

EXPLORING RESTORATIVE JUSTICE

IN IRELAND

PAULA KENNY

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Preface:

This book examines the concept of Restorative Justice through an evaluation of the conferencing practices of the Irish police force; An Garda Síochána. Restorative Justice manifests itself and is put into action by the Juvenile Diversion Programme and this is where the study will begin. The study sets out the theories and principles behind Restorative Justice, the history of Restorative Justice, International Perspectives.

Sociological theories of crime and punishment are the primary theories examined in this study. In the main the book argues that Restorative Justice is a process, which empowers victims and offenders to redress rather than reprove criminal activity. Restorative Justice is no longer a concept but a law which has the potential to bring about a secure solution to the challenges posed by modern society and significant changes to public opinion and social control, according to the study.

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ABSTRACT

This dissertation examines the concept of Restorative Justice. An evaluation of Restorative Justice Initiatives in Ireland is undertaken through the administration of Garda based conferencing to discover if it is a process, which empowers victims and offenders to Redress or Reprove criminal activity. The research objectives, to help test this hypothesis, are identified as (i) establishing what Restorative Justice is and it's related aims and benefits; (ii) identifying the workings of Restorative Justice processes; iii) identifying Garda involvement and training in Restorative Justice and (iv) evaluating Restorative Justice Initiatives in An Garda Síochána. The concept has recently been enshrined in law in Ireland with the introduction of the Children Act 2001. The Commissioner of An Garda Síochána has accepted Restoratives Justice and made it part of Garda policy. Goals for training and implementation have been outlined in the Annual Policing Plan. Restorative Justice manifests itself and is put into action by the Juvenile Diversion Programme and this is where the study will begin. A literature review is undertaken which documents the theories and principles behind Restorative Justice, the history of Restorative Justice, international perspectives and an insight into findings of the pilot schemes in Ireland and in Northern Ireland. Sociological theories of crime and punishment will be examined. The methodology utilised to collect primary data is six observational studies. The findings of this empirical research is presented and analysed. The main finding is that Restorative Justice is a process, which empowers victims and offenders to redress rather than reprove criminal activity. Restorative Justice is no longer a concept but a law. It is not a 'cure all' solution to the challenges posed by modern society, but it does have the potential to bring about significant changes to public opinion and social control.

Chapter One

Restorative Justice: An Introduction

INTRODUCTION

This book examines the concept of Restorative Justice and asks the question: *‘Is it a process, which empowers victims and offenders to redress rather than reprove criminal activity?’* This chapter will introduce the reader to the concept of Restorative Justice and why it is relevant to Irish society. In order to fully understand the concept of Restorative Justice in an Irish context, one must look at the Garda Diversion Programme and the introduction of the Children Act 2001.

The significance of this dissertation will be outlined to the reader, stressing the importance of Restorative Justice in today’s world. The aims and objectives of this study and how they were addressed will be outlined in this chapter. The author will also present the methodology employed. Other options that were considered for different research methods will be examined. Finally, the limitations and constraints felt by the author in research and compiling this dissertation will be outlined.

DEFINING RESTORATIVE JUSTICE

‘Restorative Justice is a process whereby the victim of a crime and the young person responsible for it, provided they are freely present, are enabled to participate actively in resolution of matters arising from the crime. Restorative Justice takes place with the help of an impartial third party’.

(Garda Restorative Justice Information Leaflet 2001)(See appendix 2 for full draft)

The main argument made by advocates of Restorative Justice is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done to the victim and to the community. Restorative Justice is not a new idea in criminology or in crime control; most traditional systems of justice in continents such as Africa and Asia have been based on restorative justice (Maguire et al, 1997). Aboriginal and Native American forms of justice are just two examples of systems that operate on the basis of restoration and reparation. In these societies unlike some modern societies justice between people is inextricably linked to the religious and everyday make up of the people whose lives criminal behaviour affects. The philosophy of restorative justice embraces a wide range of human attributes including healing, compassion, forgiveness, mercy, mediation, reconciliation and where appropriate sanctions (Consedine, 1999).

The United Nations define Restorative Justice as a follows;

‘Restorative Justice is an alternative measure in the criminal justice system that is not punitive in nature but rather seeks to render justice to victims and offenders alike, instead of tilting the balance heavily in favour of one of the other stakeholders to the disadvantage of another. It seeks to re-establish social relationships that are the end point of restorative justice and seeks to address the wrongs in the doing and the suffering of a wrong that is also the goal of corrective justice’

(United Nations, Restorative Justice, Report of the Secretary-General, 2002, p3)(See Appendix 3 for full version).

The Friends World Committee for Consultation provides the following definition;
‘Restorative Justice seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and to enable all parties with a stake in the justice process to participate fruitfully in it’

(United Nations, Restorative Justice, Report of the Secretary-General, 2002, p3)(See Appendix 3 for full version).

The concept of Restorative Justice dates back over centuries. It is recognised worldwide as having potential benefits for all those affected by crime.

Restorative Justice seeks to repair the harm done to the victim by an offender. It concentrates on the harm done and who has been affected by the harm. The victim gets an opportunity to express to the offender how he/she been affected by the offender’s behaviour (Graef, 2000).

It allows the offender to realise how his/her behaviour has affected the victim and the community. It gives the offender an opportunity to take responsibility for his/her actions.

‘Restorative Justice seeks to balance the legitimate concerns of the victim, the community, and the need to reintegrate the offender into society. The Restorative Justice process does not concern itself with judging or blaming. Restorative Justice is not a judicial process’.

(Garda Restorative Justice Information Leaflet 2001)(Appendix 2)

In order to discover how An Garda Síochána became involved in Restorative Justice the author would firstly like to give a brief history of An Garda Síochána and secondly outline the Garda Juvenile Diversion Programme.

AN GARDA SÍOCHÁNA

Organised policing commenced in Ireland in 1822 with the foundation of the Irish Constabulary. The title Royal Irish Constabulary was applied in 1867. In 1922 the Royal Irish Constabulary was disbanded with the foundation of the Irish State. An Garda Síochána was formed in 1922. The Dublin Metropolitan Police, which had been founded in 1836, was amalgamated with the Garda Síochána in 1925. The strength of the service according to figures published in the Commissioners Annual Report for 2001 is approximately 11,814 men and women, serving throughout the country at 702 locations (Commissioners Report 2001). Since its inception in 1922, the Garda service has continually reflected the vision of its founding fathers as expressed by the first Commissioner Michael Staines;

“The Garda Síochána will succeed, not by force of arms or numbers, but by their moral authority as servants of the people” (P1).

The prosecution of a juvenile should not be taken without full consideration. The child’s and the public interest are often best served by dealing with the matter under the provisions of the Garda Juvenile Diversion Programme.

*‘It is recognised that the delay in entry of a young person into the formal criminal justice system may help prevent entry into that system altogether’
(An Garda Síochána H.Q. Directive 91/1991)*

GARDA JUVENILE DIVERSION PROGRAMME

This programme, which was introduced in 1963, provides an opportunity to divert juvenile offenders from criminal activity. The philosophy behind the juvenile diversion programme is that if young people make a mistake in life, they do not suffer the consequences for the rest of their lives. It protects the juvenile from being brought through the Criminal Justice System, which could lead to a court conviction. It essentially gives the juvenile a second chance.

In recent years, the age limit for inclusion in the programme has been increase from 17 to 18 years of age. Before the passing of the Children Act of 2001 the Juvenile Diversion Programme was merely a Garda policy, which had no standing in law but was based on a common law principle of police discretion to caution for certain offences. It is operated with the approval of the Attorney General and the Director of Public Prosecutions (An Garda Síochána Headquarters Directive 91/1991).

THE JUVENILE PROGRAMME IN OPERATION

The programme operates under the supervision and direction of the Garda National Juvenile Office and is implemented by Juvenile Liaison Officers who are based locally. The cautioning and supervision of juvenile offenders represents a form of entry into the criminal justice system, if not the 'formal system'. A record of a caution will remain live on file until the juvenile reaches the age of 18 years or for a period of two years in the case of those aged between 16 and 18 years. It is, therefore important that the issue of a caution be a formal procedure, which takes full account of the circumstances of the individual in question and takes place only where strict criteria are met. The inappropriate use of cautioning may therefore undermine the intended effect (National

Juvenile Liaison Office). Crimes and offences involving juvenile offenders can be dealt with in two ways, by prosecution or through the Juvenile Diversion Programme.

The Juvenile Diversion Programme allows juvenile offenders to enter the Garda Juvenile Liaison Scheme. In this way the offender is diverted from the formal criminal justice system by way of an official caution. If after two years the offender has not re-offended, the record of the caution is deleted. The conditions for inclusion in the Juvenile Liaison Scheme are as follows:

- a) The offender is under 18 years of age
- b) He/she admits the offence
- c) Have not been previously cautioned, or having been cautioned, the circumstances are such that it would be deemed inappropriate to administer a further caution (ibid 1991)

Parents/Guardians agree to co-operate with the Gardai by accepting any help or advice concerning the juvenile's future, or in the circumstances pertaining to the particular case, where the parents/guardians fail to co-operate, the juvenile deserves the opportunity of availing of the benefits of the scheme (ibid 1991).

The consent of the injured party, although not a condition for inclusion of the juvenile offender into the Diversion Programme, should where possible be attained and given due consideration. Juvenile Offenders who are admitted to the programme will be dealt with in one of two ways:

- Formal Caution.
- Informal Caution.

An Informal Caution will be appropriate in cases where the juvenile is involved in minor crimes it is given by the JLO in the presence parents/guardians. A Formal Caution will be appropriate where the offender is made amenable for a serious crime or offence and an informal caution is inadequate. A Formal Caution may also be administered for a less serious crime or offence, where the offender has already been included in the Juvenile Diversion Programme, by way of an informal caution and the Juvenile Liaison Officer deems it appropriate that a formal caution be administered. The District Officer, Superintendent in uniform will administer the formal caution at a Garda Station. The following will be present at the cautioning:

The offender, parents/guardians of the offender, Juvenile Liaison Officer and Cautioning Officer. At this meeting the benefits of a caution are explained in terms of not having a 'criminal conviction' but attitude and indication of future behaviour are discussed. Following the Formal Caution, a supervisory period of twelve months is imposed (ibid 1991). The local Juvenile Liaison Officer in the presence of the parents/guardian will administer the Informal Caution. This will be appropriate in cases where the offender has been involved in minor crimes or summary offences. There will be no official record of caution. The aim in this case is to bring awareness to the parents/guardian of their son or daughter's behaviour.

Experience and research has shown that in many cases the parents/guardians are not aware of the anti-social behaviour of the child and this informal caution, may in many cases be sufficient to ensure a trouble free future for the child, depending on the level of parental support. In both cases of formal and informal cautioning the young offender is advised of the implications for further criminal behaviour, they are encouraged to 'steer clear of crime' and in most cases the Juvenile Liaison Officer will supervise the offender. The caution remains active until the juvenile reaches 18 years

of age or for a period of two years from the date of detection if the juvenile was cautioned between the age of 16 and 18 years. If a juvenile continues to commit offences after informal/formal cautions have been administered, the National Juvenile Office may grant ‘blanket approval’ in respect the offending juvenile. This means that if the juvenile is caught committing an offence there is in existence approval/sanction from the National Juvenile Office to proceed with normal prosecution through the Criminal Justice System. In other words, he/she is to be charged or summonsed for their offending behaviour (An Garda Síochána H.Q. Directive 91/1991).

The following table gives details of the number of prosecutions, which were instituted in respect of juvenile offenders during 2001. According to the Garda Annual Report (2001, p.108) prosecutions took place where juvenile offenders failed to meet the requirements for inclusion in the Juvenile Diversion Scheme. (in some cases juvenile offenders were prosecuted initially due to the fact that they may have been prosecuted previously or due to the serious nature of the crime).

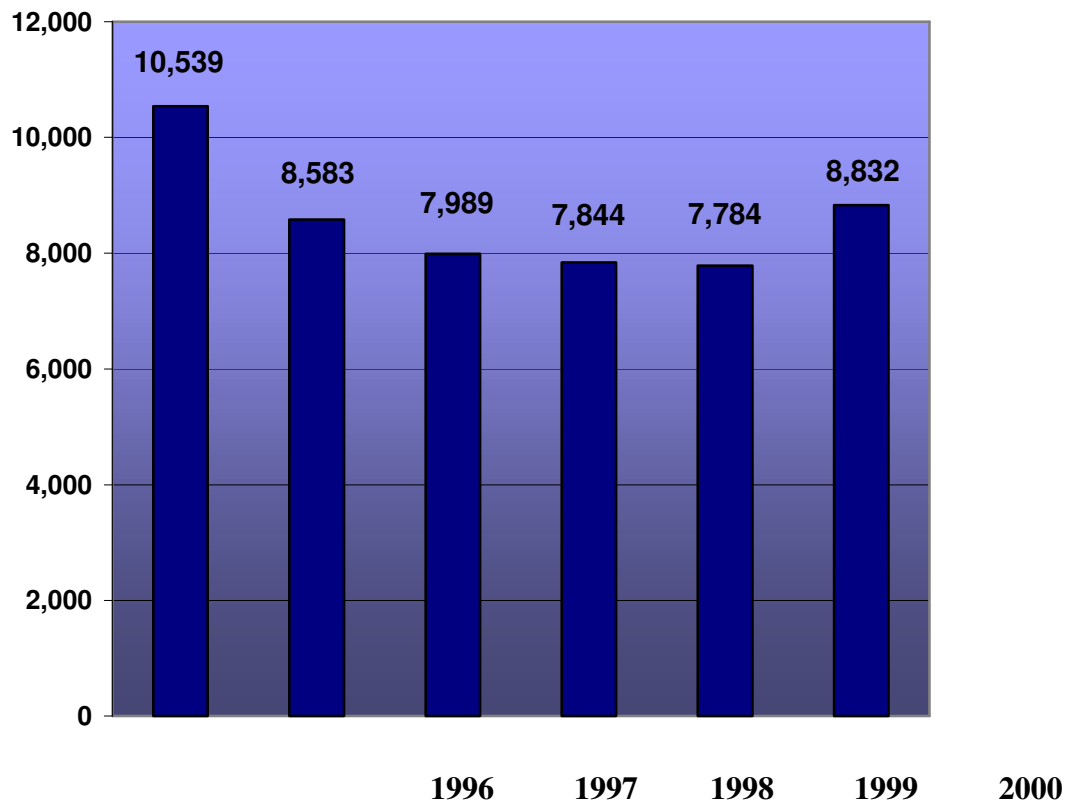
Table 1.1- Details of Prosecutions by Region (2001 referrals)

	Prosecuted Initially		Prosecuted on direction		Total prosecuted	
	Referrals	Individual Offenders	Referrals	Individual Offenders	Referrals	Individual Offenders
EASTERN REGION	94	80	351	260	445	340
Carlow/Kildare	15	14	72	59	87	73
Laois/Offaly	32	24	76	61	108	85
Longford/Westmeath	13	11	42	33	55	44
Louth/Meath	34	31	161	107	195	138
DUBLIN MET. REGION	782	441	1,356	1,055	2,138	1,496
Eastern	30	24	93	82	123	106
North Central	311	156	302	237	613	393
Northern	139	75	262	199	401	274
South Central	157	89	247	192	404	281
Southern	76	52	267	202	343	254
Western	69	45	185	143	254	188
NORTHERN REGION	36	26	237	157	273	183
Cavan/Monaghan	20	13	114	62	134	75
Donegal	10	7	94	72	104	79
Sligo/Leitrim	6	6	29	23	35	29
SOUTH EASTERN REGION	85	51	295	206	380	257
Tipperary	15	12	49	34	64	46
Waterford/Kilkenny	44	26	168	114	212	140

Wexford/Wicklow	26	13	78	58	104	71
SOUTHERN REGION	95	74	694	480	789	554
Cork City	59	45	400	263	459	308
Cork North	12	9	81	65	93	74
Cork West	11	7	65	52	76	59
Kerry	4	4	77	45	81	49
Limerick	9	9	71	55	80	64
WESTERN REGION	50	37	197	151	247	188
Clare	14	12	49	32	63	44
Galway West	7	6	38	34	45	40
Mayo	27	17	76	61	103	78
Roscommon/Galway East	2	2	34	24	36	26
Total	1,142	709	3,130	2,309	4,272	3,018

(An Garda Síochána Annual Report, 2001, p.108)

Table 1.2 - Number of Individuals Cautioned 1996 to 2001



2001

(An Garda Síochána Annual Report, 2001, p107)

JUVENILE OFFENCES - GARDA REPORT

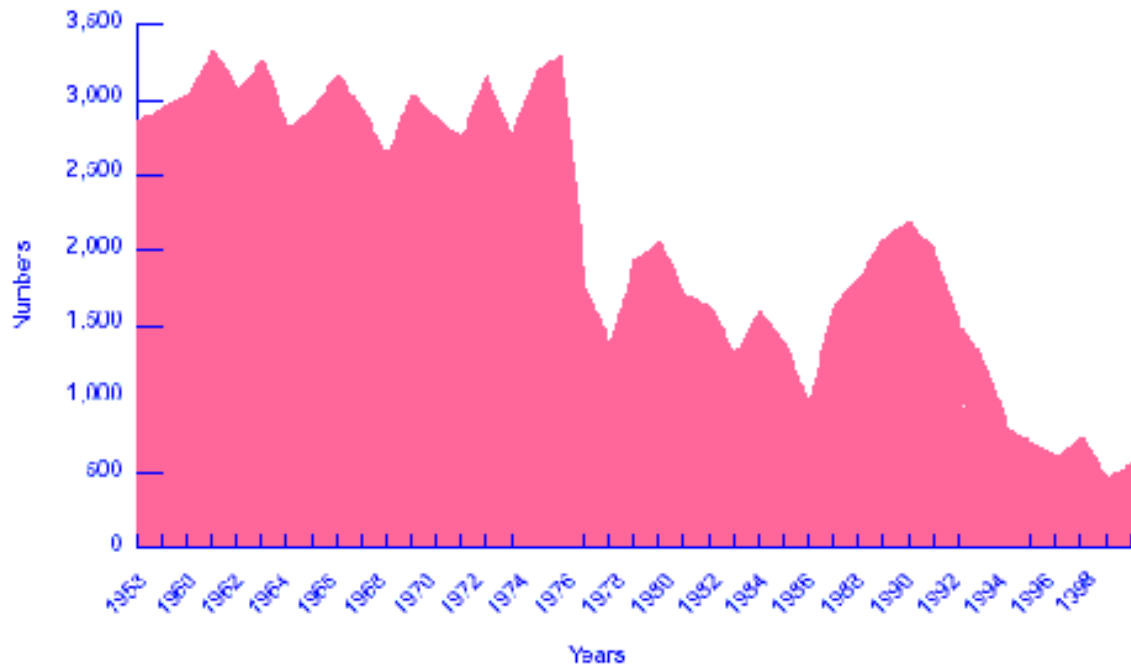
‘An Garda Síochána Annual Report 2001’ was released in January 2003. It therefore, contains the most recently published figures in relation to juvenile crime. The following are some relevant facts and tables. In 2001- 8,832 juvenile offenders were included in the programme, an increase of 5% from 2000. Since 1963- 127,852 offenders have been catered for. Of the total number included in the programme 78% were male offenders and 22% were female. Referrals in relation to drink related offences increased by 1,450 (81%) when compared to 2000. Table 1.2 documents the levels of juvenile crime from 1996 to 2001. The graph shows that the rate of juvenile crime dropped considerably from 1997 to 2000, however taking into account the figures for 2001, it appears that levels of juvenile crime have increased.

JUVENILE OFFENCES - NATIONAL CRIME COUNCIL

The Institute of Criminology at University College Dublin was commissioned by the National Crime Council to undertake a report tracking crime trends in the Republic of Ireland over a 48-year period from 1950 –1998. The following constitute some of their findings in relation to juvenile crime. Crime known to involve juveniles has been falling steadily since the 1960’s (Note: Juvenile Liaison Scheme started in 1963) Since 1992 there has been a decline in recorded crimes in all offence categories for juveniles (exception criminal damage). The mid 1990’s registered an increase in the number of juveniles being referred to and accepted onto Juvenile Liaison Scheme

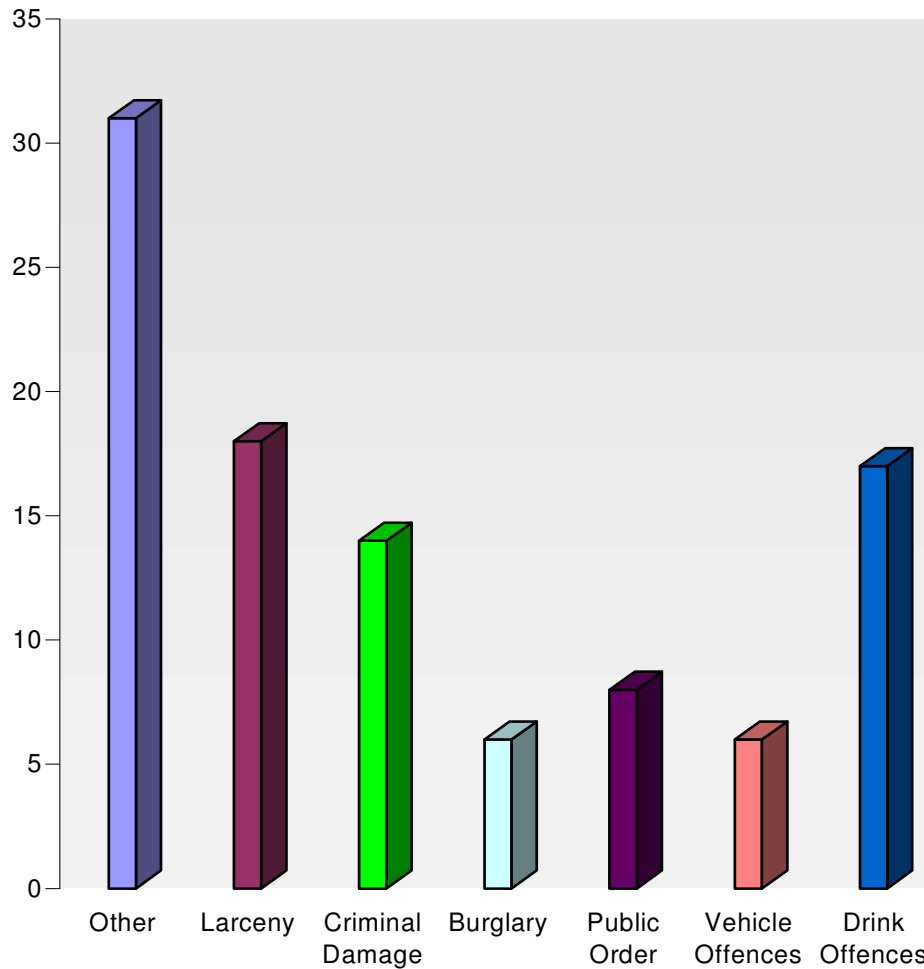
(Young et al, 2001, P63).

Table 1.3-Total Juvenile Offences (1958-1998)



(Young et al, 2001, p63)

Table 1.4-Principal Offences in respect of referrals made in 2001



(An Garda Síochána Annual Report, 2001, p110)

Above table shows the breakdown of the offences committed by Juveniles for 2001. According to the Annual Garda Report 2001, (p.110) adults and juveniles commit similar criminal offences. However, certain offences such as under-age drinking may only be committed by juveniles. Taken together larcenies, criminal damage, burglaries and drink offences, comprise slightly more than half (55%) of the total offences involved. The report states that there was an increase of 14% for both burglary and larcenies when compared to the figures for 2000. Vehicle offences relating to unauthorised taking, unlawful interference decreased by 12% whilst other traffic offences increased. Drink related offences increased by 81% and there was an increase

of 45% from 2000 in the number of cases relating to intoxication in a public place. Cases relating to the purchase, possession and consumption of alcohol increased by 126% when compared to 2000.

(An Garda Síochána Annual Report, 2001, 111)

CHILDREN ACT 2001

The most significant development for restorative justice in Ireland has been the passing of the Children Act (2001) (See Appendix 1). The Bill, which was debated in 1999, has been referred to by the Minister for Justice as the blueprint for a new system, which will chart the course of that system for many years to come (Minister for Justice, 2001). The purpose of the act is to replace the Children's Act of 1908, to implement further enactments relating to juvenile offenders and to amend the childcare act of 1991. The Act allows for close co-operation between An Garda Síochána, social services and the court system as well as bringing into effect up to date measures for dealing with juveniles.

The Children Act 2001 establishes the Juvenile Diversion Programme on a statutory legislative footing. The Act brings many significant changes to the existing legislation. Sections 52-54 raise the age of criminal responsibility from 7 to 12 years. This means that a child under 12 cannot be prosecuted for a criminal offence or cannot be cautioned under the Juvenile Diversion Scheme. The Children Act 2001 provides for a number of Restorative Justice Initiatives. Two of these concern the Gardai and take place within the framework of the Juvenile Diversion Programme.

Section 26- Restorative Cautioning

The Director of the National Juvenile Office (Superintendent) will invite victims to be present at the administration of the formal caution so that their views can be considered. At this formal caution the victim will be able to take part in a discussion about the child's behaviour.

The offender will then be invited to:

- (a) Apologise to the victim
- (b) Where appropriate make reparation to the victim (Children Act, 2001)(See appendix 1 for full draft).

Section 29- Restorative Conference

To bring the child, his/her parents/guardians etc., together with a view to establishing why the child became involved in the criminal behaviour.

To discuss how the parents/guardians can help the child from becoming involved in such behaviour again. Formulate a plan, which will seek to repair the harm caused to the victim. Potential participants include the victim and anyone whom it is thought can make a positive contribution. (Ibid)(See appendix 1 for full draft)

RESTORATIVE PRINCIPLES

The above initiatives (S26/29) as outlined in the Children Act 2001 are governed by the principles and concepts of Restorative Justice. All those taking part do so on a voluntary basis. A Garda Juvenile Liaison Officer, who has been trained in mediation skills, facilitates restorative events. During the process the Juvenile Liaison Officer will ensure that all parties get the opportunity to speak. Restorative conferencing focuses on the incident: not the offender or the victim. The objective is to make an

'agreement' or 'plan of action' between all parties: this may include reparation. This gives the victim an opportunity to play a more central role in the judicial process.

The primary goal of the Restorative Justice process is not punishment but making good the harm done by offending for the victim, the community and the offender.

Offenders have to take responsibility for their actions as a precondition to addressing the harm that they have caused. Offenders become aware that a crime is committed, not against an abstraction, but against someone real, a person like themselves and against their community, who are directly and indirectly affected by what has happened. Crime and conflict affect relationships between individuals who are left outside the court system altogether by conventional justice. Proceedings and arguments of the restorative process are voluntary for all parties. People are given the opportunity to partake in mediation, or to accept reparation. The process is always confidential however; outcomes and agreements can be made public, depending on the authorisation by participants.

WHY RESTORATIVE JUSTICE?

Like the crime it is supposed to deal with punishment is nowadays seen as a chronic problem (Garland, 1999). The renewed interest in restorative justice in America and in Europe had arisen out of a growing recognition that a reliance on traditional forms of punishment such as detention and incarceration is failing to deliver a sense of fairness, satisfaction and security from the justice system.

It can be argued that our criminal justice system

- (i) Excludes the victim from the system
- (ii) Is centrally concerned with punishment

This does not produce fairness or invoke empowerment to either the victim or the offender. Restorative justice operates within the framework of the law and is overseen by the courts to ensure that the outcome is reasonable. It allows the victim and the offender to meet face to face and discuss the harm they have suffered as a result of the offence. It empowers victims and offenders and provides them with the opportunity to take action to restore one another to their pre offence state. It gives both parties the opportunity to reintegrate into society with lower rates of stigmatisation for the offender. An important point to note is that the offender or offenders at the beginning of the restorative event, are made aware that if they fail to co operate with the proceedings they may be subject to more a adversarial response from the courts.

AN GARDA SÍOCHÁNA AND RESTORATIVE JUSTICE PILOT PROGRAMMES

An Garda Síochána aware of the international developments in restorative justice and conscious of the potential of the restorative approach initiated a programme of restorative cautions and conferences on a pilot basis in 1999. The Children Act of 2001 provides for a number of restorative justice initiatives. In the case of the Garda Síochána two types of initiative arise, both of which operate within the framework of the Juvenile Diversion Programme. The first provides for attendance by the victim at formal cautions with the offender making a direct apology and possibly reparation. A discussion about the child's criminal behaviour may also take place.

The second initiative provides for a conference to address the underlying reasons for the offender's behaviour and to draw up an action plan to avoid a re-occurrence. Potential participants include as well as the offender and his or her parents, the victim and anyone whom it is thought can make a positive contribution. It is the responsibility of the Juvenile Liaison Officer dealing with a case to recommend a restorative approach in each instance.

In Ireland at present apart from the Restorative Justice initiatives being carried out by An Garda Síochána, there are two other initiatives in operation. The first is a pre-sentence model, which receives referrals from Naas and Tallaght District Courts. It is managed by an independent board representing the main stakeholders in the criminal justice system. In this instance, trained volunteers conduct various consultations with victims and offenders to see if an apology, reparation or if a resolution can be agreed between parties carry out mediation. The mediation service then reports back to the court where the judge makes the final decision.

The second initiative operates in Nenagh, Co Tipperary and is a Community Reparation Project. It is a twelve-month pilot project managed by a local committee, which represents different community interests in conjunction with the Probation and Welfare Service. A local judge, Judge Keeley who had visited New Zealand in 1998 and was so impressed by what he saw, decided to set up a similar project in Nenagh. Offenders are referred to the project by the courts and they meet with a panel of people made up of representatives from the community, local Gardai and the project co-ordinator. The victim and their supporters may be present at the meeting. The offender is encouraged to accept responsibility for their actions. The main purpose of the meeting is to draw up a contract or agreement in where the offender agrees to any changes that he or she needs to make to their life (Lockhart cited in O'Mahony et al, 2002).

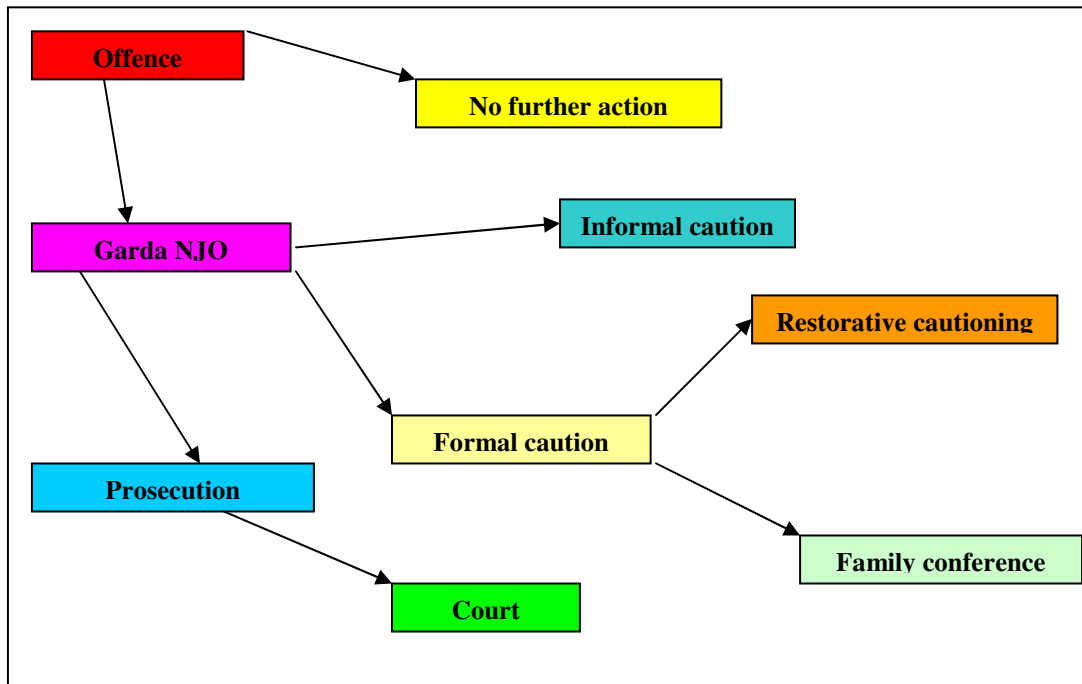
GARDA PROCESS AND THE CHILDREN ACT 2001

The Garda Juvenile Diversion Scheme operates under the auspices of the Children Act 2001. When an offender is apprehended for committing an offence, the Gardai have a

number of options open to them on how to deal with the offence depending on the nature of the offence and any previous charges against the juvenile. The National Juvenile Office will be responsible for the referral of juvenile offenders to the courts for prosecution. Prosecutions take place where juvenile offenders do not meet the requirements for inclusion in the Juvenile Diversion Programme. The National Juvenile Office and the Juvenile Liaison Officer in particular make a decision to administer a formal or an informal caution to the offender, again this will depend on the seriousness of the crime and any previous offences.

In the instance of an informal caution the offender is cautioned in the presence of their parents/guardians to refrain from committing crimes in the future. The National Juvenile Office may recommend a formal caution which, under the terms of the Children Act 2001 allows the Juvenile Liaison Officer to set up a family conference a restorative caution, this allows the offender, his/her family and the victim and their supporters/family depending on the nature of the offence. In some instances the offenders may not be prosecuted or no further action may be taken by the Gardai against them, this is the end of the matter.

Table 1.5- Garda Process, Children Act 2001



AIMS AND OBJECTIVES

The aim of this study is to carry out an evaluation of the administration of Restorative Justice in Ireland through the operation of Garda based conferencing. The evaluation will focus on the process, which empowers victims and offenders to redress rather than reprove criminal activity.

The four research objectives for this dissertation are as follows:

1. To establish what Restorative Justice is and it's related aims and benefits.
2. To identify the workings of Restorative Justice processes.
3. To identify Garda involvement and training in Restorative Justice.
4. To evaluate Restorative Justice Initiatives in the Garda Síochána

SIGNIFICANCE OF THE STUDY

Restorative Justice has been enshrined in law and put on a statutory footing as a result of the Children Act 2001. Restorative Justice has also been included in ‘An Garda Síochána-Policing Plan 2002’. This is a one-year policing plan for policing in Ireland from the 1st January 2002 to the 31st January 2002. The plan outlines the following goals:

- (i) “The development of training in relation to the Children Act 2001 will be a 2002 priority”(p20)
- (ii) “The implications for the organisation of the Children Act 2001 will continue to be monitored by the Director of the National Juvenile Office with a view to ensuring a smooth transition.
- (iii) The concept of ‘Restorative Justice’ as envisaged by the Children Act 2001 will be positively developed.
- (iv) This will be achieved by specially trained Garda Juvenile Liaison Officers covering conferences, where appropriate, whereby the victim and the young offender are brought together for discussion and, where necessary, formulate a plan of action in respect of the young offenders behaviour”. (p23-24)
- (v) “We will continue to commit to the victim of crime through Restorative Justice Process”. (p24)

(An Garda Síochána Policing Plan, 2002, p.20-24)

In recent years, practitioners, academics and policy makers have given Restorative Justice considerable attention as an alternative approach to existing criminal justice practices. With the passing of legislation in Ireland, restorative justice has been

enshrined in law and is enacted through Garda policy and more specifically the National Juvenile Office. It is an important area of the Irish Criminal Justice system especially in the area of juvenile crime. Since its inception in Ireland little study or research has been carried to examine the challenges restorative justices practices will pose to society.

CHAPTER SUMMARY

The chapter opened with a definition of Restorative Justice and a brief outline of the arguments made by advocates of restorative justice for sentences to move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm caused to the victim and to the community. The outline, structure and operation of the Garda Juvenile Programme, which was established in 1963 was presented along with tables and charts documenting the figures for juvenile crime published in the Garda Siochana Annual Report 2001 and also figures published by the National Crime Council on the rates of juvenile crime covering the period from 1958 to 1998. The chapter then presented the Children Act 2001, which places the Garda Juvenile Diversion Scheme on a statutory basis and allows for the administration of restorative conferencing/cautioning at various stages in the criminal justice process. The principles of restorative justice were presented in order to provide the reader with more information on how the process operates. The author then discussed pilot schemes in operation in Ireland at present, namely the Garda initiative of police based conferencing, the pre-sentence model in Tallaght and the Community Reparation Project in Nenagh Co Tipperary. The chapter concludes with a presentation of the aims and objectives and the significance of this research.

Chapter Two

Restorative Justice Practice

INTRODUCTION

This chapter will review the literature relevant to the research objectives. The author will firstly document the history, theory and principles of restorative justice. International aspects of restorative justice will follow on from this giving the reader a further insight in to the origins and operation of restorative justice in other countries. The chapter will continue with an examination and presentation of research findings from the pilot programmes of restorative cautioning in Northern Ireland. The author then will draw upon the research findings of an evaluation carried out by the Garda Research Unit on the pilot programme of restorative justice in the Garda Síochána. The chapter will conclude with a discussion of sociological theories of crime and deviance.

HISTORY OF RESTORATIVE JUSTICE

The principles of Restorative Justice were widely practiced in Ireland within the Brehon Laws. A central element of the Brehon Law's was restitution not retribution. However, the Brehon Laws were replaced with a more retributive system, as Ireland became part of the United Kingdom in 1801. Ireland continues to administer a system of justice that is retributive which means that if one is found guilty of a crime, one receives a punitive sanction (Maguire et al, 1997).

The concept of Restorative Justice dates back centuries in tribal traditions. Aboriginal and Native American forms of justice are just two examples of systems that operate on

the basis of restoration and reparation. Maori tribes in New Zealand have been using the Restorative Justice model for hundreds of years to deal with crimes and offences committed against members of the same tribe. The process operates as follows, if a member of the tribe commits an offence or inflicts harm on another member of the tribe they are required to meet with their victim face to face, in front of other members of the tribe, discuss the incident and offer some form of reparation for the harm that they have caused (Consedine, 1999).

THEORY/PRINCIPLES OF RESTORATIVE JUSTICE

Tony Marshall, of the Restorative Justice Consortium has defined restorative justice as the following;

‘A process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’ (Marshall, 1999,p18).

Marshall contends that Restorative Justice should aim to achieve the six following outcomes:

- (i) The denunciation of the crime
- (ii) The reform of individual offenders
- (iii) The prevention of crime
- (iv) Helping victim
- (v) Making good the suffering caused by crime
- (vi) Keeping the costs of administering justice to a minimum

(Marshall, 1999, p18)

Restorative justice essentially views the criminal conflict foremost as a breakdown in relationships between individuals and only secondly, as a violation of the law (Zehr, 1990). It seeks to repair the relationship through a healing process designed to meet the needs of the victims on the one hand for example elimination of the fear of re-victimisation, and on the other hand reintegrate the offender into society. The traditional retributive focus of the formal criminal justice system, incorporating the notions of punishment and 'just deserts' are not the goals of the restorative justice process and are viewed as ineffective, undesirable and counterproductive to prevent the offender from re-offending. The restorative justice process looks to the needs of parties: reparation of injuries, relationships and physical damage to the victim as well as attending to the needs of the offender who brought about the crime in the first place. Restorative Justice in very simple terms is another way of dealing with offenders. Many see it as an alternative to traditional approaches. The central focus of Restorative Justice is the harm caused by the offence. The offender has to redress this balance voluntarily. This is achieved by acknowledging the harm caused and by righting the wrong by engaging in reparation. The following table show the different approaches to dealing with offences.

Table 2.1-The Purpose of Punishment

	RETRIBUTIVE	REHABILITATIVE	RESTORATIVE
Reference	Offence	Offender	Loss Caused
Means	Inflicting Harm	Treatment	Obligation to Repair
Objectives	Moral Balance	Conformity	Elimination of Losses
Victim's Position	Secondary	Secondary	Central

(Vaughan, 2001, p93)

In the current retributive system, crime is considered a violation against the State. The aim of justice will be to establish guilt and hand out a punishment. It is an adversarial system with the central component of punishment. Restorative Justice sees crime as a violation on people and their relationships. The aim of restorative justice therefore, is to recognise the harm caused to victims, the community and offenders. It endeavours to repair the damage caused. The paradigms of criminal justice processes, restorative justice versus retributive justice put forward by Zehr provides an in-depth comparison of what both processes stand for in simple terms (please see appendix 4 for full description).

Braithwaite contends that Restorative Justice involves a different way of thinking about traditional notions such as deterrence, rehabilitation, incapacitation and crime prevention. He believes that restorative justice is about restoring victims; a more victim centred criminal justice system as well as restoring offenders and the community

(Braithwaite cited in Johnstone et al, 2003, p86,) (Please see table 2.2 for Braithwaite's explanation of what restoring victims means). He states that the task of restorative justice is to confront the shame of the offender, make them responsible for the bad consequences suffered by the victim and apologise with sincerity, essentially it aims to restore dignity for offenders.

Table 2.2-What restoring victims' means.

Restoring victims
Restore property loss
Restore injury
Restore sense of security
Restore sense of dignity
Restore sense of empowerment
Restorative deliberative democracy
Restore harmony based on a feeling that justice has been done
Restore social support

(Braithwaite cited in Johnstone et al, 2003, p.86)

Braithwaite states for victims, restorative justice aims to restore social support through institutionalising the gathering around of friends during a time of crisis. He believes that by removing the sense of insecurity and disempowerment of both victims and offenders through a process of deliberative democracy society can design institutions so that concerns about issues like unemployment have a channel through which they can flow from discussions about local injustices up into national economic policy making debate (Braithwaite cited in Johnstone et al, 2003). Braithwaite doesn't advocate that society abolishes the concept of crime or the key elements of state criminal justice systems which have been globalised, rather he believes in shifting power from them to civil society, keeping key elements of state systems but shifting power away from central institutions and checking power that remains by deliberative democracy from below, for example self-regulatory practice which restorative justice enables (Braithwaite cited in Tonry et al, 1998).

Braithwaite has been to the forefront in the study of restorative justice, especially through the means of his concept of reintegrative shaming. He contends that there are many reasons for the criminal justice system failing in its efforts to control levels of crime such as the stigmatisation of criminals. Braithwaite's theory Reintegrative Shaming claims that it is the societies with the lowest crime rates that have the ability to shame criminal conduct most effectively (Braithwaite in Johnstone et al, 2003). He believes that there is an important difference between shaming a person and stigmatising them. For Braithwaite, reintegrative shaming prevents crime, while stigmatisation is a form of shaming which makes crime problems worse. Reintegrative shaming means disapproving of the evil of the act while treating the person who committed the act as essentially a good human being. Reintegrative shaming in

summary relates to a strong disapproval of the act but conveying and articulating a response that is seen to respect the offender (Braithwaite, 1989).

Daly (2003) in her article on *Restorative Justice: the real story*, addresses the problem of defining restorative justice, she states that this is not easily done as it encompasses a variety of practices at different stages of the criminal justice process. She also points out that virtually all-legal contexts involving individual criminal matters, restorative justice practices have only been applied to those offenders who have admitted to an offence. Therefore it deals with the penalty phase of the criminal process for admitted offenders not the fact-finding phase. Daly's work differs greatly from Braithwaite's largely due to the fact that she deals with myths of restorative justice and furthermore she uses data obtained from observing conferences to achieve her objective. She discovered that participants engaged in a flexible incorporation of multiple justice aims which included some elements of retributive justice, censure for past offences, some elements of rehabilitative justice in the form of asking questions such as what could be done to encourage future law abiding behaviour and some elements of restorative justice such as how the offender make up for what they had done to the victim (Daly cited in Johnstone et al, 2003).

As a result of her findings, Daly was provoked to consider the relationship between restorative and retributive justice and the role of punishment in restorative justice. She states that because the term's 'retributive justice' and 'restorative justice' have such strong meanings and are largely used by advocates as metaphors for the bad and the good justice, perhaps they should be analysed in a way, which explains current and future justice practices (Daly cited in Johnstone et al, 2003). Daly does not concur that

the practices of restorative justice, which are in operation in some jurisdictions are replicas of pre-modern forms of justice, rather they are new justice practices, which have many bits of 'old' in them. By the old justice, Daly refers to modern practices of courthouse justice which permit no interaction between victim and offender, where legal actors and other experts do the talking and make decisions, whose stated aim is to punish or at times reform an offender. By the new justice, she refers to a variety of recent practices which bring victims and offenders as well as others together in a process where both lay and legal actors make decisions, whose aim is to repair harm for victims, offenders and other members of the 'community' in ways that matter to them. Therefore as Braithwaite and Petit contend, restorative justice has a better chance than 'just deserts' of being made equally available to both rich and poor (Braithwaite & Petit, 1990).

The story of Sam (an offender), which both authors refer to in their work, depicts the practice of restorative justice in operation. In the alienated urban context where the existence of a community is not apparent in a satisfactory way, a criminal justice system aimed at restoration can construct a community of care around a specific victim or offender. Both state that it is the empowerment principle of restorative justice that makes this possible. It is a form of empowerment, which permits process control (Daly and Braithwaite cited in Johnstone et al, 2003). (Separate articles)

Braithwaite (1989) further states that restorative justice must be a culturally diverse social movement that accommodates a rich plurality of strategies in pursuit of the truths it holds to be universal. We can achieve this he believes by carrying out a culturally specific investigation into how to save and revive restorative justice practices

that remain in all societies and how to transform state criminal justice by making it both more restorative and by rendering it abuses of power more vulnerable to restorative justice. Daly agrees with Braithwaites ideal of a culturally diverse social movement and states that the real story of restorative justice offers hope not only for a better way to do justice but also for strengthening mechanisms of informal social control and as a means to minimise reliance on formal aspects of social control, primarily the machinery and institutions of criminal justice.

In the past the formal criminal justice system has been overly focused on what O'Mahony (2001, p11) calls, 'public interest' which effectively amounted to the state overriding the interests of the other stakeholders. Restorative Justice on the other hand is as Consedine states a 'philosophy that embraces a wide range of human emotions including healing, mediation, compassion, forgiveness, mercy, reconciliation as well as sanction when appropriate' (Consedine, 1999, p.183).

According to Consedine (1999) the restorative approach to crime came about following mounting concern over the exclusion of the victim from the criminal justice system and also through the belief that there was a lack of participation by the offender. He believes that the restorative justice process recognises a worldview that says we are all interconnected and that what we do, be it for good or evil, has an impact on others. Restorative Justice in Consedine's view offers a process whereby those affected by criminal behaviour, be they victims, offenders, the families involved or the wider community, all have a part to play in resolving the issues that flow from the offending. Under restorative justice, victims and offenders assume central roles and the state takes a back seat. The process does not focus on vengeance and punishment but seeks to heal

both the community and the individuals involved. This is achieved by a process that puts the notion of reparation, not punishment, at its centre. (Considine, 1999)

In general, the Restorative Justice philosophy is based on three beliefs:

1. Crime results in harm to victims, offenders and communities.
2. Not only Government, but victims, offenders and communities should be actively involved in the criminal justice process
3. In promoting justice, the government should be responsible for preserving order. (Van Ness, 1996)

These general beliefs lead to a number of common elements among Restorative Justice Programmes. The key features of the concept of Restorative Justice can be outlined as follows:

It is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future. It is a problem-solving approach to crime, which involves the parties themselves, and the community generally in an active relationship with statutory agencies. It is not a particular practice, but a set of principles, which may guide the general practice of any agency or group in relation to crime. It seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist recovery of the victim and enable all parties with a stake in the justice process to participate in it. Restorative Justice is not a movement alongside or against the current criminal justice system but must be seen as a fully integrated approach with the existing criminal justice system in order to modify the foundations of the system itself (Aertson, 1997, p14).

This does not produce fairness or invoke empowerment to either the victim or the offender. Restorative justice operates within the framework of the law and is overseen by the courts to ensure that the outcome is reasonable. It allows the victim and the offender to meet face to face and discuss the harm they have suffered as a result of the offence. It empowers victims and offenders and provides them with the opportunity to take action to restore one another to their pre offence state. It gives both parties the opportunity to reintegrate into society and lower rates of stigmatisation for the offender. An important point to note is that the offender or offenders at the beginning of the restorative event are made aware that if they fail to co operate with the proceedings they may be subject to a more adversarial response from the courts.

INTERNATIONAL ASPECTS OF RESTORATIVE JUSTICE

Internationally one of the first legal changes made to incorporate restorative justice into law came in New Zealand in 1989. New Zealand and Canada have chosen different routes to restorative justice from the US and Britain, rediscovering ancient practices and using them in their criminal justice systems (Maguire et al, 1997).

According to Graef (2000), after some experimentation, the New Zealand Government passed the Children, Young Persons and their Families Act, which introduced an intermediate stage between arrest and sentence for serious cases for a Family Group conference to take place. This is a procedure based on the principles of restorative justice. It was developed then extended to deal with juvenile offenders. In Family Group Conferencing, juvenile offenders and their extended families are invited to attend, as are the victims and their supporters. The professionals who take part include a police youth aid officer, the offender's teacher or social worker. The group guided by a facilitator explores the factors that led to the offence, and the effects that it had on the

victims. The conference concentrating on repairing the damage and preventing further offending, seeks to produce a plan that will see appropriate measures are taken to make good the harm and assist the juvenile offender.

An important part of this process is that the offender and his or her family are given time in private to formulate a plan that is then discussed by the whole Conference.

Graef (2000) states that:

1. *Eighty per cent of less serious cases are diverted from court to informal measures, often restorative in nature.*
2. *The remaining twenty per cent Family Group Conferencing is used instead of the court process, or in more serious cases, the conferencing model is used to develop recommendations made to court during in the pre-sentencing report.*
3. *If the judge accepts the plan it will normally form the basis for a three-month court order.*
4. *If all conditions of the plan are completed, the case is discharged.*
5. *Justice is deemed to have been done.*

(Graef, 2000, p.25)

Recent legislation in the England and Wales is providing a new opportunity for Restorative Justice. The Crime and Disorder Act 1998 provides for Reparation Orders to be carried out by juvenile offenders to benefit their victims, or if the victims do not want to be involved, to benefit the community. Although the act does not specify victim/offender mediation (it must be voluntary to be meaningful) it is seen as an appropriate means of arranging reparation (McLaughlin et al, 2003).

Throughout Europe in the last decade there has been an increasing surge of interest in restorative justice. Several countries have now passed restorative legislation. Others including Ireland are introducing victim/offender mediation alongside their criminal justice system. At the present time, the most prominent example of restorative justice processes in operation internationally, is in New South Wales in Australia. The New

Zealand model, based around family group conferencing has been revised and replicated in Wagga Wagga, New South Wales as a community policing technique (Moore and McDonald, 1995).

In the first instance, the offenders were brought together with their family and friends to decide how to respond to the offence, as in the New Zealand model, however the scheme has been extended to include victims and their supporters. This scheme has also been adopted by police forces in other parts of Australia. The first use of police based conferencing outside of Australia occurred in 1995 when police officers in Minnesota and Pennsylvania conducted a series of training sessions. They set up REAL JUSTICE, which has made a significant contribution to the development and promotion of restorative justice in North America. The scheme was confined to misdemeanours with strict controls on the type of offences that could be referred, only minor offences were eligible and it only applied to first time offenders by the Bethlehem Police Department (McCold and Watchell, 1998). The Bethlehem project has been replicated by at least five other police departments in the United States as well as the Royal Canadian Mounted Police and a number of police forces in the United Kingdom e.g. Thames Valley and the Police Service of Northern Ireland. The projects in operation in Ireland at present include the Garda initiative and the community based project in Nenagh have been replicated from the New Zealand model (Miers, 2001).

RESTORATIVE CAUTIONING IN NORTHERN IRELAND

The Police Service of Northern Ireland formerly the Royal Ulster Constabulary ran two pilot restorative cautioning schemes in Ballymena and in Mountpottinger, Belfast. Research findings are available for the period from mid 1999 to mid 2001. The

schemes utilised a restorative approach for dealing with juveniles who committed an offence, but were diverted away from prosecution by way of a formal caution, delivered using a restorative framework. Two types of restorative approaches were used in both areas; firstly a restorative conference directly involving the victim and secondly a restorative caution which did not directly involve the victim. The schemes in both areas differ from one another. In Ballymena it was operated as part of a retail theft initiative and dealt mostly with shop lifting cases. In Mountpottinger it was used as an alternative for cases that were thought to be suitable for formal cautioning. (O'Mahony et al, 2002)

The following table summarises the Juvenile Liaison outcomes for the period May 1999 to September 2000. Some data is missing as there were a number of cases that either had no outcome or a decision was pending at the time the research was being conducted. The report states that the profile of those who were dealt with by means of no further police action were younger than the general age group of those who came to the attention of Juvenile Liaison Officers in both areas. Only a very small minority had ever been previously cautioned or prosecuted. In respect of offenders given advice and warnings the report states that a high proportion was for non-criminal incidents or general misbehaviour. Similar to no further police action over half had never had previous contact with the police. In relation to the normal caution, the report notes that all offences related to theft, disorderly behaviour violence and motoring related offences. Most of the people cautioned had had previous contacts with the police though most of these had resulted in no further action or advice and warning.

Restorative conferences took place predominantly in Ballymena and as a result the report notes that the vast majority of the cases were for thefts through shoplifting. It is reported that 95% of those given a restorative conference had never been previously cautioned and or prosecuted, making them similar to those given advice and warning than those cautioned or prosecuted. By contrast to restorative conferencing the vast majority of restorative cautions took place in Mountpottinger. The cautions were given for a wide range of offences including burglary, criminal damage and drug related offences. The age profile of the offenders was generally higher than those dealt with through restorative conferencing. Furthermore the report states that the vast majority of offenders had previous contact with the police.

The differences between the conferences and the cautions shows how the different programmes operated in Ballymena and Mountpottinger and also the different approaches adopted in the two areas to dealing with juvenile offending. In relation to prosecution the report notes that the young people prosecuted were very different to the other types of offenders. The ranges of offences leading to prosecution are associated with more serious crimes such as burglary, violent offences, theft and criminal damage. Those prosecuted were also different to the other offenders due to the fact that only 11% had never had any previous contact with the police whilst the remainder had six or more previous encounters with the police (O'Mahony, 2002).

Overall with respect to the restorative conferences and cautions the report states that the police intention was to position the scheme within their caution policy. It is clear that they were not using the restorative approach as an alternative to prosecution or instead of prosecution. In respect of restorative conferences the report states that they

were used at the low end of the criteria for official cautions. The profile of those given restorative cautions on the other hand was closer to those given official cautions (O'Mahony et al, 2002).

The report concludes by stating that the

'police restorative conferencing and caution scheme is a substantive improvement in the quality on previous cautioning practice. In this it represents significant progress towards a balanced, humane and effective juvenile justice system'

(O'Mahony et al, 2001,p.10).

The report contends that in order for the process to advance further greater efforts need to be made in order to encourage victims to take part and to take grater risks in engaging more serious and persistent offenders. The report also mentions that facilitators must strive on an ongoing basis to improve the quality of the practice for victims, offenders, the community and society as a whole (O'Mahony et al, 2002).

Table 2.3 Juvenile Liaison Outcomes – May 1999 to September 2000

	Mountpottinger	Ballymena
No Further Police Action	17%	21%
Advice and Warning	67%	53%
Caution	2%	6%
Restorative Caution	4%	*
Restorative Conference	*	3%
Prosecution	10%	17%
Total**	946	783

* Less than 1%

** Total number is lower as 132 cases had no outcome recorded-these were pending decision or outcome

(O’Mahony et al, 2002,p.28)

GARDA SÍOCHÁNA RESTORATIVE JUSTICE: PILOT PROGRAMME

The first event under the Garda Síochána pilot programme was held on the 9th February 1999. In total, 68 events are reported to have been convened between this time and the 31st August 2001. The 68 events dealt with a total of 96 offenders all from different regions in Ireland and different socio economic groups.

The pilot programme examines how the process of restorative justice operates and focuses on the happenings and outcomes of each conference. The findings are based mainly on observations of restorative events and on the completion of observation and record sheets by independent observers and Juvenile Liaison Officers.

The restorative approach was used in connection with a wide variety of offences ranging from serious assault and burglary to underage drinking and minor criminal damage. The number of participants in the conferences/cautions varied considerably, ranging from 3 to 17, whilst a high number of cases involved two or more offenders. The report states that in 14 of the 68 cases no victim was present. According to the report these cases can be shown as follows, four of the cases represented ‘victimless’ crime a further two cases related to large companies. In the other cases the views of the victim were expressed by a family member or by a representative.

Table 2.4-Restorative Events 1999 to 2001

<u>Year</u>	Restorative events	<u>Monthly average</u>
1999	11	1.0
2000	30	2.5
2001	26	3.3
Total	67*	2.2

*** Data missing for one Event.**

In relation to performance the report states that the restorative events scored highly with all participants including victims and offenders, engaging actively in the process. The level of understanding at the conferences/cautions was high with little indication that decisions were not agreed upon by all participants. The report shows that rankings were highest as regards opportunity for all participants to express their views and have their say.

Table 2.5-Garda Siochana Restorative Events

Type Of Event					
Conference		Caution		Total	
Number Held	Overall Percentage	Number Held	Overall Percentage	Number Held	Overall Percentage
19	29%	46	71%	65*	100%

*** Data missing for three Events.**

The report notes that most offenders experienced a change in their outlook as part of the process. The extent of change was assessed as regards feeling defiant, ashamed, confident, remorseful, sullen, uninterested, self conscious or apologetic. Offenders were also assessed as regards the extent to which they accepted responsibility and whether they treated the process seriously.

The greatest changes reported were in relation to the offenders feeling remorseful, accepting responsibility, being apologetic and in feeling self-conscious. Individual offenders were sometimes greatly affected by the process with a small number showing no change. The report states that a significant reduction was achieved in the levels of awkwardness between offender and victim and between their families.

Recorded levels of victim satisfaction are high in the report as a result of strongly supported evidence. Satisfaction rates were influenced by the expectations victims had going into the restorative event.

‘Support for an acceptance of the young person/offender are key elements of the restorative process, it is critical to the overall success that offenders realise that they are accepted and reintegrated’

(Garda Research Unit, 2001, p iii).

The report cites verbal apologies as the element most frequently utilised in action plans for offenders, followed by 'making promises' usually not to re-offend, compensation, written apology, restrictions on liberty, educational training and rehabilitation programmes. Drawing up the plan is a matter for the parties directly involved. The report states that the outcome of the conferences and cautions were classified as genuine consensus in 84 % of the cases in respect of the 43 cases which this information was available. In the majority of cases the J.L.O was designated to monitor compliance.

Just over a quarter (28%) of the young offenders re-offended within the time scale of the study (end October, 2001). Re-offending occurred in just over a third of cases (35%). Half of the re-offenders, 13 out of 26, re-offended only once, nine re-offended more than twice. Eight were cautioned again, most having re-offended just once. Prosecution was recommended in twelve cases (Garda Research Unit, 2001, p v).

The report stated that the early evidence of restorative justice in operation suggests that the initiative should be expanded through providing additional resources, support and encouragement for Juvenile Liaison Officers. It states that guidelines should be formulated to produce support for the Juvenile Liaison Officers in the areas of case selection, determining choice of conference or caution and the involvement of other professionals such as health board social workers.

The report suggests that every encouragement should be given to victims in order to get them to participate in restorative events. Where the victim does not want to attend the report states that consideration should be given to alternatives such as a family

representative. It states that attempts to organise a conference should not be abandoned solely due to victim absence. On a final point, the report states that any evaluation of the next phase of restorative justice should include a direct examination of views and experiences and take a much closer look at offender compliance with the actions plans and more importantly recidivism.

Table 2.6-Restorative Events by Garda Division

Division	<u>Number</u>
Carlow/Kilkenny	2
Clare	1
Cork City	3
Cork North	1
*DMR East	6
*DMR North	20
South *DMR	1
*DMR South Central	10
*DMR West	4

Laois/Offaly	1
Longford/Westmeath	1
Louth/Meath	3
Roscommon/Galway East	2
Waterford/Kilkenny	7
Wexford	4
<u>TOTAL</u>	66**

*

Dublin Metropolitan Region.

**** Data missing for Two Events.**

SOCIOLOGICAL THEORIES OF CRIME AND PUNISHMENT

From a sociological standpoint crime is dependent on society defining certain actions as being criminal and on the reaction of others to those actions. Crime and criminal behaviour therefore need to be viewed in relation to the social structure and to specific social conditions and opportunities in society. Whilst many sociological explanations vary considerably in their emphasis on the different factors within the social structure that can be related to crime, they all accept that social forces are related to and cause criminal behaviour.

Durkheim

Evidence of restorative justice practices can be seen in the work of Emile Durkheim. Durkheim recognised that crime and criminal behaviour is universal, normal functional for all societies. He saw crime as a normal occurrence and believed that it is impossible to have a society totally devoid of crime, *'it is a factor in public health and integral part of all societies, crime, is, then, necessary'* (Durkheim, 1970, p.46). Durkheim believes that the presence of the criminal allows the rest of society to draw together and reaffirm their values. Therefore through opposition to criminal behaviour, the social group or society is strengthened. Durkheim regards the criminal as someone who provides the community with an opportunity to reassert standards, which he or she had broken or opposed. His pioneering study of the production of order and cohesion in modern industrial society had noted that, as societies become more advanced and complex, punishments become less severe (Durkheim, 1970).

He cited imprisonment replacing death and mutilation as the sanction for most crimes. Durkheim argues that repressive forms of law, such as criminal law, tend to diminish, with conformity being secured more and more by restorative law, which is law concerned with complaints between individuals rather than crimes against the state/society.

Foucault

Foucault in *Discipline and Punish* sees discipline as the fundamental principle of modern punishments. He opens the work by contrasting a public torture and execution in 1757, with a timetable and rules for a 'house for the reform of young prisoners', eighty years later. The first punishment is aimed primarily at demonstrating the

absolute power of a sovereign over his subjects; the second demonstrates a new kind of governance, which utilises sovereign power, new social science, and techniques of observation and regulation to produce the docile, productive body needed by capitalist industrialism. Foucault's analysis of punishment is part of a wider analysis of power in modern society. For him, discipline is both object and mechanism of punishment and is first and foremost a technology of power (Foucault, 1977).

Merton

Merton suggests that criminal and rule breaking behaviour results from 'differential access to the success goals of society by legitimate means' (Merton, 1938, p.216). By this he is referring to societies where a strong emphasis is placed on certain goals but where the means to attaining them are unavailable to most of its members, the result Merton believes is anomie, a situation where the rules and standards governing behaviour have lost their influence and are liable to be ignored and where shared norms or rules no longer determine and direct behaviour. According to Merton a situation of 'anomie' exists where people strive for goals of material success but do not possess the opportunities to reach them by legitimate means. Merton theory of criminal behaviour can also be called a 'strain theory'. According to Merton this is a 'working class' phenomenon. Merton believes that young people from working class backgrounds share the same cultural goals and values of the middle class, but that they do not have the opportunity and means to achieve these goals and hence are motivated to lead a life of crime.

Elias

Elias theory of the civilizing process is important for the study of social control as he puts forward valuable explanations of society's level of tolerance towards criminal behaviour. The two concepts, which are prevalent for criminology, are what Elias calls 'development' and the 'immanent dynamics of figurations'. The term figuration as employed by Elias refers to a web of interdependent human beings who like all other aspects of known reality figurations are inherently processual (Dunning, 1992). What Elias means by 'immanent dynamics' is that the dynamics of a social figuration are embedded in its structure and furthermore in the make up and actions of the people who comprise it.

Dunning (1992) states that human beings always live together and that their patterns of interdependency as well as the ways in which their actions intertwine as they attempt to secure their 'shared and conflicting ends' is the structure of figuration that they form. He contends that struggles with and among such groups for the control over such examples as the economy, the state, goods and services, production, are all crucial connections for Elias concepts of the 'immanent dynamics of figurations' and 'development'. These struggles are largely influenced by developmental factors such as the length and shape of the chains of interdependency within a particular society and with other societies, the balance between the pressures of society in order for security, control and stability. The central observation which Elias makes through his theory of the civilizing process is that Western societies since the Middle Ages have experienced a growth in the refinement of manners and social constraints. The refinement of manners is self-explanatory but by social constraints Elias is referring to the increase in the amount of social pressure on people to exercise a more even self-control over their feelings in the field of social relations. This has important implications for the study of

social control and restorative justice, as it can provide a valuable insight into the habitus of victims and offenders explain why they may behave or react in a particular manner at a conference/caution.

What is important for the relationship between criminology and the wider sociology of social control is that these histories of control established the modes of punishment reflected by economic relations. They utilised the available knowledge's and technologies of their time and proved that there are continuities between the punishment of crime and the control of other deviant populations. Punishment according to Garland is a phenomenon commonly regarded as a uniform object or event rather than he states, as a complex set of interlinked processes and institutions (Garland, 1999).

WHAT IS CRIME?

It is generally accepted in society that crime is any act, which breaks criminal law. In addition to breaking criminal law, a crime can be followed by criminal proceedings including a court appearance and punishment in the form of a prison sentence. The phrase 'can be followed by indicates' that not all crime does actually result in arrest and prosecution. Some of the reasons for this are, firstly not all crimes committed are reported and secondly the police are not always aware of occurrence of criminal activity.

Criminal law is not fixed and static; it varies over time and from region to region. *'Crime is a relative concept which can only be defined in relation to particular criminal laws which are effective at particular times and in particular societies'*

(Marsh, 1991, p.1). Therefore actions, which are defined as criminal, will vary in different social settings, in different societies and over different periods of time. For example the consumption of alcohol is legal and a socially accepted practice in most countries yet in certain Moslem countries it is illegal and results in severe punishments.

The definition of crime as an act, which breaks the criminal law of a particular society, is not affected by variation in what is seen as constituting crime in different societies. Definitions of crime are based on criminal laws, which are made by particular governments and enforced by established criminal procedures. Crime therefore has to been seen as a social phenomenon which is subject variation depending on the type of society and government at particular times, including their criminal laws and practices.

Deviance

Deviance is a term, which used to describe persons or persons who deviate, digress and stray from normal behaviour. In sociology deviance is applied to situations where the behaviour is disapproved of and subject to some form of punishment. Deviance is thus used to describe behaviour that is outside the rules of society: and these rules can be legal rules or social and moral rules, rules about the conventional way to dress or to speak to other people (Marsh, 1991). Deviant behaviour is also behaviour that can result in some form of punishment and this punishment can either be formal, legal punishment or take the form of social and moral disapproval. Deviance according to Marsh is behaviour, which does not follow the expectations or norms of the majority in society and it leads to hostile and critical reaction from the majority (Marsh, 1991).

Delinquency

Delinquents can be defined as ‘persons under some specified age who commit acts, which constitute crime if carried out by adults’ (Gibbons, 1981). The age of criminal responsibility in Ireland is seven; in Britain it is ten years of age. The term delinquency covers a wide variety of violations of social and legal norms, from behaviour that is merely a nuisance to criminal acts such as theft and larceny. In criminology the term juvenile delinquent is typically used to indicate the high level of offences committed by young males between the ages of twelve and twenty. *‘The typical crimes of younger males are larceny and breaking and entering, while violent crimes are more common in the age groups of seventeen and over’* (The Penguin Dictionary of Sociology, 4th Ed, 2000, p.87).

Most sociological theories of juvenile delinquency attempt to explain crimes such as larceny and breaking and entering in terms of the organisation of urban gangs, delinquent sub cultures and the limitations on the opportunities for working class males and deprived social groups. The Chicago School had been analytically to the fore in studies of criminology by putting forward routine activities theory and control theory which both describe convergence in space in society. They define juvenile delinquency in terms of the social structures of local neighbourhoods and the role of peer groups in the socialisation of adult generations. David Matza in his book *Delinquency and Drift* (1964) argues that delinquency did not emerge as a result of a strongly determined forces but rather through a ‘gentle weakening of the moral ties of society’ which, allowed some young people to drift into delinquency. Matza further contends that delinquents often ‘neutralise’ legal and moral norms by defining them as non-applicable, irrelevant or unimportant to their being.

He states that once a person feels indifferent towards the law then he or she may commit unlawful acts without feeling any strong sense of guilt or shame. Matza believes that a delinquent who neutralises his or her behaviour towards legal and moral norms may be said to drift into a subculture of delinquency, which makes them subject to committing criminal acts (Matza, 1964).

Research has shown that Parenting and the Social and Economic background are factors, which highly influence delinquent behaviour. In relation to the factors that relate to Juvenile Crime, research had shown that no one single factor influences delinquency but rather a number of factors that work together. Every individual young person is different, their situations are different and as a result some factors will be more influential than others depending on the individual. Research carried out by Marsh and Ruckler (1989) from the analysis of four universities in the United States of America found that teenage delinquents were associated with low-income families, the absence of biological fathers, that most mothers were on social welfare and that their children had low rates of educational attainment. They also found that in many cases the presence of both parents had mitigated many of these adverse factors and generally had a protective affect. Robins (1979) has stated that poor parental supervision has contributed to children and young adolescents becoming delinquent. In a longitudinal study in St Louis University, Robins found that poor supervision and discipline were related to offending and delinquent behaviour.

CHAPTER SUMMARY

In this chapter has examined a range of literature related to the theories and principles of restorative justice. The purpose of this review was to seek theoretical frameworks that were relevant to this dissertation. The chapter has shown that there are many facets and approaches to restorative justice. It also has been demonstrated that restorative practices and principles pose major challenges to criminal justice systems and society as a whole. The chapter opened with a brief history of restorative justice outlining its origins and a description of how the process operated with emphasis on Maori tribes in New Zealand. The key aspect of the process is that it allows the victim and the offender to meet face to face, in front of other members of the tribe to discuss the incident and offer some sort of reparation for the harm that they have caused. A discussion of the theories and principles of restorative justice followed on from this.

The author presented a table on the purpose of punishment and outlined the basic principles of restorative justice in comparison to traditional methods of retributive justice. The author then presented Braithwaite's theory of reintegrative shaming which means disapproving of the evil of the act while treating the person who committed the act as essentially a good human being. The author outlined Daly's definition of restorative justice and compared and contrasted both Daly and Braithwaite's arguments.

International aspects of restorative justice followed on from this giving the reader a further insight in to the origins and operation of restorative justice in other countries. The author then presented the findings of the Garda Síochána Restorative Justice pilot programme, a total of 68 cases were observed between 1999 and 2001 across divisions in the country. The findings are based on observations of restorative events and the

completion of observation and record sheets by independent observers and Juvenile Liaison Officers. The chapter continued with an examination and presentation of research findings from juvenile liaison from two pilot programmes of restorative cautioning in Northern Ireland. The chapter followed on with a discussion of sociological approaches to crime, punishment and deviance. The author presented evidence of restorative justice approaches in the work of Durkheim and Foucault, the author continued by outlining Merton's theory of Anomie and Elias and Dunning's theory of the civilising process. The author concluded the section on sociological approaches with a definition and explanation of crime, deviance and delinquency.

Chapter Three

Presentation of Empirical Research Findings

INTRODUCTION

This chapter will set out to justify the methodology used in this dissertation. Firstly the hypothesis and the research objectives will be outlined. Next the secondary sources of information will be explained. Qualitative versus quantitative methods will be discussed as well as other research methods considered for this dissertation. This chapter will also identify how the process of restorative justice operates and present the methodology of family group conferencing. Following on from this the method of primary research data analysis will be presented. Non-participant observation at restorative conferences/cautions was used to elicit data, which would aid the achievement of the four research objectives. Finally summaries of the findings from six conferences/cautions are presented.

HYPOTHESIS AND RESEARCH OBJECTIVES

As outlined in Chapter 1 the following hypothesis is being examined:

‘Redress or Reprove?’ An Evaluation of Restorative Justice in Ireland through the operation of Garda Based Conferencing. The evaluation will focus on the process, which empowers victims and offenders to redress rather than reprove criminal activity.

1. To establish what Restorative Justice is and it’s related aims and benefits.
2. To identify the workings of Restorative Justice processes.
3. To identify Garda involvement and training in Restorative Justice.
4. To evaluate Restorative Justice Initiatives in the Garda Síochána.

Information is to be gleaned from primary and secondary sources, which is relevant and pertaining to these research objectives. The information will be analysed, evaluated and put together in order to reach an informed and considered view to prove or disprove the pertinent hypothesis.

SECONDARY SOURCES OF INFORMATION

The author carried out an extensive review of published work on Restorative Justice. These included various texts, journals and documents on the subject. Books were also sourced from other countries and jurisdictions where Restorative Justice is practiced or 'in season'. The papers from several restorative justice conferences were also analysed along with Government Publications, which outlined relevant legislation pertaining to Restorative Justice and Garda policy. The most recent crime figures and statistics in the public domain were carefully examined. The secondary information was studied and applied where appropriate in preparing and analysing the data for this research topic.

QUALITATIVE & QUANTITATIVE METHODS - ITS RELEVANCE TO THIS PARTICULAR STUDY

It was decided that quantitative and qualitative methods were the preferred options. The following issues were considered when deciding upon the preferred option. Firstly the objectives of the research thesis were perused. The principal purpose of the research was to attempt to test the hypothesis does restorative justice allow victims and offenders and the community to redress or reprove criminal activity, by evaluating the administration of restorative justice in Ireland through the operation of Garda based conferencing.

This involved forming a relationship with the Garda Research Unit based at the Garda College, Templemore in order to gain access to Restorative Conferences. While in attendance at these conferences the author employed the research method, participant observation. The author decided that this method would provide sufficient data.

OTHER MEASURES CONSIDERED

Many different measures were considered before deciding on the measure to be used as the means of gathering the information required for the purpose of the research. Some of the measures considered and eventually eliminated were due to weaknesses in anonymity, confidentiality, gaining of true responses, time and resources were as follows: focus group interviews, telephone interviews and interview by researchers (Sharp/Howard 1996).

In relation to the use of questionnaires, a number of disadvantages became apparent when considering this option. Firstly, a much larger sample would have been necessary in order to ensure a usable level of response. Secondly, questionnaires have a history of low response and the data gathered is more superficial than that collected during an interview (Sharp & Howard, 1996).

FACE-TO-FACE INDIVIDUAL INTERVIEWS

These were the next types of measure considered. Interview's range from highly formalised to free ranging conversations, i.e. structured interviews, semi-structured interviews and unstructured interviews. For the purpose of this dissertation, the author chose observational studies as a means to acquiring research data. If more time had been available semi-structured interviews in conjunction with the observation studies would have been utilised. This would have provided me with the scope to achieve

good quality data free from bias and which could be supplemented because of the open-ended questions used. This would be in line with the work of Sharp & Howard (1996) who state:

'the interview as providing higher quality information that is free from bias, than many other methods available to them...can supplement by open ended 'the interview as providing higher quality information that is free from bias, than many other methods available to them...can supplement by open ended discussion' (p147).

The author had also hoped to observe further Restorative Conferences and Cautions. The parties relevant to the conference, victim, offender, facilitator etc could have been interviewed in order to elicit real life responses and emotions regarding the event. Both of the above were not feasible due to time constraints. It was however noted by the author that participants at the conferences/cautions had no qualms in relation to being interviewed after the event. Arrangements could have been made at the end of the restorative events to acquire phone numbers and contact details from participants willing to partake in follow up interviews.

METHODOLOGY OF FAMILY CONFERENCE

Stage 1: (Juvenile Liaison Officer. Training)

With this style of conference the;

- Offender and his/her group sit together.
- The victim and his/her group sit together.
- Both groups separated perhaps by the investigating officer or the facilitator
- Facilitator introduces himself and each participant stating their involvement in the incident or their connection to the offender/victim, to say why they are here.

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- Facilitator advises the participants that they are free to leave at any stage during the conference.
- Very important that the offender and his/her acknowledge this.
- Co-ordinator focuses the conference on the offender's behaviour.
- Establishment of respect for those present is stressed and everyone be allowed to speak.

Stage 2: (Offender's Account of Events)

- The offender is asked for an account of what happened in full
- Remain focused on the offender until he begins to show some 'Remorse'.
- He/she must accept that others have been affected and to what extent.
- The victim should then be asked to indicate how this incident impacted on his/her family and friends.
- This shows the offender how his/her actions have had a much wider impact than perhaps initially realised.
- The victim should show very rash anger, fear and disgust at the behaviour of the offender.

Stage 3: (Expressing Remorse)

- Focus then turns to the offender who is asked to comment on what has been said and express remorse.
- Focus on behaviour not the character of the offender.
- Victim and offender(s) supporters are then asked to contribute.
- The Detective Police Officer is present is asked to contribute.

- The conference then experiences a 'closure' even though no great emphasis on a plan of action has been agreed upon.
- Emphasis is on making 'reparation' to the victim.

FORMULATING A PLAN OF ACTION FOR THE OFFENDER

This conference should now formulate an action plan for the offender reflecting the principles and concepts of Restorative Justice: The plan may provide for such matters as an apology and reparation to the victim, participation by the offender in appropriate sporting or recreational activities, attendance at school, or work or educational courses. The conference should also consider where the child's period of supervision should be varied. (Watchel, Real Justice, 1997)(Treacy, 2000, P.12-13).

HOW THE PROCESS OPERATES

The most common method of implementing a restorative philosophy is through programmes of victim/offender mediation where all parties meet in a structured environment with a volunteer or professional mediator. Victim-offender mediation is believed to have originated in Canada in 1974; it was heavily influenced by the Mennonite Christian Denomination, which promotes peace-building and conflict resolution (Warner, 1994). It aims to reconcile the victim and the offender through a process of dialogue between both parties relating to the offence in the presence of a trained mediator. It gives the victim the opportunity to tell offenders about the physical, mental, emotional and financial impact that the offence may have caused and gives them the chance to put unanswered questions to the offender. Outcomes may include an apology to the victim for the harm caused, reparation of various forms including financial, work for or on behalf of the victim and the victim may commit

themselves to specific undertakings in relation to behaviour for example to avail of counselling or treatment.

Family group conferencing emerged in New Zealand and Australia in the late 1980's and early 1990's. It has a number of differences to victim-offender mediation. Firstly in victim-offender mediation participation is usually limited to the victim and the offender, conferencing encourages the participation of a much wider group, including those who are concerned for the welfare of the victim or the offender and those who may be able to contribute to a solution or resolve the problem presented by the offence (Bazemore & Umbreit cited in Johnstone et al, 2003).

Police/Garda- based conferencing provides a forum for the Police/Gardaí to bring together young offenders and their victims with their respective families, friends and supporters. Many such conferences take place at the level of a restorative caution for the offender. The conference will then proceed to explore the effects of the harm on the victim, as well as the potential ways of providing redress, which will mostly commonly be through an apology, some form of reparation as well as the reintegration of the offender. The police/garda facilitator does not impose solutions, but rather they are a result of interaction, dialogue and agreement between parties.

MEDIATION

(i) Mediation offers the possibility for the **victim** to:

- ▶ Tell the offender his story and how the crime has affected him.
- ▶ Find out why he was chosen and hear the offender's side of the story.
- ▶ Receive an apology and some form of amends or reparation from the offender.

(Keely, 2001, p95)

(ii) Mediation offers the **offender** the possibility to:

- ▶ Hear the victim's story and apologise to him.
- ▶ Make some form of amends to the victim or the community and show genuine remorse to the victim and the community for the offence.
- ▶ Address and take responsibility for his actions.

(ibid,2001)

CAUTION /CONFERENCE PARTICIPATION, OBSERVATION

The author observed six conferences between December 2002 and May 2003. These conferences generally took place in the greater Dublin area, in mostly suburban regions. These events helped the author to understand and gain more knowledge and insights into the subject. It also helped her to acquire the background knowledge needed to formulate the methods necessary for primary methods of data collection and analysis. The research objectives were always kept in mind when attending and observing these restorative events. Personal participation was in the form of questions asked by the author to the relevant Juvenile Liaison Officers before and after the conferences/cautions.

'In general the degree of the observer's observation varies from no participation at all to full participation' (Sarantakos, 1998, p.208). According to Sarantakos in the first instance observers study their subjects from outside the group without becoming a part of the environment of those being observed. In the second instance they actually become members of the group they are supposed to study. The first type of observation is known as non-participant observation and the second is known as participant observation. For the purpose of collecting primary research data the author employed non-participant observation. This resulted in the position of the author being clearly defined and different from that of the subjects. The observations were semi structured meaning that approach to collecting the data, for example case studies, was structured for each observation but the setting was not.

The types of observations employed by the author can be broken down further into open, passive and direct. Open observation refers to *'the degree to which the identity of the researcher as an observer as well as the purpose of the study is known to participants'* (Sarantakos, 1998, p.209). Participants at all restorative events attended by the author were informed before the process got under way of the role of the author as an independent researcher observing the conference to collect data on the operation of the Garda Pilot Scheme. The author employed passive rather than active observation, which showed participants that her function was solely to record data. The observation was direct in the sense that this study intends to evaluate the operation of restorative justice schemes through the operation of Garda based restorative justice initiatives.

The author found these methods of observation satisfactory for acquiring knowledge about the individuals taking part in the events and also their backgrounds. The downside is that the conferences had to follow a certain schedule, which may not have been in line with the author's objectives or agenda. The restorative events observed include:

- | Date: | Restorative Event: |
|-----------------------------------|--|
| 1. 6 th December 2002: | Restorative Caution, Swords, Co Dublin. |
| 2. 11 th April 2003: | Restorative Conference, Stepside, Co Dublin. |
| 3. 25 th April 2003: | Restorative Caution, Shankill, Co Dublin. |
| 4. 7 th May 2003: | Restorative Caution, Blackrock, Co Dublin. |
| 5. 13 th May 2003: | Restorative Conference, Shankill, Co Dublin. |
| 6. 14 th May 2003: | Restorative Caution, Bray, Co Wicklow. |

Restorative Caution, Swords, Co Dublin

This case involved an assault by a young male on another young male, which occurred without motive in mid March 2002 in a parkland area. The participants comprised the offender, his mother, the victim's parents, the facilitator and the Juvenile Liaison Officer. Two participants were absent, firstly the victim who felt uncomfortable at being present and the secondly the offenders aunt who was unable to attend the meeting. The victim's parents decided to come as they felt that they could still get something out of the conference without their son being present.

The facilitator and the Juvenile Liaison Officer were sympathetic towards both sides and had the interests of both parties at heart. The participants for the first five minutes they appeared to be tense and awkward with each other, however due to the attitudes of the facilitator and the Juvenile Liaison Officer this was no longer evident once the introductions had been made. The facilitator opened the meeting by thanking everyone for being present. He made all participants aware that the proceedings were confidential and that no record was being kept by him. Each person was informed that the process was of a voluntary nature. Due to the fact that the victim was not present the facilitator called upon the Juvenile Liaison Officer to read out his statement. Before he did this, the Juvenile Liaison Officer informed all present that the purpose of the meeting was not to blame, but rather to listen and repair harm. After the Juvenile Liaison Officer read out the victim's statement, the offender was called upon to give his statement of events. The conference continued in this manner until all the participants had an opportunity to speak. A plan of action was agreed upon and the facilitator brought the conference to a close. The whole process including the post conference social lasted for approximately one hour.

As an observer, the author felt that the meeting would have been more beneficial to both parties if the victim had been present. Both the victim's parents and the offender's mother acknowledged that the restorative justice process was a proactive way of dealing with cases such as theirs. Both parties stated that they felt that the meeting gave each side a chance to see the other; they stated that it was personal and they both agreed that they no longer viewed each other as 'monsters'. There was a feeling of satisfaction and relief by all involved. The offender was clearly uncomfortable for the duration of the meeting; the author noted that he seemed to be more fearful of his own mother's reaction rather than the victim's parents or the professionals. However, the value of the meeting for the offender would have been more of a lesson learning experience had the victim been present and vice versa.

Restorative Conference, Stepside, Co Dublin

The case involved larceny and damage to several motor vehicles in a residential area. The offender (aged 15) had been cautioned with another juvenile for the same offence on a previous occasion. The Juvenile Liaison Officer felt that the victim/offender in this instance would benefit from a restorative conference. The Juvenile Liaison Officer had met the offender and his parents earlier in the week to explain the background to restorative conferencing and to outline what they should expect from the conference. The issue of financial reparation is not relevant here, as both offenders' had fully remunerated the victim's for the damage caused.

The participants on this occasion comprised of one of the offender's (it was implied at a later stage in the conference that the other offender was experiencing family

problems at present), the offender's mother, one of the victim's, the Juvenile Liaison Officer and a facilitator. The offender's father was not present as he was attending a school reunion. The facilitator introduced the participants present and informed them that there was not 'hidden agenda' to the conference. He proceeded to thank everyone for attending and outlined the principles behind the restorative conference, namely in this case to help the people who had been affected by the offence and to repair harm. The facilitator made it clear to the victim that the offender present at the conference was not the only one involved in carrying out the offence.

The Juvenile Liaison Officer explained to the participants of the conference that he had met the offender and his parents earlier in the week to explain to them what had happened so far, the reason for the conference and what their expectations should be in relation to the outcome. The Juvenile Liaison Officer commended the offender on the fact that he was willing to listen, he was upset and most of all the fact that he was very apologetic for what he had done. The Juvenile Liaison Officer reminded the offender that he had very supportive parents. He then explained the principles behind restorative conferencing, he stated that it was a new concept, which sought to repair harm by meeting with the injured party, and that it was not about the damage done to the car but rather about real people and real feelings.

At this point in the conference the facilitator and Juvenile Liaison Officer finalised the agreement and plan of action for the offender. All parties agreed that the offender needed to be honest with his parents, that he was not to consume any type of alcohol for at least a year and a half, he should concentrate on his sporting activities rather than 'hang around with friends who drink' and finally offender agreed that he would not argue with his parents re overnight stays on weekends.

The conference went smoothly, largely due to the fact that the facilitator and the Juvenile Liaison Officer put all participants at their ease. As mentioned previously the Juvenile Liaison Officer had already met with the offender and his parents earlier in the week to explain the background to the conference, the effects of this may have significantly shaped their attitudes towards the meeting. The participants were sympathetic towards the offender and were interested in helping him deal with the root cause of committing the offence rather than blaming and punishing him. However they understood the seriousness of the offence and that he had deceived his parent's. As a result of this the agreement reached, all parties reflected their desire to restore trust and confidence in the offender and help him overcome the need to consume alcohol. On a point of observation it must be noted that the offender did not have a serious alcohol problem and was not drinking on a regular basis unlike many of his peers. The reason why the participants were concerned with the offender's drinking can be attributed to his age and to the fact that he was partaking in the activity without his parent's knowledge or consent.

Restorative Caution, Shankill, Co Dublin

The facilitator opened the conference by thanking all the participants for attending; he acknowledged how difficult it may have been for some of the participants to be present. He stated that the purpose of the conference was to help to deal with the offence and to repair the harm. The facilitator described the nature of the offence at this point and informed those present that the offence had taken place on a night in late September 2002 at a Dart Station between 11pm and 11.30pm. He added that the offender had admitted involvement but that his behaviour on the night was

unacceptable and the purpose of the conference for him would be to repair the harm caused. The facilitator asked the offender if he was present at the conference by his 'own free will', the offender stated that yes he was. The facilitator informed the offender that he was free to leave at any stage but that if he did the case would be referred to the courts, he added that if he co-operated with the conference that the matter would be finalised.

The facilitator brought the conference to a close by asking all parties to agree on the plan of action for the offender. It was agreed that the offender would carry out/adhere to the following:

1. A written apology would be sent to the victim and the District Manager of Suburban Rail.
2. Trespassing in the Dart station prohibited.
3. Stay out of trouble both at home and with the Gardaí.
4. Abstain from alcohol until reaching eighteen years of age.
5. Supervision by Juvenile Liaison Officer for a set period of time.

Restorative Caution, Blackrock, Co Dublin

This case involved two youth's breaking and entering a vehicle, causing damage to the vehicle with intent to steal the same in the early hours of the morning of 6th April 2003. The participants present included the Facilitator, Juvenile Liaison Officer, offenders, their mother's, the victim, and her partner. The victim and her partner arrived half an hour before the conference was due to start. This gave both the facilitator and the Juvenile Liaison Officer the opportunity to gain a better understanding on how the victim felt about the incident and the purpose of the conference.

The Juvenile Liaison Officer received a phone call on her mobile phone ten minutes before the conference was due to start from one of the offenders stating that they had problems getting to the conference. The Juvenile Liaison Officer after receiving information that the other offender and her mother were waiting in another room left the Garda Station to go and collect the offender and his mother. It became apparent at the close of the conference that the reason why the offender had problems getting to the conference was due to family problems.

The Juvenile Liaison Officer opened the conference by introducing the participants to one another and thanking everyone for being present. The facilitator reiterated this and added that the conference was voluntary for all and he hoped that if the outcome was successful for all then they could move forward.

The Facilitator asked the first offender how he had come to be in the cul-de-sac where the victim's car was parked. The offender stated that he was cold so he got into the car. The facilitator asked him at what time did this happen. The offender stated that they got into the car at around four am. The facilitator then asked him what had he been doing before he got into the car. The offender stated that he had gone up to the second offender's house at three am and 'tipped her window'. He stated that they then went to the 24-hour garage down the road to buy cigarettes.

The facilitator continued to question the first offender by asking him how he had broken into the car. The offender stated that he had 'bent' the door. The facilitator asked him how he did this and the offender responded that he had 'bent' the door with his 'hands'. The facilitator asked the offender why he picked that particular car. The

offender stated that he did not know why he had picked the car and that he had never broken into a car before. (The facilitator in order to get any response from either offender's had to continually ask them questions at every stage of the conference). The facilitator then asked the offender what had happened after they had got into the car. The offender stated that when he saw the guards coming he 'just got out of the car'. The facilitator asked him what he felt like after he had been arrested and when he was in the Garda Station. The offender said that he 'didn't know' and when he was asked further how he felt at the time he said that he was 'sorry'.

The facilitator asked similar questions and asked for a statement of events from the second offender before moving on to the victim, her partner, both of the offender's mothers and the Juvenile Liaison Officer. The facilitator brought the conference to a close by thanking everyone for being present. The victim stated that she was happy with the outcome. She stated that both the offenders had let themselves down as well as their parents. She told them that they did not need to be going out at night and breaking into to other people's cars.

Restorative Conference, Shankill, Co Dublin

This case involved bullying culminating in an assault perpetrated by five girls in the grounds of a Church in August of 2002. The participants present at the conference were the facilitators, the Juvenile Liaison Officer, the victim, her parents, her boyfriend, the five offenders; four of the offenders had one parent each present. The facilitator opened the conference by introducing herself and the Juvenile Liaison Officer to the participants. She informed the persons present that the purpose of the conference would be to try to get everyone's views and talk about the incident last

August. She proceeded to thank all for being present and stated that the purpose of restorative justice and the meeting was not to judge people but rather to 'work on a solution to help rid problems'. The facilitator added that all the participants had admitted that there were problems.

The Facilitator began the process of finding out about what had happened on the night of the incident by asking Offender No1 how she had come to be involved. Offender No1 stated that as she was walking towards the Church on the night she heard 'everyone arguing'. She added that it was Offender No4 and the victim who had started the argument. Offender No1 stated that as a result of the arguing she had left the Church after a while to move on to another place where some of her friends were 'hanging out'. The facilitator asked Offender No1 what she was thinking at the time when Offender No4 was arguing with the victim. Offender No1 said that she could not remember. The facilitator then asked Offender No1 what she felt was the impact of the incident. Offender No1 stated that she felt that it 'wasn't worth it'. The facilitator asked her how she thought the incident had affected others. Offender No1 stated that she did not know.

The Facilitator continued the process until all of the participants had given their statement of events. At this point the Juvenile Liaison Officer asked each of the girls to contact him if anything similar happened to any of them in the future. He stated that the proceedings of the conference were confidential, that none of the girls had been in trouble before or incurred a criminal record as a result of the incident. He acknowledged that it was difficult for all the parties to attend the conference especially for the victim and her parents. The Juvenile Liaison Officer concluded by thanking

everyone for participating in the conference and stated that he hoped that some good had come out of the meeting.

Offender No3's father stated that he had drawn strength from the conference and that before hand he had not understood what had happened on the night of the incident. He informed the participants that Offender No3 was sorry to have been involved in something which had brought harm to others and that in his opinion it meant a lot for the girls to acknowledge each other.

The facilitator concluded the conference by thanking the girls and their parents for being present; she wished everyone well for the future and invited everyone to partake in tea and coffee. The facilitator stressed that no one was obliged to stay. Offender No3 and her father left straight after the conference as they were due to be somewhere else. On vacating the room offender No3 'hugged' the victim and once again apologised to her.

The post conference social lasted for more than half an hour and everyone partook in refreshments. The participants talked freely among themselves about various issues. They all acknowledged that restorative justice was a good way of dealing with offences committed by juveniles. As the remaining offenders departed they all apologised to the victim and gave her a 'hug'. They promised one another that if they came across one another in the street they would smile/nod and walk on.

Restorative Caution, Bray, Co Wicklow

This case involved three youths (one of them the victim's brother), taking a car without permission and driving to a nearby seafront car park on the night of the 31st January 2003. The driver did not have a driver's licence nor was he covered by insurance. Present at the conference were the Facilitator, Juvenile Liaison Officer, three offenders, the victim and three sets of parents. It became apparent before the conference began that the parents of the offenders were friends with one another. This created a less formal atmosphere than is normally experienced at a restorative caution. It also became clear that the parents of the victim and the offender who was driving the car were present to support both of their children.

The facilitator began the conference by thanking all of the participants for being present. He introduced the Juvenile Liaison Officer and informed the participants that he himself was also a Juvenile Liaison Officer but from a different area. The facilitator stated that the purpose of the conference was to focus on the offenders in relation to the car and not on their good or bad points. The facilitator added that none of the participants were present to make judgements about the offenders but to discuss the events, which occurred on the night of the offence. The facilitator informed the conference that the offenders had willingly admitted involvement and that they were 'all free to leave but the matter maybe referred to the courts and dealt with in a very different way'. He commented that if the offenders co-operated that the 'matter could be resolved by the end of the conference'.

The facilitator began the process of finding out what had happened on the night of the offence by asking the first offender, the driver of the car and brother of the victim;

under what circumstances had he taken the car without permission. The offender stated that it was 'a spur of the moment thing' that the other two offenders and himself had 'all been thinking about it' for a while and that when they had mentioned it to one another that it had 'just happened'. The facilitator asked offender for what reason had he taken the car out; the offender replied that he had just 'wanted to take it out'. The facilitator then asked him had he ever driven before. The offender stated that he had driven his father's car 'up and down the lane'. When the offender was asked how he felt now about what he had done, the offender stated that he felt that it was 'stupid and very dangerous to drive without a licence'.

The facilitator asked him who had been affected by his actions. The offender stated whilst looking at the victim (his sister) that it was his sister who had been most affected by his actions. When the offender was asked what he thought would have happened if the car had been crashed stated that he did not think that he would be at home but would probably be in hospital having to eat hospital food. The first offender's mother interjected at this point and stated that as far as she was concerned trust had been broken with the offender and she believes that he should have been more responsible. The offender's mother explained to the participants that the offender suffers from Hyperactivity and that since he has been put on new medication is concentrating more and is less impulsive. The facilitator asked her was there any negative effects from the new drugs.

The facilitator thanked everyone and stated that the time had come to formulate an agreement for the offenders involving the participants present. He stated that it would give the offenders the opportunity to 'make good what they have done'. The three all

nodded their heads in agreement. The Juvenile Liaison Officer stated that he would like to pay complement to the families especially the parents for the offenders for their co-operation. The facilitator then asked the Juvenile Liaison Officer what he thought should be included in the agreement. The Juvenile Liaison Officer stated that the offenders should make themselves available once a month to meet with him either in their own homes or at the Garda Station.

Furthermore the Juvenile Liaison Officer stated that the offenders should take responsibility for their actions and stay out of trouble in the future. The victim asked at this point that the offender's think about the consequences of their actions be included in the agreement.

SUMMARY OF MAIN FINDINGS RESTORATIVE EVENTS

- Direct involvement and participation by the victim and offender in the process.
- The facilitator through facilitating dialogue between the victim and the offender ensured that all parties felt safe and comfortable and assisted the parties in coming to an agreement.
- Dialogue between parties resulted in an agreement addressing the harm caused
- Voluntary- all parties freely and voluntarily entered the process and had a clear understanding of what they were undertaking
- Satisfaction of the needs of the victim socially, financially and emotionally.
- Reintegration of the offender into the community

CHAPTER SUMMARY

The chapter firstly outlined the hypothesis and the research objectives. The secondary sources of information were explained. The chapter continued with a discussion of the merits of qualitative versus quantitative methods and the other methods, which were considered for this dissertation. This chapter identified how the process of restorative justice operates and presented the methodology of family group conferencing. Following on from this the method of primary research data analysis was presented. Non-participant observation at restorative conferences/cautions was used to elicit data, which aided in the achievement of the four research objectives. The author presented the empirical findings of the research and proceeded to give a summary of the main findings. Chapter Four will present analysis of these and also an examination of the objectives will be carried out.

Chapter 4

Primary Research Results-Discussion & Analysis

INTRODUCTION

This chapter will analyse the findings presented in chapter three. These findings will be discussed in light of the four research objectives and criteria chosen to assess the quality of each aspect of restorative process practiced within the Garda scheme derived from the literature on restorative justice. The author will discuss the research findings and the themes (changes in restorative justice, rewards and recognition, service delivery and quality assurance) linked to restorative justice process presented in the literature review in chapter two. Arising from the discussion, conclusions regarding the research objectives are stated. The chapter will conclude with a discussion of the limitations of the research and objectives for further research in the area.

RESTORATIVE JUSTICE AND ITS USE IN THE CRIMINAL JUSTICE PROCESS

The review of literature on the subject presented in chapter two suggests Restorative Justice in simple terms is about restoring victims creating a more victim centred criminal justice system as well as reintegrating the offender into the community. Restorative justice has a variety of uses for other than in the criminal justice systems, for example; schools could employ conferencing in response to truancy, disciplinary incidents and violence in the school environs. The police may use conferencing as a diversion, as an alternative sentencing process, or as a healing event for the victim and offenders. Juvenile and adult probation officers may respond to various probation violations with conferences. In the workplace conferencing could address both the wrongdoing and the conflict. In Colleges/Universities restorative conferencing could

be used to resolve incidents on campus or disciplinary violations. In Correctional/Treatment centres conferencing could be used to resolve the underlying issues and tensions in conflict and disciplinary actions.

RESTORATIVE JUSTICE – DIFFERENT VIEWS/PROCESSES

In the course of my research the author found that the principles and philosophies of restorative justice very much confirm with what has already been written on the subject. However, the definition of restorative justice contained in the Garda Síochána Restorative Justice leaflet (Appendix 2) is in direct conflict with definitions put forward by restorative justice theorists such as Daly and Cavanagh.

The Garda Síochána state that restorative justice '*is not a judicial process*', Daly contends that restorative justice encompasses a variety of practices at different stages of the criminal justice system, she also states that it deals with the penalty phase rather than the fact finding phase of the criminal justice system (Daly cited in Johnstone et al, 2003). Cavanagh states that restorative justice changes the judicial system by engaging the political strength of victim advocacy (Cavanagh, 2001). Hence, proving that restorative justice is a judicial process, but it is one that is convened outside of a court environment.

The author having taken into account what has been written previously about the concept laid out in chapter two has summarised the principles of restorative justice as follows, crime is considered an act against another person rather than as an act against the state. All parties including victims, offenders, the community and professionals should be involved in the response to dealing with the crime if they wish. Participation

of the victim and their perspective is necessary in deciding how to repair the harm caused by the offence. Offenders are made accountable for their actions and are required to accept responsibility and to repair the harm caused to the victim. They may compensate the victim by making reparation or apology or both. Victims are empowered to search for satisfaction through their direct involvement in the criminal justice system. Finally, victims and offenders are reintegrated into society.

REWARDS AND RECOGNITION FOR VICTIMS AND OFFENDERS

In the course of my research the author discovered that Restorative Justice has a number of advantages and benefits over ore traditional methods of administering criminal_justice. Victims and offenders become key stakeholders in the process, they are empowered to become involved the criminal justice system. The victim is given the opportunity to address the offender and show the pain that they have suffered as a result of the incident. They may receive an apology, reparation or in many cases both. Emotionally victims receive satisfaction from actively participating in the process. The offender is given the opportunity to atone for his or her behaviour and take responsibility for their actions. It gives both the victim and the offender the opportunity to be reintegrated into society, especially the offender as they account for their actions.

The benefits of Restorative Practices include: victims and the community are involved in the judicial process. Practices such as restitution, community service, mediation, family group conferencing, and victim impact panels, are utilised consistent with restorative justice values. Victims are given choices and a sense of control, which decreases fear of revictimisation. Utilising restorative justice processes allows victims and offenders to view the system as fairer overall and also more satisfying. Court

caseloads are lowered by utilising a variety of restorative justice processes. The judicial system is changed by engaging the political strength of victim advocacy.

GARDA CONFERENCING/CAUTIONING – SERVICE DELIVERY AND QUALITY ASSURANCE

The research findings presented in chapter three indicate that the Garda scheme facilitates the following to be restored to the victim, property loss through reparation, injury and a sense of security, harmony based on a feeling that justice has been served, a sense of empowerment and deliberative democracy and social support. Disempowerment is part of the indignity of being a victim of crime. Disempowerment can be linked to the republican theory of criminal justice, which states that a crime should not be defined as a crime unless it involves some domination of us that reduces our freedom to lead life as we chose (Braithwaite and Petit, 1990). It follows on from this that the restorative process allows victims to restore any loss of empowerment as a result of the crime. The Garda scheme through its facilitation of restorative events allows victims, offenders and their supporters to deliberate over the consequences of crime, how to deal with crime and prevent recurrence, it restores the deliberative control of justice by its citizens. This contrasts with the professional justice of judges and lawyers who decide which rules apply to particular cases and then constraining their deliberation with technical debate over the use of those rules.

It is difficult to deduce the opinion of the participants of the restorative events observed by the author, as they in most cases were not aware of what restorative justice stood for before the conference/caution commenced. However, at the close of the event all acknowledge that it was a satisfactory way of dealing with crime. The participant's

acceptance of the restorative process is in line with Consedine's contention that restorative justice is a process whereby those affected by criminal behaviour, be they victims, offenders, the families involved or the wider community, all have a part to play in resolving the issues that flow from the offending (Consedine, 1990).

The Garda Restorative Justice initiative proves that the process empowers victims and offenders to take more central roles in the criminal justice system with the state taking a back seat, it allows restoration of social support. Victims of crime need support from their loved ones during the process of restoration. As my research has shown they sometimes need encouragement and support to engage with deliberation to restore harmony in their lives. Friends and relatives may sometimes blame the victim or commonly are frightened off by a victim suffering emotional from the offence. Restorative justice facilitates the gathering around of friends and relatives during this time.

IMPLICATIONS FOR BEST PRACTICE IN RESTORATIVE JUSTICE

When one takes into account the processes of each restorative event, one can see that there is in the continuity in the structure of the events. Five out of the six restorative events were held in a Garda Station. Each event commenced with the facilitator introducing the participants to each other and stating the purpose of the meeting, a brief explanation of the principles and the history of restorative justice was given, the facilitators/Juvenile Liaison Officer's then introduced the process to the participants as being a new way of dealing with juvenile crime. Following on from this all participants were given an opportunity to have their say. The facilitators began each event by asking the offender for their statement of events and in most cases the victim giving

their statement followed this. Whilst the facilitators explained to the participants that there were at the conference of their own free will, the offenders were informed that if they failed to co-operate that they could be subject to further proceedings from the courts. This empowered offenders to take control and responsibility for their wrongdoing. Victims and offenders showed one another respect and none of the restorative events focused heavily on the offender as essentially being a 'bad person'. There was no typical young offender; all of the juvenile offenders came from different backgrounds and different socio-economic groups.

The majority of the offenders had never had contact with members of the Garda Síochána or had any previous offences. The offences dealt with by cautions/conferences the author observed were similar in that three involved assault and the remaining three involved criminal damage to a vehicle, breaking and entering a vehicle and theft of a vehicle and subsequent joyriding in that vehicle. Offenders appeared to respond well to the restorative cautions/conferences. Levels of remorse were generally higher at the end of the events than at the beginning, the majority appeared to give an overall clear story of the events surrounding the offence and accept responsibility for their actions. The young offenders expressed shame in the conference/cautions and apologised to the victim for the harm that they had caused them. However, it is difficult to deduce if the feelings of remorse, shame etc were genuine or put on for effect.

The areas from where the juvenile offenders originated are not known for their high rates of crime. When asked during the restorative events the reason for committing offences the most direct answer given was boredom and a 'lack of things to do' in their area. Indirectly, these juveniles were committing offences against other members of

their own community largely as a result of a lack of parental supervision and the consumption of large amounts of alcohol. The majority of offences took place on weekends, in the majority of cases the parents did not know where their children were on the nights of the offences or believed them to be somewhere else, such as staying with a friend. The alcohol was usually acquired from asking older adolescents or adults to go to an off licence for them. The predominant category of alcohol consumed was 'Alco Pops'.

The offenders ranged in age from fourteen to sixteen, these young people are at a stage in their lives, which can be classed, as 'in between', they are no longer children but are not quite adults. They are too young to purchase alcohol legally or attend discos or nightclubs at weekends; as a result they resort to 'hanging around' housing estates, drinking any alcohol they may have acquired on open areas of grass or in parklands. The majority of the offenders at the restorative events were of the opinion that if they had not consumed alcohol on the night of the offence they probably would never have committed the offence in the first place.

Regarding parental supervision, parents of the offenders stated that on the night that their son or daughter committed the offence, they were either out of the evening or of the belief that their child was staying with friends or somewhere other than where they said they were going to be. The majority of parents expressed that in the future they would be stricter over where their children went on weekends, who they were with and what they were doing. The issue of trust being broken arose in all of the cases and parents noted that this had to be rebuilt before they would allow their children the same freedom they had before the offence. In some cases the bringing together of parents

and their children in a neutral environment with people that were not well known to them brought underlying issues to the surface made parents more aware of their child's social behaviour, such as their child's consumption of alcohol, problems they may have been having at school that they could not talk about, or issues relating to levels of attention given to them at home.

RESTORATIVE JUSTICE SOLUTIONS

All six of the restorative events observed by the author concluded with a plan of action for the offender to aid his/her reintegration into the community while lowering the chance of a reoccurrence of the offence. A central element of these plans was supervision by the Juvenile Liaison Officer until the offender reaches eighteen years of age; secondly most of the plans contained a clause relating to abstinence from alcohol until the offenders were of a legal age. Offenders were further obliged to supply the victim with a verbal and a written apology. In two of the cases observed financial reparation was made to the victim either before or during the conference.

CHANGES AND CULTURE

Victim satisfaction was very high in the majority of cases observed by the author, however, it must be noted that of the six events observed only four events had the victim in attendance. The author was impressed by the extent of reconciliation in the cases some of which involved serious crimes. It was apparent from the proceedings that the victims were sympathetic towards the offender and appeared to be interested in reintegrating the offender into the community. Victims did not appear to be upset during the restorative events observed and appeared to leave the event satisfied with the outcome. Support for and acceptance of the young offenders was a strong element

of all the restorative events. Expressions of offender support and acceptance were not explicitly sought by either the facilitator or the Juvenile Liaison Officer. Parents/Guardians of the young offenders spoke up on behalf of the offenders, discussed giving the offender another chance but noted that it would take time for them to treat the offender as being trustworthy. Victims showed that they were prepared to support the offenders during the restorative events by encouraging them to get involved in sporting activities and advising them to avoid a life of crime. Only in one case was it implied that the family could not cope with the offender. No victim was involved in this case and it was clear that the reason for the offender having problems was due to his living arrangements.

Four out of the six restorative events observed by the author held a post conference/caution social. The value of the social in restorative justice is recognised symbolically and materially. Sharing refreshments can help to resolve residual tensions and mark a new beginning for victims and offenders. However, its value may be reduced if the young offenders are uncomfortable.

POSITIVE/NEGATIVE OUTCOMES FOR RESTORATIVE JUSTICE INITIATIVES AND POLICE BASED RESTORATIVE CAUTIONING PILOTS IN NORTHERN IRELAND

As stated in chapter two the police in Northern Ireland introduced restorative cautioning in 1999. A study was carried out over a similar time frame to that carried out by the Garda Research Unit, Garda College, Templemore. Whilst the Garda programme dealt with actual victims, the programme in Northern Ireland did not. The Garda report states that out of a total of 68 restorative events observed there were 14

cases were no victim attended. None of the events witnessed by the observers had any actual victims present. They employed two alternatives either a victim surrogate to represent the views of the victim or verbal feedback from the real victim in the case of restorative cautions. The report states that both of these devices helped the young person to appreciate the consequences of his or her behaviour.

ENABLING AND CONSTRAINING FACTORS

The police findings state that the young offender found it difficult to make a sincere admission of responsibility and remorse. The report states that the facilitator often had to resort to employing leading and prompting questions in order to achieve a result. The Garda report does not report the same problem, however it does note that it needs to be recognised that there can be a point in seeking clarity beyond which it is counterproductive to go. The facilitator has to judge if progress can be made without nailing down exactly what occurred.

The Garda report states that dialogue between the parties results in an agreement, which addresses the harm, caused for both the victim and the offender. However, in the case of Northern Ireland this was not possible as it is difficult to assess this on the basis that there were no actual victims present at the restorative events observed. Nevertheless the report states that real efforts were made to enable the young person to apologise and in some cases make financial reparation. Unlike the Garda initiative, offenders were rarely asked to consider the material, social, financial and emotional needs of the victim in any great detail.

Both reports agree that offenders were reintegrated through avoidance of prosecution and the process that emphasises that the young person was not a bad person. The Garda

report takes this further however as it believes that the successful reintegration of the offender back into the community is due in large part to the presence of the victim at the conference/caution and an increased awareness among parents of their child's behaviour.

The voluntary nature of participation is covered in both reports. The Northern Ireland report states that it was clear that no one felt coerced to attend however they state that the questions posed by some of the offenders and their parents suggested that they were not clear about their rights and obligations. The report states that in future more effort should be made in gaining the consent of victims to attend. The Garda report argues that participation must be voluntary if the young person is to engage fully in the process and be committed to making decisions. Willing participation also offers the victim safeguards such as a reduced risk of re-victimisation during the process states the report.

In the instance of the process being balanced by respecting the rights of both the victim and the offender, the Garda report notes that both victims and offenders had high rates of satisfaction with the process and were satisfied that they had a fair opportunity to have their say. In the case of the police report it was not possible to deduce if the process was being delivered in a manner that was fair to all parties due to the fact that there were no victims present.

Both reports state that the use of a standard script contributed to the consistency of standards throughout the restorative events. In relation to the role of the facilitator as a 'guardian of the process' both reports state that the facilitators encouraged and

facilitated dialogue between the offender, the victim and the other participants. It is reported in the garda report that victim and offender levels of satisfaction were high and that the outcomes of the process were generally positive for both parties.

CONCLUSIONS

The four research objectives for this dissertation were first outlined in chapter one, as follows:

1. To establish what Restorative Justice is and it's related aims and benefits.
2. To identify the workings of Restorative Justice processes.
3. To identify Garda involvement and training in Restorative Justice.
4. To evaluate Restorative Justice Initiatives in An Garda Síochána.

I am of the opinion that throughout this dissertation the above objectives have been thoroughly examined, portrayed and researched. The question was posed:

Redress of Reprove?

I believe that flowing from my evaluation of Garda based conferencing that Restorative Justice is a process, which empowers victims and offenders to redress rather than reprove criminal activity.

Benefits of Restorative Justice

The benefits for victims and offenders who engage in restorative justice processes far out weight those offered by more traditional methods. Firstly victims are given the opportunity to meet the offender and relate to him or her of their version of events and how the offence has affected them. Meeting with the offender also gives the victim the opportunity to understand the reason for the offence and perhaps realise that they were not singled out. The meeting may also empower them to overcome worries about possible re-victimisation. As my research has shown victims are empowered through restorative justice and are satisfied by receiving an apology, reparation for the harm caused and an assurance that there will not be a reoccurrence.

Restorative cautions/conferences provide the offender with the opportunity to take responsibility and account for their actions. The restorative approach empowers them to express genuine remorse, to apologise directly to the victim and make some form of reparation financial or otherwise. It further empowers offenders to address underlying problems, which they may be having, and provides them with the opportunity to work with their parents and authorities to fully integrate themselves back into society.

Restorative Justice provides the Criminal Justice System with an alternative means of dealing with crime control. However in Ireland it is only legal at present to deal with matters relating to juvenile crime through convening restorative events. The benefit of restorative justice for society and the criminal justice system is that it has implications for social control in the form of reducing future rates of crime. The juvenile offenders of today are the major criminals of tomorrow. For offenders, restoring a sense of security and empowerment can rebuild their confidence in finding employment,

achieving educational success, sporting success and of feeling confident and secure in the future. Through rehabilitation and reintegration rather than traditional punitive measures offenders come to realise that there is nothing to be gained from leading a life of crime.

Restorative Processes

The restorative justice philosophy involves all of those affected by the criminal behaviour be they victims, offenders, the families involved or the wider community all play their part in resolving the issues that flow from the offending. As Braithwaite contends the restorative justice process empowers all parties to restore the deliberative control of justice by its citizens (Braithwaite, cited in Johnstone et al, 2003, p.87).

As my research has shown the most common method of implementing the restorative justice philosophy in Ireland is through Garda based conferencing. This provides a forum for the Gardaí to bring together young offenders with their respective families, friends and supporters. In my experience many such restorative events take place at the level of a restorative caution for the offender. The cautions explore the effects of the harm on the victim, as well as the potential ways of providing redress, which unlike the retributive system focuses on the offender apologising to the victim verbally, making some form of reparation as well as reintegrating the offender. The Garda facilitators did not impose solutions but rather suggested elements, which could be included in the agreement for offenders, such as supervision by a Juvenile Liaison Officer. The remaining terms of the agreement came about as a result of dialogue, interaction and agreement between all parties.

I concluded during the course of my research that the following elements are influential in encouraging future law abiding behaviour from offenders. Firstly in order for offenders to fully partake and benefit from the restorative event they are required to express remorse, during and after the event by remembering the event, completing the tasks set down in the agreement, feeling sorry for what they have done, showing it and feeling that they have repaired the harm they have caused. Offenders should be shamed but not stigmatised, they should not be made to feel like they are a bad person and they should be forgiven and accepted by society. Offenders should fully participate in the restorative events especially in the decision making process and finally meeting with the victim and apologising to him or her.

An Garda Síochána/Restorative Justice Training and Initiatives

An Garda Síochána first introduced Restorative Justice Initiatives on a pilot basis in 1999. A total of 68 events were convened between the introduction of the Children Bill in 1999 and the subsequent Children Act in 2001. Garda based restorative conferencing operates through the Garda Juvenile Diversion Programme. The Juvenile Diversion Programme operates under the supervision and direction of the Garda Juvenile Office. The Children Act 2001 placed the Diversion Programme on a statutory footing and enshrined restorative justice into law. An Garda Síochána are the only body in Ireland at present who can convene restorative events legally. However whilst the Gardaí are implementing restorative justice for juveniles during the present time, it is very possible that restorative justice processes could be extended to encompass adult crime and especially crime of a sensitive nature for example, sexual and child abuse

cases. As my research has shown the Garda initiative and the training of Juvenile Liaison Officers and Facilitators is very much in line with which is happening throughout the rest of the world. The Garda initiative is working well at present with more cases being dealt with by restorative conferences and cautions. According to the findings of the Garda Research Unit, Garda College, Templemore the number of people signing up for mediation and facilitation training is on the increase. However there appears to be scepticism among some members of the force that the process provides an 'easy way out for the offender'. However the Gardaí appear to be committed in continuing their efforts to develop and utilise restorative conferencing and cautions in areas of juvenile crime.

Recommendations

- *A multi agency approach needs to be taken in order to promote the merits of Restorative Justice as an alternative form of justice. Education is required to enhance people's understanding of the concept. Public awareness must be raised through information meetings and the media.*
- *Additional resources are needed, including more trained Juvenile Liaison Officers and facilitators, support services such as mediation and counselling for victims, offenders and their families before and after conferences to address underlying issues. It should not be the responsibility of the Juvenile Liaison Officer to be a guidance counsellor and social worker to victims and offenders.*
- *Conferences should be held in neutral venues and not in Garda Stations. Some parties participating in the process may find this setting intimidating and off putting.*

- *The process to encourage victim's attendance should be made more effective without undermining the principle of voluntary participation.*
- *More emphasis and research needs to be put into juvenile crime to discourage young people away from a life of crime.*
- *All cases under the Juvenile Diversion Programme should be considered eligible for a restorative caution/conference.*
- *All pilot programmes must evaluate their experiences. From these reports overall trends should be assessed and the important changes necessary should be implemented. This is essential for the growth and development of the system.*

LIMITATIONS OF THE RESEARCH

I encountered the following limitations, constraints and difficulties when completing this dissertation. There is a large volume of material on the topic available making it difficult to review everything in existence. I would have hoped to have attended and observed a greater number of restorative conferences, however no further suitable conferences were convened before the completion date for this dissertation. The data collected at restorative conferences attended by the author are too large to be presented fully in this dissertation. In order to provide a comprehensive account of the restorative events I had no option but to adopt semi structured observation, meaning that the approach to collecting the data, for example case studies, was structured for each observation but the setting was not, for example the background and type of case. I had intended to conduct a series of semi-structured interviews with different

stakeholders in the Criminal Justice System who are connected with Restorative Justice, however due to time and word count constraints this was not plausible.

FURTHER RESEARCH OBJECTIVES

This research has achieved its four research objectives, which were outline in the introduction. However, during the course of the research, a number of further research opportunities were identified.

1. Semi-structured interviews and follow up meetings with previous participants of restorative events and professionals working in the criminal justice system over a set period of time could provide a greater insight into the development of Restorative Justice in Ireland and its implications for social control
2. Observation and evaluation of participants at Restorative Justice Initiatives other than Garda based events to ascertain attitudes to mediation and victim/offender conferencing.

I personally see Restorative Justice as an opportunity to achieve a fairer and more satisfactory criminal justice system for all members of society. Restorative Justice principles are making slow but steady progress in Ireland. There is a growing acknowledgement among professionals and academics that we need to develop other responses to crime. The Restorative Justice process has much to offer and the I believe that this concept particularly as it centres on the greater use of non custodial sentences will bring about changes not only in the law but will have significant implications for social control.

I would like to conclude with words from Jim Consedine:

History is teaching us every day that if we continue to operate a criminal justice system oriented principally towards punishment based on vengeance, and continue to reap its bitter harvest of high crime rates, fear and insecurity. The time for change is now if we are to bequeath the 21st century a criminal justice system worthy of its name (Consedine, 1999, p.196).

CHAPTER SUMMARY

This chapter opened with a discussion of the primary research result. An analysis followed on the main observation themes. Recommendations relating to areas of restorative justice were presented. The chapter concluded with the limitations I encountered during my research. The chapter concluded by further research objectives, which were identified during the course of my research.

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