJP hold similar objectives relating to reintegration. Interestingly enough, the NSRJP holds a goal of increasing public confidence in the criminal justice system, which supports the current criminal justice system rather than carrying out a goal that supports a different paradigm. Although some of the goals suggest a desire to shift away from the formal criminal justice system, the similarities in other goals reinforce the idea that the NSRJP adopts a pragmatic approach to restorative justice. Again, this demonstrates how the NSRJP does not attempt to replace the current criminal justice paradigm, but rather emphasizes other goals and objectives in an attempt to address the current system’s shortcomings without promoting a wholesale paradigm shift.

In addition to the motives, goals, and objectives, the Best Practice Standards of the NSRJP serve as evidence for the pragmatic approach to restorative justice demonstrating the lack of a paradigm shift. According to the documents, the creation of the Best Practice Standards allows for a “broadened focus on file management” which

contributes “to greater program goals and ‘transform[s] the way in which public safety, sanctioning, rehabilitation, and victim healing goals are addressed.’” Although the Best Practice Standards stress the importance of viewing restorative justice sessions as processes rather than isolated events with a relational approach to resolving conflict, the Best Practice Standards do not provide evidence to suggest that a paradigm shift exists. Instead, the documents demonstrate the importance of adhering to the program goals and objectives, including those shared by the formal criminal justice system, while providing a voice to the victim, empowering individuals and communities, and addressing the harms caused in meaningful and flexible ways which the formal criminal justice system is unable to provide. Again, the motives of the Best Practice Standards, involving several elements found within the formal criminal justice system, despite the argument suggesting a paradigm shift occurs, and instead demonstrate the NSRJP’s pragmatic approach to restorative justice in attempt to tweak the current system by addressing its perceived shortcomings.

Although the NSRJP does not result in producing a paradigm shift, the documents suggest a gray area where evidence for a paradigm shift could be supported. For example, according to the documents, restorative justice under the NSRJP

is a way of viewing justice that puts the emphasis on healing relationships that have been broken by conflict and crime. In this approach crime is understood as a violation of people and relationships and a disruption of the peace of community, and not only as an offence against the state.

Although this alludes to a paradigm shift given the emphasis on viewing crime in an alternative way, the motives of the program involve addressing the shortcomings of the current criminal justice system rather than replacing the program entirely. According to the documents, these shortcomings include:

allow[ing] the offender to take responsibility for the harmful behaviour caused in a meaningful way, to gain insight into the causes and effects of that behaviour on others, [and] to change and to be reintegrated into the community.

Additionally, the documents suggest that the NSRJP allows the victim a “greater role than is available within the traditional justice system.” The NSRJP “allows the victim to ask questions, receive answers, gain understanding and explain the impact of the crime on them.” Lastly, according to the documents, the NSRJP

enables the community to reinforce its values and expectations, to understand the underlying causes of crime and to determine what can be done to repair the damage caused and thus promote community well-being and prevent future crime.

The documents suggest that the current criminal justice system cannot address these concerns. The program, therefore, does not aim to replace the current criminal justice paradigm, but rather to address the shortcomings of the current system by encouraging “the participation of victims, offenders and the community affected by the crime in finding solutions that seek to achieve reconciliation and restore harmony” as the program continues to be rooted within the criminal justice system.

Ultimately, the motives, goals, objectives, and Best Practice Standards of the NSRJP demonstrate that the NSRJP was not designed to produce a paradigm shift as there were only faint examples of talk suggesting a shift. Instead, the NSRJP embraces some of the philosophies, practices, goals and objectives that the current criminal justice system has to offer while supplementing its own philosophies, practices, goals and objectives in order to address the perceived shortcomings of the current system that the program identifies. The NSRJP focuses less on punishment and viewing crime as an isolated act against the state and more on the harm caused by the offence and how that

harm can be addressed via the restorative process in order to achieve a sense of healing for the involved parties including the offender, victim, and community.

### **A Place for RJ Practices: Within or Outside the Criminal Justice System**

Another fault-line, suggested by Gavrielides, concerns questions about whether restorative justice should be integrated into the formal criminal justice system or operate outside of it (Gavrielides, 2008). Some in the field suggest that restorative justice should be an entirely different system operating outside of the criminal justice system and provide a true alternative to the formal criminal justice system (Davis, 1992; Gavrielides, 2008). Others argue that restorative justice should be offered as a true alternative to the formal criminal justice system while being accommodated through the existing system (Gavrielides, 2008).

The NSRJP appears to exist in both realms, albeit primarily within the formal criminal justice system. The NSRJP is not a true alternative to the formal criminal justice system; instead, the NSRJP operates as a complimentary process within the formal criminal justice system. The NSRJP has a high level of dependence on and integration within the formal criminal justice system, but the program also has a level of independence as the program is delivered by community agencies. On one hand, the NSRJP operates only within the criminal justice system as the program only deals with criminal cases and the referrals come from the police, crown, courts, or corrections. On the other hand, the community-based agencies operate outside of the criminal justice system and are afforded considerable freedom in their delivery of the program.

The largest piece of evidence about the relationship between the NSRJP and the criminal justice system lie in the legislation governing the program. With the shift from

the Young Offenders Act (YOA) to the Youth Criminal Justice Act (YCJA), the program experienced a number of changes, which created confusion for the referral sources and the restorative justice agencies within the program as the referral sources and restorative justice agencies were no longer able to determine where the program sat in regards to extrajudicial measures or extrajudicial sanctions.

In the early days of the YCJA, the data revealed a confusion surrounding the role of restorative justice in the new Act. On a number of occasions, both the police and the crown were under the impression that cases, which would have previously been referred to restorative justice, now required referral to extra judicial measures through the court system or simply resulted in a warning to the youth instead of a referral. For example: in a Monthly Report from 2003, the documents outline how the:

referral numbers have dropped following the inception of the YCJA. A recent conversation with a Police Officer has led us to believe that Officers are utilizing the Take No Action level of discretion the majority of the time rather than the options for more minor offences.

This example demonstrates the difficulty associated with determining whether the NSRJP sits within or outside of the formal criminal justice system. While the NSRJP is an option under the legislation, police officers are not required to refer cases to restorative justice, but can opt to pursue other options under the YCJA. The documents highlight how the option to pursue various avenues under the YCJA has led to a lack of referrals to the NSRJP as officers “are not certain of how. . . [the NSRJP] works compared to their. . . [own restorative justice program]. . . there is still confusion or the officers don’t know about the RJ program.”

The examples illustrate the level of implementation the NSRJP has with the formal criminal justice system as the program receives all of its referrals via involvement

with the criminal justice system. A referral, therefore, can only be sent to the NSRJP once a youth has involvement with the criminal justice system.

Furthermore, if a youth does not complete their restorative agreement or the restorative process does not proceed successfully, the young person will be referred back to the formal criminal justice system. These examples demonstrate that the NSRJP is deeply embedded in the criminal justice system.

In addition to the legislation, the documents provide evidence to suggest that NSRJP is partially integrated into the criminal justice system based on the responsibility afforded to the state, referral sources, and restorative agencies. Beginning in 2001, the documents highlight a pre-existing relationship between the state, the restorative justice agencies, and the referral sources within the NSRJP. At several points, the documents touch upon a “collaborative working relationship” between the state and the restorative agencies, as well as the referring sources (crown, police, courts, corrections). The working partnership also includes the community. The documents outline the partnership in a number of ways including: stating the involvement of members of the state, the referring sources, and the restorative justice agencies in the restorative process; documenting meetings between members of the state, the referral sources, and the restorative agencies; or educational seminars provided by the restorative justice agencies for the state and the referral sources; or the discussing of the restorative process between the three parties; or finally, documenting ways in which members of the state and the restorative agencies or the restorative agencies and the referral sources work together and compromise to ensure a successful restorative justice session.

Along the same lines, the documents demonstrate the complexity of the relationship by highlighting the responsibilities, such as service delivery and maintaining the program, that are held by both the state and the restorative agencies within the NSRJP. Throughout the documents, several examples of the responsibilities being held by both the state and the restorative agencies exist. The responsibilities of the NSRJP are afforded to both parties in a manner that embraces the notion of the “collaborative working relationship” outlined within the documents rather than the dichotomous and static relationship suggested by the existing literature.

The referral sources, on one hand, do not act as a vehicle for the state. Instead, the referral sources act independently of the state and merely provide the actual referral to the restorative justice agencies. According to the documents, these referrals came come: “pre-charge, post charge, post conviction, [or] post sentence.” The documents outline how referrals for the program, are “accepted from every level of the criminal process, the police, crown, court and corrections.”

The referral sources maintain a level of responsibility for referring the specific cases to restorative justice; however, the referral sources are also afforded the responsibility of working collaboratively with the state and the restorative agencies to ensure the delivery of restorative justice in the NSRJP. This responsibility is highlighted throughout the documents, but prominently occurs via requesting certain mandatory conditions be included in the restorative agreements for a variety of reasons. For example: from a Best Practices Report section of a Quarterly Agency Report, the investigating officer felt that additional conditions should be imposed as part of the

restorative agreement as the officer had concerns relating to the agreement not being suffice for the youth to make meaningful life changes.

While imposing conditions was a rarity within the documents, there were a number of cases which outlined specific requests from the Crown for inclusion in restorative agreements. For example: the following example was quoted from a Quarterly Agency Report included in the NSRJP documents for a case regarding an underage drinking offence:

the investigating officer was not satisfied with an agreement to write an essay, keep a journal, and do community service. The officer was not convinced that these terms really addressed her concerns about this youth. As a result, it was decided that the officer would call a conference under the YCJA to have input from Addictions Services, Family and Children's Services, Mental Health and the Teen Health Centre Nurse from the local high school and as part of the RJ agreement, the youth agreed to attend and participate in the conference when it was scheduled.

While this example speaks to the NSRJP's level of embeddedness in the formal criminal justice system, in other cases the Crown, for the most part, simply provided recommendations as part of the collaborative effort to tailor an agreement to each individual case. Nevertheless, this suggests a high level of integration with the criminal justice system due to the ability to request recommendations.

Although the Crown may only make recommendations during the agreements, the restorative agencies within the NSRJP rely on the state in terms of legislation, funding, finding adequate spaces for the various offices, the database that the NSRJP uses, and resources outside the parameters of restorative justice due to being institutionalized. As demonstrated in the documents, the state dictates the level of funding afforded to restorative justice, the ability to develop policies and procedures, and control over the resources available to restorative justice. According to the documents, this is a result of

“the Department of Justice. . . [having] maintained the full time position of Restorative Justice Coordinator at the provincial level.” This position allows for the Department of Justice “to support the work of the programs through training, skill development and policy initiatives.” These examples provide evidence to suggest that the NSRJP relies on the state for a number of crucial aspects required for the implementation of the program and thus suggest a high level of integration with the criminal justice system.

Within the NSRJP, the state holds the responsibility of controlling funding and resources. In a number of locations within the documents, the issue of funding is mentioned. The Department of Justice provides the budget to the NSRJP and, according to the documents, the budget is specific for how the funding should be allocated. For example, the budget is broken down into categories for rent, salaries, resources, and expenses. While the restorative agencies within the NSRJP are able to seek funding from other sources, as well as provide proposals for increased funding, the state ultimately controls the amount of funding allocated to the NSRJP yearly from the Department of Justice budget. This suggests that the NSRJP is not wholly integrated as the program is able to secure outside funding not related to the allocated funding by the Department of Justice, however, there is a level of integration as the program is ultimately dependent on the funding from the state.

Finally, the documents also outline several examples suggesting that the restorative justice agencies themselves maintain responsibility for the delivery of the program. According to the documents, this mainly involves the responsibility for facilitating the restorative process, advocating for funding and resources, education, and the ability to extend beyond the constraints of the formal criminal justice system. Most

importantly, the agencies demonstrate considerable amounts of responsibility in the documents based on the high level of involvement in the creation of the Best Practice Standards. While the state was responsible for developing the Best Practice Standards via the program protocols, the restorative agencies were highly involved in the creation by participating and making several recommendations for the Best Practice Standards. While the state may be responsible for running the program due to the institutionalization, the documents suggest that the restorative agencies within the NSRJP are responsible for putting restorative justice into practice. Again, these examples demonstrate the responsibility of the restorative agencies within the program suggesting the complexity to the relationship between the agencies and the state within the NSRJP as well as support for the argument that the NSRJP is integrated into the formal criminal justice system, but may not be fully integrated.

While each party may maintain different responsibilities, the three parties contribute to the overall workings of the NSRJP. The parties are able to maintain the “collaborative working relationship” outlined within the documents. This working relationship involves the involvement of members from both parties in agency meetings, education seminars, sharing of information, and the help of both parties when requested by the other for various reasons. An example of the restorative agencies requesting the help of the referral sources involves the willingness of the police to track down the youth when the restorative agencies are unable to make contact with them. Additionally, this working relationship involves both the acceptance of sentencing recommendations when elicited from the restorative agencies by the courts, and the compromise to add to restorative agreements if members of the referral sources involved in the restorative

process are not satisfied with the proposed restorative agreement. An example of the sentencing recommendations comes directly from a Best Practices Report in 2006 and involves a case referred to restorative justice for an educational forum despite the youth not taking responsibility for their actions. After the educational forum, the judge elicited sentencing recommendations from the restorative agency based on the result of the forum. According to the documents, the participants of the forum came up with a proposed sentence plan that involved community service, essays, apologies, and a presentation to an elementary school class. Although not a typical sentence for a case in the formal criminal justice system, the judge imposed the sentencing recommendations and sentenced each involved youth the same way. These examples provide evidence to support the collaborative working relationship between the referral source and the restorative agency, which results in meaningful consequences for the involved parties but also supports the cloudiness surrounding whether the program operates within or outside of the formal criminal justice system.

Ultimately, according to Gavrielides (2008), this fault-line concerns whether restorative justice practices have a place within or outside of the formal criminal justice system. In the case of the NSRJP, the program appears to operate within the formal criminal justice system. While there may have been some confusion regarding its place early on, the NSRJP facilitates restorative justice for the YCJA and cannot implement restorative justice without the referral from the formal criminal justice system. While the restorative justice agencies within the program are afforded some autonomy in regards to the implementation of restorative justice, the NSRJP cannot be independent of the formal criminal justice system due to the legislation governing the program. Ultimately, then, the

NSRJP operates within the formal criminal justice system with an emphasis on the partnership between the state, referral sources, restorative justice agencies, and the community which allows the restorative justice agencies to deliver the program with some degree of autonomy.

### **A Definition for RJ: Outcome or Process Based**

According to Gavrielides, the third fault-line “concerns the approaches that have been adopted by the different individuals and research centers while trying to formulate a definition for RJ” (Gavrielides, 2008, P. 172). The two sides to these approaches include: the side with those who take the view that the definition for restorative justice should remain open-ended, and those that take the view that restorative justice is best viewed as decision making (Dignan, 2002; Gavrielides, 2008). The first group adopts a process-based definition to restorative justice, while the second tends to adopt an outcome-based approach.

Given these concepts and the information presented in the documents, the NSRJP adopts a process-based definition. Evidence for this claim can be found within the NSRJP documents in several places. The documents demonstrate the process-based definition via the emphasis on collecting all involved parties to participate in the restorative justice session, the lack of emphasis on the outcome of the restorative agreement, and how the NSRJP measures success. Ultimately, the documents provide the necessary evidence to support the claim that the NSRJP adopts a process-based definition rather than the outcome-based definition.

Within the documents, information regarding who to include in restorative sessions, the efforts to reach out to the involved parties, and the participation between the

parties before, during, and after the restorative sessions provide evidence to support the process-based definition claim. For example, in a case involving a young person who had stolen numerous items while babysitting the victims' children, the documents outline the extensive preparation required given the level of fear and "amount of anger" experienced by the victims, as well as the hesitation by the young person to provide reasons and/or feelings regarding the incident. The documents further highlight how the facilitator worked with each party and allowed each party to tell their "side of the story" and work through the incident. The documents outline how "the proceeding was lengthy as it was challenging to foster movement from positions previously assumed by everyone." However, in the end, the process was complete and an agreement was reached.

Although the documents include the restorative agreement terms in the case summaries and other examples, the emphasis on the restorative process greatly outweighs that of the restorative agreement. For example, in the above Case Summary involving the theft, the documents devote nearly three pages to information pertaining to the preparation and restorative session, while there is merely two lines devoted to the agreement at the bottom of the Case Summary. Similar trends occur throughout the documents further suggesting the process-based approach to restorative justice rather than an outcome-based approach.

The way in which the NSRJP measures success serves as another form of evidence supporting the process-based approach rather than the outcome-based approach. Within the documents, positive restorative sessions or processes suggest success rather than the restorative agreements themselves. For example, in a Monthly Report from 2004, in the section devoted to highlights, the documents suggest success as "the forum

was a positive experience for [the youth] since she was able to talk openly with her sister about her actions and how she felt she had disappointed her sister.” In a second example, involving uttering threats, within the same monthly report, a success is highlighted as “the victim and the offender had discussed the incident. . . and now they get along well and have put the incident behind them.” Rather than emphasizing success based on restorative agreements or the outcomes of restorative sessions, the documents suggest success is based on the interaction between the victims, youth, and other involved parties while repairing the harm caused by the youth’s actions.

Ultimately, due to the emphasis on the process of the restorative sessions, the interactions between the involved parties, the process of repairing the harm caused, and the ways in which the NSRJP measures success, the evidence supporting the process-based definition greatly outweighs the evidence supporting the outcome-based definition. Therefore, the NSRJP adopts a process-based definition, whereby the terms of the restorative agreement do not hold as much value as the restorative process itself.

### **Stakeholders in RJ: How Big Should the Circle Be?**

The next fault-line concerns the number of stakeholders in the restorative process and whether the process should be limited to those most affected by the offence or whether it should include anyone who is concerned about the offence (Gavrielides, 2008).

According to Gavrielides,

the impact of this dichotomy has been considerable on RJ’s implementation. Adherents to the first group usually accept Victim-Offender Mediation as the truly restorative practice, because it is the only programme that does not extend participants to anyone beyond the direct victim and offender. Conversely, supporters of the second view argue that only Family Group Conferencing and the various types of RJ circles and boards are genuinely restorative schemes, because they include the wider ‘community of interest’ (2008, p. 173).

The tension between the practitioners favouring mediation and those who favour conferencing has become increasingly serious. The tension has led to an impact on the implementation of restorative justice as only involving those involved in the offence “more or less collapses the distinction between crimes and civil wrongs” (Gavrielides, 2008, p. 174). Conversely, the risks associated with conferencing involve the “risk that the process and values of RJ might be invoked to provide a cover-up not only for ‘illiberal populism’, but also for vigilantism and ‘community depotism’ (Gavrielides, 2008, p. 174; Dignan, 2002).

Upon analyzing the documents, the NSRJP embraces a broad circle of key stakeholders when it comes to the restorative process. According to Gavrielides, this includes,

all those who are concerned about the offence; hence the victim and the offender, all those who care about the parties’ well-being (family and friends), all those who are concerned about the execution of the agreed sentence (prosecutors, judges, police) and finally all those who may be able to make a contribution towards a solution to the problem caused by the offence and are not related to the parties (victim support, community workers and counsellors).

In some cases, the number of key stakeholders is noticeably smaller due to the offence lacking a victim or the victim refusing to participate. Similarly, other restorative processes are used when they are more relevant to the offence.

The broad circle of key stakeholders present within the NSRJP is highlighted throughout the NSRJP documents. For example, in a Case Summary from 2006, a youth was charged with property damaged and referred by the Halifax Regional Police Force. In this case, a victim/offender mediation occurred, but it involved “2 facilitators, youth, mother/victim, community representative, [and] 2 observers for training.” This example provides evidence to support that not only are the victim and youth involved, but also that

community members should be involved in the process, thus widening the circle of key stakeholders. In another example involving a youth calling in a bomb threat to his school, an Accountability session was held and included the “youth, youth support, investigating officer, [and] 2 facilitators.” This example demonstrates the inclusion of the investigating officer and suggests that the circle of key stakeholders for the NSRJP is broad enough to include the police as well. In a third example from a Case Summary from 2006, the participants present in the session were “youth, youth support, victim, victim support 1, victim support 2, community representative, investigating officer, case worker, [and] 2 facilitators.” In this example, the documents provide evidence to suggest that the circle of key stakeholders in the NSRJP can be widened to include all of those invested in the offence. These examples support the claim for a large circle of stakeholders in the restorative process as opposed to limiting the circle to those directly involved in the incident.

Another piece of evidence to support the broad circle of key stakeholders involves the type of sessions the NSRJP uses. Family/group conference sessions accounted for the majority, 52%, of the cases processed by the NSRJP between 2003 and 2010. Accountability sessions accounted for the second highest number of sessions, 26%, while group accountability sessions accounted for 11% of the total cases processed. Victim-offender conferences accounted for only 8%.<sup>6</sup> Based on these numbers, it is evident that the NSRJP adopts a broad circle of key stakeholders as the majority of cases processed by the NSRJP involve multiple participants within the conferences.

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<sup>6</sup> Restorative Justice Information System data as analyzed by D. Crocker

The three examples and the session statistics provided from the documents in this section provide evidence to suggest that the number of key stakeholders can vary within the NSRJP depending on the circumstances, the individual offence, the particulars of each case, and what is the most appropriate given the type of restorative session. The examples provided are merely three different examples from the documents; however, the documents are filled with similar examples providing evidence for the claim that the NSRJP operates under the belief that all of those concerned about the offence should be included to contribute to the solution. Therefore, that the number of stakeholders in the restorative process under the NSRJP may vary from case to case, but ultimately includes as many stakeholders as possible or as necessary to ensure that the most meaningful experience occurs in addressing the harm caused for all of those affected by the incident as well as the corresponding community.

### **RJ: An Alternative Punishment or Alternative to Punishment?**

According to Gavrielides, this “fault-line relates to RJ’s measures and outcomes, and their relationship with the concept of punishment” (2008, p. 174). This fault-line concerns whether a punitive element exists within restorative justice. Some scholars argue that restorative justice is fundamentally punitive and serves as an alternative form of punishment in comparison to that of the formal criminal justice system (Duff 1992; Daly, 2000). Other scholars deny that restorative justice can be linked to punitive measures entirely (Wright, 1996). Ultimately, Gavrielides (2008), proposes that this fault line concerns whether restorative justice remains an alternative form of punishment or whether it can be an alternative to the concept of punishment thereby suggesting that this

fault-line results in restorative justice programs grappling with the concept of punishment in one way or the other.

The question of whether the NSRJP can be considered an alternative punishment or alternative to punishment remains undiscussed within the documents and therefore cannot be answered. In fact, the documents do not appear to address this fault line at all and therefore spend no time discussing the concept of punishment in regards to the program itself.

The lack of grappling with the concept of punishment or addressing the fault-line could be a result of a number of factors. First, it could be a result of the time frame covered by the documents for this particular research project. It can be speculated that the NSRJP may have grappled with this fault line as the program matured beyond 2008, which becomes a limitation of this research project given the inability to expand beyond 2008. Another possibility may relate to the program grappling with the fault-line in another forum or a meeting, which is not reflected in the documents. Given that the documents were not collected for the purpose of this research project, the program could easily have grappled with a number of topics in another method or forum without having to document them. Although these suggestions are just some speculations, there ultimately could be numerous reasons for why the documents do not address this particular fault line. Nevertheless, based on the information presented in the documents after conducting a thorough analysis, it is evident that the program does not address the fault-line in relation to the concept of punishment.

The consequences associated with this research project, as a result of the documents not grappling with the concept of punishment, are minimal. Speculations may

be made in regards to a compromise in the core values of restorative justice as the program aims to repair harms caused by offences by reintegrating youth, and holding them accountable in meaningful ways. The program does not seem to punish, but rather emphasizes on repairing the harm caused. Ultimately, however, as the documents do not grapple with the concept of punishment, it is difficult to speculate the consequences, if any, associated with this research project.

### **The Restorative Principles and Their Flexibility**

The final fault-line “concerns the content and level of flexibility of RJ’s core normative principles. The tension mainly refers to whether certain principles should be respected religiously, or whether practice can be carried out without adhering to them completely” (Gavrielides, 2008, p. 175). Again, scholars have participated heavily in this debate. On one hand, proponents of restorative justice suggest that a certain level of flexibility is acceptable in regards to the principles of restorative justice while working with the formal criminal justice system (Gavrielides, 2008). On the other hand, other restorative justice proponents argue that the principles of restorative justice must be fully respected in order to fall under the restorative justice umbrella leaving no room for flexibility (Gavrielides, 2008, p. 175).

Similarly to the other fault-lines, this final fault-line is present within the documents of the NSRJP. While the principles of restorative justice, as suggested earlier, are prevalent within the NSRJP, the principles are not respected religiously due to a level of flexibility and compromise also being demonstrated in the documents. However, the documents do not specifically address the flexibility in great detail, but evidence to suggest their presence and minor areas of flexibility are discussed.

In terms of the NSRJP, the documents highlight the presence of the restorative justice principles and values, as well as the NSRJP's goals and objectives. Specifically, the documents highlight the presence of encounters, increasing victim satisfaction, providing a voice to those harmed and involved in the harm, amends, inclusion, holding the offender accountable, repairing harm, reintegration, reducing recidivism, and the responsibility of the government for preserving order as the community is responsibility for establishing peace.

Although each of the restorative principles and values are highlighted within the documents, as well as examples relating to the goals and objectives of the NSRJP, the documents also detail a number of instances where compromises in the principles, values, goals, and objectives have occurred. Specifically, the documents outline how there may be a compromise in the inclusion and restorative process category due to a lack of community and victim involvement or inclusion. In many charts throughout the documents, there are "0" listed under the number of community representative present at the various restorative sessions held in that period. For example in a Sessions Report section of a Quarterly Agency Report from 2004, a chart compares the "# of sessions held with Community Representative participating" with the "# of sessions held without Community Representative participating." In this particular example, the number of sessions held with community representation is listed as "0", whereas the number of sessions held without community representative is listed as "18." Although the documents lack an explanation for this, the documents do acknowledge the compromise in regards to the inclusion category.

Similarly, the documents highlight a number of cases where the victims of the offences chose not to participate for a variety of reasons. Although the restorative process was able to continue on in cases where there was no community or victim representatives, this may, on one hand, result in a compromise in both the principles and values of restorative justice, as well as the goals and objectives of the NSRJP. However, on the other hand, this may be a result of the flexibility of restorative justice. Despite missing key players in the process, restorative justice is still able to adapt to the change and occur. This speaks to the flexibility of the principles and of the program.

In addition to the potential compromise and flexibility relating to the lack of involvement, there may also be a potential compromise due to the involvement of youth who merely use restorative justice to avoid a criminal record. The documents highlight the ongoing concern that youth were willing to participate in restorative justice simply to avoid the formal criminal justice system and a criminal record. The documents highlight that this occurs because “the regular justice system funnels cases through RJ for the purpose of not wanting to clutter the dockets.” This, according to the documents, results in “the philosophy of restorative justice. . . being misplaced.”

In addition to these compromises, the documents also detail the potential for compromises in the government and community responsibilities. As previously mentioned, the documents suggest that one of the problems faced by the NSRJP, as an institutionalized program, regards the focus of the state versus the focus of the NSRJP when dealing with youth crime. Specifically, the documents suggest that “the justice system does not focus on responsibility but rather [the focus] is the offender [being] guilty or not guilty.” As a result, the differences between the state and the NSRJP, as an

institutionalized program, may lead to a number of compromises in order to fulfill the needs of the state. The state is able to initiate this compromise due to the level of power the state has in comparison to the power afforded to the NSRJP.

Despite this, due to the complex relationship between the NSRJP and the state, as well as the fluid power dynamic, the compromises are minimal as demonstrated in the documents. This suggests that while there may be compromises in some cases as demonstrated, the principles and values of restorative justice, as well as the goals and objectives of the NSRJP are overwhelmingly present within the documents. While the evidence to suggest the flexibility of the principles is minimal, the documents do provide evidence to suggest that the program, as a whole, respects the principles of restorative justice in a flexible manner as the program adapts to ensure justice occurs.

### **Summary and Conclusion**

The description of findings section of this project resulted in the confirmation of the existence of each fault-line within the NSRJP. Specifically, the documents identify the existing relationship between the state and the NSRJP, but suggest a complexity to the relationship that is not outlined in the existing literature. This suggests that the relationship between the two is static and results in restorative justice programs remaining on a continuum between governmentalist programs and communitarian. The documents suggest that this is not the case for the NSRJP as the responsibilities of the program are fluid between the state, referral sources, and the restorative justice agencies within the NSRJP.

However, despite the collaborative partnership between the state and the NSRJP, tension exists due to the fault-lines. These issues may exist due to inherent differences

between the state and the NSRJP. These difference include differing values and beliefs in regards to justice and how justice is best served. This may translate into implementation issues faced by the NSRJP, which were outlined and explored. The implementation issues may result in the compromise of the core values of restorative justice or the individual goals and objectives of the NSRJP. However, this may be resisted due to the level of flexibility demonstrated by the NSRJP surrounding the restorative justice principles and their flexibility.

When this project began, it was hypothesized that the institutionalization of restorative justice compromises the core values and principles of restorative justice based on the mobilization of the power of the state. However, although there was some evidence of this, the collaborative working relationship between the state, the referral sources, and the restorative agencies within the NSRJP does not appear to be hindered by the issues explored and continues to grow and develop throughout the documents. Furthermore, the complexity of the relationship between the parties allows for the protection of the core values of restorative justice, as well as the protection of the individual goals and objectives of the NSRJP as demonstrated within this chapter as power is mobilized by both parties. Finally, given the relationship between the state and the restorative agencies in the creation of the Best Practice Standards, it can be concluded that the Best Practice Standards work as a protective factor for the values of restorative justice and the program as a whole.

The findings found within this chapter will be utilized in the following chapter as they will be examined through a Foucauldian lens, specifically involving Foucault's general notion of power, including governmentality, in order to contextualize the findings

prior to an attempt to answer the remaining research questions associated with this project.

## **CHAPTER SIX: ANALYSIS**

### **Introduction**

This chapter revisits and contextualizes my research findings within the analytical framework outlined earlier in this project. I turn to Foucault's notions of governmentality and power to make sense of the findings while revisiting my research questions.

### **NSRJP and the Core Values of Restorative Justice**

One of secondary research questions associated with this research project offers further insight into the effects of the institutionalization process by exploring the idea of how the core values of restorative justice have been supported or compromised.

In the case of the NSRJP, the principles of restorative justice are embedded within the program. The documents thoroughly detail how the principles relating to inclusion, victim satisfaction, amends, holding offenders accountable, repairing harm, government responsibility for preserving order, and community responsibility for establishing peace were all met. These principles are supported by the program largely in part due to the collaborative relationship between the restorative agencies and the state, as the restorative agencies are afforded autonomy, flexibility, and the ability to execute the restorative process with minimal interference from the state. Therefore, the restorative agencies are afforded enough autonomy to maintain the core values of restorative justice.

Although the core values of restorative justice, as well as the goals and objectives of the NSRJP were present within the documents I studied, there is also some evidence of compromise. Specifically, this compromise involves the inclusion and restorative processes due to a lack of community and victim involvement or inclusion, as well as the potential compromise with the involvement of youth who refuse to take responsibility for

their actions. The compromise with the latter reflects the differing focuses between the state and the restorative agencies within the NSRJP. Typically, with the formal criminal justice system, youth do not need to take accountability for justice to be served, nor does this process involve community or victim involvement as actions are seen as crimes against the state. Given the differing focuses, the state may have influenced the restorative agencies to handle some cases in a manner that may not be entirely restorative in nature.

While the documents provide fewer details about principles relating to reintegration, recidivism reduction, and both community and victim involvement, this may be part of the limitation of my research project. As the documents were not created solely for my project, there may be less of an emphasis for these principles in the documents, but proof could exist elsewhere. As a result, it cannot be assumed that these values are not supported or are compromised in the NSRJP entirely.

Ultimately, the secondary descriptive research question can be answered with the core values of restorative justice being supported within the NSRJP. Despite its institutionalization, due to the complex relationship between the NSRJP and the state, as well as the fluid power dynamic, the restorative agencies are afforded the autonomy to maintain the core values of restorative justice with minimal compromises.

### **Best Practice Standards: A Protective Factor**

Another secondary descriptive research question provides insight into the Best Practice Standards and how they act as a protective factor for the values of restorative justice.

As previously mentioned, the Best Practice Standards provide recommendations for the responsibilities of community agencies and individual restorative justice workers.

The standards ensure the goals and objectives of the NSRJP are not only met, but also ensure that each community agency is adhering to the same standards while also allowing the unique qualities and needs of each client and community to be met accordingly.

According to the documents I analyzed, the community agencies are “encouraged to use the Best Practice Standard. . . in the creation of in-house case management policies and training curriculums.” Based on this, the individual restorative justice agencies within the NSRJP are afforded the opportunity to create their own policies and training curriculums; however, these are based on the Best Practice Standard, which are based on the policies dictated by the state via seven distinct protocols outlined. While the state predominantly maintains the overarching ability to control the NSRJP given the institutionalization of the program, the agencies implement restorative justice on the ground and control the restorative justice processes almost entirely.

The Best Practice Standards work as a protective factor based on the relationship between the state and the restorative agencies within the program. Due to the relationship and the overarching responsibilities of the state, coupled with the responsibilities of the restorative agencies to implement restorative justice on the ground, the Best Practice Standards act as a safeguard for both victims and offenders in terms of the acceptance of responsibility, the assurance that re-victimization will not occur, and increasing satisfaction for the offender, victim, and community alike. Each of these factors contribute to ensuring the core values and goals of the NSRJP are met.

Based on the information presented in the documents, it is evident that the state plays an important role in the NSRJP; however, the restorative agencies also maintain a lot of control within the program. Together the state and the restorative agencies created

the Best Practice Standards to provide a standard for each individual agency within the program to adhere to. However, the Best Practice Standards also allow flexibility and autonomy for each individual restorative agency to address the needs of the various communities within the program. Ultimately, the Best Practice Standards ensure the restorative agencies adhere to restorative justice principles therefore acting as a protective factor given the freedom the restorative agencies are afforded to adhere to their own principles, values, training curriculums, and procedures.

### **Autonomy within the NSRJP**

One primary research question guiding this project involves how the institutionalization of restorative justice programs can either contribute to or help programs resist discrepancies between the core values and principles of restorative justice and its practice. This thesis hypothesized that given the dependence on the criminal justice system, as well as the governance and mobilization of power from the state, a compromise in the core values of restorative justice arises when programs become institutionalized. This hypothesis is echoed in the existing literature as many criminal justice scholars suggest the institutionalization of restorative justice creates a dependence and does not offer a true alternative to the formal criminal justice system.

However, the NSRJP demonstrates that a highly institutionalized program, deeply embedded in the state, can adhere to the core values of restorative justice with minimal compromises. This does not mean that the NSRJP can be considered a 'pure' restorative justice program. The NSRJP operates wholly within the formal criminal justice system. Legislation governs the program and it cannot operate without the involvement of the

formal criminal justice system. The state's interests cannot be completely removed from the NSRJP.

The NSRJP supplements its own philosophies, practices, goals, and objectives for those of the formal criminal justice system to address the perceived shortcomings of that system. The program focuses on the harm caused and the process of addressing the harm to achieve a sense of healing rather than focusing on the outcome of punishment. The NSRJP processes involve as many affected parties as necessary and possible, and allow a great deal of flexibility often not associated with the formal criminal justice system.

Despite being embedded in the criminal justice system, the restorative justice agencies have a high level of autonomy. This autonomy allows the restorative justice agencies to implement restorative justice in the province with less state involvement. The agencies, therefore, are afforded the opportunity to develop their own practices, principles, and objectives. This autonomy also includes determining appropriate amends, restorative agreements, and alternatives to the formal criminal justice system. Despite the autonomy given, a paradigm shift from the formal criminal justice system does not occur nor did the program ever intend for a shift to occur. This means that the NSRJP is not a true alternative to the formal criminal justice system, but rather offers a pragmatic approach to restorative justice.

Ultimately, despite its institutionalization, the restorative justice agencies within the NSRJP are afforded enough autonomy to ensure the core values of restorative justice are maintained rather than compromised. While the arrangement in Nova Scotia may not be classified as a resistance to the disjuncture between the theory of restorative justice and its practice, as highlighted in the existing literature, the collaborative working

relationship within the NSRJP allows for the involvement of the state, but does not allow for the core values and principles of restorative justice to be compromised in practice. Therefore, the NSRJP does not contribute to the disjuncture nor does it necessarily resist discrepancies given the fluid power dynamic that exists between the state and the restorative justice agencies. Instead, the NSRJP operates with a collaborative working relationship between the restorative agencies and the state that allows the involvement of both while aligning closely with the principles of restorative justice theory and implementing them into practice.

### **Power and Resistance**

One of my secondary research questions involves exploring how the institutionalization process reveals Foucault's notion of power and whether restorative justice can be a form of resistance.

As previously mentioned, according to Lynch (2011), Foucault suggests that power is omnipresent and can be found in all social interactions. This power can either be positive or negative (Foucault, 1977; Foucault, 1980). Regardless though, power holds a sense of fluidity and cannot be reserved for a single individual, institution, or state (Foucault, 1978). As power is a fluid feature that can be exerted at all levels of society, it has a decentralized nature and, therefore, can exist in a top-down structure or come from the bottom up. As previously discussed, power that exists closer to the ground often gets associated with resistance. Felder (2011) explains that Foucault focused on the resistance as an expression of power rather than something that resists the effects of power.

In the case of the NSRJP, the program inherently remains locked into the formal criminal justice system due to its institutionalization. However, as previously discussed,

despite the institutionalization, the government does not directly exercise power and control over the program due to the collaborative relationship between the state and the restorative agencies.

The documents do not outline definitive roles for either the state or the restorative agencies within the NSRJP, but rather suggest a complexity to the relationship not reflected within the existing literature. Within the documents, the partnership between the state and the NSRJP suggests the roles of the state coincide with the ones suggested by Jantzi (2004). Specifically, the state provides funding, referrals, and assistance to the NSRJP; however, the restorative agencies within the NSRJP are afforded the power to educate the state, as well as the power and responsibility for conducting the restorative process.

The complexity of the relationship in the NSRJP problematizes the existing dichotomy between restorative justice and the state as the literature suggests. One example of the dichotomy suggests that restorative justice must fit on a continuum between governmentalist or communitarian programs (Woolford, 2009). However, this dichotomy leaves no opportunity to move along the continuum, but rather suggests that the program remains static as either dependent on the formal criminal justice system or with little state involvement. This dichotomy further suggests that the balance of power is static; however, the NSRJP documents demonstrate that this dichotomous assumption is problematic and the relationship between the state and the restorative justice agencies is far more complicated than the existing literature suggests.

The documents demonstrate the complexity of the relationship by highlighting the mobilization of power for both the state and the restorative agencies. Throughout the

documents, examples of power being executed by both the state and the restorative agencies are prominent. This suggests that the NSRJP does not fall into the dichotomy suggested by the literature, but rather operates on the premise that power shifts back and forth between the state and the restorative justice agencies rather than the state holding the power. Therefore, power is mobilized by both parties in a manner that embraces the notion of the “collaborative working relationship” outlined within the documents rather than the dichotomous and static relationship suggested by the existing literature.

On one hand, due to being institutionalized, the NSRJP relies on power from the state in terms of legislation, referrals, funding, finding adequate spaces for the various offices, the database that the NSRJP uses, and resources outside the parameters of restorative justice. As demonstrated in the documents, the state, therefore, has the power to dictate the level of funding afforded to restorative justice, the power to control the referrals to restorative justice, the power to develop policies and procedures, and power over the resources available to restorative justice.

On the other hand, the documents also outline several examples suggesting that the restorative justice agencies within the NSRJP are allocated high levels of power as well. The power allocated to the agencies mainly involves the power and responsibility for facilitating the restorative process, advocating for funding and resources, educating both participants and members of the state, the power to adhere to the core values of restorative justice, and the power to extend beyond the constraints of the formal criminal justice system. Most importantly, the restorative justice agencies demonstrate considerable amounts of power in the documents given the high level of involvement in the creation of the Best Practice Standards. While the state was responsible for

developing the Best Practice Standards via the program protocols, the agencies were highly involved in the creation by participating and making several recommendations for the Best Practice Standards. Finally, while the state may be responsible for running the program due to the institutionalization, the power and responsibility for putting restorative justice into practice on the ground remains with the restorative justice agencies.

In the case of the NSRJP, rather than the government exercising its power and controlling the community justice agencies, the government exercises a rule-at-a-distance mentality. Foucault normalizes the power dynamic between the state and the restorative agencies as the overlap and intersection of power is common rather than one party holding all the power (Foucault, 1990). Given the decentralized nature of power and multiplicity of relations, power can exist in both top-down structures or come from the bottom up. In the case of the NSRJP, the power appears to shift back and forth along the continuum suggested by Woolford (2009).

The complexity of the relationship and the fluidity of the power in the NSRJP allows for the existence of the resistance of power by the restorative agencies towards the state as the state does not hold a monopoly on power within the NSRJP. Specifically, due to the power afforded to the restorative agencies, they are able to express and mobilize the core values of restorative justice, their objectives, and their practices despite the power held by the state. This power dynamic prevents the compromising of restorative justice values in favor of the ones associated with formal criminal justice system.

Ultimately, based on Foucault's notion of power, it can be concluded that the NSRJP provides evidence for restorative justice being a form of resistance due to the

complexity and fluidity of the relationship between the state and the restorative agencies, as well as the decentralized nature of power affording the restorative justice agencies the ability to avoid becoming subservient to the state.

The restorative agencies use power as a positive and productive social force challenging the knowledge, values, and discourses related to the formal criminal justice system. The resistance to the state is possible as Foucault does not suggest that power is a type of force, but rather a: “set of practices that have come to influence over our behaviour” (May, 2011, p. 77). As the practices of the NSRJP continue to shape and influence the behaviour of those involved in the processes, as well as challenge the shortcomings of the formal criminal justice system, it can be concluded that a major ceding of power exists allowing for resistance and adherence to the core values of restorative justice and the goals associated with those values.

### **Institutionalization, Governmentality, and Power**

The primary conceptual research question guiding this project involves exploring how Foucault’s notions of governmentality and power can be utilized to provide insight into the institutionalization of restorative justice within the NSRJP.

As previously mentioned, several scholars have examined restorative justice through a governmentality lens. These previous analyses have exposed the potential negative consequences of having restorative justice dependent on the formal criminal justice system as it may result in restorative justice being “locked into the conceptual and practical tendencies of the criminal justice system” (Woolford, 2009, p. 142). As a result, the core values of restorative justice can be sacrificed to suit state governmental

imperatives as restorative justice processes can be “complicit in a project of self control” (Woolford, 2009, p. 141).

According to Woolford, “the logic of governmental rule takes shape within individual ‘mentalities’ and circumscribes thought and action, thereby effecting a ‘responsibilisation corresponding to the new forms in which the governed are encouraged, freely and rationally, to conduct themselves’” (2009, p. 141). The government may implement training, education, or legislation which passes the responsibility of self-governance to those being governed in the restorative process.

Given the institutionalization of the NSRJP, the notion of governmentality can be used to provide insight into the program. While the program itself is structured around federal legislation with a dependence on the formal criminal justice system and referral sources, the restorative agencies are afforded the opportunity to execute the restorative process on the ground. Therefore, while the state may govern the NSRJP via legislation, funding, and policies and procedures, it does not directly control the program given the autonomy the restorative agencies are afforded. While promoting the sense of self-agency and reducing the role of the state within the NSRJP, the state governs the behaviours of those involved in the program at an institutional level. The government, therefore, exercises rule-at-a-distance by passing the responsibility of self-governance to the restorative agencies, who control the restorative processes on the ground.

Although the state is not all-consuming, the state remains involved in the NSRJP. Despite this, the responsibilisation to conduct the restorative justice process is passed to the NSRJP, which is reflected in the Best Practice Standards. Therefore, the state is involved in the creation of the Standards and is afforded the overarching control of the

program while the restorative agencies are afforded the responsibility to conduct the restorative justice processes and ensure self-governance of the behaviours of those involved in the process. Ultimately, the state does not directly control the program on the ground but rather stimulates a sense of autonomy within the restorative justice agencies.

Furthermore, as part of the relinquished control, the restorative justice agencies are afforded the ability to develop their own motives for the NSRJP in addition to those provided by the state. The motives of the program involve addressing the shortcomings of the current criminal justice system rather than replacing the program entirely. This means that the NSRJP adopts some similarities as the formal criminal justice system, but also may cater their motives towards addressing the perceived shortcomings of the current system while creating meaningful ways to respond to youth crime.

Ultimately, the NSRJP embraces some of the philosophies, practices, goals and objectives that the current criminal justice system has to offer while supplementing its own philosophies, practices, goals and objectives in order to address the perceived shortcomings of the current system that the program identifies. This correlates with the notion of governmentality as governmentality involves the shaping of individual behaviours to conform to a particular set of norms, which the NSRJP does as a result of the lack of a paradigm shift, while also encouraging the responsabilisation of those being governed by the program to conduct themselves in a way that does not result in future engagement with the criminal justice system.

Given this level of dependence on the state, a level of integration within the formal criminal justice system exists within the NSRJP. The notion of governmentality explains this level of dependency, and may shed light on the level of implementation as

well as the partnership between the state, the referral sources, and the restorative agencies.

Although governmentality refers to the formation and exercise of power, it does not mean that the state is all-consuming (Foucault, 1991). Instead, as previously discussed, within governmentality, the state coordinates and attempts to reformulate the relationship between the governed and governor into one of collaboration (Bratich et al., 2003). In the case of the NSRJP, the program is part, but not wholly of, the formal criminal justice system. While the state may have implemented the program and may govern the NSRJP based on the legislation, different responsibilities are held by the state, the referral sources, and the restorative justice agencies. The different responsibilities within the NSRJP create a collaborative effort to ensure that restorative justice is implemented. Therefore, although the state is in a role of power, the notion of governmentality explains why the restorative justice agencies are afforded a level of autonomy to conduct restorative justice in the community as the state has attempted to reformulate the relationship between the state, the referral sources, and the restorative justice agencies.

In this attempt to reformulate the relationship into one of collaboration, the roles of the state, within the documents, coincide with the ones suggested by Jantzi (2004) including: the state as enabler, state as resourcer, state as implementor, state as guarantor of quality practice, and state as offending party. The role relating to referral source does not associate with the state, but rather is reserved for the referring sources in the NSRJP. As previously discussed, the state provides funding and assistance to the NSRJP while the referral source (courts, corrections, police, or crown) provides the referrals to the

program. In this collaborative effort, the restorative agencies are responsible for educating the state, as well as the responsibility for conducting the restorative process and attempting to influence the conduct of the individuals involved in the program to ensure self-governance. While the state is not all-consuming, the state still holds the majority of the power within the NSRJP by virtue of the program operating within the formal criminal justice system rather than outside of it.

However, despite the state governing the program and shaping the conduct of the involved members at the institutional level, the state also promotes the collaborative effort within the structure of the formal criminal justice system. While the state maintains power and control over promoting conduct that is desired by the state, responsabilisation is passed to the restorative agencies to ensure the self-governance of conduct by those involved in the process. Essentially, the restorative agencies are tasked with ensuring appropriate agreements are created in order to ensure the harm is addressed in a meaningful way to help reduce recidivism rates.

Ultimately, due to this collaborative effort, the state does not hold all the power to shape the values of restorative justice programs that are institutionalized contrary to the concerns outlined in the existing literature. As power is not centralized or reserved only for the state, the potential for resistance can occur. In the case of restorative justice, the community and/or community agencies may resist the power of the state by mobilizing their own power. While the state's interests may not be completely removed, the community and/or community agencies may exercise their own power rather than becoming subservient to the state.

Given the institutionalization of the NSRJP, the state may not be removed from the program as it is structured around federal legislation thereby creating a level of dependence on the formal criminal justice system and the referral sources. Due to this dependence and inability to remove the state, the state continues to exercise its power and maintain its interests within the program. However, as previously discussed, the state may govern the program, but it does not directly control the program as a sense of agency is stimulated within the restorative agencies. Therefore, although the state governs the program at an institutional level, power is afforded to the restorative justice agencies at the ground-level to conduct the restorative processes within the program. Ultimately, this power from the bottom-up paves the road for resistance.

Due to the structure of the program and the power afforded to both the state and the restorative justice agencies, Foucault's notion of power and resistance can be used to provide insight into the findings explored within the description chapter of this research project.

Foucault's notion of power may shed light on the structure of the NSRJP given the power afforded to both parties. The state and the restorative justice agencies collaboratively work together in order to ensure the operation of the program. The collaborative effort allows the restorative justice agencies to express their motives, goals, and objectives while resisting the influence of the state. Included in this expression, is the ability of the restorative justice agencies to operate with a broad circle of stakeholders, rather than the limited one reflected within the current criminal justice system.

The power afforded to the restorative justice agencies reflects a major ceding of power as the state allows the agencies to adhere to their own goals while resisting the

governmental goals of the justice system. This resistance paves the way for a drift away from adhering to the goals of the criminal justice system, such as seeing crime as an offence against the state and being outcome-based, and allows for a greater circle of stakeholders to be involved in order to address the goals, objectives, and core values of restorative justice as a whole within the NSRJP despite being an institutionalized program.

Ultimately, Foucault's notion of power provides insight into the capability of the restorative agencies to provide protection to the core values of restorative justice while operating in a program governed by federal legislation. While the state may hold the majority of the power, the restorative agencies are able to resist the power of the state and continue to practice the goals, core values, and motives of restorative justice theory.

### **Summary and Conclusion**

The analysis section of this project resulted in an exploration of the research questions given the description of findings and the theoretical framework associated with this project. Specifically, this chapter shed light on the dynamic, fluid, and collaborative relationship between the restorative agencies, the state, and the referral sources within the NSRJP. This relationship was explored in relation to the institutionalization process, the core values of restorative justice, and Foucault's notions of governmentality and power.

While it was hypothesized when this project began that the institutionalization process compromises the core values and principles of restorative justice, this project found that all core values were present within the NSRJP with minimal compromises largely due to the dynamic relationship between the involved parties. Therefore, the institutionalization of restorative justice did not contribute to the discrepancies between

the core values and principles of restorative justice and its practice. However, the program itself cannot be classified as a 'pure' restorative justice program as the state's interests cannot be entirely removed due to the institutionalization.

Additionally, the lack of compromise, results in that the state is not all-consuming within the NSRJP. While the state shapes the conduct of those involved in the restorative process, it does so in a rule-at-a-distance mentality by exercising overarching control within the program. This allows the restorative agencies the autonomy to protect the core values, goals, and motives of restorative justice within the program.

This autonomy in combination with the Best Practice Standards, which appears to act as a protective factor, highlights the collaborative working relationship between the state and the restorative agencies within the NSRJP. This collaborative working relationship appears to be fluid and dynamic, allowing the program to resist becoming consumed by the formal criminal justice system while still relying on the state to exist.

## CHAPTER SEVEN: INTERPRETATION

### Introduction

According to Wolcott, the purpose of the interpretation chapter involves probing into the description and analysis chapters and determining “what is to be made of them” (2004, p. 36). This chapter serves as the final stage of transforming qualitative data.

While Wolcott (2004), suggests several possibilities to addressing interpretation, this chapter will provide a discussion of the significance of my findings and suggestions for future research.

### Discussion

My research project focused on providing a case study demonstrating how the institutionalization of a restorative justice program may lead to discrepancies between theories of restorative justice and practices. Many scholars have identified concerns with the institutionalization leading to compromises in the core values as restorative justice can be viewed as: “complicit in a project of self control” (Woolford, 2009, p. 141).

In the case of the NSRJP, this research project found that the program may be “complicit in a project of self control” (Woolford, 2009, p. 141). However, this only exists at an institutional level as the state maintains overarching control due to the program remaining rooted in the formal criminal justice system. Despite this overarching control, the state exercises rule-at-a-distance mentality. While the governmental instinct of the state may allow it to maintain control and power over restorative justice, this is not the case with the NSRJP. Instead, the state maintains a strong presence in the creation of the Best Practice Standards dictating policies that the restorative agencies must follow. However, despite these policies, the restorative agencies are also afforded the autonomy

to create their own procedures, training curriculums, and policies based on those dictated by the state in the Best Practice Standards.

The restorative agencies, then, take the responsibility of shaping and directing the conduct of the members of society. This means that restorative justice continues to be “complicit in a project of self control” (Woolford, 2009, p. 141). However, the collaborative working relationship ensures both the interests of the state, as well as the interests of the restorative agencies are maintained. The restorative agencies are “controlled” by the state, but are afforded the freedom to offer an alternative to the formal criminal justice system by addressing the perceived shortcomings of that system.

Ultimately, while the NSRJP may remain deeply embedded into the formal criminal justice system, the dynamic, collaborative, and working relationship between the state and the restorative agencies ensures the core values and traditions associated with restorative justice are maintained in Nova Scotia. Despite the concern that institutionalization limits the capacity of restorative justice, the NSRJP appears to truly offer an alternative to the formal criminal justice system with minimal compromises in the core values of restorative justice based on my analysis.

What does this mean? It means that the program provides some proof that restorative justice, in Nova Scotia, is not becoming a tool for neo-liberal forms of governance of citizens. The program itself, despite being institutionalized, continues to adhere to the core values of restorative justice rather than being susceptible to those favoured by the formal criminal justice system as power is ceded amongst the state, restorative agencies, and the referral sources. This power is fluid rather than static and ensures that all parties are afforded the opportunity to have their needs met.

According to Woolford and Ratner (2002), in Canada, non-institutionalized programs are beginning to become outnumbered by institutionalized programs. Given the extensive literature cautioning the potential for restorative programs to fall subservient to the state favouring the core values of the formal criminal justice system, this project recommends more research and more case studies to analyze restorative justice in Canada to ensure restorative justice programs continue to offer diversity and true alternatives to the formal criminal justice system.

What does this all mean for me personally and what next? Completing this project allows me to now look at things from a different perspective. It allows me to be mindful of power dynamics, and how good intentions can still result in governance through freedom as responsabilisation is passed. Most importantly, it sparks the realization for the importance of advocacy and the desire to make change. More research and analysis will not be possible unless restorative justice advocates use their words, their voice, and their actions in meaningful ways to create meaningful change just as restorative justice aims to address the harms caused in meaningful ways.

## CONCLUSION

This thesis aimed at examining the institutionalization process through a case study of the Nova Scotia Restorative Justice Program (NSRJP). I explored how the state involvement with a restorative justice program may affect the way in which power is mobilized when a program becomes institutionalized. Additionally, as the existing literature providing concrete examples to confirm the claims regarding the institutionalization of restorative justice and how it can lead to discrepancies is limited, this thesis aimed to provide a concrete example exploring the disjuncture as it is hypothesized that the institutionalization of restorative justice compromises the core values and principles of restorative justice based on the mobilization of the power of the state.

In order to answer the research questions proposed by this project, the thesis involved an extensive literature review outlining the history of restorative justice, its core values and objectives, roles relating to restorative justice, and restorative justice in the Canadian context. This thesis also involved a theoretical analysis using a Foucauldian framework specifically involving his notions of governmentality and power. In order to tie these together, a qualitative case study using a content analysis method was utilized, which allowed for the research questions to be answered based on the findings.

The hypothesis associated with this project was not supported as the core values of restorative justice were all present in the NSRJP with minimal compromises largely due to the dynamic relationship between the involved parties. Therefore, the institutionalization of restorative justice does not contribute to the discrepancies between the core values and principles of restorative justice and its practice, but rather allows for the resistance of the disjuncture based on how the program is structured.

This thesis shed light on the dynamic, fluid, and collaborative relationship between the restorative agencies, the state, and the referral sources within the NSRJP. This relationship was explored in relation to the institutionalization process and Foucault's notions of governmentality, and power.

According to Foucault, "power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization" (Foucault, 1990, p. 92). This means that regardless of where power originates, there will be considerable overlap and intersection of power. Power cannot be possessed by a sovereign individual, and thus it is not a reducible to a binary relationship (Lynch, 2011). Therefore, given its decentralized nature and multiplicity of relations, power can either exist in a top-down structure or come from the bottom up.

The considerable overlap and intersection of power, as explored by Foucault, can be used to explain the relationship between the state and the restorative agencies within the NSRJP. Specifically, due to the collaborative working relationship, the restorative agencies are afforded the autonomy to protect the core values, goals, and motives of restorative justice within the program, while also affording the agencies the autonomy and morality to follow their own goals and objectives rather than those imposed upon them by the state. The state, therefore, operates with a rule-at-a-distance mentality providing the overarching control on the program, while affording the restorative agencies the opportunity to run the program on the ground.

This autonomy in combination with the Best Practice Standards, which appears to act as a protective factor, highlights the collaborative working relationship between the

state and the restorative agencies within the NSRJP. This collaborative working relationship appears to be fluid and dynamic, allowing the program to resist becoming consumed by the formal criminal justice system while still relying on the state to exist. While the state may have governmental power, it is not sovereign. Instead, the restorative agencies are able to exercise their own power within the NSRJP.

Ultimately, due to this collaborative effort, the state does not hold all the power to shape the values of restorative justice programs that are institutionalized contrary to the concerns outlined in the existing literature. Instead, Foucault's notion of power provides insight into the capability of the restorative agencies to provide protection to the core values of restorative justice while operating in a program governed by federal legislation. Due to the structure of the NSRJP and ability of the restorative agencies to maintain restorative values, resistance to compromising those values in favour of those associated with the formal criminal justice system occurs. While the state may hold the majority of the power, the restorative agencies are able to resist the power of the state and continue to practice the goals, core values, and motives of restorative justice theory.

Furthermore, the complex relationship between the state, the restorative agencies, and the referral sources, ensures that the NSRJP remains fluid and constantly evolving rather than remaining static. Therefore, this program serves as a positive example for how restorative justice programs ought to be structured while aligning most closely to the core values of restorative justice without contributing to the disjuncture identified in the existing literature.

This thesis provides a brief glimpse into the institutionalization of restorative justice in Nova Scotia. However, as suggested by Foucault, ongoing examination,

attention, and action is required in order to ensure that restorative justice programs continue to change and operate successfully while aligning most closely to the core values of restorative justice while remaining institutionalized within Canada.

## References

- Abramson, A. M. (2003). Sustainable relationships and competing values: Restorative justice initiatives and the police - a case study. *Police Practice & Research*, 4(4), 391-398. doi:10.1080/15614260310001631280.
- Achilles, M. (2004). "Will restorative justice live up to its promises to victims?" In H. Zehr, & Toews (eds), *Critical issues in restorative justice* (pp. 65-74). Monsey, NY: Criminal Justice Press, pp 65-73.
- Amstutz, L. (2004). "What is the relationship between victim service organizations and restorative justice?" In H. Zehr, & B. Toews (eds), *Critical issues in restorative justice* (pp. 85-94). Monsey, NY: Criminal Justice Press.
- Andersen, C. (1999). Governing aboriginal justice in Canada: Constructing responsible individuals and communities through 'tradition.' *Crime, Law & Social Change*, 31, 303-326.
- Archibald, B., & Llewellyn, J. (2006). The challenges of institutionalizing comprehensive restorative justice: Theory and Practice in Nova Scotia. *Dalhousie Law Journal*, 29, 297-343.
- Ashworth, A. (November 30, 2001). Responsibilities, rights and restorative Justice. *The British Journal of Criminology*, 42, 3, 578.
- Bazemore, G., & Walgrave, L. (1999). *Restorative juvenile justice: Repairing the harm of youth crime*. Monsey, NY: Willow Tree Press, Inc.
- Bazemore, G., & Schiff, M. (2001). *Restorative community justice. Repairing harm and transforming communities*. Cincinnati, OH: Anderson.

- Berg, B. (2009). *Qualitative research methods for the social sciences*. Boston, MA: Allyn & Bacon.
- Bergseth, K. J., & Bouffard, J. A. (2007). The long-term impact of restorative justice programming for juvenile offenders. *Journal of Criminal Justice*, 35(4), 433-451. doi:<http://dx.doi.org/10.1016/j.jcrimjus.2007.05.006>.
- Bergseth, K., & Bouffard, J. (2013). Examining the Effectiveness of a Restorative Justice for Various Types of Juvenile Offenders. *International Journal of Offender Therapy and Comparative Criminology*, 57(9), 1054-1075. doi: 10.1177/0306624X12453551.
- Biggar, N. (2001). *Burying the past: Making peace and doing justice after civil conflict*. Washington, DC: Georgetown University Press.
- Bonta, J., Jesseman, R., Ruge, T., & Cormier, R. (2006). "Restorative justice and recidivism," In D. Sullivan & L. Tiff (eds), *Handbook of restorative justice* (pp. 108-120). New York, NY: Routledge Taylor & Francis Group, pp. 108-120.
- Boyes-Watson, C. (2004). "What are the implications of the growing state involvement in restorative justice?" In H. Zehr, & B. Toews (eds), *Critical issues in restorative justice* (pp. 215-226). Monsey, NY: Criminal Justice Press.
- Braithwaite, J. (1999). Restorative justice: Assessing optimistic and pessimistic accounts. *Crime and Justice*, 25, 1-127.
- Braithwaite, J. (2002). *Restorative justice & responsive regulation*. Oxford, UK: Oxford University Press.

- Braithwaite, J. (2003). Principles of Restorative Justice. In A, Von Hirsch, A, et. al. (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Hart Publishing, Oxford, pp.1-20.
- Bratich, J, Packer, J., & McCarthy, C. (2003). *Foucault, cultural studies, and governmentality*. Albany: State University of New York Press.
- Brooks, R. (1999). *When sorry isn't enough: The controversy over apologies and reparations from human injustice*. New York, NY: New York University Press.
- Bush, R., & Folger, J. (1994). *The problem of mediation: Responding to conflict through empowerment and reputation*. San Francisco, CA: Jossey-Bass.
- Burchell, G. (1993). Liberal government and techniques of the self. *Economy and Society* 22(3), 267-282.
- Christie, N. (1977). Conflicts as property. *The British Journal of Criminology*, 17(1), 1-15.
- Choi, J. J., Bazemore, G., & Gilbert, M. J. (2012). Review of research on victims' experiences in restorative justice: Implications for youth justice. *Children and Youth Services Review*, 34(1), 35-42.  
doi:<http://dx.doi.org/10.1016/j.childyouth.2011.08.011>.
- Clifford, J. (1980). Fieldwork, reciprocity and the making of ethnographic texts: The examples of Maurice Leenhardt. *Man* 15, 518-532.
- Correctional Services of Canada. (2012). *Canadian inventory of restorative justice programs and services*. Retrieved from <http://www.csc-scc.gc.ca/restorative-justice/003005-4001-eng.shtml>
- Criminal Code*, RSC 1985, c C-46 s 718.

- Criminal Code*, RSC 1985, c C-46 s 718.2.
- Daly, K. (2002). Restorative justice: The real story. *Punishment and Society*, 17(1), pp. 55-79.
- Daly, K. (2003). Restorative justice: The real story. In G. Johnstone (eds.), *A restorative justice reader: Texts, sources, context*, Collumpton, UK: Willan Publishing.
- Daly, K., & Immarigeon, R. (1998). The past, present and future of restorative justice: Some critical reflections. *Contemporary Justice Review*, 1(1), pp. 21-46.
- Daniels, G. (2013). Restorative justice: Changing the paradigm. *Probation Journal*, 60(3), 302-315. doi:10.1177/0264550513493370.
- Dean, M. (1999). *Governmentality: Power and rule in modern society*. London, UK: Sage.
- Department of Justice. (2000). *Restorative justice*. Retrieved from <http://www.justice.gc.ca>
- Dignan, J. (2002). Restorative justice and the law: The case for an integrated system approach. In L. Walgrave (ed.), *Restorative justice and the law* (pp. 168-191). Cullompton, UK: Willan.
- Dixon, B. R., Bouma, G. D. & Atkinson, G. B. (1987). *A Handbook of Social Science Research: A Comprehensive and Practical Guide For Students*. New York: Oxford University Press.
- Elis, L. (2005). Restorative justice programs, gender, and recidivism. *Public Organization Review*, 5(4), 375-389. doi:<http://dx.doi.org/10.1007/s11115-005-5097-4>.

- Erbe, C. (2004). What is the role of professionals in restorative justice? In H. Zehr, & B. Toews (eds), *Critical issues in restorative justice* (pp. 293-302). Monsey, NY: Criminal Justice Press.
- Farrier, A., Froggett, L., & Poursanidou, D. (2009). Offender-based restorative justice and poetry: Reparation or wishful thinking? *Youth Justice*, 9(1), 61-76.  
doi:10.1177/1473225408101432.
- Faget, J. (2006). The French phantoms of restorative justice: The institutionalization of penal mediation. In I, Aertsen., et. al. (eds), *Institutionalizing restorative justice* (pp. 151-166). Devon, U.K., Willan Publishing.
- Feld, B. (1999). Rehabilitation, retribution and restorative justice: Alternative conceptions of juvenile justice. In G. Bazemore, & L. Walgrave (eds), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 17-44). Monsey, NY: Willow Tree Press.
- Felder, E.K. (2011). Power/knowledge. In D. Taylor's, *Michel Foucault: Key concepts* (pp. 55-68). Durham, UK: Acumen.
- Foucault, M. (1978). *The history of sexuality*. New York, NY: Pantheon.
- Foucault, M. (1977) *Power/knowledge: Selected interviews and other writings 1972-1977*. New York, NY: Pantheon Books.
- Foucault, M. (1980). *Power/knowledge: Selected interviews and other writings 1972-1977*. New York, NY: Vintage Books.
- Foucault, M. (1982). The subject and power. In H. Drefus, & P. Rabinow (Eds.), *Michel Foucault: Beyond structuralism and hermeneutics* (pp. 208-26). Brighton, UK: Harvester.

- Foucault, M. (1985). *The use of pleasure: Volume 2 of the history of sexuality*. New York, NY: Pantheon Books.
- Foucault, M. (1991). Governmentality. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The foucault effect: Studies in governmentality: With two lectures by and an interview with Michel Foucault* (pp. 87-104). Chicago: University of Chicago Press.
- Foucault, M. (1994). *Ethics, subjectivity and truth*. New York, NY: The New Press.
- Foucault, M. (1997). The ethics of the concern for the self as a practice of freedom. In P. Rabinow (Ed.), *Ethics: Subjectivity and truth* (pp. 281-302). New York, NY: The New Press.
- Garland, D. (1999). 'Governmentality' and the problem of crime. In R. Smandych (eds.), *Governable places: Readings on governmentality and crime control* (pp. 15-43). Vermont, VA: Ashgate Dartmouth Publishing Company
- Gavrielides, T. (2007). *Restorative justice theory and practice: Addressing the discrepancy*. Monsey, NY: Criminal Justice Press.
- Gavrielides, T. (2008). Restorative justice - the perplexing concept: Conceptual fault-lines and power battles within the restorative justice movement. *Criminology and Criminal Justice*, 8, 2, 165-183.
- Gerring, J. (2004). What is a case study and what is it good for? *American Political Science Review*, 98, 341-354.
- Hall, M., & Wright, R. (2008). Systematic content analysis of judicial opinions. *California Law Review*, 96, 1.

- Heyes, C.J. (2011). Subjectivity and power. In D. Taylor's (eds.), *Michel Foucault: Key concepts* (pp. 159-172), Durham, UK: Acumen Publishing Limited.
- Hogeveen, B. (2005). Toward "safer" and "better" communities?: Canada's Youth Criminal Justice Act, Aboriginal youth and the processes of exclusion. *Critical Criminology*, 13, 3, 287-305.
- Hsieh, H-F., & Shannon, S. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15, 9, 1277-1288.
- Huckin, T. (2004). Content analysis: What texts talk about. In Bazerman, C. & Prior, P. (eds.), *What writing does and how it does it: An introduction to analyzing texts and textual practices* (pp.13-33). Mahwah, NJ, Lawrence Erlbaum Associates.
- Jaccoud, M. (2007). Innovations Penales et Justice Reparatrice. *Champ Penal*, 4, 65-87.
- Jantzi, V. (2004). "What is the role of the state in restorative justice?" In H. Zehr, & B. Toews (eds), *Critical issues in restorative justice* (pp. 189-202). Monsey, NY: Criminal Justice Press.
- Johnstone, G. (2002). *Restorative justice: Ideas, values, debates*. Cullompton, Devon, UK: Willian Publishing.
- Kling, J.R., Ludwig, J., & Katz, L.F. (2005). Neighbourhood effects on crime for female and male youth: Evidence from a randomized housing voucher experiment. *The Quarterly Journal of Economics*, 120(1), 87-130).
- Law Commission of Canada. (2003). *Transforming relationships through participatory justice*. Ottawa, ON: Law Commission of Canada.

- Lawrence, B. (2003). Gender, race, and the regulation of native identity in Canada and the United States: An overview. *Hypatia* 2, 3-31.
- Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85, 2, 127-144.
- Levrant, S., Cullen F.T., Fulton, B., & Wozniak, J.F. (1999). Reconsidering restorative justice: The corruption of benevolence revisited? *Crime and Delinquency*, 45, 3-27.
- London, D. (2003). The restoration of truth: Bringing restorative justice from the margins to the mainstream. *Criminal Justice Studies*, 16(3), 175-195.
- Llewellyn, J. (2009). Restorative collaboration: The Nova Scotia Restorative Justice Program. Retrieved February 13, 2015, from [http://www.iirp.edu/article\\_detail.php?article\\_id=NjI5](http://www.iirp.edu/article_detail.php?article_id=NjI5)
- Llewellyn, J. (2011). Restorative collaboration: The Nova Scotia Restorative Justice Program. Retrieved December 2, 2012, from [http://canada.iirp.edu/uploads/article\\_pdfs/20335\\_Beth09\\_ProfJennL\\_Lewellyn.pdf](http://canada.iirp.edu/uploads/article_pdfs/20335_Beth09_ProfJennL_Lewellyn.pdf).
- Llewellyn, J. (2012). Restorative justice: Thinking relationally about justice. In J. Downie & J. Llewellyn (eds.), *Being relational: Reflections on relational theory and health law* (pp. 89-108), Vancouver, BC: UBC Press.
- Lynch, R.A. (2011). Foucault's theory of power. In D. Taylor, *Michel Foucault: Key concepts* (pp. 13-26), Durham, UK: Acumen.
- Marsh, P., & Crow, G. (1998). *Family group conferences in child welfare*. Oxford, UK: Blackwell Sciences.

- Marshall, T. (1996). *Restorative justice: An overview*. London, UK: Home Office.
- Mason, J. (2003). *Qualitative researching*. London: Sage Publications.
- May, T. (2006). *The philosophy of Foucault*. Ann Arbor, MI: Acumen.
- May, T. (2011). Foucault's conception of freedom. In D. Taylor's (eds.), *Michel Foucault: Key concepts* (pp. 71-83), Durham, UK: Acumen Publishing Limited.
- McCold, P. (2001). Primary restorative justice practices. In A. Morris and G. Maxwell (eds.), *Restorative justice for juveniles*, Portland: OR: Hart Publishing.
- McCold, P. (2006). The recent history of restorative justice: Mediation, circles, and conferencing. In D. Sullivan and L. Tifft. (eds.), *Handbook of restorative justice* (pp. 23-51), New York, NY: Routledge International Handbooks.
- McHoul, A., & Grace, W. (1993). *A Foucault primer: Discourse, power and the subject*. New York, NY: New York University Press.
- Mendieta, E. (2011). The practice of freedom. In D. Taylor's (eds.), *Michel Foucault: Key concepts* (pp. 111-124), Durham, UK: Acumen Publishing Limited.
- Mika, H. (2002). Evaluation as peacebuilding? Transformative values, processes, and outcomes. *Contemporary Justice Review*, 5(4), 339-350.
- Mika, H., & Zehr, H. (2003). A restorative framework for community justice practice. In K. McEvoy, & T. Newburn (eds.), *Criminology, conflict resolution and restorative justice*, Basingstoke, NH: Palgrave, McMillan.
- Miles, A., & Huberman, A.M. (1994). *Qualitative data analysis: An expanded sourcebook* (2<sup>nd</sup> ed). Thousand Oaks, CA: Sage Publications Inc.
- Miles, M., Huberman, A.M., & Saldana, J. (2014). *Qualitative data analysis: A methods sourcebook* (3<sup>rd</sup> ed.). Thousand Oaks, CA: Sage Publications Inc.

- Morris, A. (2002). Critiquing the critics: A brief response to critics of restorative justice. *British Journal of Criminology*, 42, pp. 596-615.
- Nealon, J. (2008). *Foucault beyond Foucault: Power and its intensifications since 1984*. Stanford, CA: Stanford University Press.
- Neuman, L. (2006). *Social research methods: Qualitative and quantitative approaches*. Boston, MA: Pearson Education.
- Neuman, L. (2011). *Social research methods: Qualitative and quantitative approaches*. Boston, MA: Allyn & Bacon.
- Nova Scotia Department of Justice. (1998). *A program for Nova Scotia: Restorative justice*. Retrieved from [https://www.novascotia.ca/pps/publications/ca\\_manual/ProsecutionPolicies/Restorativejustice.pdf](https://www.novascotia.ca/pps/publications/ca_manual/ProsecutionPolicies/Restorativejustice.pdf)
- Nova Scotia Department of Justice. (2013). *Restorative justice: Executive summary*. Retrieved from <http://novascotia.ca/just/rj/materials.asp>
- NSRJ-CURA. (n.d.). *The Nova Scotia restorative justice program*. Retrieved from <http://www.nsrj-cura.ca/home/the-nova-scotia-restorative-justice-program>
- O'Connell Davidson, J., & Layder, D. (1994). *Methods: Sex and madness*. New York, NY: Routledge
- O'Malley, P. (2006). Risk and restorative justice: Governing through the democratic minimization of harms. In I. Aertsen, et. al. (eds), *Institutionalizing restorative justice* (pp. 216-236). Canada: Willan Publishing.
- Orum, A., Feagin, J., Sjoberg, G. (1991). Introduction: The nature of the case study. In J.R. Feagin, A. Orum, & G. Sjoberg (eds.), *A case for the case study* (pp. 1-26). Chapel Hill, NC: The University of North Carolina Press.

- Pavlich, G. (2001). The force of community. In H. Strang and J. Braithwaite (eds.), *Restorative justice and civil society*, Cambridge, UK: Cambridge University Press.
- Pavlich, G. (2005). *Governing paradoxes of restorative justice*. London, UK: GlassHouse Press.
- Peachey, D. (2003). The Kitchener experiment. In G. Johnstone (ed.), *A restorative justice reader*, Cullompton, UK: Willian Publishing.
- Prichard, J. (2010). Net-widening and the diversion of young people from court: A longitudinal analysis with implications for restorative justice. *Australian & New Zealand Journal of Criminology*, 43(1), 112-129. doi:10.1375/acri.43.1.112.
- Put, J., Vanfraechem, I., & Walgrave, L.(2012). Restorative Dimensions in Belgian Youth Justice. *Youth Justice*, 12(2), 83-100. doi: 10.1177/1473225412447159.
- Rigby, A. (2001). *Justice and reconciliation: After the violence*. Boulder, CO: Lynne Rienner Publishers.
- Roach, K. (2000). Changing punishment at the turn of the century: Restorative justice on the rise. *Canadian Journal of Criminology*, 42, 3.
- Roche, D. (2006). Dimensions of restorative justice. *Journal of Social Issues*, 62(2), pp. 217-238).
- Saldana, J. (2013). *The coding manual for qualitative researchers* (2<sup>nd</sup> ed.). Thousand Oaks, CA: Sage Publications Inc.

- Schiff, M. (1999). The impact of restorative interventions on juvenile offenders. In G. Bazemore, & L. Walgrave, *Restorative juvenile justice: Repairing the harm of youth Crime* (pp. 327-256). Monsey, NY: Willow Tree Press, Inc.
- Schwandt, T. A. (2007). *The Sage Dictionary of Qualitative Inquiry*. California: Sage Publications.
- Sharpe, S. (2004). How large should the restorative justice “tent” be? In H. Zehr, & B. Toews, *Critical issues in restorative justice* (pp. 19-45).
- Stahlkopf, C. (2009). Restorative justice, rhetoric, or reality? Conferencing with young offenders. *Contemporary Justice Review*, 12(3), 231-251.  
doi:10.1080/10282580903105756.
- Stephens, G. (1997). Youth at risk: Saving the world's most precious resource. *The Futurist*, 31(2), S1-S7.
- Strang, H. (2004). Is restorative justice imposing its agenda on victims? In H. Zehr, & B. Toews (eds), *Critical issues in restorative justice* (pp. 95-106). Monsey, NY: Criminal Justice Press.
- Stuart, B., & Prannis, K. (2006). Peacemaking circles: Reflections on principal features and primary outcomes. In D. Sullivan & L. Tifft (eds.), *Handbook of restorative justice* (pp. 121-133), New York, NY: Routledge International Handbooks.
- Sullivan, D., & Tifft, L. (2006). *Handbook of restorative justice*. New York, NY: Routledge International Handbooks.
- Thomas, G. (2011). A typology for the case study in social science following a review of definition, discourse, and structure. *Qualitative Inquiry*, 17(6).

- Tiftt, L., & Sullivan, D. (1980). *The struggle to be human: Crime, criminology, and anarchism*. Orkney, Scotland: Cienfuegos Press.
- Van Ness, D., & Strong, K.H. (1997). *Restoring justice*. Cincinnati, OH: Anderson.
- Van Ness, D. (2002). The shape of things to come: A framework for thinking about a restorative justice system. In E. Weitekamp, & H-J. Kerner (eds), *Restorative justice theoretical foundations* (pp. 1-20). Devon, UK: Willan Publishing.
- Van Ness, D. W., & Strong, K. H. (2010). *Restoring justice: An introduction to restorative justice*. New Providence, NJ: Matthew Bender & Company Inc.
- Walgrave, L. (2000). How can pure maximalist approach to restorative justice remain? Or how can a purist model of restorative justice become maximalist? *Contemporary Criminal Justice Review*, 1(4), 415-432.
- Walgrave, L. (2002). From community to dominion: In search of social values for restorative justice. In E. Weitekamp & H-J. Kerner (eds.), *Restorative justice theoretical foundations* (pp. 71-89). Devon: UK: Willian Publishing.
- Walgrave, L. (2004). Restoration in youth justice. *Crime and Justice*, 31, (Youth Crime and Youth Justice: Comparative and Cross-National Perspectives), 543-597.
- Warner-Roberts, A., & Masters, G. (1999). *Group conferencing: Restorative justice in practice*. Minneapolis: MN: University of Minnesota's Center for RJ and Mediation.
- 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 Accociation, Sheraton Wall Centre, Vancouver, BC., June.

- Woolford, A. & Ratner, R. (2008). *Informal reckonings: Conflict resolution in mediation, restorative justice and reparations*. New York, NY: Routledge-Cavendish.
- Woolford, A. (2009). *The politics of restorative justice: A critical introduction*. Halifax, N.S.: Fernwood.
- Yin, R. (2009). *Case study research: Design and methods*. Thousand Oaks, CA: Sage Inc. *Youth Criminal Justice Act, SC 2002, c 1*.
- Zehr, H. (1990). *Changing lenses: A new focus for crime and justice*. Scottsdale, PA: Herald Press.
- Zehr, H. (2002a). *The little book of restorative justice*. Intercourse, PA: Good Books.
- Zehr, H. (2002b). Journey to belonging. In E. Weitekamp, & H-J. Kerner (eds), *Restorative justice theoretical foundations* (pp. 21-31). Devon, UK: Willan Publishing.