

“The Beloved Community”:
A Study of the Restorative Justice Paradigm

by

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Abstract

Restorative justice has become a worldwide phenomenon in the criminal justice system. Taking into consideration that criminal law seeks to protect fundamental legal assets, also the maintenance of legal peace, the alternative proposals of criminal reaction have shown that they are an attempt to resolve the conflict between the parties involved and the social issues generated by the crime. So, it is crucial to stimulate the development of alternatives to criminal basis and its traditional model of imposing sentences. Thus, restorative programs (such as victim-offender mediation, family conferences, circles and impact panels) are essential because they are ways of healing, assuming that human beings care. So, they are alternative ways to respond to crime that seek to make amends instead of punishment and restitution rather than retribution. Those interventions are being used by police, judges, prisons and probation officers. This paper does a qualitative a case study that aims to demonstrate that restorative justice fulfils its role of empowering participants, interests of people who have been harmed are met and offenders, when appropriate, have the option to make restitution. Also, demonstrates how restorative justice affects the criminal justice system as practices that complement rather than a substitutive way of existing interventions taking the view that one system reinforces another to mutual benefit.

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Table of Abbreviations

APAC	Associação de Proteção e Assistência aos Condenados, translated from Portuguese as the Association for Protection and Assistance of Convicts
FBAC	Fraternidade Brasileira de Assistência aos Condenados, translated from Portuguese as Brazilian Fraternity for Assistance of Convicts
IPTR	Irish Penal Reform Trust
MADD	Mothers Against Drunk Driving
RJ	Restorative Justice
TVRJS	Thames Valley Restorative Justice Service
VOM	Victim-offender Mediation

Chapter 1 - Introduction

Considering the actual model of criminal law which faces its illegitimacy and inefficiency, some consensual methods of conflict resolution have emerged as an alternative to the traditional model restorative justice programs, bringing up the opportunity to brainstorm about the difference between the social and the personal aspect of crimes.

Taking into consideration that criminal law seeks to protect fundamental legal assets, also the maintenance of legal peace (McIntyre, McMullan and Sean O Toghda, 2012), the alternative proposals of criminal reaction have shown that they are an attempt to resolve the conflict between the parties involved and the social issues generated by the crime. So, it is crucial to stimulate the development of alternatives to criminal basis and its traditional model of imposing sentences. However, it is essential to highlight the necessity of a new way of thinking which permits a redefinition and reconstruction of the penal mission.

Chapter 2 states the aims and objectives of this paper, that intends to discuss the importance of restorative justice as a means of alternative dispute resolution in the criminal justice system with practical applications and restoring a sense of justice after rule-breaking, viewing that it is relevant to reflect, study and debate about it. Also, it seeks to introduce readers to restorative strategies.

This paper comes from many questions related to the role of criminal law and the possibility of changing its basis and way of thinking. As known, the traditional model of crime treatment – based on punishment – has been experiencing its crisis when it comes to legitimacy which can be seen in aspects such as the exclusion of the analysis through penal law of the victim and the crime aftermath. Also the punishment, in the way as it is accepted by the actual model of the criminal justice system, does not achieve the goals of prevention that should be sought, which leads to the crisis of legitimation of the system.

Having that in mind, law scholars in the world started thinking in different alternatives to the basis of punishment, aiming for new approaches to criminal liability. Restorative justice

emerges in this context of dissatisfaction and so many questions arising seeking to have another way of thinking instead of punishment, in which the parties are brought to the centre of this, the harm caused can be repaired and the offender can be reintegrated to the community.

Umbreit, M. (1998) claims that restorative justice shows how vital the role of victims and community members is when a crime takes place, in a way that offenders are held accountable and the emotional and material losses of victims are restored. Thus, this would provide several opportunities for dialogue and problem solving, when it is possible, which can lead to an essential sense of community safety, conflict resolution and closure for all participants.

Then, Chapter 3 presents an in-depth review of the literature about restorative justice – the paradigm. It explains that restorative justice is about creating obligations to ‘make things right’, about the empowerment of the stakeholders, about bringing people face to face together, about healing, about restoration, about restitution. It includes victims, offenders and communities.

Wenzel (2008) explains that status and power are concerns related to retributive justice while restorative justice has in its basis the interest in shared values. Restorative practices are based on a set of principles and values that focus upon the actors related to the crime: victims, offenders and community members, contrasting to the current system of criminal law that focuses on punishment.

Thus, those principles claim that justice must be sought not only for an offender but also for the victims; understanding and recognition of the harm caused are necessary; dialogue is needed to achieve understanding of the harm caused; the importance of the involvement of communities to reintegrate victims and offenders and avoid future offending on the part of the offender.

The necessity of restorative justice as an alternative model to the criminal justice system brings important implications for this system as it is an entirely different notion from the retributive justice that still influences criminal law in some extent. The retributive concept focuses on repairing justice through a unilateral imposition of punishment, whereas restorative justice proposes to discuss the social and personal aspects of a crime in a bilateral process.

Kelly Jr. (2014, p. 26) says that restorative interventions work because human beings care: “amongst other things: people care about what others feel and think about them; they care about others have been harmed and are in need of repair; they care that they may have harmed others and don’t know how to fix it; they care that others care for them. Furthermore, all human behaviour is motivated by what we care about”.

Thus, restorative programs (such as victim-offender mediation, family conferences, circles and impact panels) are essential because they are ways of healing, assuming that human beings care. So, they are alternative ways to respond to crime that seek to make amends instead of punishment and restitution rather than retribution, in a manner that allows us to build what Dr Martin Luther King called “The Beloved Community” – a society that maximises empathy, compassion and love:

“The end is reconciliation; the end is redemption; the end is the creation of the Beloved Community. It is this type of spirit and this type of love that can transform opponents into friends. It is this type of understanding goodwill that will transform the deep gloom of the old age into the exuberant gladness of the new age. It is this love which will bring about miracles in the hearts of men.” (Dr. King, 1956).

Therefore, the title of this paper – “The Beloved Community” seeks to emphasise that restorative justice is concerned with repairing social injuries and relationships. It is not a utopian ideology, but a realist, achievable goal that has been implemented in many ways around the world.

Then, Chapters 4, 5 and 6 explain the research methodology chosen in this paper, presentation of the data gathered during the study and analysis of it and a discussion of the limitations of restorative justice, that will help answer in chapter n. 7 how might restorative justice movement affects the criminal justice system.

Chapter 2 - Aims and Objectives

One of the purposes of this paper is to familiarise readers with restorative justice as a way of conflict resolution with practical applications. It advocates that all of us should do a deep recognition of others' realities so social policies should also be changed in the criminal justice system.

This paper aims to demonstrate that restorative justice fulfils its role of empowering participants, interests of people who have been harmed are met and offenders, when appropriate, have the option to make restitution. It stands up for the principles of restorative justice since it considers that such standards should be taken seriously anywhere.

Also, it seeks to assess the limitations of restorative justice and the boundaries between restorative practices and the criminal justice system. It focuses on demonstrating how restorative justice affects the criminal justice system as practices that complement rather than a substitutive way of existing interventions taking the view that one system reinforces another to mutual benefit.

Chapter 3 - Literature Review

A Brief History of Restorative Justice – A Way of Engagement and Empowerment

Explaining Restorative Justice (RJ) is not so easy while it faces the distrust from many people because of the lack of information about this topic, taking into consideration that the notion of restorative justice is still being constructed and it is in constant transformation. Thus, it is pivotal to think and reflect about it to deepen the knowledge that could help the society as a whole (Zehr, 2015; Walker, 2013, pp. 8-11; Van Ness and Strong, 2010, pp. 21-26; 2010).

Yet this field has been growing and also an acknowledgement of its limits and failures. Victims, offenders and community members, as well as justice professionals such as lawyers, judges, prosecutors, probation and parole officers, very often, feel that the justice system is not satisfactory and does not meet their needs, and many times they end up being extremely frustrated. This problem becomes even more prominent because many of them think that instead of contributing to healing or peace, the process of justice that we have deepens societal wounds (Zehr, 2004, Chapter 1).

Marshall (1999, p. 5) says that restorative justice is “a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies”. This approach is seen as a great via of conflict resolution different from the traditional criminal law justice based on imposing penalties and seeks to get victim and offender participating and engaged in resolving the conflict.

Restorative justice came about because the traditional model of resolving conflicts offered by criminal law justice system had shown its inefficiency so, restorative practices, gradually, started being used in different places around the world in the 1970s.

Van Ness and Strong (2010, p. 21), deepening the knowledge about restorative justice, explain that in the context of criminal justice, the term “restorative justice” was first used by Albert Eglash in so many articles about 1958. He came up with the suggestion that there are three types

of criminal justice: (1) retributive justice, based on punishment; (2) distributive justice, based on treatment of offenders via therapy; and (3) restorative justice, based on restitution.

McCold and Watchtel (2003), presenting at the XIII World Congress of Criminology in Rio de Janeiro, Brazil, explain that the retributive approach tends to mark people with a negative label, stigmatising them while the essence of restorative justice is collaborative problem-solving.

According to Eglash (Eglash, 1977, cited in Van Ness and Strong, 2010, pp. 21-22), both the punishment and treatment models, focus on what the offenders have done, their actions, ignoring the participation of the victim in the process.

On the other hand, seeing the process through the lenses of restorative justice, the focus is on the harmful effects of the wrongdoing in which victims are not ignored but involved together with offenders in the process of reparation and rehabilitation. McCold (2000) says that restorative justice has always put attention on victims, offenders, community and their needs that crime creates for all of them.

Walker (p. 5) says that current restorative justice's development came from experiments in the 1970s that reunited people offenders with the victims of crimes. This new way of thinking brought a new focus on individuals and communities making questions related to what people needed to heal from incidents of crime. So, offenders and victims were brought together to discuss what had happened, involving topics such as accountability for the crime, how harmful it was to the victim and how the harm could be repaired. This kind of response to wrongdoings is entirely different from the criminal justice system that is based on identifying and punishing offenders.

Initially, according to Van Ness and Strong (2010, pp. 28-29), a variety of approaches have emerged, and the first known experiences were in Canada (1974), the United States of America (1978), Norway (1981) and New Zealand (1989). However, Norway and New Zealand developed restorative justice for juvenile offenders, and New Zealand used the family group

conferences as restorative practices. The others used the mediation victim-offender (VOM) in which the focus was on adults.

Howard Zehr, who is one of the world's most recognised restorative justice pioneers, considered the "grandfather" of restorative justice, argues that "restorative justice emerged as an effort to correct some of the weaknesses of the western legal system while building its strengths". Victims and their needs have always been overlooked by criminal justice, and this is an area of particular concern, he says, considering that legal justice only brings loads of answers to what with offenders and the need to hold them accountable (Zehr, no date).

After years advocating for people being prosecuted in court, he conducted a restorative meeting that was a transformative experience. In his 1990 book, *Changing Lenses: Restorative Justice for Our Times*, he demonstrates how transformative empowering restoring practices could be and criticises the current model of criminal justice and its failure to meet the needs of victims, offenders and community (Zehr, 182, 2015).

He claims that the "lens" used by the actual model of criminal justice sees crime as a violation of law and justice is applied through punishment and blame Zehr (2015, p. 187). He explains the differences and contrasts between that model with restorative justice, in which the "lens" used deals with crime as a transgression that affects people and relationships that brings the necessity to repair it and "make things right", throughout a process that involves all parties that are seeking for solutions (Zehr, 2015, p. 187).

He continues (2015, p. 188), "recognising that punishment is often ineffective, restorative justice aims at helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible. Rather than obsessing about whether offenders get what they deserve, restorative justice focuses on repairing the harm of crime and engaging individuals and community members in the process".

Braithwait (2004) claims that "restorative justice restores victims, restores perpetrators and restores communities. It is about the idea that because crime hurts, justice should heal".

Furthermore, Bazemore (1999), talking about the excessive concern with offender punishment and treatment in the current response to crime, says that this obsession is “one-dimensional and insular”. He explains that “too often the treatment and punishment intervention paradigms reduce the justice function and process to a simplistic choice between helping or hurting offenders, and hence fail to address and balance the multiple justice needs of communities. In addition, these approaches share an insular, “closed-system” focus on the offender that ignores the needs of crime victims and other citizens and fails to engage them effectively in the response to crime”.

However, it is important to remember, as Johnstone and Van Ness (2007, p. 7), focusing on an internally complex concept, that not all constructive and progressive alternatives to traditional interventions into crime can be considered as restorative justice. It needs to have some important characteristics such as the aiming to have victims, offenders and others involved and firmly connected, seeking to discuss the conflict – what happened, the result of the harm, what should be done to repair it and the intention to prevent future crimes.

Also, the alternative needs to emphasise the empowerment of people who are involved – whose lives are affected by the crime. Decision-makers or those who facilitate the decision in the process – need to make an effort to promote a response that seeks offenders’ recognition of the harm caused in a manner that they take responsibility for what they have done, instead of stigmatizing and punishing them. Those actions are essential steps for their reintegration into the community (Johnstone and Van Ness 2007, p. 7).

Johnstone and Van Ness (2007, p.7) claim that restorative procedures and everything that involves them, including decision-makers and facilitators and the outcomes will be guided by principles or values that have to be followed as we live in a society which is based on an interaction between people. So, respect should be demonstrated for others and violence, and coercion should be avoided, focusing on inclusion rather than exclusion of the human being.

Moreover, attention will be put on the harm done to the victims and tangible ways to repair the harm caused. Also, there will be more focus on strengthening or repairing relationships between people, all of this seeking to find solutions able to resolve difficult situations (Johnstone and Van Ness 2007, p. 7).

Hence, there is the importance of restorative practices in the criminal justice system. Some people might not agree with an intervention that clearly includes all of those characteristics. However, it is pivotal to allow restorative justice to happen in order to stimulate alternatives which are guided by principles or values that empower the parties in the process and refuse the stigmatising rationality of punishment that is so commonly accepted in the traditional model of the criminal law justice system.

Restorative Justice Definitions and Terminology

As pointed out earlier, the first use of the term “restorative justice” in the context of criminal justice was by Albert Eglash in 1958. The punishment and treatment models, according to Eglash, focus on the offenders and their actions, do not consider the victim participation in the justice process, and requests not efficiently small passive participation by the offender (Van Ness and Strong, 2010, p. 22). Restorative justice, instead, focuses on people harmed by crime and also leave room for community involvement.

It is important to remember that the meaning of RJ is still in construction and there is no definition of this that everyone agrees with. People do not mean the same thing when they describe the actual nature of the transformation sought by the restorative justice movement.

Howard Zehr (2015), in his inspirational book, *Changing Lenses*, describes restorative justice as being: “Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.”

A commonly accepted definition used internationally and offered by Marshall (1999, p.5), who worked for the British government, states that “restorative justice is a process whereby parties

with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”.

The United Nations (2006) sees restorative justice as a way of responding to wrongdoings by balancing the necessities of the victims, the offenders and the community. This is a concept that is in development and has given room to different interpretation in different countries – so that, there is not always a perfect consensus.

Van Ness (2015) explains that many people in the world advocates the thesis that restorative exists to repair the harm caused by crimes to victims and communities. However, criminal justice systems still tend a retributive connotation in which the offender has to be punished with equivalent prejudice or with making the offender less likely to relapse and cause more harm in the future (deterrence or rehabilitation).

The Program of Prison Fellowship International (2019), a Christian organization doing restorative justice work with prisons, defines restorative justice as a paradigm of justice that focuses on repairing the harm caused by criminal behaviour, which is best accomplished through cooperative programs that involve all willing stakeholders to come together to meet, even though others options are available when that is not possible to happen. This service can result in the transformation of people, relationships and communities.

It becomes clear that repairing the harm caused is necessary because justice requires it, in a way that transforms individuals, relationships and structures. In fact, the final objective and primary focus should be on changing the way we view ourselves and relate to others in our everyday lives (Sullivan and Tifft, 2001).

Hence, the critical implications drawn from this is that, although there is no definition of restorative justice that everyone agrees with, what everyone that advocates this idea around the world seeks is another and better lens of viewing justice than that which exists, so another way of viewing justice than only the rationality of punishment.

Johnstone and Van Ness (2007, p. 5) have come up with a suggestion that restorative justice is a complex idea that evolves with discoveries and that is one reason for the difficulty in arriving at a single definition of restorative justice. In this way, people generally understand what the movement seeks, but they might not be able to agree on a single definition.

However, according to Johnstone and Van Ness (2007, p. 5-21), it could be possible to identify three basic conceptions that suggested definitions of restorative justice are focused on: (1) the encounter conception, (2) the reparative conception, (3) the transformation conception.

The encounter conception focuses on the importance of meetings between stakeholders and on the several benefits that come from those encounters once the wrongdoing is discussed, motivations that led it to happen its aftermath. This conception would not consider any practice as restorative if it did not involve the victim, offender and the community meeting together.

McCold and Wachtel (2003) explain that victims and offenders are the primary stakeholders – the most directly affected by a specific offence. However, they say, those emotionally connected with a victim or offender, such as parents, siblings, friends, teachers or co-workers are also considered primary stakeholders, because they are directed affected and “constitute the victims’ and offenders’ communities of care”.

The secondary stakeholders include those who are neighbours or belong social, religious, educational or business organisations whose place that they share includes people who were affected by the wrongdoing. Eventually, society as a whole – represented by government officials is also considered a secondary stakeholder. Both sets of secondary stakeholders are harmed impersonally and vicariously; “their needs are aggregate, not specific, and their most restorative response is to support restorative processes in general”. (McCold and Wachtel, 2003).

According to Van Ness and Strong (2010, p. 57), it helps identify one of the key differences between restorative processes and criminal justice processes: in restorative programs, the stakeholders have the freedom to speak and make decisions in an environment less formal than

courts and through that evaluate what had happened. In courts, on the other hand, the active participants are generally professionals who have no connection to the crime whatsoever. Judges decide, not the parties and while the offender usually has a lawyer, the victim does not, because their needs are generally considered the same as the society's, which the prosecutor represents.

The reparative conception seeks to repair the harm caused by crime through justice. This conception recognises that harm can often be addressed when there is an encounter between the parties in a restorative process, but it is not limited to a meeting. So, when it faces the unwillingness of the parties to meet, court proceedings should identify and make reasonable effort to repair the harm caused by the crime. This conception would not consider any practice as restorative if it did not insist on repairing the harm to direct victims, communities and offenders too (Van Ness and Strong, 2010, pp. 5-21).

The transformation conception broadens its concept being more expansive than the others because it deals not only with individuals instances of harm but goes beyond and also raises concerns about structural issues of injustice that prevents people from living harmoniously with others and their social environments, such as racism, sexism, and classism. This conception views restorative justice as a way of life because it suggests an approach that broken relationships can be repaired. Therefore, the transformation conception would not consider any practices as being restorative if they did not address structural issues of injustice (Van Ness and Strong, 2010, pp. 5-21).

Adding to the confusion, some have chosen to use different terms and concepts to explain and describe the field. McCold and Wachtel (2003) use the name 'restorative practices' to define practices that involve restorative justice principles, which do not need necessarily to involve crimes. They advocate the theory that schools and colleges should use restorative practices to invite students to reflect on their behaviour.

Morris (1999, p. 2-3), a Quaker with a doctor in sociology and social work calls the field ‘transformative justice’, explaining that this term expands what restorative justice seeks because it goes beyond and offers an opportunity for a transformation of the stakeholders and relationships. It recognises that the causes of the crime inherent in social, economic, and political systems need to be taken into consideration.

Hence, all the different terms and concepts demonstrate how the movement of restorative justice has been developing and changing over the years, which is influential in governmental policy. However, it is essential to emphasise that all of them use healing as the point of reference and speak of the necessity to repair the harm caused by criminal behaviour and consequently as a way of engagement and empowerment, which includes all stakeholders. In fact, what is necessary in most cases is to find a new reality.

Principles of Restorative Justice

Some key principles do exist when it comes to restorative justice, so it is important to highlight them and claim the need for them to be observed, once they set out fundamental standards. Dworking (2011, p.22) defends that a ‘policy’ sets out a goal to be reached. On the other hand, a principle goes far beyond: “I call a ‘principle’ a standard that is to be observed, not because it will advance or secure an economy, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality”.

Having said that, it is pivotal to consider each of them:

- *Victims, offenders and communities’ support and healing*

This principle of restorative justice claims that justice must be sought not only for an offender but also for the victims and communities. The victims of such offences, as Young (no date) explains, are also the victims’ family and community harmed by the offence. Van Ness and Strong (2010) share the same view: “These victims may include family members, [neighbors], and friends of primary victims and offenders. Their injuries and needs may also be considered in constructing a restorative response to crime”.

Liebmann (2007, p. 26) says that victim support is a priority, but, although it seems to be an obvious objective sought by the criminal justice system, most criminal justice systems are focused on offenders – from the stage of identifying them to taking them to court, sentencing them and punishing them. Also, justice professionals such as police, prosecutors, judges and probation staff focus on processing offenders. So, her concern is vital for the empowering of the victim, who has been forgotten in penal processes.

It is known that, for victims of crime, many of them do not bother to see their offender punished but many of them very often would be delighted to have an explanation about the issue or have their property back or even a simple apology could enough.

Moreover, the injuries of offenders need to be taken into consideration as well, which could be something that contributed to the crime (prior condition) or that resulted from the crime (those caused by the wrongdoing itself or its aftermath). Van Ness and Strong (2010) explain this: “these may be physical (as when the offender is wounded during the crime or incarcerated as a result of it), emotional (as when the offender experiences shame), or moral and spiritual (because the offender has chosen to harm another)”.

Besides that, it is crucial to bring the attention to the injuries experienced by offenders as a result of the criminal justice system’s response: he/she will carry on being described and stigmatised as an offender even after the sentence has been served. Therefore, this paper believes that those issues should be addressed in response to crime, which does not mean that wrongdoers are relieved of accountability.

- *Offenders take responsibility for what they have done*

Liebmann (2007, p. 26) argues that offenders are used to be punished, but this is not the same as taking responsibility for what they have done. According to her, it is necessary to exist a deeper understanding and recognition of the harm caused. In fact, offenders need to be held accountable for their actions, but it is imperative to understand what accountability means.

Zehr (2015, p.46) brings attention to the fact that for most people, accountability means punishment, often prison, as an answer to offenders. Such view is very limited, he argues, so without an intrinsic link between the act and consequences otherwise there will not exist true accountability. Therefore, while consequences are decided *for* offenders, accountability will not embrace responsibility.

Consequences, according to Young (no date), should be based on mutual respect seeking to make people feel that they have value and they can get heard and contribute, also focused on the outcomes for the victims and community, influenced by education, compassion and dignity when treating the offender.

Considering this, Zehr (2015, p. 46) adverts the issues that our current criminal justice system can cause: “In order to commit offences and live with their behaviour, offenders often construct elaborate rationalizations for their actions, and prison gives them much time and encouragement to do so. They come to believe that what they did was not too serious, that the victim “deserved” it, that everyone is doing it, and that insurance will take care of any losses. They find ways to divert blame from themselves to other people and situations. They also employ stereotypes about victims and potential victims”.

Hence, needs and responsibilities are a matter of accountability. The meaning of this accountability, Zehr explains (2015, p. 202), involves understanding and acknowledging the harm and focus on steps to ‘make things right’ and also their involvement in deciding what needs to be done to accomplish healing.

- *There is dialogue to achieve understanding*

This principle, according to Hyndman, M. and Johnson, L. (2007) addresses the importance of giving explanations about what has happened. Many offenders do not comprehend the extension of the harm from their crimes on their victims and, as it was already said, many victims really desire to understand the conflict and have many questions that they want to be answered. These dialogues, which are usually impossible to happen in the formal court setting,

are essential to make offenders understand the harm caused and it is fundamental when it comes to restorative justice.

For the facilitators, language skills matter: Martin (2006, p. 169) claims that their communication skills must include an ability “to handle the press”. A skilful facilitator can make a crucial difference, so this aspect cannot be overlooked as facilitators help the parties change their mind-set from war to healing.

It is possible, though, to contextualise those skills to what Roger Fisher and William Ury, in *Getting to Yes – negotiating without giving in* (2012), suggest in their book: an alternative way to negotiate, a method of *principled negotiation*, which invites us to focus on mutual gains for all parties involved rather than a game of winners and losers.

This theory insists on using some fair standards to resolve conflict opinions instead of what each party wants or not to do, respecting other’s views and making them respect ours too. Likewise in the context of restorative justice, the dialogue is essential to achieve understand, although, it is crucial to highlight to avoid confusions, restorative justice is not about negotiation between parties.

- *Offenders look at how to avoid future offending*

This principle highlights the need to have community and state’s help to prevent future offending. For some offenders, the understanding of the harm they have caused is enough to prevent them from committing other crimes. However, it becomes much more difficult for people who are addicted to drugs and alcohol or homeless (Liebmann, 2007, p. 27). These cases claim considerable help to avoid future offending and build a new path of life. Restorative justice, with assertiveness, focuses on the future, stimulating offenders to think differently and create a new path of life. (Zehr, 2015; Van Ness and Strong; 2010; Liebmann, 2007; McCold and Wachtel, 2003; Morris, 1999).

- *The community helps to reintegrate both victim and offender*

Criminal justice systems have addressed the need to reintegrate wrongdoers into the community, throughout housing them and giving them jobs especially after the deprivation of their liberty by a prison sentence. However, victims also need special attention to be reintegrated into the community once very often they feel excluded. That is why the victim support promoted by some organisations is so important to provide them practical and emotional support (Liebmann, 2007, p. 27).

The necessity of restorative justice as an alternative model to the criminal justice system brings important implications for this system as it is an entirely different notion from the retributive justice that still influences criminal law in some extent. The retributive concept focuses on repairing justice through the unilateral imposition of punishment, whereas restorative justice proposes to discuss the social and personal aspects of a crime in a bilateral process. (Zehr, 2015, pp. 211-212).

Wenzel (2008) explains that status and power are concerns related to retributive justice while restorative justice has in its basis the interest in shared values. Restorative programs are based on a set of principles and values that focus upon the actors related to the crime: victims, offenders and community members, contrasting to the current system of criminal law that focuses on punishment.

The term “community”, as explain Van Ness and Strong (2010, p.44), is used in different ways. That could refer to a geographic location, for instance, the neighbourhood where the parties live, or where the offence happened (that they call a “local community”). However, they argue that a nongeographic definition would be more useful, focusing on the presence of relationship (which they call a “community of care”).

In McCold’s (1995) words, “it seems prudent to consider the minimal necessary boundary of community as that which is limited to parties with a direct stake (need or responsibility) in the specific conflict”, considering that there are different levels of community.

Values of Restorative Justice

Restorative justice is also surrounded by underlying values that, if they are not respected, the services will not provide necessarily restoration. O'Dwyer (2014) and The Restorative Justice Consortium (2004) say that restorative practice is based on a set of core values: "Quality assurance systems need to ensure that these [values] are upheld and seen to be upheld, whether or not they are set out explicitly in agreed standards".

Restorative services and organisations working restoratively should state the values that surround their activities clearly, including respect, empowerment, honesty, engagement, voluntarism, healing, restoration, personal accountability, inclusiveness, collaboration and problem-solving (O'Dwyer, 2014; The Restorative Justice Consortium, 2004).

Zehr (2015, p. 247) suggests that there are three essential values that must be followed: respect, humility and wonder.

- *Respect*

Restorative justice is about respect. All human beings deserve to be treated with respect, regardless of their race, culture, beliefs, age or sexual orientation. Zehr (2015, p.247) believes that issues of respect and disrespect will influence the way that victims experience justice.

- *Humility*

Humility recognises that when justice is taken seriously and well-practiced by restorative justice practitioners, participants very often do not recognise how important the role of the facilitator is. Thus, it is necessary for practitioners to be able to live without being recognised. However, Zehr (2015, p. 247) claims that this value requires a recognition of the limits of what we "know" since our gender, culture and own histories profoundly determine the way we see the world. Humility, therefore, requests all of us to a deep recognition of others' realities.

- *Wonder*

The third value is wonder, which "involves an appreciation of mystery, of ambiguity, of paradox, even of contradictions. An ability to live with the unknown, with surprises, and with

the seemingly irreconcilable is essential to good restorative practice” (Zehr, 2015, p. 248). Thus, we should approach our activities with wonder. Zehr (2015, p. 245), believes that if we all take restorative justice seriously, with respect and humility, and also a perspective of wonder, this practice can lead us to a much better world.

Restorative Processes

Victim-offender mediation (VOM)

Victim-offender mediation programs (VOMs) were first seen in the 1970s and brought a lot of contributions to the restorative justice movement. Victim-offender mediation programs offer victims and offenders the opportunity to dialogue with the assistance of a trained facilitator to talk about the wrongdoing and harm caused in order to agree on steps towards healing and justice (Zehr, 2015; Van Ness and Strong, 2010; McCold and Wachtel, 2003).

The Centre for Justice & Reconciliation (2019), a program of Prison Fellowship International that promotes restorative justice around the world explains that VOMs, in essence, consists of a face-to-face encounter between victim and offender facilitated by a trained facilitator, in cases of criminal justice process and that the offender has admitted the offence.

With the assistance of the facilitator, both victim and offender, voluntarily, have the opportunity to resolve the matter and to come up with solutions to achieve justice. Zehr (2015, p. 161) emphasises that in those meetings three elements need attention: facts, feelings, and agreements.

Thus, unlike a court process, as Van Ness and Strong explain (2010, p. 66), those meetings seek the empowerment of the parties to solve their conflict in the way that suits them best. Different from arbitration, in which the arbitrator (a third party) delivers a decision after hearing the parties, the VOM is based on the resolution to the matter given by victim and offender. The focus is on promoting empowerment of the participants, dialogue and encourage mutual problem-solving.

Both victim and offender get the opportunity to talk about their feelings and perceptions of the offence that many times show some misconceptions that they might have one another before accepting the mediation. The meetings finish with an attempt to settle the matter with an agreement that sets steps that the offender will take to repair the harm caused to the victim, in order to “make things right” (The Centre for Justice & Reconciliation, 2019).

The role played by facilitators is extremely important in these meetings as they cannot impose solutions. They need to conduct the meeting in an atmosphere that encourages the parties to tell their stories, ask questions, and talk about the harm caused and also about the impact of this experience.

VOM, then, is a conflict-resolution or peace-making program that deals with transgressions of criminal laws by tackling the underlying conflict and injuries caused to the victim and also the offender (The Centre for Justice & Reconciliation, 2019). It stresses the voluntariness to embark in this process as an attempt to achieve justice instead than having the matter entirely decided by courts in criminal procedures.

According to the National Commission on Restorative Justice - Ireland (2009), research strongly indicates that victims who have the opportunity to meet with offenders are much happier with the criminal justice system and less fearful about being victims again in the future. Studies suggest high levels of satisfaction between victims who have participated in this kind of program, regardless of the seriousness of the offence involved.

Although the word *mediation* is used around the world when that comes to restorative justice, it is important to make a note concerning its terminology: is *mediation* the best word to describe these meetings? Is this term a problematic description?

Restorative approaches are useful regardless of the possibility of an encounter. A lot of restorative justice programs seek to have a facilitated meeting between victims, wrongdoers and the community of care. However, as Zehr (2003, p. 8) argues, a meeting is not always appropriate.

Even when a meeting happens, the term *mediation* could be not the best word to describe this process, considering that “in a mediated conflict or dispute, parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides”. (Zehr, 2003, p.7).

Zehr (2003, p.7) claims that in some criminal cases this sense of “shared blame” may be true. However, there are a lot of instances in which it is not. Some victims, such as in cases of rape or burglary does not want to be called “disputant”. Also, an offender needs to admit their responsibility, and the wrongdoing will be named and acknowledged in this kind of programme. So, the neutral language of mediation could be interpreted as being offensive in such cases.

Some authors believe that mediation in the criminal justice system is not applicable because its principles are not compatible with criminal cases, in which there is a clear inequality between the parties and that would prevent them from having an equal balance throughout the resolution of the conflict.

For all those reasons, some authors have replaced the term *mediation* for the term *conferencing* (Zehr, 2015; Wormer and Walker, 2013). This paper shares the same concerns of Zehr (2015) and Wormer and Walker (2013). Although it uses the term *mediation* for being very well-known in this field, it considers that the term *conference* would define this program best, considering that restorative justice in the criminal justice system is for people who have been affected by wrongdoing and there is no dispute between parties which needs to be negotiated.

In order to have a deeper understanding it is also necessary to develop the general concept of mediation, delivered by Erickson and McKnight (2001, p. 55) who say that has become a common term to define the method of settling legal disputes outside of the formal court system and a neutral third party is used – the professional mediator. In this way, the ultimate decision-making authority is left in the hands of the affected parties rather than the courts.

Importantly, as Hutchinson (2010, pp. 10-16) explains, mediation is an alternative way of conflict resolution in which the parties involved seek to resolve the conflict through this

approach, facilitated by a third party who needs to be completely impartial and is not involved in the dispute. The third party – the mediator – will play their role by helping the parties to come up with a possible solution that is neither binding nor imposed and that is acceptable and fair for all of them.

The agreement, when reached, is done exclusively by the parties involved, so the mediator is there only as a facilitator. Hence, the key implications drawn from this is that what is pivotal in this process is the autonomy of the parties that will be seeking to have the best solution that meets their needs.

Another key that Folger and Bush (1994, p. 17) claim attention to remember is that in the alternative form of mediation there is a fundamental effect which is the empowering of the parties. They will be playing their role as responsible for resolving the dispute instead of being there as adversaries or enemies, with the help from a mediator who is there to facilitate the dialogue and a possible restorative solution.

Note that, this feature – parties' empowerment – so important when it comes to mediation, based on the voluntariness and autonomy to resolve their conflict, is the element which draws a distinction between others alternative approaches of conflict resolution such as arbitration.

In arbitration (Hutchinson, 2010, pp. 15-16), for instance, the third party, who needs to be a specialist in the matter, will decide things, acting like a “judge” with a binding and enforceable decision. Hence, the emphasis is on differences, and the parties will never decide which the best solution is for them in the conflict that they are dealing with. Differently from mediation, the decision is not done by the parties but by the arbitrator, a third party chosen by the parties to resolve the conflict.

So, it is important to highlight that, what distinguish those approaches of conflict resolution, from one to another, is the role of the third impartial in the dispute, because when it comes to arbitration, the third party (arbitrator) will have the final decision of the conflict, and this differs

it from other procedures for the resolution of disputes (Marshall, 2001, p. 6). On the other hand, the role of the mediator is to facilitate conversation, discussion, and communication.

Liebmann (2007, p.27) claims that the victim-offender mediation can lead to a deeper understanding for the victim and the offender and it can also lead to a tangible reparation whether directly to the victim or indirectly to the community. It includes explanations about the crime (what and why it happened), an apology and financial reparation. So, this exchange can help victims and also offenders who have to face the harm they have caused.

Marshall (1999, p. 11), agreeing, explains that this personal dialogue permits agreements between the parties and accepts more flexibility and a higher level of creativity in this process than court processes. The role of that an apology plays here is also very important and some victims find it very helpful to have the chance to express their forgiveness and to be able to end up settling their conflict, considering, for example, any remaining bad feelings or fear and how to behave in case they meet each other in the street.

This experience copes much more with victims' emotional than material needs, and after a successful meeting, the parties can effectively resolve their differences. It is also known that in many cases the victim is delighted to have influenced the offender to keep themselves away from crime, transforming the whole experience in something positive (Marshall, 1999, p. 11).

Umbreit, M. (1998) says that differently from many other types of mediation approach, which are mostly "settlement driven", victim-offender mediation is "dialogue-driven". This focus primarily on "victim healing, offender accountability, and restoration of losses", because the dialogue between the parties is essential, once "dialogue addresses emotional and informational needs of victims that are central to their healing and to development of victim empathy in the offender, which can lead to less criminal [behavior] in the future".

The meetings need to be facilitated by someone who is specialist as a mediator, who has to make sure that there exists a safe and comfortable environment for the parties in order to have a higher exchange that can be positive for them (Gerkin, P. *et al.* 2017).

Schiff (2013, p. 318) explains that the process of mediation between victim and offender seeks to enable them to meet in a safe and structured setting, in which the dialogue can prosper. Before meeting each other, the victim and the wrongdoer participate separately of conferences with a trained mediator who will explain to them the process and evaluate if they are prepared for it. According to Raye and Roberts (2007, p. 219), in some places, the classic model of mediation has been changing, and it has been very common to have the inclusion of the family and friends of both, victim and offender, seeking to provide more support for them.

Another new feature in the process is what is called *shuttle diplomacy*, in which the mediator meet the parties separately without any further contact between them. In this practice, there is no direct communication between the victim and the offender, so the contact is made through the mediator. It has been applied in many programmes of mediation victim-offender in Europe and can be used in cases that there is a clear unbalance of power between the parties. (Raye and Roberts, 2007, p. 219).

Kriesberg (2007), in his book, analyses why some conflicts deteriorate terribly, becoming extremely destructive for all parties involved, in order to seek alternatives that may diminish the harm. Thus, it is important to study the importance of restorative justice as a system that includes loads of practices which can be executed in order to achieve its goals, through having a constructive dialogue between the parties, giving to the victim and wrongdoer the opportunity to talk and the importance of the program (conference/dialogue) as a restorative practice. Those practices, when applied, contribute to reduce the harm and increase the benefit of a specific conflict. (Zehr, 2015; Wormer and Walker, 2013; Van Ness, 2010; Kriesberg, 2007; Martin, 2006).

Evaluation studies of the victim-offender mediation (conference/dialogue) indicate the power of this remarkable program: victims get a sense of satisfaction that justice is being done; restitution completion rates; offenders recognise their responsibility and agree to make amends to the victim. (The Program of Prison Fellowship International, 2019; Zehr, 2015, p. 164; Van

Ness and Strong, 2010, p. 168; National Commission on Restorative Justice – Ireland, 2009); Umbreit, Coates, & Roberts, 2000, cited in Dijk et al., 2019; Sherman and Strang, 2007; Marshall, 1999, p. 8).

Conferencing

The origins of conferencing are found in the *whanau* conference of the Maori, aboriginal people from New Zealand, as a way of dealing with their own youth, once they have a strong relationship between them (The Program of Prison Fellowship International, 2019).

Raye and Roberts (2007, p. 213) explain that, in 1989 family group conferencing initiated under provisions of the Children, Young Persons and Families Act in New Zealand, was subsequently adopted in Australia and now is being used through different forms around the world. The Act sought to empower the families of the Maori in a process thought to bring families of victims and wrongdoers together to come up with solutions to their own conflicts, with the assistance of a facilitator given by the government. As a result, according to Zehr, (2015, p. 172), an enormous drop in caseloads (as high as 80) were reported by judges.

Conferencing programmes involve the participants in an in-depth conversation about the crime and its consequences. One crucial difference from Victim-Offender Mediation, as Van Ness and Strong (2010, p. 68) explain, was the inclusion of family members and supporters - referred to as their community of care. Also, the facilitator (called “coordinator” in the New Zealand model) gives assistance to the group, in order to make sure that the process is safe for all participants, feelings are expressed and facts explored. The conference process has been most often used in the juvenile justice system, but conferences with adult offenders are also being used, as explained by Raye and Roberts (2007, p. 214).

Vernon C. Kelly Jr., in his brilliant book “The Psychology of Emotion in Restorative Practice” (2014, p. 67) says that conferences are usually very emotional meetings that seek to encourage every participant to express their emotions, to convey clearly to everyone how harmful the wrongdoing was and how deeply it has affected them emotionally.

Those programmes, as emphasised by the Program of Fellowship International (2019), intend to show the juvenile offender that people care for them and to introduce a sense of accountability to all participants.

Kelly Jr. (2014, 26), says that restorative interventions work because human being care and each of us evolves from a complex interplay of being biological beings, living in social settings. Therefore, he explains (2014, p. 67-68) that conference programs contrast directly to the way that people behave themselves and tend to hide their strong emotions in their relationships with others, not to demonstrate weakness by being 'emotional'. Negative emotions do not disappear by being ignored. Instead, they start to negatively affect the physical and emotional wellbeing of individuals, which could lead, over time, to verbal and physical attacks.

Once the phase of conversations about what had happened and feelings is finished, the group suggests ways to repair the harm caused by the crime. The victims and families and friends have a chance to say what they expect, and then the offender and their supporters respond. The dialogues continue until the participants have a plan for reparation, which increases commitment since all participants are involved, that will be in writing (Van Ness and Strong, 2010, p. 69).

Other criminal justice systems have adopted the New Zealand model of family group conferencing. Not only Australia is using, as pointed out before, but also the United Kingdom and the USA. In Northern Ireland, it is applied on a statutory basis (National Commission on Restorative Justice - Ireland, p. 41). The New Zealand model was also adopted in Ireland, through the Children Act, 2001, which provides for the implementation of conferencing by An Garda Síochána to deal with offenders (Children Act 2001). Van Ness and Strong (2010, p. 69) and also The Program of Prison Fellowship International (2019) demonstrated that evaluation studies of conferencing indicated prosperous returns in juvenile corrections with victim satisfaction around 90%, restitution plans made in 95% of the cases and commitment of the restitution plan without police follow-up in 90% of the cases. Qualitative studies demonstrate

that those programs help offenders develop empathy for their victims, change in the wrongdoer's behaviour reported by their families and support networks are strengthened.

Circle Processes

Based on the values and traditions of North American aboriginal people, circles are based on a decision-making approach, which involves victims, offenders, their families and supporters, interested members of the community of care and (usually) a criminal justice personnel. This program was first used in the criminal justice system in 1990 as part of a judge's pre-sentence hearing (Van Ness and Strong, 2010, p. 69).

Participants speak one by one and may discuss and address a wide range of issues concerning the crime, including community conditions or other concerns that are important for understanding what happened and what should be done. The focus is on a constructive result that meets the needs of the victim, community and offender. A plan is created to be followed and it will be monitored. In cases of noncompliance with the plan, the case could be submitted to a circle again or to the formal court process (Van Ness and Strong, 2010, p. 70).

A very well-known format of circle is the Hollow Water First Nations Community Holistic Circle. Because of the high level of alcoholism in Hollow Water (Canada), community members started using circles to deal with it. In the safety of those circles, the first disclosure of sexual abuse came in 1986 and at that point it turned out that there was a massive number of people who had been abused, which led to the increment of more healings circles as a way of tackling the injuries done, healing the victim and restoring the community (The Program of Prison Fellowship International, 2019).

The International Institute for Restorative Practices (1999) says that in the first circle of those, the offender was asked to share what they have done. Although they tried to avoid explaining some details, gradually the offender was able to admit their actions, and they were helped to feel the love and support of the circle. This circle, which could involve psychologists or other helpers, aimed to help the wrongdoer become a productive community member.

In the second step, the circles required the offender to bring his/her own nuclear family together, in order to deal with the family's response. The following circle (the third one) does the same that was done in the second one and dealt with more people of the family, and the fourth circle required abusers to explain to the community what they have done and what steps they were already taking in this healing process (The International Institute for Restorative Practices, 1999).

This model has still been repeated and their staff say that a person who experiences all of those steps is then convinced of his/her commitment to the healing process. Moreover, The Hollow Water highlights that they focus not only on the abuser but also on the victims, who receive care and attention from skilled therapeutics to help them overcome their trauma (The International Institute for Restorative Practices, 1999).

Circles have been developed in Yukon, Saskatchewan and Manitoba and have also been used in loads of different communities in Canada and the United States and other parts of the world for both young and adult wrongdoers including a great variety of offences (U.S. Department of Justice, no date).

The Department of Justice Canada (2019) says that sentencing circles have been used a lot, at the provincial/territorial court level and also in minor criminal cases involving Aboriginal wrongdoers and their victims. Many Supreme Court of Canada decisions have taken into consideration the changes to the *Criminal Code* that suggested Courts that alternative sentences for all offenders should be considered with particular attention to Aboriginal offenders, because of their heritage or identity.

The Program of Prison Fellowship International (2019), emphasizing the importance of healing in this process says that "the process is value driven. Primarily, it is designed to bring healing and understanding to the victim and the offender. Reinforcing this goal of healing is the empowerment of the community to be involved in deciding what is to be done in the particular

case and to address underlying problems that may have led to the crime. In reaching these goals, the circle process builds on the values of respect, honesty, listening, truth, sharing, and others". Judge Barry Stuart (cited in Zehr, 2015, p. 175) claims that the community-building and the community problem-solving of the circles' models may be one of the most relevant results of those process: "The principal value of Community Sentencing Circles cannot be measured by what happens to offenders, but rather by what happens to communities. In reinforcing and building a sense of community, Circle Sentencing improve[s] the capacity of communities to heal individuals and families and ultimately to prevent crime. Sentencing Circles provide significant opportunities for people to enhance their self-image by participating in a meaningful way in helping others to heal".

Zehr (2015, p. 175), agreeing to Stuart's position, says that when the community is not taken into consideration, as it is in the traditional criminal justice process, we miss the possibilities of growth and community building. On the other hand, when conflicts are addressed correctly, they are able to build relationships between people and communities.

According to The Program Prison Fellowship International (2019), studies regarding circles have demonstrated generally positive results. In a study carried out in Minnesota, participants noted the stronger relationships between people and communities which is an essential characteristic of the sentencing circles. Respondents say that the process is fair because it gives voice to each person involved considering that the participants work together in finding a solution. Some reservations are also made, regarding the need for better preparation of participants and even the length of the process.

The Living Justice Press (no date) lists some benefits after listening to the participants who spoke from their own experience: (1) it encourages an atmosphere of humility and compassion; (2) it builds mutual understanding, as they learn the personal stories and motivations to what happened; (3) it goes through social issues, economic, political, ethnic, racial and gender

divides and goes beyond, it brings everyone back to humanity. Thus, in general, circles have been viewed as a powerful way of building relationships and strengthening the community.

Restorative Justice Panels

Impact panels came about, considering that an encounter is not always possible or appropriate. Moreover, not all offender is caught and not always victims and offenders are willing to meet each other, or some other issues could occur and prevent an encounter from taking place. Considering these possibilities, impact panels provide parties who are willing to participate in an opportunity for an “indirect encounter”.

Van Ness and Strong (2010, p. 71) explain that those panels are made of groups of victims and groups of offenders who are linked by a common kind of crime. Thus, restorative justice panels bring together groups of victims and offenders who have no relation to each other, seeking to help victims find resolution and healing and to demonstrate to offenders how harmful their actions were their victims, which can lead them to a reflection about their attitudes and behaviour.

In Canada, impact panels are referred as community justice committees, and in England and Wales, they are referred as order panels. In Ireland, restorative justice panels have been used with adult offenders as a Community Reparation Panel, based on experiences seen in New Zealand, and is called Offender Reparation Panel in Tallaght. (National Commission on Restorative Justice - Ireland, 2009, p. 41).

In Ireland, the Offender Reparation Panel brings together a small group of citizens and offenders for a meeting. Throughout the encounter, panel members talk about the offence and its consequences. Afterwards, sanctions are proposed, and an agreement is reached regarding the steps the wrongdoer will take to repair the crime in a period of time. The program also requests offenders to document their progress in fulfilling their obligations under the agreement (National Commission on Restorative Justice, 2009, p. 41).

The Ministry of Justice UK and Youth Justice Board for England and Wales (2018, p. 4) explain that in England and Wales, referral order panels are applied in cases of minor offences to young offenders that will meet (accompanied by their parents) with two volunteers from the local area who will facilitate the restorative process. This process seeks to reach an agreement which will define the actions during the referral order. The contract aims to repair the harm that the offence has caused and to address the causes of the wrongdoing.

In the United States, Mothers Against Drunk Driving (MADD) organises panels that provides an opportunity for offenders to express their feelings and for victims to express the harm that drunk driving had on their lives, if telling their story will not be more harmful than helpful for them and also if they are able to discuss without accusing offenders (The Program of Prison Fellowship International, 2019).

According to The Program of Prison Fellowship International (2019) and Van Ness and Strong (2010, p.72), studies have demonstrated that those impact panels have great benefits such as the panels organised by MADD that shows changes in the attitudes of offenders and in the likelihood of committing more crimes: before the panels 87% of participants said they would drink and drive, but after the panels 90% said they would never drink and drive again. Moreover, 82% of the victim participants noted that the panels had contributed to their healing.

The Boundary between Restorative Practices and the Criminal Justice System

When it comes to restorative justice and legal justice there is a concern about their coexistence – the negotiation practices and the rules of the criminal system, and some questions emerge such as how to guarantee that the due-process safeguards for rights and proportionality would not be lost. Some other people defended the idea of having two completely parallel systems, without any interference in each other.

The Insight Prison Project (2019), a restorative agency, defines restorative justice as a social movement that is focused on a completely different way of thinking about crime and victimization. Our current system of criminal justice – retributive, focuses on punishment. It

considers the state as the primary injured from criminal behaviour and victims and prisoners have passive roles.

On the other hand, restorative justice includes human rights analysis and considers that the most affected by crime are the victims and offenders, so they should have the change to get involved in resolving the conflict (The Insight Prison Project 2019).

They consider that “the goals of restoring losses, allowing prisoners to take responsibility for their actions, and helping victims move beyond their sense of vulnerability stand in sharp contrast to the conventional focus on past criminal [behavior] and increasing levels of punishment” (The Insight Prison Project 2019).

Therefore, while the criminal justice system is essentially retributive, restorative justice speaks of restoration and healing. Thus, can those different goals coexist?

This paper agrees to Marshall (1999, p. 8), who explains that, even though restorative justice devolves a bit of control to individuals and communities, it is accepted that restorative justice cannot and should not be separated from legal justice and they should be totally integrated as a complementary process in order to have more effectiveness and quality of justice as a whole. So, one system reinforces another to mutual benefit in which the community and formal agencies cooperate.

Use of Restorative Justice Processes in the Contemporary Criminal Justice System

This topic will go through the use of restorative justice practice over the world, using case studies to emphasize the benefits that such practices bring to society. Restorative programs have become a significant component of the criminal justice system throughout the world and it is known that restoring practices are used in different instances of the criminal field, such as police, courts, probation, prisons and parole officers (Van Ness, 2008, p. 155).

Use by police

As pointed out before, victims and communities can benefit from the use of restorative justice processes. Police agents are first responders to community calls for service. As a result, several

countries have started using restorative practices when determining what to do with young and adults involved in wrongdoings, which is only possible where police have the discretion to decide what to do in such cases.

Bazemore and Griffiths (2003) say that restorative policing brings officers new tools for dealing with conflicts and also stimulates new ways of thinking. It emphasises the possibility for an officer to use discretion when dealing with wrongdoings and it encourages community involvement.

However, they argue that restorative justice does not limit it there. For this new thinking to take place, it should change the view that police officers take about all functions concerning the criminal justice system.

In England and Wales, restorative justice schemes were introduced in 1990 by the Thames Valley Police initiative (Stockdale, 2015). According to Van Ness, Thames Valley Police train officers to facilitate conferences that could involve victims and offenders as well as their families and friends, and in some cases, members of the community. Thames Valley Police (2019) says that “the process is about building understanding and confidence, with a face-to-face meeting and an agreement on some form of reparation being the end of a journey”.

Thames Valley Restorative Justice Service is provided by The Thames Valley Partnership with other agencies. Their services are (Police and crime commissioner Thames Valley, 2019):

- Young Victims Service;
- Independent Sexual Violence Advisory (ISVA) Service;
- Victim-Led Restorative Justice Service;
- Victims First Emotional Support Service;
- Victims First – Willow Project (exploitation and complex needs service);
- Domestic abuse services commissioned in partnership with local authorities.

This restorative justice practice has been adopted by other countries. In Norway, for instance, a mediation agreement which is followed successfully can lead to the dismissal of charges or

in the decision not to charge. In New Zealand, adult offenders are also included in their programmes.

Use in prison

Prisons were not seen as a natural place for restorative practices. They allocate offenders who have been sentenced, usually the majority without having been given the opportunity to participate in any restorative services. The society in general typically sees prisoners as dangerous people who need to stay incarcerated, whose victims are unlikely to want contact.

Thus, most restorative programmes in the world are employed outside prisons, because it is much easier for wrongdoers to make amends if they are not incarcerated. Moreover, restorative justice seeks the involvement of the community – it is community based, which highlights the importance of the ‘community of care’ in restorative processes. Also because of the hope of policymakers those restorative justice processes have the power to reduce court and prison overcrowding (Van Ness, 2010, p. 158).

However, there are many reasons for providing restorative processes in prisons. Many have argued that restorative justice is a viable alternative to imprisonment for a significant number of cases. Johnstone (2014) claims that restorative justice interventions are able to accomplish many goals we expect imprisonment to accomplish, such as showing victims and society that attitudes are being taken in response to crime, changing the outlook of offenders and discouraging wrongdoings and recidivism.

On this view, Van Ness and Strong (2010, p. 158) explain that one of the reasons for providing restorative interventions in prisons is to help prisoners develop empathy for victims, instead of anger. Another reason is to develop a way of thinking within prisons in which conflicts can be resolved peacefully.

The APAC (*Associação de Proteção e Assistência aos Condenados*), translated from Portuguese as the Association for Protection and Assistance of Convicts, is an alternative model in Brazil’s penitentiary system, which has fully implemented restorative practices within prisons (an

restorative approach to rehabilitate incarcerated people) and has accomplished incredible results in the country (FBAC, 2019).

APAC is allowed by the Criminal Procedure Code, to give assistance in the serving of custodial sentences, and its main objectives are: 1) to promote the humanization of prisons, without losing sight of the purpose of punishment, 2) to prevent recidivism of crime and 3) to offer alternatives to recover the convicts (Sabbatelli, 2015).

APAC was created in 1972 in San Paulo – Brazil by a group of Christian volunteers, under the leadership of Dr. Mario Ottoboni, a lawyer, journalist and passionate Catholic, seeking to give moral support to offenders who were imprisoned, assisting Courts throughout the execution of the sentence.

Walker, Johnson and Wormer (2013, p. 152) say that “APAC prisons promote a restorative response to crime by encouraging the community and incarcerated people to be accountable for their lives and for society”. Instead of prisoners, APAC calls them *recuperandos* – “people who are undergoing a process of rehabilitation” (Creighton, 1999, p.2). Ottoboni (2003, p. 52, cited in Walker, Johnson and Wormer, 2013) claims that for their prisoners, avoiding crimes is not enough; it is necessary “to do good”.

Although its roots are religious, it does not compel *recuperandos* to follow any religion or some sort of faith: “*Recuperandos* need to profess a religion, believe in God, love and be loved. It does not really matter whether they profess one belief or another; moreover, we should never suffocate or asphyxiate *recuperandos* who feel they have to follow a certain vocation (that would generate anguish in them, instead of making they reflect” (Ottoboni, 2003, p. 61, cited in Walker, Johnson and Wormer, 2013).

Walker, Johnson and Wormer (2013, p. 154) explain that APACs have a methodology based on that incarcerated people are more than their crimes: APAC prisons receive visits from community volunteers to teach courses to *recuperandos*, building trust with them and getting things more natural to send them back into the community.

Furthermore, the methodology includes a big variety of elements such as work opportunities, recuperando helping recuperando, spirituality, informing incarcerated people their legal status and how long of imprisonment they still have left; providing legal help, health care (physical, mental and dental), treating recuperandos with dignity, helping their families meet their basic needs; reintegration programs are given to all recuperandos before they are released into society (FBAC, 2019).

The importance of relationships is also intensely promoted by the APAC methodology: “unconditional love and trust are two subjective aspects of supporting the entire methodology. These two aspects should be manifested at all times through concrete gestures of welcome, forgiveness, dialogue without any discrimination on the part of volunteers, the relationship with the recuperandos. Unconditional love and trust are bigger [them] all elements, and they must be virtues cultivated with all the Christian vigor in implementing the methodology” (FBAC, 2019).

Speaking about the causes of crime, Dr Ottoboni said: “Our prison psychiatrist says, ‘Crime is the violent and tragic refusal to love.’ We are born out of love and we are born to love. But love must be learned, just like speaking and writing. The place to learn how to love is the home. But sometimes our families fail us and when that happens, the result can be crime. The solution to crime is to teach prisoners to love. That is the purpose of APAC. We create an environment in which they learn to love themselves, each other, and the communities they live in. As we see them grow, we give them responsibilities to show we trust them and to prove we are right to trust them. Once men have been loved and have learned to love they will not go back to crime” (The Prison Fellowship International, 2019).

According to the Brazilian Fraternity for Assistance of Convicts (2019), there are APACs in 51 Brazilian cities, and researches show that, comparing APACs with traditional prisons, significantly less recidivism is seen. Recidivism is 15% for people released from APAC and 80% for prisoners released from traditional prisons. In some APACs non recidivism is 98%.

Walker, Johnson and Wormer (p. 159) suggest that APAC is a successful restorative prison model that treats imprisoned people with dignity to put the human being in the first place can rehabilitate and prevent crime.

Use by Probation Officers

Not all stakeholders are able or even willing to engage in restorative practices and forcing any of them to participate, as stated before, is not an option and any service that ignores this understanding cannot be considered as restorative. So, Van Ness and Strong (2010, p. 157) explain that restorative processes can be used by probation services to undertake such practices in the course of the offender's sentences. According to him, in Japan, when the offender is placed on probation, meetings between victims and offenders may be organised by the probation officers.

In Ireland, The Probation Service is an agency within the Department of Justice and Equality that plays a role in 'making good' the harm caused by crime. They claim that restorative justice achieves that goal by giving victims the chance to communicate with the offender to explain how deeply the offence has affected them (The Probation Service, 2019).

The Probation Service's work believes in a person's capacity for change: "By engaging effectively with communities, particularly through a restorative justice model to address crime, we can enhance public safety and reduce offending patterns". (The Probation Service, 2019).

Restorative justice started to be used in its actual model in Ireland in 2009, when the National Commission on Restorative Justice expressed the view in a report to the Minister for Justice and Equality that victims, offenders, their families and their communities could *all* benefit from a restorative approach to criminal behaviour and recommended wider implementation: "the Commission is convinced that the implementation of restorative justice on a nationwide basis will make a positive contribution to the lives of all citizens, and particularly to those more closely connected to the offending behaviour. Victims, offenders, their families and their communities can all benefit from a restorative approach to criminal

behaviour and the Commission strongly recommends national implementation, in a structured way” (National Commission on Restorative Justice, 2009).

This service works closely with the courts, producing reports of offenders to have the most appropriate sanction for wrongdoers. They also work on finding alternatives to detention when that is possible, depending on whether the offender is considered to work in the community or not. In this way, they believe their work help keep the community safe and that a person under supervision is less likely to reoffend. According to the Probation Service in Ireland, 63% of offenders on probation supervision did not commit more crimes within a three-year period (The Probation Service, 2019).

Judge Tom O’Donnel (2019), who works in the Limerick District Court – Ireland, reinforcing the importance of the Probation Service says: “I would normally canvass a Probation Report through a family conference to get a background, a picture of the dynamics of this young man or lady’s family and see where the difficulties lie”.

Between the services provided, the probation service provides encounters between the victim, offender and a facilitator seeking to address the aftermath of crime and to repair the harm caused, so that it helps in terms of rehabilitation of the offender to help create safer communities. This meeting could be requested post-sentence by the court, but the participation is always voluntary.

Moreover, family conferences ordered by the courts in cases involving young offender, in which they reunite the victim, the young offender and their family, facilitated by probation officers to discuss the consequences of the crime and make the offender take responsibilities (Section 78, Children Act, 2001).

Ultimately, probation is not about being a soft option to let offenders get away from their responsibilities, but it is about the main goal, which is achieving safer communities and fewer victims, so that benefits everybody. This should be seen, as the Probation Service claims,

practices that complement rather than a substitutive way of existing interventions (The Probation Service, 2019).

Chapter 4 - Research Methodology and Methods

The research onion is being considered at this point to explain the methodology of this paper. The research onion was created by Saunders et al. in 2007 to demonstrate the steps that a researcher has to pass when building a suitable methodology. Hence, the researcher needs to explain and justify each stage of the methodology chosen, going from the outer layer to the inner layer.

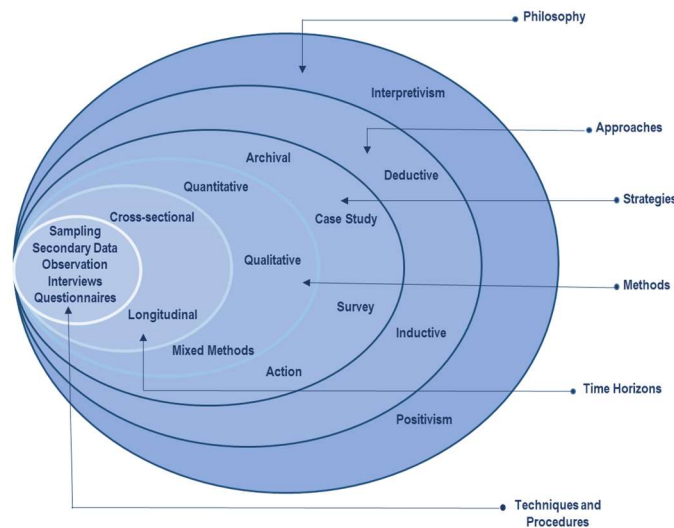


Figure 1: The research process ‘onion’ (Saunders et al., 2007, cited in Stainton, 2019).

It is important, therefore, to start by stating that this paper does a qualitative case study using in-depth secondary data with an interpretivism philosophy and deductive approach through a longitudinal timing.

So, the outermost layer is concerned with the research philosophy, which refers to a “set of beliefs or metaphysics that represent the researcher’s world-view; the nature of ‘the world’, the individual’s place in it and the range of possible relationships to that world. This tends to be either scientific or society based” (Stainton, 2019).

The philosophy, therefore taken in this paper is an interpretivism position, which tends to discuss subjects that have loads of grey areas, like restorative justice, for example. Understanding the need for healing and why human beings care to each other, feelings and behaviour (why did the offender commit a crime?) cannot be assessed through the analysis of

numbers. Instead it requires an in-depth analysis of behaviours, causes that led to such actions and the inclusion of the society. An interpretive researcher, as explains Stainton (2019), focus on the meanings that people give to situations and behaviour and how they put this into practice to interpret the world.

The alternative to the interpretivism research is the positivism research philosophy, which refers to deductive logical reasoning, but this did not seem to be possibly useful in this research, because of the reasons pointed out earlier.

The upcoming layer in the research onion is the research approach, and this paper has taken a deductive approach, considering that it fits best this work. Russell (2015), explains the difference between inductive and deductive research: the first one begins with a research question that guides the writer and is used to generate hypothesis and theory (theory-driven hypothesis). Deductive research starts with the review of a particular social theory and based on it the writer formulate a hypothesis that will be tested and can be either confirmed or refuted. Stainton (2019) explains that the deductive approach gets bigger throughout the study: it starts with a specific hypothesis that has been developed based on information or patterns that have been perceived by the researcher. It then seeks to test this hypothesis and develop a broader theory from it.

Russell (2015) states that there are four necessary components in a research process: 1) theory, which comprehends a bunch of ideas that help explain a particular social phenomenon; 2) hypothesis, which is a “testable prediction about empirical reality that specifies a relationship between two or more variables” (Russell, 2015). Hypotheses, according to Bell (2005, p. 33) “make statements about relations between variables and provide a guide to the researcher as to how the original hunch might be tested”; 3) empirical observations, that are all the stuff that you pick and identify in the social world; and 4) analysis, when themes from observations are analysed.

Hence, this paper in its first step demonstrates both a variety and critical analyse of scientific studies that have been done along the years about the rationality of punishment that still happens in the criminal justice system. It provides a historical and theoretical overview of restorative justice, starting from the more individually based, such as the encounters between victims and offender to a level that involves families and communities, in cases, for instance, of family group conferencing and circles. Then it goes to a macro-level of the use of restoring practices by institutions (for example, prisons), to demonstrate that restorative justice is not only a theory, but it works in practice.

It goes through the concept, essential characteristics and the basis of restorative justice and the importance of the mediation as a restorative practice as well as others practices that could be considered as being restorative, taking into consideration that, as noted earlier, restorative justice takes shape in many forms.

In this paper the deductive approach provides the necessary study to address the research objectives through the execution of secondary research, since the performance of primary research turned out to be extremely difficult, as the researcher faced with difficulties in having access to, for example, victims and offenders that have participated of restorative programs in Ireland, where this paper was written, as planned in the proposal of this dissertation.

In contact with the Probation Service of Ireland, a meeting between the researcher and probation servicers in order to interview them could not take place before the deadline of this paper (because they were in annual leave), nor could real cases be shared by them, because of ethical limitations, as explained by them by e-mail. Considering those issues, interviewing only lawyers or professionals who have their background in law did not seem to be appropriate to avoid being bias.

It is important to highlight that the methodology which is followed throughout this work is the qualitative approach of research, so this paper does a deep understanding of underlying reasons,

opinions and motivations of restorative justice, evaluating actual uses of restorative justice in the criminal justice system.

DeFranzo (2011) explains that “qualitative research is primarily exploratory research. It is used to gain an understanding of underlying reasons, opinions, and motivations. It provides insights into the problem or helps to develop ideas or hypotheses for potential quantitative research. Qualitative Research is also used to uncover trends in thought and opinions, and dive deeper into the problem. Qualitative data collection methods vary using unstructured or semi-structured techniques. Some common methods include focus groups (group discussions), individual interviews, and participation/observations”.

Furthermore, profound research about restorative justice is done, seeking to demonstrate the impact that restorative practices can have in the world and, by promoting restorative justice, the criminal justice system adopts a new role to play. Instead of imposing penalties, it shows the necessity of interpreting criminal law and fundamental rights in a manner that victims, offenders and communities are heard and taken into consideration as the central in a crime.

In doing so, restorative justice does provide a range of opportunities for dialogue, healing and problem solving which can restore the material and emotional losses of the victim and help the reintegration of the offender to the community.

Besides that, some criticism and limitations to restorative justice are demonstrated in this dissertation. So, it is shown, for instance, that a mediation agreement is acceptable when it comes to the guarantees of the criminal justice system and the model of conflict resolution of it because this restorative practice does not exclude the necessity of clarifying the crime – information gathered in the investigation of wrongdoings.

The alternative research methods to the qualitative approach are the quantitative and the mixed approach, which did not fit in this paper because of the difficulties faced to create data. Quantitative research is taken to quantify the problem by way of creating numerical data that can be transformed into useful statistics. It is used to quantify attitudes, opinions, behaviours,

and other defined variables – and generalize results from a larger sample population. Quantitative research uses measurable data to formulate facts and uncover patterns in research (DeFranzo, 2011).

In order to answer the questions made and support evidence to what has been said this dissertation evaluates some institutions that use successfully restorative practices. Bell (2005, p. 10) explains that it is possible to find examples that could be the introduction of a new way of thinking, stage of adaptation or development of something.

Therefore, the research strategy for this paper is the case study approach with the study of successful ways of using restorative practices in the contemporary criminal justice system by institutions such as the APAC prisons' restorative approach to rehabilitate imprisoned people in Brazil and the Probation Service of Ireland, that is an agency within the Department of Justice and Equality that plays a role in 'making good' the harm caused by crime.

Denscombe (2010, p. 53) says that case studies focus on individual instances instead of a wide spectrum, seeking to provide in details a study of events, relationships, experiences or processes occurring in that particular instance. Blaxter, Hughes and Tight (2010 p. 72) say that this approach has become very common in social research, especially with small-scale research.

The case study approach works well in this paper because it offers a great opportunity of going into sufficient detail to unravel the complexities of an idea still in construction, such as restorative justice. Thus, Rowley (2002, p. 16) states that case studies are an important way of putting attention to the world around us.

As explained by Denscombe (2010, p. 54): “The prospect of getting some valuable and unique insight depends on being able to investigate things in a way that is different from, and in some senses better than, what is possible using other approaches. What a case study can do that a survey normally cannot is to study things in detail. When a researcher takes the strategic decision to devote all his or her efforts to researching just one instance, there is obviously far

greater opportunity to delve into things in more detail and discover things that might not have become apparent through more superficial research”.

The instances used that form the basis of the investigation are usually something that already exist. Denscombe (2010, p. 55) stresses that it is not something created specifically to attend the purpose of the research: “It is not like an experiment where the research design is dedicated to imposing controls on variables so that the impact of a specific ingredient can be measured”. As Yin (Yin, 2009, cited in Denscombe, 2010, p. 54) explains, the case already exists before the proposal and, hopefully, it will carry on existing once the research is concluded.

Hence, all the information gathered by the researcher builds a case study. In this paper, the researcher explains restorative justice in a manner that combines the theory with the practice of this field worldwide, giving evidence of so many different restorative services applied around the world and the use of restorative practices by institutions such as in a policing environment, prisons and probation service. It investigates the issues and limitations in-depth and brings applications of restorative justice in the criminal justice system that can cope with the complexity of real-life situations.

Denscombe (2010, p. 56) explains that the case study approach expects the researcher to choose events, people or organisations from a wide range of examples that might exist in the area of the subject that is being studied. As he says: “whatever the subject matter, the case study normally depends on a conscious and deliberate choice about which case to select from among a large number of possibilities”.

That is why the practical uses of restorative justice showed in this paper were not chosen randomly. Instead, they were selected based on their distinctive features. For this, the criteria used when selecting the policing environment, prisons and probation was the impact that they cause on a large scale of people (victims, offenders and communities).

For the last research onion layer, just before the core, the time horizon, a longitudinal timing is used with this research that refers to a study of a subject that has been developing over time and

those developments and changes are observed in this paper. The longitudinal timing aims to research the dynamics of the problem.

The core of the research onion stresses the techniques and procedures taken. In this paper, as noted earlier, secondary research was used, taking on board relevant academic literature, organisational websites, official statistics collected by governments and government agencies, related reports and articles. Explaining the importance of secondary research to enlighten a study of a subject, Blaxter, Hughes and Tight (2010 p. 188) say that “secondary analysis can give fresh insights into data, and ready-made data sets or archives do provide extremely valuable and cost-efficient resources for researchers”.

Therefore, this research follows the pathway below:

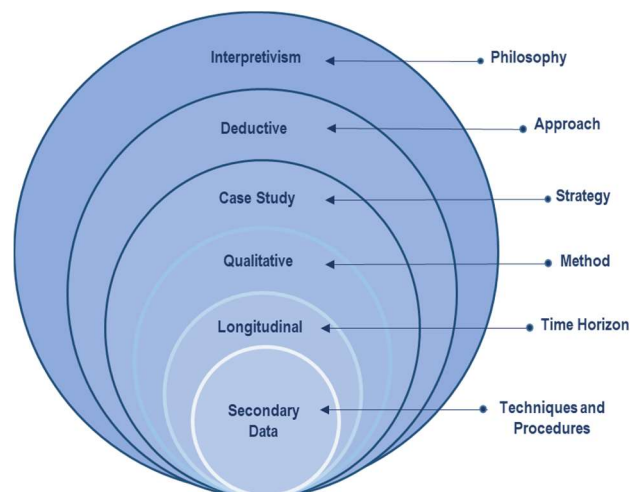


Figure 2: Based on the Research Onion (Saunders et al., 2007).

Chapter 5 - Presentation of the data

As pointed out earlier, this paper has gone through in-depth secondary research and the data gathered was showed throughout this work and summarised in this chapter, considering the restorative justice services (VOM, circles, family group conference and impact panels) and the use of restorative justice practices by different institutions (policing environment, prisons and probation services).

Restorative Justice Services:

- Studies suggest that participation in victim-offender mediation can lower the risk of reoffending (The Program of Prison Fellowship International, 2019; Zehr, 2015, p. 164; Van Ness and Strong, 2010, p. 168; Sherman and Strang, 2007; Umbreit, Coates, and Roberts, 2000, cited in Dijk et al., 2019, Marshall, 1999, p. 8).
- Research has found high satisfaction rates by participants and victims who participated in the program says that VOM reduces feelings of fear and trauma (The Program of Prison Fellowship International, 2019; Zehr, 2015, p. 164; Vernon C. Kelly Jr, 2014, p. 67; Van Ness and Strong, 2010, p. 168; National Commission on Restorative Justice – Ireland, 2009); Umbreit, Coates, & Roberts, 2000, cited in Dijk et al., 2019; Sherman and Strang, 2007; Marshall, 1999, p. 8).
- Research indicates that the restorative panels have enormous benefits and show changes in the attitudes of offenders and in the likelihood of committing more crimes. The panels organised by Mothers Against Drunk Driving in the United States show that, before the panels, 87% of the participants said they would drink and drive, but after the panels 90% said they would never drink and drive again. Furthermore, 82% of the victim participants said that the panels had contributed to their healing. (The Program of Prison Fellowship International, 2019; Van Ness and Strong, 2010, p. 72).
- When that comes to circles, studies have found generally positive results (The Program of Prison Fellowship International, 2019; The Living Justice Press, no date). In the

Minnesota study, participants noted the stronger relationships between people and communities, which is a vital characteristic of the sentencing circles. (The Program of Prison Fellowship International, 2019).

- Studies indicate that Family Group Conferences help offenders develop empathy for their victims, change in the wrongdoer's behaviour reported by their families and support networks are strengthened (The Program of Prison Fellowship International, 2019; Zehr, 2015, pp. 170-175; Van Ness and Strong, 2010, p. 69). Research has shown prosperous returns in juvenile corrections with victim satisfaction around 90%, restitution plans made in 95% of the cases and commitment of the restitution plan without police follow-up in 90% of the cases (Van Ness and Strong, 2010, p. 69; The Program of Prison Fellowship International, 2019).

Restorative justice practices in the contemporary criminal justice system:

- Research carried out in the UK by the Ministry of Justice in 2008 showed how effective is The Thames Valley Restorative Justice Service. They used controlled trials involving face-to-face encounters between victims, offenders, their families, friends and community, which demonstrated high levels of satisfaction by participants and reduced recidivism on the part of offenders, compared to others participants who were allocated in another control group that did not participate in restorative justice. The research also showed that their services reduce feelings of fear and trauma on the part of the victims (Thames Valley Restorative Justice Service, 2018).
- There are APACs in 51 cities in Brazil (43 for man offenders and 8 for woman offenders) and 78 are being implemented, so the total is 129. 48.666 *recuperandos* have stayed in APACs since 1972 (FBAC, 2019).
- Research has found that comparing APACs with traditional prisons, significantly less recidivism is seen: 15% for people released from APACs and 80% for prisoners released from traditional prisons. In some APACs non recidivism is 98% (FBAC, 2019).

- According to study carried out in 2015 by the Probation Service in Ireland (2019), 63% of offenders on probation supervision did not re-offend within three years.

Chapter 6 - Findings and Discussion: Assessing the limitations and issues of Restorative Justice

The application of restorative justice, as already seen, is not limited to the use of victim-offender mediation. Although this practice remains the predominant use of restorative justice service and has received considerable research attention – more than any other services, there are other practices that have shown an incredible capacity of healing and problem-solving, such as the family group conferences, circles and impact panels.

Moreover, restorative justice practices go far beyond the criminal justice system use. Schools and universities also apply them to invite students to reflect on their behaviour, using the appropriate language and processes for their situations, of course.

According to the data gathered and presented, there is a solid basis for saying: 1) participants of restorative justice processes have shown high satisfaction rates with the programs and, consequently, with the criminal justice system; 2) fear and trauma are reduced on the part of the victims; 3) participants generally report feelings of fairness; restorative justice services are an effective way of reducing recidivism; 4) the traditional criminal justice system labels offenders permanently as offenders while restorative justice approaches focus on healing and restitution.

Furthermore, one of the main features of restorative justice is voluntariness, which involves it. If one party does not want to join it, the options are reduced and, if both parties are not willing to participate, the only option left is the formal justice. (Irish Penal Reform Trust – IPRT, 2019). Hence, it makes clear that restorative justice does not seek to have the formal justice completely restorative neither replaced (Restorative Justice Council, 2011) taking into consideration that it could be inappropriate and inapplicable depending on the offence and circumstances (for example, there is still a big debate around the world whether restorative justice is appropriate in cases of sexual violence or not).

Zehr (2004, Chapter 1), with a fundamental position, explains that “most restorative justice advocates agree that crime has both a public dimension and a private dimension. I believe it would be more accurate to say that crime has a societal dimension, as well as more local and persona dimension. The legal system focuses on the public dimensions; that is, on society’s interests and obligations as represented by the state. However, this emphasis downplays or ignores the personal and private and interpersonal aspects of crime. By putting a spotlight on and elevating the private dimensions of crime, restorative justice seeks to provide a better balance in how we experience justice”.

Marshall (1999, p. 8) agreeing, says that experience has indicated that most people who were offered a chance to resolve the conflict through restorative justice would like to do so, and the rate of agreements is also expressive. Moreover, the rate of cases in which it fails is much lower than failures to pay fines or compensation ordered by the courts.

Also, it is important to highlight that the principles which restorative justice is based make it easier to be understood by the parties involved than legal procedures and offer individuals more flexibility in the process. Besides that, according to the Sherman and Strang (2007), studies have shown that restorative practices reduce repeat offending more than prison and it brings the sense of satisfaction to both victim and offender than the traditional criminal system does.

Marshall (1999, p. 8) also claims attention to one more critical limitation to practices that intend to involve communities because of the level of availability of resources and skills as communities are not as integrated as they used to be.

When that comes to the encounters between victim and offender, some other issues should be taken into consideration before using this program. Considering that the criminal justice system is coercive (offenders are punished and victims and offenders cannot refuse to participate in the process), the meeting programs could face difficulties on having a genuinely voluntary process so they should be offered as honestly as possible not to risk being coercive.

Also, Van Ness and Strong (2010, p. 76) claims that facilitators must be well trained to ensure that they will not pressure the victim in an attempt to convince them to participate in the encounter. It is pivotal that victims and offenders receive clear orientation about the alternatives that they could take to resolve the dispute.

Furthermore, they argue (Van Ness and Strong, 2010, p. 77) that professional facilitators with therapeutic expertise should be used in cases of severe or violent crimes, to be able to take the right actions if the encounter gets physically or emotionally dangerous for anyone.

Moreover, the Walden University (2019) highlights that the fundamental support networks for reintegration can be hard to get as many communities do not feel comfortable to have some criminals – such as in cases of extreme violence – to come back to the community. Hence, for many reasons, restorative justice still has to overcome by the time, the traditional justice – retributive, which is way more practised than restorative justice throughout the world. Restorative justice is nonetheless a social challenge and needs the whole society to get involved.

Chapter 7 - Conclusion

Restorative justice has been developing over the years. This thinking is based on a set of principles and values that seek healing, dialogue, empowerment, recognition, reconciliation, transformation. Note that this paper has used a lot these words, not usually used in the criminal justice system.

These goals attempt to provide human growth into the criminal justice system. Here, the dialogue itself has significant importance, once it gives victims and offenders the opportunity for a deeper understanding of the conflict. It is about strengthening the parties' capacity that will be playing their role as responsible for resolving the impasse instead of being there as adversaries or enemies — also, the ability for expressing concern for others. Therefore, restorative justice brings hope for a human transformation, as an alternative to the punitive and adversarial criminal justice system.

Such developments, as demonstrated throughout this paper, shows that while there is always the necessity of more expansion of this way of thinking, it seems that there is strong evidence that restorative justice is becoming part of the criminal justice system and influences governmental policies.

Restorative justice differs from the current criminal justice system in many ways. Instead of limiting crime to punishment, it recognises that crime generates harm to the victims, communities and also the offenders. Rather than focusing only on the offender, it broadens its aspects and includes victims and communities. Furthermore, it does not leave the problem of crime to only the government, but it stands up for the importance of community involvement.

It becomes clear that repairing the harm caused is necessary because justice requires it, in a way that transforms individuals, relationships and structures. In fact, the final objective and primary focus of restorative justice should be on changing the lens we view ourselves and relate to others in our everyday lives. Restorative justice invites all of us for a deep recognition of others' realities.

Reflections on Learning

This personal reflection provides an in-depth overview of my experience in this Dissertation. To explore this topic best, I decided to use a model based on Kolb's learning cycle, which is a theory created in 1984 that claims that we learn from our experiences in life so, reflecting is an essential part of such learning. This theory is called "Experimental learning" to highlight how our experiences play a fundamental role in our learning process (Kolb, D. A, 1984, cited in Leeds Beckett University, 2015; University of Leicester, no date).

The model followed is the one below:

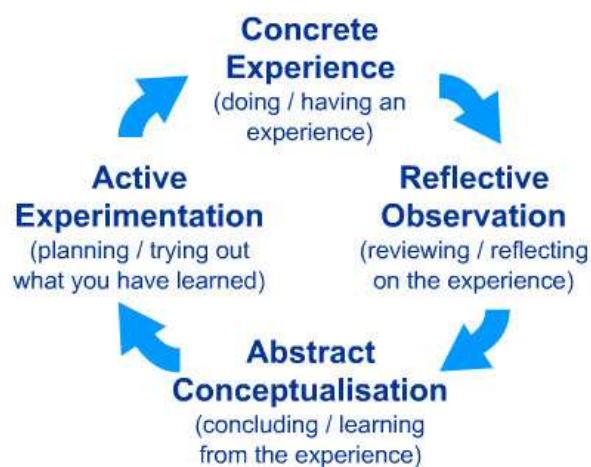


Figure 3: Kolb's Learning Cycle (1984, cited in McLeod, 2017).

In Kolb's words (1984, p. 38, cited in McLeod, 2017), "learning is the process whereby knowledge is created through the transformation of experience". McLeod (2017) explains that this cycle is observed when the learner takes four steps of learning: (1) getting new experiences; (2) reflecting on those experiences; (3) interpreting the events and relationships between them, making conclusions which will be (4) tested in future situations, generating new experiences so the cycle will be repeated since each stage feeds the next one.

Researching involves using different methods of gathering information. Every human being, since their birth, starts searching and trying to discover some answers without even realising that they are doing different types of research to understand the nature or quality of a

phenomenon and to find out simple answers such as who, what, how, when and why. Thus, we use Kolb's learning cycle without even realising it.

When I decided to apply to the MA in Dispute and Resolution I never thought that it would be such a remarkable experience. Actually, I was not so confident of this decision because that would be the first time that I would be studying this type of course in a foreign language, as I am Brazilian and Portuguese is my first language.

I was scared that I would not make it, but then it turned out to be a fantastic experience, full of challenges that could push myself to the limits. Also, as usual in our lives, as you start getting adapted, things become more comfortable.

A dissertation was proposed in the first semester of the course, through a subject called 'Research Methodology', delivered by the lecture John Lamont that nowadays is my supervisor for this work.

So, starting Kolb's learning cycle, all of those experiences and first impressions of the course were fundamental in this process. Throughout the classes, in general, we had the opportunity to dive into discussions and practical exercises such as presentations and problem-solving activities, which was the focus of the course: alternative forms of dispute resolution (how to deal with conflicts).

Moving to the second stage, I could so many times step back from what I was doing in class and reflect on what had been done when loads of questions started to arise: was it what I was looking for? Am I happy studying in this college? What could be improved to have better learning? What is missing in this course?

A lot of questions made me reflect and see that the course, in general, could explore different forms of dispute resolution. Mediation and Arbitration were thoroughly explored, which was terrific, also the basis of conflicts and the notion that conflicts are inevitable and they define us while society, but we need to learn how to deescalate them. However, more forms of dispute resolution regarding different fields of law could also be studied.

I understand that the course only takes one year and it has its limitations (that it is just not possible to study all the possibilities of alternative forms of dispute resolutions in only one year). That is why all the reflections made me decide that I wanted to write my dissertation about a subject that had not been studied throughout the course, so I would have the opportunity to go in-depth in something different.

Moving on to the next stage, I started making comparisons to what I have done in life, trying to understand the relationship between those facts and my current situation. That was when Restorative Justice came up.

I am passionate about criminal law; I have always been. Since I started studying in this course I questioned myself why this topic was not delivered to the students. When I was graduating in Brazil, back to 2010-2015, I had the opportunity to do an internship in criminal law that gave me the chance to see other perceptions of the world; to see the other. That is what restorative justice is all about.

I had the opportunity to work with prisoners within prisons, getting to be their lawyer, seeking to have their guarantees and rights respected. Also, I could meet their families and friends out of the prisons and, in some cases, even talk to their victims (in cases of domestic violence, for example).

I did not have the chance to work in restorative programs such as VOM, conferencing, circles and panels, but all the job done had the basis of restorative justice: the sensibility to see others perceptions, assuming that we do that because we care to each other.

The decision to search about restorative justice was because I always believed that restorative practices are fundamental in this world, so I decided to take this opportunity to deepen my knowledge in this field, having the chance to discover how the restorative programs are used in Ireland and, especially, if they work.

Moving on to the last stage, I ended up confirming that this decision was the best for me since I could see how important restorative practices are in the world. After going in-depth in my researches, I felt that those practices work but still need more developments and acceptance.

All this process made me feel more confident, especially to show me that I do not have to be afraid of new challenges. However, I felt that I could have done more research if I had guidance in my dissertation throughout my second semester, which did not happen once the subject “Research Methodology” was not delivered again.

So, since I met my supervisor John Lamont for the first time in June, he gave me all the necessary guidance to get my best in this paper. But, again, I felt that the College should make some effort to have them in contact with the students much earlier so that we would have more time to research with the guide of a professional.

The fact that I did not have the opportunity to talk face to face to participants of restorative programs in Ireland gave me a sense of frustration, although I understand all the limitations for this work and all the considerations about ethics that need to be taken not only in Ireland. That is why I am still hoping to get that chance in September 2019 via the Probation Service in Ireland, which will give me some more concrete experiences and a new cycle will start once again.

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