Potential and Limits of Abolitionist Restorative Justice in the UK

A thesis submitted to Middlesex University in accordance with the requirements for the degree of Doctor of Philosophy

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Table of Contents – Concise

1. *Title* *1*
2. *Table of Contents – Concise* *2*
3. *Abstract* *3*
4. *Acknowledgments* *4*
5. *Abbreviations* *5*
6. *Legal Instruments, Government Reports, Parliamentary Bills & Acts in Order* *6*
7. *Table of Contents – Extended* *8*
8. *Introduction* *11*
9. *Methodology* *21*
10. *Sample, Ethics and Anonymity* *30*
11. *Chapter I: Philosophies & Ideologies of Crime, Punishment & Alternatives: Introduction* *33*
12. *Chapter I: Philosophies & Ideologies of Crime, Punishment & Alternatives: Summary* *51*
13. *Chapter II: Penal Abolitionism: Theory & Stance: Introduction* *52*
14. *Chapter II: Penal Abolitionism: Theory & Stance: Summary* *79*
15. *Chapter III: Alternatives to Custody: Introduction* *80*
16. *Chapter III: Alternatives to Custody: Summary* *96*
17. *Chapter IV: Questionnaire, Data Collection & Data Analysis: Introduction* *97*
18. *Chapter IV: Questionnaire, Data Collection & Data Analysis: Summary* *101*
19. *Chapter V: Discussion of Findings: Introduction* *102*
20. *Chapter V: Discussion of Findings: Summary* *174*
21. *Chapter VI: Criticisms & Weaknesses: Introduction* *176*
22. *Chapter VI: Criticisms & Weaknesses: Summary* *194*
23. *Chapter VII: Conclusions and Recommendations: Introduction* *195*
24. *Chapter VII: Conclusions and Recommendations: Summary* *246*
25. *Funding* *246*
26. *Coded Schedule of Participants* *247*
27. *Interview Tables* *251*
28. *Diagrams and Figures* *253*
29. *Visual Descriptions of NVivo Coding Analyses, Word Trees, Term Clusters* *257*
30. *Appendix* *270*
31. *List of References and Bibliography* *271*

Abstract

Potential and Limits of Abolitionist Restorative Justice in the UK

The central focus of this research is Restorative Justice in the United Kingdom and the extent to which this alternative judicial practice introduces abolitionist elements in the criminal justice system. This research is inspired by previous empirical and theoretical work around the concept of 'spreading the net', which assessed whether alternatives to custody were, in fact, alternatives to freedom. In brief, the potential and limits of restorative justice as an alternative to penal justice are critically examined through an abolitionist lens.

After a review (and a short history) of the alternatives to custody available in England, penal abolitionism will be introduced, particularly its definitions of crime, its critical discussion of the law, and its views on punishment (see the work of Mathiesen (2015), Christie (1994), Hulsman (1991), Ruggiero (2015), Bianchi (1994) et al). The views of 'reductionist' authors such as Pavarini (1981), Melossi (1997), Pitch (2008), Mosconi (1998) and others will also be presented. The recent work of Andrew von Hirsch (2017) and other contemporary penologists (Garland (2018), Huff (2002), Scott (2014), Ryan (2013)) will complete the background work.

Desk research analysed journal articles, reports by the WHO, UN, UDHR, electronic and physical data taken from library resources across universities in London. Empirical studies, analyses and academic research conducted by public, private, governmental as well as charity organisations (Prison Reform Trust, Howard League for Penal Reform), was also examined. Fieldwork was carried out between June 2018 and January 2019. Primary research included undertaking, recording and transcribing 41 interviews with practitioners of Restorative Justice in England as well as academics involved in the restorative justice debate. The research is mainly qualitative in nature, and interviews contain open-ended questions. Interviewees were asked to tell their experience of Restorative Justice and to assess the degree to which this type of alternative practice in dealing with offenders and victims is consistent with penal abolitionism.

The thesis has been divided into seven distinct chapters. Each chapter has its own introduction and summary conclusion thereby condensing the insights gained throughout the research. Introductions and summary conclusions per chapter clarify how each chapter ties into the aims of the research. Each chapter has also been subdivided into titled themes for easier comprehension and improved flow. Detailed list of aforementioned sub-themes within each chapter has been provided below within an extended Table of Contents with corresponding page numbers.

Acknowledgements

This research has been made possible by the learned advice and genuine encouragement of my Director of Studies and PhD Supervisor, Prof. Vincenzo Ruggiero, Professor of Sociology, Director of the Centre for Social and Criminological Research at Middlesex University, London. His steady support brought great clarity and much needed direction to this research. And it has been an honour and a privilege being guided by him. I am immensely indebted and grateful to him for the completion of this research and the learning I received along the way.

I would like to earnestly acknowledge the insight and views of all the participants and respondents to this study. I thank them sincerely for their time, patience and willingness to participate, engage and share their thoughts, feelings and wisdom.

Finally, I am exceedingly grateful for the ongoing support of my parents during trying times.

Abbreviations

ACR	*Age of Criminal Responsibility*
CJ	*Criminal Justice*
CJS	*Criminal Justice System*
DV	*Domestic Violence*
E&W	*England and Wales*
FLO	*Family Liaison Officer*
GBH	*Grievous Bodily Harm*
MAPPA	*Multi Agency Public Protection Arrangements*
MARAC	*Multi Agency Risk Assessment Conference*
NI	*Northern Ireland*
NZ	*New Zealand*
PA	*Penal Abolitionism*
PCC	*Police and Crime Commissioner*
RJ	*Restorative Justice*
RJC	*Restorative Justice Council*
RP	*Restorative Practices*
SOTP	*Sex Offender Treatment Programme*
UK	*United Kingdom*
US	*United States of America*
VLO	*Victim Liaison Officer*
VOM	*Victim Offender Mediation*

List of Legal Instruments, Government Reports, Parliamentary Bills and Acts in Chronological Order

- *Children and Young Persons Act, Section 50 (1933)*
- *Universal Declaration of Human Rights (UDHR) (1948)*
- *European Convention on Human Rights, Article 3 (1950)*
- *International Covenant on Civil and Political Rights (ICCPR) (1966)*
- *United Nations Convention against Torture (UNCAT), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985)*
- *Council of Europe Report for the 7th Conference of Directors of Prison Administrations' Alternative Measures to Imprisonment, Strasbourg (1986)*
- *The Elaboration of Standard Minimum Rules for Non-Institutional Treatment, Proceedings of the Sixth International Colloquium of the IPPF (1987)*
- *Groningen Rules (1988) or Standard Minimum Rules for the Implementation of Non-Custodial Measures involving the Restriction of Liberty (1988)*
- *Tokyo Rules (1990) or United Nations Standard Minimum Rules for Non-Custodial Measures (1990)*
- *Crime and Disorder Act of England (1998)*
- *Criminal Procedure (Scotland) Act, Sections 41 and 41A(1)-(2) (1995)*
- *Recommendation on Improving Implementation of the European Rules on Community Sanctions and Measures (2000)*
- *Mediation Act, Swedish Code of Statutes (2002)*
- *UN Optional Protocol to the Convention against Torture (OPCAT) (2002)*
- *Recommendation regarding Conditional Release (Parole) (2003)*
- *Eleventh United Nations Congress on Crime Prevention and Criminal Justice, An Overview of Restorative Justice around the World (2005)*
- *United Nations Office for Drugs and Crime, Handbook on Restorative Justice Programmes (2006)*
- *Education and Inspections Act, Schedule 13, Paragraph 7 (2006)*
- *Health and Social Care Act (2008)*
- *EU Framework Decision on the Mutual Recognition of Probation Decisions (FD 947) (2008)*
- *The Fourth Report from the Evaluation of Three Schemes, Ministry of Justice Research Series, London: Does Restorative Justice Affect Reconviction? (2008)*
- *UK National Preventive Mechanism (NPM) (2009)*
- *Council of Europe Probation Rules (2010)*
- *Ministry of Justice, Green Paper Evidence Report (2010)*
- *NOMS Commissioning Intentions for 2013-14, Ministry of Justice NOMS, Discussion Document (2012)*
- *Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) (2012)*

- *Directive 2012/29/EU of the Parliament and of the Council of 25 October 2012, Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA*
- *Secretary of State Guidance for Pre-sentence Restorative Justice, Ministry of Justice (2014)*
- *Department for Education National Statistical Report, Children looked after in England (including adoption and care leavers) (2015)*
- *Victims' Code 2015 - Code of Practice for Victims of Crime (2015)*
- *General Data Protection Regulation (EU) 2016/679*
- *House of Commons Justice Committee Fourth Report of Session 2016-17, Restorative Justice (2016)*
- *Ofsted, HM Inspectorate of Prisons (HMIP) and Care Quality Commission (CQC) Report, Inspections of Secure Training Centres: Inspection of Rainsbrook (2016)*
- *Restorative Justice Council Report, New Polling Shows Overwhelming Public Support for Restorative Justice (2016)*
- *Fourth Report of Session 2016-17, Restorative Justice, House of Commons Justice Committee, HC 164, 13 January (2016-17)*
- *Ministry of Justice, Criminal Justice Statistics Quarterly December 2016 (2017)*
- *The Farmer Review, Secretary of State commissioned Report on The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime' (2017)*
- *Restorative Justice Council Report, Victim's Justice (2017)*
- *Ministry of Justice Report, Prison Population Projections 2018-2023 (2018)*
- *Restorative Justice Council West London NHS Trust Report, Broadmoor Hospital now has Restorative Service Quality Mark (RSQM) (2019)*
- *Ministry of Justice, Violent and Sexual Offenders to spend longer behind Bars (2019)*
- *Prison Reform Trust Report, England and Wales Fact Sheet: Why focus on reducing Women's Imprisonment? (2019)*
- *House of Commons Briefing Paper, Number 6086, Sentences of Imprisonment for Public Protection (2019)*

Table of Contents – Extended

Below is a breakdown of this thesis into chapters with subheadings and corresponding page numbers:

Chapter I – Philosophies & Ideologies of Crime, Punishment & Alternatives – Subheadings –

i.	*History of Restorative Justice around the World*	*33*
ii.	*Religious Roots of Penal Law*	*38*
iii.	*Relationship between Criminology and Social Harm*	*45*
iv.	*Significance of the State within UK Penology*	*49*

Chapter II – Penal Abolitionism: Theory and Stance – Subheadings –

i.	*What is Crime*	*53*
ii.	*Anarchist Origins*	*54*
iii.	*What is Law – and why do we have it?*	*58*
iv.	*Kropotkin's Categories of Law*	*60*
v.	*What is Punishment – and why do we have it?*	*62*
vi.	*Punishment as Retaliation*	*62*
vii.	*Punishment as a Message*	*63*
viii.	*Quantitative and Qualitative Punishment*	*64*
ix.	*Punishment as Means to an End*	*65*
x.	*Institutional and Material Functions of Punishment*	*67*
xi.	*Significance of Time*	*70*
xii.	*Significance of Pain*	*70*
xiii.	*Role of Community in Penal Abolitionism*	*71*
xiv.	*An Abolitionist View of Restorative Justice*	*74*

Chapter III – Alternatives to Custody – Subheadings –

i.	*Pan-Europe and UK Initiatives and Legal Instruments*	*82*
ii.	*Restorative Justice: Types and Stages*	*88*
iii.	*Benefits: Prioritising Victimhood*	*89*
iv.	*Restorative Justice: Myth or Reality*	*90*

Chapter IV – Questionnaire, Data Collection & Data Analysis – Subheadings –

i.	*Data Analysis*	*97*
ii.	*Data Collection*	*98*

Chapter V – Discussion of Findings – Subheadings –

i.	*Abolitionism and RJ*	*103*
ii.	*Alternatives to Custody*	*117*
iii.	*Alternative to Punishment*	*120*
iv.	*Examples of RJ*	*126*
v.	*Fear of Empowerment*	*132*
vi.	*Growth in Prison Population*	*133*
vii.	*Prison as a Deterrent*	*135*
viii.	*Probation and RJ*	*137*
ix.	*Remorse and Forgiveness*	*138*
x.	*Retributivist Traits in Humanity*	*140*
xi.	*Penality and Moral Theory*	*142*
xii.	*RJ in England and Abroad*	*147*
xiii.	*RJ in Northern Ireland*	*150*
xiv.	*RJ in Scotland*	*151*
xv.	*Serious Crime: Murder/Sexual Abuse/Domestic Violence/Hate Crime*	*153*
xvi.	*RJ: Risk-Averse or Risk-Aware?*	*163*
xvii.	*RJ within Prison Settings*	*165*
xviii.	*Significance of Early Education*	*167*
xix.	*Trauma-Informed Practice*	*167*
xx.	*Types of RJ Practitioners*	*169*
xxi.	*Youth Offending and Youth Justice*	*171*

Chapter VI – Criticisms and Weaknesses – Subheadings –

i.	*Weaknesses in Research*	*176*
ii.	*Failings and Vulnerabilities of RJ*	*177*
iii.	*Admission of Guilt: Innocence as a Risk Factor*	*177*
iv.	*Aspect of Net Widening*	*179*
v.	*Community Involvement*	*180*
vi.	*Fragmented Practice*	*181*
vii.	*Institutionalisation*	*182*
viii.	*Lack of Awareness: Insufficiently Offered*	*184*
ix.	*Lack of Research and Statistics*	*186*
x.	*Paid or Voluntary*	*186*
xi.	*Post Code Lottery*	*187*
xii.	*Power Imbalance*	*187*
xiii.	*Pricey and Does Not Reduce Reoffending*	*189*
xiv.	*Pro State Views*	*189*
xv.	*Resource Intensive and Time Consuming*	*190*
xvi.	*RJ as a Cottage Industry*	*191*

xvii. Quality Assurance and Fees 192
xviii. Volitional or Enforced? 193
xix. Zero Level RJ 194

Chapter VII – Conclusions, Recommendations, Gap in Literature, Original Contribution – Subheadings –

A) Conclusions 195
i. Abolitionism and RJ 197
ii. Cautious Abolitionism? 201
iii. Importance of Storytelling Narrative 204
iv. Lack of Resources and Standardisation 205
v. Quality versus Quantity 207
vi. Reintegration Benefits 211
vii. RJ as a Deficit Model 213
viii. RJ as Co-Option 215
ix. RJ in Prison Settings 215
x. RJ with Serious Crimes 219
xi. Romanticised Notions or Realistic Expectations? 220
xii. Standard or Subsidiary? 222
xiii. Wider Awareness 222
xiv. Youth Justice System 223

B) Recommendations and Implications for Policy and Research 224
i. Accountability: Training and Preparation 224
ii. Continued Presence of RJ staff 225
iii. Family Engagement in Judicial Process 226
iv. Increased Awareness at All Levels 227
v. Increased Resources 231
vi. Intergenerational Crime: Secondary Victims 233
vii. Labelling: Inclusive or Inhibiting 234
viii. Northern Irish Model of RJ 236
ix. Penal Minimalism 236
x. Proactive Curriculum 237
xi. Protection and Transparency 239
xii. RJ in Scotland 240
xiii. Standardisation: Need for a National Policy 242
xiv. Treatment of Victims 244

Introduction

This thesis outlines restorative justice in the UK as seen from an abolitionist lens. The main research questions investigated is 'What abolitionist principles do we find (or detect) in restorative justice in England?' and 'How does non-custodial treatment adopt some abolitionist principles? Does it or does it not?' The informants are individuals involved in non-custodial, alternative treatment of offenders, practitioners of Restorative Justice and academics involved in this debate.

The structure of this Thesis is divided into 7 Sections with brief introduction and conclusion for each chapter respectively.

The first Chapter details responses to crime in traditional societies. An in-depth deliberation is submitted on principles and practices based on classical philosophies and religious sensibilities. Examples of restorative justice we find in those societies and philosophies are also put forward.

Chapter Two focusses on Penal abolitionism and the development of this school of thought in the areas of crime and punishment. Three areas are focused upon: what is crime; what is the law; why punish. This is a review of the literature on the main tenets of the abolitionist approach. This section also includes information about abolitionist views of restorative justice.

The third Section is an overview of alternatives to custody available in England, Scotland and Northern Ireland: their history, the debate accompanying their elaboration and practical application. Among the alternatives looked at examples of RJ is presented and discussed.

Section 4 contains the background work which will inform the construction of a questionnaire aimed at assessing the functioning, scope and outcomes of RJ in England and Wales and the

extent to which RJ contains abolitionist elements (or principles). It also consists of the identification of informants who partook in this study and the empirical work that ensued.

Chapters 5 and 6 consists of identification of informants and empirical work. Thereafter, they evolve into a discussion of findings of the research, and the challenges, issues and criticisms encountered.

Chapter 7 provides conclusions and recommendations. It also contains an exploration of the gap in existing literature, original contribution provided to the field and implications for policy and research.

There are several underlying themes and sub-topics within the overarching umbrellas of Restorative Justice (RJ) and Penal Abolitionism (PA). Within this research it has been endeavoured to shed light upon the workings of RJ within the United Kingdom, its basic premise and practical application, its subjective reach and objective limits, as well as its aspired usability and pragmatic boundaries. The responses to questions asked in the primary research and findings gathered from secondary research have then been seen through an Abolitionist lens to critically evaluate the extent to which restorative justice in the UK is abolitionist in its theory and functioning, to explore the potential and the limits of RJ, and the extent to which there are elements of abolitionism within RJ in the UK.

Various kinds of restorative justice practices are being followed in the UK currently. These include Direct or Indirect RJ processes, community conferencing, mediation, and Referral or Supervision Order Panels following a Final Warning, as arranged by Youth Offending Team staff and volunteers from the community (Restorative Justice Council, 2016). RJ does not necessarily have to be seen as an alternative to punishment, but as "another form of punishment, meaningful in its own way, and taking its place alongside other deterrents, such

as just deserts or deterrence." (Miers, 2001: 87) On a similar note, proponents of RJ have to posit the question, "What are we restoring to? What is the nature of the relationships already present in this *society*?" (McCluskey *et al.,* 2008: 213) These and aligning deliberations are further investigated.

The socio-political structure in the UK is geared more towards public protection and risk management due to which the long-term well-being of the community takes a backseat. Justice after an offence is committed should ideally be seen from a threefold paradigm: the victim, the offender, and the community, their past, present and future possibilities for expansion, reconciliation, growth and emancipation, since crime is a violation of relationships. Victims are regarded as human beings, rather than witnesses or evidence. (Van Ness & Strong, 2010)

RJ may be defined as being built of three primary concepts, as described in the Handbook of Restorative Justice, Encounter, Reparation and Transformation.

The Encounter conception proposes that stakeholders in a criminal case should be able to face one another outside professional and formal sites such as the courtroom. (Johnstone & Van Ness, 2013) Advantages cited are rehabilitation, deterrence and reinforcement of societal norms that the offender has disrupted. It also gives the victims an opportunity to be personally involved in the process of restitution. This results in a marked reduction in victims feeling fearful after the incident, thus bringing about an enhanced sense of safety. (Robinson, 2003)

The Reparative concept of Restorative Justice has a number of advantages. Victims experience healing of trauma by expressing their suffering through personal involvement in case proceedings. Alongside this, there is also an element of empowerment and autonomy. Victims and their families feel they are given back their place in society that was snatched from them

by the perpetrator. It is worth noting that people in themselves are not isolated entities in society. They are interrelated in a complex mix of subjective interactions with other members of the society. It is possible that the offence occurred as a result of a preceding event initiated by the victim, an example here may be revenge crime. However, this idealized scenario is not true in every case, and therefore lends itself to subjectivity as per the crime in question.

Reparation can help achieve four objectives: repairing damage, vindicating the innocent, locating responsibility, and restoring equilibrium (Johnstone & Van Ness, 2007). "Vindication is most powerful when it comes from the offender, and reparation helps convey it… It gives victims a recognition that the wrong suffered was in fact a wrong," (Strang 2004: 102) and that "the victim was not somehow at fault." (Bazemore and Schiff 2005: 51) "Being victimized is by definition an experience of powerlessness – the victim was unable to prevent the crime from occurring." (Van Ness and Strong, 2010: 38) It is important that the offender take full responsibility of the crime and at the same time, the victim should have the full freedom to refuse, accept, or ignore the apology. This gives them a position of strength, control and respect, and also a touch of fearlessness in future dealings with people (Minow, 1998: 115).

Reparation is more useful when it is 'tailored' to the needs and concerns of the victim. As in a domestic violence case, the husband volunteering for or donating to a women's shelter "has far more psychological, sociological, and moral power in 'righting the wrong' or 'restoring justice' than does simple financial payment." (Brunk, 2001: 52) In cases of permanent harm, injury or death, where material reparation is not a possibility, it is vital to gain an uncoerced symbolic reparation from the offender.

The Transformative conception of RJ entails that both sides have an opportunity to tell their side of the story; their version of truth as they interpret it. This provides a more liberating

ground for people affected by and involved in the incident. By having an open channel of communication, hurt and harm can be discussed and possibly healed on both ends of the spectrum. This is deemed more satisfying than a mechanical cure of a judgment based on evidence and historic precedence, which may not necessarily be valid in contemporary cases and individual circumstances.

It is asserted that no social, philosophical or criminological precept or ideology is perfect. There has not been an objective pillar of sociological conception that has not had exceptions and difficulties in its functioning in society over time. Punitive measures have not been fruitful in all cases, which can be evidenced by a high rate of recidivism in modern society. Hence discarding Restorative Justice solely because it has not worked out perfectly in every case is an unfair treatment of it. RJ as a criminological principle and substitute for punitive justice has the potential to bring about meaningful change and a bigger contribution to society in the long run (Zehr and Toews, 2004: 403).

It is argued that imprisonment is as bad as capital punishment, if not worse, because it removes the offender from their social milieu, cuts them off from their environment, and even when they do get released, if at all, there is nothing left for them to go back to. There is no sense of reintegration into society as it has been planned in a way that he is now an alien and can never be a normal functioning member of society thereon (Bianchi, 1986).

There is in place, a system of 'Circular Elimination' as explained by Michel Foucault on his visit to Attica Prison in the New York in 1972 (Simon, 1991). In this system, society physically eliminates people by sending them to prison where there are crushed then freed back into society. They find it incredibly difficult to find and keep a job, meet their social and financial needs, and gain access to resources if they are systematically and structurally shunned from

society. This broken state of newly freed prisoners ensures they will be eliminated by society again, thus returning to prison. (Simon, 1991)

Imprisonment, in the words of Anton Chekhov (2007), is a death sentence clothed in a form less repugnant to human sensibilities. The first payback was imprisonment, then the cutting out from society, followed by reintroduction into society, when there is nowhere new to go or do, as they are treated as an outcast. If there is any "reintegration", it is with the same peers they used to spend time with who initiated, encouraged, or co-operated with the *criminal* behavior in the first place, thus perpetuating the cycle of crime and recidivism. Since there is no interaction of rehabilitation within the larger society or community, the newly released prisoners' only sense of community comes from their peers.

There is a continual sense of "payback" for that first offence that spirals into the need to commit more crime to obtain the basic, everyday necessities needed to live as a regular adult living in a free world (Chekhov, 2007).

If prisons are a means of dispensing punishment through the limitation, constraint and curtailment of time and space (Foucault, 1977; Cohen, 1985), then it is not enough for abolitionism to oppose imprisonment. Questioning punishment itself becomes the basis of abolitionism.

Abolitionism does not seek to abolish prisons. It seeks to negate the notion of utilising punishment as a valid, legalised response to crime. Otherwise, with only prisons being abolished, the same, similar or worse treatment and aftermath may entail in community punishments, societal detention camps, or even house arrests. Also, Restorative Justice is not about incapacitating offenders or punishing them in proportion to the crime committed following the norm of 'an eye for an eye and a tooth for a tooth.' It is about restoring victims

and offenders into safe communities after they have found resolution to their conflicts (Van Ness, 1993).

Abolitionists understand there are people who are clearly a risk and danger to others. However, they recommend a different way of dealing with such people. Abolitionists such as Bianchi (1986) and Mathiesen (1974) assert that such people can be kept away in incapacitating facilities but the number of such people is far lower than is drawn out to be, and so there is a need for only a small number of such institutions, lest it becomes a norm rather than the exception that it is.

Conditions within prisons may lead to what was termed 'prison fevers' as far back as the eighteenth century (Gonin, 1992). A few factors are the length of time spent in isolation, and time being a relative entity experienced differently by those pronouncing the sentence and those serving it. This fever can be defined as a gradual process of transformation of an individual from a human being to a degenerate animal to a severely malfunctioning being, and ultimately self-destroying, corpse. The process, albeit gradual, is, in many cases, inevitable and demonstrable within prisons (*ibid.*). It starts with many of the prisoners feeling disorientation and an inability to concentrate. Repetitive surveillance and recurrent isolation gives way to feelings of extreme loneliness and menacing emptiness. This void causes mental, physical, emotional and psychological atrophy and deterioration. The average space of an inmate's cell, a confined space depleted of time and meaning, adds to his perception and experience of emptiness. All of these factors in many cases lead to health problems, including ulcers and cancers of various kinds that can be seen as a sort of autophagy or self-cannibalism. The agony produced by this only adds to the already existing suffering of the inmate. This, in its final turn,

leads to self-harm, self-mutilation and death by suicide. The rate of suicide within prisons equals six to seven times that in the world outside (Liebling, 1992; Liebling and Maruna, 2005).

With rehabilitative settings introduced within prisons, there is a continual process of trying to improve the offender. There is no fixed time frame for this as improvement of a person is not an objectively definable goal. The psychological treatments or counselling provided within prisons or using prison as a therapeutic community only prolong the length of stay of these prisoners there, and "a delinquent who *for instance*, behaved badly in prison *faces* the possibility of a much longer stay in prison than the seriousness of his crime warranted." (Bianchi, 1986: 150, Italicised words added)

Notions are put forward suggesting that the criminal justice system itself is nothing more than the stronger ruling over the weaker, the more powerful making rules to govern the lesser so, rules that are in conjunction and accordance with what they (the former) think is more suitable, easier and suitable for them (Plato, 1937).

It is argued that the concept of precedence in the legal system is a disproportionate comparison between what the law used to be in historical eras and attempting to attach the same principle and logic to recent developments and incidents. It can prove to be irrational at times since law was shaped by political events, strife, contradictions and conflict in times bygone, and the same principles are being used to dispense justice in modern times. This going back and forth between centuries for 'punishing criminals' can be innately problematic in many instances (Norrie, 1993). Furthermore, once the laws are established within the criminal justice system, the carrying out of those laws are not left to the original powerful actors nor the constitution makers of this process; rather it is delegated to authorized legal professional who bring their own twist to the mix. They are human beings with their personal

set of stories and life histories and their own way of interpreting what is handed down to them. So, there is an additional danger of not just the criminal justice system blurring in its definitions and boundaries, but also that of the actors who are given the responsibility of meting out 'justice' to 'criminals' (Quinney, 1970).

The way the criminal justice system functions with a person who has committed such an act, is by isolating them from the very circumstances in which the event occurred, the causes or reasons leading to the event, their social milieu, as well as the person/s against whom the act was committed. Due to the manner in which the criminal justice system acts with them, the individual is, in a way, hijacked from everything that happened within a given set of events and environment, thus creating a new, fictitious individual along with a whole new set of fictitious interactions between them (Hulsman, 1991).

Crime in itself is a definition given by the criminal justice system of events that are out of the ordinary, events that step away from what is the norm, the usual practice in a given society. In order to objectively establish what crime is, we need to understand what the norms are and abolitionists seek to identify the situations in which a person or people stepped away from these norms, and thereby create understanding of such events through horizontal or *equalitarian justice* (Christie, 1998). Thus conceptually, *crime* emerges as an older, more unruly brother of *deviance* in society, which cannot be tolerated any longer as simply a nuisance. It is a sort of behavior that is considered abnormal, unnatural or out of the ordinary to what a society conforms to at a given time. Crime, therefore, risks been seen as fickle and ever-changing, according to what society considers right, just and acceptable in a particular era or frame of sociological time.

There is, in the criminal justice system, a consumerist trait. "Indifferent though it may be, it presumably offers a concrete service to the community in the form of protection. On the other hand, it artificially creates the need for that service through its devotion to quarrels and wars: its commodified ego responds to a demand that it fosters." (Ruggiero, 2010: 209)

Abolitionists have a different way of looking at this notion. If for conflict theorists the first step is a repudiation, rejection and criticism of the criminal justice system as a paternalistic, pedantic system with "antagonistic values and interests operating from above, abolitionists re-appropriate the very notion of 'conflict' and turn it into a critical tool to be utilized from below." (Ruggiero, 2010: 38)

Correspondingly, abolitionists are concerned about the fact that control agencies and the legal system assess the manner in which to process a crime through the amount of resources they have at hand instead of the quality or severity of the event (Cicourel, 1976). They take a lot for granted and make it a numbers game, a way of appropriating their limited resources and grouping and bunching people into pre-set categories of crimes, precedents and kinds of punishment (Sumner, 1994). Practicality takes over, the entire process is treated as a business to be run, and the amount of money to be spent, costs, price, benefit and Returns on Investment are prioritized over the individual and correspondingly the community. Abolitionists "reject the notion of institutions as repositories of settled wisdom, and of law as a reflection of some immanent rationality." (Ruggiero, 2010: 52)

Methodology

"The phenomenologist seeks understanding through qualitative methods, such as participant observation, in-depth interviewing, and others, that yield descriptive data. In contrast to practitioners of a natural science approach, phenomenologists strive for what Max Weber (1968) called verstehen, under- standing on a personal level the motives and beliefs behind people's actions (Hennink, Hutter, & Bailey, 2011). It is the perspective that guides our research." (Taylor, et al., 2016: 4)

This research is a thematic mixed method analysis of the existence of, and extent to which there are abolitionist elements in UK's Restorative Justice system. It is a qualitative, conceptual, exploratory understanding of RJ in the UK and examining the existence of abolitionism within it.

Primary Research was carried out through a qualitative and exploratory analysis of semi-structured interviews lasting 45 minutes to an hour each. There were 41 interviews conducted as part of the primary research phase. All interviews were either in person or on the telephone. These were recorded and then manually transcribed by the researcher. All transcripts have been saved and copies are available on request in accordance with the anonymity and confidentiality of the respondents. All respondents quoted in the writing of this thesis have been codified therefore there are no direct references or names disclosed. Detailed information on sensitivity of responses and the method of recording them is provided in Ethics section of this Thesis.

Research is largely focussed on the tenets contained in the following questions: What policies and legal principles need to be examined in order to gain a better understanding of RJ? How,

if at all, does restorative justice unravel the dissonance in the current prison systems' functioning?

Research questions were chosen specifically so as to gain a wider understanding of RJ and what abolitionist tendencies it garners in the UK vis-à-vis a more public form of criminology. It entails a discussion of all stakeholders in the criminal justice system, and not just those producing and instituting penal policies. There are numerous reasons as to why there is a revived interest in public criminology. It may be placed within the specific framework where contemporary crime policy is developed. It includes a heating up or sensationalism of issues for political rather than evidentiary gains (Loader and Sparks, 2010a). This may be interpreted as an environment of authoritarian populism that is anti-democratic, wherein legitimate public worries are manipulated by policymakers to gain electoral advantage. Such a strategy is most likely to be implemented in situations where the state is experiencing a grave crisis of legitimacy (Hall, 1988).

Law and order have been prioritised and emphasised in recent times. With the state's increasing reluctance in supplying social security, it prioritises providing physical security through finding fitting scapegoats for issues in the society (Bell, 2011). It is within this particular framework that crime has been politically popularised. It is noteworthy that state legitimacy being in a form of renewed crisis driven by the implementation of neoliberal politics systematically functions against the interests of considerable portions of the population (Loader, 2006; Ryan, 2005).

In order to combat this, criminologists are encouraged to not turn their backs on politics but to engage in democratic debates as a means to move from populism to democracy. This criminological undertaking is to be considered as contributing to a more nuanced politics and

regulation of crime (Loader and Sparks, 2010a: 117). In order to further explore the concept of public criminology as a modality, it is essential to fully comprehend the meaning behind a more nuanced politics of crime. It may be about creating a more genuine form of democratic legitimacy. This type of legitimacy may yet be an ideal to aspire towards and may not necessarily be something that already exists. It could be expanded upon by expanding upon existing themes within policing and penal organisations. In this regard, it borrows from Mathiesen's idea of the 'unfinished' ideal (Mathiesen's (1974a)). It is vital to evolve beyond what already exists and to come up with alternatives.

As a result, they remain quite equivocal about what composes penal alternatives that endorse democratic validity. Democratic legitimacy may take root around three main ideas of legitimacy: the legitimacy of impartiality; the legitimacy of reflexivity; and the legitimacy of proximity (Sebastian and Rosanvallon, 2007). The legitimacy of impartiality involves building institutions that can watch over the few in the best interests of the many (Loader and Sparks, 2013). These apparently unbiased institutions are already present in the form of Independent Monitoring Boards and Police Complaints Commissions, Ombudsmen, Probation Service, Constabulary, lay visitors *inter alia*. However, it is important for them to be more accessible and conducive to democratic feedback. The legitimacy of reflexivity entails encouraging dialogue based on human rights with the aim of compelling democratic institutions to consider and examine their actions without reference to electoral cycles. Legitimacy of proximity is described as the building of an authentic democratic consensus by bringing together citizens, administrators and experts in making sure that there is respect for procedural fairness (Loader and Sparks, 2013).

The issue of penal policy has often been presented as a debate between abolitionism or reformism. This has often led to the accusation of both sides being ideologically opposed. The debate between the two camps has often been presented as a clash of ideals and has created unnecessary divisions. There is a hard form of abolitionism known as the first wave. It was associated with the early writings and ideas of Mathieson (1974), and it rejects the conventional wisdom about prison reform. The second wave, which is more tolerant and flexible, developed during a later date when the prison population started to expand. As the years went on, some people began to accept the idea of humanitarian reforms, while others were still committed to abolitionism.

One aspect of Mathieson's version of abolitionism is his commitment to "the unfinished." It is a disinclination to provide in depth alternatives that might result in the construction of improbably and unsustainable models that may be easily rejected. However, in order for reforms to be introduced, alternatives need to be found and recognised and this was the conclusion reached by second wave abolitionists. One of the most discouraging characteristics of the first wave of abolitionism is the reluctance to seek improvements in prison facilities, as it is argued that they only help religitimise the existing order. This is associated with the notion that improving conditions in prisons does not change the fact the people are in a prison system and therefore it is pointless to instil short-term changes or reforms.

The second wave of abolitionists, who are sometimes referred to as selective or partial abolitionists, are those who believe that prisons are not designed to reduce crime, but are instead expected to engage in progressive reforms. Second wave abolitionists are committed to the development of alternatives to imprisonment, removing certain offender categories from prison, as well as questioning the existence of the prison industrial complex. Most

abolitionists agree with these goals, but the question remains how they are to be realized and how they are linked to the overall abolition objective. They suggest that the first step in addressing these issues is developing a case against imprisonment as well as organising suitable social support.

There are a number of factors that need to be considered before implementing reforms. Prison reform organisations and academic researchers rely on a small group of supporters and funding sources to send out their message to the public and policy makers. However, the efficacy of said groups is unclear and even a clear agreement on policy, there is no certainty as to which representatives or processes will enable their introduction.

In recent years, in various advanced western countries, there have been numerous instances of considerable reductions in the number of people in custody. However, newer forms of supervision and control have since been coming to the forefront. As society and the world move more increasingly into a post-fordist globalism, higher prominence is placed upon upward mobility and social flexibility of labour. Consequently, the regulatory structures that commanded power and dominance in the 19th and 20th centuries are being forced into ever-increasing pressure (Matthews, 2018).

Risk frameworks create the foundation of modern structures of security. However, risk-based predictions detect insecurities rather than securities. Adopting risk as an outline of government redesigns relationships. There are various aspects of regulation and control developing that are at odds with the disciplinary methods and associated types of power that Foucault identified as the basis of modern prisons. These evolving systems of control have been established with little or no approval from academics or reformists. The expansion and scale of these mechanisms could not have been predicted.

Arguably two major internal and external influences are affecting the future of imprisonment. The internal process includes the increasing frictions and inconsistencies inside the criminal justice system and its growing challenges. With rising tensions in this space, the means of managing it is becoming progressively more strenuous. The external influence consists of the expansion of ways of regulation that may be subtle but are most assuredly potent, 'post-disciplinary and post-panoptic.' (Matthews, 2018: 31) There are methods of security and governance that are forming an intricate network of surveillance. These mechanisms function in open areas and so they no longer need to depend on the tactics of enclosure. They are not static or limited to time as they can easily modify and evolve.

Along the same lines, there is a reconfiguration occurring of the three major factors that provided the prisons their seeming normalcy – labour, time and space. As this seeming fit between incarceration and post-fordism becomes more problematic, the social support for abolitionism may well grow. At present it is constrained and irregular. During this time, there is an increasing number of urgent matters in the penal system that need to be tackled. "However, the abolition of imprisonment will not be achieved through the greater use of alternatives or through a process of attrition, while the promotion of informalism particularly in the form of restorative justice is a flawed option." (Matthews, 2018: 31) Matthews (2018) claims that there is hardly any official difference between abolitionism and reformism as it is merely a variance in ideology. He argues that even though Mathiesen's statement on the contradictory practices and tensions in the prison system may be correctly assumed, there is no practical application for Mathiesen's 'classic distinction between positive and negative reforms', and that short term demands are not related to abolitionism. He goes on to suggest that prison reform needs to be prioritised over calculating the differences in interventions used by 'self-proclaimed abolitionists and reformers' (Matthew, 2018).

It is argued that, even though other factors may be present, it is mainly neoliberalism that resorts to policies that are presently politically attractive (Bell, 2011). It is claimed that labelling neoliberalism is politically essential, in order to give resistance substance, emphasis and a starting point. Similarly, it is politically vital to discuss neoliberal penality if the punitive trends it engenders are sought to be questioned (Hall, 2011). There are differing levels of punitiveness within each region of a nation. Furthermore, neoliberalism is utilized in exceptionally distinct ways across the world as it adjusts to local, constitutional and institutional societies (Bell, 2014). With a focus on the UK, it is advisable to explore ways in which the reasoning of neoliberal penality could be challenged, thus paving the route for alternatives. This is not a simple task. A number of political analysts who are opposed to the negative impacts of neoliberal policies have a pessimistic view on alternatives. It could even be assumed by extension that there actually is no substitute to neoliberal penalty, which would lead to increasing prison residents, heightened criminalization and a diminishing of the borders between penal and welfarist processes (Crouch, 2011; Gamble, 2009). One of the reasons behind this catch 22 argument may be described as a failure to formulate the definitions of the alternative futures they seek to encourage (Loader and Sparks, 2013). It should be stated that there are some significant exceptions to this discouraging view such as Thomas Mathiesen (1974a) and more recently, David Scott (2013a, 2013b). Scott (2013a; 2013b) proposes a plan for an 'abolitionist real utopia'. Nevertheless, there is a seeming lack of tangible ways to move away from the present punitive stalemate in penal policy. In the last few years, this dissatisfaction has led some criminologists to come up with a few exit strategies under a theme of 'public criminology' (Loader and Sparks, 2013). It is claimed that delving further into a more genuinely 'public' form of criminology can assist with formulating alternatives to custodial punishment, inspired by the tradition of penal abolitionism (Bell, 2014). Criminological models such as Good Lives, Risk

Need Responsivity have been considered in the framework of effective deliverance of criminal justice.

Primary and secondary research methods have been applied through analysing journal articles, double blind peer reviewed articles and reports by the WHO, UN, UDHR. Electronic and physical data gathered from library resources at Middlesex University and other universities in London has been evaluated. Academic research and empirical studies in the field have been compared and inductively and deductively evaluated.

Potential, long and short-term effects of retributive justice policies as discussed by public, private, governmental and charity organisations in the UK have been critically analysed.

Each semi-structured interview consisted of between 11 to 13 open-ended questions.

A Qualitative Data Analysis and Research Software, NVivo was utilized for analysis of the primary research data.

This type of study was chosen because of its adaptability, ability to improve best practices and add to existing knowledge on the subject matter in the field. It enabled the researcher to critically analyse the pros and cons of implementing the surrounding legal framework and suggest recommendations for its future in the UK. In order to gain a deeper understanding of the RJ processes in the UK, practitioners and academics directly related to the field were selected based on their comprehensive theoretical or practical insight on the subject. Their consent and availability were factors that affected the number of respondents included in the final study.

This research is self-funded, and no part of the conclusions is skewed based on the sources of funding or any external influence. To the best of the researcher's knowledge, ability and

awareness, no fraud, misconduct or unconscious bias has been exercised in the gathering of data and writing up of findings.

Interviews for primary research data collection, recording and transcription were self-conducted. Following the collection of primary data through semi-structured interviews from June to December 2018, end chapters were written. Conclusion, recommendations and feedback was provided via a triangulated critical analysis of themes established within the primary data collected. Connections and comparisons were made with secondary data, literature review and original ideas emerged as a result.

Samples, Ethics and Anonymity

The analytical sample for this study consisted of 41 professionals who were interviewed using a semi-structured interview guide. Each respondent's confidentiality and anonymity requirements have been strictly adhered to. Some participants gave full consent to having their identities disclosed whereas others gave partial consent of only their views being published but not their workplaces or identities. A list of names and titles of interview respondents is provided in the appendices in accordance with each participant's anonymity requirements.

The interviewees have been anonymised and thereafter coded during the writing and quoting of this study. A coded schedule of participants has been provided below.
The Risk and Ethics, Consent, Anonymity, Health and Safety forms were submitted and approved by the Committee at Middlesex University, London.

This is by way of clarification that the Ethics Committee at Middlesex University did not provide permission for researcher to interview current or ex-offenders, or offenders' families. This result was reflected in the primary research as most of the responses received are from academic, RJ practitioners and a few victims' families and MoJ or HMPPS employees but no direct accounts from offenders on their experience of RJ and its effects on their lives. None of the participants in this study have been identified. It was decided on ethical grounds not to include names of any respondents in the research. Direct quotes by certain participants have been codified with a code provided at the end.

Various ethical concerns have been considered during the writing up of this Thesis and on choosing informants and their anonymity. Grave seriousness and sensitivity to victims and their families was proffered as it was appreciated on a deeper level that their trauma would not be

overlooked in any way. Primary research was conducted in a trauma-informed manner and strict adherence was given to the participants' wishes and convenience regarding time, place and manner of interviewing.

Choosing the respondents was a result of a variety of justifications. The reasoning behind selecting the participants was essentially people who have had a direct impact of RJ in their lives, in the lives of those close to them, or those with expert knowledge, understanding, practice or training in the field of RJ within the UK.

Ethics concerning conducting interviews, typing transcripts and using data from respondents was followed with due respect to the respondents' informed consent. A few respondents who are presently working in criminal justice in UK were happy to oblige with information and relevant experiences whilst remaining anonymised. Others expressed no qualms with their full identity being revealed and/or published. The rest declared that their academic sentiments or professional opinions may be stated in the thesis with their names but without affiliation to their job roles or the organizations they work for. Each of these wishes has been duly noted and the research references as well as bibliography reflect the same.

Interviewees' wishes, needs and requirements regarding anonymity were approached with complete respect and regard. It is important to note that some of the participants in this study were victims' families who chose to take part in RJ projects historically. Others were new to the concept but open to it and wished to explore more. A few respondents had had indirect dealings with RJ as they were related via work or volunteering connections to victims or offenders who had taken part in RJ conferences in the UK. They wished to share their experiences and contribute to the ongoing discussion. It is noted that practitioners of RJ were happy to oblige with responses and their direct experiences in and knowledge of RJ

conferences they had facilitated. They shared their expertise and gave consent to having their names published alongside their organisations.

Sensitivity to participants was thoroughly considered throughout the study. One of the primary requirements of a study of this nature is to follow closely the respondents' cues of the way they are feeling whilst answering questions in interviews. With an exploratory, qualitative study, primary research tends to take on the flavour of the participants' responses rather than the questions being asked. Studying sociological experiences can be subjective and not scientific or objective. Truth is seen through the lens of the interviewees' experience of RJ, what they thought it was going to be, what it was, and what it eventually came to be. The expectation and experience can differ profoundly during RJ conferences, or other types of RJ practised and explored in this study. All these experiences were being recounted in one way or another during interviews for this research therefore it was of paramount important to strictly adhere to how the respondents wanted to be addressed in the writing up stage.

Chapter I

Philosophies & Ideologies of Crime, Punishment & Alternatives

Introduction

This first Chapter contains historical and philosophical theories on the reality and ontology of restorative justice. These principles and practices are based on classical philosophies as well as religious sensibilities. Examples of restorative justice found in those societies and philosophies are also put forward.

History of Restorative Justice around the World

According to Walgrave and Bazemore (1999), Crawford and Newburn (2003), and Gavrielides (2007), RJ consists of practices such as family group conferences, direct or indirect mediation, community-based restorative boards, or circles built around sentencing and healing purposes.

The rehabilitative system of justice largely concentrates on rehabilitating the offender and catering to his sociological, criminogenic and criminological needs thus unintentionally ignoring/marginalizing the victim in the process (Weitekamp, 1999). Conversely, RJ brings the victim to the front and centre of the justice process through promoting their healing, restoration and restitution (Mulligan, 2009), as well as urging from the offender the sense and sensibility of repentance, responsibility and reparation for their actions (Zernova, 2007). It also bears with it aspects of "reconciliation, atonement, redress, community service, mediation and indemnification." (Weitekamp, 1999) This is facilitated by means of arranging sentencing

circles, conciliation, conferencing and mediation, elements that also constitute the definition of RJ in the Basic Principles of the U.N. (cited in Mulligan, 2009: 141). It is in contrast to the retributive system of justice in which an offence is deemed as committed against the state and the state in its turn punishes the criminal by inflicting harm it deems proportionate on the offender, thereby ignoring the victim for the most part in the process (Mulligan, 2009).

As will be further explored here, three schools of thought exist in terms of explaining the history of RJ in the world. One describes it as being roughly four decades old starting in North America in the 1970s (Burkemper & Balsam, 2007). The other theory explains RJ as being as old as humankind itself (Braithwaite, 1999) in its acephalous or pre-state, nomadic, hunter-gatherer societies (Weitekamp, 1999) and how later on the introduction of punitive systems in the name of justice started to arise in the community as a whole (Liebmann, 2007). However, there also exists a third viewpoint that illustrates restorative justice as standing alongside retributive justice since the conception of organised communities around the world historically. Among a few examples are corporeal punishment, imprisonment, brutal oppression, violent retaliation, stoning, impaling, mutilation, getting sold into slavery, debt slavery, or being executed in cases where the offender was unable to pay monetary fees as restitution for his crimes (Sylvester, 2003).

Countries that practise RJ currently in the world mainly in the field of Juvenile or Youth justice systems are Canada, New Zealand, South Africa, Australia, Western Europe, Israel and Hong Kong. New Zealand started its practices of introducing family group conferencing and mediation in 1989 and since then, there has been an approximate reduction of two thirds in youth related offences and crime. In Italy there is a divide between North and South as to ease with which restorative justice is practised. The Justice of the Peace carries out restorative justice

in the form of mediation services called Victim Offender Mediation. The inspiring principle behind the Justice of the Peace is *favor conciliationis* implying that the Justice of the Peace "must encourage as much as possible, reconciliation between the two parties." (Act No. 274/2000, Art. 2 cited in Mannozzi 2013)

Criteria for 'mediation'-worthy cases in Italy as established by Act 274/2000 are the following: a) both the offender and victim are physical, objectively identifiable persons, b) the victim is clearly identifiable from the start of the case, c) objective seriousness of the harm is limited, and d) the harm caused is personal.

Empirical research suggests mediation occurs in both serious crimes and petty relational offences. This mediation and possible ensuing reparation may affect the trial at different stages: a) at the pre-trial phase as a diversionary practice, b) during trial as mitigation, c) as part of the *punishment* stage post trial to account for the inmate's early release, and lastly, d) after the offender is released to encourage their reintegration in the community. In the south there is more of a hold of mafia like organisations even currently, and organised crime circuits can have an effect on the successful running of VOM. For greater success of mediation in South European countries, having a secular and modern culture with an informed awareness of the past is encouraged. Further recommendations are made in terms of increasing public awareness, investing in training of mediators and, as is already being established in Northern Europe, having a higher number of mediation centres.

Restorative Justice is also starting to be practised in other countries like Chile in the form of VOMs in the juvenile justice system. Studies suggest that with its underlying ethics of social justice and accountability, practitioners of VOM in Sweden, Italy and England are satisfied with the results.

While Italy does not have any RJ specific law, it uses diversion tactics and practices RJ especially as an alternative to youth custody. In Sweden the Mediation Act (Swedish Code of Statutes, 2002) makes it imperative for all municipalities to offer RJ in the form of VOM for youth who are found guilty and / or if they request mediation. In England there have been various pilot programmes with a restorative focus but there is no fixed stable legislative force on a national level implementing or promoting RJ (Reyes-Quilodran *et al*. 2019).

Restorative Justice has come a long way from being merely a concept discussed in criminal justice conferences. It now occupies a central role within a discussion of the tenets of criminal justice in the UK. However, this has contributed to more tensions and questions arising in the field of criminal justice reform in the UK. Lode Walgrave, Professor Emeritus in Criminology at KU Leuven, Belgium has been a researcher and educator in the field of Criminal Psychology and Theoretical Criminology. He has conducted numerous theoretical and empirical projects on Youth Criminology and Restorative Justice. He is also a member of the Editorial Board of 'Restorative Justice: An International Journal.' According to Walgrave, "Restorative Justice is based on mutual respect and inclusion through dialogue… First, it offers a realistic and more positive alternative to detrimental punitiveness. Second, it contributes to de-dramatising and demystifying the image of crime and criminals to more realistic dimensions (which are in themselves serious enough)." (Walgrave, 2019: 618)

Walgrave imagines a consanguinity between Good Lives Model and Restorative Justice working together to developing a 'criminology of trust'. Instead of focussing on risk reduction and prevention primarily, RJ utilises strengths-based perspectives with a view to creating skills in offenders thus reducing risk in an indirect way. There is no guaranteed rehabilitation for the offender through RJ and the offender's personal eagerness to change is paramount. RJ fully

accepts these limitations claiming that if offenders are offered the chance to change with realistic notions on the future through dialogue, then individuals are more likely to put in more enduring efforts and a commitment to solve problems connected to their offending behaviour (Walgrave, Ward & Zinsstag, 2021). GLM (Good Lives Model), RNR (Risk Need Responsivity) Model and other strength-based approaches are based on the simple realisation that offenders have needs and aspirations similar to non-offending members of society, but they require hope and realistic inspiration that something will work in their lives in future and that it is in their power to create a better life for themselves. This can be achieved by providing psychological wellbeing and means towards living personally meaningful and socially responsible lives. Also changing focus from 'What works' to 'What helps' can help (Ward & Maruna, 2007).

These approaches complement RJ wholesomely as they have common underlying principles.

Both RJ and GLM normalise, humanise and de-dramatise criminal, problematic or offending behaviour. Offenders are viewed as humans with their own sets of strengths and weaknesses, values, needs and motivations, who came to commit crime as a result of harmful choices or adverse conditions and who ultimately want similar outcomes as the rest of the subset of non-offenders, to live harmoniously with their social milieus (Walgrave, Ward & Zinsstag, 2021).

As a meta definition of RJ, it can be summed up in three principles of encounter, reparation and transformation. These three concepts cover majority of values of stakeholders. However, the manner in which societies create responses to crime is also a political matter, so there needs to be a political dimension added to gain a deeper understand of RJ. "The fragmentary growth of restorative justice is inextricably related to the normative inconsistencies across its very political conditions." (Maglione, 2019: 557)

RJ revolves around the concept that if crime hurts, then justice should heal (Braithwaite, 2016). RJ is a bottom-up relational method as it not only requires a compensation for the harm but also rebuilding or renewal of social bonds. "The Gavrielides and Artinopoulou model on structured and unstructured restorative justice contributes to the conceptualization of restorative justice and reflects its interactive and transformative approach." (Artinopoulou, 2016: 121)

Religious Roots of Penal Law

Penal law can be traced back to its historical roots in various religions around the world. In India and Judea, law is considered to be a part of divine revelation, so it holds even more significance religiously, with similar workings of the penal law in Rome, Greece and Egypt where priests used to manage crime in society through sacerdotal edicts. The *Code of Hammurabi* (c. 2380 B.C.) also preferred compensation over the death penalty (Gavrielides, 2011). Looking at the etymology of the terms, 'punishment' comes from the Greek word *pune*, which means 'an exchange of money for harm done,' and the word 'guilt' comes from Anglo-Saxon *geldam*, meaning payment (Braithwaite, 2002).

Religious roots and connections of penal law to religion and morality are delved into further in subsequent sections on morality, moral theories and collective conscience. At the start of the first phase of the Middle Ages from 500 to 1350 A.D., RJ weakened in spirit and essence. For instance, the practice of *infangthief* was instituted, which meant the offender was making two separate sets of payment, *bot* to the victim and his family, and *wite* to the king or Head of State. A precise example of this act was in the Anglo-Saxon empire, after Charlemagne's empire was divided by the Verdun treaty in 843 A.D. A fine had to be paid to the king and not

to the victim, thus replacing restitution in its original sense and meaning. By the latter stage of the Middle Ages or its second phase, i.e. between 1100 and 1500 A.D., *bot* was officially circumscribed and therefore soon lost its significance by the end of the 12th Century (Gavrielides, 2011; Christie, 1977). From the start of 13th Century Europe, the State was in total power of any conflicts arising within the society. That is when terms like 'offender' and 'victim' emerged, and a distinction was made between 'public' and 'private' law as 'criminal' and 'tort' law respectively (Gavrielides, 2011). This gave rise to an imperative positivist theory. Legal systems established the notions of command and obedience entirely discounting whether the king had a meritorious or moral right to command or rule (Johnson, 1991). In addition, due to the ecclesiastic law during the 13th Century, money accrued from said fines amassed one sixth of the king's total revenue (Barnett, 1977). In a similar vein, the brutality, injustice and inequity of the *Inquisition* was made legitimate with the justification that crime was being committed against the church and its moral precepts and orders. This was also being orchestrated by the church leaders long before the Inquisition, to impose their will on the people.

Crime and punishment have not always been as strongly bound as they are in current times. Criminal justice and punishment are comparatively newer institutions when seen from a historical perspective where 'crime' was viewed more as a 'conflict between individuals' (Gavrielides, 2011: 4). The modern definitions were put forward via a more legal positivistic framework from the 16th Century onwards that was strengthened by political philosophers like Thomas Hobbes, David Hume and Jeremy Bentham. From the start of 16th Century and onwards, there began to arise more proponents for Restorative and Restitutive Justice, such as Sir Thomas More, James Wilson, Enrico Ferri, Cesare Beccaria and Raffaele Garofalo. The RJ movement from the 20th Century onwards has been brought forward by victimologists like Margery Fry, Hans von Hentig and Benjamin Mendelsohn, as well as penal abolitionists such

as Randy Barnett, Nils Christie and Albert Eglash. Barnett (1977) also claims that only a small minority of 17% of tribal communities around the world ask for human sanction, i.e. people being handed over to the victim's family as sanction, as opposed to the whopping majority 73% of the tribes calling out for pecuniary sanction. This view is also supported by Hindu societies across India as well as nations built on Semitic beliefs (Schafer, 1968). Therefore, the preferred choice in said societies is that of financial repayment as opposed to human sacrifice, death penalty or revenge. Barnett's contemporary, Eglash (1977) comments on the three types of criminal justice, *distributive, retributive* and *restorative*. The first two kinds, however, overlook the victim in the process of meting out justice for the offence committed. Another contemporary of Eglash and Barnett, Martin Wright (1977) claims that the definition of 'crime' is fluid and changing, and that there does not exist a clear distinction between what is termed as a crime and other actions that harm and hurt the victim. Hence, he supports restorative justice measures in this process so as not to add to the harm already caused, but to endeavour to do as much as is possible to restore the situation (Wright, 1996).

Restorative Justice (RJ) was practised in diverse forms in various countries around the world since before organised law and order rules were established. RJ in fact, precedes common law based on the rule of law in the UK, which itself was based loosely on the Ten Commandments from the Bible and the Old Testament, i.e. the Hebrew Bible dating between 1200 and 10 B.C.. It is noted that RJ has its roots in ancient cultures, customs and traditions that predate current traditional societies and religions, going back to ancient Roman and Greek civilizations. Most countries around the world can be shown to have links with practices that in modern terms would be deemed as restorative in the nature of their terms of meting out justice.

The earliest recorded human groups of societies were acephalous or 'headless'. Michalowski (1985), Kuppe (1990) and Hartmann (1995) agree in that these societies did not have a distinct head or chief. They were more spread out in that manner, adhering instead to strong group values, kinship and collective responsibility with each other and their environment, thus reducing egoistic interests. They existed for around 30,000 years as nomadic tribes or small segmental societies that depended to a large extent on mutual cooperation and egalitarianism. Although other things like blood revenge, ritual satisfaction and retribution were present at the time, punishment in most cases was the exception. The norm was Restitution as it was the most commonly practised answer to any deviation, distortion or imbalance in these societies (Gavrielides, 2011). Restitution in those times referred to the community assuming the role of the mediator through its representatives to restore the balance in society and do away with the harm done on a personal level so as to rehabilitate the offender, deter crime and restore the victim.

Another example is the Yurok Indians of Northern California. According to early 20th Century studies, even though the level of harm done to the victim in these tribes was the primary means of judging the amount of restitution and/or compensation provided, this victim-oriented response was trumped by the fact that in the event of non-payment of damages, the victims were empowered and legally permitted to keep the offender as their debt-slave and/or punish them with physical force or abuse including death. So, the Yurok system favoured victims' well-being, but with the options of death or slavery included in the mix, it is safe to conclude that this system was not wholly restitution-based (Nader & Combs-Schilling, 1977: 31). A similar practice is noted among the Ifugao community of Philippines where the community members decide the compensation payable by the offender according to the level of harm caused to the victim. A mediator called *monkalun* is assigned by the community to

bring about more peaceful financial settlements to the injury rather than physical vengeance or harm to the offender, based on the nature of the offence and the relative status of the victim. However, these practices show, that even though the victim is being prioritised, the community is given a place even higher to the victim in that the community gets to evaluate if and how much harm has been caused to the victim, thus taking away from the victim, the right to choose their own remedy. Also, there was found to be major distinction in the severity of penalties depending on what class the offenders belonged to, and their gender or status they held in society (Versteeg, 2002). It was less about victims and more about punishing deviants and restoring status quo and order within a community by keeping people in line (Whitman, 1995). Death penalty was common in ancient law. But it is noteworthy that it was used more often as punishment for an attack on an upper-class victim by an offender of a lower class, whereas the reverse was more often than not, met with a fine or restitutive end (Westbrook, 1995). The Twelve Tables of the Roman Law are claimed by some scholars to be based on "revenge." (Drapkin, 1989) It is also essential to not overgeneralize the Roman law because firstly, there are very few written sources to quantify the information. Secondly, the Roman magistrate was more powerful than is generally noted in legal texts, as they meted out, often in summary fashion, most of the public punishment for low-level crimes. (Sylvester, 2003: 515)

In the *Nuer* tribe of the Sudan, judgment proceeded from whether or not the victim and offender belonged to the same lineage or tribe (Hoebel, 1954; Colson, 1962). Another custom followed by ancient communities was that of *palaver,* which revolved around placing the victim and offender in the middle of the community inside a hut without walls and letting the act of having a local public dispute itself be a way of resolving the conflict. Through this, it was easier

to establish the harm done and the community's role in mending it (De Waal, 1990; Rossner, 1989).

Early-state societies' legal codes warranted restorative justice elements with focus on restitutive justice even for violent offences. Examples are legal codes of ancient Mesopotamia, namely Uru-Inimgina (circa 2400 B.C.), Hammurabi, Ur-Nammu (2094-2047 B.C.), Eshunna and Lipit-Ishtar (Versteeg, 2002). RJ processes could be seen in ancient cultures as far back as 1700 B.C. in ancient Babylonian code of Hammurabi, primitive Middle Eastern Codes from 2050 B.C. of Ur-Nammu and Eshnunna, as well as quoting the word *shillum* or 'restitution' in Hebrew to have the same root as *shalom* or 'peace'. Among newer societies where justice was of a relatively more restorative nature were pre-Norman Ireland, Fiji, Tonga, Samoa and pre-colonial New Zealand (Daly, 2002). Other examples from European law include the Roman Law of Twelve Tablets (449 B.C.), the English Laws of Ethelbert (7TH Century A.D.) as well as the Anglo-Saxon laws that had RJ as the corner stone of their creation. Similar kinds of 'restitution negotiations' exist in present day acephalous societies and tribes for instance, among "Australian aboriginals, Egyptian Bedouin, and many Native American societies where restorative justice continues to be the dominant form of conflict resolution." (Mulligan, 2009: 143) A change occurred at the time of the Norman invasion of England in 1066 A.D., where a shift was experienced from restorative justice procedures to a more retributive system of justice. Crime began to be defined as a "disruption of the 'King's Peace'" (*Ibid.:* 144). It was a transition from viewing crime as a breach or a violation of the peace of the victim and his family to that of the king/state/government/external authority. This became a way of inculcating fear of a bigger authority in the minds of the offender, and thus also benefitting the King politically and financially.

Nevertheless, not all ancient Codes or religio-cultural practices were solely restorative in nature, for example codes from Indian and Islamic law were much more punitive and traditionally deterrent in their founding and functioning. Hence, although there is no dearth or complete absence of restorative justice in history, we do see a sort of overlap, co-occurrence and even at times, domination, of retributive justice measures over restorative justice even in ancient communities. There are claims made in older historical judicial processes where retribution was brought into effect in cases where restoration was not possible (Sylvester, 2003). However, that begs the question whether the laws of those times also were devised in a way that retribution most often took precedence over RJ measures which were present merely as a *formality*. On the contrary, the supposition that retribution became more prevailing solely after the Norman invasion for reasons of giving the King more power, status and authority under the new system of laws concludes that restorative justice was practised largely equally, prominently, and *alongside* retributive justice until before 1066 in England.

The notion of RJ started further disintegrating from the Middle Ages onwards resulting in a distinct lessening in practice in the 9th Century Europe. This deterioration was formally complete by the 12th Century A.D., where acephalous societies were replaced by those with distinct rules, centralised State rules and practices with a 'clear hierarchical structure' (Gavrielides, 2011: 7). This structure consisted of a ruler/king/leader/elected *government* that assumed the role of *governing* the lives and affairs of its 'citizens'. In the process, the interests of the so-called State inextricably gained priority over those of the victim. Conflict resolution thus became a matter of atoning for the sins committed and wrongs done unto the State or the King, and restoring the actual victim relegated to the point of being partially silenced or at times, entirely unheeded (Schafer, 1968; Kuppe, 1990).

Relationship between Criminology and Social Harm

Among the key criticisms of criminology put forward by social scientists in the last five decades have been the following: that there is no ontological reality of crime, criminology perpetuates the myth of crime, crime actually comprises of several minor events and it excludes various major harms, the synthetic construction of crime, punishment of such criminalised acts, the ineffective control of such acts, thereby legitimising increased crime control, and thus crime serving to maintain power relations (Hillyard &Tombs, 2007). People's welfare, in this context, is seen as a wholesome picture of societies as opposed to atomised individual social milieus. This is done for reasons of gaining a bigger picture of societies in which individuals function as part of smaller groups belonging to varied socio-economic statuses, ages, genders, ethnicities, faiths, cultures and even geographic locations within larger communities. In order for a social harm approach to be applicable, it is imperative to define and redefine what is meant by harm. As a result, sociologists argue that it is time to move beyond criminology into a field of Social Harm. The disciplinary potential of having a Social Harm approach speaks to being theoretically coherent as well as politically progressive. Sociologists critiquing criminology as a field have argued that crime does not have an ontological reality. There are different problematic situations (Hulsman, 1986) which cannot, in their heterogeneity, have an a priori response as their origin is subject to a vast array of societal differences. From civil crimes, white collar crimes to sexual and environmental crimes, there is a more detailed story required to encompass all such events within a definition of 'crime'. Criminology perpetuates the myth of crime in that it entails and seeks debates on crime but rarely questions what crime is. Criminology does not deconstruct crime; it simply assumes it. "At the same time, despite the post-modern critique of theory, criminology is still producing meta-theory to explain 'crime' or producing another "Cook's tour" from Lombroso through to strain theory." (Hillyard

& Tombs, 2007: 11) Criminology, it is contended, still contains within it a formulation of endeavouring to explain or theorise the reasons as why offenders commit crime. However, there is gross misunderstanding of the notion that crime in itself is social construct. As a discipline, criminology focusses less on the socio-economic or political context where contemporary 'truth' of policies is produced and associates itself more with the content of what it attempts to debate on (Hillyard & Tombs, 2007). Majority of what crime is defined as, consists of petty events. This is not including or in any way minimising extreme acts of violence, cruelty or genocides committed that also rightfully come under its ambit. Nevertheless, a vast majority of criminal events are minor and can be explained via personal hardship (Hulsman, 1986). These have little to no influence on producing victims and most of which can be 'solved' via existing channels such as insurance and compensation. Crime also excludes many serious harms as criminal law does not include these events and incidents as part of its definition of crime. These are mostly ignored such as corporate, environmental, or state crimes. More attention is given to minor crimes committed in disadvantaged and powerless communities through policy and enforcement thus ignoring more serious, widespread, and higher levels of harmful activity or 'crime'. This results in not just deflecting but also in many instances, excluding state crimes, health and safety offences, workplace injuries, et cetera. It is argued that crimes are constructed within criminal law with a pre-established concept of *mens rea*, i.e., the supposition of intent of a guilty mind. However, these at times fail to include corporate crimes such as corporate liability manslaughter, as it is difficult to ascribe responsibility for social harm to an organisational entity since such acts are considered merely regulatory. Thus, the corporate entities are provided with an excusable clause of being able to rationalise the consequences of their actions (Slapper & Tombs, 1999). Events described as 'crime' then become part of a process of criminalisation wherein the state takes the conflict upon itself and

imposes the punishment. Here, both the problematic event as well as the punishment for it are defined by the state. However, there is rampant ineffectiveness in the control of crime by the state. Between 1997 and 2004 even though there were more than 50 Acts of Parliament in the UK in relation crime, law and order as well as record numbers of criminals in prison, crime rates were not affected to any noticeable extent (Solomon, et al., 2007). Arguably, definitions of criminal events legitimise the machinery of crime control. One feeds into the other, thus perpetuating a cycle of crime and punishment as a fundamental uncontrollability within the criminal justice system (Hulsman, 1986).

Abolitionism incorporates public criminology in a way that utilises academia, cultural work and social conflict as intellectual and social activism. Abolitionists do not undermine the notion of conflict as they believe it can be fostered as a valuable resource. Knowledge, for abolitionists, is not limited to specific times or opportunities when it can be transmitted to those interested or receptive enough to accept it. Knowledge can also be used as tools or 'repertoires of action' to aid those who are engaged in a conflict of some kind, through a mutual explanation of their experiences. Example offered is of Thomas Mathiesen's engagement with different groups of incarcerated people with the intention of production a knowledge resource that may be subjectively and objectively valuable in their struggles to change and transform (Ruggiero, 2012).

In place of criminology, if events are viewed from a perspective of social harm, it is argued this will make it easier to discuss alternatives to custody. This will be aided by the fact that debating reform within a field has the inadvertent effect of strengthening said field, even though elements of it are being put to questioning and policy reform. Hence, if the debate continues to be about crime, imprisonment and punishment, the field of criminology gains momentum.

However, certain sociologists argue that if the focus is moved from crime and custodial punishment to an aspect of harm being done to society, that would make it easier for all stakeholders to be made equal participants in the conversation. However, this argument comes with its own challenges. For instance, it would be important to define harm in a more inclusive manner than crime. A social harm approach would have to focus on physical, financial, economic, emotional, and psychological harm. Even though it may be conjectured that harm is as ontologically unreal as is crime, and its definitions can descend to the same depths of relativism as those of crime, there is hope yet. Sociologists advocating social harm policy claim that defining harm can be more productive and positive than debating definitions of crime already established by the state under criminal law. Defining harm can contain within it elements of its operationalisation, thus being able to include widespread perspectives of all those directly affected by the harmful event. This harm could potentially all the ups and downs of life of citizens during their lifetime and track the relative significance of harm suffered by individuals belonging to different groups of society. This individualistic approach to harm has the potential of catering to much wider groups of society than as its definition bends and moulds to people subjectively. Prioritising social harm would benefit the individual as well as aid in the creation of more rational social policies. It can also make the allocation of responsibility more succinct and precise, which would include corporate, collective and political responsibility leading to policy reform, challenges to power and critiquing risk as a means to achieve social justice (Hillyard & Tombs, 2007).

Significance of the State within UK Penology

When it comes to the importance of the State, criminological theory has been through stages of acceptance and denial of it in its proceedings over the last eight decades. Post Second World War, criminology was shaped by proliferation of the welfare state through Keynesian economic principles centred around the tenet that government intervention can help stabilise the economy. Penal policies were informed by psychologists and legal theorists (Ryan, 2003). During that time, crime was not big on the agenda, and it was believed that having a strong welfare state would engineer solutions to crime (Downes and Morgan, 1994). Even prisons were regarded as something of a bygone era that would 'soon' be made almost redundant (Cohen, 1985). All this was still considered largely unproblematic 'penal welfarism' where the criminologists' main task was to work 'with' the state on creating benevolent social responses to crime (Garland, 2001). During the 1960s up until the 1980s, the state occupied a central position in criminological study as a legacy left by Marxism and the New Left (Hallsworth & Lea, 2012). Gradually, the state started to disappear from discourses on criminology as it was considered to be weak and something of the past. However, despite continued economic expansion and general reduction in poverty, crime rates continued to rise in the UK. During this time, crime control began to take center stage within UK state politics and penal welfarism started to be viewed as being problematic. At the same time, a new class of criminologists and social scientists emerged which was more critical of the state and its authoritarian regime. This problematisation of the state was recorded in works such as a 'Policing the Crisis' by Stuart Hall and colleagues (Hall, et al., 1978). Towards the end of 1970s there was in effect an organic crisis emerging from the fall of economic stability, hinting at recession, industrial unrest and an economic crisis. "A state crisis was provoked in a context where capitalism's failure as an economic system was in danger of being openly revealed." (Hallsworth & Lea, 2012: 187) In

order to retain a semblance of control and hegemonic superiority, it is argued that the state shifted the focus from economic and industrial decline to a new law and order specialism subliminally fostering class and race struggles by focussing on street crime perpetrated by 'black street mugger'. Hall (1978) claims that this originated not from an objective rise in street theft but, from using media's black mugger image and facilitating a moral panic engineered to resolve the state's organic crisis and maintain hegemonic equilibrium (Ibid.). This gave rise to an authoritarian statism with a focus on law and order in society as an ideological superstructure which in turn facilitated neoliberalism within the Thatcher government during the 1980s with Police and policing laws becoming stronger and civil liberties or unions getting weaker (Hallsworth & Lea, 2012). Thatcherism gained popularity as authoritarian populism with its 'get tough' and 'hard on crime' policies against 'enemies from within'. Its ideological appeal lay in a sense of innate conservatism and establishing stricter control of state as well as civil power (Hall 1988). Although such policies were thriving in a conservative government, they were quite unpopular with the masses due to the fear of limiting welfare spending and a failure of Labour to efficiently challenge the Conservatives (Jessop, et al., 1984). Critical and cultural criminologists challenged not just state repression but criminal law itself and began discussing ways to come up with alternatives to addressing social harms. Abolitionism arose within this climate, as one of the loudest voices to object to custodial punishment and criminal justice (de Haan, 1990; Hulsman, 1986). Over the next few decades, Hallsworth and Lea, 2012 claim, however, that the power of the state began to be resigned or at least, somewhat overlooked due to four reasons: a retreat from Marxist principles on class and capitalism, a rise in globalisation, influence of the Foucault effect on policy formation, withering away of the State identity and a rise in privatisation even within criminal justice sector. However, the state did not wither away but mutated and recalibrated into a different kind source of influence on

theory, policy and practice; and that this can be evidenced via discourses on public criminology, neoliberalism and critical theory (Hallsworth & Lea, 2012).

Chapter I

Summary

This chapter contained information on the history of restorative justice, and various philosophical, social and philosophical precepts used to formalise the concept. It summarised the historical origins of RJ and described the different schools of thought that explain the history of RJ in the world. The religious roots of community-based justice in acephalous or headless societies were also discussed. Early-state societies' legal codes warranted restorative justice elements with focus on restitutive justice even for violent offences. Examples were provided from different regions of the world describing how they meted out justice before the establishment of monarchies or the Crown. The chapter also delved into a brief critique on criminology and its relationship with social harm, advocating redefining the notions of crime and harm respectively. It ended with reemphasising the importance that the State has had within penal policies of crime and punishment in the UK.

Chapter II

Penal Abolitionism: Theory and Stance

Introduction

This chapter focusses on Penal abolitionism and the development of this school of thought in the areas of crime and punishment. Three areas are focused upon: what is crime; what is the law; why punish. It contains a review of the literature on the main tenets of the abolitionist approach. This section also includes information about abolitionist views of restorative justice.

According to Mathiesen (1974), Abolitionism is not held within the boundaries of a set system of modular thinking. Abolitionism in its principles, is constantly unfinished, ever evolving, and continual. It stands for questioning the current system of authority in modern society and acts as a voice for those that are negatively affected by it. It is a syncretism of activism and academic knowledge. It can be defined as an incipit to the revolutionary praxis germane to the political wrongs of the times, standing against the mendacious practices of those in authority and abusing the system. Abolitionism is also about questioning the system itself with a belief and a yearning that it will have an expurgatory effect on society.

"Mathiesen is aware that the penal 'sciences' are not based on rational empirical knowledge, but are the result of group interests, ideology, and wider cultural beliefs (Feyerabend, 1975). In a way that reminds us of Dilthey (1989), he seems inclined to study his subjects and access their world through some form of imaginative reconstruction and empathy." (Ruggiero, 2010: 141)

At times at the cost of sounding truculent and anti-system, Abolitionism is a *stance* of saying no to the moral putrefaction of the day. It is not, without a doubt, an objective step that can change things in a concrete manner overnight. Abolitionists believe that the way things are, need to be questioned and put to the test, continually and regularly, to pave the way for a better understanding of human thinking and society's well-being. It is, therefore, closer to being a stance for clearly saying what it is not and what all it stands against. Due to these reasons and because of it being of a questioning and negating nature, it is judged, quieted and pushed under the rug by current political systems. "Endorsing the Max Weber (1948) of *Politics as a Vocation*, Mathiesen concludes that political developments may be slow, but experience confirms that we would not have attained the possible unless time and again we had reached out for the impossible." (Ruggiero, 2010: 147)

In order to better comprehend the stance of Penal Abolitionism (PA), three questions are examined:

i. What is Crime?
ii. What is Law – and why do we have it?
iii. What is Punishment – and why do we have it in place?

What is Crime?

There are no such things as crimes, there are acts. (Christie, 2004)

According to Christie (2004) and Hulsman (1986), crime in itself does not exist as an objective entity that can be neatly put into a category of events; "there is no ontological reality to crime." (Hulsman, 1986: 66) Over the ages, crime has been seen as something distinctly different from

what society considers normal or acceptable. And with time, as societies change and evolve, so does the concept and definition of crime. It regenerates or degenerates over decades, epochs and eras. "Events which differ to an important extent from other events which are not defined as criminal," (*Ibid*.: 63) and the only thing distinguishing them from other events at the fringes of what is termed as acceptable in a given society, is that "the criminal justice system is authorized to take action against them." (*Ibid*.: 65)

Anarchist Origins

It is noteworthy that some abolitionist arguments have had their origins in anarchist thought. A few criminologists who have had an Anarchist Abolitionist view on crime and punishment are Molinari (1984), Pietro Gori (1968), Louise Michel (1809; 2017) and Errico Malatesta (1974). "Crime does not exist. It is a vague shadow that we try to grasp, it is yet another altar erected by ignorance and superstition supporting brutal bullies. The victims are the poor, the large majority unfortunate people, the unhappy…. Have you killed? Here is your sentence. Thirty years imprisonment…. and correct yourself! For the first three years you will be buried in a cell, you will never speak to anybody and will even lack the air to breathe. (I am not afraid of being proven wrong, because I experienced it!) After three years, if you haven't become a perfect cretin, if furious madness hasn't turned you into a ferocious beast, you will be given some work to do and remain in prison for another 27 years so that you will correct yourself." (Molinari, 1984: 30)

In Conflict Theory, the suggestion is made that Crime and the acts considered as criminal are based to a large extent on who is committing the act, and what section of society they belong to. The labelling of acts depends, to a large extent on the socio-economic status of the

individual or groups of people in society (Ruggiero, 2010; Hulsman, 1986). There is a sense of 'othering' involved in these cases. We fear what we do not understand. And often we do not understand that which is different from us, from our sense of who we are, our identity, belief patterns, often even ethnicity, race and varying socio-economic statuses. Knowledge and meaning can lead to at least a subjective comprehension of what a problematic situation is, and how it can be set as a crime under the professional framework of the criminal justice system. However, knowledge in itself is not a fixed, unchangeable entity. There is no indisputable knowledge that is not affected or influenced by the mentality, means, sense and sensibilities of those pursuing it. For abolitionists, the main task is not to question the legitimacy of this knowledge, but to explore how this knowledge comes into being and takes shape (Downes and Rock, 2007). "The knowledge of an event as deviant, for example, derives from a specific system of belief that manufactures its own deviants." (Ruggiero, 2010: 47)

The early Biological Positivists, the western philosophical tradition and the modern world agree on the Platonic stance of crime, of what is considered good and evil, of there being a clear distinction between the good life and the bad life. Analysing the abolitionist perspective, we come across a "radical anti-Platonism" (Ruggiero, 2010: 15) which has been explained above. There are, according to Plato, three kinds of hungers or appetites that comprise the soul, one is the hunger for learning, another for anger, and the third is a composite one without a distinct name since it amasses many different forms of desires and appetites, including a thirst for drink, food, money, alcohol, love or money. Those who can conquer their desires and feelings of pleasure and anger are safe and good, and those who lose under the effect of these emotions are evil and bad or prone to faults. Vice in Plato's philosophy, is a state of mind of a human being who is delving into the darkness of ignorance, away from knowledge, away from wisdom and virtue. Plato's beliefs are in conjunction and continuance with those of Socrates,

who proclaimed that anyone who is with the knowledge of what is pious, pure and good, will not wittingly and knowingly commit an impious action, only the ignorant one will (Westacott, 2003). Hence crime for Plato consists of an ontological reality, whereas abolitionists do not agree with this. Plato is more of an absolutist in describing that the Utopian world called Magnesia would have a set moral code with finite and definitive criteria for defining the good and the bad, and that even if a person has no knowledge of this, they can adhere to the good by following, blindly at times, the legal code which can typify and embody this standard.

For abolitionists, 'crime' is about the context in which the event occurred, the circumstances leading to the event that is considered a crime in the eyes of the State or the law, the state of the community or society it occurred in, and the state of affairs of the individual who committed the crime. Penal Abolitionism gains credence from a range of philosophies. There is the Aristotelian ethics that provides it with a major foundation, which states that a society as a whole cannot be flourishing if certain members of it are not doing well or are in an extremely bad state of affairs (Aristotle, 1977). Aristotle suggests that justice and equity should be seen from the lens of proportionality and priority. "Argue not simply 'the letter of the written [particular] law,' he advised. Instead, insist upon [the] greater equity and justice' of common principles of universal law to 'the full purpose of law.'" (Aristotle, 1952 in Bonventre, 2006) Furthermore, Spinoza is a major influence on Penal Abolitionism in that he suggests that there is nothing bad or wrong, as everything represents a part of God or nature's infiniteness. (Spinoza, 1677; 1959)

Defining an event as a *crime*, requires more initial deliberation in the abolitionist perspective. In addition, the abolitionists hold the opinion that, "knowledge does not lead wrongdoers to virtue; rather, it teaches everyone how to cope with problems. Ignorance, on the other hand,

envelopes the very concept of crime: the criminal justice system does not know the motives and mechanisms of problematic interactions, the public does not know the effects of actions taken by the criminal justice system, victims do not know how to articulate their experience outside the official narratives, while criminologists do not know 'criminals'. The concept of crime is the result of a conspiracy of ignorance." (Ruggiero, 2010: 21)

Nietzsche also stands against this whitewashing of human conduct as purely pertaining to light, good and seeking virtue all the while ignoring one's appetites for lower desires or feelings. He thinks this Socratic belief in the stoic lifestyle wherein one always aims for the virtues and hides away from what is termed as darkness if one gives in to one's instincts. He says this is not fleeing from a disease, but it is a disease in itself of a different kind (Nietzsche, 1982). Spinoza echoes in with the opinion that there are no absolutes in terms of a fixed hierarchy of morals or orders which are far above human desires. He is against this patriarchal authority standing over mankind telling right from wrong. "What is justice for those who oppress is unbearable power for the oppressed." (Bodei, 2003 in Ruggiero, 2010: 29) According to Spinoza, there are three stages of cognitive processing that humans need to go through. The first is *cognitio primi* generis or a confused, befuddled state of ideas that information is gathered, noticed and saved in the mind. The second stage is *cognitio secundi generi* where this information is scientifically processed, investigated and then resituated in the brain. The third and final stage is the *scientia intuitiva* where the human puts in his/her intuition, feelings or emotions of how to live a better life and the fact that it is possible to have a more elevated, happier life for oneself and others (Spinoza, 1959). He says that freedom comes when fear is not a deciding factor in the actions of humans. If we act from fear, we are not free. His amorality is not exactly similar to Hobbe's concept of there being no meaning to good and bad. He thinks that it is all relative and based on the context, individual circumstances and situations,

and that humans will act not on external authority but on what helps their own conservation and happiness. And if people who are 'committing crimes' (in modern parlance) are acting against their own preservation, they are in a sense diminishing themselves and in thinking they are able to have power over or control others, they are utterly misguided, since "they in fact are the easiest beings to control." (Ruggiero, 2010: 32) Abolitionists agree with Spinoza in that human beings will be good to themselves and others, not out of fear or an external decree, but "by the mere guidance of reason." (Spinoza, 1959: 81)

What is Law – and why do we have it?

The nature of law and the making of legal rules are based on sets of principles that are in themselves subject to the society shaping them, which in its turn takes guidance and advice from the ethos of the times, eras and epochs in which it was formed. As explained above, the entirety of this system cannot be shown to be based on 'empirical' rules that will stand the test of time, every time. Therefore, law, the nature of legal principles, and their framing lends itself to subjectivity and desirous change, in case it is observed that *things are not working as they should be*. This raises a two-part question. Firstly, who decides that things are not working? And secondly, who decides the 'should' part of the question? Who knows and can say for sure that there is a certain way that things *should* be working. Theories like the Conflict Theory based on Marxist principles state that it is the elite, the small number of the powerful that claim and form the authority. The minority that assumes power and control over the majority of the common public, making up the rules and the laws in accordance with what is good for them. Thus, in most cases, they penalize weaker sections of society making rules that are in their own favour, controlling, gaining profit from, or monetizing the majority of the masses or

general population as resources to be used for their profit (Chambliss and Mankoff, 1976). Anything that stands against this created aura of peaceful control and a functioning society, is labelled as a threat, as something *conflicting* to the standard set for acceptable behavior in society by these teaming masses of normal people, thus labelled as a conflict, and therefore against *the law*. To conflict theorists, therefore, "to a great extent, the legal system itself is thought to create crimes and criminals by its arbitrary categorization of certain human behaviours as illegal." (Ruggiero, 2010: 149)

Hence the law can be seen as having a 'penumbra of uncertainty' around it (Hart, 1977). In addition, there is also a 'sociological ambivalence' among people in general because of differing expectations of the role each member of the society plays in it. The attitudes and beliefs of individuals may not always match the status they are assigned with. Moreover, it is observed that *criminality* is ubiquitous, whereas only some problems in the society are labelled to be *criminal* (*Ibid.*).

Law prides itself over being blind in that Iustitia or Themis is shown to be blind and hence treating everyone who comes before the court of law as being equal and therefore to be judged equally and according to the same parameters and laws. This proposed impartiality and objectivity, however, is a misnomer. This atomistic individualism in effect means that no attention is paid to the actual differences that exist between persons in the society based on their socio-economic background. There is an outer layer of affected impartiality that is masking and, in a way, supporting an inner body of deep-rooted differences and social and economic inequality.

Christie's abolitionism is partly rooted in anarchist thought (Christie, 1977). A preceding example of an abolitionist is Peter Kropotkin (1927). Kropotkin is heralded as an author and

an activist with an anarchist background in criminology. According to anarchists, *Law* should ideally emanate from within, from one's own sense of morality, ethics and education. But in society it is the other way around (Christie, 1989; Kropotkin, 1927). There is a proliferation of legal rules and principles thrust upon men by those in power and authority and a certain responsibility is laid upon legislation to be the *omnia* and *panacea* for society's ills.

Kropotkin's Categories of Law

According to Kropotkin, law can be divided into three major categories:

- Protection of Property
- Protection of Persons
- Protection of Government

All these categories are claimed to be ultimately useless and even hurtful to society's overall good when seen from a bigger picture. Appropriation of funds, property and goods and a legal sanction over said appropriation only goes on to further extend the power of the few over the weaker many. Protecting the government which in itself is the powerful few does not make an argument for true and objective fairness and justice whatsoever anyway. Severely punishing people based on their crimes committed against another human being only goes to resorting to lower means and thus perpetuating the cycle of crime as was discussed in the section 'Functions of Punishment' above. Kropotkin notes that crime is not diminished by the severity of punishment. By hanging and murdering criminals, the number of murders in society does not decrease. Instead, crime remains unaffected by the punishment accorded to it. Adopting an abolitionist approach will help bring crime rates down. Abolishing the death penalty will result in fewer murders being committed. Bradney (1985) agrees with Kropotkin in

claiming that eventually our concern should not be with the severity of punishment, the type of retribution delivered unto *the criminal*. If that is our primary concern, then the law and legal justice system are harbingers of death and evil depravity and cruelty in just an equal measure as the criminal herself, if not more so.

According to Kropotkin, however, not all law is useless and hurtful. There is a version of law that can be used to maintain social harmony. That version is the *customary law* that is built and developed over the ages and takes into consideration the customs, cultures and tradition of the society. It is similar to what we call instinct among animals. It is belonging to the very nature of things (Kropotkin, 1927). It chooses mutual aid over mutual struggle, and cooperation over competition, an actionable idea that was the root of success in past civilizations (Kropotkin, 1902). This is because it isn't *written law* that is overbearing and surmounting in the society, treating its people as its subjects and a subgroup that is ruled by it. Customary law is a system of mutual aid, where conflict is interpreted as being a property of the society, and therefore are dealt with by members of the society, and not outsourced to external, mechanical bodies (Bankowski, 1983). Customary law helps with clarification through mediation, and progressively modifies itself and the norms it encapsulates according to the highest good of all concerned. It brings society together and ensures the unity (Christie, 1977). Mutual aid in customary law, in its ideal state will be expanded to growth of informal economy, so much so that power exchange relationships in the society will have a whole new bearing. Men will work no longer to earn money, but to build and create, things, ideas, music, paintings, words, art. "Absorbed in their métier, their activity will often be transformed from labour to work, or in the German version, *werk*, the final goal of creation. When that happens, the market economy loses its totalitarian reign. Human beings find other reasons than money for labour, and wealth ceases as the symbol of fulfillment of life." (Christie, 1998: 127)

What is Punishment – and why do we have it?

Punishment as Retaliation

Kant and Hegel, both believe that punishment is retribution (Kant, 1797; Hegel, 1821). However, they employ different rationales to argue this same starting premise. Kant quantifies punishment as being deserved by the wrongdoer to balance the scales of justice for disrupting the principle of equality, that all men are equal. If a person is inflicting pain or suffering on another, then to balance the scales of justice, the wrongdoer deserves to have the same suffering inflicted upon them. This is referred to as the Kantian "Principle of Retaliation" (Kant, 1972). In his words, "whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself." (Kant, 1797: 141)

Hegel argues that an eye for an eye approach is not the best way forward. He argues for the same conclusion of using retributive punishment but through a different logic, that a criminal has a right to be punished. By virtue of being punished for their wrongdoing, the criminal is being regarded and treated as a rational being. And punishment should not just be equal to the crime but proportionate in terms of the value of the harm caused (Simmons, 1994). Thus, an example would be that a rapist is not raped, but castrated. Hence, the Hegelian approach begins with establishing a sense of equality between the victim and the criminal, and therefore demonstrates that the victim has a right to do to the criminal what the criminal did to the victim.

Punishment is an act of *Lex Talionis* wherein we are still imitating our ancestors and historical forefathers by inflicting pain as a means of retribution, a response in vengeance (Nietzsche,

1968). It is an atonement of sins through further hurt, an avenging of acts by expiation, and Durkheim considers this to be an outrage to morality and the idealism of what humanity can and should be. By punishing people for their acts, we are furthering the harm done to an individual in a society in different ways.

Punishment as a Message

Punishment, then, can be viewed as a scratch for the itch for revenge, in a way, against the offender who has wronged the moral ethic of other individuals and society. Subsequently, punishment becomes more a message for the outward society than for the incarcerated individuals; a message that speaks to a presumed sense of common morality or conscience for the collective (Ruggiero, 2003). Punishment is inflicted in varying degrees on offenders via suffering and hardship to deliver a scathing message of moral strength more than any conceivable material benefit that may be derived from it (Garland, 1990). "It reassures and regenerates the righteousness of the law-abiding community, whilst also meting out in legally sanitized fashion our need for revenge… Punishment, therefore, is applied to acts that offend strong values and defy beliefs that are ingrained in our collective conscience. In this sense, a human action does not shock the common conscience because it is criminal, but it is criminal because it shocks the common conscience." (Ruggiero, 2010: 66-68)

Punishment does not have to be capital to be taken as extreme. It could be a civil death, which is a total stripping away of one's rights. It could also be a metaphorical death in a cell, a solitary confinement within the four walls of a room, dark, dingy and perpetuating on the sadness of loneliness. It could even be life imprisonment, which is the same as above, only infinitely longer, with no hope for release (Durkheim, 1974).

"Society has no right to punish: no right to take revenge, as it no longer has the right to torture. It has a right to defend itself, like any organism that wants to survive. An enlightened society will try to cure radically its profound ills, from which most crimes emerge." (Gori, 1968: 236)

There is also a question of identifying what kinds of acts are seen as deserving of *greater punishment*. Is murder a serious enough act to deserve death in return? Or is a stock market crash or an economic crisis a larger misfortune? The main question to ask here is which of the acts causes a greater disruption within the society and the peaceful functioning of its moral fabric. Acts become crimes by the level of reprehensibility attached to them. People do not reproach an act because it is a crime. It becomes a crime because people reproach it (Ruggiero, 2010).

What makes stronger ripples in the ocean of a society's group mind and workings? Murder in penal law is the highest form of crime one could commit, yet it can be seen in the light of it being an isolated event affecting fewer individuals than a large scale economic crash that hits several hundreds or thousands of people and families at the same time, for a long time. Without any thoughts on which act is more criminal or eviler, if it is seen purely on the basis of the scale of harm caused to a number of people, it is claimed that in many cases, punishment or the strength of institutional response does not proportionately match the harm caused by the crime (Durkheim, 1974).

Quantitative and Qualitative Punishment

This bifurcation in the ways punishment can be looked at was put forward by Durkheim (1982). According to it, Quantitative Punishment involved the idea that the stronger the central

authority of influence or power figure is, and the lesser developed a society is, the more severe the punishment is applied in it (Durkheim, 1982). As is said, power tends to corrupt and absolute power corrupts absolutely (Dalberg-Acton, 1907), power becomes absolute when principles set down by a select few are deemed complete authority and the people over whom said principles are to be directed, are no longer considered as citizens, but as property, the property of the State, with the State being the absolute power.

Qualitative Punishment prioritises stripping away one's personal freedom and removing one's liberty, thereby slowly eroding the concept of group responsibility from the equation of redress for a disruption in the community, namely an offence or a *crime*. The development of penal law as it stands today has been led through a removal of group conscience for acts committed. Today, if an individual is not caught and held in prison for what he did, there is a tension surmounting in all areas of the legal establishment. In olden times, if the person who committed an offence fled, there were others who were answerable; there was his community and society that took his place if he was gone to be held accountable for what had been done.

The fact that the criminal justice system has created imprisonment as the main means of dispensing justice speaks to a lessening of collective social responsibility as it is seen as something external or foreign and therefore easier to objectify and distance from. This belief is a strong inspiration behind abolitionist thinking (Ruggiero, 2010).

Punishment as Means to an End

Punishment can be perceived as a deterrent for crime and as a way of making people learn what is acceptable in a given society, and what steps should be taken or refrained from being

taken, in order to establish a more peaceful, just and calmer society. Here, punishment is not seen for its moral justness or if it is fair to use punishment at all. Punishment in this case, is seen as means to an end, used to produce a more just society, regardless of whether or not it is acquired by just means.

According to Hegel, there are four ways in which punishment can be seen to be justified: Vindictive, deterrent, preventative, and reformative or rehabilitative (McTaggart, 1896). The first two, Kant agrees with as being normal functions of punishment (Byrd, 1989). Vindictive reason would be inflicting pain on an offender for the sole purpose of making them feel unhappy, unpleasant, bad, harmed and hurt. After all, he 'deserves' this pain for having done the same to someone else as part of the crime he committed and for restoring respect to the victims as an end in itself. The Deterrent function as explained in the paragraph above, would be to make the punishment so extreme and terrifying, that upon release, the offender and others who viewed the punishment, would be too scared and/or in pain to try re-committing a similar offence.

The Preventive function would be to isolate, corner, disable, remove, or in cases of the death penalty, permanently prevent the perpetrator from recommitting the offence as he physically will not be able to, even if he wished to mentally. Lastly, it is the Reformative function, which would include aspects of making the individual better while in custody, reforming their mind and rehabilitating their conscience to stop feeling the urge to commit crimes. Perhaps the isolation and the solitude would make them reconsider their actions, or perhaps the religious doctrines introduced within prisons would help terrify them into feeling so guilty about their vices and sins that they have a change of heart and swear never to commit crime again. Punishment here is seen as good practice, regardless of how it is meted out or what it is in

principle, as long as it is serving a greater need of rehabilitation and a means to an end of preventing further crime in society.

Institutional and Material Functions of Punishment

Following the philosophy of Kant and Hegel on the one hand, and Durkheim and Nietzsche on the other, prison can be seen as having two principal functions respectively, institutional and material. The main propagator of the Institutional function is Michel Foucault (1977), while those of the Material function are Rusche and Kirchheimer (1968).

The Institutional function of punishment would be the retributive aspect discussed above or in its extreme sense, the overall wiping out or absolute destruction of the bodies. Prisons here, are used mainly for the role they play in repression, deterrence, institutionalized fear propagation through surveillance, and breaking the spirit of people by focusing on punishment of the individuals, irrespective of the severity of the crime nor whether the punishment is disproportionately harsh. Importance of surveillance and discipline, as well as creating and strengthening a permanent divide between the dominators and the dominated, is described by Foucault in his analysis of the Panopticon prison and the Mettray penitentiary (1991).

As seen from the Material approach, prison serves more of a regulatory function as agreeing with the labour market, producing goods and delivering services. This function also discusses the proportionality between the number of prisoners and state of conditions within prisons on one hand and the economic status of the country or society overall on the other. As economic status of a country falls so does the state of affairs within prisons and the number of prisoners

rise. As a rule, within this functional paradigm of punishment, the conditions within prisons must be worse than the worst conditions in the free world outside (Melossi, 1989). Because of its functionalist model, inmates, regardless of their background or personal characteristics, respond similarly to incarceration. This can be explained by the fact of prison possessing an essentially coercive character (Kruttschnitt, *et al.,* 2000).

Abolitionism argues against all of the aforementioned functions of prison and justifications for punishment and demonstrates how rehabilitation through punishment and imprisonment is rarely achieved (Mathiesen, 1990). Firstly, studies suggest that the rates of recidivism do not reduce due to incarceration. Secondly, the concept of providing rehabilitation or treatment within the confines of prison walls proves to be a non-sequitur. Two wrongs do not make a right: putting people in prisons as to rehabilitate them does not make sense (Sykes, 1956). The prison environment, with its authoritarian regime, stifling bureaucracy, poor health conditions, unclean surroundings, and overcrowding, not only reduces any chances of tangible improvement or rehabilitation, but it also actually exacerbates criminal behavior and perpetuates the cycle of crime. Prisons, therefore, act more like "factories for the manufacture of psycho-physical handicaps." (Gallo and Ruggiero, 1991: 278) Thirdly, a prison is akin to a society within a society. There is complete control over every minutiae of a prisoner's life and power is concentrated among the ruling few, creating a huge divide between the rulers and the ruled. It is a totalitarian regime with the prison official as a bureaucrat, with a gun (Ruggiero, 2010). All of this leads to the development of a *culture of prisonisation* for those incarcerated. They become oblivious to any chances at real change, and internalize the prison behavioural environment and practices for their whole lives. "Such culture, which protects the inmates from the very setting that they inhabit, makes prison perform the function of a crime

school, and prisoners 'more or less' immune to treatment or readjustment programmes." (Ruggiero, 2010: 82)

Finally, the idea of imprisonment and punishment used as a deterrent does not seem very helpful since there is hardly any evidence to the actual effectiveness of the scheme. Deterrence used a general ideology for the entire general population makes for multiple erroneous calculations. Firstly, general prevention functions mainly on people who do not need to be deterred, and it does not seem to function on people who genuinely are in need of deterrence. People who make up their minds to commit serious crimes in society are not deterred anyway (without their minds being changed, or them having a change of heart through intervention, mediation or other restorative measures). And those who do not commit said offences do not need to have deterrent practices and principles thrust upon them unnecessarily. In addition, this general preventive measure would inevitably take into its reigns and circle of influence, those that are innocent. And punishing the innocent just to prove a point and make a mark in general deterrence does end in disaster. It is also against moral principles laid out by philosophers like Kant who profess that individuals are not the means to an end, but an end in themselves and therefore should be given the dignity and respect that they deserve as persons (Kant, 1797). In addition, using incarceration as a deterrent means predicting who will reoffend. These predictions and pre-emptive measures, once again, can go horribly wrong. They can produce what are known as false negatives and false positives (Mathiesen, 1990). False negatives arise when those who have an actual high risk of recidivism are spared custody, and false positives occur where an individual with a lower risk of recidivism is indeed penalized and imprisoned, thus creating a false positive of deterring the wrong kind of people from criminal activity. In both cases, predictions are going awry and imprisonment or custody as a punishment meant for deterring people from crime proves to be malfunctioning. Penalizing a

huge set of the population for catching the few who are truly dangerous stands in stark opposition to the abolitionist way of thinking. The problem of the dangerous few needs to be solved in a manner different from incarcerating a large number of people who 'probably' 'might be' recidivists.

Significance of Time

When talking about time spent in prison, how long is considered long enough and painful enough for a particular crime? Abolitionists consider this to be a concept that is truly taken for granted, misused and in many cases, even abused. Mathiesen emphasizes the significance of time as it seems longer to those serving a sentence than to those who pronounce it (*Ibid.*). Time spent cooped up in the four walls of a prison seems like an eternity to the prisoners. That in itself is enough punishment for the offender without the need to add more penal sanctions on top of it. It is this value of time that is described by Piranesi as an additional physical aspect, a fourth dimension (Wilton-Ely, 1978). Time, according to Mathiesen in this context, is not an absolute value. It changes according to one's perspective and is subjective.

Significance of Pain

Pain is used as a currency in prisons to demarcate the beasts from the men, to mechanize, objectify and dehumanize prisoners. This pain through punishment, instead of reducing crime and recidivism, in most cases, further creates crime. It does nothing to reform the teaming millions of vulnerable, weak, poor, ill-informed, uneducated, illiterate members of the society who commit crimes out of a helplessness that arises out of having no roads left to run, no

options left but to believe in living in a dog eat dog world, where they have to steal, kill, murder and pillage in order to survive and live without getting killed off first by another, society, or the systematized rich ruling poor world that slowly kills them eventually anyway. "Year after year the gates of prison hells return to the world an emaciated, deformed, will-less, ship-wrecked crew of humanity, with the Cain mark on their foreheads, their hopes crushed, all their natural inclinations thwarted." (Goldman, 1911: 90) With hunger and inhumanity as their constant companions, these victims it is argued, haplessly return to their socially inadept milieus and have no other choices but to reoffend in order to exist. A lot of men and women therefore, become revolving doors and spend half or all their lives in and out of prison. Prison for such people, becomes one of the few means of sustaining a life-wrenching habit of barely surviving until they eventually succumb to it and die (Goldman, 1911). The fault, therefore, is not in the criminal, it is in the way society is functioning that is misconstruing people committing crimes. These people are not evil criminals. They are themselves victims of self-inflicted or other-directed hate crying out for help, from someone, from the community, from God. Saint Francis says those that steal are not the thieves, but those who do not give enough to those in need. And it has been proven through the ages that inflicting pain upon them through imprisonment is not the answer nor a workable solution.

Role of Community in Penal Abolitionism

Kropotkin continues to stand in favour of people supporting each other in building well intentioned, cooperative, progressive and proactive communities. Communities where people work together to build, not to enslave. As a public stance, Abolitionism is closely related to public sociology. It focusses more on social movements, the socially disadvantaged underdogs

and collective stakeholders that can mobilise change from below as opposed to a top-down system of legislators, legal policy makers and media. Examples given are those of Nils Christie (1982) talking to serial killers and ex-officers from former concentration camps, Thomas Mathiesen (1974) expending equal amounts of effort with prisoners and students alike, and Louk Hulsman (1986) formulating practical experiments for social change in the course of meeting people engaged in problematic circumstances (Ruggiero, 2012).

Community is the centre piece of this kind of alternative to justice. At the same time, it should be borne in mind that RJ may not be the be-all-end-all panacea to all kinds of crime or deviance in current society. RJ, in itself, is not a way-out ticket to the offenders, setting them free and at large, completely unanswerable for their actions. It does maintain responsibility and culpability on the part of the offender or deviant; it only shifts the balance of harm caused from the government to the mere body and mind of the person/s against whom the offence was committed. The State is still in the picture, but it comes only after the victim, their family, friends and community they form a part of. Prioritization of victimization is moved, seen and reflected upon, from a different angle. And this can be a good thing, especially seeing the statistics of how simply incarcerating people for their crimes does not, indeed, reduce recidivism, nor does it help much in establishing guilt or a change of heart and mind on the side of the offender. Current retributive-adversarial justice can be likened to sending a naughty child to his room per force and shutting his bedroom door, until the parents ask him to come out again. The offence committed in this case was his beating up, harming or bullying his schoolmate in front of their friends and classmates. The government here are the parents, who assume the harm caused as against their own selves, the retribution is locking the child up in his room, and presumed solution is assuming the child will feel bad enough about himself while being locked up, so that when he is asked to come out of his room, he will not commit

the same offence again. Even if none of that actually happens, at least he will be incapacitated for the time being and the schoolmates will be safe from a bully while he is in the prison of his bedroom. At most, it will also have a deterrent effect wherein other students will be discouraged from making the same mistake as he did. An obvious assumption is made in cases like these, that the child will see the error in his ways and that keeping him confined to his room will make him feel guilty and bad enough for what he did. But there is no explanation made, there is no place for a humanization of the act or the process. Criminal law and the legal justice system as it stands today, almost fails to recognize that it is dealing with human beings, not human doings. And what one does at any given point in time is fully subject to how and why one is being as a result of it and more importantly, before it. The State, or governmental authorities, in RJ scenario would only be responsible for preserving order while the citizens, community itself would be the one in charge of restoring peace among those affected by the incident.

Gradually from 1982 onwards, ICOPA (International Conference on Prison Abolition) moved on from prison to penal abolition transitioning from activist engagement into transformative, peacemaking or restorative justice. The third ICOPA Conference officially changed from 'International Conference on Prison Abolition' to 'International Conference on Penal Abolition'. Furthermore, one of the urgent themes emerging from more recent ICOPA Conferences is 'Carceral' Abolition. This encompasses punitive trends such as confinement, preventative immigration detention of non-citizens, and the systematic deprivation of liberty outside and alongside the penal system. Their reasoning for this change in focus is the onslaught of penal systems that are creating pre-crime societies based on precautionary risk prevention tactics. It is contended that such pre-crime activities cannot be justified or mandated through retributive justice penal methodology or sentencing laws such as 'three strikes rule' or compulsory

minimum sentence term to prevent already existent or currently occurring crime. Worse yet, pre-crime practices and policies are aimed at detaining people to prevent crime that has not happened yet. "It is a presponse – an action taken to forestall some future threat, according to government rationales." (Piché & Larsen, 2010: 401)

A comparatively old and longstanding example of a community actor participating in restorative justice activities can be found in Canada called the Justice of the Peace (J.P.). The J.P. evolved historically in a way that maintains its utility in contemporary Canadian society. The role of J.P. predates the Norman conquest of the 11th century (1066 A.D.). In that era, relatives and citizens of the town were given the responsibility of producing the offenders at trial, which was generally held in the manorial courts of barons' estates (Gardiner & Shearer, 1928: 99 in Chiste, 2005: 154). "In medieval and early modern Europe, people still felt that criminal conflicts were their business." (Cayley, 1999: 167) When the Tudors came into power, they found the J.P. to be a useful ploy to keep the barons in check, and although they used them for the purposes of maintaining peace effectively and inexpensively, the committee structure was built up in a way that discouraged local despots from rising to challenge more centralised authority (Chiste, 2005).

An Abolitionist View of Restorative Justice

Abolitionists believe in empowering the victims and making the incident or crime, a more personal event for the victim. Rather than disempowering the victim by giving an external body the authority to act on behalf of the victim, abolitionists believe in returning the decision-making authority back to where it belongs – to the victim. In this manner, penal abolitionism paves the way towards a restorative justice paradigm. For reasons alluded to above, it does

not agree wholly with purely restorative justice because the way RJ currently functions is still as a subgroup of the penal justice system. Additionally, it is not a completely innovative programme because the name itself spells a return to something that was before, a pre-existing state of affairs before the *crime* occurred, which is not always a good thing, because the underlying causes for the crime occurring in the first place are not looked at with much concern in this scenario. 'Restoring' to the pre-existing problematic socio-economic or cultural situation is not enough or even advisable in many instances. It is suggested to move beyond and to evolve by means of creating new relationships, better understanding, without attempting to 'restore' to the conditions that existed previously. Nils Christie (1989) suggests stepping beyond precise terminology that creates more barriers than solutions such as labelling people as offenders and victims and it can be imposing and limiting to what one is trying to achieve from RJ processes. Rather, terms such as 'participants', 'complainants' or 'disputants' are advocated for facilitating a dialogue and easing barriers. He also recommends divorcing RJ from the looming penal justice system for more independent inquiry into social change (Christie, 1989). Among other suggestions offered by Christie for RJ are creating local conflict management tools that involve the community without an obligatory intrusion of legal practitioners (Aertsen & Pali, 2017). Deeper understanding and acknowledgement also need to be created around the notion that these disputants are complex human beings with distinctly different backgrounds and that these background environments are subject to constant change and mutation. Hence, they must not be treated as irrelevant objects without a voice to be contested on behalf of in legal courts. Greater attention is to be placed on nuances and details that only such actors can proffer in the course of any decision-making process post offence.

In terms of empowering the victims and giving them more control over the situation by making them a centrepiece of the equation, abolitionist process may include a three-step programme as a response (Strang, 2002). First, institutions to be set up for a proper bereavement process thus restoring and re-establishing a sense of honour, fearlessness, peacefulness, and well-being among the victims (Braithwaite, 2007). Second, material and financial support provided to the victims through state funded automatic insurance against crime (Ruggiero, 2010). Third, centres for dispute discussion, conflict resolution, mediation and therapy would be established to have an open channel of communication between the victim and the offender which would also help in reducing post-traumatic stress among those suffering. People running these crisis centres will not be given an authoritarian role, rather they will be accorded with responsibility to play solely a mediatory role, which is meaningful but not powerful in a way of being 'enforcers of justice'. Also, very specially, these mediators will not be given ways to personally profit from playing this role or from the outcome of the conflict in any way (Christie, 1982). In this manner, there will be no contest, no competition but cooperative rehabilitation on both ends. There will be neither winners nor losers. It will be a co-habilitative, healing process for collective well-being and safety (Karagiannidis, 2001).

The role of pain in abolitionist thought is accorded to mourning. Pain realized as a result of genuine sorrow of having hurt another would be the real punishment. This will serve less utilitarian and more significant personal and social functions. "Expressions of grief and sorrow help people carry on with their lives, but when imposed by authorities they lose their spontaneous healing quality. 'This is what makes a state funeral of a not so loved person into a not so lovely occasion.' Sorrow for the sake of sorrow; mourning may include a degree of anger, but it is not addressed to any specific target, while anger converted into punishment has very precise targets." (Ruggiero, 2010: 188)

Shaming risks dividing people into categories that may permanently label those being shamed. This creates outcasts in society whose only sense of camaraderie comes from other similarly 'shamed outcasts'. In place of disintegrative shaming, there can be re-integrative shaming, which initiates with expressing collective disapproval, even rebuke and degradation to varying degrees towards the perpetrator. However, this is followed by gestures of acceptance into the fold of the community in a gradual yet proactive way. The label, therefore, is not an everlasting one. The shame and rebuke do not last forever. The offender has hope after all, of being *rehabilitated* in the true sense of the word.

There can be *inter alia*, four different types of reactions to a problematic event such a child misbehaving at school. Parent can be Authoritarian or Stigmatizing, 'go to your room'. Next is Lax, Indifferent or Passive approach, 'I don't care'. Third is the Permissive or Over-Indulgent. And fourth approach is Restorative, where the parent admonishes the child but remains respectful all the time, so that the child feels worthy and therefore responsible for his/her actions. The parent does it with them, without telling them what to do, without punishing them. Questions such as, 'What happened? What were you thinking at the time? How are you feeling? How do you think they felt when you did this?' are constructive ways of communicating with the child restoratively. This model is often used in trainings for RJ (Nathanson, 1992).

Furthermore, dismissing Penal Abolitionism because it is too radical or utopian only aids in underestimating its potential contribution (Roberts, 2007). In terms of the meaning and purpose of pain inflicted through imprisonment and the corresponding popular definition of punishment, for abolitionists, it will be a different ideal. "Abolitionists, however, express the view that the pain of imprisonment is to be measured and judged in relation to the general

conditions prevailing in societies, the system of opportunities in place, and the subjective experience of those suffering it." (Ruggiero, 2010: 199-200) Abolitionists distinguish imprisonment experienced through the lens of the imprisoned and how time is defined by them from inside four walls of a prison cell, as opposed to those on the outside making the rules.

Chapter II

Summary

This chapter attempted to explain the origins of abolitionism and sociological precepts put forward by distinguished sociologists like Christie (1977), Hulsman (1986), Mathiesen (1974), Dilthey (1989), Ruggiero (2010), with a background of historic philosophies on the subject such as Aristotle (1952), Plato (1937), Nietzsche (1982) and Spinoza (1677; 1959) among others. Roots, categories and functions of Law (Kropotkin, 1902; Durkheim, 1982) and Punishment (Kant, 1797; Hegel, 1821; Foucault, 1977) are also discussed. Epistemological questions about crime, law and punishment were detailed, along with delving into the anarchist origins of abolitionism Molinari (1984), Pietro Gori (1968), Louise Michel (1809; 2017) and Errico Malatesta (1974) in this Chapter. Thereafter, the significance of Time and Pain as conceptual measures of punishment are explained. The Chapter then describes the role of Community in Penal Abolitionism and begins its journey into an Abolitionist view of Restorative Justice.

Chapter III

Alternatives to Custody

Introduction

This Chapter is an overview of alternatives to custody available in England, Scotland and Northern Ireland: their history, the debate accompanying their elaboration and practical application. Among the alternatives looked at examples of RJ are presented and discussed.

Restorative justice in many cases has been offered and used with a co-option approach, which relegates it to the background with penal measures taking the front seat in the criminal justice systems of the world. However, there have been times and countries where RJ was historically utilised as the main method of meting out justice. RJ measures adopted in prisons and penitentiaries are mainly ones that encapsulate and emphasise the suffering of the victim and the morality of the offender. To what extent this is a feasible approach and how useful the introduction of restorative detention is, is open to questioning and further research (Van Garsse, 2015).

The extent to which RJ is successful is also dependent on how success is measured in any given state. There are different measures of success, such as participant satisfaction, rates of recidivism. Therefore, there is a mixed perception regarding the effectiveness of restorative practices. There are other factors such as whether it is a public funded as in England, Sweden or Italy, or privately run by agencies like in Chile.

England appears to have a more punitive focus around penal responsibility among children, youth and adults. The Crime and Disorder Act of England (1998) establishes 10 as the age of

legal responsibility in England. (Children and Young Persons Act 1933, Section 50) In Scotland no child can be found guilty under the age of 8 but no they cannot be prosecuted under the age of 12. (Criminal Procedure (Scotland) Act 1995, Sections 41 and 41A(1)-(2)).

Since the 1980s, a major proponent of RJ has been Howard Zehr, who sees crime as a violation, not of the state, but more fundamentally of the people involved and their interpersonal relationships. Consequently, "the focus of the process is on the restoration of human bonds, and the reunion of the two individuals and of the individual with the community." (Gavrielides, 2011: 14). John Braithwaite (1998) has furthered the cause of RJ by supporting the notion that RJ has been the most powerful and commonly used manner of meting out criminal justice throughout the different epochs and places in human history. He also subscribes to the Christian notion of 'hating the sin but loving the sinner'. Louk Hulsman (1986) agrees with Thomas Acquinas in distinguishing between the sin and the sinner, believing said *sinners* account for a minority of the population who are the most vulnerable and many a times, the weakest link in the society. They need more help than punishment. "Anger against the sinner is not an expression of nobility or greatness, but of a deadly passion, the outcome of frustration turned into resented hostility." (Ruggiero, 2010: 115)

Pan-Europe and UK Initiatives and Legal Instruments

Across Europe, there have been different routes towards establishing alternatives to custodial sentences. These alternatives have had their roots in common law as well as civil law jurisdictions. These emerged as a result of a consensus pan Europe on penal values in the form of European Rules on Community Sanctions and Measures, and the Recommendation on Consistency in Sentencing, 1992. From the late 1980s to the early 1990s there was mass level of awareness in European policy making and research to set basic minimum standards for non-custodial sanctions. Detailed analysis goes into creating community sanctions as these are more comprehensive than other non-custodial measures that are less interventionist therefore not as exhaustive and require less regulation around them. In 1992, the Committee of Ministers of the Council of Europe subsequently adopted both the European Rules on Community Sanctions and Measures as well as the Recommendation on Consistency in Sentencing (van Zyl Smit, et al., 2015: 2).

The basis of the underlying consensus was a rethinking of a 'pure' suspended sentence and as an alternative to imprisonment and probation that was regarded as a way to avoid formal imposition of punishment by replacing it with a form of community-based supervision. Probation in Europe began in the United Kingdom (Vanstone, 2008), formally enshrined in 1907 by Probation of Offenders Act. However, its roots can be traced further back to 1841 in the works of a Birmingham judge who placed juvenile delinquents under 'supervision' of elders, parents or volunteers (Timasheff, 1943a: 12-13). There was, in addition, a practice in 18th Century Britain of using 'preventative justice' that aimed at replacing punishment with judicial oversight (Nellis, 2007).

"Crime was viewed principally as a product of social and moral decay, which led, it was feared, to the creation of a 'criminal class' united against the prosperous middle-class mainstream." van Zyl Smit, et al., 2015: 7) As a result, there were a few charitable organisations that started to engage in the lives of the offenders offering salvation via alcohol recovery programmes. They especially focussed on offenders pre-imprisonment or in place of, as opposed to those who had served a sentence and were released. These activities gradually culminated in the formation of a secular and formal probation service in 1907 (Nellis, 2007).

Post Second World War, conferences on non-custodial sanctions continued. A European Seminar on Probation was held in London in 1952 as part of the Social Commission of the Economic and Social Council of the United Nations. With the ongoing support of the United Nations, there were key developments in Europe in the role of alternative penal sanctions. The Helsinki Institute for Crime Prevention and Control (HEUNI) as a former associate of the UN, funded a study on European alternatives to custody and held a major conference in 1987 to develop it further by discussion (Bishop, 1988).

The Council of Europe helped shape the earlier measure on non-custodial punishments, some of which were proposed in the Resolutions and Recommendations of the Committee of Ministers in 1965. Three of the main measurers are briefly described herein. First was the 1965 Resolution encompassing the 'Suspended Sentences, Probation and Other Alternatives to Imprisonment'. It highlighted the disadvantages of imprisonment and encouraged substituting custodial sentences with suspended sentences or probation orders especially in the case of first-time offenders or those committing petty crime. A second resolution came out in 1970 promoting the use of conditional non-custodial sentences in order to avoid the use of imprisonment. A third resolution in 1976 followed with alternatives to penal measures

by fostering virtues of a common crime policy Council of Europe member states. This resolution was based on research organised by the European Committee on Crime Problems (1976) of the Alternative Penal Measures to Imprisonment that was then made available to Council of Europe member states. The main recommendations from these resolutions were for the member states to remove legal obstacles to imprisonment alternatives and to expand on practical measures for those under probation, such as increased housing and community work and extended use of fines.

In the lead up to the 1992 Recommendations, there was another comprehensive study done by Rentzman and Robert in 1986 that was published as a report 'Alternative Measures to Imprisonment' that was later presented to the annual Conference of Directors of Prison Administrations, held by the Council of Europe (Rentzman and Robert, 1986). The Conference of Directors of Prison Administrations endorsed it stating that new policies should contain a code of ethics for those enforcing these measures, as well as safeguards for the rights of offenders. It emphasized respect for human rights whilst implementing non-custodial sentences. The Rentzman and Robert report paved the way for the 1992 European Rules on Community Sanctions and Measures (van Zyl Smit, et al., 2015).

Between 1988 to 1992, comprehensive standards were adopted via two international instruments with European consensus, the Groningen Rules (1988) and the Tokyo Rules (1990) or Standard Minimum Rules for the Implementation of Non-Custodial Measures involving the Restriction of Liberty (1988) and the United Nations Standard Minimum Rules for Non Custodial Measures (1990). These two regulations, along with the 1992 European instruments, the European Rule on Community Sanctions and Measures and the Recommendation on Consistency in Sentencing, together form the basis of international standard setting in

sentencing reform, suggesting alternatives to custody and other non-custodial reforms. It was the most crucial stage of development for the setting of international standards and these four instruments aided in it enormously. This led to the Recommendation on Improving Implementation of the European Rules on Community Sanctions and Measures being adopted in 2000. In it, there was a subtle shift from a 'nothing works' pessimism to a 'what works' strategy encouraging cognitive behavioural and psychosocial interventions to aid offender rehabilitation utilising a risk-needs-responsivity (RNR) approach (Smith, 1998). It encouraged the use of prolonged community sanctions to manage risk for community safety that was to be reviewed at regular intervals of time. This was followed by the 2003 Recommendation concerning Conditional Release (Parole). It encouraged non-custodial sentences albeit, with stricter definitions of the 'conditions' within the 'conditional releases'. It included offenders who had already served part of their sentence in prison, on the condition that they did not reoffend. The primary basis of this recommendation was to reduce prison populations and lower costs. However, these conditions expanded to include extending post release supervision longer than the prison sentence itself in certain instances, thus being under the state control for lengthier periods of time. It also inadvertently encouraged the creation of more conditions with the mirage of non-custodial settings being easier than a prison sentence. Since non-custodial measures are seen as being less intrusive, they risk being overused or used unreasonably (Tokyo Rules, 1990).

Consequently, the next European instrument on community sanctions and alternatives to custody was the 2008 EU Framework Decision on the mutual recognition of probation decisions (FD 947). It spoke of positive impact by way of reducing the impact of imprisonment on foreign nationals by letting them serve a community sentence in their home country (Morgenstern, 2009) and emphasising the social function of rehabilitation (Snacken and

McNeill, 2012). However, it had a few limiting practical outcomes, in that it was applicable to only 28 European Union states, with only 14 states adhering to it by 2014, thereby making its full implementation insignificant. In 2010, the Council of Europe Probation Rules was introduced which had the effect of questioning the position of prison services and entrenching the status of probation organisations pan-Europe (Council of Europe Probation Rules, 2010). However, a detailed reading of the CEP 2010 emphasises protection of the status of probation agencies rather than recognise the importance of community sanctions via probation as an activity, thus unconsciously entrenching the net widening concept (van Zyl Smit, et al., 2015). Nevertheless, the Council of Europe helped boost cooperation with existing national bureaucracies and civil servants of its member states with a view to promote human rights. Other criticisms of the CEP Rules include a heavy reliance on RNR (Risk Needs Responsivity) and What Works models with only a slight mention of Desistance and Good Lives models (Mair, 2004). This is viewed as a pitfall also because many civil servants or officials may not have been educated in that particular format therefore, it may seem foreign to them and thus harder to implement (Herzog-Evans, 2011). In addition, there does not exist a causal link between entrenching probation agencies and reducing prison population as there is no guarantee that the former would ensure the latter. This may eventuate in widening the net of penal policies, increasing costs and diminishing the significance of non-custodial alternatives. As time passed, the Council of Europe (CEP) as well as more recently the European Union (EU) have been more involved in the introduction and implementation of community sanctions pan-Europe. However, as aforementioned, wider implementation of probationary agencies carries with it the risk of mass supervision which may eventuate in having the opposite effect to what CEP initially set out to achieve (McNeill and Beyens, 2013). Critical revaluation and

greater research of this approach is recommended in order to prevent probation being an overly restrictive response to custody.

Abolitionists and sociological thinkers propose critiquing this through the lens of liberal scepticism, radical non-interventionism and human rights (van Zyl Smit, et al., 2015). Liberal scepticism challenges community sanctions as being disproportionate interventions due to the fact that they are still within the ambit of the penal system. It questions whether it is in society's best interest for offenders to receive their social work assistance programmes from within the criminal justice system. Radical non-interventionism revolves around community sanctions and measures. It includes restrictions of liberty via non-custodial punishments such as fines. Although such measures can in certain instances, possibly equal or even surpass the pains of imprisonment (Rotman, 1989). It involves rehabilitation that is positive and nuanced enough to take into account the different agencies and backgrounds of offenders (Canton, 2011). It has been suggested that offenders are given an opportunity to choose rehabilitation that is right for them and their psychosocial circumstances rather than it being mandatory or enforced, whilst maintaining elements of compulsion (McKnight, 2009). For this rehabilitation or reintegration to occur, more thought has to be placed into what original conditions offenders are reintegrating into (Dwyer, 2013). Having a right to choose does not automatically imply offenders would be able to make objectively rational choices. Socially weaker members of society are usually not in a position to make socially competent choices due to their original conditions being class-bound, unstable or deviant (Carlen, 2013). For many such offenders, a reasonably rational and classless society that they could possibly strive to reintegrate into does not exist (Lacey and Zedner, 1995). Governmental or even academic groups do not recognise the extent to which such circumstances are prevalent in most cases. Human rights idealism is the third key aspect in critiquing these instruments. One way is by reemphasising the

importance of liberty and to what extent deprivation of liberty is considered fair game within non-custodial measures (Loader and Sparks, 2013). Another way is to assess penal interventions such as stigmatising clothing worn by offenders while undergoing their punishment as degrading and therefore non-compliant with human rights regulations such as the European Convention on Human Rights, Article 3. In addition, there was greater focus on the overall growth of socio-economic status of all members of society while recognising the basic minimum cultural, economic and social rights that all citizens should be entitled to. This would help with overall reduction of crime rather than pinpointing individuals committing comparatively minor or routine offences that usually is the focus of community sanctions and procedures (van Zyl Smit, et al., 2015).

Restorative Justice: Types and Stages

Restorative Justice in the UK takes multiple forms. It can be practiced as victim-offender meetings or conferences, providing mediation and reconciliation, family group conferencing, peace-making and sentencing circles, and surrogate encounter programs (Helfgott, 2010: 847). Programs involving the community and citizens a bit more in the process of finalizing reparative agreements include victim impact panels, community reparative boards and victim awareness programs. These are generally used in cases of non-violent offenders. RJ does not consist of only mediation, but also endeavors to produce reconciliation, resolving of conflict, reparation and community participation for better understanding of the crime and the reasons as to why it occurred, as well as the impact and aftermath of the harm caused to an individual as well as their family and immediate community. All this, in turn, enhances public safety and furthers social and criminal justice in its true philosophical essence.

Benefits: Prioritising Victimhood

Inflicting one's thinking on a person per force will make them agree out of fear of punishment or other reactionary causes; help them change their heart and mind upon a subject, and they will argue with the world to prove how right you are. RJ measures, in part, help offenders to question their way of thinking and living, by giving them an open space for expression, argument, justification and debate, followed by discourse and reasoning. Mediation proves its worth and when both sides are listened to, even more space is created for open dialogue and discussion. In the words of Holocaust survivor Elie Wiesel, 'the opposite of love is not hate, it is indifference' (Wiesel & Wiesel, 2006). Offenders and victims can be made to feel as if they are being treated as part of a machine or a behemoth of State structure, wherein their roles as persons are miniscule and all their actions are in direct consequence to the State and not to each other as well as their own selves. This makes crime less human and more mechanical. It is against a system, a structure, or a metaphorical, objective, authority figure rather than a real, living person or human being. It is contended to give offenders a destructive ease in reoffending. It is easier to destroy an inanimate entity than something similar to one's own sense of self. Hence, the government claiming that the harm done is against the machinery of the State can potentially make it easier for the offender to not see the real harm caused. And they can continue down the path of annihilation and in the process, destruction of self and community at large.

Restorative Justice: Myth or Reality

Evaluating the pros and cons of restorative justice, some authors claim that there is a mythical aspect to the way restorative justice has been positioned to the public in current criminological practice and dialogue. At times, when a change is sought in society, an older or new theory is seen through an idealised lens in order to find it fitting to substitute the current practice in place. A few criminologists argue that the same has been happening to the ideal of restorative justice and the urge to implement it in today's penal-oriented society. Kathleen Daly contends that restorative justice scholars have selectively and superficially employed historical arguments to create an "origin myth" about restorative justice to justify its idealism and usefulness in current justice practice, that is to say, history has been surgically constructed to fit utilitarian ends (Daly, 2002).

Statistical records showing Restorative Justice works in the current criminogenic climate are as follows: majority of victims chose to engage with the offender in a face-to-face meeting in a controlled environment with a trained facilitator present. 85% of those victims found the process to be satisfactory (Strang, et al., 2013). RJ reduced the frequency of reoffending by 14% which led to a saving of £8 to the criminal justice system for every £1 spent on RJ processes (MoJ, Green Paper Evidence Report, 2010). Using the same model on a bigger scale, and based on conservative modelling estimates, providing RJ to 70,000 cases involving adult offenders would result in cashable cost savings of up to £185 million over a span of two years to the criminal justice system. These savings would be a direct consequence of simply reduction in reoffending alone (Shapland, *et al*, 2008). In case of young offenders, diverting them from a community order to a pre-court RJ conferencing scheme would provide £7,050 savings per young offender equalling up to £275 million worth of lifetime savings to society.

Implementation costs would be repaid within the first year of the scheme itself, and this also produced benefits of over £2 billion to society over the course of two general elections (Mallender & Venkatachalam, 2012).

In places and cases where restorative justice is not made available, there are fresh rates of suicides going far exceeding those in previous years. There is reported to have been an 'epidemic' of self-harm in prisons for both adult as well as young offenders. From September 2015 to September 2016, there were 105 self-inflicted deaths in England and Wales prisons, a number which is almost double that of 2012, and seven times that of 1978 when suicides in prison were first started to be recorded. In 2003 and 2004, 13 women were reported to have committed suicide in prison, and in the first nine months of 2016 alone, 19 women have taken their own lives. Women are 21 times more likely than average to commit suicide, and they are being sent to prison for very short times, an act which achieves nothing in terms of reducing recidivism, adds to the increase in self harm and number of suicides while their mental health needs, troubled socio-economic and familial backgrounds and health and addiction problems are mainly ignored (Ministry of Justice, 2017). With the infamous statistic of recidivism rate being almost 50% within a year after release, the Director of the Criminal Justice Alliance, Ben Summerskill said, "If we had any other industry in the country where half the products got returned to the factory, ministers would have acted decades ago." (Doward, 2016) The Ministry of Justice has published reports which quantify the total number of deaths including homicide, natural causes and suicide as almost one per day. From June 2015 to June 2016 the rate of assaults in male prisons increased by 69% in three years, and there were 36,440 self-injury incidents reported, which is equivalent to 100 per day (Ministry of Justice, 2017). The CEO of Howard League for Penal Reform, Frances Crook was reported to have said that this situation "was the worst she had known in her 30 years of campaigning." (Doward, 2016)

The Age of Criminal Responsibility (ACR) in North Carolina is 6, Belgium and Poland have theirs as 18, Italy at 14, and Finland has its as 15. Finland does not have a separate juvenile court. So at the age of 15, a person would be tried in the same court as adults. A massive abolitionist movement gained momentum in 2001 when a higher rate of mediation and restorative justice practices were introduced. There was a broader and more generalised acceptance that crime is a result of social inequality (Muncie & Goldson, 2006: 193). With UK's ACR currently being 10, it was discovered that if one or more parent is in prison then there is an obvious higher chance of the child being neglected and as a result more prone to offending at a younger age. Research done in 2015 suggests that with restorative justice being used in place of incarceration, there is a drop in children offending by 72% than in 2005/6 and the children in custody lowered by two thirds in volume than in 2008. With RJ measures used mainly for youth offenders in current legal justice system in the UK, if the Age of Criminal Responsibility is increased to 15 or even 14, more child offenders can have the chance to have restorative justice used with them and thus a more rehabilitative future is hoped for the youth and future adults of the UK in this way. Raising the ACR to 15 would also be in accordance with the Convention on the Rights of the Child, which the UK has ratified and pledged to uphold (Halsbury's Law Exchange, 2015).

At Medway, a secure training unit run by private firm G4S in Kent, England, a programme called Panorama on BBC showed children being slapped on the head and submitted to restraint tactics, something which is clearly against Secure Training Centres' rules in the UK. These instances included "one child having his windpipe pressed until he complained that he could not breathe." (Townsend & Allison, 2016) An Ofsted report published in December 2016 evidenced that in Rainsbrook STC, Warwickshire, a young person did not receive treatment

until 15 hours after suffering a fractured arm caused by restraining by the staff at the Secure Training Centre (Ofsted, CQC, HMIP, 2016).

According to government research in the UK, and an independent Ministry of Justice evaluation, 85% of the victims have been shown to be satisfied and there has been a 14% decrease in the rate of recidivism through the proceedings of Restorative Justice in criminal justice cases, and if the proposed introduction of face to face conferences before offenders are sentenced, there would be a 27% reduction in re-offending (Restorative Justice Council and the Campbell Collaboration, 2013; Victims' Justice Report, November, 2010). On the other hand, however, in a study conducted by Crawford & Burden in 2005, only 5% of the contacted victims actually attended the panel meetings. Reasons cited were a) delivering authority in the hands of professionals, b) personally not wanting to see the offender at all, and c) fear of reprisal for participation by the offender or his friends outside (Sarver, 2008). So these concerns have to be taken into account as well while promoting RJ.

According to studies done in England and Northern Ireland over two years, it has been suggested by organisations such as Victim Support and Restorative Justice Council in accordance with Ministry of Justice, that there would be a saving of £185 million if RJ were offered to 75,000 victims of adult offenders. This saving would be done through the reduction in recidivism, even if there was only a 40% uptake of RJ measures in said population. This would also lead to 27% less crime through reoffending.

On the other end of the restorative justice spectrum, in Northern Ireland three quarters of victims chose face to face meetings with their young offenders and the satisfaction rates were 90% which as a statistic is much higher than in cases where RJ is not made available. Crimes included were burglary, robbery and violent offences (Restorative Justice Council, 2011).

Sylvester (2003) argues that RJ scholars are overreaching and resorting to imagined sources of legitimacy to justify their desire to effect legal change. Indeed, he claims that the history of restorative justice, "whether accurately presented or not, is a recovery narrative as evidenced by restorative justice jeremiads attempting to undermine current perceptions of legitimate criminal justice approaches… In the battle over cognitive legitimacy, history is one more tool in the restorative justice arsenal." (Sylvester, 2003: 493-495) Some have argued that abolitionism is a vision lacking a set workable strategy, and that it only differs from informal justice in that the latter is just practice without a fixed theory to back it up with (Hudson, 1998: 238)

There is something inherent within abolitionism that renders it in contradiction to what it is endeavouring to bring about. This can be explained by Thomas Mathiesen's reform/revolution dilemma, which explains that reforms proposed by abolitionists, if utilised in practice, would actually end up strengthening the existing institutions as they stand, by giving them a more lenient, less oppressive flavour. And if they speak more openly against the system for change and/or abolition, that may simply result in them not being heard, or worse, being marginalised even further than they already are (Mathiesen, 1974).

A few authors in the 1970s, namely Stephen Schafer and Herbert Edelhertz, stated that restorative and restitutive practices are not a new concept. They were a part of historic and pre-historic criminal justice systems. However, Edelhertz (1975) reports that the main party benefitting from such programs was the offender and their social groups. Their protection and limiting blood feuds and offender-aimed vengeance were the main objective of restitution programs in those times. The needs of the victim were not necessarily held to be a priority. Soon after this was published, directly refuting this claim were anthropologists, Laura Nader

and Elaine Combs-Schilling (1977). They stated that restitution in ancient societies indeed did hold victims as a priority. It was a more humane and liberal approach to criminal justice than retaliation, seeking to restore balance and wholeness in communities (Nader & Combs-Schilling, 1977). It promoted a major shift in people's thinking to a less penal, more restorative stance of justice in the 1970s. This heralded the movement of restorative justice in that decade, in America and the modern world at large.

In the larger scheme of things, these restitutive practices were more community-centred than victim-centred. "By looking at the sources that scholars have used to make arguments that restorative justice was the norm in these societies, it is possible to see how they have manipulated, altered, forensically-culled, and/or misrepresented the very evidence on which they rely." (Sylvester, 2003: 519) So even though criminal justice in prehistoric and pre-state societies may have been restitutive in nature, it was not wholly restorative overall. It contained elements of revenge, threat, fear of violence or actual death for the offender. The community and societal class took the lead in deciding the severity of punishment and punitive sanctions, not the victim. There were in addition, alternative measures of justice existing alongside restitutive means. This is also prevalent in current criminal justice policies, where restorative justice exists on the sidelines. It is a fringe measure of meting out justice with more punitive ways being the mainstream of UK's contemporary criminal justice system.

These differences demonstrate that even though pre-historic and historical societies contained elements of brutality, fear, threat, classism and bias, they simultaneously had more restorative procedures. In his article on the *Myth in Restorative Justice History,* D.J. Sylvester concludes that instead of idealising how it used to be, we can look to the future and formulate how it should be (Sylvester, 2003).

Chapter III

Summary

This Chapter elaborated upon the fundamental aspects of the alternatives to custody in the United Kingdom (Nader & Combs-Schilling, 1977; Edelhertz, 1975). It has been surmised that there are not many pure alternatives to custody, but that pilot projects, one of which is Restorative Justice, run alongside of custody in the UK (Schafer, 1968; Mathiesen, 1974; Hudson, 1998; Kuppe, 1990; Sylvester, 2003). The different forms of RJ were then discussed with examples, benefits and measures of its potential success or failure (Daly, 2002; Helfgott, 2010). Laws, Acts as well as Functional theories put forward by criminologists such as Zehr, 2004; Gavrielides, 2011; Hulsman, 1986 were also explained.

Chapter IV

Questionnaire, Data Collection & Data Analysis

Introduction

This Chapter contains the background work which informs the construction of a questionnaire aimed at assessing the functioning, scope and outcomes of RJ in England and Wales and the extent to which RJ contains abolitionist elements (or principles). It also consists of the identification of informants who partook in this study and the empirical work that ensued.

Data Analysis

In accordance with the general guidelines of Bazeley (2013) and Jackson (2019), qualitative analysis of data was done in different stages. This consisted of thematic analysis of common topics across interviews followed by triangulation with related policy papers, relevant studies and legal documents. NVivo was used to code and interpret the data. This approach to analysis was selected because of its applicability to semi-structured interviewing techniques as it allowed for comparing emerging themes and testing theories. It aided in importing data from various sources, identifying trends and cross-examining information by thematically dividing and querying collected data.

Interviews were transcribed *verbatim* and were coded in NVivo by the researcher. In order to enhance the rigor of the study and examine the validity of the data, interviews were held with varied stakeholders of RJ in the UK. Corresponding, common and contrasting themes from literature and legislation were curated and critically analysed.

Data Collection

Extensive search of literature was done to gain an understanding of the right audience to interview for this study. Participants were then recruited by the use of social media, work emails and phone calls on their public number to ask for their interest and availability.

Opportunity Sampling was utilised for collecting and analysing empirical material in accordance with risk and ethics guidelines to recruit participants in the study who were available and willing to share their practice and perceptions on the topic. (Robinson, 2014) This culminated in the recruitment of 41 respondents under Snowball Sampling used as an epistemological and methodological approach (Noy, 2008).

Snowball Sampling was used as a Convenience Sampling method whereby a portion of the future respondents were recruited by existing study subjects. This was achieved by asking existing respondents to provide information about others involved in RJ processes in the UK. This sampling was continued until data saturation (Naderifar *et al.,* 2017).

With regards to processing and movement of data, authorization and compliance was followed throughout the data collection and editing phase in accordance with the General Data Protection Regulation (EU) 2016/679.

With the passage of time, research has gained a stricter focus. In addition to inspecting crime, restorative justice and penal abolitionism in general in the UK as a concept and an ideology, the research has been narrowed down to particular crimes, a fixed demographic, and a fixed number of organisations to be contacted. Refinements were also made in the questionnaire. Furthermore, in the main initial research question, all *alternatives to custody* in the UK were narrowed down to RJ to explore abolitionist elements within it. This has made the research

more niche as it was understood that exploring every alternative to custody in England, Scotland, Wales and Northern Ireland was overly optimistic given time constraints.

Even RJ, it has been contended, is not an *alternative* to custody but a process occurring alongside imprisonment, in many instances. For purposes of this research, the types of crimes that form the main focus of primary research are serious and violent crimes and crimes of passion, e.g., murder, rape, domestic violence and burglary. The demographic of respondents is restorative justice practitioners, academics in the field, government and charity organisations that work within the alternative justice sector along with retired police officers, ex governors of HMPPS, and probation staff in England, Scotland and Northern Ireland.

Primary research question, of the extent to which there are abolitionist elements in restorative justice in the UK, was subdivided into secondary and tertiary questions that were then asked of researchers, practitioners and academics in related disciplines.

Below are outline questions that were used in each semi-structured interview:

i. In your opinion and experience, is the practice of RJ in the UK an alternative to punishment or is it another form of penalty?
ii. What are your views on the use of RJ in prisons? – Do you think there is a role for RJ in reducing the emphasis on/role of punishment/retribution, namely, using prisons for the purposes of incapacitation only?
iii. In your experience how, if at all, has RJ assisted with a victim/an offender's life during and post-incarceration?
iv. What, in your opinion, are the disadvantages of having RJ as it currently stands in the criminal justice system (CJS)?

v. What changes (in general or specific) (in functioning or in policy) would you like to see/suggest in the way the CJS works in terms of RJ in the UK/specific prison/institution?

vi. What, in your opinion, can be done to bring about an increased involvement of practitioners of RJ in the CJS? / (increased practice of RJ in the CJS)

vii. In your workings with RJ as a witness/practitioner/influencer/receiver of RJ practices, what has been the most striking experience (positive or negative)?

viii. What other, if any, forms of punishment or alternatives to punishment do you advocate?

ix. What do you think about utilising RJ measures in more serious cases, like sexual assault, rape, serious sexual offences, domestic violence, murder and homicide, serious physical assault, robbery? Please relate any experience/stories within this sub-topic.

x. A definition of *Abolitionism*: "…the criminological perspective that dismisses penal definitions and punitive responses to criminalized problems, and proposes their replacement by dispute-settlement, redress, and social justice. In more general, historical terms it refers to the abolition of state (supported) institutions that are no longer felt to be legitimate. The word abolitionism as we currently understand it in criminology is adopted from the North American anti-prison movement of the early 1970s." (Ritzer, 2007) - What are your views on this? / To what extent are you utilising abolitionist elements in your RJ practice? / What does *abolitionism* mean to you?

Chapter IV

Summary

Above Chapter contained an explanation into how the participants of the study were chosen, their anonymity preferences and how they were codified for a more seamless approach towards data analysis. Extreme care was taken into the sensitivity of the nature of this type of research and all informants have been anonymised apart from those who expressly wanted their views published and given named reference to. Deeper explanation into this has been provided within the Methodology and Ethics Section at the start of this thesis. The Chapter then went on to describe how the primary research question was subdivided into a wider base of questions that helped in constructing the questionnaire for primary research.

Chapter V

Discussion of Findings

Introduction

This Chapter contains a discussion of findings. These findings were gathered from the primary research and interviewing practitioners, victims' families, as well as academics in the field of Restorative Justice in the UK. Insights gained from each response were coded and processed through NVivo to provide graphical descriptions and thematic analysis was written based on the responses obtained during the interviews. Respondents were detailing their experiences with RJ and their thoughts on abolitionism or abolitionist tendencies. As this was a sociological questioning on trends in current society, each question in the schedule was open-ended to aid with the qualitative, exploratory nature of the study.

One of the first findings of the research was that RJ, as it currently functions within the UK is neither an alternative to punishment, nor another form of penalty. It was claimed by respondents that RJ sits alongside punitive responses. It has the capacity to replace many punitive responses, but it will not completely remove the need for punitive actions to be taken. For instance, if an offender denies responsibility for the offence but is proven to have been involved, then most restorative practices are not suitable. Therefore, there is a requirement to have a punitive response as this behaviour cannot be ignored. Hence there is a need highlighted to always have prisons as some people will need to be kept away from the public for public safety reasons. This type of response was provided by participants who believed that prison is full of harmful people. Therefore, the answer could be 'both', depending on

circumstances. Some victims' families stated it was an added punishment on the perpetrator making them go through what they had done and how their actions had affected the victims (V1). For the perpetrators it was shown to be a difficult process to go through. One of the perpetrators of rape was mentioned as saying, "It was harder to do than a SOTP!" (Sex Offender Treatment Program) (V1). For academics and practitioners, it was stated to be mostly as a diversionary practice and as something on the side or in addition to regular custodial sentences (A1-A8; P1-P7).

Abolitionism and RJ

Abolitionists claim that there is true democratic power in an abolitionist stance because it welcomes the negation and questioning of current practices and problems in the world of criminology (Mathiesen, 2008). Abolitionism has the potential to truly empower people by providing the required understanding on current political and penal trends to the subjects and social movements that operate within the system. It is a stance that demands answers of the centralised state, the powers that be and the mainstream criminal justice professionals (Cohen, 1988). It is for this precise reason that it is not well suited to a public criminology that aims to work with the very same institutions it questions. These penal institutions cannot be part of the solution as they define what crime is, thereby creating it in a sense. Therefore, they are viewed as problematic by abolitionists. Nevertheless, some abolitionists understand that it is necessary to work with penal and criminal justice institutions in order to bring about new definitions of crime and penal policies that are influenced by aspects of abolitionism. This is a realistic rendition of what abolitionists hope to ideally achieve (Hulsman, 1997). By connecting these institutions to ordinary grassroot levels, there is a higher possibility for authorities to

have a less authoritarian approach towards making rules and have a better understanding of how things function in relevant communities in the real world (Mathiesen, 2008). Abolitionism centers more on the grassroots, collective stakeholders, social movements than on the legislative policy makers and how it is reflected in the media (Ruggiero, 2012). "Reorienting public criminology thus involves moving beyond public criminology as it is currently most widely defined in Britain today, notably by Loader and Sparks. It entails reviving a truly public and democratic form of criminology which was originally found in the writings of the penal abolitionists in the 1970s." (Bell, 2014: 500) Criminology, it is stated, needs to go beyond current policies and work harder on coming up with genuine solutions and alternatives to existing rules. It needs to have hope that something other than the current penal status quo is truly possible and let its actions be guided by a 'fantastic sense of the possible' and a 'practical utopianism' (Cohen, 1988: 28). The practical aspect would be defined as coming up with real and objectives alternatives to current penal measures and custodial sanctions. The utopian aspect can be described as constantly questioning or rejecting existing definitions and worldviews present within criminology that are based on accepting or justifying how the criminal justice system already currently works (Cohen, 1988).

RJ contains within it, abolitionist concepts of knowledge and conflict. These are of particular importance to the abolitionist project. "As Nils Christie has noted, restorative justice cannot simply 'restore' the conditions prior to the emergence of the problematic situation. Something, at the same time, has to change." (Ruggiero, 2012: 158) Nevertheless, RJ does not and cannot guarantee exacting results from its interventions as each conflict has its own similarities and uniqueness to the social milieu in which it was born. Certain conflicts may be resolved in a way that clarifies to both parties what precisely happened, why it happened, and open the way to a dialogue and exchange of knowledge, understanding and information. Other conflicts may

be resolved in a mutual appreciation of the similarities in expectations, backgrounds and socio-economically problematic environments of both parties which ultimately induces them to realise that it is their best interest to coexist harmoniously and peacefully. Certain conflicts may end in the parties humanising and de-demonising each other, with the offender realising that the victim is a precious and inviolable person in their own right, and the victim feels less traumatised in finding the offender a hurtful, hurting yet ordinary fellow human. In other situations, the end result may be that parties reach an understanding that they both require the same things and the same changes in their social conditions. On the flip side, there may be circumstances where such positive and hopeful resolution is far from possible. There may be extreme differences in their socio-economic environments. These conflicts will unavoidably return to their origin, that is an imbalanced society with disproportionate resources, and an ensuing fight for equality, other differing rationalities in their backgrounds. Abolitionists hold conflicts as precious commodities that can be utilised from below not simply to solve limited problems but also to influence social change in the long run. Eventually, abolitionism in itself can be used as a commodity for social movements (Burawoy, 2005) and as a type of public sociology (Ruggiero, 2012).

Abolitionists confirm offenders need to be included in the debate but changes need to come from higher up as well. There needs to be a synthesis of these two aspects. There are various ways of providing alternatives to current state of affairs, such as, changing policy on reducing prison populations, constructing fewer prisons in future, decriminalising certain events, providing shorter sentences, delivering enhanced probation services whereby offenders serve a licence in the community via better liaison with their probation officers.

Questions about the concept of Abolitionism in theory and practice in the UK were met with disdain, disrespect or denunciation on the one hand, or an admittance of it being at most a theoretical ideal to aspire towards on the other.

Strict opponents of Abolitionist ideas opined that it is only considered to be a good idea by idealistic schools of criminology. But the number of people being punished and being sentenced to prison in the UK in the last few decades has only been going up. Ideologically it is possible but practically, it is a fallacy. A respondent stated, "Abolitionism is the stuff of criminological conferences, which ontologically might last but do not have any inklings on the real world." (C6)

One third of respondents refused to answer questions directly pertaining to Abolitionism, a third replied along the lines of not knowing where to begin to answer the question, and the rest had a systematic argument against it. A PCC (*anonymised*) stated, "I suppose I would say that your question kind of implies that there is a rational and logical thought process that arrives at a place where you could say, you're an Abolitionist or not. Particularly for us working within the field, it's not the kind of question that we would ask ourselves. If you actually think about the outcomes you are trying to achieve, the outcomes you should be trying to achieve from our perspective are fairly well-defined, they are about offending and re-offending. They are about trying to make our place a safer place. And these kinds of very theoretical, academic questions are questions that we don't even attempt to answer in our policy making." (C6)

Still other opponents of Abolitionism stated clearly, they were not Abolitionists and that it was an incredibly naïve utopian concept. Wholesale reform to the prison system was suggested including reforming cheap custody which simply delays offending at best. According to such respondents, "RJ may play a small role in maintaining prison safety but this is secondary to

suitable and sufficient staff running busy, purposeful regimes for those who genuinely deserve to be behind bars. I'm certainly in favour of abolishing 'stupid custody'!" (C4)

Abolitionism is an overall stance. It is an approach to all those problematic situations which are part and parcel of people living together. As a result, living together, being in a society, being a social group means there will also be conflict. It is impossible to have people together without some kind of dispute. However, the problem with conflict or this kind of opposition among people can create consequences which are very destructive. Therefore, ways have to found to handle that conflict. Abolitionists, in a general perspective, do not think that the way to handle these destructive consequences of conflict is by prisons, punishment or delivering pain.

"It is indeed possible to identify clear propositional-constructive aspects in the abolitionist criticism. With their criticism, the authors proposed a new way to approach and understand conflicts, which later gained strong impetus in North America and Europe under the label of restorative justice." (Aertsen & Pali, 2017: 14) It is of prime significance to note the intimate bonds that connect penal abolitionism and restorative justice with an eventual confidence in the hope that penal abolitionism does not simply oppose or criticise the present statutes in the penal justice system. It also presents itself as one of the most significant alternatives to punishment, and not merely some kind of an alternative punishment.

There are many people in the RJ movement who believe that the present criminal justice system is not fit for purpose. They would come from all sectors, practitioners, professionals, academics. They would range from pure abolitionists to those with pragmatic models incorporating RJ into the CJS. Many realise the risk for RJ is it being copied by the system. Many see the route to be slow change and influence of present practice in criminal justice by

using diversion and non-criminal disposals especially for young people. The political landscape in England and Wales is relatively unreceptive to RJ even where evidence shows it works as it could appear to be soft on crime. The move towards crime being seen as a factor in socio-economic or mental health issues is moving the backdrop but incredibly slowly. Academics may write about abolitionism but in the day-to-day work of practitioners they have to innovate within the existing context.

There is a genuine misunderstanding of punishment and some of that is culturally around the fact that people do not like to be seen as being 'soft on things.' "Politically it is very difficult to look like you are not being hard on crime. And maybe that's partly our fault. We haven't helped them put the case." (P1)

There is a tendency in the UK to do things 'to' people. Punitive sanctions are always done to people. They are imposed on them and because professionals are considered to know best. As adults, human beings can act like that. "And as adults we'll happily use RJ with children, but not necessarily think about using RJ on each other. Because we're smart adults and we're all grown up. One of the barriers to RJ is the adult pride about actually we're just as capable of hurting other people and we're just as needy of needing to put it right." (M6)

It is ethical for the society to mark its displeasure for what someone chose to do to them through a penalty or a sanction, for instance, in serious sexual offences against women. However, going to prison 'as a punishment', and not 'for punishment' is suggested. There can be community penalties used 'proportionately' instead, as there are prison sentences that have become longer, and for no appropriate reason.

Most of the people who are involved in RJ in the UK are quite progressive, but most have moved much to the centre in their framing of it, so as to encourage its development within the existing system. Most people perceive it as a way to reduce the need for punitiveness, but few expressly talk about it in those terms, and those that did would be more moderate rather than abolitionist. There would be some people, mostly independent practitioners or academics, who would like it to be part of this, but not many.

In Scotland Abolitionists are not any more vocal than they are in E&W. The restorative justice advocates tend to support the expansion of restorative justice processes to allow more people to partake in them, also advocating that restorative justice processes are used instead of the mainstream criminal justice processes where appropriate, (for instance, as diversion from prosecution). Some people are very much against replacing criminal justice processes with restorative justice. In particular, some voluntary sector organisations that support women, victims of domestic abuse, or sexual crimes oppose the use of restorative justice in place of criminal justice processes.

One academic, researcher and RJ expert interviewed in the study stated, "For myself, I would be happy to see much of the mainstream criminal justice system replaced with processes that are based more on restorative justice principles, processes and outcomes, but I don't believe that the whole criminal justice system should be scraped and replaced with restorative justice, or at least not in the short term. My hope is that the criminal justice system would, over time, be based much more on restorative principles and processes, but it's hard to know whether this is likely to happen (at least within my lifetime). I remain hopeful." (A11)

Respondents in favour of having RJ whilst negating the concept of Abolitionism recommended building 'Restorative Prisons' without abolishing prisons completely. They believe there are

elements of prison that are good and necessary and recommended adding on to those, principles and ethics of Restorative Justice. Clink Restaurant was stated as an example. It is a charity that is a restaurant in HMP Brixton, HMP Cardiff, HMP High Down and HMP Styal. Cardiff Prison received Best Restaurant reviews in the whole of Wales. Major restaurateurs including Michel Roux visit these restaurants to explore inmates' cooking talent. If they think they are good enough when they come out they will give them a job. People in general queue and book ahead to go there for the food. (The Agency, 2015)

"I don't think we use Abolitionism in anything we do. We have to have both, penalties and punishment. It's not a replacement. We can't replace. You've just got to have an add-on to this system that we've got. We can't abolish. The American way of doing it is un-forgiveness; unforgiveness and shaming. Put them out there and clean the floor. That is not punishment to me. That's going back into the medieval times put people in the stocks. Why do we have to follow the American system in this country? They got two different prison systems there, Federal and State, and their system's just stupid. 'A man's innocent until proven guilty' they say. They march a man in court in orange overalls with chains on his feet and hands. He's already guilty before you can get to the court case! You don't see the good things happening in prisons on TV. Did you know the men in Grendon got on an exercise bike and cycled the equivalent from Land's End to John o' Groats and raised £5,000 to help the Heroes? They do that in Kingston Prison, which was a prison for murderers only. They closed it immediately. One of the best prisons in the country and the government closed it. They did a gym marathon for us and raised £600 for our charity! And they're inmates! They only get about £13 a week. So, can you imagine for them to give a couple of pounds it means a lot to them! Coldingley Prison last Christmas did a quiz night for our charity. And the officers were there along with them, not like 'We're looking after you.' They were sitting at tables with them! The way we

build prisons, the way we treat staff and offenders. It's the human element that we lost in the retributive system we had. It's got to come back. But in a way that's softly, softly. A lot of people say, 'We're going to do away with prisons.' Not that far. There's got to be a balance there isn't there? You get a slap on the wrist. There are some bad people. It's like bringing up a child. If people like us who are victims of serious crime can say that, then it's got to be right." (V1, V2)

In order for political policies to be made, there would need to be a popular consensus about these issues. Popular opinion would require not only monetary considerations such as cost cutting but also highlighting the moral failures of prisons and how they culminate in exacerbating the very problems they seek to diminish in society via the expansion of definitions of crime and offenders. People can increase their understanding of these issues by expanding their awareness of penal institutions and the treatment of offenders in prisons. Only then can all parties come together to create sustainable alternatives to conventional criminal justice methods. Community justice is seen as a viable alternative as long as careful attention is paid to how it is meted out. If it comes with a threat of imprisonment, community justice would simply be helping widen the net of formal criminal justice system. Defending and safeguarding individual human rights would also need to be implemented and protected by law.

Delegitimizing neoliberalism and attempting to question its primary logics would allow greater attention to be placed on attaining societal justice. This is not a suggestion to return to the past where the common public was mostly excluded from the decision-making processes. The feedback is to support genuine democratization which can aid in creating waves in current political trends. A different new politics that is not motivated by corporate or political elites but has the strength of becoming truly popular by going beyond populism. "Perhaps this

would entail the people appropriating the 'big society' for themselves rather than allowing it to be used as a rhetorical device for advancing the interests of big government and the big market." (Bell, 2014: 501) Along the same lines, the idea of public criminology would need deeper implementation than academic thought. A genuinely public criminology would be able to incorporate all major stakeholders into itself: policy-makers, offenders and their families, primary as well as secondary victims and citizenry. Abolitionists also recognise the significance of confronting the logic of neoliberalism which, despite its rhetoric, can be profoundly anti-democratic, as it greatly increases the power of the state. By challenging neoliberalism and moving past neoliberal penality, abolitionists believe it may be possible to garner a truly public and democratic debate on themes of crime and punishment.

Prison Fellowship is the world's largest Christian non-profit organisation for prisoners and their families where everything is done with a restorative approach, without making more victims. They explained that Prison Fellowship was getting funding and then it was stopped soon after. Reason given was that they were behaving more along the lines of a Victim Awareness programme rather than a full spectrum Restorative Justice programme, because Prison Fellowship were bringing surrogate victims to talk to the prisoners instead of real victims. A few proponents of RJ in prisons declared that although that was the case, it had a similar if not the same effect on prisoners, in that at around week 6 of the programme, prisoners were queueing up to ask to see and speak with their victims as a result. Hence they were of the opinion that abolitionism was not a useful approach.

Practitioners of RJ in Youth Justice interviewed were of a unanimous belief that people in general should not be removed from society and placed in prisons unless they are a danger

to others. Examples were given of countries like Sweden and Norway where they aim to rehabilitate people who have been incarcerated back into society.

Problem solving courts which get to the underlying issues behind offending are a way forward which should be pursued in this country as a better approach to tackling offending. They have recently been recommended by Lord Justice Munby who has retired as President of the Family Division in the High Court (England & Wales).

Some state supported institutions are useful in this country for developing RJ, e.g. in Youth Justice for minor crime. These institutions are useful for training practitioners and assisting young people in Youth Justice. "I give more thought to how this could be developed further to be more restorative and more effective, than I do about 'Abolitionism'!" (P11)

It was surmised by majority of respondents including RJ practitioners that there are some people who need to be locked away because they are a danger to society. However, many more people need help from rehabilitation programmes that will help with addiction, violence and mental health issues. Restorative Justice fits into a programme which is not punitive but aims to treat crime as injury rather than punishment, and justice as healing rather punishment.

Other liberally based views suggested that victims and offenders should do what they think is right, in terms of the process and the system that they choose to go through, within of course the limits of human rights. If they want to go and talk to the Police and go through the criminal justice system, they should be able to do so. And the criminal justice should organize itself so that dispute resolution or problem-solving features including RJ should be available within it.

However, alternative views were presented that if victims of crime do not want to go through police or through the criminal justice system, then they should be able to not do so. What they

cannot be able to do is form lynch mobs and decide on their own version of justice which does harm to others. The problem with Abolitionism has been put forward that it does not necessarily contain safeguards for those groups and individuals in society who are more disliked. And it can be more power to the powerful. That may not be what any of those proposing it want, but that is what could happen because Civil Justice or Community Justice do not have the same safeguards as Criminal Justice. With Civil Justice especially, it really matters if people bringing a case forward have got the necessary financial means to do so, particularly in the UK, because there are such limited opportunities to hold the person to account. Moreover, this is due a lack of legal assistance at all levels.

A definition of *Abolitionism*: "…the criminological perspective that dismisses penal definitions and punitive responses to criminalized problems, and proposes their replacement by dispute-settlement, redress, and social justice. In more general, historical terms it refers to the abolition of state (supported) institutions that are no longer felt to be legitimate. The word abolitionism as we currently understand it in criminology is adopted from the North American anti-prison movement of the early 1970s." (Ritzer, 2007)

The era in which this statement was given was during the midst of the "rehabilitative ideal" which essentially encouraged a more treatment focussed system towards those that break the law rather than a more punitive approach towards incarceration. Whilst they agreed they should be reformist in their views and actions and apply more compassion to those in custody and be more humanitarian led, they felt they had come too far socially to be this liberal. Their main concern was about what was to be done with those that committed the most heinous of crimes. And they did not feel confident that anything other than taking someone's liberty was appropriate.

Overall, respondents agreed that people should be able to do what they want to do. This included being able to go through criminal justice. These respondents stated they were very anti *Top-Down Abolitionism,* which leaves people with nothing. There needs to be a structure. Even if there is freedom to choose whether to go through the system or not, but there need to be safeguards. There need to be limits to how much freedom and power the community can have in deciding to quell individual disputes, as there is this danger of having lynch mobs if the community is so powerful.

Looking at numerous RJ examples in different parts of the world, which is what Nils Christie is referring to in his example from Tanzania, it was Elders in that situation whose ideas of what is right, tended to prevail. And that justice may, in some cases, be anti-women for instance. Thus, society is back to occurrences like witch trials. Conversely, equally the State can simply go and poach everything and deal with things in its own way which does not necessarily help victims or anybody else feel included. Hence why a more lenient problem-solving kind of justice has been suggested, than what is present currently in UK's criminal justice system.

For some academics who took the middle ground, abolition was seen to go hand in hand with the existence of state institutions and it did not necessarily refer to the abolition of state institutions. It refers to the reduction of state's interference as much as possible on people's conflicts, and to the reduction of the CJS in particular, but not a reduction of the welfare state following social justice policies. It also relates to some especially concrete strategies, such as decriminalisation of certain offences, reduction of decrepit laws and unnecessary imprisonment, introduction of a maximum prison sentences, increasing public deliberation and having alternative sanctions.

When asked about the idea of Abolitionism, respondents from Restorative Justice Council (RJC) advised that they were not a very philosophical organization at the moment. They were more 'in the practice' of it and very much in liaison with government and stakeholders about how it can practically be applied. They do not get much of an opportunity to think about abolitionism or related ideas as part of working for RJC. However, they advised that RJC does speak to the idea of the abolition of state-supported Institutions that are no longer felt to be legitimate. That is because it is about the state and state institutions not being in the best position to completely meet the needs of the people involved who have been harmed or who were the harmer in the crime. And disassociating what happens after the crime from the people who were involved in it, does not lead to a good outcome or being able to effectively address the harm. In this manner, respondents working at the RJC informed that it puts the powers slightly back in the hands of the victim in particular, but also the offender as well. One of the issues pointed out was that professionals were making decisions *on behalf of* either the victim or the offender. And that is where this kind of mentality of *the state knows best* and the state institutions are in the best position to make decisions about events, begins. Restorative Justice tries to fight against that and tailor what happens to the individual's needs.

Proponents and practitioners of RJ in the UK agreed that they believe punishment is not effective and the idea of helping somebody to take responsibility for their actions and atone for it in some way is ideal. If there is danger and people need to be separated from the community to avoid further danger, that is reasonable, but punishment by itself is not the best way forward. It is not a good solution to any offending behaviour. It is RJ's philosophy to recognise what one has done, the harm that has been caused, and atoning for it or repairing it. RJ therefore in a way, especially with offenders of serious crime, is more difficult than

therapy. It is like therapy in action. A practitioner informed that a victim told them that having a RJ meeting with her rapist was better than 'a hundred hours of therapy,' (P3) and a psychologist in Thames Valley informed them that 'it certainly beats training for offenders.' (A7)

A few RJ practitioners working with youth offenders who were respondents in this research stated that they cannot replace the penal criminal justice system completely. They can only work alongside it, but that they certainly see where RJ would fit into that definition because it is about redress and justice for the victim. They informed they certainly do have some elements of that within their practice and trying to bring the person who was harmed back into the center of the offence, whereas in the current system, the victim is generally kept out. The victim at most, gets to write an impact statement. And that might be all they get to do in the whole process. They should be at the center of the process because they are the one who have been harmed. So, in that respect, Abolitionism and RJ go hand-in-hand.

Alternatives to Custody

In order to examine alternatives to punishment, one needs to look at different categories of offending, seriousness of offending, seriousness of risk and so on. Punishment as alternatives to custody may be seen as how society deals with different types of offence in a more measured way without necessarily resorting to custody because there is lack of evidence around the effectiveness of custody. Countries who make far less use of custody have far better reducing reoffending outcomes than the UK. Greater use of Community Sentences where appropriate was suggested as an option. In the UK, there are not as many Community options

as there could be to support alternatives to custody. PCC's office interviewed stated, "The courts are a bit hamstrung when it comes to sentencing, since they do not have the range of options available to them, that exist in other countries for example. And that's particularly the case for women offenders at the moment. A disproportionate number of women offenders are receiving custodial sentences due to a dearth of alternative options." (C1)

Police and Crime Commissioners interviewed as part of this research advised they were working with partners on trying to develop some alternatives to custody where it is appropriate. But that is limited to working within the existing framework. In order to get any further down the road with it, there needs to be acceptance on a national level and the policy being changed so as to reflect that. Even among RJ practitioners there seems to be a sense of frustration because sometimes their efforts do not match the plans. At times it is too little or it is not adopted on a larger scale. "I mean it's a political joke. Offender assessments in this country, we have a certain approach to that. In other countries, they approach it differently. The evidence base is there to tell you that custody is not a great option for most of the people who end up in custody. But it is a fairly fundamental political national issue that in effect we can have very little influence on here." (C1) It is about gaining a balance between Punishment and Rehabilitation. The UK follows a narrower approach where the criminal justice system is not generally focussed on Rehabilitation. Punishment is taken as a key part of its role and Punishment often equates in this instance as Custody.

It was deemed by a majority of respondents that within the justice system's current environment in the UK, the court would hardly take account of RJ as an option in sentencing to the point where it influences a prison sentence's length or severity. It was considered an impossibility. RJ in the context of prisons was seen more in terms of Conferencing for serious

crimes where the aim is the victim having a chance to speak to an offender to gain some sort of resolution for themselves in terms of the offence that has been committed. And for the offender, it is more about assisting their rehabilitation, enabling them to understand the consequences of their action, whatever it was, and to better comprehend the impact on victims as a part of their broader work that is going on to help them rehabilitate and avoid reoffending in the future.

In England Wales at other stages of Criminal Justice Restorative Justice can be done after sentencing, which does not necessarily form part of the sentence at all. However, it can. Thames Valley model in probation, that forms a condition on a Community Order, which is part of the sentence, can have RJ done in prisons. And that has nothing to do whatsoever with the sentence.

If a crime occurs, there must be an answer, and the State should act and acknowledge the victim as the victim. However, punishment may not necessarily have to be that answer. Restorative Justice at least is a forum. It can be one of the answers, where responsibility is taken seriously, and an act is required from the offender to show that responsibility. But it is important that in these cases it comes somehow from the person and not from the State or an authority.

Other alternatives to punishment could include deferred prosecution, an increased scope for deferring coercive action, such as prosecution and indeed imprisonment and other forms of sentencing in order to allow people a chance to engage with services before that. Community sentences could be used far more, for people who would otherwise have been in prison. So down tariffing, and Community Sentences, which may be made more intensive, where people have to undertake different kinds of actions. However, letting those actions be not just punitive

or designed for stigmatisation, but actually satisfying people's needs. The purpose and the idea should be to make things right, and make sure the offence does not happen again. This may be termed as a consequentialist view of sentencing.

Alternative to Punishment

Creating genuine alternative penal policies entails first tackling at source the problem of neoliberalism as a significant factor that makes punitive penal policies more likely. Neoliberal penality stands on four institutional logics as described by Loïc Wacquant in his 2009 book, 'Punishing the Poor: The Neoliberal Government of Social Insecurity'. These logics are as follows: deregulating economic structures, devolving, withdrawing and recompositing the welfare state, maintaining a cultural image of individual responsibility, and having a vast, invasive and proactive penal apparatus (Wacquant, 2009). It is these four institutional logics that need to be confronted and deconstructed first in order to challenge the logic behind neoliberal penalty as these aspects impact most significantly on penal policy. Simply considering cost implications may not be enough, or worse, it may do more harm than good (McBride, 2013). Decreasing costs of running prisons for instance, whether they be public or private prisons, may lead to less quantitative but more qualitative punishment, thus significantly enhancing the pains of imprisonment. Due to this, it is essential to not make cost considerations a focus of handling punitive policies. Humanitarian and moral grounds must also be considered (Bell, 2011).

Whilst there is widespread denigration of the poor and offenders by popular media and the government, it would be complicated to humanise these aliens and monsters (Scott, 2013a in Bell, 2014). Hence it would be valuable to make offenders a part of the debate on crime and

punishment, rather than only viewing them as its objects. Criminologists should include not only the crime committed but also those committing the crime in their discourse on crime and punishment, to make offenders themselves an integral part of the conversation. More importantly, offenders themselves should also be permitted to participate in the dialogue, a hypothesis set forward by Thomas Mathiesen in 1965 (Mathiesen, 1965). In current times, there are options to achieve precisely this outcome via university modules and courses where students and professors sit with select prisoners to gain insight on offenders' understanding of their lives in prison, criminological theories and make policy recommendations. An example is put forward as the Learning Together Programme Module initiated by Cambridge University in conjunction with HMP Grendon in 2014 thereafter replicated by other universities including Middlesex University in association with HMP Wandsworth in 2017.

Upon asking whether RJ is considered to be an alternative to custody, the family of a murder victim explained that many of the 'offenders' going into prison do not believe they can potentially make victims out of people (V1). When restorative justice is used, it brings them to a point of understanding that they may have created victims and who their victims are. RJ acts as an aid to this realisation. They state those responsible must be taken out of circulation and imprisoned. But also, that having a restorative process must be an add-on to their imprisonment. "How on Earth are they going to know what they've done unless someone actually goes and tells them? It can contribute to it, you know." (V1)

Respondents stated that in order to understand this fully, wider attention needs to be given to the definition of punishment. If punishment is taking away someone's liberty or purely inflicting physical pain on to the offender, then RJ cannot be considered a punishment. But if confronting one's offender with the reality of the event and its aftermath is painful and

emotional, then RJ can be understood as a kind of punishment in its own right. It compels offenders to address their issues and search within themselves for honest answers as to their incentives and inclinations. Proponents of RJ conceive of it as constructive punishment with a purpose rather than a retributive response.

Punishment is also seen as contextually relative or circumstantially dictated. For instance, community punishments are not seen to be as punitive as a custodial punishment, but that is dependent on one's circumstances and the type and level of offence and other contributing factors that come with community punishment.

Among supporters of RJ, there was a divide between respondents who supported or opposed certain kinds of RJ; schisms were created depending on who was delivering the RJ processes, whether it was governmental or private, whether it was a volunteer-driven or as a paid exercise, and the ensuing success of the project was defined accordingly.

Questions were also raised about what is considered a truly successful RJ process as there is no objective definition of success in this, only guidelines and parameters. Overall, it was considered to be an older, more classical style of reducing conflict, more an ethos to follow rather than a set procedure with fixed outcomes. It encourages taking responsibility for one's actions and understanding how they affect other people's lives.

RJ is not truly an alternative to punishment so far. Many cases are more diverted from the normal criminal justice course through using any kind of restorative justice process in an early stage. If these lighter cases end up in fines or community service and not imprisonment, then it is viewed as an alternative to custody. On the other hand, there is increased utilisation of RJ as a parallel alternative. It is not there to replace something but to offer an extra approach, an

extra service. That is mostly for the victims. However, in serious crimes, RJ has no direct link with the punishment pronounced.

A person can go into restorative justice processes with the intent of having something that is not punitive or is not a punishment but will necessarily be experienced as such by the person on the other side, the offender. The idea of retribution and restorative as a dichotomy is suggested to be untrue. It is a continuum, a spectrum of pain and pleasure on which two parties who are in dispute choose to resolve their conflict. Also, reparation is a different logic to retribution. Again, that depends on how punishment is defined, if any form of sentencing is viewed as a punishment. There are complexities within it since RJ can be done punitively, and it can be done non-punitively.

Punishment can be defined as the infliction of pain. (Christie, 1982) Pain may be interpreted as restricting people's movement or fining them, taking away their money or their time. By that reasoning, Reparative work and compensation are appropriate. They do not just have to be seen as punishment either but, it can be punishment. That will therefore include what used to be called Community Service what is now called Unpaid Work. And that is punishment. There can also be some use to electronic tags, which are basically a means of restricting where people will go. It can be to stop people going near their victim, as in sexual offences or those who offend against children can be stopped from going to schools. House arrest on the other hand is extremely difficult on offenders. But some forms of tagging or monitoring can allow people to be out on Licence. And equally they can be used for employment, in countries that have judgments like Weekend Imprisonment, so that people can keep their weekday jobs. Women in prison undergo more damage due to separation from their families, their pregnancies and children affected by maternal imprisonment. (Prison Reform Trust, April 2019)

Improving education and availability of courses within prisons, getting the community to offer work to offenders are some of the options to try not to dissociate from those in the community who are struggling or even causing others harm.

In Scotland, the Youth Justice system is not part of Criminal Justice formally, at all. It does Restorative Justice in relation to criminal offences, but it is officially not part of the Criminal Justice System. Therefore, ideas of punishment and penalty in legal terms do not follow. Whether the Young Offenders see it as Punishment is quite a different matter.

There was unanimous agreement among the respondents that serious offences be sanctioned with a consequence. However, the consequence does not necessarily have to be punishment. "In my experience with corporal punishments at school when I was a younger person, I don't think it worked. It just happens a second, third and fourth time, and I'm a Probation Officer now. So there has to be some other kind of reparation that should work in place of punishment." (C7)

More effective use of the Incentives & Earned Privileges (IEP) Scheme is proposed within prisons. There need to be, however, consequences to poor and/or protesting behaviour. But a deeper understanding of personal triggers and levers is encouraged, and what best impacts on requisite behaviour changes in terms of developing a rehabilitative culture.

These actions must be in conformity with human rights and protections for the offenders and victims. Basic rights, standards and guarantees ought to be in place. When it is not possible to reach them or when these make no sense in a specific case, a minimum use of imprisonment as a form of collective or public protection (incapacitation) is suggested even by staunch RJ practitioners. But even in these small number of cases for which there would be use of prisons, it will nevertheless have to change its form and content. Arts, schools, dialogue, work, all

civilised forms of human communication and existence ought to replace the repressive ones that currently exist within these institutions. Respondents in favour of RJ strongly believed that nothing good or useful comes out of violence and that violence breeds violence. And the way people are treated contributes to what these people will become. Hence, if a system is engineered to create monsters, then that is what society will have more of *ad infinitum*.

Appropriate interventions for people with mental health and psychiatric problems are advised to be done before they are returned to prison. That implies not just fewer people being sentenced to prison, but also people being sentenced for less time to prisons. The true driver of UK's currently remarkably high prison population is the long sentences not short sentences. And it is increasing lengths of sentences which have almost tripled since 1969 (Ministry of Justice, 2019).

There is no consistent method of RJ across the UK. Even within criminal justice, RJ does not seem to have a straightforward methodology in all cases. Focus of restorative justice is the delivery, but what is the model behind it? What is the underlying principle underpinning of it? For some practitioners it is an alternative method, but often it is not explained well. Therefore, it can be perceived by those who are supposed to do it, as a punishment.

It has been advised that RJ is not an alternative and it is not another form of penalty either. It is at best, at the moment, an anomaly within the criminal justice system (CJS). It has features of a subsystem, but its survival is very much dependent on how it is incorporated into the CJS. RJ as a concept is victim-offender orientated and therefore has no place in prisons. Hence why it needs to be Community-orientated. The model in prisons needs to change dramatically to what is called 'Within the Gate' as opposed to 'Through the Gate'. That distinction is vital because in prisons it is too burdensome. And with the amount of pressure or capacity within

the system or lack thereof, simply to say that RJ would slot neatly into that system is naive at best.

Examples of RJ

According to a Police and Crime Commissioners office in the UK *(county redacted on request)* Restorative Justice can mean different things to different people based on what level it is being applied at and the amount of funding available in the political climate of the time for restorative practices in the criminal justice system (C2). It can range from basic street level restorative approaches that are designed as a diversionary sort of intervention to bring people together and avoid people getting into contact with the criminal justice system, right up to the more intensive Conferencing that is usually applied to more serious types of offences. At the lower end of RJ application spectrum such as face to face meetings between an offender and a victim to resolve an issue that has cropped up, e.g., anti-social behaviour scenarios, RJ can be applied as almost an alternative to punishment. However, the further 'up tariff' one goes in terms of the seriousness of the offence and the more sophisticated sort of RJ approaches, RJ is not necessarily seen as an alternative to punishment. Rather, it is seen as something than can run alongside punishment like a prison sentence or an order of the court that has more the aim of supporting victims.

Furthermore, it is dependent on the police as well in terms of the proposed tariff for the crime or incident. So, for example if one chooses to do an Out of Court Disposal, but it has to determine a way that is compliant with RJ processes. Also, the victim and offender have to agree for it to be a mutually restorative outcome. Therefore, it was suggested that this question would require a more nuanced answer.

West Yorkshire Police have been using it as part of Conditional Caution, so whenever an offence is proved and someone takes responsibility for it, it is not considered to be in anyone's best interest to drag that perpetrator through the entirety of the court system. It is reported to have been useful to narrow it down, someone taking responsibility for what they have done, and making amends in some ways, shape or form, depending on what the victim is looking for. (C1, C2)

RJ can be introduced pre-sentence through the Crime and Courts Act 2013. Pre-sentence RJ is through two separate pathfinder projects, one is in the magistrates' courts looking at processes and the other is based in 10-12 specific Crown Courts focusing on outcomes.

A key question is, at what stages of criminal justice is the restorative justice taking place? If it is at first level it can be instead of going to court, it can be treated as a conflict. And in that case, it may be similar to Mediation. RJ can be after charging before sentence. This would be considered as a Diversion. It can be a Caution for example, or a Conditional Caution. Then it can be after charging before sentence. In such circumstances there is a possibility of 'Deferred Sentence.' (Crime and Courts Act 2013; Secretary of State Guidance for Pre-sentence Restorative Justice, 2014)

Another legislation called Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) is concerned with deferment of sentences. A person can be convicted and then the court can advise they will wait for three months or six months and assess whether a restorative meeting can take place. The assumption is, that before making such a deferred sentence, the victim is asked if they would be interested in participating if the court passes this sentence. The process should be assessed as being fair on both sides so as not to raise expectations. Thereafter if the offender as a result undertakes to do something in terms of restoration or

reparation to the satisfaction of the victim, it is then converted into a non-custodial sentence. (Morris, 2013; Edwards 2012)

There have been diversion projects that have been utilized in attempts to divert people. Turning Point in West Midlands are involved in it. Various authorities have been clear to say this is in addition to everything else. It is pre-sentence, post-conviction usually, after which a report from the meeting is sent back to a judge or a sentence. It may be considered in sentencing. So, there is absolute clarity that there is no guarantee of reduced sentencing alternatives (M1).

A woman who had been stabbed by her partner multiple times wanted a RJ model to work for her. She believed it would help her transcend the harmful experience and move on. But she was rejected by everyone, until an organization called 'Why Me?' made it happen for her. Her response was thus: "Why Me? were the first people I spoke to who did not judge me [for wanting to meet my partner]. I needed to do this for me. I have moved from being a victim to a victor." (V3) Similar results were obtained by another woman who had been raped by a man she later persisted on meeting to ask the question, "Why Me?" thus initiating a dialogue and coming out of the situation more powerful (Why Me, April, 2017). Another example was given of a person whose mother was murdered ten years ago, and she opted for Restorative Justice conference to help heal the psycho-emotional wounds. She came out of the conference saying the experience had benefited her (Why Me, March, 2017).

Most remarkable experience for two respondents to the study was when they were meeting the three boys who killed their son (V1, V2). They reported that one of the boys in court when he was found guilty, shouted at his own father that he was innocent and had done nothing wrong. 11 years later while they (V1, V2) were sitting in a room with him, and after a four-hour

RJ meeting, he turned to them and disclosed that he was a 15 year old coward who murdered their son all those years ago and that he was truly sorry. “For the first time! If it wasn't for Restorative Justice, we wouldn’t have got the truth.” (V1, V2) Months later, they met the other boy who was a co-defendant in the same case. They stated that he came in the room extremely distressed and embraced them firmly. He was reported to have been very emotional and was regretting what he had done. The third co-defendant in the same case, each of whom it took the parents two years to go through the three meetings with, apologized for what he had done. They believe they would never have obtained this satisfaction and remorse from the defendants from solely being in court. “RJ did that for us. It got us the truth. We kind of feel that it gave us back our lives. Yeah, it won't bring our son back, but we have been able to move on with our lives. It got us answers to our questions.” (V1, V2)

Above respondents additionally reported going to Grendon Prison, talking to the men there and telling them their story. They described that a young resident there said he would like to meet his victim, and that he genuinely wanted to do this almost immediately after their talk on RJ. But in that case the victim was not very much inclined initially but eventually went from ‘I won’t forgive him’ to ‘I really want to help him.’ (V2)

Conversely, respondents related that not all their experiences with RJ have been positive or ideal. One of the victim’s families and current proponents of RJ reported having received a phone call from the Restorative Justice Council (RJC) asking them to go to Dover. The victim was very upset by the facilitator. They drove down to Dover, met her in the hotel, bought her a meal and tried to placate her. In that particular instance, there were supposed to have been three RJ facilitators, but somehow there was only one. It was surmised that the facilitator may have been biased in favour of the offender. They had naturally as it were, upset the victim

whose son had been murdered by the offender in question. And the victim wanted the RJ process to be shut down immediately. The aforementioned respondents went on behalf on the RJC and apologized to her. "We know you've been apologised to, but we're apologizing again. I don't think we can do it for you." (V1) As a result, she later felt more confident and eventually asked for a RJ meeting with two more facilitators involved the second time. She met the offender in Rochester Prison and was satisfied with the process.

So even when it does not end well initially, there is a possibility that with the right support, a RJ conference can be revived. "And people like us can help with that, help other victims understand because we've been there. We've had it done wrong for us. Mistakes are made by human beings and we are not perfect. But it does demand that the facilitators be non-biased on both sides there. It's very important." (V2)

The support Thomas (*name has been changed for privacy*) received from the parents of the man he killed was life-changing for him. As a result of them wanting the best for him Jacob took a degree in Criminology and has worked with The Forgiveness Project's RESTORE programme as a facilitator. (P8)

Mike (*name has been changed for privacy*) met the man who savagely beat him years after the attack. It again was life-changing for Mike. The Forgiveness Project filmed the meeting. Mike sadly died in 2017. (P9)

Sean (*name has been changed for privacy*), a prolific offender, had his life changed forever the day he met one of his victims. His is one of the first cases of RJ in the UK. (P10)

Another example of RJ being used in a serious crime was for a rape case. (A3) The offence had happened 20 years ago. The perpetrator was not caught for 14 years. He was then caught on

DNA evidence on a cold case review. He was at that time incarcerated on another case on DNA evidence. So, he was argued to be, almost certainly, a serial rapist. 7 years ago, RJ facilitators received a phone call from a woman saying she wanted to meet her offender. However, efforts of these facilitators were reported to have been minimised by probation and prison service as being too risky. Eventually after all the preparation, a RJ conference was conducted between them. 20 years after the offence, 7 years after the initial consultation, the victim informed she had never slept in her bedroom. She slept fully clothed on the couch in the living room. After the RJ meeting, she finally went back to the bedroom. For 20 years she reported to have never slept with the lights off. Since that conference, she stated she slept with the lights off 5 times. And she texted the RJ facilitators saying she had lost 30 pounds in weight. It took the facilitators months of preparation, but the meeting itself took only about an hour and a half. (A3) As of 2019, the 'victim' is herself in her third year of criminology degree and states she is desperate to change the world involving all those questions.

There was a young woman who was imprisoned for having killed a friend of her family. She was preparing to come back out into the small community they were a part of, and she was highly motivated to meeting the victim's family before coming out. The victim's family were motivated in a similar way. They wanted to meet the woman before her release so that it may let them move forward and have a plan for what happens next. Therefore, a RJ process was facilitated between them. This helped with a sort of communication if not reconciliation between the two parties. It was perfectly placed to be able to provide the way forward for those people. (M6)

A real-life example was cited by a Lead Practitioner and RJ Trainer about his colleague who is a forensic psychologist who had never done RJ, but actually has been working with sex

offenders for 20 years. SOTP has now been completely discredited. The same forensic psychologist now advocates the compulsory use of RJ for sex offenders, where they listen to their victim telling them how they have been affected. An offender was quoted to have come up to the psychologist saying it was more difficult than the Sex Offender Treatment Program. They believe it was because he was challenged about his behaviour in a way no one but his victim could initiate. It makes it personal to them rather than a neutral or third person outlook on their behaviour. (P1)

Fear of Empowerment

It has been reported by RJ Trainers for youth offending services that suggestions around training prisoners to do RJ work is gratefully received by prisoners, but the system does not like the level of empowerment there. So, there appears to be a belief that if there are prisoners who can manage conflict, then that undermines or can create a lack of confidence in the staff as they feel they do not know what is happening or they cannot control ensuing outcomes. Training is consequently contained to prisoners and prison officers together. And some of that relationship building has been remarkable. However, institutionally, the organization does not know where this fits in because it is an alien concept. At a policy level, the lack of evidence holds this process back immensely. In the sector itself, because of its very nature, there is a competition between trainers and a lack of understanding by academics, about the general narrative needed to instigate the systems to change. All these factors are making it challenging for governments to put more resources into this. There are high levels of violence within the prison system and there is no compelling enough argument for change as a sector. Thus, a recommended change may be that a much better narrative is vital.

It was suggested by practitioners that judiciary and magistrates are hesitant about embedding RJ as part of the CJ process as magistrates may feel threatened by it. There is a perception that it takes away work, that they perhaps should be dealing with it in court. It was recommended there be encouraged a change in attitude of the judiciary towards RJ as otherwise there will be easily missed opportunities for RJ. If done skilfully with the informed consent of all parties, RJ in serious cases should be encouraged.

Growth in Prison Population

Sentences have become longer since about 1992 after the Bulger Killings. There is a consensus the political parties and the liberal thinkers that imprisonment should be used less and not overused. However, since 1992 and onwards, there has been a steady increase in the political rhetoric saying serious and persistent offenders should get longer prison sentences. (Ministry of Justice, 2019) There has also been an increase in the use of discretionary rights of the courts, which means the courts can give increased sentences. It has been accompanied by toughening of sentencing guidelines and statutory changes. These changes are made by politicians through Parliament which have mandated compulsory sentence points for certain types of murder. (Beard, 2019) For instance, if murder with a shotgun gets a sentence of 30 years, then that means a violent rape is around two-thirds of that. This implies that what was previously a 10-year sentence goes up to a 20-year sentence, because in court terms, they have a tariff under which all the sentences hang together. So that has the effect of increasing sentences across the whole range and to some extent because judges have failed as well under pressure from the media complaining about lenient judges. That attacks the public belief in the law as being an effective system for bringing justice. In attempts to ensure there is more validity they

make the sentences tougher. Therefore, someone who would receive a seven-year sentence for armed robbery in 1969 would possibly end up with a twenty-year sentence now, for essentially the same offence. For offences such as shooting a taxi driver during a robbery, the guilty received ten years but today it could be safely assumed to be double that time frame. They would likely receive a thirty-year recommendation, as a twenty years' half sentence is ten and they could be out in five years. Those are some intriguing illustrations of the changes noticeable in punishment in the UK over the last few decades.

"I was a Prison Governor in the UK for 29 years. In 1996, the Home Secretary introduced savage staffing cuts, which enabled me to take early retirement. The prison population was 48,000 at the time and escalated to 87,000 by 2012, falling to 83,175 in September 2019. On retirement I trained as a Mediator and Restorative Justice Facilitator and Trainer and realised that the restorative approach was the key to reducing the prison population by teaching restorative skills to parents and children and teachers in schools and police and prison staff in the criminal justice system." (M2) The restorative approach enables those in conflict to resolve problems by learning to treat others with respect and empathy and to settle conflicts to mutual satisfaction rather than adopting or being subjected to an authoritarian, disrespectful approach which can foster humiliation, rage and a determination to harm in self-defence or retaliation. On one occasion, while talking to a challenging prisoner doing a long sentence for a serious crime, with a history of being moved from one segregation unit to another because of intolerable behaviour he said to above respondent, "It probably all started in the school playground, when I was wearing an Oxfam jersey." This left a lasting impression on the respondent. While prison population could be vastly reduced by RJ practices, within and outside prisons, as described above, there will continue to be a need for some people to be kept in secure conditions for the safety of the wider community. Due to the growth in the

prison population and the reduction in officer staff, conditions are not conducive at present to developing restorative practice sufficiently within prisons to make a significant difference.

Prison as a Deterrent

Prison is also seen as a refuge for some people who use it as a means to an end, or if they believe they have nothing to lose. In such situations, survival becomes a bigger attraction than deterrence. Regarding the concept of deterrence, it has been suggested that prisons will not deter those who do not feel they have a choice. Prison will only deter people who feel they have choices in their lives and who will not put those choices at risk; people who have something to lose or those who have a moral compass that inhibits them from offending behaviour. There is a distinction between punishment and retribution. The State has very few options in terms of punishment. It is mostly through imprisonment, the removal of freedom, and the removal of choice. If a Community Sentence is defined as punishment, there is usually a consequence for not fulfilling it, which is the withdrawal of liberty.

Practitioners of RJ stated that many young people they see have a sense of hopelessness. They do not have jobs. They are not building lives. They are not saving to buy a house. They cannot get a council house. They are homeless if they leave their mother's front room. Such people are less afraid than others to commit crime to get quick rewards or some money in their pockets. Judging those young people on the expectations of other young people who have gone through school, who have parents who are supporting them through college, such people will not be going to prison unless they make a reckless mistake. Prisons will deter them. However, it will not deter the young people who do not feel part of that process. They are the people who need the most help from external agencies and sources. Prisons ends up deterring

the wrong people who do not need a deterrent. This group of people are seen as prison fodder who have got no other option. “I've worked on the same local estates, I have lived on them! And I brought up my own children! My son’s 34 now, but when he was 16, 17, 18, it was hard. It was hard, because young men particularly have to have a sense of purpose. They have to have a sense of status. They have to have all those things that growing up and going through a maturation stage gives them. They have to have a good role model. Dad or otherwise. They're absent from our communities. Even uncles are absent you know what I mean.” (P2) For a generational group of young men prison is simply present as a natural step. Prison is seen as one of the perils of the job. They believe they have no other choices or prospects in life and prison is not a deterrent for them. If prisons were a deterrent, then American prisons would be empty. They have sentences of 70 plus years, without parole for 15 years. It is like a death sentence with a long waiting time. And there are thousands more in the USA compared to the UK. However, that is still not deterring people. “They’re queuing up at the door because their lives outside are not valued and not worth anything and they take risks. And then of course, there'll be people with psychological issues.” (P2) Such people are being put in a prison complex whereas they should be in hospital being looked after. They should ideally be supported by mental health agencies and not be put in a place where their situation gets worse. Therefore, imprisonment does not work. It is not a deterrent. “It is a deterrent to me and you, we're not a danger to public anyway. As Foucault says in Discipline and Punish, prisons put in perspective, are for the wrong people for the wrong purposes for the wrong reasons. But that's the political science of it yet.” (P2)

It has been argued that in terms of deciding whether Utilitarian or Deterrent approach should be prioritised, the current march of human rights has done many good things. But it has undermined potentially some of the deterrent effects that some punitive sanctions have. There

needs to be a consequence to harm. It was claimed by many respondents that the moment society reaches a stage where there is no consequence to harm, there will be anarchy. Further understanding is required about what is trying to be achieved by having prisons or any other form of punishment. Currently, prison is merely the means to deal with people who are difficult to deal with. Those who truly need to be imprisoned for their own and other people's wellbeing because they cannot be safely supervised in the community are a much smaller group compared to all those who are actually imprisoned. Therefore, the rest of these individuals are imprisoned ineffectively. Prisons are used as a means to incapacitate a much larger number of people than is required or needed. Yet it is still considered a good idea to have prisons, only if clarity is obtained around it. If prisons were extremely unpleasant, regressing to Victorian prisons, which were relatively horrendous places, that would have been more motivation not to offend. One of the complications is the people that deterrence did not work on would now be in a horrible state. Since people are not clear on what they want prisons to achieve, they end up falling into an exceedingly difficult place. There remains a similar problem with all punitive sanctions. They need to be clear what it is for, clear when they are going to use it and not be unafraid to use it when they need to. It is harrowing on those people, but it is also achieving a greater good than on the individual. And that is the tension with any punitive sanction.

Probation and RJ

It was noted that with different foci, there emerged different points of view. Within Youth Offending Teams, RJ is a starting point, whereas in Probation, that is not the case. Rather, it is something to avoid. Additionally, in order to have a higher proportion of practitioners in the

UK, it has to be demonstrated through sound case studies, that RJ can work for the benefit of those directly involved as well as the wider prison community, even if this carries with it the danger of institutionalisation.

Probation staff interviewed stated it is vital to look at why people breach their order repeatedly. "It's like if I don't turn up to work repeatedly, you'd find out why. You wouldn't just go I will sack her then! You find out why to see if there's anything that could be done to support the person and see if any changes need to be made." (C2) That is not achieved enough, and the adult justice system is even stricter. A sizeable portion of people are recalled to prison because they cannot meet their license conditions. The reasons are not explored to a satisfactory extent.

Some positive news has been reported that Offender Managers and Supervisors are being supportive and helping the prisoners make more informed decisions. Secondly, they can gain IEP levels (Incentives and Earned Privileges) through maintaining low static risk or enrolling in new programmes such as Kaizen or Horizon after SOTP (Sex Offender Treatment Programme) was abolished (Inside Time, December 2017; Inside Time, August 2018).

Remorse and Forgiveness

Care has to be taken, however, in the apology aspect of RJ. Extensive measures should be adopted to evaluate the sincerity of the apology. There is a danger of the victim believing an insincere apology and the offence being repeated, as seen in instances of domestic violence (Griffing et al. 2002: 313).

RJ has been reported to affect both parties in a way that they are not prepared for. The experience of the victim allows them to become focussed on the issues faced by people who

regularly offend. Their social status, addiction and relational problems all play a part in that. The perpetrator witnesses, for probably the first time, the real impact and effect that their offending has on someone who is real and in front of them. These events are usually very sobering and if done correctly could have a much wider impact.

Remorse has always been a mitigating factor in criminal justice sentencing and a mitigating factor in relation to retributive punishment. If somebody agrees to do RJ, they often are saying that they are remorseful; this is not necessarily always the case, but they may be. If they do feel contrite, it means that if the RJ is coming about because of the offender's remorse, then in England and Wales, it should be taken as mitigating.

Another important thing about restorative justice is when there is talk about the Process and the Outcome. In a sense in restorative justice, the process is part of the outcome. In other words, in criminal justice, there is a trial which in some cases is to determine guilt in the first place. Whereas restorative justice starts with an admission of some sort at least. Numerous criminal trials start with a plea of guilty and the court proceedings simply decide what the sentences is. But in the restorative case, the actual process is part of what happens to both the victim and the offender. And it is one part of the consequence in addition to whatever they agree to do after the restorative session, including a reparative option.

RJ can contribute to reducing the emphasis on retribution as RJ can provide information to sentencers if it is done pre-sentence. That information may encourage sentencers to adopt a rehabilitative view or a reparative view which will reduce the emphasis on retribution, but not directly.

Getting people more involved in community-based projects, giving them a sense of ownership and belonging within the community can assist with their transition from incarceration. In

prisons, a lot of the prison population do not feel they belong in the community or their ties familial or community ties are soon broken after being incarcerated. Having a sense of belonging can provide a sense of responsibility which assists with reducing recidivism.

"Certainly, from a lot of my conversations in custody with prisoners, especially the younger lads, they say they're quite happy to be going back in prison, because they've got nothing outside. They've got no proper home, they've got no sense of belonging. They've got no sense of purpose. In prison they've got 3 meals a day. They've got a family around them in terms of other prisoners. And they've got a sense of belonging. And they've got a purpose because they've got workshops and what not to go to." (M4)

Retributivist Traits in Humanity

Other studies on intuition and retribution argue that human beings intuitively have certain retributivist traits. It is purported to meet a need in the human psyche to see the offender suffer. This is where retributive justice has a role to play in the human psyche and social sensibility of human beings as seen from the perspective of justice. This can be further explained through the Fair Play theory, Moral Communication theory, and Intuitive Desert theory (Moss, 2013). So even though theoretically they would choose to adopt a utilitarian approach, it ends up being their first impulse, or their first reaction that prevails and shapes their lateral thinking and latter judgment. The more serious the crime the more they are led towards retribution intuitively. Consciously and intellectually, they cannot seem to explain it but that is what they end up doing. In certain rape cases, victims were reported to have stated that they actually felt good about their offenders being in prison as they walked out into freedom post RJ Conferences. Even so, victims of rape who participated in restorative justice

meetings stated it was beneficial for them as they got what they wanted out of it, even though in a particular DV case the offender was not outright apologetic. The victim (female partner) was reported to have come out of the meeting saying she was able to 'put him in his place.' (A8) So it was evidenced that even in an RJ process, there can exist some retributivist traits that are antithetical to the premise of RJ.

Conversely, if the offender has been punished, but ultimately has not been able to repair the harm, then the best defender will be left with the guilt. The worst offender will be unaware as to why they should feel guilty. Punishment does not resolve that. While discussing punishment with victims, they believe that punishment of the offender will make them feel better and yet it never does. Even in examples of people being executed in various countries, even when the victim has pushed for that execution, it never makes them feel better. It is argued that a justice system that does not in reality make people feel better or give people the chance to make things better should be disintegrated. "That does not make any sense because that is not what we are. We have been sold the lie, that punishment is required for justice to be done. And as I say, it may well be that but the people who are deciding what is right and what is fair and what is just are the wrong people to decide it. The only people that can truly decide justice are the people that have been harmed." (M6)

Some practitioners and academics stated that initially they would have been in favour of a completely utilitarian approach to justice as the only purpose of preventing future harm and future offending. However, they informed that they are now convinced, partly through some RJ studies but much more through talking to victims that there is a natural desire for retribution in us which if completely ignored or repressed, will backfire. It was reported that most victims in these interviews, in the long run what they want is for the offender not to do it again. But

along with it, they also want it to lead to some sense of punishment that would be negated if a punitive response to crime is abolished.

Penality and Moral Theory

Utilitarian, Consequentialist or Instrumentalist theories justify a deterrent, means to an end approach in utilising punishment for supposed benefits in the future. This justification outweighs the suffering inflicted via punishment. These are also called Reductivist theories as they are centred around the reduction of crime. The explicit objective of moral legal theories is to create similarly legitimizing frameworks as they prioritise the state retribution and sentencing (Hart, 1968; Morris & Tonry, 1990). Due to this, moral theories are considered crucial while setting standards for justifying the practice of punishment (Duff & Garland, 1994). Legal practitioners and criminal justice representatives also frequently use aims and values derived from moral theories of punishment to defend their actions and rationalise their decisions. "However, though a link between (moral) theory and practice may well be present, it is not as evident and straightforward as one might expect or wish." (de Keijser, J. W., van der Leeden & Jackson, 2002: 318)

Part of the respondents, probation officers, ex and current governors of HMPPS (*counties anonymised*) believed that society needs to see that there are consequences to actions and that it was part of social cohesion. People need to feel that they are safe if something violent has happened. It is a common sentiment that punishment follows wrongdoing. But very often prison is not the right punishment. On the other hand, the way Nelson Mandela used imprisonment when he came into power in South Africa by getting the parties involved while

he was in prison, RJ was widely used to bring the whole society together, for people to gain an understanding of each other. (Davis, 2015)

"I think part of the problem is probation is very much displaced from the private charged companies and the National Probation Service. Probation is very much risk focused. And the people managing the process find it a bit too much of a risk to manage the RJ process. And a lot of them believe in separation rather than bringing people together. It's almost like if you keep people apart, the risk isn't there! So I do think there is potential but I don't think it is maximised." (C5)

Although the future of democratic legitimacy is considered to be 'unfinished', there is some reason in seeing optimism in what already exists. For example, it is noted that human rights play an increased role which is believed to provide at least basic safeguards for the individual against the state's coercive infringements. They also put required limits on the scale and reach of penal power (Loader and Sparks, 2012). Subsequently, there is an underlining need to develop a human rights ethos in policing and penal institutions. This ethos may either be public or private. It may also be an appropriate place to highlight the changes that have occurred within criminal justice institutions, by way of the police operating under forms of routine, sceptical scrutiny that to an extent, make them more watchful due to their legitimate authority being of a conditional nature. This was quite unheard of in the prime of policing 'by consent' during the mid-twentieth century (Loader and Sparks, 2012).

Ideas put forward in Public Criminology are of significant value in a manner that paves the way towards alternatives to the current punitive penal unanimity embodied by neoliberal penality in recent times. The three basic pillars of public criminology as described above are focussing

on human rights, prioritising democratic legitimacy over state legitimacy and shifting the focus from a crime-oriented politics towards one centred around encouraging social justice.

However, there are a number of issues with this approach thereby implying that it may not be easy achieving these ideals and thus delivering genuine alternatives to current policies. First, this methodology tends to focus on improving existing institutions. The problem with this approach is that there is an underlying belief that it is possible to revive and re-invent police and penal institutions so that they become dynamic agents of unbiased ordering. It is assumed that these institutions would be able to bring about a rejuvenated social democratic politics of order, or that it is possible that existing institutions are able to produce a truly human rights-based ethos. This optimism may end up being misplaced or temporarily true as it is unlikely that citizenry would be able to force this change upon penal institutions (Bell, 2014: 494). This may be due to the public monitoring boards lacking power, finding it difficult to access sensitive police records and also those charged with the responsibility of monitoring the police being too close to or dependant on the police, thereby lacking unbiased attitudes towards supervising (Savage, 2013). It is highly possible then, that this form of public criminology renders itself so powerless, as in the case of left realism, that it is co-opted by the same institutions that it intends to hold answerable. Another commonality between Loader and Sparks' version of public criminology and left realism is pointed out wherein both limit their aspirations to gaining formal equality in a system that is guaranteed not to deliver it substantively using criminal law (Bell, 2014).

Due to these reasons, it may prove difficult to put public criminology into practice. As long as the organisations that are intended to watch over penal bodies lack actual power, there would not be legitimacy of impartiality. This in turn would affect the legitimacy of reflexivity due to

their dependence on the same bodies they are meant to supervise. They might only do this out of a sense of formality towards human rights and basic democratic values. Consequently, the legitimacy of proximity will also be weakened as the gap between citizens and the institutions representing them widens. It may, therefore, not be in the public's best interest to focus on improving existing institutions. The 'unfinished' nature of the legitimacy project proposed by Loader and Sparks may be somewhat problematic as there is a risk of these alternatives being defined into existing institutional approaches.

A flexible system is required which includes incarceration. Some people need to be locked up for at least a period of time whilst they pose a danger to others, for their own protection and as importantly, to give those they offend against a break from falling victim to their criminal conduct. That said, it is what is then done to them whilst locked up that counts. A combination of restorative processes, rehabilitation, education and development of empathy for their victims will be worth the investment over time.

In order to formulate a wider understanding of what public criminology is or at least should be idealistically, it has been contended by critical sociologists that it needs to create stronger bonds with sociology rather than try to distinguish itself from it as a niche discipline. Via a revitalisation of sociology and a deeper integration of sociological concepts within itself, public criminology can aim to become truly public and widen its horizon from being solely a part of academic debate. It needs to reach beyond university curricula and conferences and have direct interaction with the public and outside world for a better understanding or reshaping of societal values (Burawoy, 2005). Including students and public in a debate on how sociology affects their lives, day to day experiences and personal identity is paramount to the development of a true public sociology. Having their critique over contemporary social and

penal policies and coming together in collection action to effect social change can aid with this (Clawson et al., 2007). There are a few aspects here though, that need further careful consideration. It is argued that public sociological can be more successful if it comes from below and not as a top-down trickling of information and need for change. With a strategy aimed towards acting for social change and accepting that sociology in itself is rooted in movements that operate outside the state's authority, sociology has the potential of helping create a globalised civil society. It is argued that this can be facilitated by the production of theoretical knowledge and alternatives on current social issues, disseminating and discussing these with different groups, communities and stakeholders as opposed to institutional funding bodies, coming up with solutions, values and policies together with the public thus promoting new ideas, practices and ultimately social change (Burawoy, 2005). Those opposing this view argue that public sociology contains a lot of academic assumptions and unfounded patronising assertions. Added on is the fact that criminology has little to no effect on public policy on criminal justice, unless it is on matters that are important to the current government in power, and it happens to match its values and ideation on strengthening contemporary legal policies (Currie, 2007). By moving the debate straight to the source of communities and groups affected by crime and policing, public criminology can grow out of the domain of reformist intellectualism and have a greater impact on effecting longer lasting social change (Loader and Sparks, 2010). Instances of social situations that can make criminology more public are examining discrepancies between growing rates of incarceration and reoffending, carrying out a cost benefit analysis of custodial punishment, looking at crimes of the elite and powerful such as corporate corruption or environmental mass level destruction (Ruggiero, 2012).

There is an internally derived mechanism in criminology that seeks to step away from its parent disciplines of classical sociology and social theory in order to showcase a scientific uniqueness and analytical independence. However, this makes its efforts to become 'public criminology' antithetical and quite impossible. Social theory as pertaining to conflict, collective class action and movements is subject to social change being subjective and fluid. Criminology attempts to divorce itself from such subjective principles in order to be viewed as more technical and objective. However, this simplifies it into a mechanism of debate for resolving immediate concerns and contingencies (Ruggiero, 2012). Rather than dealing with and pertaining to what is important in the longer term in terms of conflict and allocation of resources, it limits itself to what is urgent in terms of contemporary political grievances.

RJ in England and Abroad

In a study comparing youth restorative practices in England, Sweden, Italy and Chile, it was discovered that these countries had different objectives focussed on the past or present. England seems to oversee RJ with more punitive objectives as a starting point. For instance, making an offender understand the impact of their offences, and their ensuing admission of guilt or remorse is seen as a positive outcome of the VOM. Practitioners in England and Chile tended to focus on the past, having the offender make amends and express remorse for their actions and for the victim to feel more secure after their past traumatic experiences. On the other hand, practitioners in Sweden and Italy were more oriented to the future goals of VOM, including better communication, assisting both the offender as well as the victim take responsibility for their past actions, present lives and future well-being (Reyes-Quilodran *et al*. 2019).

One of the objectives of RJ is the prevention of future crime. Interestingly, reduction in recidivism has not been measured on a single scale throughout the UK or even in other countries in Europe. The ways in which recidivism is calculated is different in different countries. Recidivism cannot be guessed with absolute certainty as the time frame for measuring it in is not formalised.

A decisive factor with measuring recidivism is time. The length of time passing before an offender commits another crime is of importance in defining rates of recidivism where RJ processes are involved. Furthermore, recidivism can be interpreted differently. Is a time lapse of one year without offending behaviour sufficient for RJ or a VOM process to be regarded as successful? Or is it longer, five or ten years? Countries like Sweden consider measuring success of VOM difficult because there is no formal evaluation of each phase of RJ due to confidentiality issues. It is recommended to have exhaustive and more inclusive factors to measure the benefits of RJ. It is considered to be of limited dimensionality if the focus is solely on recidivism as it looks only at the offender and not at possible re-victimisation of people (Reyes-Quilodran *et al.*, 2019).

Notably, RJ practitioners in Italy involve the families of the victim and offender in their VOM, whereas in Sweden individual privacy is a priority with families being present offered as an option on the side. In Sweden individual interaction between the victim and the offender is the main concern.

RJ Practitioners in England and Chile tend to focus on the importance of considering psychosocial factors such as financial hardship, vulnerability, within the family unit that can contribute to youth delinquency. This can result in a longer chain of offending behaviour and

recidivism if left unmonitored during the juvenile stage. As a result, it is recommended that restorative practices are made use of more intensively as part of youth justice proceedings.

The Italian initiative of restorative encounters between victims and perpetrators of political violence has been another motivational example of successful RJ. The way it was carried out, and the results it produced have been encouraging for RJ facilitators elsewhere in the UK and Europe. (Regalia, 2015)

Further significance needs to be laid on the role of intersection between RJ programmes and other service systems both in custody and community. In countries like Chile and Italy, the role of family is far-reaching, therefore the entire family unit is incorporated within RJ programmes and VOMs whereas the opposite is observed in countries like Sweden and the UK where family plays a discretionary role at best. For social workers as well, restorative practices can have far-reaching effects if the model is stretched from victim-offender to including further members of extended family or members of the community who were affected by the crime as secondary or tertiary victims. Under such circumstances, wider crimes like human rights violations or white-collar crimes, restorative justice has the potential to create a more understanding community and compassionate society at large. Studies suggest that outgroup empathy is a contributing factor to outgroup trust which garners intergroup contact and intergroup forgiveness (Cehajic, Brown, & Castano, 2008; Noor, Brown, & Prentice, 2008). Forgiveness is shown to be two dimensional, with the positive dimension being benevolence, and the negative dimension of forgiveness being avoidance or resentment. The positive dimension engages both cognitive and emotional components of forgiveness whereas the negative dimension, avoidance or resentment is seen to utilise only the emotional components of forgiveness (Regalia *et al.,* 2015). On this note, as evidenced from forgiveness literature, the

cognitive aspect of empathy, i.e. perspective taking, becomes part of forgiveness only when the reflective and not the emotional dimension of forgiveness is brought into effect (Welton, Hill, & Seybold, 2008). Dialogue helps build an initial semblance of trust that further encourages an opportunity for forgiveness to occur. This provides the starting point for a relational reconstruction. The notion of justice can be defined as the strategies chosen and employed by people to resolve conflicts in society. Transgressions, wrongdoings and social conflicts, otherwise termed as crime can be healed through open communication. Open dialogue has also been shown to lessen resentment among victims and their families (Regalia *et al*., 2015).

RJ in Northern Ireland

In Northern Ireland, Restorative Justice is the main method of alternate dispute resolution for youth crime. The Youth Justice System in Northern Ireland diverts young offenders from the prison pathway into doing restorative justice in a way that can be considered almost mandatory. This has resulted in bringing down the population in youth offender institutions or youth prisons by more than 80% (Shapland, *et al.,* 2017).

In Northern Ireland within the youth justice system RJ has contributed to a reduction in the use of custody for young people. It does that through encouraging judges not to give custodial orders because the victim has been fully satisfied. In that system, the judge in the court will receive a report of the restorative conference. And normally the victim will be satisfied by steps taken to repair the harm and will not be looking for any further punishment. This gives sentencers the courage to not send people to prison. For juveniles in Northern Ireland there

are more restorative processes pre-sentencing, as a diversion in court. There is also post sentencing RJ there even though the majority is pre-sentencing.

Furthermore, there are several ways that it also benefits prisoners in Norther Ireland. One is in terms of day-to-day living within prisons. There is frequent conflict, harmful behaviour and violence in prisons. Rather than being reported, disciplined and losing prison privileges, prisoners can agree to a restorative process which aims to address the harm they have caused in a restorative way. And in this way, they learn how to deal with conflict in a non-violent manner. This also benefits, though only in fewer cases, when victims outside of the prisons ask to meet them to resolve issues. And this can be beneficial for prisoners because they have an opportunity to apologize and quite often be given the opportunity to be forgiven by the person that they have harmed. It acts as a major motivation to stay out of trouble when they return to the community.

RJ in Scotland

Experts on Scottish CJS reported that the biggest problem with the use of Restorative Justice in Scotland is that it is hardly used. Their main criticism is it is rarely used and is essentially only operating as alternative to prosecution in 3 of the 32 local authorities. And even there the numbers of cases that it is dealing with are relatively low (roughly within the range of less than 200 cases per year in 2 services). There are thousands of cases that are coming through the system and in those areas, there is a lot more scope to use them there and certainly much greater scope to use them in other parts of the country. The biggest parts of the country which have the largest amounts of crime like Edinburgh, Glasgow and Dundee do not have fully operating RJ services that are functioning at any kind of scale. They are basically dealing with

relatively minor crime. It ought to be stuff that is considered serious enough to go to court, but suitable for diversion to RJ intervention. But it is essentially only really dealing with relatively minor crime. Consequently, some of the greatest benefits of restorative justice are lost because RJ has greater benefits for more serious crime, both in terms of an impact on chances of person re-offending, but also in terms of victims of crime that the greater the harm, the greater the potential benefits of restorative justice. One of the common reasons why victims of crime do not want to use RJ as an alternative to prosecution is because they do not believe it is necessary because they were not that harmed by the event, or they have moved on from it, or they may have even forgotten about it. Therefore, it does not have as much benefit and as much uptake potentially for victims of crime because of that lack of seriousness of the offence.

In Scotland, it is reported that there are hardly any referrals or cases that involve Restorative Justice. Far fewer requests are made by victims or their families as well as offenders to include Restorative Justice in post-crime proceedings. The researcher of current thesis was advised by practitioners and academics specialising in the Scottish criminological scene, to completely exclude Scotland from the research. Reason provided was that there will be hardly any new data or information that will be considered worth investigating in the field of Restorative Justice for Scotland solely. However, this piece of information in itself is deemed vital to the research and thus, responses from interviews and data based on Scotland was included in this thesis.

Serious Crime: Murder / Sexual Abuse / Domestic Violence / Hate Crime

"People harmed by the murder of someone close have told me that it helped them to come to terms with what happened by meeting the people who did this and getting answers to their questions. They have told me that they also met the people concerned because they did not want them to go on and reoffend, creating more victims so they befriended them and encouraged them to sort themselves out. There are many stories around from people who have been involved in RJ in serious cases who have benefitted from this approach. This is a difficult area where it may not be appropriate for people to meet. This can only be assessed on a case-by-case basis by experienced practitioners." (P11)

A murder victim's family's perspective on using RJ with serious crime was thus, "As a victim of crime, there is no way we would have advocated meeting our offenders if we felt that they were getting time off for this because we wanted Justice and it is right that we had Justice. But we were very interested in the fact that they shouldn't just go to prison and not learn anything from this and then come out and maybe do it again. We were very interested in them listening to us for the first time. Our voice was never heard in the court system. So it was important and so it can't be and will never be for us an alternative at all. It can't be. There must be Justice." (V1, V2)

In cases of child sexual abuse, the victims/survivors have reportedly benefitted from the use of restorative practice (Lewis, 2015). It was reported that most victims of childhood sexual abuse by members of their close or distant family do not wish to make a formal complaint to the authorities. The rest who are abused by unrelated offenders often express continued humiliation, fear and feeling demeaned during a trial and the course of justice. In such cases, restorative practice gives centre stage to victims and provides offenders with an opportunity

to express and discuss genuine remorse and possible reparation. Sexual abuse carries with it a serious risk of re-traumatisation as it is based on shaming, secrecy, abuse of power, control, and a distortion of reality. Consequently, the IIRP (International Institute for Restorative Practices) trains psychotherapists and advocacy officers in restorative justice for serious and complex cases. They are facilitated to work in pairs for every case and are provided with regular supervision of their work. Between 2012 and 2015, the IIRP facilitated 12 such cases and following findings were established.

- More regular supervision is a must for facilitators as they run the risk of getting secondary trauma themselves while dealing with such complex cases.
- Careful selection of participants is essential as not all volunteers may be the right candidates for a restorative session between them.
- Supervisors themselves should undergo psychotherapy before being involved in these practices.
- Preparation is key, to get background work done thoroughly. In some cases this took up to 2 years before a restorative meeting was conducted between stakeholders.

The IIRP maintain that teen courts, youth aid panels or reparative boards are more akin to community justice processes and are not to be interpreted as purely restorative justice protocols. Similar to restorative justice in criminal justice, examples are cited of FGDM (Family Group Decision-Making) or FGC (Family Group Conferencing) in social work. It clarifies that it views Restorative Justice as being a subset of Restorative Practices whose objectives are the following:

- Reduction in crime, bullying and overall violence.
- Improving human behaviour and strengthening society.

- Restoring relationships by repairing harm and making co-operation possible.
- Providing effective leadership.

Using the conference script, offenders are asked these restorative questions:

(a) "What happened?" (b) "What were you thinking about at the time?" (c) "What have you thought about since the incident?" (d) "Who do you think has been affected by your actions?" (e) "How have they been affected?"

Victims are asked these restorative questions:

(a) "What was your reaction at the time of the incident?" (b) "How do you feel about what happened?" (c) "What has been the hardest thing for you?" (d) "How did your family and friends react when they heard about the incident?" (Wachtel, 2012)

Utilising restorative justice measures has been shown to be insightful and helpful with victims of hate crimes in UK's multicultural context. Involving members of the society in restorative justice processes helps ameliorate the tension between the perpetrators and the society after they are released, as compared to using penal methods where society re-inflicts a second sentence on them after they are released through blocking them out and shunning them, which leaves the perpetrator without any means to rehabilitate into society, even if he is truly repentant and gives an honest try at living peaceably and conscientiously. RJ also helps reduce the fear element present among families and friends of victims a long time after the perpetrator has served his sentence and is out of jail and into the community (Walters, 2014).

The RJC (Restorative Justice Council) reported to have Quality Marks and Guidance documents for trainers, service providers, and practitioners. There it sets out guidance on how a restorative justice process should be run. It also suggests some additional ideas that should be considered

for cases labelled complex and sensitive. This implies the higher the risk deemed; the more dynamic Risk Assessment processes are to be initiated throughout the process. RJC recommends working with support organizations. In instances of sexual assault, other women's organizations can be involved, where restorative justice practitioners work with clinical psychologists to provide specific supervision and expert advice. It is an acknowledgement that a single organisation may not have all the expertise and answers. And collaborating with specialist organizations can better meet the needs of the people involved.

Adding to the qualms about utilising RJ measures with serious crimes, Barbara Hudson produced results from research conducted on whether an abolitionist perspective is appropriate in cases of crimes committed against women, children and other citizens of ethnic minorities. In 1980s, it was assumed that "abolitionism was a vision without a strategy" *and* "informal justice was a practice without a theory." (Hudson, 1998: 238)

"I did have a case of a murder earlier. And the offender was really, really sorry for what he'd done and I was finding it impossible to get access to the mother of the person murdered, and it was a great shame that we weren't able to, because the offender was so remorseful and so keen to apologize. We were never able to trace her or any of the family either which I find very hard. Sometimes, I'm accused of being over diligent in my effort. It was a London case. And the judge had said, 'Nobody will ever know why this evil deed was done.' Well, we knew. He told us, very freely why it had happened. It was because of a gang thing and it was either he thought he was going to be killed or they were, and he shot not knowing there was somebody hiding under the blankets then, so that was a complete accident but in a very difficult situation." (M8)

A woman who is currently working with West Midlands was attacked by her partner in a car park and was stabbed by him. In her assessment, the criminal justice process was appalling all the way through. She reported as living in fear and dismay of the justice system and she heard about RJ by accident. The tale of trying to access it and trying to overcome barriers is astonishing, as she stated that people did not support her. They decided for her that they did not think it was appropriate. They said that it was 'completely inappropriate and disgusting.' She eventually found an RJ organisation (anonymised) one night and went through a restorative process. Thereafter she said she moved from being a 'victim to a victor', and that it was the one thing that changed her life. She has now helped in the recruitment to take part in the program for officers. It is these personal stories of people's lives being changed that drive practitioners to work within this field. The impact makes them think that it is worthwhile and needs to be prized. (M9)

"I am doing research at the moment and have spoken to victims of serious violent rape, victims of abuse by priests, a mother whose daughter was killed by a drunk driver, and all of them have benefited greatly from meeting the perpetrator. So I'm convinced that even the most serious offences can be a great benefit to the victim and for the perpetrator if the preparation of the facilitation is done in a very skilful and professional way." (A7)

A 2017 study led in London assessing surveys by 66 victims, 44 offenders, 11 victim interviews as well as a focus group of 7 victims and RJ practitioners provided the following main results. 85% of the victims interviewed had never been offered restorative justice, or a chance to directly or even indirectly communicate with their offender/s. When the other 15% were asked at what stage of the criminal justice process they were offered RJ, 50% stated it was during probation and 17% was post release of the offender. This offer was made to them mostly by

probation (50%), Victim Support (17%), a community, charity or voluntary organisation (17%) and 17% of the victims had to initiate RJ themselves. Comparing this statistic to offenders, only 12% had been offered RJ, with 50% of the offers being made in prison, 25% before trial and 25% post release. Uptake of RJ among victims was evenly split with 57% agreeing to go ahead with it. Reasons given for going ahead with RJ by victims interviewed were to bring closure (60%), to vocalise their opinion and state the impact of the offender's actions (40%), to ask questions of the offender (40%) and other miscellaneous reasons (40%) such as 'being passionate about RJ'. Similar questions were asked of the offenders with 80% going ahead with it and only 20% declining the odder of RJ. Reasons provided by them were to give victims a chance to ask questions (75%), to provide their own explanation and reasons for their actions (50%), demonstrate their proactive attitude towards recidivism (50%) as well as to simply apologise and offer compensation (50%) (Gavrielides, 2016). An overwhelming 71% of the victims preferred in person victim-offender mediation with the rest choosing letter writing, telephones, emails or Family Group Conferencing.

Two main points of feedback were established with this research. Firstly, that a lot more victims were offered RJ and the number of offenders offered the possibility of RJ was restricted. Another not so surprising result was that RJ was only ever offered to these offenders after they were imprisoned and not at any stage pre-custody. This stands in direct opposition to the new law that permits, even encourages RJ being offered pre-sentencing and also allocates provision of RJ resources to London Probation and CRCs (previously Community Rehabilitation Company, now re-nationalised into a Unified Probation Service). According to the fieldwork, that research suggested that the most important outcome was the realisation that both victims and offenders lacked a voice and an individual contribution in the criminal justice process. They felt they were outsiders and were not given a personalised treatment as they did not feel

heard. They were unable to voice their concerns in a manner that made them feel whole again after the offence, so there was even less of a chance of reconciliation as is possible with RJ processes. They felt disempowered due to a lack of reasoning behind why the crime was committed or the conditions it occurred in. With RJ, this demand and innate need for being listened to should ideally be satisfied as individuals feel they are not mere numbers or a cog in the wheel of the justice system. "In short, any restorative justice service falling into the trap of replicating the impersonal treatment of users by justice officials, would end up becoming yet another 'sausage machine' with which victims and offenders will unlikely engage." (Gavrielides, 2016: 272) Another noteworthy conclusion from that research was that the victims wanted restorative justice more in serious crime cases. The more complex the crime was the higher the demand for restorative justice was by the victims interviewed. Reasons stated were for a difference to be made by their actions not only in their own lives but also in the offenders' future.

RJ policy in the UK is not encouraged with crimes of rape or domestic violence. The Ministry of Justice has stated: "RJ should not be targeted at domestic violence offenders, and only in exceptional circumstances sexual offenders." (NOMS Commissioning Intentions 2013-14: 35). However, RJ is often sought by survivors of rape, domestic violence and sexual abuse. The Forgiveness Project cites examples where it has worked in cases of serial rapists and their victims coming to terms through an ideal of restorative forgiveness and victim empowerment. (Cantacuzino, 2015)

One of the respondents to the study, who has been a RJ Trainer and Lead Practitioner since 2013 informed that he worked on a historic sexual assault case in August 2018 whereby the victim was sexually assaulted by his father over 30 years ago. The incident was only reported

in 2014 and the offender sentenced in 2016. The victim initially thought knowing the offender was imprisoned would help him move forward. However, he wanted an opportunity to ask questions and speak for his younger self. He approached the service and went through the RJ process after various meetings and risk assessments. The victim following the conference said RJ was something that should have been available in the UK a long time ago. All the sleepless nights he had could have been avoided had he done this process earlier. He felt empowered by the process and was able to move on with his life. The offender following the meeting took steps to engage in various work with his Probation officer and other services to support his rehabilitation. (A9)

A second serious case example was given that had a positive outcome for an offender post completion of RJ conferences with his victim. It was a GBH case he had worked on in 2015. In 2018, he found out the offender is one year away from completing his criminology degree. This was a promise he made to the victim whom he seriously injured with a crowbar. The victim wanted to see some change from him which he had since accomplished. Since the offender has been out, he has been working and was hopeful of completing his degree in 2019. (A10)

While it is tempting to think of RJ as a solution to helping victims of sexual assault on the campus or at work, practitioners must have adequate training and experiences in both RJ and in how to respond to sexual assault for it work. While in some cases RJ may promise healing for the deep wounds of sexual misconduct and rape, since it can offer a voice, support, responsibility, and empowerment, there does not seem to be adequate research to show how far this can work.

In a serious sexual offence instance, the victim might come out of a RJ conference having told their story feeling actually listened to, heard and glad to have got it off their chest. If the

offender had just been drinking earlier during that offence, they have now been given the ammunition and the motivation to carry out their next offence. Because if their motivation is to hurt, impose themselves and control, they have just heard from their very victim that that is exactly what happened. Therefore, practitioners need to be exceptionally skilled and have a very high degree of confidence that the offender is in the right place to say what they are going to say. Furthermore, there is a risk that the offenders will probably say exactly what the victims want to hear. Within a domestic violence situation, the fear is that because much of the relationship that the facilitators are witnessing between the victims and offenders is hidden, they can say all the right things but actually nothing is going to change. Facilitators might simply be enforcing the power and control, the imbalance that already exists.

"Because it is all of those little looks, it is the little glances. Those people are in a very strong relationship, the dynamics of which cannot be fully understood in that room. Are they saying what is desirable to hear? Why is the victim saying that? Is she trying to say that to please the offender because she wants everything to be better to go back home with him? Is he getting her to say how he has harmed her so then he has got more information with which to manipulate her?" (P12)

All of those things are happening in the room, even though what one hears as a facilitator sounds perfectly logical. Hence much guidance has dictated for years not to involve these areas. There are now people with a lot of experience in restorative justice who are starting to look into these matters more clearly and using RJ more guardedly in these areas. It is a highly specialist piece of work and one needs to be exceptionally skilled to do the preparation. It is about the timing and most of RJ pre-conference time is always taken up in preparation. The more complex the case the more preparation is required. The meetings are always about an

hour, but it is how many dozens of hours or meetings one would need to have somebody to be convinced that their motivations are pure for going into this. And that could be said from both the victim's and the offender's perspective.

The examples evidenced above of historic sexual assault are decent case studies that demonstrate the importance of RJ in more serious cases. There is understandable reluctance toward using RJ in DV cases due to manipulation amongst many other reasons. However, there is still a possibility that the process could work with such cases.

In certain serious cases where it is deemed inappropriate to have a meeting with the offender, other forms of RJ can be considered, such as Shuttle Messaging. This was reported by a respondent to have been hugely impactful in a positive way for the victim, who spoke about finally getting closure and receiving 'the best news ever' when the offender took responsibility and understood consent. (M10) There are numerous variables and external influences at work in this sphere. One common theme in relation to violence or power offences such as robbery, is that the victims upon meeting their offender report the offender being smaller than their recollection, with reduced fear and anxiety. Most face-to-face meetings result in victims showing care for the rehabilitation and welfare of the offender and proactively shaking hands and sometimes hugging the offender. This may be due to the fact that they empathise with the lives of the offenders. There is empowerment, reduced fear of being targeted, reassurance in humanising the offender, offenders feeling empathy and awareness of the impact of their actions.

So regardless of the categories, the position taken by RJ organisations in the UK is that there is no crime that cannot have a restorative process. What therefore has to happen is the trainers have to look at all of the risk and then make sure the victim is ready because the victim is the

Primary Person of Interest. In cases of robbery the victim may not have had any mental health issues before the incident but is now afraid to go out. Suddenly the facilitator is dealing with someone with no preconditions around mental health but has now governmental health issues. In their experience and not excusing the crime in any way, most offenders are victims in themselves. They cannot even understand the process because they have got cognition issues. There will be additional empathetic issues. They have never seen, or ever had to be asked a question around how it feels to be somebody else. The simplest crime, therefore, which is still horrendous, becomes complex. Therefore, there appears to be a problem around appropriately defining 'Complex and Sensitive' cases. It needs redefining without there being a single definition. Instead, it has been advised to have informed guidance around issues like 'Elder Abuse,' or 'Adolescent Violence in the Home,' which is actually the biggest domestic violence in the UK currently, because young people stay at home longer. Readiness of people to do it is merely a factor in a long line of elements to consider. This risk assessment may be likened to running the conference before running the conference.

RJ: Risk-Averse or Risk-Aware?

Depending on which county or borough the offence is committed in, victim's wishes are brought forward and then further assessed for vulnerability. If a victim of rape or the family of a victim of death by dangerous driving come forward and express their wish to meet the offenders, this is then escalated for a serious assessment process looking for risk of re-victimisation and suitability for both victim and offender in terms of the effectiveness and authenticity of a mutual dialogue between the two sides. As part of the assessment process with these more serious tariff cases, the office of the PCC must be very careful about the victim

in terms of assessing where the victim is coming from in requesting RJ, but equally extreme care has to be taken regarding the offender and their motivations for wanting to engage in RJ. This normally comes down to involving the Probation service in carrying out an assessment of the offender whether they are suitable for RJ in terms of their maturity and reasonings, whether that is genuine, "or whether they are playing games, because we inevitably, when we get into these sorts of realms of offending, you know, we're talking about people where there may be complex or mental health issues and other factors at play." (C1)

The assessments for suitability of having an RJ process need to be very thorough. Otherwise, the RJ process can easily go wrong and that can be even more detrimental to victims in terms of its impact than even the original offence. If the process is not managed effectively, they can almost be re-victimised. The higher the tariff, the more complex and thorough the assessment must be, for both the offender as well as the victim's suitability for doing an RJ process. In the words of the PCC, "there are some tricky individuals in the system. As you go to higher tariff issues, our risk appetite will get lower and lower and lower. We are not going to find ourselves in a position where we have a high-risk appetite in these kinds of areas." (C6) An example was provided where the mother of someone who was murdered in prison wanted contact with the other inmate who had committed the offence and was very keen to have that contact. But after a consultation with the Probation services about the situation and the particular individual, the advice was that the perpetrator was not suitable for an RJ intervention due to their complex personality issues. He was willing to engage but the Probation service's risk assessment was that he was not suitable. And therefore, the RJ process did not go ahead. RJ in the UK has been used in a way that is more risk-averse rather than risk-aware. Every risk is seen as an event to avoid, rather than an occurrence to mitigate against.

RJ within Prison Settings

Preparing for a RJ conference or even a shuttle mediation is likened to peeling off the layers of an onion. So once practitioners start to go deeper with prisoners to move them forward, practitioners have to be skilled enough to allow that person to go through the motions, at a pace that is going to still allow them to survive in prison. As prisons are very regimented environments, that individual is likely to get into more fights and trouble when they start the process, because they are now emotionally in a different place. They tend to become a lot more withdrawn and vulnerable, a psychological state that does not sit well with incarceration. In addition, there is no set regulation in place that says these are the key things to consider.

Ex-Governor of a UK prison whose staff members used to run RJ programmes (M8) stated they have been a proponent and practitioner of RJ in their latter career. They have seen it used for inter-inmate and offender-staff conflict as well as for specific crimes such as robbery and burglary. The victim is able to, in some cases, get better satisfaction at the result rather than that person just going to prison. Said respondent reported sitting in some of the RJ programmes in prison and described that many of these programmes have a basis in faith principles and values.

The prisoners and staff are in an enforced community, neither of whom are there willingly in some respects. And in order to live and survive together RJ is perfectly placed to mediate how they live together and deal with harmful people. It is considered by many to be a perfect tool that encourages community cohesion. A few respondents said similar practices can and should be introduced in children's homes that is another area of similarly aligned conflicting relationships.

The Sycamore Trust in the UK visits prisons and they bring victims of crimes in to speak to a group. That is one of the main things they do. It can prompt prisoners to introspect, and quite often after that course, they ask to do RJ. It is quite a powerful way of stimulating that kind of interest. Sycamore Tree is not about a specific victim and perpetrator interaction, but it is largely about perpetrators getting to understand the impact of their actions against the victims in a faith-based system. It is an intensive five to eight week programme that brings in groups of victims into prison to meet unrelated offenders. The feedback received from people who have been through the Sycamore Tree programme has been exceptionally positive. This was corroborated by respondents in this research as well. Gloucester Prison also had direct victim-perpetrator RJ programmes before it was closed down in 2013.

It was suggested that the UK should be closing prisons not building more. The dilemma is that RJ cannot flourish in a system that builds prisons to house more prisoners that should not be in that system. That is not the right place for them to get treatment, support, guidance or even punishment in a productive way. RJ does not fit within our current Criminal Justice System. It is at odds with the punitive element of imprisonment. "I think we're choosing not to, because it's big business. All our jobs would be gone wouldn't they? If we could get it right and then we never will get it right. But we're on 86,000 prisoners, number has reduced itself these past couple weeks. I'm an advocate that we can, even under our current processes. We can reduce that prison number by a quarter. We can release 20,000 prisoners in the next three to six months, and nobody would even notice. Prison was not meant to house a hundred thousand prisoners in a country of 56 million people. I'm not advocating for the death penalty, but that's what it was originally for. It was for housing people who were waiting to go to the guillotine – that's why prisons were called 'Gallows'." (P2)

Significance of Early Education

Developing a wider curriculum in education in general, providing more technical schools, colleges & apprenticeships that would give opportunities for young people to develop practical skills rather than the narrow academic routes currently available would help. This would allow more youngsters to follow routes to skill sets that would help them to take ownership of their own futures earlier. Leaving youngsters struggling with a narrow writing based academic curriculum has been deemed to be counter-productive and a waste of talent. A wider set of opportunities would give them access to career paths that many may not currently be able to access before they get into trouble.

A vast number of youngsters in the UK are on 'NEET' status (Not in Education or Training). More attention in schools would be beneficial at an earlier stage in understanding why so many youngsters struggle in education rather than excluding them from school to avoid having low results counted in their overall exam results to climb GCSE league tables (Morgan-Bentley et al., 2018).

Trauma-Informed Practice

The notion of 'Trauma Informed Practice' is being brought forward in the criminal justice and the media. It is a way of stating that the definition of victim is a bit loose in cases of serious crime. Even those who commit serious and violent crime are traumatised by their actions. It is exploring multiple victims of a single crime and an offence causing not just one victim. There is an acknowledgment that there are multiple victims in criminal behaviours. The perpetrators themselves can be a victim as they mature. The offending act was committed when they were

younger, but as they develop and grow, they realize what they have done. In time, reflection and healing may naturally enable the trauma to transform into guilt. There was a need cited to acknowledge varying levels of victims. Secondary victims may be on both sides of the incidence of an offence. The perpetrator's family may be fully innocent of their family member's crimes but are equally traumatised as the victim's family. "They lost their son. Their son went off the rails. The wife left them. The mother was always crying. They're the people who are hurting day by day." (P2) It is difficult for people to have empathy for those they do not know. Therefore, it was recommended that there be restorative justice programmes and programmes around forgiveness aimed at the families of perpetrators. If the offender is made to realise the impact their crime has had on their own family, then this empathy may also flow out to the victim and his family's suffering. People recognise the impacts of their offending on their own families before they recognise it on anybody else. And that is why it was recommended that restorative justice programmes also support the perpetrator's families through this process. They can assist their loved ones to then realise the impact their actions have had on others. Hurt people hurt people. If people are in a healthy frame of mind and they feel supported, they would not offend.

Many people have emotional causes of crime that are not always related to poverty and lack of money. They are sometimes related to emotional hurt and trauma. Unless people's emotional hurt and trauma are truly addressed, part of their response is to match it with aggressive behaviour and viewpoints, or with drug and alcohol issues, which then leads to other problems. Punishment is akin to doing harm to people who have done harm to other people to show them that doing harm to people is wrong. On this note, punishment seen from a Draconian aspect to serve a preventive function for offending behaviour in society. There was a mixed response to this notion among the respondents. Most saw the need for

punishment as a deterrent but with a view that prison makes individuals worse off in the end as it is broken and a flawed system. It was advised by RJ proponents that many prisoners should be released, but with a truly robust RJ offer, physical hard work offer through communities inter alia, or mental health treatment programs and alcohol or substance misuse programs; and in cases of domestic violence, to look at the emotional causes of crime.

Types of RJ Practitioners

The issue is not having few practitioners, as they can be outsourced as a human resource. A more serious danger is about sustainability. In voluntary or private sector organizations, the model is dependent on funding. So, there is an aspect of scaling up practitioners in a sustainable way. And this is why training is essential in the system presently. It has to be that way for long-term sustainable change to occur.

Therefore, returning to a circular argument, one of the problems is not only about supply of the numbers of practitioners. It is also about the supply of cases. The other element is around the training of practitioners and also developing a method. Practice has outstripped Guidance and Policy and some of the academic research that says this works in these ways, but practitioners keep on doing it. They need to be supported in doing it well. And those are the two balances around the Practitioner situation. It is also cogent to have diversity in practitioners. There are certain situations where gender, sexuality, place of origin, cultural background inter alia might make a practitioner the wrong person to do the conference. RJ conference is not just this pure thing that simply exists. It needs to be cognizant of all these other issues. So not enough practitioners might be a problem, a bigger issue is not having enough trained practitioners that offer diversity. For instance, schools are primarily employing

female teachers, but there is a need for male role models as well. "My school's in an environment where the male role model was so rare in the home, or the role model that was there in the home was not the one we might have wanted for them to see, that it became really important for us to employ the right sort of men as opposed to just a man. And I didn't want some macho idiot replicating the behavior that a male was doing at home. I needed somebody who could be seen as being, who could model a behavior that made the young people think - Oh, so you don't have to be like him. You can be like him!'" (P6) That type of modelling is significant in restorative practices.

The main driver for increased involvement of RJ practitioners in the CJS would be to make it a regular part of the system. There is a whole question about who does it. There can be full-time practitioners of restorative justice, or there can be a probation officer or a police officer who will have Restorative training. They might get the quality mark and a short training. But they will only do it as part of their secondary or tertiary duties, as most of the time they are being a police or probation officer, but every now and then they will do a Restorative case. The problem with that is partly they may find it difficult to shake off their previous training and to adopt a Restorative angle rather than a police or probation one. And the other is just a question of time. If their main job is something else then they will only do a Restorative case when they have time for it. All the other victims and offenders will thus not have the benefit of it. So it was advised to either have full-time practitioners or trained volunteers practising RJ. And it has been shown that volunteers can do it quite capably provided they have proper setup with steady training, supervision and feedback.

However, having many RJ practitioners as volunteers contributes to a cottage industry mentality. Volunteering implies an easy ability to opt-in and opt-out. This hinders having a level of practice coherent with the Professional Standards.

Youth Offending and Youth Justice

One of the unintentional side effects of having RJ placed in the youth justice system is the aspect of '*Widening the Net*.' RJ can be seen as another form of penalty in youth justice if those particular types of cases were previously processed as simply being told off for that behaviour, but it now can attract criminal sanction (C4, C8).

In Youth Offending Teams, RJ is utilised post sentence, as part of the Youth Rehabilitation Order. These youth offenders are not incarcerated. They are placed on Community Orders. In the community, probation takes over decision making over such events. In order to be truly rehabilitative, an opportunity to explore RJ is important but it should not be enforced as this would be incongruous with its ethos.

Majority of it is operated by the Police via their Referral Panel System and Referral Orders with the youth justice in order to avoid the necessity of prosecution or punishment. The exception is within the youth justice system, minor offenders can be sent to a Referral Panel, which is not fully restorative, as victims rarely attend it. They will be asked to account for their offending and then they will be given some sort of Reparation or Rehabilitation activity to follow. Followed this way, it is seen by offenders and victims as more a punishment than a restorative process.

RJ Practitioners in UK's Youth Justice System (P7, A4) reported having two major striking experiences which happen regularly:

1) When young people say they have changed their attitude to whatever has brought them into an RJ situation and taken ownership of their lives, to rise above issues they have. It is wonderful to hear about them settling into a job and making plans for a positive future. This is especially rewarding when they are triumphing over structural issues which include, poverty, educational disadvantage and family issues.

2) It is remarkable being struck by the high numbers of youngsters who have educational issues and who have been failed by UK's education system from their earliest days in school. This needs to change urgently.

UK's education system defines 'success' through written academic work in school even in practical subjects like Art, Food Technology and Drama. This fails to take account of children and young people who have any language, communication, information processing and writing difficulties. Thus, for many of them school is a challenge, and they feel like failures because they struggle in these areas of learning. They are often banned from mainstream schools or not allowed to take exams because this will adversely affect school results for League Table purposes. (P7)

There is not enough emphasis on contacting victims and passing their views on to offenders in Youth Justice if they do not want to be personally involved. "Justice on the cheap doesn't do it as well as it could be done!" (M4)

As many of the participants in Youth Justice are severely affected by structural inequalities & live chaotic lives, this can make it difficult for them to participate in RJ. It may also cause

problems with fulfilling agreements reached between offenders & victims. This is taken account of in practice. However, more should be done to assist in these situations. It is often down to individuals to decide whether help in these situations or not & this varies from area to area.

"There was a mistrust of the Youth Justice Board as it was felt that its staff really did not understand victim work and therefore, they should not be imposing this without having the relevant knowledge and information needed to do the work." (Evans, 2006: 287) Concerns also arose about the mental and emotional health and well-being of these officers and volunteers who were taking the stress and turmoil of the victims upon themselves in different ways and it was affecting their private, personal and professional lives, hence it was recommended that their work be offloaded by a degree to more trained professionals or trained professionals who have been through similar circumstances in their own lives so that they and the victims can identify with each other on a deeper and more authentic level.

Quite often, in terms of Youth Justice, RJ is used to stop young people in their tracks. First time offenders are referred for RJ, because then the young person can understand what they have done, when they hear the victim explain the consequence to their action. "I've seen young men crying when they've understood what they've done or when their parent who's been with them has said, do you know how I feel how upset it made me that you've done this? I think it's really good to use it for young people. And if they don't do RJ they often will just get a Police Caution. Well, that means nothing to them. It could be a little badge, I got Police Caution ha! Whereas facing the victim is really hard and as a prisoner would say, 'It was the hardest thing I had to do.'" (M7)

Chapter V

Summary

This chapter set off with the identification of informants. These were coded and anonymised, with a table of the code provided at the end thereby strictly adhering to the agreed rules on anonymity and confidentiality. This chapter then evolved into a discussion of the findings. In addition, it explored the various challenges faced and criticisms encountered relating to the questions asked and the topic itself by authors, academics and other respondents to the research.

This study adds to existing literature by exploring the nuances in objectives and foci of RJ practices in the UK. It offers insight and strategies to promote RJ in the UK exploring if these programmes are abolitionist in their theory or practice.

It has been one of the findings that RJ is still in its initial stages of conceptualisation and implementation. It was suggested that RJ has yet to move forward from its pilot stage for it to gain traction and more of a standing in the mainstream criminal justice system in the UK.

The ways in which Restorative Justice function within the ambits of the criminal justice system of Scotland has been perceived to be vastly different to that of England and Wales which is also considered widely dissimilar to Northern Ireland's criminal justice system's working with Restorative Justice.

It was stressed upon by respondents that the Scandinavian model is better than the US model of prisons. Exploring what is working around the world and mirroring that was advised. What works is defined by evidence. And evidence for policy making and governmental measures is

an objective summation of numbers. These numbers are success rates of alternatives to custody. And success in RJ measures is subjective as is previously described. Therefore, there is a catch 22 loop of RJ not being introduced in hard policy because its success cannot seem to be measured in hard numbers, only stories personal to victims, offenders and their families.

Policies are also directed by the kind of government in power. It was suggested by respondents in the UK that the more conservative a government is, the more punitive and tough on crime its approach to offending will be. Conservative governments want to be seen as being tough on the causes of crime and therefore take a penal, anti-abolitionist approach. These risk-averse policies such as Michael Howard's Prison Works (1996) indicate that government does not have an appetite to go down the road of liberal principles around alternatives to custody and reducing numbers of offenders being imprisoned.

Chapter VI

Criticisms and Weaknesses

Introduction

Chapter VI investigates the failings and vulnerabilities of RJ as it is practised in the UK. It provides a list of weaknesses inherent within the topic and research. Thereafter, responses regarding the concept of Abolitionist philosophy are discussed. This chapter also contains an exploratory analysis of the relationship of Abolitionism to Restorative Justice.

Weaknesses in Research

There are at least three weaknesses of this research. Firstly, numerous examples of RJ cases are set forth as anecdotal evidence as informed by direct respondents to the research. They are first-hand evidence of their own work but the researcher herself has not been able to corroborate these by speaking to the original victims or offenders. One of the reasons is that some of those cases are historic. Also, Risk and Ethics Committee did not give the researcher permission to interview direct offenders serving prison sentences or ex-offenders in the community, but only practitioners of RJ, academics and experts in the field.

Second weakness of this study is that as many of the participants of the study are retired police officers, ex-governors of HMPPS, current civil servants, expert witnesses, and academics affiliated to widely known organisations, they were happy to indulge the researcher with their enlightening wisdom, however, they wished to be anonymised so their workplaces may not be

recognised through their responses. Hence, in various places, there are direct quotes by them and their practice of RJ, but they would be anonymised as per their confidentiality agreement.

Third weakness in this study is that by the time the data was collected and analysed, the research took a slightly different turn more towards explaining the way RJ works, its strengths, challenges and criticisms rather than its underlying philosophies and how abolitionist they were. This has been noted. This was compounded by the fact that in most of the primary data, the respondents and participants did not have much to say about Abolitionism or Abolitionist tendencies within their practice. Some of them were highly opposed to the idea of it and even refused to answer questions related to it.

Failings and Vulnerabilities of RJ

RJ comes with its issues and challenges. It is disputed whether or not it has a truly rehabilitative effect or if it is simply a utopian idealization of the way things should be dealt with after a deviant occurrence in society. Also, in cases of sexual abuse or rape, for instance, it is contested whether victim involvement in the proceedings is healthy for the victim or if it exacerbates the harm caused (Helfgott, 2010). Disadvantages of having RJ as it currently stands in the justice system were mentioned as being multi-faceted. RJ is resource-heavy and intensive. There is a staffing shortage in prisons. Agencies are not being cleared to go work in prisons.

Admission of Guilt: Innocence as a Risk Factor

Prisoners maintaining their innocence have expressed thoughts of helplessness and hopelessness, stating that they have no chance of progress or risk-reduction if they do not

claim guilt for their alleged crimes. There is no further discussion for their cases. A person serving a life or indeterminate sentence can be released only if the parole board deem them fit to leave. The key criterion for their freedom is the parole board's belief in the sufficient reduction in risk of recidivism. In order to calculate this reduction, the prisoner should have at least expressed empathy towards the victims or showed some insight into the motivation behind the offence. In addition, they should have successfully completed a range of offending behaviour programmes, most of which require discussing the alleged offence (Dean Kingham, Parole Board Lead for the Association of Prison Lawyers). Therefore, the Catch-22 situation lies in getting the prisoner to admit to the crime eto have their risk reduced. Failure to do so can be interpreted as denial or minimisation and an assumption of continued guilt on the side of the prisoner.

This situation has been deemed to be unfair on those pleading not guilty. The Prison Service have mentioned other areas of improvement that can facilitate their belief in reduction of risk. Examples of said areas are maintaining strong familial ties and working towards gaining employment on release. However, even these are not readily available to all prisoners. For instance, they may unintentionally lose touch with family as a direct consequence of serving many years in prison. There are other factors such as mental or physical disability that can add to the negating process. Furthermore, there is not much clarity regarding how much weight is accorded to these factors in the Parole Board's final decision. And therefore, maintaining innocence in itself is seen as a risk factor.

Aspect of Net Widening

RJ in its functioning and working, is not a reductionist but an expansionist philosophy. By adding 'less serious' offences under its realm, it assists in spreading the net, increasing surveillance over actions and crimes, and not limiting it. The idealism of RJ comes into question due to this unwanted side effect of widening the net of an already punitive and expanding criminal justice system in the UK.

From a principle and a normative viewpoint, RJ should not be used simply for petty crimes with financial reparation, as that runs a risk of net widening. While instead for serious crimes with psychological and emotional dimensions, RJ can work on these profound dimensions, facilitating an encounter between people involved in this destructive conflict. It is paradoxical, almost antithetical that RJ is used instead much more for petty situations in the UK.

Thames Valley Partnership also works on offender-initiated RJ referrals from the Thames Valley Prisons for all crimes bar DV and sexual cases. There are expansion plans in place where they will be working on the CRC (Community Rehabilitation Company) RJ cases where a large number of offenders have RJ specified in their RAR (Rehabilitation Activity Requirement) as part of a Community Order. These are quite different as the offender is really being told or firmly recommended to do RJ but has not asked for it themselves. And so they may not be as motivated, or motivated for the right reasons, as the rest of their offenders who choose to take up RJ.

There is an imminent risk of net widening where it is used in cases of minor crime which until previously would not have attracted a formal sanction.

Community Involvement

One danger surrounding part of the definition of Restorative Justice is the concept of community involvement. What if the community involved ends up doing more harm than good? Does involving the common public produce a blurring of the lines between civil and criminal law? What is the correct definition of "community"? A bigger question leading on from there is how does RJ go around the cultural, ethnicity or traditional divide in any given society? What if the victim and offender belong to opposite ends of the spectrum in terms of their race or class? What if the victim belongs to the white, upper middle-class background, and the offender to a working class, socioeconomically disadvantaged ethnic minority, Black, Hispanic or Asian background? Who has the weaker voice then, the victim or the offender?

In the case of Lavinia Woodward, an Oxford graduate who had a history of domestic violence, she stabbed her partner. And the judge did not sentence her stating she was "extraordinarily able", and he did not want to destroy her future career. She was training to be a doctor (Morgan, 2018). This is in the context of the discussion about disproportionality. It would be practically impossible for a judge to pronounce a similar sentence to a young black boy in the UK who had committed the same offence. Examining an Abolition of the system, it is important to consider what it will be replaced with. Since the present system is inherently disproportionate and essentially needs to generate that disproportionality to keep people in place.

In Nils Christie's Conflicts as Property (1977), from a sociological perspective it is imperative to understand how restorative justice is being framed. What are we trying to create? What goes in the place of an abolished penal system? There is a health model. It would be much more suited to understanding conflict as a health, or violence as a public health issue that we need

to respond to, and will that generate more resources in that? It is important to analyse systems, systems thinking and emergent behaviour (Young & Young, 1992; Mamayek *et al.*, 2015). The intersectionality between poverty and crime is where the issue is seen to lie. But no well-known cases exist of RJ being practised with white collar crimes or environmental crimes.

Unless practice follows policy and policy is much clearer about redress and settlement, one system will merely replace another set of inherited biases without being much more specific and explicit about what needs to change in the system. RJ as it functions currently in the UK, is incapable of completely replacing the CJS model because it lacks the maturity yet to be able to be a viable alternative to what presently exists.

Fragmented Practice

There is a diverse number of programmes and schemes being commissioned by different authorities and being run by different providers. It is difficult to gain any meaningful understanding of the national picture. Practice is fragmented and quality varies significantly. Some programmes are genuinely innovative and invest a significant amount of resource into doing restorative justice well. Others tend to use a one-size fits all approach, with outcomes often being pre-packaged, thus making the process largely inconsequential. Ultimately, for RJ to become well developed and established in the criminal justice system, it needs to be placed on a legislative platform and it is suggested that it be made mandatory (at least for some cases). This is the position in Northern Ireland where conferencing is now used to dispose of the vast majority of cases involving juvenile offenders.

Disappointment is expressed by some respondents that a 'watered down' version of Restorative Justice is measured as if 'fully restorative' to meet the agenda of the CJS. Restorative Justice has become a mixture of both punishment and its alternative over the last few years, in particular with relation to its use within the Criminal Justice System (CJS). Ex Vice Chair of the Restorative Justice Council (RJC) and founder Chair of the RJC Standards and Accreditation Board (SAB), wrote in a letter to the then RJC Chair in April 2014, before resigning from the RJC Board soon after, frustrated at the direction things were being taken, "I and a growing number of other individuals and organisations in the field of restorative justice are becoming increasingly worried about the extent to which the Ministry of Justice are directing and manipulating the restorative justice field through its effective annexation of the RJC. The resultant lack of impartiality, neutrality and proper representation is bringing a previously well-respected organisation and charity into disrepute and conflict with its own membership." (P3)

Institutionalisation

Trying to integrate it (RJ) into a system with a highly institutionalised rationale (CJS) will create a hybrid between the two. That may mean Conferencing is accomplished, but the practitioners will be under pressure to do it quickly. Those will be some of the priorities which emerge because of integrating restorative justice into an existing system.

Some of the findings from this research include that the manner in which Restorative Justice is being used in the United Kingdom is leaning more towards institutionalisation rather than a standalone, alternative to custody. Restorative Justice methods are at risk of becoming institutionalised, becoming part of the system for better or for worse. However, to begin with,

it is not being considered to be a serious enough intervention with serious enough cases which lends itself to be seen as a soft touch or soft on crime.

British CJS is more involved in damage control and risk aversion rather than proactive management. It often acts like a revolving door. People are leaving the prison sector without having been rehabilitated in any way. They have still got no skills and no coping powers to deal with life. Consequently, quite quickly, they are back in prison again because they become institutionalised.

Research suggests that after a while the restorative processes can be influenced negatively by the prevailing values and practices of criminal justice. Statistically, a lot of restorative processes do not have a victim present. An example of this would be where victims are given less priority than offenders. This could be seen in some practitioners not making the same effort to engage and invite victims to a restorative process as they would with offenders. And so, there is often a very low level of victim participation. Other examples have been in England where researchers find that when a young person was asked after a restorative process to do certain activities to repair the damage to the victim but also to undertake rehabilitation programs, that the workers tended to favour the rehabilitation programs over the reparation. Quite often the young person ended up not doing the reparation that was expected of them but doing the rehabilitation program. So there appears to be a bias within the criminal justice system towards the offender and towards rehabilitation over the needs of the victim for reparation (Chapman, 2012).

Lack of Awareness: Insufficiently Ordered

There is not enough information for victims about RJ processes available to them. People are scared to tell a victim. The disadvantage may be that due to fewer people knowing about it and others knowing only parts of it, they do not always understand what it means. And that can be a major disadvantage for some people. A potential reason is the fact that a lot of information gets disclosed, that maybe people do not always want disclosed, possibly for offenders. This fear of information disclosure is experienced on both sides. Offenders may also believe that if they consent to meet their victim, other aspects of their lives will be disclosed. It is believed that the people looking into it or facilitating RJ could find out information about them that they might wish to remain hidden. It depends on how much they want restorative processes and how much they need to change their inter-relationships while in prison.

Code of Practice for Victims of Crime (Victims' Code 2015) came into force on 10 December 2013. It contains tenets relating to RJ stating that it should be offered at all times irrespective of what stage of the criminal justice process the offender and victim are at. It further clarifies that it should also be made accessible across all ranges of crimes, where available and appropriate. One of the primary objectives of the aptly named Victims' Code is to raise awareness about RJ among victims of crime. There is an emphasis laid on its voluntary nature and that all feasible measures will be implemented in order to ensure that the victims are kept safe during any ensuing RJ process. The Code goes on to detail that it is in the victims' rights to be informed about RJ by the police (Code of Practice for Victims of Crime, 2015).

One of the key disadvantages is that it is not offered enough. It is part of the Victims Code of Practice, that all victims should be offered RJ. Both victim and the offender may not want to

participate and that is fine. That is what it means by being voluntary, but there is deep lack of awareness among the public about it (Shapland, et al., 2017).

RJ is dependent on stages. At pre-court stage, the PCC claimed they worked a lot with police and supported many diversionary policing approaches which are RJ based, Out of Court Disposals for example. (C1) They support the police in developing a strategy around Out of Court Disposals and by and large, that area of practice is working with proportionate success. However, it can be improved. It is often police officers themselves who are delivering Restorative interventions, by talking to victims and offenders, to resolve issues before they ever get to court. So that part of the system is seen to be working reasonably well. But as one goes into the post court settings, then in both probation and prison service, while some staff have been trained, that training is alleged to be outdated and as part of a Ministry of Justice initiative. And since then, the focus has been pulled away from RJ. Not surprisingly, referrals are not coming through because of this situation, resource-wise in public services presently.

Common criticisms of restorative justice are that it is unclear how it helps to reduce reoffending, particularly because it is often not well connected to other aspects of standard practice for addressing human behavior. So that is for instance what happens in the criminal justice Social Worker Program. That is where practitioners work to identify the needs that a person has that are related to their offending behaviour and undertake work with that person to help them address those needs. And usually that level of support is not available or connected through a RJ process, not at least in Scotland. This also partly connects to the idea that often these are cases involving minor crime. In many instances, the people who have committed the offence do not have a history or pattern of offending behaviour. Facilitators would be dealing with a one-off offence. There is not a lot of work necessary to address the

issues underlying their offending behaviour. Therefore, it does not have a meaningful and lasting impact on crime essentially or address a range of needs for an individual around offending behaviour. The potential of restorative justice is undermined in a way because it is not tried with serious crimes or repeat offenders.

Lack of Research and Statistics

Further criticisms include modest research and statistics backing up the claims of RJ being a truly rehabilitative and all-round beneficial approach, that it looks and sounds good in theory, but in practice it does not amount to much objective gain to the victim or community (Daly, 2002). This may be counter-claimed by the fact that there are not enough systems in place to utilize RJ in mainstream cases, or those involving high risk or serious harm. Hence it is problematic to ascertain whether this flimsiness in empirical results is because of its inherent weakness or the lack of practical application and utilization.

Paid or Voluntary

One of the impediments to practising RJ is that if its facilitation is paid, then there is a risk of it being run as a business rather than a passionate exercise or a meaningful activity. "It has to be a passion that you want to do, not making money. And this will put people off! If they think oh, I've got to pay 500 pounds to have two people come in my house and help me facilitate this, then I'm not going to pay it. If you're doing it for money, then you're not in it for the right reasons as far as we're concerned. '9-5' as we call them." (V1)

Post Code Lottery

"Some of it is a 'supply' thing, you know. The PCCs and Victim Services are sitting on cases that they think they cannot do anything with, and so nothing gets done with them. And in the city next door! - those cases have been dealt with. And it's even worse if you're a victim in my town and I'm a perpetrator in another town. You can't cross boundaries. In some cases you can, those are places you come to an agreement." (P6)

RJ is a postcode lottery now in the CJS. There needs to be a more even approach overall. There is no information on legal or human rights once someone is in the system and doing RJ in England & Wales.

RJ in the UK is still patchwork. It comes in and out of favour, in different areas. There is a lack of consistency in how it is implemented. It is used as an addition, an optional extra and on a voluntary basis. It is not appropriately and correctly integrated into other services or even into the criminal justice system. Although, the latter may not necessarily be a disadvantage for proponents of abolitionist RJ.

Power Imbalance

It is possible that RJ might be offered in inappropriate cases where there is a power imbalance, so it is not safe to do it. In some cases of DV it has the potential to go very wrong. And 'wrong' is to be interpreted as where one party seeks to dominate the other party or manipulates them. Or the offender is not prepared to admit responsibility for the offence and the RJ conference ends in an argument. That does not do any good to anyone whatsoever. This is a distinct possibility if there are multiple offenders for a crime. (Shapland, et al., 2017) There may be re-

victimization through risk of disempowerment. On the other hand, denying them the chance to speak up to their perpetrator is a kind of re-victimisation as well. That is why it is imperative that the offender is prepared to take responsibility for that particular offence. But it is incredibly rare that that would occur.

In domestic violence, sexual abuse, racially motivated crime (i.e. crime occurring between majority and minority ethnicities or races), gang violence, or where there is a child victim and adult perpetrator, there exists a deep imbalance of power between the victim and the perpetrator, which needs to be stressed upon for restorative justice and abolitionist policies to make a real difference. Restorative justice and abolitionist principles put the victim and the offender in centre place which can sometimes, it is argued, cause more harm than good, as the victim can end up feeling equally or more marginalised standing up to the offender/s without the power of the State acting on behalf of the victim. Thus, restorative justice should create strategies and processes that are able to work with victims and offenders on a large scale. RJ should help victims offering them support and remedies. It should ultimately provide solutions that have the ability to alter social attitudes that engender tolerance and mutual understanding. RJ should also assist in inculcating in the offenders, a sense of genuine remorse and a desire to change. "This can bring about a rebalancing of power within the crime relationship." (Hudson, 1998: 247) Still, the weakest link in Restorative Justice is not how this balance of power can be brought about; it has more to do with the question of the definition of community and community interest. Otherwise, RJ could just end up substituting civil justice for criminal justice. In a worst-case scenario, if the concept of community is removed from the mix, then RJ could just become a matter of competition between the victim and the perpetrator and their chosen viewpoints and perspectives, since "there is no social group with reference to whom the offender can experience either shame or reintegration." (Hudson, 1998: 252)

Pricey and Does Not Reduce Reoffending

Another criticism is based around RJ not being cost-effective nor being able to prove a reduction in recidivism. The counter argument is that the principal objective of RJ does not include either of those two goals. Cost effectiveness would be an added bonus, a surplus to what is really desired of a RJ intervention, not its primary goal. Reducing recidivism may be a by-product of RJ measures, but the main focus of it all is 'to do the right thing', which would include "personal and interpersonal offender development, offender adaptation and reintegration, victim healing, and citizen and victim fear of crime." (Helfgott, 2010: 849) Currently resources and strategy regarding RJ's future in the UK are inadequate. It is challenging to see how this will develop into a scalable initiative. Organizations, particularly the voluntary sector, appear to have different voices around this subject.

Pro State Views

"I think it's appropriate that the state delivers the punishment. My argument is not with doing that, but with the penalties that are being delivered at the moment are disproportionate, are getting longer and longer." (A6) A portion of respondents were in favour of RJ whilst simultaneously believing the State needs to oversee punishment. They opined that society can express displeasure about what someone has done, but without having all the negative consequences that it has currently. So, there is a case for RJ. But so is it for penalties when a penalty is what is required. Without those penalties or justice done by the State, community takes justice into its own hands that then runs a risk of becoming even more retributive than State justice. It is important that society can see that it does not have to deal with this itself. The state will do it. The critical thing is how justice is seen to be executed. It is the State versus

the offender, not an individual, and not justice dispensed as vengeance by the individuals who have been affected.

In the legal system of the UK, the ultimate priority is to satisfy the Crown or the Head of State, in the Crown Prosecution Service. With this detachment of victimhood comes a certain level of disengagement with the actual victim. As it is ultimately the Crown you commit offences against, so it is the Crown that will deem whether justice is done. This separation between people and the crown in court settings leads to impersonalisation and the victim loses their voice.

Resource Intensive and Time Consuming

Gaining access to the other party when RJ is initiated from one side can sometimes take from 6 months to a couple of years, at least. "Getting access to a prisoner where, a woman wants to meet the guy who raped her. She has worked with RJ advisors, counsellors and practitioner firms, 2 years on the case, and the Victim Liaison Officer who has never met her in 2 years, says it's too dangerous. He tells this to the Offender Manager who writes it in his report. That guy's in Cat A jail. He can't go anywhere. He's searched before he comes in the room. And there'll be officers in the prison. How dangerous can that be? He's never coming out of jail. He has about 70 years, will die in jail." (P5)

RJ as a Cottage Industry

In cases of staff who play multiple roles within a criminal justice system like the prison officer, there will be times when they will be in that prison officer mindset and they will be told to do a restorative meeting. The expectation is that they will just change gear and embody that role. That has proved to be more harmful in some cases than not having RJ at all. These are people playing a secondary role within their primary roles.

There is a lack of understanding about the roles individuals play within the system as opposed to what they are later trained to do as a subset of their role, such as conflict resolution. There is an immense disadvantage. And that is why it seems to be a cottage industry because it has not yet grown into a profession that has a proper throughput, in terms of staff within the criminal justice system being trained at the point of recruitment into restorative justice.

Another danger is the variety of projects, with a lot of pilots continuously occurring. It is like a test bed constantly. It has not moved from a testing phase into a deeply embedding phase. As a result, it will always be done at the whims of Senior Management. The biggest disadvantage is that there is no underlying ecosystem that really brings this to life currently. It helps the CJS shift into a system fit for the 21st Century, recognising the mental health and emotional needs of people in prison, and what they do in conflict or violent situations. These are some of the crucial issues and disadvantages. And this is not necessarily to do with the practice. It is much more to do at a strategic level and a policy level, that has not been fully addressed. There are continued talks about the pilot or the good practice, but there is little understanding yet, of the ecosystem in which it exists.

Quality Assurance and Fees

Another criticism of restorative justice is that the facilitator may take sides, pointing the finger and lecturing the offender. That is not what it is supposed to be about. In other words, it can be done well or badly, but when it is done well, it can be a valuable service.

It was stated that although being accredited and registered with the Restorative Justice Council was a good idea as it provides a foundation for quality assurance, there being a fee attached to the process hinders a lot of well-intentioned people eager to help. However, there are people who do not get appropriate registration or qualification and volunteer to do restorative processes. Therefore, it is recommended that there be a law that requires people to be registered and appropriately trained before they can initiate RJ proceedings. On the other hand, to get registered costs a hefty fee and the monetary angle puts some people off it as they intend to work as volunteers after paying for their registration. "How can you afford that if you're a volunteer? It's become money-making and the government's got to stop it. There's an awful long way to go before we even get this completely right for the people. They're going to charge two thousand pounds now, or a thousand pounds per person. And who's got that?! Nobody's got that. So you're just going to go off on your own and do it aren't you? You're not going to adhere to it. There has to be a law. There has to be." (V1)

Volitional or Enforced?

A wholly restorative programme is always going to be limited by the willingness of the people to participate because if somebody is not there to participate, then to force them to participate becomes penal anyway. Therefore, for those who plead not guilty and are found guilty, for those that are not at all remorseful, but did their harm deliberately, and have no desire or willingness to repair harm, there must be a consequence. Even in the most restorative setting, there was expressed a need to have a penal code of some description. This penal code would sit alongside it, for those that bluntly refused to effectively pitch into it. "You can't expect this, you know a psychopath could sit through a meeting and would make no amends." (M6)

An alarming observation made by trainers of RJ was the drifting away from training principles into person practice. Translating subjective RJ principles into practice to achieve objective results is exceedingly difficult. People are asked to sit in a room with an emotionally harmed environment between the harmed and the harmer and the harm is broken down into a script of approximately five questions. What is really being asked of them is that they need to be able to make those decisions based on those questions to produce a peaceful outcome or an outcome that reduces the harm in some way. "This is so ridiculous it blows my mind! Absolutely impossible to do in three days. Without some kind of structure behind it, it's the most challenging thing I've seen as a trainer, and difficult for participant practitioners to get their head around because they tend to think they know it after three days. They totally misunderstand the bit about being impartial." (A1)

Zero Level RJ

There is a lack of understanding of what the purpose of RJ is. The overarching shadow looming over RJ is Co-optation. RJ's preceding philosophy, goals, principles and practices are overlooked by the CJS and then transformed into something very different from what they were originally. Thus, RJ becomes functionalised through traditional, conventional Criminal Justice goals. This is overall a problematic situation. Practically there are a lot of disadvantages of RJ practised by police officers. In the UK for a long time, police officers have been doing RJ for cases of domestic violence at zero levels, which basically means that if there is a case of domestic violence, one of the partners calls police. Police steps in and on the spot, tries to do something 'like' restorative justice. It is called zero level restorative justice. Now in general this is a major evidence failure of RJ applied by police. That being stated, there are also good things done by police officers in terms of restorative justice. (Wager, et al., 2015)

Chapter VI

Summary

Above chapter explored criticisms of Abolitionist RJ and weaknesses prevalent in this research. It then provided a synopsis of the challenges and issues encountered by practitioners and academics in the field.

Chapter VII

Conclusions, Recommendations, Gap in Literature, Original Contribution

Introduction

This section presents main themes that emerged from primary and secondary data. It includes the objectives, focus and barriers in implementation of RJ in the UK, strategies to overcome these barriers, perception of practitioners, victims and authorities on the abolitionism aspect of these practices, and recommendations for its future in the UK. This chapter provides conclusions and recommendations generated from the research. It also contains an exploration of the gap in existing literature, and original contribution provided to the field.

A) Conclusions

Currently RJ is under-resourced and used mainly for minor offences. It is not yet at the heart of the CJS. It has been domesticated, colonised by the system and set as a thing on the side, in other words marginalised. There is criminal justice and there is restorative justice. There is no 'criminal restorative justice system'. Another challenge is that the system is recuperating the terminology and the language of restorative justice to mask more repressive developments. Hence, it does what it always did, and it calls it restorative, or it adds a restorative flavour to the usual dish.

Interventions which are behavioural change programmes are being classed as restorative when they are, in fact at best, partially or mostly, rather than fully restorative. When these are

delivered in a piecemeal and watered-down way and then fail, they do damage to the standing of true fully restorative processes (McCold 2004).

There appears to be a definitional issue with RJ in the UK. This in turn allows itself to be used by those who see restorative justice as being someone putting on a flap jacket and picking litter up at the side of the road or painting a wall which is reparation rather than RJ. Reparation could be a chosen subset of RJ but it cannot be synonymous to it, because restorative implies there is a restoration for two parties not just for one. The key to it all is the dialogue that happens before the process and during the process and, monitoring it afterwards. It is more complex than is expected. Notwithstanding, it can be very punitive in the wrong hands and equally it can be liberating and empowering in another pair of hands. A way of equalizing that power imbalance needs to be discovered.

Along with the issue around definition, there is an issue of recording as well. How is a 'successful' restorative process recorded? How does one monitor when one does not know what one has created? There are criticisms of RJ around its definition, around supervision, around facilitator skills, as well as around monitoring. Those are elements that need to be sharpened in the UK.

If it is not voluntary, conversely RJ then runs the risk of being institutionalised within the CJS, and reaching a stage where victims are being coerced into doing restorative justice because it would show up better for the offender. This may be likened to demanding objective data from a subjective process dependant on various dynamic factors. Different parties can have vastly different reactions and behaviours after a similar offence.

There may be RJ cases which go wrong where the victim may lose their temper, or all sorts of reactions can happen. They are not the fault of having restorative justice. They may be the

fault of individuals or maybe that session was not conducted very well. That is not an argument against having it. It is an argument for doing it well.

Victim-led services and offender management services are still quite suspicious of what RJ is, even if they are conceptually in favour of it, when it comes to a particular individual victim or offender. They can always state multiple reasons as to why RJ may not be appropriate in a particular case, such as the victim is too scared, too affected, or not affected enough in their judgment, or the offender has got mental health problems, or the offender is vulnerable or angry *inter alia*. And that is primarily because organising RJ meetings is taking a risk in a very risk averse criminal justice system.

Abolitionism and RJ

It is noted that questions on Abolitionism could not be asked directly of practitioners and current employees in UK's criminal justice system, who formed a major part of the respondents to this study. This was initially attempted during interviews. However, such questions were met with surprise bordering on disdain as it was stated that Abolitionism stands in direct contrast and is inherently contradictory to said respondents' job roles.

Restorative justice is an idea rooted in abolitionist ideals. Restorative justice has (mainly an implicit) claim or intention, a desire, to influence the reduction of punishment, and to transform the justice system and society. It makes three major and simple claims which are related tightly to abolitionism:

1. Start with the lifeworld of people not with the system's definitions of their problems.

2. Engage the people themselves to deliberate about the problems and come up with a solution together, instead of imposing it.

3. Let this solution prioritise restorative and reparative actions instead of punitive actions for the sake of punitiveness (Pali & Pelikan, 2014).

The question on Abolitionism is difficult to answer because within the RJ movement and even the early advocates of restorative justice define themselves as abolitionists, like Nils Christie (1994). The idea of restorative justice and giving back the conflict to the people concerned rather than to institutions came, at least partly, from an abolitionist idea.

The main abolitionist component is the aim to reduce violence mainly achieved through the basic idea that RJ is not about deliberate infliction of pain. This idea survives also in the most institutionalised versions of RJ. The emphasis on direct stakeholders' intervention and direct communication could be also considered a 'legacy' of abolitionist thought. The idea of focusing on the person who has been harmed is also something related to certain abolitionist strands.

Looking at UK's political past, it would be too ideological to think that the whole criminal justice system can be replaced with community-based conflict resolution. Europe-based RJ practitioners and experts argued that even in European political terms, people are becoming increasingly punitive and want the state to take the lead in fighting crime, terrorism and other societal problems they are fearful of. In that sense, Abolitionist RJ is not seen as feasible at the moment in the UK or even Europe.

Respondents who were academics and experts in the field of RJ were unanimously of the opinion that Hulsman (1991) was a true Abolitionist, signifying that he was also very much

concerned with the language of Criminal Justice, which is a most alienating and violent language. Nils Christie (1994) on the other hand, was more a Penal Minimalist, which was considered to be a much more realistic approach. Some of the academic respondents and practitioners considered themselves to be more Abolitionist, even though they appreciated that to effect change with such a radical perspective is very difficult.

With this in perspective, the problem reported with the term RJ is that there is not much Abolitionism to be found in RJ, especially the radical abolitionism by Louk Hulsman (1991) or Thomas Mathiesen (1974). There is much more of Nils Christie's *Penal Minimalism* in RJ. One main reason is that today especially in the UK, RJ still endorses criminal justice language, and, to some extent, also the criminal justice mindset. RJ takes a *victim / offender*. RJ requires an offender's *admission of responsibility*. RJ does not problematise the overlaps between so-called victim and so-called offender. In this respect, Restorative Justice looks very much like conventional criminal justice. Therefore, it has been concluded that there is very little Abolitionism in RJ. Although there are some ideas in common, in that RJ tries to empower direct stakeholders in dealing with the consequences of *problematic situations or 'crimes'* in the criminal justice language.

From this viewpoint there is an overlap between RJ and Abolitionism. But then there are also a lot of differences or more so contradictions between the way in which RJ is practised today in the UK and an Abolitionist perspective. There is much more consonance between penal minimalism and RJ, because in the end RJ is about a less punitive penal response, which is a kind of contradiction in terms to crime, but in this respect is very similar to Penal minimalism. However, it is very different from Abolitionism and especially the most radical abolitionist approach of Louk Hulsman (1994).

Some academics opposing RJ stated that they wished retribution did not underpin criminal justice, but they were conscious of the fact that if everyone wants that, then the legitimacy of the system is destroyed by removing it. It is about finding an appropriate balance between all possible philosophies, and everyone's needs and desires. It was surmised that this balance right now is too retributive, by far. But this again, is a typology. None of these things exist in isolation; none of them ever could.

Van Ness's argument is to what extent can you have a pure restorative justice system at one end compared to a pure punitive system at the other (Van Ness, 2014). The default punitive system will require change, so suggest several models (e.g. Duel Track, Hybrid). It cannot reach a fully restorative system, so elements of abolitionist perspectives will be present but not dominate depending on the system features. For instance, the Youth Justice System in the UK was seeking to become a restorative justice system similar to the New Zealand model, yet, it has failed to do so. Thus, England and Wales are left with a system that has elements of restorative justice but within institutions which use RJ for their own ends rather than for the community. Punitive systems co-opt in restorative justice for institutional goals. There is little evidence at present of an abolitionist element(s) in UK restorative justice as the process has become institutionalised but not the principles. Hence, processes of dispute-resolution are present but not to redress the community conflict (Christie 1977) and therefore do very little to address social justice.

Cautious Abolitionism?

Abolitionism taken to its ultimate point where there are no prisons was unanimously thought not to work as a functioning philosophy. But a desperate need to think about alternatives was suggested; alternatives that received funding for them to work. Some academics believed in a "gradual" or "cautious" Abolitionism, in the sense that they thought society would function better with less use of the punitive aspects of the criminal justice system. Using prisons less, making them more humane, and overall decreasing the use of criminal justice sentences in general has been proposed. This would mean still having sentences but that they are less restrictive and more supportive. And having the overall response from the criminal justice system as being more informed by restorative justice processes and principles, that can be a better response to crime and a better functioning society.

The reality is RJ is still very new in adult settings. And majority if not 90% of crime is adult crime. The law in the UK is not as well set up to encourage RJ with adult offenders. There are no specific court sentences that are restorative. There are no probation staff trained specifically in RJ settings. It is lagging behind in the justice system. There is not a lack of RJ practitioners, however, only to what extent their resource is used. "The adult justice system is still almost entirely punitive and RJ is at best wedged into the side of it. But it will happen as long as the government believes that RJ is the way forward." (M6)

The original research question was: To what extent are there abolitionist elements in the alternatives to custody in the UK? This was found to be too expanded a view for a single piece of research. The ontological question therefore was surmised to be thus: To what extent are there abolitionist elements within Restorative Justice in the UK? This more restricted question itself was still found to be paradoxical in a sense. RJ does not at present, with adult male

offenders for serious crimes, function as an alternative to custody, but as something that runs alongside incarceration. Thereby it runs a risk of being institutionalised and used by prison officials in a manner they think best, if they even consider it enough to permit it to exist within their ecosystems. Restorative Justice thus seen from an Abolitionist lens eventually becomes a means to prison reform rather than adhering to Abolitionism originally founded on anarchist principles. Also, Abolitionism in this manner, is seen as ideologically attached in theory, but far removed from RJ in its practical workings in the UK.

It is speculated that RJ will continue to not decrease incarceration. Reasoning provided has been that RJ has macro, meso and micro level goals. Transformation and reducing imprisonment have been touted as macro level goals of RJ. However, the way in which RJ is practised currently in the UK, there has been little to no reduction in prison sentences due to it. RJ can produce changes in offender behaviour and other restorative outcomes, but this is not considered a large enough objective to affect the bigger social structures in terms of incarceration and punishment (Wood, 2015).

Abolitionists are in favour of restorative justice but not all those in favour of restorative justice are abolitionists. The ideas of punishment and restorative justice are not mutually exclusive. It might be appropriate that an offender is punished and takes part in some restorative activity although the restorative element may lessen the punishment. For instance, it may be that someone who has caused criminal damage is required to clear it up. The work in doing so might be hard or moderately unpleasant and take time so have a punitive effect but also be restorative. It might be that someone in prison meets their victim and explains their offence. That might in turn be evidence of reduced risk that assists any parole application. For many but not all offences, restorative justice can be an alternative to prison.

It was argued that abolitionists did not have an appropriate answer to offenders who refused to engage in any restorative processes and who therefore posed a real risk of repeating their behaviours. In historical terms there was always a hammer and carrot approach to RJ. Where death sentences were not used the common practice for more minor matters was banishment for those who refused to live within societal norms. In modern terms, if one cannot play with the team, they are not wanted in the team. While not being a death sentence this was a sufficiently frightening outcome that most people were willing to abide by it and resolve matters. "If the lens is zoomed back to current practices, to do away with all punitive sanctions would leave a hole that Restorative sanctions cannot fill." (M6)

There is a fundamental tension in this research. And that is that criminal justice and ideas of punishment are coercive. Therefore, they apply to people whether people wish to be there or do those things. Asking questions about punishment, penalty and sentence are all potentially coercive things. An Abolitionist system cannot work in a coercive way as that is hypocritical to the tenets of Abolitionism. On the other hand, punishment can be defined as Nils Christie (1983) does, which is the deliberate infliction of pain. Then it is possible to talk about whether Restorative Justice can include that or not. And that is for example what Lode Walgrave (2003) does.

During the course of this study, further nuanced questions were raised around the definition of punishment. RJ can be seen as an 'alternative to punishment' as synonymous to it being an alternative to criminal justice. Or is it an alternative to Nils Christie's 'infliction of pain'? (Christie, 1983) As there is no doubt that the process of restorative justice is uncomfortable, usually for all the participants. And therefore, potentially painful. But it has been reported by participants that it is worth doing it and going through that for the benefits it may bring.

Importance of Storytelling Narrative

It is of vital importance that the incarcerated are given a chance to be heard, witnessed, and that they have a chance to tell their story as it is certifiably true that angry inmates end up creating more victims. It requires a thought-through process, a champion in government and more resources. In practitioners' experience of delivering RESTORE (a restorative programme that The Forgiveness Project has delivered in UK prisons since 2008), storytelling is a powerful and transformative tool. They work with surrogate victims to share their own meaningful stories with offenders who then in turn share their stories with the victim storytellers. The moment people see themselves in each other, it builds understanding and empathy. Interventions which include real lived experience create connection and collaboration and are deeply healing. The main reasoning behind being able to produce a personal narrative is self-reflection as it helps in making sense of one's own life. However, it is contended that self-awareness through self-reflection is a surprisingly underused tool. Consequently, one of the suggestions for UK rehabilitation practices is to emphasise personal narrative work as a pathway to creating positive self-identity.

It is essential to analyse the synthesis of all that knowledge about what is occurring in the system. The policy environment has changed so the synthesis has not been quick enough to respond to the needs of the CJS in general and prison system in particular. This is where that single narrative needs to be much more clearly issued, but it may not be the job of RJ or Penal Abolitionism to achieve all of that.

Many different variables come into a person's life after the end of a RJ meeting. They could then go straight back into a house where an abusive relationship was happening and become abusers again. They could by fortune get a job, a new partner and that has nothing to do with

the meeting. So, it is measuring life over time and recidivism is one of those results which has too many variables outside of a RJ conference. Is it because of what the judge did? Is it because of what the prison sentence was like? Or is it because of the RJ meeting? There is an obsession around numbers, and it is seductive to have objective figures and measurable results. However, this work lies in the field of people talking to each other and their emotions. A RJ meeting is an emotional interaction that facilitators try to manage. Court process is a dehumanising process, and the victim is alienated from it. They have no voice if the Defence Counsel do not want to hear from them. (V1, A1, P3, M2)

Lack of Resources and Standardisation

There is no service provider for RJ with sufficient and stable income. There are no financial means, the training is scattered and not standardized in a way. The value of RJ practice is dependent on the training and on the general quality of the service which can be very different from one service provider to another. In Europe, it was reported by respondents who are RJ experts, that it is impossible to get statistics on a number of cases due to these reasons. Hence why it is an overly complex and challenging venture. In every country, there are different patterns. The way it is organized is exceedingly diverse in each country. In some countries there are lists of mediators published and there is no coordination on a national level for it. These criticisms are not concerning the practice itself but more the policymaking. This kind of input is needed to be able to assess the development of the field.

There have been pilots on Conflict Resolution between prisoners, but these are sporadic and there is no consistent approach towards RJ in prisons. And given the other challenges in a prison environment, there is a perception among staff that it is a nice activity to do as opposed

to something that is essential. PCC (Police and Crime Commissioner) as respondents mentioned that it comes down to resources, and that within the prison estate security will always take precedence over any rehabilitative programs. It was also stated that there are no confirmed findings on whether results are incident-specific or tangible over a longer term. (C2)

Overall, RJ was deemed by PCC to be very resource intensive, with it being a question of whether it is affordable or feasible within the sort of constraints that probation and the prison service are presently working on in their sentencing policy and framework.

PCC clarified that from a governmental point of view, there has been a lack of commitment. As the legal basis of RJ is unclear, its funding becomes unclear. It is not something that in the UK, there has been a policy commitment to, in the way that perhaps it could have been. This, whilst there have been a number of research studies that have deemed that RJ provides value for money, it has been a developing area for far too long, and it does not have that kind of real commitment to it from the system and all parties within the system. There is no consistent practice nationally. It is a poor relationship and there is a lack of joined up working. It is disjointed and varying from area to area. (C1, C2)

RJ is something that runs in parallel with the sentencing process, but does not, in any way, shape or form influence the outcome of court decisions. And that renders it in a position of weakness. Victims' families interviewed believe, restorative justice does contribute to the reduction of crime. For the first time, an offender gets to hear their victim, because victims do not get a voice otherwise. And in court, victims are instructed to sit back and be quiet. "To an offender, a victim is just a piece of A4 paper. That's all they are." (V1) Conversely, in a RJ meeting, they hear about the concrete damage they did to the victim, and it helps reduce the crime. Again, it cannot be used as a punishment. In fact, there are a few prisons now taking

restorative justice in the prison with the men. The men are taught RJ while they are inside prisons, and it is reducing the violence in the prison. (V1)

Lack of resources in Youth Justice hampers the way RJ is used. This needs more full-time and part-time RJ staff responsible for conducting all cases ensuring they are appropriately looked at, victims contacted, full preparation of all parties in all cases by those delivering RH and apt follow up afterwards. Elements of dispute resolution, redress & social justice are used in RJ. It would be possible to develop these further, particularly in relation to social justice with more resources available to counteract some of the structural issues that youngsters in RJ must deal with in their lives.

Criticisms were raised about the Restorative Justice Council. It was suggested that currently becoming a member of the RJC permits one to volunteer under a restorative banner, without ever having to engage thoroughly with the RJC. There is no accountability structuring because it is all voluntary. And there is no regulatory enforcement in this sector to be able to exclude those who do not conform to the RJC standards due to a lack of evidence base.

Quality versus Quantity

Qualitative data is important because the correlation between doing restorative meetings and then not reoffending, at least for the same crime, is quite high. Where restorative practice or justice is used within education, there is a reduction in exclusions. The process has ways of demonstrating its success. Unfortunately, the nature of restorative working is very qualitative. It is stories that are important. People have to capture the narrative and the examples. The follow-up to a restorative meeting where the facilitator gets in touch after a week or a month,

the language used is around 'feeling' and not statistical evidence. 'Well, I feel a lot better now, I'm relieved. I got it out. I've done it. Now at least I've said what I wanted to say. I knew I was never going to get that back. I knew that.' The recidivism drops abruptly after the first six weeks. However, with more time passed, progress is seen to slow down.

"For every £1 spent on delivering a face-to-face meeting, £8 was saved through reductions in reoffending." (House of Commons Justice Committee, 2016: 3) There will be some cases where RJ does not quite meet the expectation of the participants. In practice however, it is reported to be minimal in comparison to the benefits that are achieved by the participants.

Laws must be flexible and allow for communication between RJ practitioners, judges, prosecutors, and lawyers. Restorative practitioners must become a central element in the justice system just as everyone else and once their role is accepted, they have to try and influence that system as much as possible. Restorative justice considerations must become a normal part of considerations in every case. Antagonising the CJS practitioners will not be very productive. Teaching the system another way of asking the basic questions, that begins with what happened, why it has happened, who was affected, what damages have been made and how these damages can be repaired. Only when this will become the central focus, not punishment, but working with the offender, the victim and the community together to repair the damage, can some change take place. (A4)

Responses from practitioners of RJ in prisons and community included victims and offenders reporting to them that RJ had helped enormously with their lives, offenders who stated RJ was a turning point for them which helped them to see the events that led them to be involved in RJ and the way they behaved were not alright. Offenders have also told these practitioners, some of whom wish to remain anonymised, that RJ gave them an opportunity to see what

happened from another view or perspective. For example, one offender came from a family that always justified criminal behaviour as the norm. RJ contributed in assisting this person develop a different viewpoint which helped them to understand that the behaviour was not beneficial, for all parties concerned, and they stopped offending as a result. (V1, P3)

Victims have informed these practitioners that RJ was crucial to them because it gave them an opportunity to speak to the person that caused them harm and to explain how the crime had affected them which helped them come to terms with what happened. Some victims did not want the offenders to continue with the problematic behaviour and wanted to assist them in moving on so that there would not be more victims in the future. This helped the victims to gain a sense of closure and a sense of empowerment over that situation in particular and their lives in general. It was reported that in Aylesbury HMP YOI and Bullingdon Prison, the men have approached the Governor asking to have RJ in the wings as they were 'fed up with all the violence.' They got men trained, not just men but staff as well and this aided in reducing the violence. It has also been happening in Winchester prison, where it is reducing violence and the men were reported as being satisfied with its process. It has received favourable reviews when run between inmates and staff members, so it proves to be a win-win situation on the wing (Carrabine, *et al.* 2014). "But also, you know, how it assisted us when the young boys who killed our son went to prison, we felt as if they've gone to prison and they weren't going to learn anything. They were just going to come out and do it again. It wasn't enough for us, having gone into prison since we know that there has to be more than that." (V1)

An example was stated by a proponent of RJ (P2). This was a serious and complex historic case. The offender's partner ended up not leaving them solely because they went through an RJ process. They became more open and receptive to other people and were deeply apologetic

about the effect their actions had on the victim. This resulted in the children not being sent into care and a family unit surviving because RJ was introduced into the mix of criminal justice. The perpetrator had committed a serious sexual crime and initially would not acknowledge it even though they had pleaded guilty. On the contrary they minimised and justified it and would not engage with any offending behaviour programmes. It was stated to be a complicated, dynamic, complex and emotional case, even where the victim was not involved in the RJ process. The secondary victims, friends and family of the victim can participate in such cases and the eventual outcome can still be deemed successful if the perpetrator feels remorse and does not reoffend due to it. (P2)

Similar effects were found in lower-level offending such as anti-social behaviour. For instance, using relatability and reflection, teenage boys sitting on an older lady's house railing were encouraged to see their behaviour from her perspective. The old lady who lived inside was petrified. The boys were asked to imagine if a similar event happened with their grandmothers or mothers. Consequently, they amended their behaviour thus saving on a lot of time, money and resources without the need to involve the justice system (P2).

RJ should not be considered a panacea. Solely because it does not fulfil the idealistic standards every single time does not mean that it is a failure. RJ gives people an opportunity to change. It gives people an insight into an alternative lifestyle, an alternative way of dealing with conflict. The use of restorative practices motivates people better to engage with rehabilitative programs than the mere absence of it.

Offenders often say that facing their victim was one of the most difficult things they have ever had to do, far harder than serving a prison sentence, but as a result of doing something to make amends they feel more connected, lighter, heard and more worthy. Evidence shows that

RJ reduces reoffending and it is little wonder therefore that offenders who have been through a RJ process always feel more determined to look seriously at their offending behaviour. "Just recently been to a conference where after the meeting the offender comes up to me and says, 'That was harder than a sex offender treatment program! Done the SOTP, and this is harder, but more fulfilling.'" (P1)

"As a journalist and founder of The Forgiveness Project I have spoken to many people who have been through restorative justice, by which I mean the face-to-face meeting of victim and offender). In every case the victim has used expressions like 'I felt better', 'I slept better', 'a weight lifted off me'." (P4)

It also affects victims' lives positively. Many victims find meaning again through undergoing RJ. In one case Grace Idowu met her son's killer in prison and it brought peace to both her and her surviving sons. (The Forgiveness Project 2013)

Reintegration Benefits

RJ can have social benefits whereby concrete actions agreed upon in a RJ conference would help offenders in reintegration. There are prospects around doing voluntary work, gaining particular skills, addressing issues in their life, gaining employment or making connections and relationships. These are sort of purposes that could also be directed to the victims of crime. There is scope to do it with other people in a person's life as well, such as secondary or tertiary victims, other family members on both sides who have actually been indirectly harmed in a way by the crime and also by the person's imprisonment.

RJ can have a preventative aspect. An instance reported was about the emotional breakdown of a mother whose son is an offender. (P2) However, she has other kids as secondary victims who have now come to the knowledge of social workers. Soon after, those children are taken into care. Children in care are five times more likely to end up in the criminal justice system themselves, but the emotional impact, trauma of separation and loss is unaccountable. (Department for Education, 2015) As such, merger intervention has been recommended. Making everyone involved aware of how other parties are feeling, making the mother aware of social services guidelines will help. Also making social services aware that the mother wants to love her children and she does. She just needs to get help. Subsequently everyone's voice is heard, everyone's fears and concerns are mutually discussed, and to some degree a further negative situation is prevented from happening.

Another example cited was of a letter writing outcome mutually agreed upon after a RJ meeting. She (victim) wanted him (offender) to write to her via post once a month and she wanted the offender to tell her what he was doing with his time in prison. This was a motivator for him to be strict with his time and proactive with his growth. He was genuine and keen to do whatever she wanted him to do in order to prove that he was sorry and that his apology was not just verbal. He went on to completing courses in education, accessing resources that would help him on release. His letters informed her that he was behaving well and getting positive write-ups from prison officers. That was a positive experience for her as well when she understood his response as being genuine. Consequently, it was beneficial for both parties. (A3)

"Before coming to Restorative Justice I was a Senior Police Officer for 30 years, and in criminal justice earlier. It is apparent to me in cases such as Peter Woolf, but also having spoken to

other offenders who had gone through the process, that it can make a significant difference to that person's life by actually seeing the person they caused the harm to, to be reintegrated into society. It can be life changing. It can be invaluable too, to reduce reoffending and reintegrate offenders back into society." (M5)

A few RJ practitioners who were police officers earlier in their careers, responded stating they were quite cynical about RJ initially, the way it was sold as a panacea for all custodial punishment. But working with it in pragmatic terms made them outright supporters of it, for both victim-offender as well as offender-prison staff conflicts. A similarly inclined respondent described, "Since then, I've become a trainer myself and I've trained hundreds of people and I see this same cynicism that I had from professionals time and time and time again, and I see people over three days of experiential learning, change, and get to the point where they are thinking, "Yes, this is right. This is about real Justice." And I'm going away excited about the potential for restorative practices. And I think that that for me is the most striking thing that I see." (M5)

RJ as a Deficit Model

The ideas and principles of restorative justice are profound and have a considerable influence on the way crime and education are viewed. But there appears to be a lack of understanding regarding it. A useful question to ask may be, 'What is it communities need to do to build and keep peace in those communities?' As the absence of peace is almost always apparent. However, Western culture, mainly Britain works on a deficit model. That is, working on what the problem is that needs to be solved as opposed to what the assets are that could be built on. As long as the lens is pertaining to a Deficit model, whether it is about reducing violence,

recidivism or offender population, society will find it hard to thrive. It will merely survive. From a Systems perspective, a system can be played or tampered with to get better results. However, in order to get an entirely different outcome, which is more peaceful communities and people to engage in such communities, an entirely different system is necessary. The danger is that even the evidence can be framed within that context. There are discussions on 'What works to help reduce violence?' as opposed to 'What works to create a more peaceful community?' Consequently, how the question is framed becomes crucial; namely, 'What's working is zero tolerance, and zero tolerance works because…' Ultimately it is still about the reduction in violence, so the narrative does not change dramatically. It simply becomes more evidence-based, as opposed to 'What is the outcome we are actually after? And what works to produce that outcome?' That is a different perspective.

From the perspective of Evaluative Measures, the same measures cannot be used because the complexity of the case means that there are different data points that are expected to be collected. Therefore, generic concepts like 'victim satisfaction', 'victim happiness' cannot be objectively measured or compared. In absence of a colossal data set, it would be unfeasible to do comparative analysis. There is a difference between process satisfaction, victim satisfaction and outcome satisfaction. So again, this is where there is a lack of understanding about how to evaluate Restorative Justice. Based on these values, it is almost irrelevant what the content is if there is no robust evaluative model. Offences such as coercive control might be a much more difficult form of case for a practitioner to handle by the very nature of the fact that the perpetrator wants to have them in the room, which in itself is a form of coercive control. These are event-based incidences as opposed to relational. With acts of violence or extremism, there is an ongoing relationship there that might be different to a robbery or physical assault which is a one off. So that is where the distinction has to be made, about the type and quality of the

relationships between the people involved and not necessarily the event. Domestic violence would be considered to be closer to it. Although once again, is it more about the act of violence within the household, as opposed to the financial constraints the partner is put under by the perpetrator? Ultimately, RJ is in a deficit model in the UK because it is trying to address the violence.

RJ as Co-Option

The difficulty with co-option is that it is something which happens, but people are not particularly aware. Police officers in general do not want to co-opt in RJ. It is just something that happens, because they have their own organizational culture which is very much ingrained in their way of being, thinking and practising. Therefore, this co-option is a natural dynamic, that can be handled or even prevented. But that will require training to develop a critical awareness of what they are doing and why they are doing RJ.

RJ in Prison Settings

There is a danger in any institution like the police or prisons, for people to be autocratic and diminishing towards the people they are looking after. A starting point can be to garner a therapeutic atmosphere. HMP Grendon for instance is expensive to run because it has a good proportion of staff to prisoners. But it is not impossible for most prisons to become more humane in their dealings if their staff get more training, more support and a more realistic job to do. At the moment, prison staff in the UK are in an impossible situation with excessive workloads and large proportion of prisoners on remand. In a therapeutic atmosphere, there

can be more courses provided to prisoners that might lead them towards doing restorative justice or finding other solutions to their particular issues.

From the point of view of prisoners, they are in prison 'doing their time' completing their punishment. While undergoing punishment that is part of their Rehabilitation, they can begin to think differently about themselves and their victims. They can engage in a restorative process with their victims. That may be quite a powerful change mechanism. But it needs resourcing. It should not be done to save money. It must be done properly. It must be a resource. It must be resolved with the right staff, taking the right amount of time. It needs to be done carefully. It cannot be adjusted into the CJS's crevices, but a new pathway needs to be built for it to work properly.

Conversely, even current police officers and penologists interviewed believed that punishment is not the panacea for all of society's problems, such as inter-generational unemployment and offending, mental health, substance misuse and poor educational outcomes *inter alia*. They stated that RJ practices can and do fit within a custodial environment and can effect change in behaviour, within a wider framework of incentives, penalties and other disincentives.

"At HMP *(location redacted)* we have a RJ practitioner actively working on site (initially for 12 months under a Service Level Agreement). I am seeking, for example, to use RJ as an alternative adjudication outcome for low level violence (without injury) – prisoner on prisoner. Again, used properly I don't think this conflicts with the HMPPS 'zero tolerance to violence' approach." (C4)

There are two issues that are relevant here. One is whether RJ can be used to challenge imprisonment, therefore being used as an alternative. The other is whether it can used during the sentence and change either the prison culture, or have an impact on the individual case,

while not impacting the sentence itself. Both are possible and both take place, although none of these aims or practices is mainstream.

The ultimate aim in nearly all cases should be to return the person to the community as a better citizen who will not reoffend. Part of not reoffending may be changing their attitudes through a restorative process. If while they are in prison, they meet their victim, and it makes them regret their actions, then they are less likely to reoffend because they will want to show how sorry they are. Incapacitation in most cases is not permanent. Most people come out and if they are assisted in coming out with as positive an attitude as possible, that can include regretting what they did to the victim and wanting to make up for it.

Respondents from organisations involved in delivering RJ in the UK surmised that it can be used in prisons in terms of adjudications and dispute resolution. Wherever this is permitted, staff and inmates are perceived to be in restorative processes by them. Particularly there are issues that prisoners will not take to staff, so very clear parameters have to be set, since it cannot be seen as an alternative justice in order to gain continued acceptance for these programmes to be run within prisons. As a result, there is a recognition by prisoners that they are just as capable of taking responsibility for the process.

One rationale for utilising RJ for inter-prisoner conflict is that a vast majority of prisoners are released. And if they are trained in restorative processes, there is a hope they will continue with it in their future dealings outside or at least will not repeat the same offence. In this manner, it is expected that RJ can help more people stop reoffending even if used within the institution of prisons.

If RJ is used in prison for the original crime for which a person was imprisoned, then it is not reducing the role of the punishment. However, it is an additional source for a good re-integration post release and also a possibility of change for the victims.

RJ can contribute to reducing the overall punitiveness of the criminal justice system. However, the manner in which RJ is used in the UK, it may not be RJ's role to accomplish this objective. Wider themes are required for that, such as Social Justice, Housing, Education and Employment. These are the interventions that can reduce the role of prisons in our society. RJ has the potential to elevate the relationship between prisons, staff and the inmate population. It can also help mitigate the relationship between victims and prisoners. But using just RJ for large-scale reduction in the role of prisons at this time is overly optimistic, nor is that its function.

"When I was working as a VOM practitioner, there were at least seven or eight out of ten that were successful and 2-3 were not successful which means basically people could not find an agreement. This means unsuccessful. And they weren't able to move on. We had the kind of standards to evaluate when an encounter is successful and when it's not." (A2)

Proponents of using RJ in prisons stated that prisons should be seen a 'contained' and not 'controlled' environment, where time can be used to train inmates in restorative practices.

There is a role for RJ and particularly wider Restorative Practices (RP) within prisons and other secure establishments. It can be a valuable tool to help rehabilitate offenders, to instil a sense of accountability and help them to appreciate the human cost of their actions.

Within prison, the prison staff should be aware, if someone goes through this process during their sentence, it may have really strong emotional implications. They must be aware of that

and offer a kind of support, and that systematically does not happen. The prisoner is psychologically and emotionally cleansing with this process and thereafter returning to the same environment in prison where remorse, emotions or regret are generally repressed. This makes it more difficult to be switching from one position to another without losing personal authenticity.

There are a lot of interesting cultures, whereby the offender in prison does not meet the actual victim but a kind of proxy for the victim; accordingly, a person who has nothing to do with that offender, only that said person was a victim of a similar crime in the past. Consequently, the proxy victim can participate in an encounter with a non-related offender. And they have a communication that is mostly victim-centred facilitated by a trained professional. And that is an interesting conceptualisation of RJ. Even if there is no direct relationship between them. There is one organisation in the UK called Prison Fellowships that facilitates this type of work.

RJ with Serious Crimes

Respondents from European RJ projects reported that at the European Forum they were partners in two research projects, on sexual violence and domestic violence specifically. (Drost et al., 2015; Keenan & Zinsstag, 2014) There are also 'successful' cases of RJ with murder and homicide reported, for instance with parents of murdered children meeting the offender. The success was measured in terms of reportedly lower levels of fear and Post Traumatic Stress Disorder among parents of victims after a Restorative Justice project, as well as the provision of enhanced guarantees for children and young people who may have particular vulnerabilities and special needs due to their age and maturity in the process. (Implementing Restorative Justice with Child Victims, IJJO, 2017)

Practitioners and academics in the field of RJ were of the opinion that the type of offence in and of itself should not exclude a case from Restorative Justice. And that everyone who wants to, should be assessed for suitability, irrespective of whether it is considered a serious crime or a minor offence. Everyone should have the right to be assessed.

It is a recognised finding in RJ that the deeper the human problem that has occurred the more significantly restorative encounters of RJ are. In some of these cases the offender does not even recognise the victim as human and working with the offender is extremely beneficial. Likewise, these cases and the level of violence creates in the victim deep fears and an inability to move on with their lives. Therefore, RJ encounters help to some extent to move on. A compromise may have to be reached at this stage for these cases to be in a 'parallel' RJ system. There is some doubt as to what is considered objectively serious and for whom it is serious. Sexual violence or domestic violence was not considered to be as serious in legal terms in the 1990s as it is now. Environmental harm or structural violence are also very serious issues with a very long-term impact, but not according to the system. Hence the victims need to be given a voice to declare what is serious to them, rather than let the system define this.

Romanticised Notions or Realistic Expectations?

Further recommendations were made around prisons in the UK needing clear strategic leadership and support and being realistic about what RJ can do. It can work for some people and some offences and be very helpful to them. But there are other offences where it is not terribly clear who the victim is. White collar crime or environmental damage for instance, an MP who cheats on their expenses - what would restorative justice be in that case? And how would that be distinguished from a Community Penalty?

Restorative justice is claimed to be overrated by a few respondents to the study who are Trainers and Researchers in the field. According to them, the transformation process without a lot more understanding of what it does as opposed to the theoretical or practitioner claims because of the feel-good factor, can be futile or even injurious to its future. It is also critical to distinguish what the stand is in this field particularly for people within the penal system as opposed to the wider criminal justice system. It was further argued that it does not fulfil the potential of the theories that are espoused by academics. The danger is a massive drift in practitioner practice without a formalized qualification, as well as trying to answer the question: What is the model of supervision?

"Having delivered training and advised on the implementation of RJ or Restorative Practices in several establishments in both the UK and Ireland over the last three decades, I know that when used well it can be very effective as an add on to the formal adjudication processes, reducing disruption and tension on wings, addressing harm caused to those affected by the behaviours that led to the incarceration, confronting such behaviours, improving empathy and aiding in their resettlement." (M3)

It would be advantageous for PCC's all over the UK to start to embrace RJ with realistic outcome measurements. RJ sector would benefit if PCC's were to recognise that conferencing should not be the only outcome for RJ as there is a lot of good work carried out regardless of a face-to-face meeting occuring. Additionally, if the Police use Community Resolutions and Conditional Cautions more, RJ can work hand in hand with both forms of disposal.

It was also advised that the Parole process become much more transparent where there is a degree of respect given to processes such as RJ, especially given the potential positive

outcomes that could be achieved. However, the CJS will need to offer the right acknowledgement to RJ processes in order for this to be achieved.

Standard or Subsidiary?

There are RJ services in each PCC's area. These services need to be more deeply embedded, as part of the fleet of support services that victim services can offer. Fundamentally, it is a culture shift and leadership is required in areas to drive RJ as a key part of the CJS. It is still viewed as something new, something that is not fully in line with core services. The judiciary, and magistrates are not wholly signed up to the opportunities of RJ. RJ can play a significant part in rehabilitating offenders. First and foremost, it can be life-changing for prisoners. And it can run in parallel to punishment. Therefore, if a person is punished and given custodial sentence, that is not to say that it is either/or, and that restorative justice cannot occur. There is still an opportunity for restorative justice to take place. And that has made a significant impact upon offenders. There is also quite clearly a significant benefit for victims also. There are other opportunities of using it as a different type of disposal that can aid in using restorative justice as a way of reducing prison numbers. But they should be victim-led. And since people cannot be forced to do it, it has to be done voluntarily. That is how it can be used as an alternative as a disposal category of rehabilitating victims.

Wider Awareness

It is important to have a wider awareness of RJ in the police service, among legal practitioners, and making RJ part of the curriculum in law schools and universities. It would also be useful to

consider its shortcomings and the main ideas behind it. This can be established by embedding RJ more deeply in the system and among people who are in contact with victims and offenders meaning the police, victim support, lawyers, the judiciary, therapists and health care providers. In this way, there can be more referrals made for RJ conferences to take place and more practitioners can come to the fore with the services they can offer.

Youth Justice System

There is evidence in the Youth Justice System that can be presented in terms of the effectiveness of alternative approaches. In the Youth Justice System, the use of custody has been successfully managed down over the past ten years to the point where there are relatively fewer young people receiving custodial sentences. More importantly, this has not resulted in a huge surge in re-offending; quite the contrary. There is a disconnect somehow in terms of how the adult justice system is perceived in the UK. Some learning can be gleaned from the Youth Justice System.

The discussion and debate go back to the beginning about what is perceived as punishment. "So it's a community support offer. It's an intensive Community Order. It's go and get therapy. It's go to a drug rehabilitation. They're punishments! But they've got a bigger purpose." (P2) Enabling offenders to completely review their lives, make some life-changing decisions, critically analyse their offending behaviour and feel genuine remorse, then that can be seen as punishment. Facilitating this process is not straightforward. But this punishment should be appropriate to the level of offending whereby people are apprehended without the need for retribution. It is about having punishment with a purpose.

A small minority of offenders are in a spectrum that may be sociopathic, psychopathic, or otherwise criminally insane with other serious mental health issues where restricting their freedom for public and self-protection might be necessary. However, Broadmoor, which is one of the most secure mental health institutes in England, is using restorative practices. (West London NHS Trust, 2019) So there is no rationale that underpins punishment other than a sense of moralizing about punishment being essential. Lex Talionis implies proportionately balanced retaliation in kind and degree in response to repay the offender for the crime they have committed. (Fish, 2008)

B) Recommendations and Implications for Policy and Research

Accountability: Training and Preparation

It has been recommended to have more accountability in regard to the providers of RJ to address poor practice and improve outcomes for those taking part in the process. A well-facilitated process conducted by an appropriately trained and suitably supervised practitioner is key. Only those with recognised qualifications and training should be permitted to carry out the process.

There is a lack of training for Magistrates and the CPS when dealing with under 18's in the CJS which lead to orders involving RJ. This should be dealt with via a National Training Programme to ensure that everyone dealing with under 18's is properly equipped to do this. For instance, fines should not be given to under 18's as part of a package which involves RJ or anything similar as they do not have the legal status to agree to these, such as under 18's cannot have

their own mobile phone contracts as they do not have the legal status. They should not be given fines for the same reason. It is very doubtful that fines should be made against children's parents for children's criminal acts even though this is done in the CJS here. There needs to be a different way of dealing with these situations.

Concerns are raised as to whether as a practitioner, more so a volunteer, who has been trained for three to five days in RJ, is qualified enough to handle that level of complexity. To cite another example, a young adult imprisoned for a petty crime thereafter is groomed by older young people or older gang members into committing serious and complex crime like group sexual assault. This young person might be in conflict with other young people within their prison environment as well. The relationship between the victim and the perpetrator is a lot more nuanced in such cases. Practitioners in such cases would need to have superior levels of training, widespread experience as well as extensive support. The measures are primed as a product, as opposed to asking who is creating the product? And that is the practitioners, the organization. It should be established what measures are in place for those people.

<u>Continued Presence of RJ Staff</u>

It was also recommended by victims' families interviewed that the senior staff should not be changed at least for the time the government is in office. "They shouldn't keep moving them around. Because we were promised by the last Minister of Justice before she was moved that she would help with the Victims' Charter. Next day, she got moved somewhere else! So we lost that didn't we?" (V1, V2) Similar responses were provided by ex-prison governors as respondents to this study. They stated staff who produce a successful pilot project of RJ in any given prison are often promoted and transferred as a congratulatory gesture. However, this

breaks a good procedure and future staff may or may not continue projects in a similar vein or at all. (M8)

Family Engagement in Judicial Process

Concerns were raised about the lack of involvement and agency of the victim's family in the judicial process. The policy is that they are placed at the back and are not permitted to speak during the hearing. They do not have an opinion and are not asked any questions. They see their QC in six to ten weeks and are not told anything. They are placed at the very back of the courtroom. It is a similar procedure for rape victims. The rapist at times stands in the foyer with the victim. A woman whose son was stabbed was not allowed downstairs because she was purported to be a witness, even though the incident happened miles away from her house. She started crying. A court official told her she was not allowed in court any longer as her cries were influencing the jury. She was the mother of a son who was stabbed. "We are not allowed to show emotion. They can talk about her son being murdered. And that's the law as it stands now, we're not allowed to influence the jury. They can laugh and joke. They sat in the foyer and laughed in our faces. And they can do that. Now something has to be done about that. The criminal justice system really needs to look at that. The exposure to the victim is so painful. And it's the justice system that makes you angry with the offender. They muck you about. So, this is where RJ really comes in. They muck you about so much, the court officials, the Judges, everybody else. And the only person you can take your anger out on is that person sitting in the dock. And that's where RJ needs to come in to show that you know, it was the system that made it bad for him. Yes, he killed your kid. But they make it worse. They re-victimize." (V1, V2)

Increased Awareness at All Levels

Another aspect of policy-change included awareness raising and communication. Practitioner level involvement is important as well. There needs to be a bigger national debate on this, across all stakeholder groups, that brings a level of awareness, knowledge and debate, so that a more consistent way forward across the whole of UK can be agreed upon. "If we think about our world in particular here in the PCC, you know, we deal with police officers on a pretty regular basis day in day out really, and you'd expect if you like, your frontline professionals who come into contact with people, most of the time you know, probably their greatest distress is there needs to be a really good strong awareness of RJ and there isn't." (C6)

Among others, suggestions were made that RJ processes should be organised and facilitated before the court process occurs. If successful RJ has taken place prior to prosecution, the Crown Prosecution Service (CPS) should be able to use that as a fruitful outcome for themselves, and therefore effectively withdraw the prosecution as no longer being in the public interest. The CPS is believed to still run the case if it looks good to tick the box of successful prosecution of the offenders. However, if the victim is satisfied then there is no requirement to go through with additional sanctions or measures. Acting so that justice is seen to be done can, in some instances in fact, make it unjust. Ultimately, if an apologetic offender does everything to make amends and the victim is satisfied, but they still get prosecuted anyway, then why would anyone be so inclined? It is a major disincentive to be involved with victims or for the offender to pursue restorative practices just because it does not make any difference to the outcome. Whereas if they knew that there was a potential bonus for them in being able to avoid prosecution by righting the wrong, it is believed that offenders would be much more willing. At the same time at the other end of the guilt spectrum would be defence

solicitors and the rest of the system encouraging offenders to show they were remorseful just to get out of a predicament. And the whole system would encourage them to be involved in RJ rather than requiring a level of remorse and guilt which is often lacking in many offenders.

In March 2017 Valuing Victims project was launched. It looks at how RJ is offered to victims of crime throughout England and Wales. It is divided into three parts. The first part looks at responses of RJ practitioners and Police and Crime Commissioners to a survey, and the second part would organise a workshop in May 2017 inviting RJ managers, police and victim service agencies throughout the UK. The third and final part would be citing the key points gained from this reflective learning and sharing of good practice among criminal justice professionals and victims' services. In terms of gaining a national perspective on these events, it was confirmed by the Office for National Statistics that in 2016 only 4.2% of the victims were offered a chance to meet with their offender. The Victims Commissioner was also reported as declaring, "To have only 4.2% of the public offered RJ is a real worry, given the investment of £29m by the Ministry of Justice over the last three years." (Baroness Newlove, Why Me, 2017)

Above figure stands in direct disagreement with the Victims' Code, Chapter 2, Part A, Section 7.7, which clearly states that if the offender is an adult, then the victim is fully entitled to receive information on the use of RJ in their case from the police or the RJ service providers in their area. It is then up to the victim to choose whether to go ahead with it or not, or to even refuse for their details to be passed on from the police to RJ service providers. The alarmingly low statistic clearly shows that there is a need for greater awareness of RJ services to victims of crimes, irrespective of how serious they are, if they are committed by adult offenders. Some recommendations were made by the RJ Council on how to increase victim uptake of RJ measures in 2017 and beyond. Four main recommendations were made:

1) A trained facilitator should be offering RJ to victims in ideally a face-to-face meeting.

2) Contact should be made prior to the meeting, but the discussion or letters should be kept short.

3) Care should be taken not to use too much emphasis on labels, jargon or names, such as 'restorative justice'. The process should be explained in an easy to understand, clear and simple manner.

4) A decision should be made on whether RJ is the right course to adopt for a victim by a trained RJ facilitator in consultation with fully informed criminal justice professionals on a case-by-case basis.

According to Ipsos MORI polls released in the latter end of 2016, it was reported that 80% of the public were in favour of RJ being made available to victims of crimes and that the victims should be given the right to meet their offender if they so choose. This figure rose to 85% when the victims themselves were asked the same question. If this process were put in place, there would be 85% victim satisfaction rate, and would lead to 14% reduction in the frequency of reoffending which would, in turn, result in major savings of the taxpayers' money. However, the same report also showed that only 28% of the public knew about or were academically aware of RJ, which is an appalling figure, given the benefits shown above. The CEO of Restorative Justice Council, Jon Collins reaffirmed the importance of increasing awareness of RJ practices among the common public and the fact that it can be incorporated at any stage of the criminal justice process. Mutually communicating the harm done between the victims and the offenders would aid victims and, arguably, also the offender, in gaining closure, and moving on with their lives after the offence was committed (Restorative Justice Council, 2016).

"I'd like to see more information. More adverts outside, more adverts in prison, on the noticeboard in prison, Restorative Justice, booklets for the men to take because not every prison has a Victim Awareness course. And the men are blind to it. That is what I want to see, more advertising out there. You can put in doctors' offices. You can put it anywhere, you know, mental health hospitals. Victims said I do not know what is going on and nor do the men. We asked a few prisoners what they knew about restorative justice? They knew not a thing about it. What is it about? As I said the victims do not know because no one tells him. We need to open up a bit more about it on the media, I reckon." (V1)

It would be helpful to have some sort of RJ awareness program running in all prisons, so that even if offenders do not want to go through with any real RJ, they are at least shown what it looks like and the benefits it can have for them. This will help them gain an awareness of it in terms of victim empathy as well. It was also recommended to have RJ embedded within the Prison Service Instructions (PSI) and Prison Service Orders (PSO).

Another way the criminal justice system can change is by including RJ information inside the Police Homicide pack victims' families are provided with. It contains information and details of people they may wish to contact, but it does not say anything about RJ. Having RJ as an option within the first literature provided post crime to victims' families provide them with an option to choose, reject or rethink RJ at any stage of the judicial process.

Increased Resources

It is recommended to have more resources put into RJ in the CJS in England, Scotland and Wales in terms of staff to enable RJ to be carried out properly.

There also need to be more resources available to help people to get back into mainstream jobs and society when they enter the CJS. A problem-solving court type approach would help where people running RJ have the resources to offer help to people for the underlying issues that led to their involvement in RJ in the first place.

There is no system for people involved in RJ in the CJS to feedback where there are issues which need to be resolved which are not dealt with at a local level. For instance, if anyone involved in RJ spots an issue that needs to be dealt with, they can only refer it up to the management concerned and hope that action is taken. There needs to be a clear system where individuals can raise issues beyond this if necessary. As an example, if a child is given a fine, there should be a way of reporting this, so it triggers training for the individuals concerned & stops this happening again as part of good practice in the CJS.

Suggestions were made by respondents about changes in policy and functioning in the way RJ works in the UK. Responses included creating a functional policy, a framework, increasing funding, and deciding on the matter of who does it, as the previous frameworks relied very much on training in-house staff in prisons and probation to deliver some RJ. PCC interviewed did not consider that to be an ideal model as it was deemed that at the end of the day the staff were employed to do something quite different, and it is better to bring in some specialist resources. (C1)

In terms of bringing about an increased involvement of practitioners, there is a latent body of people who are there as a usable resource going forward with some refresher training. However, if RJ is endeavoured to be applied to scale, the staff who have been trained to date would not be able to offer a vast amount of impact. Many more people would need to be trained because inevitably, while considering the application of RJ in a probational, prison setting, the offences in question are more serious. Consequently, it stands to reason, that the RJ processes must be that much more sophisticated and lengthier to work through, to get the desired outcomes. Dealing with a murder case for instance, is an overly sensitive situation to address in terms of RJ. It can take months if not years to work through to get to any sort of satisfactory outcome. Hence it is labour-intensive and very resource intensive.

There is a recommendation made to include RJ principles within business laws as well for human rights violations. In principle, mostly ADR (Alternative Dispute Resolution) is utilised as a means to fight back against any company violations of employee or human rights. However, this is considered to be marginalising for victims or those affected in the community. Also, CGM (Company-based Grievance Mechanisms) are not comprehensive or methodically instituted. Therefore, it has been advised that in addition to ADR, RJ is also implemented in companies. A restorative framework of this kind has the potential of providing a thorough CGM with a spotlight on the victims' needs, the harms committed and a mutual restoration of justice through coordinating restorative dialogue. "Based on a prompt discovery and a thorough investigation of the grievance, companies should design and prepare the remediation process together with victims, offenders and affected community members." (Schormair & Gerlach, 2020: 475) If the circumstances surrounding the wrongdoing are discussed along with the aftermath and how it affected the parties, there is a higher probability of having a successful and mutually restorative dialogue. This way, companies would be able

to not only resolve the harm or sustain trust among their stakeholders but also protect human rights with best business practices. This is also purported to increase stakeholder engagement on all levels post RJ interventions.

Intergenerational Crime: Secondary Victims

There are various external agencies and non-governmental organisations in the field of offender resettlement as well as victim support in the UK. ReConnect helps female inmates being released with accommodation as a starting point followed by provision of more holistic support. One of the research respondents, Ms Diane Curry, is the CEO of POPS (Partners of Prisoners) who support families of prisoners in a trauma-informed way considering them secondary victims of the crime. In 1989 POPS joined the Federation of Prisoners' Families Support Group. In 1992 it also established the Black Prisoner Support Project that was deemed to help strengthen the Coalition for Racial Justice in the UK. Lord Farmer's 2017 report further established the importance of strengthening prisoners' family ties to break the cycle of recidivism and reduce intergenerational crime (Lord Farmer, 2017).

RJ can be successfully used in prisons and other contexts to reduce the emphasis on the role of punishment and retribution. Using restorative approaches in prisons generally, e.g., for discipline and education inside prison, instead of confining RJ to offences that led to incarceration would aid in developing a constructive, rehabilitative environment. This could work well within a system that involved prisons working in jobs outside prisons as part of their rehabilitation plans. This in turn could potentially assist with prisoners' reintegration into the community.

Often, offenders are doing unpaid work and they do not really know what it is pertaining to, where the benefits are, and who is benefitting from their unpaid work. There is scope for development in this sector as well connecting it with RJ.

Retribution implies an equivalence. And that would imply that an offender through his act sets the standard by which the society responds. However, it may be considered reasonable for society to set a portion of penalty or sanctions to hopefully play by the rules. A critical issue is that contemporary society's only response is a prison sentence and too often this response is longer and even longer prison sentences. Prison may be used as a last resort, only in the most serious offences. And the sentences should be shorter, with other aforementioned options being used, such as Community-based penalties or tag which may prove to be less destructive. It does not imply the offender cannot be rehabilitated.

Labelling: Inclusive or Inhibiting?

Among respondents there were practitioners of RJ and/or Mediation services. They tended to think that the two services are not and should not be considered synonymous. Assigning high risk RJ cases to mediation practitioners was reported as being injurious to the ethos of RJ conferencing as they may have different priorities.

It was recommended that RJ would flourish with anti-social behaviour and school bullying. These may not be deemed the most serious of crimes, but they impact very highly on people. Sometimes the label is the problem. Practitioners of Mediation projects or those doing Trauma Informed practice for perpetrator's families stated they were doing RJ as well. They just do not call it by that name. These practitioners advised rebranding or simply changing the name of

Restorative Justice to something simpler, more approachable, and easier to understand, such as 'Punishment with Purpose', or 'Contemplation in Action.'

A victim's family who are present proponents of RJ stated that based on their visits to schools inviting them to speak about RJ, they observed that a lot of the activities labelled as RJ within schools are, in effect, 'Mediation' and they always have been Mediation (V1). If there is an element of being told to do something or being told to apologise or make amends, then it automatically becomes Mediation as the voluntary aspect of RJ has been stripped away.

Respondents who have worked as both Mediators and at a different stage as RJ Facilitators reported that the two methods can be distinct from each other. In mediation there is no 'harmed and harmer.' They are both on the same level playing field. There is no victim and offender. Whereas RJ tends to stick to a script, and they have the same questions for both sides. Mediation goes much further, deeper and can be done several times. While there might be only one RJ conference albeit after much deliberation and pre-conference meetings, with mediation there can be several mediation sessions involving both parties. The courts can make it an official condition to have mediation because they find it reduces the cost for the courts. For instance, in family court cases, the judge could adjourn the court for mediation. This in a way is compelling the family members to talk to one another and resolve their issues as amicably as possible. There can be Community Mediation or Family Mediation. They cover different scenarios. Nevertheless, RJ has a place in all those arenas as well.

Northern Irish Model of RJ

It has been suggested that a move towards a Northern Ireland system where RJ is more widespread and acceptable, would be ideal for E&W. If it is used more in prisons, it could be quite beneficial, and give some people the experience of gaining that empathy which could be the first time they have had that experience. Also, if more courts ask for certain questions at the time of sentencing, it will help commence that conversation, and get people thinking about the impact of what has happened with both parties involved.

Penal Minimalism

Martin Wright (1988; 2018) recommends minimising prisons and using them for incapacitation only. Unless the incapacitation is going to be lifelong, it needs to be 'preparation for the release.' Anything short of a life sentence ought to be based on what the person is going to do when he comes out of prison. 'Purposeful activity' which is supposed to include work or education *inter alia* should be prioritised over too much purposeless inactivity. Nils Christie (2004) suggests an element of incapacitation would be required even in the freest of states with successful abolitionist tendencies in their social and criminal justice systems. Christie therefore is supposed to be a Reductionist or Penal Minimalist rather than an Abolitionist. "There are some cases where even a person with abolitionist instincts, be it a judge or a parole board who wouldn't let that person out, because of the risk, and I think you'd have to say a serious risk of serious reoffending. And also, that in those cases where it is necessary for preventative reasons that the regime should be constructive." (A5)

One of the reasons why people in prison turn to drugs is sheer boredom. And boredom is not supposed to be the punishment. The real punishment is deprivation of liberty and making someone feel sorry for what they did to someone else, rather than feel sorry for what is being done to them.

a) Better funding of RJ in the CJS would be a big help in increasing practitioner involvement as agencies would have more resources to employ practitioners as regular staff or on an ad hoc basis to develop RJ.

b) Free training of RJ practitioners in return for commitment to assisting in CJS organisations for a minimum period may encourage more involvement.

The real risk is that the restorative idea gets colonized by the CJS because it is a very massive and dominant system, and not the other way round. This is one of the reasons why Belgium has opted to keep RJ out of the system. This means that it is part of the justice system but the services are offered independently and safeguarded from the criminal justice language and thinking. This parallel system is one interesting option, but not necessarily ideal.

Proactive Curriculum

It was advised to have a wider national educational curriculum in schools that focuses on developing practical, technical and creative skills in ways accessible to vulnerable groups of youngsters as well as allowing those who can achieve in a narrower more traditional academic sense to be seen as successful. A country can be successful in achieving social justice by developing children and young people into well-adjusted adults with the skills required to make an honest living doing something they enjoy. Encouraging technical training as an

equivalent pathway as well as developing apprenticeships for those who do not want to follow an academic route would help abundantly. Other countries in this regard have been exemplified, for instance, Germany & The Netherlands.

There needs to be a system of advising children of their human rights in RJ situations in the CJS. Now, it is the umbrella organisations who are expected to ensure that their rights are respected. To be restorative, the system needs to ensure that children are advised of these too and have a way of challenging anything which does not fit in with this framework. The system needs to stop recording so many RJ processes as 'spent convictions' on the Police National Computer – especially when they relate to under 18's.

A thorough review of the UK sentencing policy has been recommended. Even within custody, there are different models that could be instated, for instance Weekend Prisons as the ones in Holland. These options and models need to be developed to match, fit and suit UK culture and society, both of which are inextricably linked to the country's political will and vice versa.

There can be a much greater use of Victim Impact Statement. It is a massively under-used opportunity for the court to hear exactly the impact of a particular crime. And that might be inclusion of what the victim's views are regarding what the appropriate punishment should be. The impact is never straightforward. An instance can be a handbag that was stolen. But that handbag may be a means of an emotional connection to a baby who is now deceased. And the impact of just a stolen handbag is consequently enormous on the victim. That is the type of detail that a court should be aware of. It is that type of detail when the offender hears that the RJ process is much more likely to be the one that changes them and makes them think about this. The Impact Statement is simply not used the way it was intended.

Punishment and using punitive responses to crime mainly contributes to perpetuating the cycle of imbalance, social inequality, and widens the gap between the rich and the poor, the powerful and the marginalised in society. Instead of 'deterrence', early intervention is recommended.

Certain legislations are easier to process, for example with the idea of keeping young people out of prison and in these cases, it is therefore more easily accepted that punishment should not be used for incapacitation. In such cases, the idea that restorative justice should be a priority and should offer an alternative to imprisonment is accepted. In these cases, another lens gets the priority. It can be recuperation of the young person or their education that takes precedence over punishment.

Protection and Transparency

Respondents to the study advised that in view of current policies regarding prisons and the criminal justice system in UK, there should be more protection *along with* more transparency. "Let them see the victim. Get your court system right. The court system today is the stupidest in the country. I was talking to a murder victim's family, their son got stabbed 2 years ago. They put you in witness protection room. Then a case gets called. Anyway, you're rushed upstairs to where the balconies are. You're standing there and the other side of this door, there's a glass door. Behind that glass door, there's stairs leading from the street and standing behind that glass door are the family of the offender. Then the case gets opened, the doors get opened to the court, and you all go into the balcony together! So, what's the point in separating when you're going to put us all in the room together!? There's no protection." (V1)

Greater consultation as to 'what works' can provide more opportunities for knowledge exchange between practitioners, policymakers and researchers. Culturally some practitioners are working in agencies which tend to have always worked with offenders. And RJ means working with victims as well. And that can be really difficult for some practitioners and agencies. There are difficulties noted in relation to youth offending teams in E&W, and also occasionally in Probation service in E&W. They think that contact with victims might be harmful to their offenders, particularly young offenders. They see potentially victims as being difficult, angry people, even though victims who have agreed to participate are generally not like that (Crawford & Newburn, 2002).

RJ in Scotland

Scotland has Community Payback Orders where people can have a requirement to do unpaid work. Within that is an opportunity for them to do something that is referred to as "Other Activities." Various activities can be done under this umbrella and it could include a Restorative process. If someone gets sentenced a hundred hours of unpaid work, up to 30 hours or 30 percent of the total can be used for this "Other Activity."

This implies a possibility they could spend time in a restorative process, preparing for the actual meeting, debriefing and so on. That could be a constructive way of bringing restorative processes to the criminal justice response and embedding it in a way that would not only enhance Community Sentences, but also potentially boost restorative processes by having them better linked to other kinds of support mechanisms.

In contrast to England and Wales, there was nearly total absence of policy on RJ in Scotland up until quite recently. In 2017, the Scottish government recognised the possibility and presence of RJ through crime victims' policy. Taking support from the EU Directive 29/12, the Scottish government published its first national 'Guidance for the Delivery of Restorative Justice' on 13 October 2017, seeking to promote and implement the development of RJ programmes with an emphasis on victims' rights. Directive 2012/29/EU of the European Parliament and of the Council dated 25 October 2012 established 'minimum standards on the rights, support and protection of victims of crime', thus replacing Council Framework Decision 2001/220/JHA. Aforementioned 'Guidance' by the Scottish government gained traction in the ensuing two years and on 28 June 2019, it was integrated into an 'Action Plan' proposing to further develop RJ throughout Scotland by 2023 (Scottish Government, 2017; 2019)

It is noteworthy that in Scotland there historically has been cynicism and distrust surrounding the relationship between victim-focussed organisations such as particularly Victim Support and RJ (Maglione, 2020). One of the reasons for such a perspective is that RJ is viewed in Scotland as something connected to diversionary schemes that are often initiated by offenders. Examples of these occurrences are policies and measures composing Scottish mediation and reparation practices in the past (Munro, 2015). "Scottish RJ policy appears to suffer from what could be called the 'Elmira's complex'… This means that RJ is construed as a response to minor crimes committed by one-time offenders against innocent victims, and not a rejoinder to behavioural patterns rooted in socio-structural inequalities or complex social conflicts. This makes RJ a 'lower rank justice' ancillary to penal responses inspired by Scottish penal welfarism." (Maglione, 2020: 14-16) [Elmira was the Canadian town where RJ was first used to dissuade drunk teenagers damaging properties at night (Peachey, 1989)].

Standardisation: Need for a National Policy

On a policy level restorative justice is focused on victims for which there are many good reasons. And that is manifested in the fact that funding for restorative justice comes out of the victim surcharge from the Ministry of Justice. So, when PCC's receive that funding, they are thinking about it in the framework of victim services. In many ways it is sensible, but it makes prisons possibly less interested in working together. Policies which also promote restorative justice as a response to support Rehabilitation are encouraged.

Until RJ becomes a statutory organisation, RJ practitioners will not be in a position to become more involved within the CJS. A brief solution for instance, could be including RJ within MAPPA or MARAC meetings. This would enable practitioners some exposure into all the different agencies within the CJS.

The idea of introducing new policies on RJ in prisons is encouraged, such as creating a RJ officer in every prison. This person can then advocate increased awareness around RJ across the staff and among the prison population. It is a long-term policy change which RJ cannot accomplish by itself, and it would be unfair to expect it from RJ. It would in fact be more than just unfair. It would undermine the credibility of restorative justice, presuming RJ will have to change prisons, or that RJ will have to alter retribution. That is an enormous goal and a shift of horizon that RJ cannot do on its own. Thus, it is recommended to focus on small steps that RJ can essentially take, instead of an overall transformation, which requires several cultural changes. It involves political changes and these need to be made mainly by the social justice initiatives. That may be a better way to create a revolution in the prison system.

If the Police and Crimes Commissioner commissioned RJ service in a particular area, if a victim comes to them and is interested in RJ, and the offender is in prison, then an RJ intervention

can be arranged. In areas where it is set up properly, the RJ team can then go into the prisons, liaise with prison staff, set up a conference, do the pre-meetings with both and set up that conference where the victim meets the prisoner in prison. RJC argues that it is effective. It is a good way of supporting the rehabilitation of the offender and helping the victim cope and recover. It needs extra measures inside prisons as they have their own ways of working. It was reported that at times even after consent is received from the PCC, it is up to the Prison Governor whether or not they support RJ processes happening within their prisons. If they do not cooperate the first time, then it is almost impossible for RJ to be initialised or introduced within a prison. Thus, gaining PCC's recognition does not make it a rule of thumb across prisons. It varies depending on the leadership of the prisons. It takes time to develop a process for restorative justice for prisons. There are various elements to consider around risk, security, access to prisons, and finally gaining official approval on it all.

Part of the obstacle can also be probation officers. The barrier has partly been enforced by the sentencing process, which is about keeping the two separate and asking the victim if they want conditions put in the licence to prevent contact with the offender. The fault lies in that aspect as well. It is probation officers' task to protect the victim. That is why the safeguards are in place. But RJ then cannot be seen to be part of such a process. And unless there is personal experience of the effectiveness of a RJ process, probation would not realise its effectiveness. Therefore, the system should seek whether the victim wants any acknowledgement from the perpetrator. Once there is a match on both sides, that is a step forward.

Treatment of Victims

It was suggested that the victim's views need to be given more weight. Although this needs to be balanced on a scale of fairness as there may be vindictive victims who want people to go to prison, whether it is justified or not. There has to be some measure of objectivity about it. Simultaneously however, at the moment much of the legislation says that victim's views actually cannot be taken into account when sentencing. The police might seek a victim's views, but then the courts are not allowed to take that into account in sentencing. This leads to rising frustration over quashed expectations on the victim's side. The victim should not be asked their views if that is not going to change the outcome or does not at least have, even the potential to change the outcome. It is being considered disingenuous to treat victims in that way. "One of the biggest problems with RJ is that most victims by the time practitioners meet them, are already significantly traumatized by the way that the process has handled them. The place, the investigation reports, the biggest barriers to RJ are not offenders. They are the system." (M6)

RJ organisations working in HMP Forest Bank near Manchester, HMP Wakefield and in Leeds reported that unfortunately in their experience, the work tends to be very successful for a short period of time and its success is predicated on the fact that a particular governor or officer was present in the prison at the time. However, due to the success of the project, these officials are moved or promoted almost immediately with the intention to starting similar projects in other places. (M2)

So, what is truly obtained is pockets of success in prisons where RJ has been used inter-prisoner, between prisoners and guards, but not constantly. But there is a route, the context for RJ in prisons is dependent on the stability of the prison. RJ should not and cannot be

introduced into a massively chaotic prison, which is at the point of breaking, simply because it will be one more intervention that will lose itself because the context is destabilised. However, if it is brought in slowly after analysing where it can be successful and used incrementally to develop skills, then it gets more standing and longevity than it would have had otherwise. Regardless, it is much too dependent on who happens to be in the building at the time, or who the restorative practitioners are. And then it becomes a question of political will. Politically it is fairly challenging not to look harshly on crime in the UK. Unless the message of RJ is clearly proclaimed, it is seen as 'a pink and fluffy thing' or a way to excuse someone's behaviour. (M2) Therefore, for RJ to be successful in the long term, there is a propaganda battle to be won at the same time as the structural issue, which is how will it be placed in English prisons. With RJC some RJ organisations have access to England and Wales, but not to Scotland as it has got a different legal system.

RJ is like another form of penalty or a sort of *sui generis* penal response to criminal behavior. It is not precisely a punishment, because there is no deliberate infliction of pain intended to the offender. Simultaneously, it is not exactly an alternative to punishment because it does require in the UK, the offender's admission of responsibility. Therefore, it is more like a form of penality because it happens after the admission of responsibility. RJ is at the intersection, between an alternative to punishment and an alternative of penalty.

Treating the prison as a community implies 'Within the Gate' RJ. The model is different and it is called 'Conflict Resolution' in prison. Without robust evaluations done in present times in the field, it is hard to see what benefits prisoners get from going through this process, bearing in mind they are going back into violent communities. What is actually learned for that

offender going through that process is hard to measure. It can be a potential topic of another research study to understand how this works in depth in prisons in the UK.

Chapter VII

Summary

This last chapter of the thesis provided conclusion, feedback and recommendations for the future of RJ and what Abolitionism means to related stakeholders in the UK. It discovered gaps in literature that exist within Abolitionist Restorative Justice in the UK. It eventuates with a discussion on original contributions made to the field, albeit merely empirical. An exploratory analysis has been produced on stakeholders involved in Abolitionism, Restorative Justice and the Criminal Justice System in the UK.

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Coded Schedule of Participants

V	Victims and Victims' Families
V1, V2	Murder victim's mother and father, 14 June 2018
V3	Surviving Victim of Male Domestic & Sexual Assault, Current RJ Proponent, UK

A	Academics, Scholars, Writers and RJ Trainer/Researcher
A1	RJ Trainer, Researcher and Academic, London
A2	Retired VOM Practitioner, current Academic
A3	Researcher, Lead Practitioner & RJ Trainer, Oxford
A4	Brunila Pali, Researcher at Leuven Institute of Criminology, 2 August 2018
A5	Dr Martin Wright, Author, Expert, Consultant, Mediator, Scholar, Earliest Advocates for RJ across UK and Europe, 29 June 2018
A6	Nick Hardwick, Chair of Charities & Criminal Justice Organisations, Ex-Chair of Parole Board of E&W, 26 June 2018
A7	Academic and RJ Practitioner, Oxford, United Kingdom
A8	Practitioner, Academic and Researcher, England

A9	RJ Trainer and Lead Practitioner since 2013, England
A10	Researcher and RJ Practitioner, Bolton, England
A11	Academic, RJ Expert, Edinburgh

P	**Practitioners of RJ/ Mediation**
P1	Tony Walker, Director of Service Delivery at Restorative Solutions, 20 June 2018
P2	Diane Curry OBE, RJ Proponent, CEO of Partners of Prisoners and Families Support Group (POPS), Manchester, United Kingdom
P3	Les Davey, Director at SynRJ Limited, 14 September 2018
P4	Marina Cantacuzino MBE, Founder at The Forgiveness Project, 4 September 2018
P5	Lead Practitioner, RJ Trainer, England
P6	Chris Straker, Ex-headteacher, MA in RJ, Lead Trainer & Consultant in RJ, Restorative Practices Director, 24 July 2018
P7	RJ Practitioner in Youth Justice System, UK, *Location Anonymised*
P8	The Forgiveness Project 2016
P9	The Forgiveness Project 2012

P10	The Forgiveness Project 2004
P11	RJ Practitioner in Youth Justice, London, *Name Anonymised*
P12	Respondent, RJ Facilitator and Trainer, Berkshire, England

C	**Current Criminal Justice Employees, HMPPS, MoJ Professionals, Police/Governors/Judges**
C1	PCC, Police and Crimes Commissioner, *County Redacted on Request*
C2	Probation Officer Youth Justice Board, 26 June 2018
C3	Treatment Manager at HMPPS, England & Wales
C4	Governor HMPPS, RJ Advocate
C5	Probation Officer, England, June 2018, *Name Anonymised*
C6	PCC, Police and Crimes Commissioner, *County Redacted on Request*
C7	Probation Officer, Bolton, 23 June 2018

M	**Ex/Retired Criminal Justice Employees and Current Practitioners of RJ**
M1	Retired Sr. Police Officer, Birmingham, RJ Consultant, June 2018

M2	Retired Governor of Prisons, HMPPS Director, Proponent, Trainer, Facilitator of RJ, Mediator, and Consultant on Prison Reform, England, *Name Anonymised on Request*
M3	Director, England based Restorative Practices Organisation, *Name Anonymised*
M4	Joanne Caffrey, National Training Award Winner and Expert Witness in: The use of force and managing of challenging behaviour; Safer detention in police or prison custody, RJ Practitioner, 4 July 2018
M5	Retired Sr. Police Officer, RJ Consultant, England, June 2018, *Name Anonymised*
M6	Matthew Wilcox, RJ & Referral Order Co-ordinator, Devon, England, 6 July 2018
M7	Retired Police Officer, Current RJ Practitioner, pan London, *Name Anonymised*
M8	Ex-Governor HMPPS, RJ Practitioner, VOM Facilitator, England
M9	Retired Police Officer, RJ Consultant, London, England
M10	RJ Trainer, Ex-Probation Officer, Manchester, England

Interview Tables

Table A:

Tape Recorded	Interviews
Males	14
Females	14
Total	28

Table B:

Interviews with	Written Responses
Males	7
Females	7
Total	14

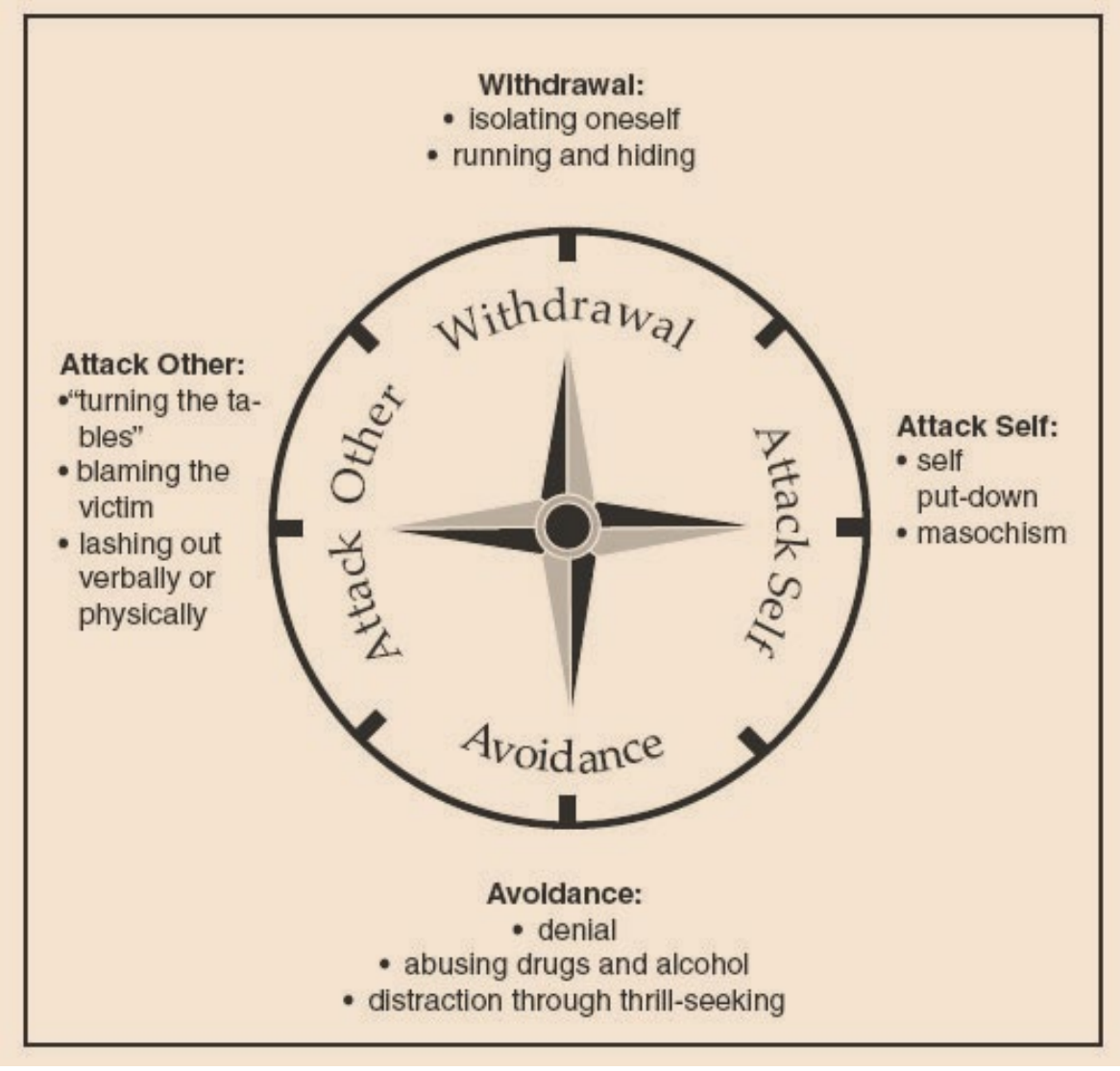
Table C:

Thesis Analysis NVivo Codes MS

Name	Description
Question 1	Nodes, References
Question 10	Nodes, References
Question 2	Nodes, References
Question 3	Nodes, References
Question 4	Nodes, References
Question 5	Nodes, References
Question 6	Nodes, References
Question 7	Nodes, References
Question 8	Nodes, References
Question 9	Nodes, References
Question 10	Nodes, References

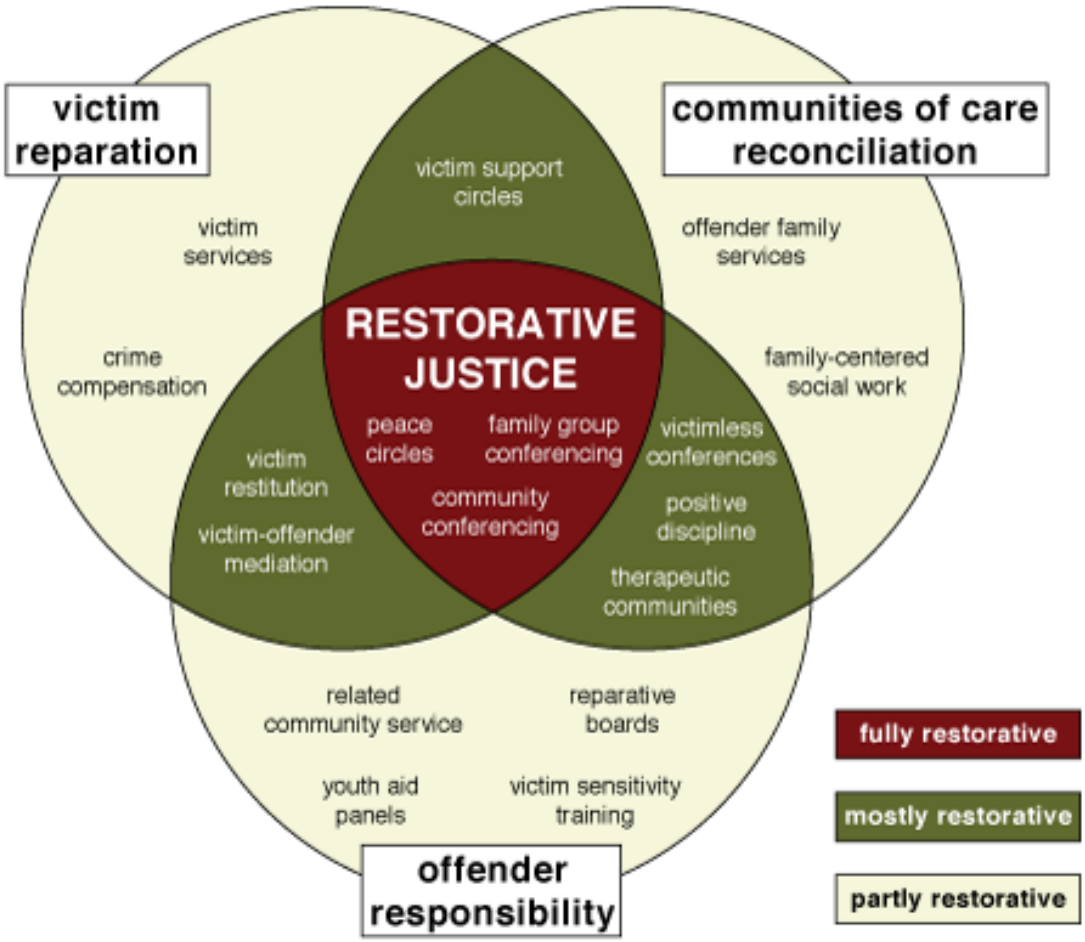
Diagrams and Figures

The Compass of Shame stems from the fact that human beings are hard-wired to connect with each other. According to this Theory humans are born to connect. But if something untoward happens they go into one of the parts of this compass, and it is perceived as a real injury (Stowe, 2014).



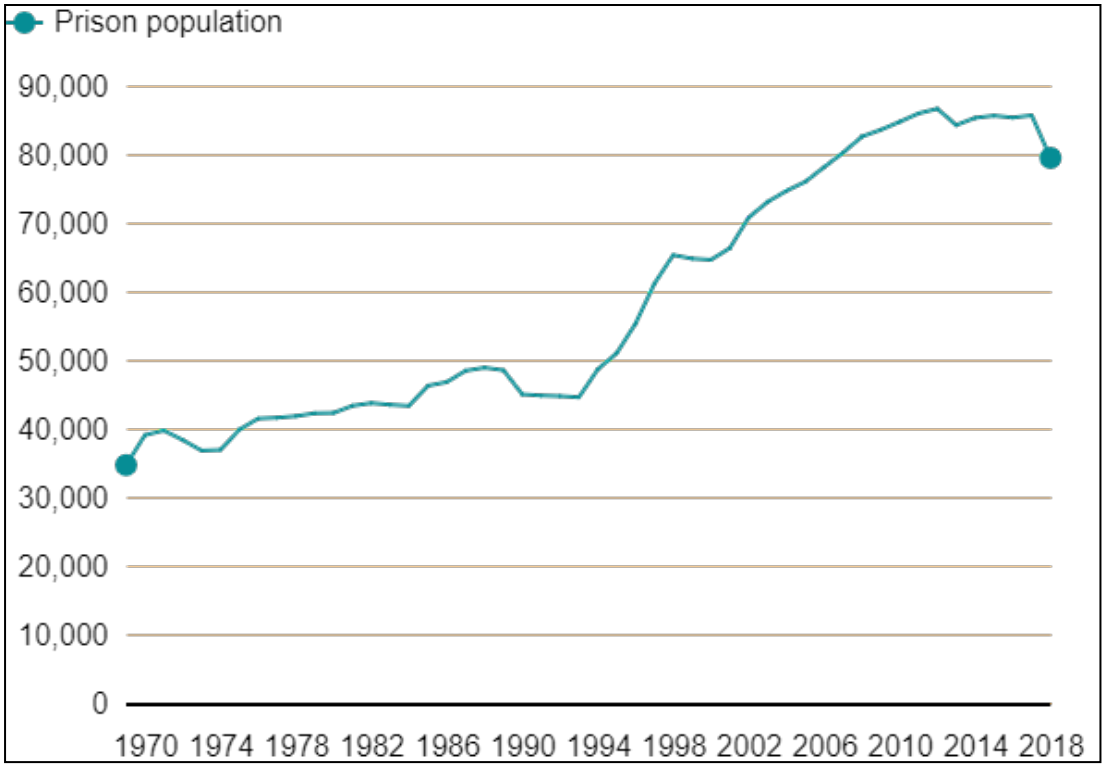
(Source: Stowe, 2014, https://mstowerp.wordpress.com/2014/08/16/the-power-of-vulnerability/compass-of-shame/)

Below figure summarises RJ typology, the types and degrees of RJ practice and defining what is at the intersection of RJ.



(Wachtel, T 2012, Defining Restorative, Figure 2: 4)

The decrease in prison population in the UK was largely due to Home Detention Curfew or people being released on tag. However, overall, the figures are rising according to Ministry of Justice statistics and predictions from 2018-2023 (Ministry of Justice, 2018).



(Source: Ministry of Justice, year ending March 2018)

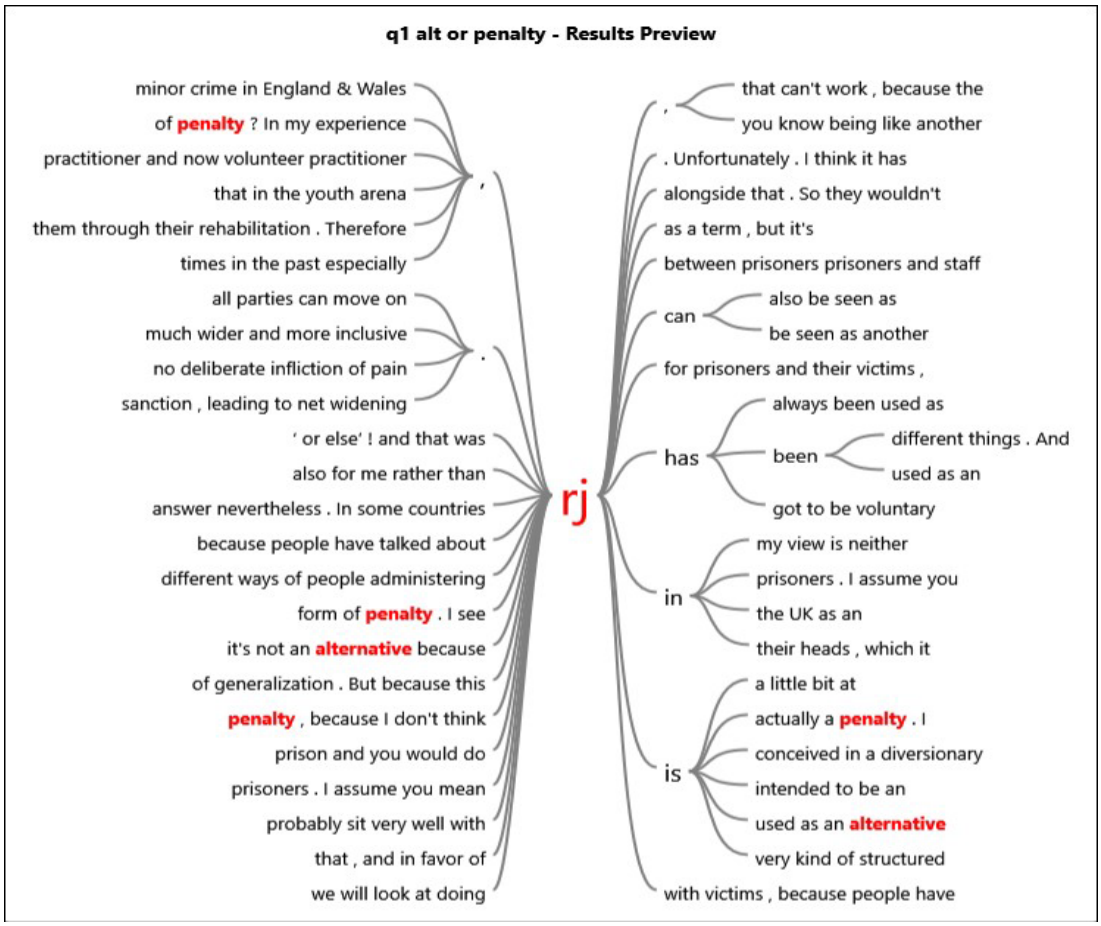
Below table summarizes the main differences between retributive and restorative models:

Retributive	***Restorative***
Crime = legal violation	Crime = harm
Wrongs create guilt	Wrongs create obligations
Debt abstract/punitive	Debt concrete/reparative
Blame/retribution central	Problem solving central
Victims needs ignored	Victims needs central
Offender stigmatized	Offender reintegrated
State monopoly on response to wrongdoing	Victim, offender, citizen roles recognised
Battle/adversarial	Dialogue/reconciliation
Model normative	Normative

(Helfgott, 2010 Restorative Justice, Rikers Island Jail: 846 table)

Below is NVivo Coding Analysis visual description of question 1 as word tree and term cluster for additional illustration.

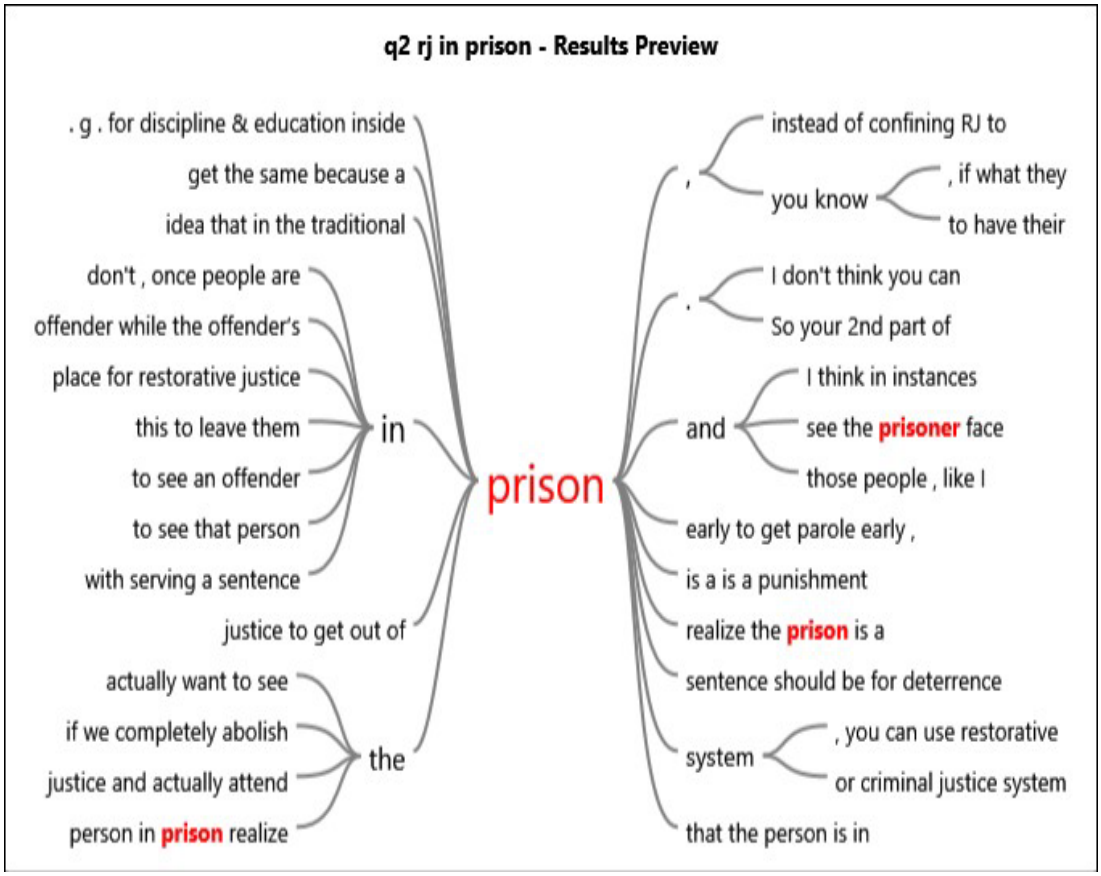
Question 1 - In your opinion and experience, is the practice of RJ in the UK an alternative to punishment or is it another form of penalty?



(NVivo code analysis 1.1 for question 1)

Below is NVivo Coding Analysis visual description of question 2 as word tree and term cluster for additional illustration.

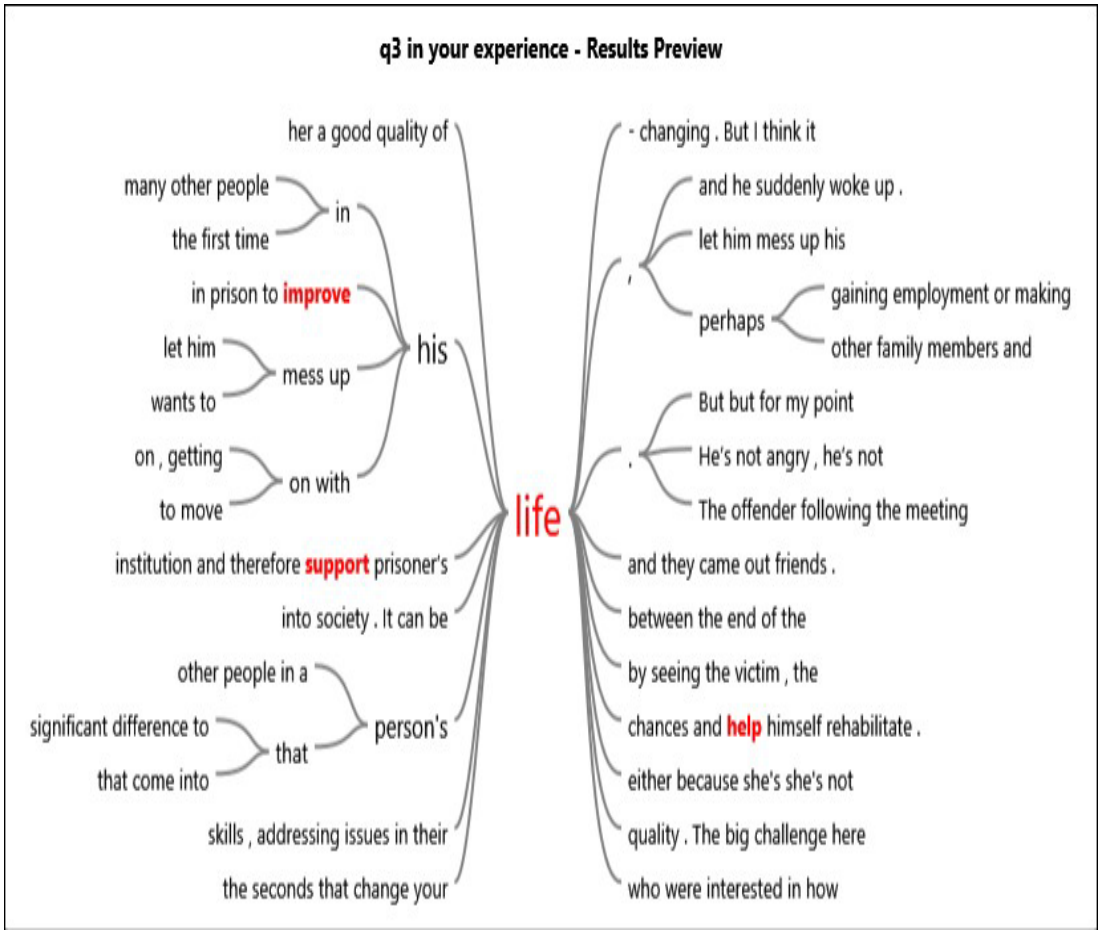
Question 2 - What are your views on the use of RJ in prisons? – Do you think there is a role for RJ in reducing the emphasis on/role of punishment/retribution, namely, using prisons for the purposes of incapacitation only?



(NVivo code analysis 1.2 for question 2)

Below is NVivo Coding Analysis visual description of question 3 as word tree and term cluster for additional illustration.

Question 3 - In your experience how, if at all, has RJ assisted with a victim/an offender's life during and post-incarceration?



(NVivo code analysis 1.3 for question 3)

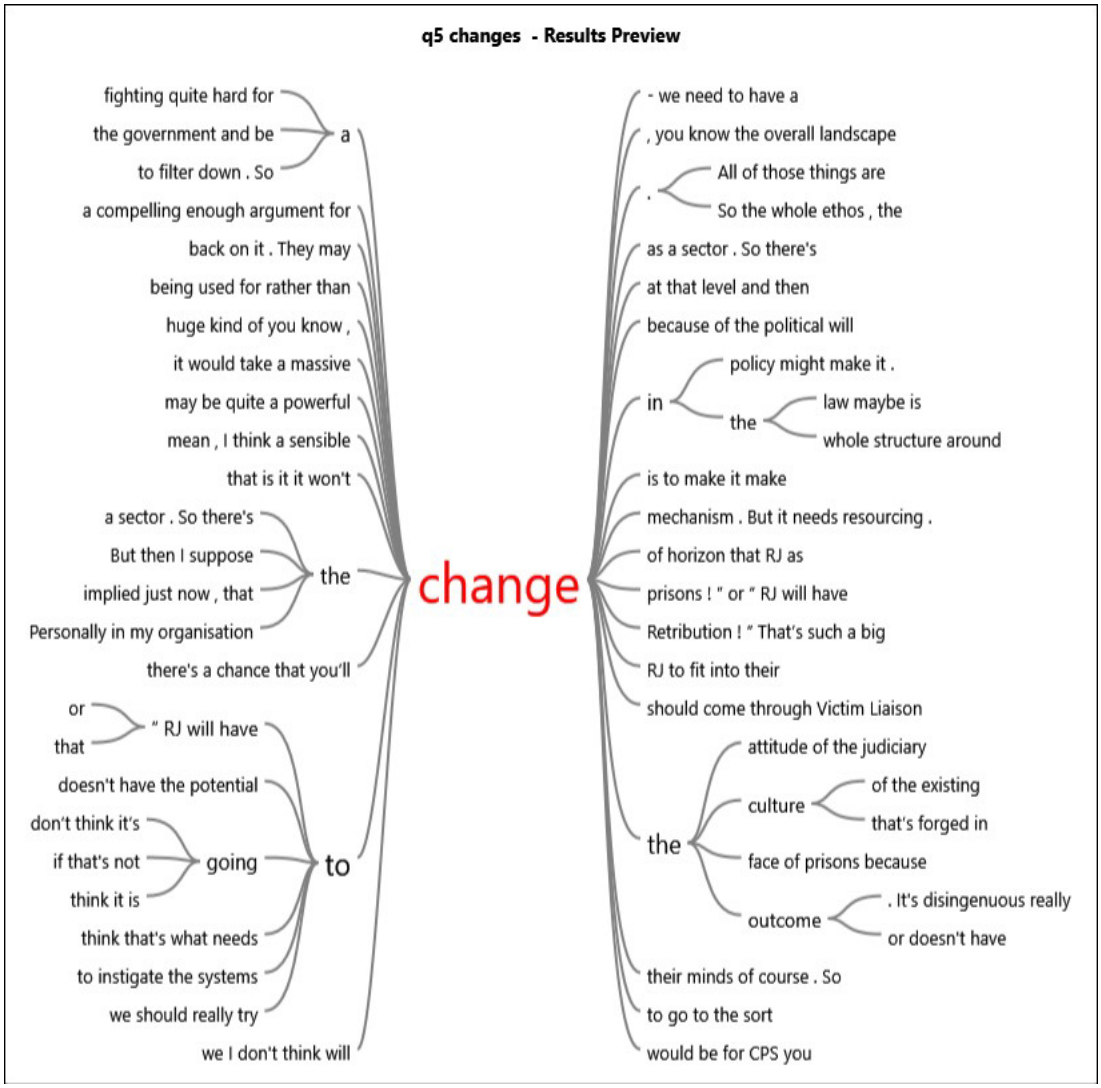
Below is NVivo Coding Analysis visual description of question 4 as word tree and term cluster for additional illustration.

Question 4 - What, in your opinion, are the disadvantages of having RJ as it currently stands in the criminal justice system (CJS)?

(NVivo code analysis 1.4 for question 4)

Below is NVivo Coding Analysis visual description of question 5 as word tree and term cluster for additional illustration.

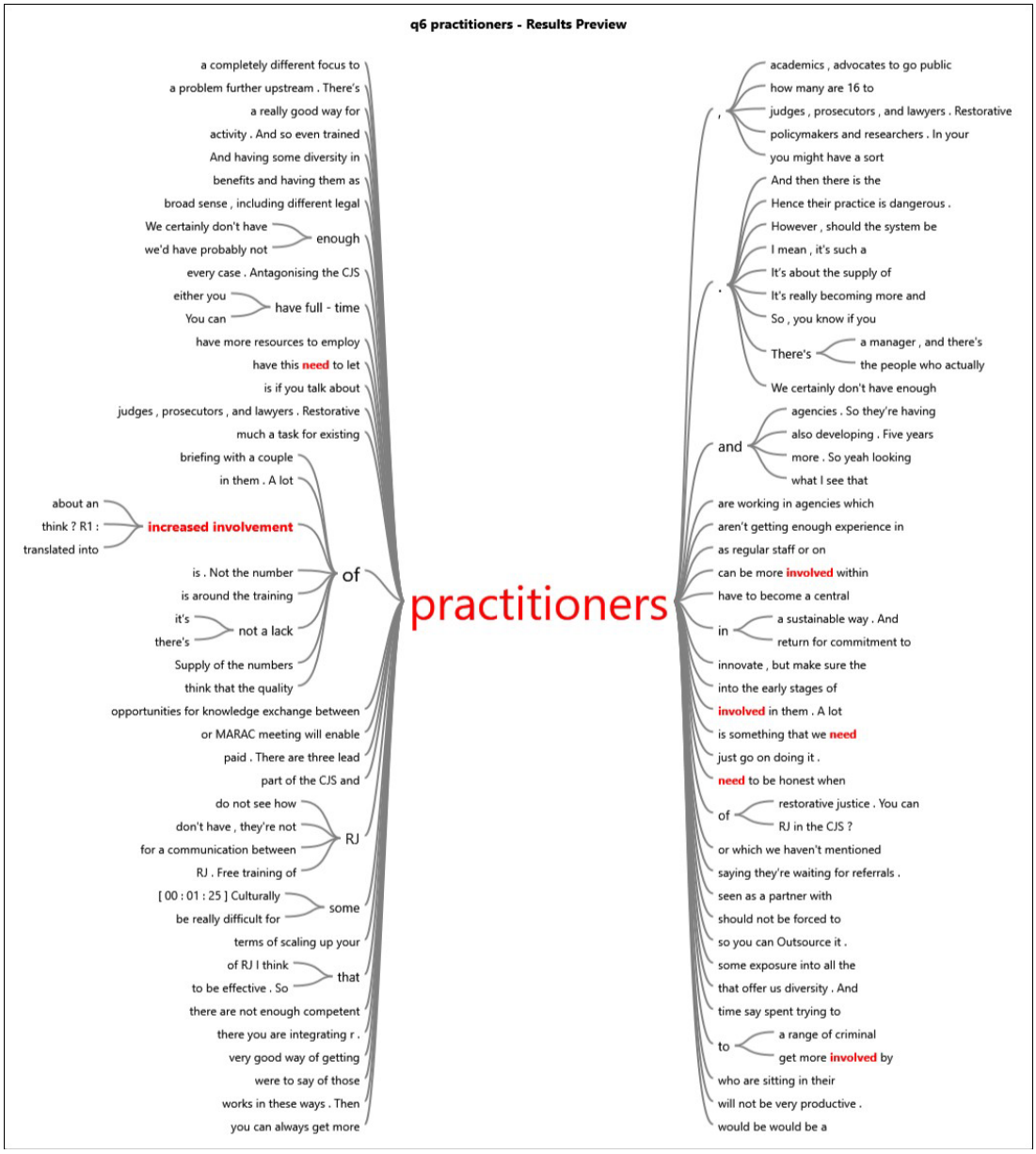
Question 5 - What changes (in general or specific) (in functioning or in policy) would you like to see/suggest in the way the CJS works in terms of RJ in the UK/specific prison/institution?



(NVivo code analysis 1.5 for question 5)

Below is NVivo Coding Analysis visual description of question 6 as word tree and term cluster for additional illustration.

Question 6 - What, in your opinion, can be done to bring about an increased involvement of practitioners of RJ in the CJS? / (increased practice of RJ in the CJS)



(NVivo code analysis 1.6 for question 6)

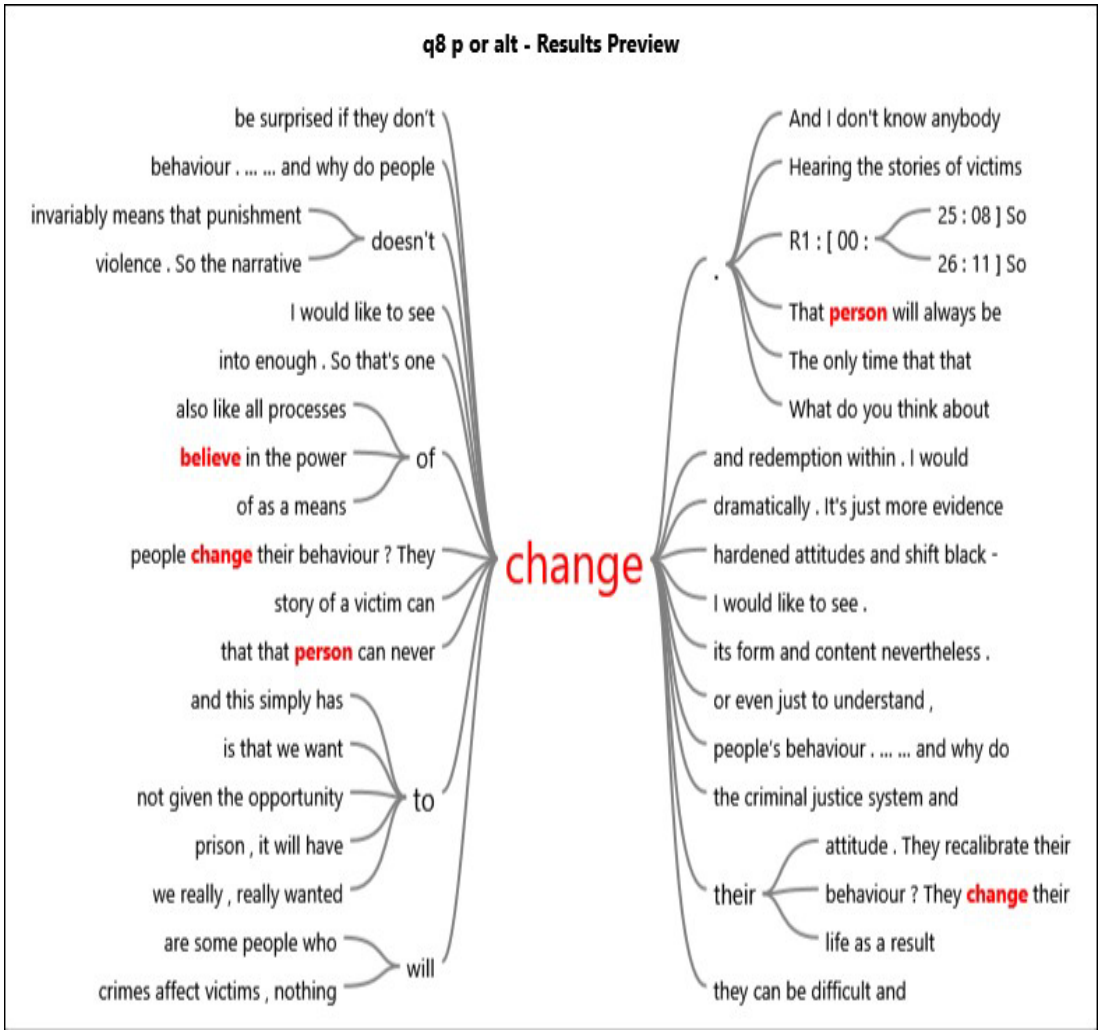
Below is NVivo Coding Analysis visual description of question 7 as word tree and term cluster for additional illustration.

Question 7 - In your workings with RJ as a witness/practitioner/influencer/receiver of RJ practices, what has been the most striking experience (positive or negative)?

(NVivo code analysis 1.7 for question 7)

Below is NVivo Coding Analysis visual description of question 8 as word tree and term cluster for additional illustration.

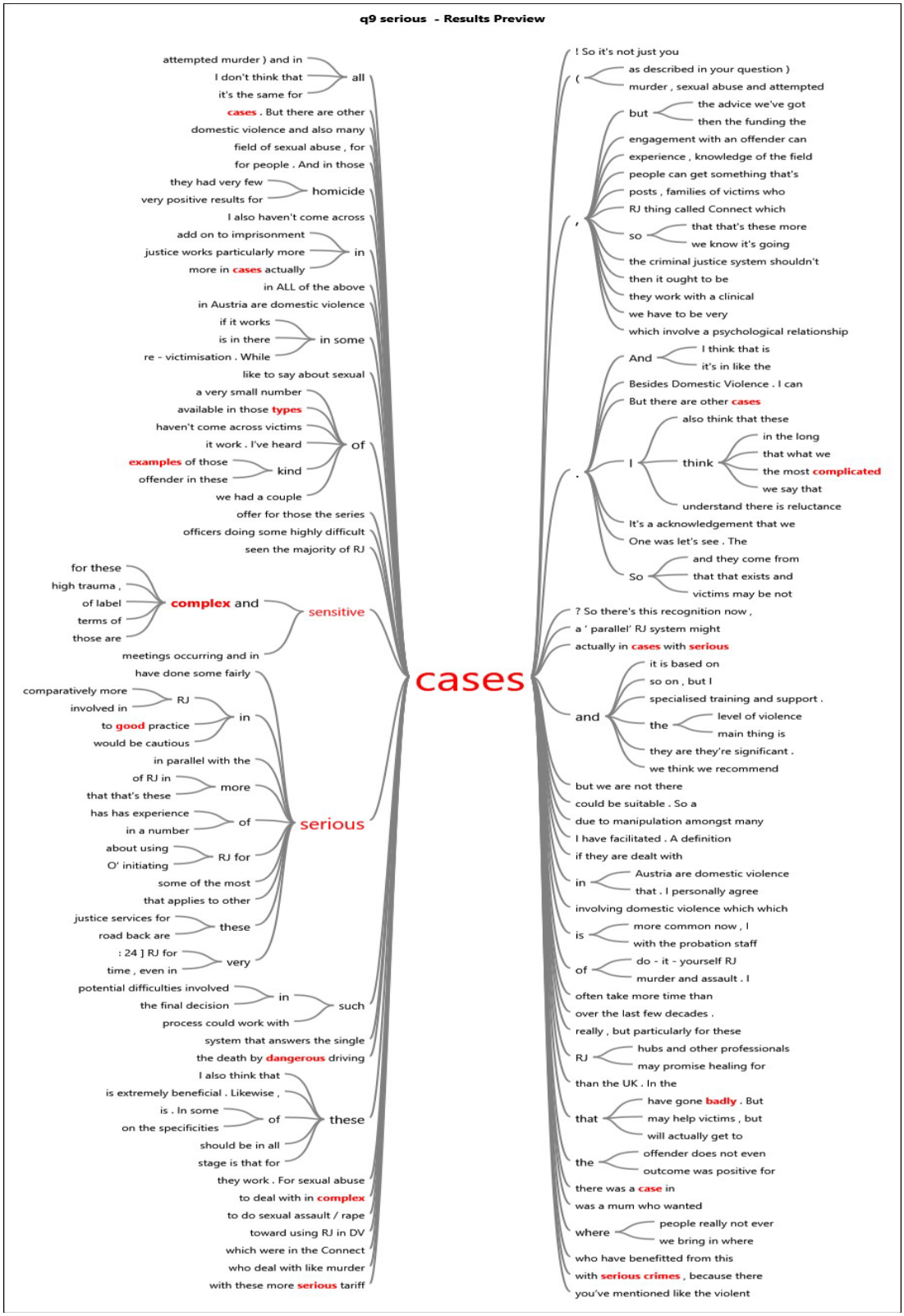
Question 8 - What other, if any, forms of punishment or alternatives to punishment do you advocate?



(NVivo code analysis 1.8 for question 8)

Question 9 - What do you think about utilising RJ measures in more serious cases, like sexual assault, rape, serious sexual offences, domestic violence, murder and homicide, serious physical assault, robbery? Please relate any experience/stories within this sub-topic.

On the following page is an NVivo Coding Analysis visual description of question 9 as word tree and term cluster for additional illustration.



(NVivo code analysis 1.9 for question 9)

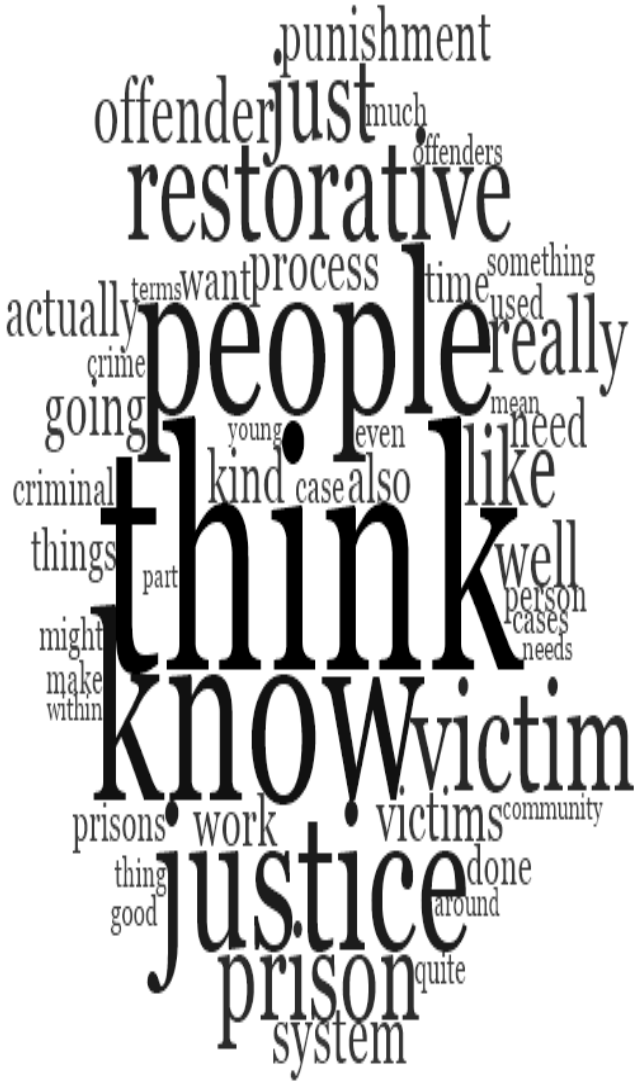
A definition of *Abolitionism*: "…the criminological perspective that dismisses penal definitions and punitive responses to criminalized problems, and proposes their replacement by dispute-settlement, redress, and social justice. In more general, historical terms it refers to the abolition of state (supported) institutions that are no longer felt to be legitimate. The word abolitionism as we currently understand it in criminology is adopted from the North American anti-prison movement of the early 1970s." (Ritzer, 2007)

Question 10 - What are your views on Abolitionism? / To what extent are you utilising abolitionist elements in your RJ practice? / What does *abolitionism* mean to you?

On the following page is an NVivo Coding Analysis visual description of question 10 as word tree and term cluster for additional illustration.

(NVivo code analysis 2.0 for question 10)

Below are Term Clusters used most by respondents to this study as a visual description from NVivo Coding Analysis.



(Word Frequency, Coding NVivo)

Appendix

1. Candidate Declaration Form
2. Consent Form
3. Data Protection Checklist
4. E-Repository Form
5. Ethics Form
6. Interview Questions
7. Participant Information Sheet
8. REC (Risk & Ethics Committee) Approval Form
9. Research Information Leaflet

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