

The Irish Restorative Reparation Panel and the Search
for Community.

Idealised Rhetoric or Practical Reality?

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DECLARATION

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy is entirely my own work, and that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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Abbreviations

BARJ	Balanced and Restorative Justice
FGC	Family Group Conferencing
RJC	Restorative Justice in the Community
RJS	Restorative justice Services
VOM	Victim Offender Mediation
NCRP	Nenagh Community Reparation Project

Abstract

Darren John McStravick

The Irish Restorative Reparation Panel and the Search For Community. Idealised Rhetoric or Practical Reality?

The paradigm of restorative justice seeks to repair harm, increase accountability and further opportunities for rehabilitation. Central to understanding this paradigm is an awareness of the roles and responsibilities of stakeholders in the response to criminal behaviour. These can include victims, offenders and the community. Within restorative discourse, the conceptualization of community has remained vaguely defined. Theoretically, a general consensus exists that community is an important factor within a successful restorative process. Within the Irish adult reparation panel models, based in Dublin, Tipperary and surrounding counties, the concept of community is continually put forward as an important component in attempting to reintegrate and rehabilitate participating offenders. There is, however, little theoretical and practical consensus on what the community concept actually represents. Such confusion has the potential to both dilute underlying restorative values and undermine reparation panel goals.

Based on an in-depth empirical analysis of both reparation panel models, this thesis focuses on these issues by evaluating the restorative practices and principles operating within the reparation model. It also attempts to clearly identify the theoretical and practical elements within the reparation panel community. It will be argued that a practical community can be identified through geographical community service providers, and volunteer and lay member participation. A newly proposed theoretical 'community of care, concern and accountability' will also be introduced within which welfare and social need concerns are combined with an emphasis on repairing the harm caused. Such a community can ultimately improve opportunities for a non-recidivist future.

In addressing these research issues, this thesis adds a valuable contribution to the wider literature on restorative justice and the role of the concept of community and contribution of community members within those processes and principles.

Dedicated to my Parents

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Chapter One

Introduction

1.1 Introduction

The concept of restorative justice has been characterised as a way of

‘doing justice by repairing the harm, which includes material damage, psychological and other forms of suffering inflicted on the victim and his proximate environment, but also social unrest and indignation in the community, uncertainty about legal order and the authorities’ capacity for assuring public safety. It also encompasses social damage which the offender caused to himself by his offence’.¹

The restorative aims contained within this definition are similar in theme to the objectives of the Irish adult reparation panel, the restorative model under investigation for the purposes of this thesis. The Irish reparation model focuses on repairing the harm caused by a criminal event to victims and community members, while also addressing the specific needs of participating offenders. The reparation panel is one of a number of restorative justice programmes that have been widely utilised within criminal justice processes generally. Other models include family group conferencing (FGC), victim offender mediation (VOM) and peace-making circles.² The reparation panel model can be viewed as a recent example of an older and more widespread community sanctioning answer to juvenile offending labelled generally as youth panels, neighbourhood boards or community diversion boards.³ The Irish adult reparation panel brings together criminal justice professionals, community representatives, offenders and victims within a facilitated discussion in which the facts of an offence and the reasons for the offending

¹ Lode Walgrave, ‘Imposing Restoration Instead of Inflicting Pain: Reflections on the Judicial Reaction to Crime’ in (eds.), Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent Roach and Mara Schiff *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* (Oxford and Portland: Hart Publishing, 2003) 61.

² The background and concept of these models are briefly explored further within this introductory chapter.

³ Gordon Bazemore and Mark Umbreit, ‘A Comparison of Four Restorative Conferencing Models’ in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 228.

behaviour are discussed in detail. Participating offenders can be diverted from formal prosecution and rehabilitative plans are formalised that can increase the potential for a non-recidivist future. Victims and other affected community members can be emotionally restored and materially compensated for the damage caused through reparative acts such as an apology or financial restitution.

The Irish adult reparation panel has been chosen as an appropriate investigative justice model for a number of reasons. It has been previously been stated that a major deficiency within the overall provision of restorative justice throughout Ireland has been a general lack of monitoring and evaluation.⁴ Many of the evaluations that have been carried out have tended to concentrate on more established juvenile based restorative programmes rather than those managing adult offending.⁵ Further, the reparation panel format has previously been recommended as a potentially viable restorative justice model capable of successfully delivering restorative justice for both adults and juveniles within Ireland.⁶ In addition, the Irish adult reparation model has a relatively short history of restorative practice and, unlike the juvenile restorative model, has no statutory definition of methods, aims and principles.⁷ More generally, the reparation panel model

⁴ See The Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) Executive Summary, section 37.

⁵ See for example, Mairead Seymour, 'Transition and Reform: Juvenile Justice in the Republic of Ireland' in Josine Junger-Tas and Scott H. Decker (eds.), *International Handbook of Juvenile Justice* (Dordrecht: Springer, 2008) 117. Kieran O'Dwyer, 'Juvenile Crime and Justice in Ireland' in Nicholas Bala, Howard N. Snyder and Joanne Paetsch (eds.), *Juvenile Justice Systems: An International Comparison of Problems and Solutions* (Toronto: Thompson Educational Publishing, 2002) 153. Liam Leonard and Paula Kenny, 'Measuring the Effectiveness of Restorative Justice Practices in the Republic of Ireland Through A Meta-Analysis of Functionalist Exchange' (2011) 9 *The Prison Journal*, 57.

⁶ The Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) Executive Summary, section 9.

⁷ The Children Act 2001(the 2001 Act) has incorporated a number of restorative principles aimed at diverting juveniles from prosecution and repairing the harm felt by victims of crime. One example can be seen within Section 29 of the 2001 Act which allows for the convening of a restorative conference to discuss the offending behaviour. Irish juvenile restorative programmes are discussed further within this chapter.

has also been criticised by several theorists as lacking in restorative value when compared to other programs such as FGC and VOM models.⁸

This thesis also examines the practical and theoretical concept of community within restorative justice processes generally, and its specific role within Irish reparation practice. Within the restorative literature there is a widespread acceptance that there is a place for communities within restorative practice.⁹ However, there is also an element of confusion surrounding the frequent referencing of community within justice discourses as well as confusion over its particular role. Lacey and Zedner, for example, have questioned the 'conceptual and political vagueness' of community and its power of appeal to improve justice policies when it is usually the very breakdown of that community which can attribute to a rise in crime problems.¹⁰ Gerkin has further argued that there is little evidence of community involvement in the successful moulding of principles such as social cohesion or the reintegration of offenders within restorative justice practices.¹¹ Such confusion and vagueness over the theoretical and practical relevance of community within the reparation panel schemes has the potential to weaken underlying restorative values and undermine reparation panel goals to the detriment of both victims and offenders. In this regard, the actual roles of stakeholders other than facilitators, direct victims and offenders has varied widely within restorative practices. If the community concept is to legitimately claim its important theoretical and practical status within restorative justice procedures, these roles need to be better identified in order for communitarian aims and ideals to flourish. One example of the need to succinctly define community has been posited by McCold and Wachtel, who

⁸ Paul McCold and Ted Wachtel, 'In Pursuit of Paradigm: A Theory of Restorative Justice'. Restorative Justice E Forum. Paper Presented at the XIII World Congress of Criminology, 10-15 August (Rio de Janeiro, Brazil 2003), 2. Available at www.iirp.edu/pdf/paradigm.pdf. The authors have argued that a restorative model which lacks the full participation of all the primary stakeholders within a criminal event, namely victims, offenders and their respective family and supporters, should only be labelled as a 'partly' or 'mostly' restorative programme.

⁹ For example see generally Mandeep K. Dhami and Penny Joy, 'Challenges to establishing Volunteer-Run, Community Based Restorative Justice Programs' (2007) 10 *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 9. See also T.R. Clear and D.R. Karp, *The Community Justice Ideal: Preventing Crime and Achieving Justice* (Boulder, Colorado: Westview, 1999).

¹⁰ Nicola Lacey and Lucia Zedner, 'Discourses of Community in Criminal Justice' (1995) 22 *Journal of Law and Society* 301, 302.

¹¹ Patrick M. Gerkin, 'Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice' (2012) 15 *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 277, 278.

have argued that restorative justice is ‘moving towards a more practical micro-communities perspective’ wherein informal social support and control of criminal justice conflicts can empower victims and offenders and their close ‘personal communities’ of family and friends.¹² However, the potential for danger can arise in that abstract notions of this personalised community, and the failure to distinguish the role of community with the role of society, can lead to the contamination of these interpersonal interrelations and only serve to ‘weaken the locus of existing informal social control’.¹³

This thesis focuses on these issues and debates by examining the practices of the two Irish adult reparation panel projects currently operating within this jurisdiction. It examines the dynamics and discourse within panel meetings, including how participating panel members communicate and interact; it questions the restorative principles employed within the management of panel cases and reparation agreements; and it offers up recommendations for future policy improvements. In relation to the concept of community within panel procedures, this thesis explores the potential conflict of interest between community led and managerial ideals; it explores the means by which certain panel members are seen to ‘represent’ the community; it outlines the importance of partnership agreements with community based rehabilitative programmes within reparation panel practice and reparation contract agreements; and, it outlines the theoretical significance of an original ‘community’ observed as part of an overall case management approach which tends to prioritise principles of care, concern and accountability.

By way of introduction this chapter will briefly outline the two concepts at the centre of the research, the origins of Irish restorative practice generally and the background and concept of the adult reparation schemes themselves. The research aims and objectives will also be outlined, along with the research methodology employed.

¹² Paul McCold and Benjamin Wachtel, ‘Community is not a Place: a New Look at Community Justice Initiatives’ in Gerry Johnstone (eds.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 294, 298.

¹³ Ibid. 300.

1.2 Concept Consolidation: Restorative Justice

The task of accurately defining the concept of restorative justice has regularly divided theorists. This is due, in part, to the wide array of practices and principles which can be viewed as restorative in nature.¹⁴ Indeed, restorative justice has been represented both as a process in its own right and as a set of defining principles.¹⁵ This is backed up by Roche's assertion that restorative justice can include values and processes as well as a mutually supportive combination of informal and formal justice ideals.¹⁶ Furthermore, as the theory of restorative justice continues to develop through practice, a complete understanding of the concept has proved difficult to pin down.¹⁷

For Tony Marshall, restorative justice can be best described as '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'.¹⁸ Parties with a stake can include the offender, the victim and their respective family members as well as 'any other members of their respective communities' who have either been affected by the crime or might be able to contribute to a solution to the offending behaviour.¹⁹ The

¹⁴ For example see Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, 'Situating Restorative Justice Within Criminal Justice' (2006) 10 *Theoretical Criminology* 505, 506 in which it is argued that restorative justice cannot be specifically contained and packaged as a confined set of beliefs, actions and principles. Rather, it is a process that is in a continual state of flux, morphing as each different set of participants and offences open up new possibilities.

¹⁵ John Braithwaite and Heather Strang (eds.), *Restorative Justice and Civil Society* (Cambridge University Press: Cambridge, 2001). Also see Andrew von Hirsch, Andrew Ashworth and Clifford Shearing, 'Specifying Aims and Limits for Restorative Justice: A 'Making Amends' Model' in Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent Roach and Mara Schiff, *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms* (Oxford and Portland, Hart Publishing, 2003), 21.

¹⁶ Declan Roche, *Accountability and Restorative Justice*. (Oxford, Oxford University Press (2003).

¹⁷ Andrew Ashworth, 'Responsibilities, Rights and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 578. Ashworth argues that, due to the developing of restorative theory through various practices, 'there is no single notion of restorative justice, no single type of process, no single theory'.

¹⁸ Tony F. Marshall, 'The Evolution of Restorative Justice in Britain' (1996) 4 *European Journal on Criminal Policy and Research* 21, 37.

¹⁹ Tony F. Marshall, 'The Evolution of Restorative Justice in Britain' (1996) 4 *European Journal on Criminal Policy and Research* 21, 37. Also see John Braithwaite (1989) *Crime, Shame and Reintegration* (New York: Cambridge University Press, 1989) for a similar description of stakeholders within a criminal event.

concept has been further defined as a 'victim-centred response that gives the individuals most directly affected by the criminal act the opportunity to be directly involved in responding to the harm caused by crime'.²⁰ Braithwaite views restorative justice as the restoration of victims, offenders and the community to which they belong.²¹ Victims can be 'restored' by regaining a sense of empowerment, dignity, security and social support, while offenders can also have their dignity restored after the shame of breaking the law has been confronted. He further argues that a sense of community can be restored through a strengthening of the social support bonds around both victims and offenders. For Braithwaite, restorative justice should not make structural injustice worse and should 'restore harmony with a remedy grounded in dialogue which takes account of underlying injustices'.²² In addition, restorative values should always include elements of non-domination, empowerment, accountability and respect for fundamental human rights,²³ as well as inclusive negotiation and overall agreement across the whole spectrum of relevant stakeholders within a particular process.²⁴

The core elements of the restorative justice concept, as posited by Daly, serves as a comprehensive summary of the paradigm. Those elements, quoted in full, are that

'it deals with the penalty (or post penalty), not fact-finding phase of the criminal process; it normally involves a face-to-face meeting with an admitted offender and victim and their supporters, although it may also take indirect forms; it

²⁰ Mark Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* (San Francisco, California: Jossey-Bass, 2001), 2.

²¹ John Braithwaite, 'Restorative justice and a Better Future'. Paper presented at the Dorothy J. Killam Memorial Lecture, Dalhousie University, 17th October 1996. Available at <http://iirp.org/library/braithwaite.html>.

²² John Braithwaite, 'Restorative justice and a Better Future'. Paper presented at the Dorothy J. Killam Memorial Lecture, Dalhousie University, 17th October 1996. Braithwaite argues that one such example of 'structural injustice' is the way in which the Australian criminal justice system oppresses and discriminates against Aboriginal people.

²³ John Braithwaite 'Principles of Restorative Justice' in Andrew von Hirsch, Julian V. Roberts, Anthony Bottoms, Kent Roach and Mara Schiff, *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms* (Oxford and Portland: Hart Publishing, 2003), 8-9.

²⁴ Andrew Ashworth, 'Responsibilities, Rights and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 578.

envisages a more active role for victim participation in justice decisions; it is an informal process that draws on the knowledge and active participation of lay persons (typically those most affected by an offence), but there are rules circumscribing the behaviour of meeting members and limits on what they can decide in setting a penalty; it aims to hold offenders accountable, while at the same time not stigmatising them, and in this way it is hoped that there will be a reduction in future offending; and it aims to assist victims in recovering from crime'.²⁵

In concluding this brief description of the core principles within restorative justice, it is also important to highlight a number of criticisms that have been aimed at the concept. For example, Andrew Ashworth argues that the principle of proportionality within the criminal justice process, and specifically within sentencing decision making, might be put at risk by increasing the role of affected victims. That is to say, victims' emotions can vary between forgiveness and vindictiveness and the level of punishment may alternate depending on the views expressed within a restorative encounter.²⁶ For Ashworth, further concerns have surrounded the impartiality and perceived fairness of restorative hearings. Article 6.1 of the European Convention on Human Rights states that every person has the right to a fair trial (and sentencing process) 'by an independent and impartial tribunal'. Ashworth has questioned the impartiality of restorative conferences (and other models) which allow for victims and their families to participate in determining the outcome of such a process in that 'the victim cannot be expected to be impartial, nor can the victim be expected to know about the available range of orders and other principles for the disposition of criminal cases'.²⁷ Finally in this regard Ashworth, along with Cunneen, has questioned the legitimacy of the consent given by offenders to freely participate (and disengage) in a restorative process when the alternative will almost certainly result in a harsher sentence and punishment.²⁸ These criticisms, and other perceived weaknesses within the Irish reparation panel model, and

²⁵ Kathleen Daly, 'The Limits of Restorative Justice' in Andrew von Hirsch, Andrew Ashworth and Julian Roberts *Principled Sentencing: Readings on Theory and Policy* (3rd Edition). (Oxford and Portland: Hart Publishing, 2009) 219-220.

²⁶ Andrew Ashworth, 'Responsibilities, Rights and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 586.

²⁷ Ibid.

²⁸ Ibid, 587. See also, Chris Cunneen and Carolyn Hoyle, *Debating Restorative Justice* (Oxford: Hart, 2010).

the methods by which they are being addressed within reparation practice, are further explored within this thesis as a whole.

1.3 Restorative Justice versus Retributive Justice

Several theorists have further attempted to clarify a definition of restorative justice by grounding it in direct opposition to the concept of 'retributive justice'. For example, Umbreit argues that restorative justice contrasts fundamentally with 'retributive justice' in that crime is recognised first and foremost as 'an activity directed against individuals rather than as against the state', and that 'whereas retributive justice focuses on punishment, the restorative paradigm emphasizes accountability, engagement of the parties most affected by the crime in responding to its impact, and repair of the emotional and physical harm caused, to the greatest extent possible'.²⁹ Braithwaite similarly notes that retributive values should not be included within a restorative framework, that restorative justice should amount to a 'values shift' from retributive and punitive emotions which have the potential to destroy relationships.³⁰ This notion of crime as primarily a violation of human relationships rather than simply a violation of state imposed law has been taken forward further by Claassen. For Claassen, such state imposed laws only exist in order to primarily safeguard fairness and safety within these relationships.³¹ He argues that restorative justice can provide opportunities for recognising injustice and restoring equity between parties by managing the conflict 'at the earliest point possible and with the maximum amount of voluntary cooperation and minimum coercion, since healing in relationships and new learning are voluntary and cooperative processes'.³² Such relationships within a criminal event can include

²⁹ See Mark Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* (San Francisco, California: Jossey-Bass, 2001) 2.

³⁰ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), 16. It should also be noted at this point that other theorists have sought to combine utilitarian and retributive theories within a mixed theory of punishment. See for example John Rawls, 'Two Concepts of Rules' (1955) 64 *The Philosophical Review* 3. See also H.L.A. Hart, *Punishment and Responsibility* (Oxford: Clarendon Press, 1968), and Thom Brooks, *Punishment* (Oxon: Routledge, 2012).

³¹ Ron Claassen, 'Restorative Justice – Fundamental Principles'. Paper presented at the National Commission for the Protection of Child Rights (NCPCR), revised May 1996 at the UN Alliance of NGO's Working Party on Restorative Justice. Available at <http://peace.fresno.edu/docs/rjprinc.html>. See Principle 1.

³² Ibid. See Principle 6.

immediately concerned individuals such as the victim and offender, as well as their relationships with family members, friends and the local community.³³ Moreover, restorative justice, according to Johnstone, should promote itself as a set of ideas which can challenge the fundamentals of the established criminal justice system.³⁴ The need for such a challenge has been famously reiterated by Zehr, who views the criminal justice dynamic through a set of diametrically opposed lens.³⁵ The 'restorative lens' focuses on problem solving, normative dialogue, offender accountability and integration. Also included is the acknowledgment of a victim's voice and suffering and the repair of social injury. The 'retributive lens', on the other hand, discourages accountability and forgiveness, assumes a state monopoly of criminal law enforcement and emphasises 'right rules' rather than 'right relationships'.³⁶ While it is submitted that this may signify an overly simplistic view of the retributive/restorative alleged conflict, it has served to lay the foundations for a more detailed analysis of the restorative justice concept generally.³⁷ For Daly, retributive and restorative justice principles should be renamed 'old' and 'new' justice. Within this format, 'old' justice could refer to a legal actor led process with little or no interaction with victims and offenders with its emphasis on

³³ Michael Schluter has termed this relational perspective to criminal offending as 'relational justice'. See Michael Schluter, 'What is Relational Justice?' in Jonathan Burnside and Nicola Baker (eds.), *Relational Justice: Repairing the Breach* (Winchester: Waterside Press, 1994) 17.

³⁴ Gerry Johnstone, *The Idea of Restorative Justice*. Inaugural Professorial Lecture, University of Hull, 11th October 2004. Also see Kathleen Daly, 'The Limits of Restorative Justice' in Andrew von Hirsch, Andrew Ashworth and Julian Roberts *Principled Sentencing: Readings on Theory and Policy* (Oxford and Portland: Hart Publishing, 2008) 219.

³⁵ Howard Zehr, *Changing lenses: A new focus for crime and justice*. (Scottsdale, PA: Herald Press, 1990).

³⁶ Ibid, 211. Nils Christie, in similar vein, has previously argued that criminal conflicts were being 'stolen' from their rightful owners by lawyers acting as 'professional thieves'. Victim and lay-orientated courts, suggested Christie, represented theoretical models within which the criminal justice experience could be enhanced for all stakeholders, including both victims and offenders. See Nils Christie, (1977) 'Conflicts as Property' 17 *British Journal of Criminology* 1. Other theories might be seen as substantiating the development of the restorative paradigm. For example, the American legal and political theorist, Randy E. Barnett previously explored the merits of replacing more traditional forms of punishment such as incarceration with that of financial restitution by offenders to victims of crime, a principle which exists within many modern restorative outcomes, including those within Irish adult reparation panel practices. See Randy E. Barnett 'Restitution: A New Paradigm of Criminal Justice' (1977) 87 *Ethics* 279.

³⁷ Daly argues that both restorative and retributive justice principles can be viewed as dependant on one another rather than in opposition. See Kathleen Daly 'Restorative Justice: The Real Story' in Gerry Johnstone (ed.), *A Restorative Justice Reader*, (Cullompton, Devon: Willan Publishing, 2003), 366. Also see R.A. Duff, 'Restorative Punishment and Punitive Restoration' in Lode Walgrave (ed.), *Restorative Justice and the Law* (Cullompton, Devon: Willan Publishing, 2002) 82 in which he notes that restoration 'requires' a relationship with retributive punishment: for example, the sincerity of an apology can be strengthened by reparation or community service in situations where a serious crime has been committed.

punishment whereas 'new' justice could be all inclusive with multiple aims including, but not reliant on, punishment. Both forms would be interchangeable, as restorative and retributive principles can merge within practices. In her opinion it is overly simplistic to argue that both ideals are polar opposite in the principles they espouse.³⁸

As the concept has steadily evolved, three particular restorative justice models have tended to dominate justice processes. These are the family group conferencing model, the victim offender mediation model and the sentencing or peacemaking circle model. Family group conferencing involves victims, offenders and family members and supporters of both parties, facilitated by a criminal justice professional or lay representative, coming together to attempt to repair the harm caused by the offending and plot a course through which non-recidivist tendencies can be nurtured. This model was first introduced into the New Zealand youth justice system in the 1980's and is argued to have its roots in the dispute resolution practices of the Maori.³⁹ It was further introduced into the Australian criminal justice system in the early 1990's, and spread internationally to other jurisdictions in various forms including the United Kingdom.⁴⁰ Victim-offender mediation programmes, also known as 'victim-offender reconciliation programmes', originated in North America and Canada from the 1970's onwards.⁴¹ This model allows for a victim, assisted by a trained mediator, to describe to the offender how the crime has affected themselves emotionally, physically or financially while being directly involved in developing a reparation plan with the offender. Circle sentencing or peacemaking principles have their origins in the traditional healing and sentencing practices of American Indian and Canadian aboriginal peoples. Resurrected by judges and justice committees in the Yukon Territory and other Canadian communities, this model can be described as 'a holistic re-integrative strategy designed to not only address the criminal and delinquent behaviour of offenders but also to consider the needs of

³⁸ Kathleen Daly, 'Restorative Justice: The Real Story' in Gerry Johnstone (ed.), *A Restorative Justice Reader*, (Cullompton, Devon: Willan Publishing, 2003) 366.

³⁹ Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Devon: Willan Publishing, 2002) 3-4.

⁴⁰ Ibid.

⁴¹ Ibid, 2. Also see Tony F. Marshall, 'Restorative Justice: An Overview' in Gerry Johnstone (ed.), *A Restorative Justice Reader*, (Cullompton, Devon: Willan Publishing, 2003), 31.

victims, families and communities'.⁴² The goals of circle sentencing programmes reconcile with those of conferencing and mediation models and include principles such as healing, the need to make amends and the requirement to address the underlying causes of the criminal behaviour. However, where circle sentencing contrasts with these other dominant models is in the all-inclusive make up of circle participants which can include police officers, lawyers and judges as well as victims, offenders and family and community members. Such a wide range of participants increases the potential for further building and promoting a sense of community and community values.⁴³

It should be noted at this point the general difficulty with successfully classifying and defining the range of restorative models. It can be argued that some degree of overlap of principles and practices can exist between many restorative programmes, including conferencing, mediation, circle sentencing and panel based models. Indeed the Irish reparation panel model espouses many of the aims of the more conventional programmes, namely compensation for the victim, the highlighting of the harm caused and the importance of accountability and a move away from recidivist tendencies. Compensation across the range of models can include financial and moral elements such as apologies and community based services. Many of the criminal justice agencies who participate in the panel process are also directly involved within conferencing and, more indirectly, mediation based models including police and probation officers. The process across the restorative programmes is also similar with an importance placed on communication and inclusive dialogue. All the models noted above are closely linked to the conventional criminal justice system, and wholly dependent on referrals, staff and funding with the final arbiter always remaining the court itself. Where the reparation panel does contrast with these other programmes is in the participation of community based volunteers, and community representative case workers. It also somewhat contrasts with victim offender mediation modes of practice in that there is a greater onus on the sentence based reparative acts that each participating offender needs to carry out. In saying that, however, this principle, including financial payments, written apologies and agreements to engage in certain prescribed behaviours, has been

⁴² Gordon Bazemore and Mark Umbreit, 'A Comparison of Four Restorative Conferencing Models' in Gerry Johnstone (ed.), *A Restorative Justice Reader*, (Cullompton, Devon: Willan Publishing, 2003) 225, 233.

⁴³ Gordon Bazemore and Mark Umbreit, 'A Comparison of Four Restorative Conferencing Models' in Gerry Johnstone (ed.), *A Restorative Justice Reader*, (Cullompton, Devon: Willan Publishing, 2003) 233.

regularly employed within conferencing schemes, including police-led restorative cautioning pilots in Northern Ireland.⁴⁴ There is at first glance little reason why this principle could not also be integrated into mediation based practice. Furthermore, a conferencing and circle sentencing case will usually consist of a greater number of participants than in a panel based restorative encounter. Actors can include the victim, offender and their family members and supporters as well as criminal justice representatives including lawyers. Another contrast, and general weakness, with the reparation panel as opposed to other programmes is the lack of participating victims. Thus, while subtle differences do exist within the range of restorative models available it can be argued that there is a large degree of overlap in both practices and principles across the restorative spectrum.

1.4 Defining Restorative Justice: Process or Outcome Based?

Theoretical disagreements surrounding the correct definition of restorative justice have included the question of whether the concept should be labelled as being either 'process' or 'outcome' specific. For example, Marshall's definition above, of restorative justice as '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', has been criticised in that it favours process, and face-to face practices, over actual restorative outcomes such as repairing harm.⁴⁵ The definition has also been seen as failing to adequately address the needs of the wider community members.⁴⁶ Similarly, Braithwaite argues that this definition, while outlining a 'shared core meaning', does not define the 'core values' of restorative justice or fully indicate what should actually be 'restored'.⁴⁷ For Walgrave and Bazemore, a better definition of restorative justice would include 'every action that is primarily orientated toward repairing the harm that has

⁴⁴ David O'Mahoney and Jonathan Doak, 'Restorative Justice - Is More Better? The Experience of Police-Led Restorative Cautioning Pilots in Northern Ireland' (2004) 43 *Howard Journal of Criminal Justice* 484.

⁴⁵ Tony F. Marshall, 'The Evolution of Restorative Justice in Britain' (1996) 4 *European Journal on Criminal Policy and Research* 21, 37.

⁴⁶ Gordon Bazemore and Lode Walgrave, 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform', in Gordon Bazemore and Lode Walgrave (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, (Devon: Criminal Justice Press, 1999) 45.

⁴⁷ John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002), 11.

been caused by crime', including both coercive sanctions and voluntary processes.⁴⁸ Such an outcome based definition has been described as a 'maximalist' model which serves to widen the principles of punishment and treatment to include the repairing of harms and rehabilitation of offenders.⁴⁹ It is also said to embrace all restorative justice initiatives, voluntary and informal as well as state referred and court processed. For theorists such as McCold, however, this all-encompassing model is problematic because of its inclusion of court authorised restorative sanctions as well as state representatives acting as direct stakeholders.⁵⁰ McCold has put forward, in his eyes, a more appropriate 'purist' model which would only be justified in calling itself 'fully restorative' whenever the needs of all the 'primary stakeholders' of a criminal event are met.⁵¹ A model meeting such 'primary' needs then, is said to be 'centrally focused on the repair of harm as a goal, (it) provides a limited role for coercive formal responses and fundamentally challenges the way justice is conducted in all parts of the formal system'.⁵² Furthermore, McCold's 'purist' definitional model only recognises restorative practices such as family group conferencing, victim offender mediation and peace and healing circles as legitimate 'fully restorative' processes capable of successfully managing 'holistic' restorative ideals such as victim reparation and offender accountability.⁵³

⁴⁸ Gordon Bazemore and Lode Walgrave, 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform', in Gordon Bazemore and Lode Walgrave (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, (Devon: Criminal Justice Press, 1999) 48.

⁴⁹ Paul McCold, 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', (2000) 3 *Contemporary Justice Review* 357. See also from the same volume Lode Walgrave, 'How Pure can a Maximalist Approach to Restorative Justice Remain? Or can a Purist Model of Restorative Justice Become Maximalist?' (2000) 3 *Contemporary Justice Review* 415. Also see Virginia Mackey, *Holistic Restorative Justice: A Response to McCold* (2002) 3 *Contemporary Justice Review* 451.

⁵⁰ For example, see criticisms in Paul McCold, 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', (2000) 3 *Contemporary Justice Review* 357.

⁵¹ Paul McCold, 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', (2000) 3 *Contemporary Justice Review* 357, 400. McCold, along with Ted Wachtel, have recognised these 'primary stakeholders' as the most important actors within a restorative process as they are the most affected by a particular crime. As well as victims and offenders, such primary stakeholders can also include their family members and friends.

⁵² *Ibid.*

⁵³ *Ibid.*, 401. Under McCold's 'purist' criteria, reparation panels such as those under investigation within this research thesis would only be defined as 'partly restorative' in the principles they adopt.

The foregoing discussion illustrates the difficulty in defining the characteristics of restorative justice; it is a multi-faceted concept that can represent a number of different justice processes as well as a varying list of principles and ideals. It can provide an accompaniment to formal, state-sanctioned justice processes or be promoted as an alternative process, encouraging crime resolution as the repairing of broken relationships rather than broken formal rules. It will be argued within subsequent chapters of this thesis that the Irish reparation panel model, despite specific reservations over court ordered sanctions and a lack of primary stakeholders, can be legitimately viewed as a restorative process. However it will also be underlined, particularly within the conclusion chapter that an overall lack of direct victim participation within both programmes has served to dilute the reparation panels' restorative ethos. While both programmes do strive to compensate for this participatory lacuna, there is no doubt that a greater victim input in reparation panel practices and procedures, both directly and indirectly, would further benefit both the reparation process in general, and participating offenders in particular.

It should be recognised at this point that the very concept of legitimacy is difficult to measure. However, it will be argued that such restorative legitimacy can, at least in part, be derived in a number of ways. Despite the overall lack of direct victim involvement, a level of restorative legitimacy can be gleaned from both the direct and indirect panel practice of successfully employing restorative ideals such as empowerment, dialogue, accountability and reparation through a 'community of care, concern and accountability' approach between state professionals, lay volunteers and participating offenders and victims.⁵⁴ Whilst there are certain areas in which improvements might be made to panel practices in order to increase certain restorative values,⁵⁵ it will be argued that the Irish reparation panel should be identified as a viable restorative model capable of standing alongside other, more established programmes such as family group conferencing. The thesis will illustrate how panel practices are successfully repairing the

⁵⁴ For example, victims can participate directly by attending panels or they can participate indirectly by receiving letters or apology and reparation, or by designing victim impact statements which are read out during panel discussions.

⁵⁵ A number of recommendations for improving restorative policy and practice are listed further within Chapter 5.

harm caused by criminal behaviour and increasing the accountability and non-recidivist tendencies of many offenders through a process of cooperative partnership and all-inclusive dialogue between both primary and secondary stakeholders.

1.5 Concept Consolidation: The Restorative Justice Community

In a similar vein to the arguments surrounding the true nature of the restorative justice concept, many theorists and restorative advocates have noted difficulties in clearly and concisely defining the concept of community, and its practical and theoretical role, within restorative justice practices.⁵⁶ Despite this, the concept is regularly portrayed as an important element within a successful restorative justice process.⁵⁷ Therefore, and as noted earlier within this Chapter, any confusion over perceived roles and responsibilities inherent within such an important concept has the potential to undermine and weaken underlying restorative values and the respective aims of restorative justice models generally, including the Irish reparation panel schemes.⁵⁸ Indeed, it has been stated that one of the greatest challenges facing the ever maturing restorative justice concept is to define the role of community in theory and practice.⁵⁹

Within a restorative justice process, as well as within the criminal justice system more generally, the community can take on a number of personas. It has been described as

⁵⁶ For example, see Paul McCold and Benjamin Wachtel, 'Community is not a Place: a New Look at Community Justice Initiatives' in Gerry Johnstone (eds.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003). 294. See also Lode Walgrave, 'From Community to Dominion: In Search of Social Values for Restorative Justice in Elmar G.M. Weitekamp and Hans-Jürgen Kerner (eds.), *Restorative Justice. Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 75.

⁵⁷ Nancy Rodriguez, 'Restorative justice, Communities, and Delinquency: Whom do we Re-integrate?' (2005) 4 *Criminology & Public Policy* 103. See also Paul McCold 'What is the Role of Community in Restorative Justice Theory and Practice?' In Howard Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, NY: Criminal Justice Press, 2004) 155.

⁵⁸ A thorough evaluation of the community concept and how it relates, both in a practical and theoretical sense, to reparative panel practices and principles is contained within Chapter 4 and Chapter 5 of this thesis.

⁵⁹ Paul McCold 'What is the Role of Community in Restorative Justice Theory and Practice?' In Howard Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, NY: Criminal Justice Press, 2004) 155.

both a geographical area, 'a place where people know and care for one another',⁶⁰ as well as a set of values and relational bonds. Such bonds can result in a series of 'meaningful interrelationships...and common interest in something greater than ourselves'.⁶¹ Community can also adapt to a number of roles. For example, within a group conferencing restorative model it can be 'an extension of both offender and victim' wherein family members and friends of both stakeholders can come together around the conferencing table and attempt to repair any harm that has been caused; it can be another stakeholder, along with the victim and offender, a 'secondary victim which has suffered its own harm through social unrest or threat'; and it can represent the potential, idealistic goal of a successful process, 'an ideal form of collective life' in which a repentant offender can be successfully reintegrated and rehabilitated amongst fellow ideal community members.⁶² Indeed, the inclusion of community members as an extension of victim and offender has been viewed as the vital ingredient which can transform a 'partial' restorative justice model into one that can be legitimately called 'fully' restorative.⁶³ In this way, the support network of family members and friends can act as 'primary stakeholders'. They, along with the victim and offender, become the most important actors within a restorative process as they are the most affected by a particular crime and have the greatest emotional connection. This grouping can include parents, spouses, family and friends, as well as teachers or co-workers'.⁶⁴ Such primary stakeholders, according to McCold and Wachtel, are to be contrasted with 'secondary stakeholders', including neighbours and those 'who belong to educational, religious, social or business organisations whose area of responsibility or participation includes

⁶⁰ Amitai Etzioni, *The Spirit of Community: The Reinvention of American Society* (New York: Simon and Schuster, 1994) 31- 32. See further, Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities and the Communitarian Agenda* (London: Fontana, 1995).

⁶¹ Paul McCold and Ted Wachtel, 'Community is not a Place: a New Look at Community Justice Initiatives' in Gerry Johnstone (eds.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 295.

⁶² Lode Walgrave, 'From Community to Dominion: In Search of Social Values for Restorative Justice in Elmar G.M. Weitekamp and Hans-Jürgen Kerner (eds.), *Restorative Justice. Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 75.

⁶³ Paul McCold, 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', (2000) 3 *Contemporary Justice Review* 357, 400.

⁶⁴ Paul McCold and Ted Wachtel, 'In Pursuit of Paradigm: A Theory of Restorative Justice'. Restorative Justice E Forum. Paper Presented at the XIII World Congress of Criminology, 10-15 August (Rio de Janeiro, Brazil 2003) 2. Available at www.iirp.edu/pdf/paradigm.pdf.

the place or people affected by the incident'.⁶⁵ In this regard, government officials and criminal justice professionals can also be viewed as 'secondary stakeholders'.

For Zehr and Mika, the justice process should be seen as belonging to the community and active participation by community members can serve to maximise that role and encourage values such as rehabilitation and reintegration rather than coercion and isolation.⁶⁶ Accordingly, 'the justice process draws from community resources and, in turn, contributes to the building and strengthening of community'.⁶⁷ Furthermore, the level of community involvement has been said to represent one of the most important differences between the retributive justice and restorative justice paradigms.⁶⁸ The justice system also attempts to promote changes within the community by attempting to prevent similar harms from happening to others, as well as fostering early intervention to address the needs of victims and the accountability of offenders.⁶⁹

The concept of 'community justice' can also represent a criminal justice movement in its own right. This theory has evolved from historical traditions which saw restitution and compensation agreements forming the bedrock of criminal sentences, even those resulting from serious offences against the person.⁷⁰ Such a concept was seen to 'place a high premium on negotiated, extrajudicial settlements, usually involving compensation'.⁷¹ More recently, the community justice movement has been described as embracing a number of criminal justice models, including community policing,

⁶⁵ Paul McCold and Ted Wachtel, 'In Pursuit of Paradigm: A Theory of Restorative Justice'. Restorative Justice E Forum. Paper Presented at the XIII World Congress of Criminology, 10-15 August (Rio de Janeiro, Brazil 2003) 2.

⁶⁶ Howard Zehr and Harry Mika 'Fundamental Concepts of Restorative Justice' (1998) 1 *Contemporary Justice Review* 47, 53.

⁶⁷ Ibid.

⁶⁸ Mandeep K. Dhimi and Penny Joy, 'Challenges to establishing Volunteer-Run, Community Based Restorative Justice Programs' (2007) 10 *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 9, 12.

⁶⁹ Howard Zehr and Harry Mika 'Fundamental Concepts of Restorative Justice' (1998) 1 *Contemporary Justice Review* 47, 53.

⁷⁰ Howard Zehr, *Changing Lenses: A new focus for crime and justice* (Scottsdale: Herald Press: 1990), 99.

⁷¹ Ibid, 101.

community crime prevention, community courts and community defence.⁷² While similar in ideals to its restorative justice counterpart, including prioritising victims' needs and offender sanctions such as restitution and reparation, community justice is said to be 'more broadly conceived of than restorative justice' in that it manages crime prevention as well as offender sanctioning and concentrates directly on 'community outcomes' and 'the location of justice activities at the local level'.⁷³ Principles such as restoration, public safety, moral concern and collective outcomes are seen as core values within the community justice concept.⁷⁴

Within the Irish reparation panel model, the concept of community is regularly identified as an important ingredient within operating practice and procedure. This is evident in the name of the town based panel model, Restorative Justice in the Community (*RJC*), and can also be evidenced amongst the stated principle aims of both panel models. For example, the town based model has previously claimed that it

'seeks to harness the moral resources and local knowledge of the community in identifying and prioritising the concerns surrounding problems of crime, disorder and crime prevention within the community...This is a community based initiative and is wholly dependant on the consent, goodwill and participation by community members'.⁷⁵

⁷² David R. Karp and Todd R. Clear, 'Community Justice: A Conceptual Framework' (2000) 2 *Criminal Justice* 323, 324. See further Gordon Bazemore, 'The Community in Community Justice: Issues, Themes and Questions for the New Neighbourhood Sanctioning Models' (1997) 19 *The Justice System Journal* 193. Here, community justice, and 'community decision-making' is used as an umbrella term to describe a number of restorative justice sanctioning models.

⁷³ David R. Karp and Todd R. Clear, 'Community Justice: A Conceptual Framework' (2000) 2 *Criminal Justice* 323, 325.

⁷⁴ David R. Karp, 'Birds of a Feather: A Response to the McCold Critique of Community Justice' (2004) 7 *Contemporary Justice Review* 59, 63. For criticism of the community justice paradigm, see Paul McCold, 'Paradigm Muddle: The Threat to Restorative Justice Posed by its Merger with Community Justice' (2004) 7 *Contemporary Justice Review* 13.

⁷⁵ The Nenagh Community Reparation Project, *Presentation to the National Commission for Restorative Justice* (Nenagh: NCRP, 2007).

I have classified this model as ‘town based’ as the bulk of the cases being managed involve offending in and around smaller towns such as Nenagh, County Tipperary and Birr, County Offaly. Alternatively, as the other reparative model, Restorative Justices Services (*RJS*) mainly manages cases situated in and around Dublin city centre, this has been classified as a ‘city based’ programme. Furthermore, this city based model has also identified the importance of the community concept within its restorative programmes. It has emphasised, for example that

‘offenders, like victims, are a part of our community. There are those who may not like to think of offenders as part of the mainstream community but they are. A glance through our files will tell you that they come from the blue-collar and white collar skilled and semi-skilled professions, they can be public servants, third level students, unskilled manual workers, homemakers and unemployed people. They come from the tree lined avenues of South Dublin and the large housing estates of West Dublin. They are members of our community. They are neighbours, friends, work colleagues, brother, sister, parent, partner, spouse. We need to re-evaluate how we treat members of the community when they breach the criminal law. We need to step away from the first-resort fixation with custody and punishment. We may agree that we need and want to use sanctions but let us put a bit more thought into what kind of sanctions and why. Let us think of what can really benefit our communities and victims, not just what can punish our offenders. We need to work with offenders in ways that will not only address issues of accountability, responsibility and reparation but in ways that will also facilitate their return to the community as equals, as opposed to stigmatizing and marginalizing them further within their communities’.⁷⁶

The promise of active community participation and representation is arguably embedded within the DNA of both programmes. However, unveiling exactly how that

⁷⁶ Peter Keeley, ‘Restorative Justice in the Community. A Partnership Approach’. In Kevin Lalor, Fergus Ryan, Mairead Seymour and Claire Hamilton (eds.), *Young People and Crime: Research, Policy and Practice* (Dublin: Centre for Social and Educational Research, Dublin Institute of Technology, 2007) 91, 95-96. Available at www.dit.ie/cser/media/ditcser/images/young-people-and-crime.pdf.

concept is *actually* employed within panel practices, beyond the somewhat cursory nods to ‘community representatives’ and ‘community based initiatives’, has proved difficult in reality. This thesis attempts to take a deeper look at the concept of community. It strives to illuminate the practical and theoretical relevance of community within panel practices and reparation contract agreements, to clarify the vagueness inherent within the community concept and to measure the true representative nature of community members, community based partnerships and initiatives as part of continuing reparation procedures. In doing so, restorative justice values and reparation panel objectives can be strengthened.

Furthermore, the thesis also addresses the question as to whether the reparation panel programmes should be classed as either state-led or community-led in both their practices and general principles.⁷⁷ As noted above, both adult reparation programmes continually argue that the community around where the offence has taken place should always be a primary focus in the search for reparation, accountability and remorse. However, Garland, Cohen and Able argue that many ‘informal justice’ and ‘community-led’ criminal justice programmes, while claiming to prioritise community based interests and community members as primary stakeholders, in reality merely serve to extend the influence and power of criminal justice professional agencies and government branches.⁷⁸ This can be due to programmes prioritising ‘top-down’, state-led, managerialist factors such as bureaucracy, cost-effectiveness, professionalism, centralisation and rationalisation over ‘bottom up’ community ownership and participation.⁷⁹ The concept of a ‘bottom up’ owned justice process is coined by, among others, Anna Eriksson in which she describes the role played by political ex-prisoners and former combatants in community based restorative justice projects in Northern Ireland. Its basic premise is management and ownership of a process from within the community where the

⁷⁷ See especially Chapter 5 wherein the conflict between communitarian and state-led principles is further analysed.

⁷⁸ See generally Richard Abel, *The Politics of Informal Justice Volume 1: The American Experience* (New York; London: Academic Press, 1982), Stanley Cohen, *Visions of Social Control* (Cambridge: Polity Press, 1985) and David Garland, *The Culture of Control* (Oxford: Oxford University Press, 2001).

⁷⁹ For a discussion on the concept of managerialism, see David Garland, *The Culture of Control* (Oxford: Oxford University Press, 2001), 18-19. See further, Anna Eriksson, ‘A Bottom-Up Approach to Transformative Justice in Northern Ireland’ (2009) 3 *International Journal of Transitional Justice*, 301.

offending is taking place; 'bottom up' rather than 'top down', that is, state and professional institution led.

In the case of the reparation panel schemes, at first glance there is cause for concern that the adult based programmes are actually endangering the communitarian ethos within criminal justice conflicts rather than strengthening and embedding such values within their primary stakeholders. For example, all cases referred to the panel process are judge referred within a formal court process. Furthermore, the programmes rely completely on funding from the Probation Service, through the Department of Justice and Equality. The panel format does allow for community based volunteers and community representative caseworkers to attend and actively contribute to case discussions. However, on most occasions criminal justice professionals will outnumber their lay member colleagues within the panel structure.⁸⁰ The referring judge remains the final arbiter as to what the appropriate punishment should be, regardless of panel deliberations and recommendations. In addition, while there has been an annual increase in the numbers of case referrals to both models, this increase has not been replicated in either funding or panel member recruitment. This, in turn, could lead to the prioritisation of managerial ideals such as cost effectiveness, financial monitoring and a need for time constraints within panel case discussions, to the detriment of the social, economic and communitarian contexts surrounding many crimes and participating offenders.

Despite these managerial-led concerns, this thesis will go on to demonstrate that both the town based and city based panel models can legitimately be classified as community-led justice models. It will show that community representative lay members and criminal justice professionals have successfully combined their respective skills and expertise and utilised a task sharing philosophy within panel discourses. This task sharing ethos mirrors the 'democratic professionalism' theory put forward by Olsen and Dzur.⁸¹ Within this theory, professionals within mediation programmes will not monopolise criminal conflicts but will act as equal partners alongside their lay member colleagues. In addition, they will manage cases with as much emphasis on social justice issues as fiduciary and administrative concerns. It will be argued that this democratic

⁸⁰ The structure and format of reparation panels and the particular roles of panel members is analysed in some detail within Chapter 2.

⁸¹ Susan M. Olson and Albert W. Dzur, 'Revisiting Informal Justice and Democratic Professionalism' (2004) 38 *Law and Society Review* 139.

professionalism based, task sharing ethos can be evidenced within reparation panel case management. Lay member panel members have been shown to have an active voice and role to play within case deliberations. Community services have been successfully utilised as a means of addressing rehabilitative options. Furthermore, this identified partnership has been combined with a welfare themed dialogic approach to panel deliberations wherein social justice issues such as debt, employment and relational concerns are discussed and dissected alongside more traditional criminal justice elements such as accountability, reparation and remorse.⁸² Due to these findings, it can be shown that both reparation programmes have successfully balanced the competing communitarian and managerial led ideologies that have hindered many restorative styled models. In doing so, both schemes have managed to not only dilute the notion of an over-reliance on criminal justice professionalism and governmental mechanisms but, conversely, they have also produced real, bottom up styled, community based activism.⁸³

The next section of this introductory chapter will briefly introduce the history, development and workings of the Irish reparation panel schemes themselves as well as a summary of current juvenile and other adult based restorative justice initiatives. Prior to this, a background summary of the origins of the restorative justice concept within the Irish jurisdiction is further outlined below.

1.6 Origins of Irish Restorative Justice Principles

Restorative principles have played a role within Irish justice systems for centuries.⁸⁴ Within early Celtic law practice there were elements of social restoration, while the native Brehon law also engaged with restorative principles such as community

⁸² This welfare based panel ethos resulted in one of the main findings of the thesis, that of a newly identified meso-community within the confines of the panel meeting itself. See section 1.13 of this introduction and Chapter 4 for further discussion.

⁸³ See Chapter 5 for further illustrations of this community-led approach.

⁸⁴ Jim Auld, Brian Gormally, Kieran McEvoy and Mike Ritchie (1997) *Designing a System of Restorative Justice in Northern Ireland: A Discussion Document*. (Belfast: 1997).

ownership, negotiation, and compensation.⁸⁵ Brehon law was the most recognised legal system before Anglo Saxon jurisprudence in the 17th Century took precedence and brought together customary law, customs and institutions.⁸⁶ The reintegration of both victims and offenders and the importance of social cohesion were seen as strong *Brehon* tenets.⁸⁷ Indeed, the law's legitimacy and overall authority very much depended on social cohesion amongst the hierarchical town communities of that time, with fines as a form of reparation and redress being encouraged for a wide range of crimes, from minor thefts to murder.⁸⁸ Crime itself was viewed as a conflict between community members directly rather than between an individual and the state, unless politically motivated.⁸⁹ Thus a restorative philosophy would appear to have taken precedence. A more retributive form of justice, however, is said to have become the norm from the beginning of the 19th Century onwards; however, despite this shift in philosophy, different forms of alternative, informal justice continued to operate in a piecemeal fashion as a means of challenging British colonial rule and law making.⁹⁰

1.7 Context of the Thesis: The History and Development of the Irish Reparation Panel Models

One example of the provision for restorative justice principles generally, and specifically within the management of adult offending, can be further evidenced in the work of the non-statutory restorative schemes under investigation for the purpose of this research thesis. These restorative models have been in operation since 1999, operating both victim offender mediation (VOM) and offender reparation panel (ORP) programmes. The

⁸⁵ Liam Leonard and Paula Kenny 'Measuring the Effectiveness of Restorative Justice Practices in the Republic of Ireland Through a Meta- Analysis of Functionalist Exchange' (2011) 91*The Prison Journal* Volume 57, 59. See also Liam Leonard and Paula Kenny, 'The restorative justice movement in Ireland: building bridges to social justice through civil society' (2010) 18 *Irish Journal of Sociology* 38, 40.

⁸⁶ Anna Eriksson *Justice in Transition: Community Justice in Northern Ireland* (Collumpton: Willan Publishing, 2009) 36.

⁸⁷ Anna Eriksson *Justice in Transition: Community Justice in Northern Ireland* (Collumpton: Willan Publishing, 2009) 36.

⁸⁸ Rachel Monaghan, 'The Return of 'Captain Moonlight': Informal Justice in Northern Ireland' (2002) 25 *Studies in Conflict and Terrorism* 41, 42.

⁸⁹ Jim Consedine, 'Restorative Justice: Could Ireland Lead the Way' (1999) 88 *Studies: An Irish Quarterly Review* 132, 134.

⁹⁰ C. Bell, 'Alternative Justice in Ireland' in Norma Dawson, Desmond Greer and Peter Ingram (eds.), *One Hundred and Fifty Years of Irish Law* (Belfast: SLS Legal Publications, 1996) 145-146.

emphasis on restorative justice principles within Irish, adult based criminal justice policy can be traced back to the second half of the 1990's.⁹¹ During this period, the National Crime Forum in its consultation on crime in Ireland heard a number of presentations on the restorative justice concept. These recommendations included calls for a re-think on the way in which crime was being managed, including the need for a 'fundamental change of focus to make the prison the option of last resort, to be used sparingly and only when all other options have been tried or considered and ruled out for cogent reasons'.⁹² Early in 1999 approval was received for payment of grants through the Probation Service for two pilot restorative projects for adults, operated by local committees in conjunction with the Courts, at Nenagh, Co. Tipperary and Tallaght, Co. Dublin. In the following sections I will outline the history and development of the panel models in more detail. Before this however, it is necessary to trace the restorative timeline in regard to this increased interest in the utilisation of restorative justice principles as part of Irish criminal justice policy.

Following on from the statutory implementation of juvenile restorative group conferencing as part of the 2001 Children Act by way of the Garda Juvenile Diversion Programme,⁹³ a number of influential reports followed further raising the restorative profile. For example, in 2006 the Joint Committee on Justice, Equality, Defence and Women's Rights examined the potential of restorative justice and heard oral submissions from both adult based panel projects as well as the Secretary General of the Department of Justice and senior representatives of both the Probation Service and Garda Síochána.⁹⁴ The Joint Committee's report contained a total of 10 recommendations, and proposed that restorative justice should be developed as a more regular feature of the Irish criminal justice system and that those existing models should be supported. Other recommendations included increasing the funding streams for

⁹¹ David O'Donovan, 'The National Commission on Restorative Justice: A Review and Plan for Development' (2011) 8 *Irish Probation Journal* 165, 165.

⁹² National Crime Forum: *National Crime Forum Report* (Dublin: Institute of Public Administration, 1998) 142.

⁹³ Sections 78-87 of the Children Act 2001. The juvenile model is outlined in more detail within the following sections of this introductory chapter.

⁹⁴ See the Joint Committee on Justice, Equality, Defence and Human Rights: *Report on Restorative Justice* (Dublin: Houses of the Oireachtas, January 2007).

restorative programmes, as well as increasing both the awareness and engagement of the judiciary in restorative justice practices. Furthermore, the Joint Committee recommended that restorative practices for adult offenders should follow the juvenile model and be provided for in legislation. In accumulating cross-party support within the Irish National Parliament (the Oireachtas) as well as raising the profile and potential of restorative justice as a viable option within the Irish justice system generally, this report has been seen to represent an important political reference point for the paradigm.⁹⁵

In its presentation to the Joint Committee, the Probation Service argued that, as well as expanding the existing adult pilots, a cross-sectoral working group should be commissioned in order to review restorative models both in Ireland and internationally and create proposals for further development. This proposal was endorsed, with the Joint Committee recommending that such a group be created 'to develop a national strategy for restorative justice that is based on international best practice'.⁹⁶ It was the Committee's view that this particular group of practitioners and academics would assess the value and impact of restorative practices and develop a restorative blueprint for the national roll-out of restorative services which would best suit the Irish jurisdiction.

In March 2011, the then Minister for Justice, Equality and Law Reform, Michael McDowell TD, announced the establishment of the proposed National Commission on Restorative Justice and highlighted the victim and community focus, as well as the potential for accountability and repair of past harms that restorative justice can provide. The Commission was chaired by a Judge of the District Court with members drawn from senior management in the principal criminal justice agencies involved, including the Probation Service, the Courts Service, An Garda Síochána and the Director of Public Prosecutions. As O'Donovan succinctly sums up, the core goal of the Commission was to explore the use of restorative justice with persons brought before the Courts on criminal charges and to make recommendations as to its potential wider application in the Irish

⁹⁵ David O'Donovan, 'The National Commission on Restorative Justice: A Review and Plan for Development' (2011) 8 *Irish Probation Journal* 165, 166.

⁹⁶ *Ibid.*

jurisdiction.⁹⁷ The Commission produced an Interim Report in March 2008, followed by a Final Report in June 2009. Within both reports it recommended the particular restorative models which would be most appropriate and cost effective when utilised within the Irish criminal justice system, one of which was the reparation panel model, whether these models should be enshrined in legislation, the specific offences and Courts to which restorative justice would be best suited and the particular roles of key stakeholders such as the Courts, Probation Service, Gardai, victims and local community members. A number of the Commission's findings were directly related to the practice and policy making of the adult based reparation panel models. These findings, and the background and development of both reparation programmes, are further explored within the next section of this chapter.

1.8 Adult Reparation Panel Programmes: Restorative Justice Services and Restorative Justice in the Community.

Restorative Justice Services

The Restorative Justice Services (*RJS*) restorative model has operated a victim offender mediation scheme since 1999 and an offender reparation programme since 2004. *RJS* is based in Tallaght in Dublin and also arranges reparation panels within Dublin city centre. This model originated primarily as a victim offender mediation service when funding was first announced. Prior to this, the programme had been operating as a sub-committee of a community mediation group, led by the community sector and included representatives from agencies such as the Probation Service, An Garda Síochána, and victim advocates. Before its formal implementation, it had been in discussion for a period of 18 months with the Probation Service and the Department of Justice.⁹⁸ A similar restorative justice service based in Edinburgh, Safeguarding Communities, Reducing Offending (*SACRO*), provided a training programme during the autumn and winter of 1999, part of which involved trainees spending time with the Scottish service participating in 'live' situations with victims and offenders. Personal contacts were also used to research practice in other jurisdictions such as the United Kingdom, Canada and

⁹⁷ Ibid, 167.

⁹⁸ Peter Keeley, 'Restorative Justice in the Community. A Partnership Approach'. In Kevin Lalor, Fergus Ryan, Mairead Seymour and Claire Hamilton (eds.), *Young People and Crime: Research, Policy and Practice* (Dublin: Centre for Social and Educational Research, Dublin Institute of Technology, 2007) 91, 91-92. Available at www.dit.ie/cser/media/ditcser/images/young-people-and-crime.pdf

mainland Europe. During that time the programme also made efforts to promote the service with the judiciary and became formally available in February 2000.

At the beginning the programme's focus was on a pre-court diversionary model, in line with the practice of the Scottish service. The programme developers initially argued that such a pre-court format would carry the most benefits for the stakeholders involved including victims, offenders, the wider community and the Exchequer. However, after discussions with the Probation Service and the Department of Justice it was ultimately agreed that a pre-sentence format would be the most suited to the Irish criminal justice system. During the initial operating phase the programme had two primary objectives. One was to sell the service directly to the judiciary. This was deemed necessary due to the lack of any legislative provisions or directives issued from the Department of Justice, Equality and Law Reform advising the courts to support and utilise the service. Secondly, the programme prioritised the recruitment and training of community members as, they argued, 'community involvement is a central tenet of Restorative Justice and we are of the view that the facilitation of contacts with and/or between victims and offenders provides an important and meaningful role for the community'.⁹⁹ Furthermore, the programme has stated that its practitioners should be guided in their management of offenders by a number of core restorative justice foundational beliefs; that crime hurts victims and their families; that crime affects the offender, his or her family and the wider community; that the victim's voice needs to be heard and that the offender accepts responsibility and takes opportunity to repair the harm caused.

From the programme's beginnings, communications and burgeoning relationships with the judiciary have proved an important factor with regard to possible referrals. Initial approaches were made to a number of District Court judges, before the then President of the District Court, Judge Peter Smithwick, invited programme representatives to address a statutory meeting of the District Court in 1999 on the restorative project.¹⁰⁰ The service became available to the courts in 2000 with victim/offender mediation cases being referred from courts such as the Metropolitan District, Dun Laoire and Bray

⁹⁹ Ibid.

¹⁰⁰ Ibid.

District Courts to Naas and Kildare. There were also referrals from Dublin District Appeals Court and the Circuit Courts in Kildare and Wicklow. Initially, reparation cases were only referred from Tallaght District Court. However, as will be illustrated within the following chapters, the number of reparation cases and referring judges has increased considerably.¹⁰¹

Restorative Justice in the Community

The second reparation model under investigation for the purposes of this thesis, is Restorative Justice in the Community (RJC).¹⁰² The programme has been based in Nenagh, County Tipperary from the outset and began managing offenders as a 12 month pilot project managed by a local committee, representing varying community interests and working in tandem with, and funded by, the Probation and Welfare Service. The model was inspired by the work of the then Principal Probation Officer Martin Tansey and Judge Michael Reilly who visited New Zealand as part of a working group in 1998 investigating the work of the Probation Service. It was there that the group observed a similar restorative programme operating in Timaru, whereby offenders would make reparation to both victims and their community for the harm caused by their offending behaviour.¹⁰³ Judge Reilly spoke to the main stakeholders connected to the project including the local judge, the local police chief, probation service members, the Deputy Mayor and a cross section of community members. The New Zealand based scheme entailed the management of the offender in the community under the supervision of the probation service but always under the direction of the court. It has been argued that the scheme 'had the effect in that locality of dramatically reducing crime against a national yearly increase across New Zealand'.¹⁰⁴ After the New Zealand observations, Judge Reilly then attempted to replicate the model in Nenagh wherein he was sitting judge. A consultation process was started with various stakeholders such as the Probation Service, An Garda

¹⁰¹ Indeed, the *RJS* programme has been predominantly managing offender based reparation cases in preceding years due to a lack of willing, participating victims in potential mediation cases.

¹⁰² Formerly the *Nenagh Community Reparation Project*.

¹⁰³ Nenagh Community Reparation Project (NCRP). *Presentation to the National Commission on Restorative Justice* (Nenagh: NCRP, 2007) 3. Available at <http://www.nenaghreparation.com/report-2007.php>.

¹⁰⁴ Department of Justice and Law Reform. *White Paper on Crime. Report of Proceedings of Open Forum Consultation Meeting on Criminal Sanctions* (Dublin: Institute of Public Administration 2010) 30.

Síochána, the Courts Service, and other organisations such as the Chamber of Commerce. This then led to a public meeting in Nenagh from where Judge Reilly outlined his ideas and asked the stakeholders to consider the establishment of a similar project in their area. As a result a committee was formed, officers were elected an application for funding from the Probation Service was successful and the first referrals were made to the project in June 1999.¹⁰⁵

The Nenagh based model is comprised of a number of directors representing all stakeholders, with a Management committee and a panel of community representatives who are directly involved in the reparation process, including referrals and panel meetings. The project is said to take cognisance of the fundamental rights of both victims and offenders and to follow the recommendations of the draft report of the United Nations Commission on Crime Prevention and Criminal Justice, Section III regarding the Operation of Restorative Justice Programmes.¹⁰⁶ These recommendations include the need for guidelines and standards to be established, with legislative authority when necessary, in order to govern the use of restorative justice programmes. Such standards should address the conditions for the referral of cases to restorative justice programmes, the handling of cases following a restorative process, the qualifications, training and assessment of facilitators, the administration of restorative justice programmes and the standards of competence and ethical rules governing operation of such programmes. The report also recommends that a number of fundamental procedural safeguards should be applied to restorative justice processes, including the right of parties to legal advice before and after the restorative process and, where necessary, to translation and/or interpretation. Further, before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision

¹⁰⁵ Ibid.

¹⁰⁶ Nenagh Community Reparation Project (NCRP). *Presentation to the National Commission on Restorative Justice* (Nenagh: NCRP, 2007) 3. Available at <http://www.nenaghreparation.com/report-2007.php>.

and neither the victim nor the offender should be induced by unfair means to participate in restorative processes or outcomes.¹⁰⁷

As noted earlier, the National Commission on Restorative Justice compiled a number of recommendations which directly related to the adult based reparation panels. The reparation model was one of three restorative justice formats of which the Commission believed would be an appropriate fit for the Irish criminal justice system, the other two being victim offender mediation and family group conferencing. It also noted that such a model could prove a cost effective alternative to custodial sentences in certain cases. With regard to referrals, the Commission believed that in principle all offences should be open to a restorative programme, apart from more serious offences such as murder and rape, for which substantial minimum sentences are set in law and did not consider that provision should be made to test the suitability of sexual and domestic violence offences.¹⁰⁸ They concluded that by targeting offences for which sentences of up to three years of imprisonment are being considered, it would enable the process to apply to more-serious offences and would improve the prospect of diverting offenders from a custodial sentence and from further offending.¹⁰⁹ In regard to reparation panel case referrals, from the outset both programmes have primarily managed first time offenders and less serious offences including minor thefts, minor assaults and public order cases. Following successful engagement with the programmes, those participants have had their cases struck off the court books or dismissed under the Probation of Offenders Act 1907.

However, and as this thesis will go on to illustrate through various case study examples, more recent case referrals have illustrated an increase in the seriousness of the criminal behaviour being managed. These cases have involved serious assaults, high value thefts, fraud, criminal damage and racism. This increase in case tariff levels can be traced to the National Commission's recommendation of Probation Service scrutiny of existing reparation programme practices and possible expansion. In 2011 it was agreed that the

¹⁰⁷ The Economic and Social Council "Basic principles on the use of restorative justice programmes in criminal matters." ECOSOC Res. 2000/14. Adopted 27 July 2000. U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

¹⁰⁸ The Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) Executive Summary, section 75/76.

¹⁰⁹ *Ibid*, Section 76.

Probation Service would put in place a 12 month pilot project, from June 2011 to May 2012, to expand the services of the two projects within existing budgets.¹¹⁰ The objectives of the pilot were identified within the following terms of reference: to expand restorative justice services to additional District Court areas, to apply a restorative justice model to higher tariff cases where a sentence of up to 12 months could be imposed and that those cases should represent two thirds of the pilot referral, and to target an annual referral rate of up to 300 referrals for *RJS* and up to 100 referrals for the *RJC* model. For the purposes of the evaluation, a list of offences deemed serious enough to warrant a potential custodial sentence was drawn up, and included assault causing harm, affray, violent disorder, burglary, robbery and unauthorised taking of a motor vehicle. In relation to previous convictions, the threshold for higher tariff cases was set at two or more previous convictions.¹¹¹ Through case study analysis of reparation programme practices and procedures, this thesis will go on to illustrate and analyse this higher tariff case and repeat offender referral policy.

As noted earlier in the chapter, both reparation programmes, cases are referred from court at the pre-sentence stage and the court remains the final arbiter as to the ultimate sanction. Cases are adjourned until an agreement, drawn up between the panel members and agreed with the offender, can be finalised and ultimately completed. Any of the key stakeholders, the Probation Service, An Garda Síochána, legal representatives and victim support interests may all request the court to consider mediation or reparation in a particular case if it is thought appropriate to do so.¹¹² An offender's guilt has to be admitted or proven in court in order to participate. The circumstances surrounding the crime and the effects of the offending are discussed and a reparation agreement drawn up which will typically include financial reparation to a recognised victim or charity, a journal to be written by the offender outlining the harm caused by the crime on victims and their significant others, as well as the harm caused to the

¹¹⁰ The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Projects* (The Probation Service: 2012) 2.

¹¹¹ Ibid. 13. The pilot study showed that 137 out of 168 cases referred to *RJS* fell into the higher tariff category, while 20 cases out of 58 cases referred to *RJC* were also classified as higher tariff.

¹¹² Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) 3.35. The procedures, participants and restorative principles employed within panel practices will be evaluated in detail within Chapter 2.

offender themselves and their families. Letters of apology to various stakeholders may also be written, along with agreements not to reoffend in the future. Thus reparation can be seen to be both financial and symbolic.¹¹³ Ideally, the panel will successfully tease out accountability for any harm caused and help to prevent such offending behaviour in the future while providing opportunities for adequate reparation, remorse and forgiveness.

Both reparation panel models employ similar restorative principles, with victims being contacted at various stages of the process and asked as to their willingness to participate.¹¹⁴ Both programmes attempt to highlight the harm caused and the need for repairing that harm through inclusive dialogue and mutual agreement. When contract agreements are completed, the case is returned to the referring judge. If the judge believes the restorative aims and reparative actions have been successfully completed, there is the possibility of the participant being diverted from a formal criminal record. It should be noted that such an outcome is not guaranteed, with sanctions sometimes being handed down despite an offender successfully embracing the restorative ethos.¹¹⁵ Presiding judges, however, will tend to look favourably on participating offenders whose actions signify elements of remorse, apology, reparation and accountability for any harm caused.¹¹⁶

¹¹³ Heather Strang argues that many victims within restorative justice processes tend to see emotional redress, as with the offering of an apology, as far more important than financial and material restoration. See Heather Strang, 'Justice for Victims of Young Offenders: the Centrality of Emotional Harm and Restoration' in Alison Morris and Gabriel Maxwell (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford: Hart Publishing, 2001), 183.

¹¹⁴ There are differences in the method by which both programmes contact affected victims. This difference in practice is discussed further within Chapter 2. An example of the general rate of victim participation within referred cases can be gleaned from *RJC* statistics from 2012. Of the 58 referrals taken on by the Nenagh model in that year, 31 had a direct victim – 12 directly participated, 13 cases had indirect participation and 6 cases had no response. Conversation with *Restorative Justice in the Community* project co-ordinator Emily Sheary, 10th July 2012

¹¹⁴ Ibid.

¹¹⁵ For example, the Probation Service have noted that 45 cases out of a total of 168 referred to the *RJS* scheme in 2012 contained additional sanctions, including a suspended sentence and fine. See The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Projects* (Dublin: The Probation Service, 2012) 15.

¹¹⁶ Panel members remarked through informal conversations at the beginning and end of panel cases that referring judges would usually look favourably on offenders who successfully completed their contract agreements, even with more serious cases such as assault causing harm.

1.9 Irish Restorative Justice: Juvenile Practice

The modern Irish criminal justice system utilises the restorative justice concept within a number of formats and includes both adult and juvenile offenders as potential participants. Within the youth justice system, juvenile services have been in operation since 1963 under the Juvenile Liaison Officer (JLO) Scheme which allowed for diversionary cautions in lieu of possible prosecution. However, this scheme operated purely as a diversion from prosecution mechanism until the late 1990's when a number of restorative elements were introduced in anticipation of the Children Act 2001 (the 2001 Act) provisions.¹¹⁷ Following Part 4 of the 2001 Act, the JLO Scheme was replaced by the Garda Diversion Programme to deal with juveniles under the age of 18 who commit offences. These statutory provisions replaced the somewhat outdated Children Act 1908 and were introduced in order to provide greater protection, care and control of children. Although there is no stated reference to 'restorative justice' within the text of the 2001 Act, there are a number of restorative principles evident within the Act's proposals for managing juvenile offenders. These principles include diversion from prosecution through the acceptance of responsibility,¹¹⁸ detention as a last resort,¹¹⁹ and due regard to be given to victims' interests.¹²⁰

Within the 2001 Act, as amended by the Criminal Justice Act 2006 (the 2006 Act), there is now provision for any child who has committed criminal acts and accepts responsibility for that criminal behaviour to be considered for admission to a diversion programme, unless the interests of society are not be served by the diversion.¹²¹ Children who take responsibility for their offending behaviour can be diverted from the traditional criminal justice system through this programme by way of either a formal or informal caution, depending on the nature of the offending. If the caution is a formal one, the child will be placed under the supervision of a Garda Juvenile Liaison Officer (JLO) for twelve months. Other restorative provisions within the 2001 Act include the

¹¹⁷ The Children Act 2001 (Number 24). As amended by the Criminal Justice Act 2006 (Number 26).

¹¹⁸ Part 4, Section 18 of the 2001 Act as amended by Part 12, section 123 of the 2006 Act.

¹¹⁹ Part 9, Section 96(2) of the 2001 Act.

¹²⁰ Part 9, Section 96 (5) of the 2001 Act as amended by Part 12, section 136 of the 2006 Act.

¹²¹ Section 18 of the 2001 Act as amended.

potential for victim attendance at the administration of a formal caution,¹²² and restorative family group conferences for children who have already been administered with a formal caution and are being supervised by a JLO.¹²³ Section 78 of the 2001 Act further provides for court referred Probation Service conferences where criminal charges have been laid, responsibility has been accepted and reparation to the victim offered, and the court has deemed it necessary that an action plan be drawn up in order to prevent re-offending.¹²⁴

1.10 Irish Restorative Justice: Other Adult Practices

Restorative justice is also practiced within the confines of the Garda Adult Cautioning Scheme (the Scheme) which has been in operation since February 2006 and followed on from a number of reports which recommended a greater need for proportionality within sentencing.¹²⁵ The Scheme operates on a non-statutory basis. Similar to the juvenile programme, it also allows for diversion from prosecution, only this time with offenders over the age of eighteen. Garda Síochána guidelines allow for a list of offences wherein, if guilt is acknowledged, a caution can be administered. These include thefts where the value of property is less than 1,000 euros, public order offences such as intoxicated or threatening behaviour, and criminal damage offences and minor assaults.¹²⁶ The decision to caution rather than prosecute is made by the local Garda Superintendent. In making this decision, certain factors are to be taken into consideration, including whether the victim is agreeable to such a disposal and whether or not the sanction is in the public interest. It should be noted here that the National Commission on Restorative Justice has previously recommended that this diversionary method should be increased where possible, with a greater emphasis on a restorative dimension.¹²⁷ It further

¹²² Section 26 of the 2001 Act.

¹²³ Section 29 of the 2001 Act.

¹²⁴ See the Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: DJELR, 2009) Chapter 3, especially 3.6 – 3.26 for a detailed summary of youth justice restorative initiatives within the Irish jurisdiction.

¹²⁵ See, for example the Law Reform Commission, *Report on Sentencing*, LRC 53-1996 (Dublin: Law Reform Commission, 1996). Available at http://www.lawreform.ie/_fileupload/Reports/rSentencing.pdf.

¹²⁶ An Garda Síochána (2009) *Adult Caution Scheme*. Available at www.garda.ie.

¹²⁷ Although the restorative ideal would see the views of the victim always being considered, and their views are sought when possible, the decision to caution can still occur even if the victim is opposed to it.

recommended that both reparation panel models should work with the police in broadening the restorative nature of the caution.¹²⁸ Within personal observations of panel practices, no caution based cases were managed. Indeed, the two diversionary methods appeared to be working in opposition to one another with several offenders participating in the reparation panel process having received an earlier caution for another unrelated offence. The police themselves are responsible for caution disposals, while the presiding judge will refer offenders to reparation panels. However, the offences managed within reparation panel practice are very similar to those within the Garda Síochána's cautioning guidelines, and there does appear to be an element of overlap between both diversionary methods with some confusion as to the reason why one method is being chosen as an appropriate sanction over another.¹²⁹

1.11 Research Aims

The research aims of this thesis are primarily two-fold. It aims to provide a critical assessment of the restorative practices and principles utilised within the operation of the two Irish reparation panel schemes, Restorative Justice in the Community and Restorative Justice Services. It further aims to examine the role of community within *these* reparation models from both a practical and theoretical perspective. Within both research aims there are a number of questions addressed within the thesis.

How is the restorative ethos being actively employed within panel practices?

Firstly, the thesis will examine which stakeholders are directly or indirectly involved in the panel process and their specific roles within that process, as well as outline the way

This would appear to dilute the restorative ethos of the Scheme. See the Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) 3.47.

¹²⁸ The Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009) 3.48.

¹²⁹ For example, during a number of panels the police representative would question why the participating offender was not primarily cautioned for the offence rather than referred to the panel process itself. The reason for the contrast in referral was not clear. However, a Garda panel representative did state during one of the interviews that it was her understanding that all participating offenders would have been handed out a caution for a minor first offence prior to a second offence panel referral. It is difficult to substantiate this at the time of the panel meeting as previous convictions or cautions were not always known by the panellists or included within the panel discourse. This is discussed further within Chapter 2.

in which participating panel members communicate with victims and offenders within case discussions. It will strive to answer the question as to whether or not the restorative ethos is suffering due to a perceived lack of victim involvement. The success of reparation tasks within contract agreements, with respect to increasing the accountability of offenders and repairing the damage done to relevant victims, will be studied. Particular consideration will be given to the identification of those whom the offenders are said to be accountable to, and the type of offences being managed within reparation practice. In this regard, the National Commission for Restorative Justice has previously argued for an increased number of 'more serious' offences to be referred to the reparation panels.¹³⁰ This thesis will examine whether this recommended policy is being successfully implemented within panel referrals and whether or not the panel referral system can be deemed to be fair to participating offenders generally.

How is the concept of community represented within reparation panel practice?

Secondly, the thesis will identify the practical characteristics of the community concept within panel discussions and contract agreements. It will examine which community assets and services are being utilised as part of reparation outcomes, what particular section of the community, if any, is actively involved in reparation panel practices and their specific roles. The thesis will examine whether these community representative roles represent genuine, active participation within the reparation process as a whole or whether, in reality, they are nothing more than token gestures with limited influence. Furthermore, the way in which both community representative and criminal justice representative roles react within panel discussions will also be analysed. In this regard, the potential conflict between community led and managerialist justice ideals within panel practice and procedure will be studied, including the question as to whether one particular ethos subjugates the other within the practical realities of reparation management. Moreover, the thesis will outline the particular form in which a notional community can be identified within panel practice. It will examine whether such a notional community is a direct result of reparation panel policy or has simply developed over time within panel practices; it will examine further whether this notional

¹³⁰ 'More serious' cases have been classed as those of which sentences of up to three years imprisonment were being considered. See Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: DJELR, 2009) section 76 of Executive Summary.

community is distinct to the Irish reparation panel process or can also play a defining role within restorative justice models generally. Finally, the thesis will outline the specific advantages and disadvantages of identifying such a community within reparation panel workings.

Overall, this thesis provides a detailed case study of a developing restorative justice model. Based on a collection of personal observations allowing for unprecedented access to panel practices and procedures,¹³¹ as well as a number of semi-structured interviews with relevant stakeholders, the research offers a thorough analysis of how restorative principles are being employed within the Irish reparation panel process. This is important in that some theorists have questioned the ‘true’ restorative ethos of the reparation panel model generally when contrasted with larger, more inclusive restorative models such as family group conferencing schemes.¹³² Further, a practical and theoretical investigation into the role of community within panel practice helps to clarify the vagueness and looseness inherent within discussions surrounding the definition of the community concept in general. Such confusion has the potential to dilute restorative principles within reparation panel practice and undermine reparation goals. In this regard, the theoretical concept which has been originally identified within the Irish model can also potentially be connected to other restorative models within other jurisdictions. Therefore this thesis adds a valuable contribution to the restorative justice literature and the potential of community within reparation panel practices.

1.12 International Perspectives

In addition to providing a detailed examination of an emerging Irish restorative justice model and a consideration of the restorative principles and community led values employed within, this thesis also draws on international comparisons of restorative ideals and systems. It examines aspects of restorative practice in other jurisdictions including the United States, the United Kingdom, New Zealand and Australia. Further

¹³¹ Although others have been allowed to observe reparation panel discussions, including potential panel members of the Garda Síochána and the Probation Service, it is submitted that the actual number of panels observed by one researcher represented an unprecedented approach within this particular model.

¹³² Paul McCold, ‘Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model’, (2000) 3 *Contemporary Justice Review* 357, 400.

examination of these comparable models includes the methods by which restorative contracts are agreed, and the procedural conflict between community led and managerialist principles. Such an international perspective provides context for the Irish reparation panel model and introduces a restorative template from which Irish best practice standards can be examined further.

Furthermore, the utility of restorative justice practices and principles are being increasingly realised across the international criminal justice spectrum. Restorative principles have been incorporated into a number of European Union and United Nations instruments. For example, following the Economic and Social Council's (the Council) 1999 resolution in which the Commission on Crime Prevention and Criminal Justice were asked to consider the possibility of formulating UN standards in the field of mediation and restorative justice,¹³³ the Council adopted a further resolution in 2002 adopting a set of basic principles on the use of restorative justice programmes in criminal matters.¹³⁴ The purpose of this resolution was to inform and encourage Member States to incorporate restorative justice measures within their respective legal systems, although there was no intention to make them mandatory or prescriptive.¹³⁵ A number of guidelines and standards were proposed in order to achieve this, addressing factors such as definition, case referral and facilitator practice and representation. The potential of restorative justice to specifically improve the standing of victims of crime has also been recognised internationally. Within the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, victims who choose to participate in a restorative justice process must have access to safe and competent restorative justice services.¹³⁶ The Directive has stated that

¹³³ Economic and Social Council of the European Union (ECOSOC), *Resolution 1999/26, Development and implementation of mediation and restorative justice measures in criminal justice*. Adopted July 1999.

¹³⁴ Economic and Social Council of the European Union, *Resolution 2000/12, Basic principles on the use of restorative justice programmes in criminal matters*. Adopted July 2000. In Resolutions and decisions adopted by the ECOSOC at its substantive session of 2002 (1-26 July) 54-59. UN ECOSOC E 2002/INF/Add.2. Furthermore, in 2001, the European Union issued a framework decision stating that member states should promote mediation in criminal cases and bring into force their legal instruments by 2006. See the European Union Council *Framework Decision of 15 of March 2001 on the Standing of Victims in Criminal Proceedings*, Article 10.

¹³⁵ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (Vienna: Criminal Justice Handbook Series, 2006) 33.

¹³⁶ The European Parliament and the Council of the European Union, *Directive 2012/29/EU of establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council*

‘Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm’.¹³⁷

The offender reparation panel model can be included within this list of beneficial restorative services for victims and stakeholders generally. The study of the Irish reparation model can, therefore, increase knowledge and awareness specifically within this jurisdiction as well as provide a valuable comparative contribution to the ever expanding international based body of restorative justice literature.

1.13 Research Rationale

In the concluding sections of this introductory chapter the research methodology, as well as ethical considerations surrounding interview and observational access to panel discussions and participants, is discussed. Within this section, the means by which this thesis significantly adds to pre-existing restorative justice practical and theoretical analysis can be further illustrated. The thesis will go on to show that an original concept of community has been identified within the previously under researched Irish reparation panel models. This newly identified community is specific to reparation panel procedure and has been formed around every specific panel case that is referred to both city based and town based restorative programmes. There are two elements to the reparation based community. The first is the practical, geographical community, identified by way of the panel schemes’ use of locally based services and support groups within reparation contract agreements. These agreements can include rehabilitative

Framework Decision 2001/220/JHA. Adopted October 2012. Available at eur-lex.europa.eu>EUROPA>EU law and publications>EUR-lex.

¹³⁷ Ibid, 19. Section 46.

measures such as attendance at locally based drug and alcohol counselling services. Furthermore, a geographical notion of community can be also evidenced by the use of locally sourced justice professionals, programme caseworkers, chairpersons and volunteer lay members around the panel table, each bringing their local knowledge and expertise to case discussions and rehabilitative options within contract agreements.

In addition to this practical, geographical reparative based community, a novel theoretical community has also been identified. This theoretical community, identified by way of a series of case observations across both programmes, can be classified as a 'meso-community of care, concern and accountability'. It has emerged by way of the particular 'welfare themed' discourse employed by all panel participants during case deliberations. This 'welfare themed' approach involves criminal justice professionals, community based volunteers, programme representative panel members and participating offenders discussing the individual social and relational contexts of the referred crime, as well as the need for accountability and reparation for the harm caused to both direct victims and the community generally. Furthermore, these rehabilitative social and welfare based concerns are discussed both as part of contract agreements and outside contract parameters. This novel reparation based community builds on previous 'micro' and 'macro' community theories put forward by McCold.¹³⁸ For McCold, the 'micro' community represents the primary stakeholders within a restorative event such as the close friends and family members of victims and offenders lending support and advice. Alternatively, the 'macro' community represents secondary stakeholders such as state institutions, church groups, clubs and associations. It can also include community representative lay members and criminal justice professionals within restorative programmes.¹³⁹

However, the novel reparation community I have identified is fundamentally different in that, first and foremost, the welfare ethos within panel case discussions has been

¹³⁸ Paul McCold, 'What is the Role of Community in Restorative Justice Theory and Practice?' In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004), 155.

¹³⁹ Ibid. 158.

initiated by reparation panellists rather than a familial support structure.¹⁴⁰ In essence, the reparation case specific community can be seen to represent a novel, relational 'macro community' delivering the welfare based, emotional support more commonly identified as part of the familial 'micro community' put forward by McCold.¹⁴¹ Therefore, previously identified, theoretically thinner relational bonds between an offender and criminal justice professionals and restorative programme actors have now come to represent, within the reality of a reparation case event, those thicker bonds more readily evidenced between family members and close friends of victims and offenders within a restorative meeting.

Thus a novel 'meso-community' has been identified emerging within the previously identified micro and macro community dynamic in restorative programmes such as family group conferencing. This reparation based community has emerged in each referred case managed by panel members, and formed around each participating offender but without the direct familial support structures illustrated within larger participatory restorative models such as family group conferencing and circle sentencing programmes. Uniquely, the reparation panellists have demonstrated a series of surrogate familial relational bonds around each participating offender, in which the individual social contexts of the crime are investigated alongside more conventional factors such as accountability, non-recidivism, rehabilitation and the need to make amends for the harm caused.

Importantly, the fact that this novel community has been identified within the more confined participatory surroundings of the Irish adult based reparation panel model can serve to underline and promote the communitarian potential of restorative justice generally, and reparation panels in particular. In this regard, the reparative 'meso-community of care, concern and accountability has added considerable value to the existing practical and theoretical restorative justice literature.¹⁴²

¹⁴⁰ Family members and/or friends do not usually attend reparation case discussions, although this is not ruled out as a possibility depending on the case being managed.

¹⁴¹ Ibid.

¹⁴² The meso-community concept is discussed in detail within Chapter 4.

1.14 Methodology

The thesis draws on an ‘across method’ triangulated research design¹⁴³ involving a desktop literature review, participant observations of both Irish reparation panel schemes and semi-structured interviews with key stakeholders within the reparation process including participating panel members from An Garda Síochána and the Irish Probation Service, as well as community representative volunteers, reparation caseworkers and reparation scheme managers. This research method was chosen so as to help improve the reliability of interpretations across a range of data sources. Moreover, it has been previously pointed out that a semi-structured interviewing method, allied with participant observations, can each compliment the other and increase data output while also enabling a better understanding of the subject at hand.¹⁴⁴ Denzin has further argued how across method triangulation can help the researcher to ‘achieve the best of each (method) while overcoming their unique deficiencies’,¹⁴⁵ while for Atkinson and Coffey qualitative forms of triangulation can increase the respective strengths of observation and interview based methods while also counteracting the potential limitations of both.¹⁴⁶ This section will address the challenges of conducting such a research method when investigating reparation panel practice and procedure, including ethical concerns and issues relating to access.

1.15 Access Considerations

Preliminary email correspondence, exploring the possibility of investigating panel procedures, was initiated with the manager of the Restorative Justice Services project, Peter Keeley, in August 2011. A meeting was arranged at the RJS offices in Tallaght in

¹⁴³ Norman K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (3rd Edition) (New Jersey: Prentice Hall International, 1989) 244.

¹⁴⁴ Norman K. Denzin and Yvonna S. Lincoln, *Collecting and Interpreting Qualitative Materials* (USA: Sage Publications, 1998) 56.

¹⁴⁵ Norman K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (3rd Edition) (New Jersey: Prentice Hall International, 1989) 244.

¹⁴⁶ Paul Atkinson and Amanda Coffey ‘Revisiting the Relationship between Participant Observation and Interviewing’ in Jaber F. Gubrium and James A. Holstein (eds.), *Handbook of Interview Research* (California: Sage, 2002) 801.

September 2011 wherein both the research proposal and my own background were discussed in more detail. It was explained that the research proposal would require a number of panel observations as well as possible interviews with relevant stakeholders. It was further explained that the process of gaining ethical clearance from Dublin City University was ongoing and that the proposal would only begin whenever ethical clearance had been approved. The manager was initially supportive of the proposed project, but explained that the remaining committee members would also have to be consulted before access could be finalised. Full approval was granted by the scheme in December 2011 and the details of a panel caseworker were relayed in order to help set up an initial observation.¹⁴⁷

With access to the *RJS* model agreed, it was then necessary to explore the possibility of expanding the research to also include the Restorative Justice in the Community project based in Nenagh, County Tipperary. Observing both schemes would open up the possibility of evaluating the community concept and relevant practices and principles employed within the Irish reparation process as a whole. With this in mind, Peter Keeley offered to contact the manager of the Nenagh based project, Emily Sheary, and, after initial email contact was established, a meeting was arranged at the project's headquarters in Nenagh in May 2012. The research plan was again outlined in detail and the manager of the town based model was supportive of the proposal, but noted that the management board would have to be consulted before overall access could be finalised. After discussions with the management board, access was granted to observe the Restorative Justice in the Community panel process in May 2012.¹⁴⁸ With access to both reparation panel schemes agreed in principle, it was then necessary to apply for ethical clearance from Dublin City University. It was explained that the research involved adult participants and would involve a series of observations with the added possibility of a series of semi-structured interviews with various panel programme stakeholders. Ethical clearance was then granted by Dublin City University Ethics Committee on 31 May 2012, after which the series of panel observations then began. In all, forty six

¹⁴⁷ See appendix 3 for signed ethical agreement statement.

¹⁴⁸ See appendix 2 for signed ethical approval statement.

reparation panel meetings were observed in total between both programmes and seven semi-structured interviews over a period of twenty four months.¹⁴⁹

1.16 Observational Access

In addition to reading and evaluating a large collection of both primary and secondary sources, and carrying out a collection of semi-structured interviews, the primary method of data collection for this thesis was a series of participant observations within panel case discussions. The process of gaining individual access to observe a panel meeting was similar across both schemes. Within the *RJS* reparation scheme, an email would be sent to either the manager or the caseworker asking when the next series of meetings were due to take place and if it would be possible to observe. If there were no other observers due to attend,¹⁵⁰ then a date and time would be set for attendance at the next observation. The *RJS* scheme did overall tend to have more cases referred for reparation panel disposal than its town based counterpart. For this reason, the opportunities for observing within the *RJS* programme were greater and more cases were observed within this scheme. Although a more limited number of observations was carried out within the *RJC* model, the overall access granted and number of panels observed allowed for a comprehensive sample to be achieved.¹⁵¹ All *RJS* panel cases were observed within the confines of The Probation Service headquarters, Haymarket, Dublin 7.

Within the town based Restorative Justice in the Community project, emails would be sent to the project manager asking for possible dates on which to attend panel

¹⁴⁹ A complete breakdown of panel observations, including crimes managed and participant roles, is provided for within Chapter 2 of the thesis.

¹⁵⁰ On a number of occasions there were Garda officers or Probation Officers due to attend a particular panel for training purposes. The caseworker did not want more than two observers at the one time within a meeting, therefore a date would be rearranged if there were two observers provisionally planned to attend.

¹⁵¹ In 2012, *RJS* managed 168 referred cases compared to 58 cases managed by Restorative Justice in the Community. See, The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Projects* (Dublin: The Probation Service, 2012) 9. Furthermore, evidence gleaned from interviews with both programme managers illustrated that from January to November 2014, *RJC* had managed an approximate total of 105 case referrals, while between 2013 and 2014 *RJS* managed over approximately 350 referred cases a significant increase on previous numbers for both programmes.

observations. If a referred case was upcoming, a date and time was arranged so that the observation could take place. These observations took place in a number of towns within County Tipperary and County Offaly. Six cases in all were observed within the town based model. For the purposes of this thesis, it would have been preferable to have attended a larger number of *RJC* managed panels. However attendance within the scheme was dependent on the manager of the process arranging observational opportunities. Of course, the thesis attempts to tease out restorative practices and principles, as well as the notion of community, within both reparation schemes but it is not a direct, statistical comparison between the two. Despite the limited number of panels observed within the *RJC* panel project when compared to the access granted within the *RJS* scheme, the opportunity of observing these town based panel cases allowed for the collation of valuable information relevant to the thesis aims, including themes such as community representation and practices involving reparation contract agreements and venue locations. During observations of all panel meetings, access to discussions, case notes and other documentary information was on an unconditional basis. No information was placed 'off limits' during observations and at no point was I ever asked to leave the panel room during sensitive discussions, thus adding reliability to the research findings.¹⁵²

Further, throughout observations of both schemes, a collection of regular panel members would participate in the case meetings. Therefore, a relationship of trust was built up as the observational process progressed. For example, an important source of information was informal conversations with panel members both before and after cases were managed. As my presence within meetings became more commonplace, panel members began to discuss more freely their ideas on a range of issues surrounding the reparation panel process. This would include thoughts on how a particular case had been managed, perspectives on the attitude of participating offenders and ideas on the perceived advantages and disadvantages of the reparation process generally. Panel members within the schemes were also very interested about the practices employed within both projects and would ask during case breaks about the comparisons and contrasts that I had observed within each. I found within these informal talks that many members had a limited knowledge of how the 'other' project was operating and it could

¹⁵² Raymond M. Lee, *Doing Research on Sensitive Topics* (London: Sage Publications, 1993) 124.

be argued that a more rounded appreciation by members of how *both* schemes operated might result in a more restorative reparation practice generally.¹⁵³

1.17 Interview Access

The data collection method included a collection of semi-structured interviews with various stakeholders within the adult reparation panel process. The semi-structured interview design was chosen so as to allow interviewees to answer questions surrounding the reparation panel process as well as the freedom to explore other issues and themes which they felt were important. Overall, seven stakeholders were interviewed. They were made up of caseworkers, support caseworkers, managers, community representatives and Garda officers across both reparation panel schemes. Interviews were arranged on a face-to-face basis after case discussions or by email. Interviews took place within the Probation Service headquarters in Dublin city centre, the town based panel headquarters in Nenagh, Thurles Garda station both in County Tipperary, and more informal locations such as a coffee shop in Dublin city centre.¹⁵⁴ Participating offenders within the panel process were not interviewed. Both programme managers removed interview access to this particular stakeholder group. This was due to concerns over a number of issues, including confidentiality and anonymity, as well as the need to limit any potential disruption to the panel process itself.¹⁵⁵ All interviewees were asked if they would be open to having their interviews tape recorded, to which all agreed. The length of interviews ranged from thirty minutes to an hour. Each interview

¹⁵³ It is recommended within Chapter 5 of the thesis that a policy of more widespread advertising of reparation panel practices and principles needs to be implemented throughout the jurisdiction and is one of a number of recommendations that may improve restorative policy as the panels move forward.

¹⁵⁴ One community representative from the Restorative Justice in the Community scheme was interviewed in this location. This was the location suggested by the interviewee.

¹⁵⁵ Panel managers were reluctant to give out specific contact details of participating offenders. During the panel process itself, interview access to this group would have been almost impossible without interrupting the case management procedure. Participants would arrive a short time before their arranged slot. After the panel discussion, and in a separate room, caseworkers would then discuss the case with their clients directly. As observations regularly included three or four cases in a row, I was unable to leave the panel room until all registered cases were finished. Therefore, even if permitted, the logistics of the process did not allow for interviewing this group of stakeholders on the day of the observations. Without the necessary contact details then, such interviews were not possible. However, through directly observing the offenders within panel discussions, in terms of their body language and speech acts, a number of conclusions could be drawn as to their participation.

employed a semi-structured design. A mixture of both open-ended and specific questions were addressed to each interviewee, with room also left for the participant to discuss any further issues they believed were important. All interviews were convened in a friendly, conversational style which helped to put each participant at ease during the process.

1.18 Ethical Considerations

Within both reparation schemes, the participating offenders and panel members being observed were fully informed about the purpose of the research and the reason for their involvement. Within the *RJS* scheme, I would arrive at least half an hour before a panel was due to begin in order to introduce myself and explain to arriving criminal justice professional and community representative panel members the principle aims of the research and answer any questions. In relation to participating offenders the *RJS* caseworker would discuss with those participants, on a one-to-one-basis, the presence of an observer prior to their entrance to the panel room and whether or not they would consent to that presence. They would explain my background, the aims of the research project and the fact that complete anonymity was guaranteed. It was also explained that any refusal to allow an observer would have no bearing on the outcome of their case. The process was similar within the Restorative Justice in the Community project, with the manager interviewing participant offenders pre-panel with a view to gauging if they would accept the presence of an observer within their case discussion. However, within this scheme, meetings between manager and offender would take place approximately a week or two weeks before the date of the arranged panel rather than on the day of the panel as within the *RJS* process. The main cause for this difference in practice was the differing levels of case turnover within both schemes. It should be stated again that all participating offenders within both projects were told that they could refuse consent to being observed at any time during the reparation process, and were assured that their decision to either allow or not allow an observer to view their case would have no impact on the reparation process as a whole. As well as through pre-panel discussions, offenders within both schemes were further reminded of my presence whenever they entered the panel room itself. The manager or facilitator would introduce the panel

members and finish introductions by stating my name and occupation, as well as further underlining that confidentiality and anonymity was a paramount principle within the research process. Participating offenders would then be asked again whether they were happy to be observed and that any refusal at any time would have no bearing on the outcome of the case.

On a number of occasions within both reparation schemes, I was refused permission to observe panel discussions by participating offenders. After observing one particular panel meeting within the *RJS* scheme, and waiting for another to commence, the caseworker entered the panel room and informed the panel members and myself that the participating offender was not comfortable with the presence of an observer. I then left the panel room for the duration of that case discussion.¹⁵⁶ Throughout the *RJS* based observations this was the only occasion when a participating offender refused permission for the presence of an observer. Participating offenders within the Restorative Justice in the Community scheme have also refused permission for my presence of an observer. After pre-panel discussions with the manager, a total of four offenders stated that they would not be comfortable with someone observing their case. No reasons were given for the refusals. These panels were not observed and alternative meetings arranged. In addition to offenders themselves refusing permission, the manager of the town based scheme has also on occasion made an individual decision to hold the panel meeting without an observer present. On one such occasion, I was due to attend two panel meetings on the same day in Thurles. However, the manager decided that one of the participating offenders was very nervous and anxious about the process generally and did not want to cause him further anxiety by adding another person to the room. This was completely understandable and on this occasion I only attended the second panel discussion in which the participating offender was willing to be observed. It might have proved a useful exercise, however, to have been able to observe such nervous participants and the method in which they were managed by both community representative and criminal justice professional panel members.

¹⁵⁶ The reasons for such a refusal were unknown. However, it could be argued that the sensitive nature of the offence being managed, which was a sexual offences case involving male prostitution, could have been a contributing factor.

Throughout the observation process I attempted to be as non-intrusive as possible. This was important in that, as Pollner and Emerson have noted, the more one becomes a part of a setting, the more one risks being drawn out of the role of observer and into that of participant.¹⁵⁷ I wanted to guarantee as much as possible that criminal justice professional and community representative panel members in both schemes, and especially participating offenders, viewed my presence purely as an observer. With this in mind, within the *RJS* scheme, I would sit in the corner away from the panel members and participating offenders who sat around a table in the centre of the room. During the panel case deliberations there was no engagement whatsoever between the researcher and any of the panel members. This non-intrusive policy was possible due to the large conference rooms within the Probation Service building in which panel meetings were held. Within the Restorative Justice in the Community project, the size of the meeting rooms selected for the management of cases was not ideal for a successful policy of limiting intrusion to the panellists and participating offenders. However, I again managed to observe situated in the corner and as far away from the offender as possible so as to limit any intrusion caused by my presence. There was no engagement with any panel participants during case discussions apart from initial introductions. Informal conversations did take place on occasion but only before the participating offender had entered the room and after they had left.¹⁵⁸

Ethical considerations within the research study have further included an emphasis on what Lofland and Lofland have termed the ‘assurance of confidentiality’ in the course of researching panel practices, participating offenders and panel members generally.¹⁵⁹

¹⁵⁷ Melvin Pollner and Robert M. Emerson, ‘The Dynamics of Inclusion and Distance in Fieldwork Relations’ in Robert M. Emerson (ed.), *Contemporary Field Research. A Collection of Readings* (Boston: Little, Brown and Company, 1983) 235. Cited in Raymond M. Lee, *Doing Research on Sensitive Topics* (London: Sage Publications, 1993) 140.

¹⁵⁸ Town panels were observed within small rooms in community centres and the smaller confines of the Nenagh headquarters. These locations were less formal venues than the Probation Service location in Dublin city centre. For example, the Probation building needed a security pass to enter all floors and lifts. The various reparation venues are discussed further within Chapter 2 of the thesis.

¹⁵⁹ John Lofland and Lyn H. Lofland, *Analyzing Social Settings. A Guide to Qualitative Observation and Analysis* USA: Wadsworth Publishing Company, 1995) 43.

Within panel observations I was permitted to take shorthand written notes which I then typed up in detail after the discussions had ended. Within those notes I ensured that no names, addresses or other identifiable characteristics were ever written down. At the beginning of panel meetings the facilitator would hand out hard copies of summarised case notes to all the panel members, including myself, detailing the offender's offence, their criminal history and other details. These sheets were always returned to the facilitator at the end of each panel case discussion. I decided not to tape record meetings in order to better safeguard confidentiality and privacy of participating offenders. Any written notes regarding offender participation were always locked in my desk drawers at the end of each day.

In conclusion, this thesis combines a triangular, methodological approach in an attempt to provide the most effective way of answering the research questions. An observational approach has been employed to gain a 'close up' appreciation of the practices and reparation agreements employed within panel processes. This has enabled a detailed analysis of the relationship between the adult reparation panel and the concept of restorative justice itself, as well as the relationship between criminal justice professional and community representative panel members, and participating offenders. It also enabled a better understanding of the practical and theoretical community role within panel workings. The interview method allowed for research participants to answer specific questions not addressed within panel observations, as well as also allowing those participants to describe their own experiences and personal thoughts of the process. Finally, the third core method of a desktop literature review has enabled a comparative analysis of restorative justice models and restorative justice and community themed theories within which to place the workings of the reparation panel process as a whole.

1.19 Structure

This chapter has outlined the dual research aims of this thesis alongside the main concepts under investigation, and has also introduced the particular restorative model which forms the research context. It has offered a brief outline of both the historical

background to Irish restorative justice practice as well as current restorative procedures within the juvenile and adult based criminal justice system. In addition, the methodological approach has been detailed. The remaining structure of the thesis is as follows. Chapter 2 reviews the practice and procedures of the panel projects in detail, including participant roles, the venues, the principles within reparation agreements such as the use of apology, and the type of crimes being managed. Chapter 3 elaborates on the subject of contract agreements and examines further the principle of reparation. In particular, the chapter discusses the theoretical importance of ideal apologies and how this relates to the practical realism of panel management. Chapter 4 builds on the introductory background surrounding the concept of community within Chapter 1 and probes further into the concept, investigating its practical and theoretical relevance within restorative justice practice generally and within reparation panel practice specifically. In this respect an original theory of the representation of community within Irish reparation panel practice is submitted. It is argued that the method of discourse within the management of panel cases has illustrated a 'community of care, concern and accountability' wherein welfare concerns and the rehabilitative needs of participating offenders are intertwined with an impetus on repairing the harm of affected victims. Chapter 4 builds on this theoretical and practical analysis of community by reviewing the conflict between community led and managerialist justice ideals. This conflict of ideals is examined further within other comparable restorative models. In this regard, the form by which the conflict between community led and managerial based principles can represent within the Irish panel programmes themselves is also investigated. Finally, Chapter 5 will form the conclusion of the research thesis. It will return to the research questions and analyse how the thesis has addressed these issues while also offering up a series of recommendations that can provide opportunities for improving future best restorative practice within panel procedures and active practical community representation and ownership within reparation agreements and panel membership. It will include a further summarising of the newly found reparative community within panel case management processes and briefly examine how this original concept might be expanded to play an important role in other jurisdictions and within other restorative justice models.

Chapter Two

Practice and Procedure within the Adult Irish Reparation Panels

2.1 Introduction

The purpose of this chapter is to explore in detail the workings of the two adult reparation panel projects under investigation for the purposes of this thesis, Restorative Justice Services (*RJS*) and Restorative Justice in the Community (*RJC*). Both schemes have aimed to deliver a restorative response to crime by way of a reparation panel format which focuses on restorative principles such as repairing the harm caused by an offence and increasing the accountability of those offenders responsible for the criminal behaviour. This chapter serves to outline a range of issues within the reparation practice and procedure of both projects. These include the make-up of panel participants and their respective roles, the venues within which panel discussions are held, the specific crimes being managed, the representative nature of participating offenders and the method by which those offenders are referred to the reparation process. The type of discourse employed during panel deliberations is also outlined, along with the important panel process of negotiating reparation contract agreements. These reparation panel programmes have operated on a non-statutory basis since their inception and the principles and processes utilised have generally been closed to public scrutiny. By outlining these factors, this chapter can serve to broaden the knowledge base as to the particular 'nuts and bolts' and restorative practices and principles employed within panel procedure. It can also illustrate how the panel format has engineered a restorative ethos and successfully increased the potential for addressing such restorative aims as accountability, symbolic and financial reparation for the harm caused, rehabilitation and reintegration. Moreover, it can illustrate the means by which all stakeholders within the panel format, criminal justice professionals, community representative volunteers, caseworkers and facilitators, have forged a successful working relationship and provided an alternative restorative based criminal justice option which has generally benefitted participating offenders, victims and the wider community.

2.2 Reparation Panel Participants and Roles

Within the next sections the various panel representatives and their roles within both reparation programmes will be investigated further. With this in mind the make-up of both models and their respective operational procedures is briefly summarised below

in order to provide some background detail. A more substantive discussion on participants and roles will then follow.

Restorative Justice Services:

The *RJS* reparation programme is based in Tallaght on the outskirts of Dublin. The *RJS* panel consists of a Probation Service officer and Garda officer, and a chairperson and caseworker representing the *RJS* programme itself. A support caseworker will also manage administrative tasks such as communicating with the courts. The caseworker's role, as outlined in greater detail within this chapter, includes discussions with participating offenders through pre-panel meetings and the organisation and overseeing of reparation contracts. Victims are usually not directly involved in the panel process. This model manages offenders who have been referred from courts in Dublin city, Bray, Dun Laoghaire, Tallaght and Wicklow. After an initial pre-panel meeting with the caseworker to familiarise the participant with panel procedures, a panel meeting takes place in which the offence and the harm caused is discussed after which a reparation contract is drawn up and agreed between the participant and the panel members. A follow up second panel meeting is then arranged after the contract terms have been completed. It is at this second meeting that the contract, if successfully completed, is signed off by panel members and forwarded to the referring judge who has the ultimate final decision on the appropriate sanction.

Restorative Justice in the Community:

The *RJC* reparation programme is based in Nenagh, county Tipperary. The *RJC* panel consists of a Garda officer and either one or two volunteer community representatives from the local area, as well as the manager of the *RJC* programme itself. The manager role, as discussed in greater detail within the following sections, resembles elements of the caseworker role within the *RJS* model. Offenders have been referred from courts in Birr, Nenagh, Roscrea, Thurles and Tipperary. The manager acts as a conduit between the courts, police, and the participating offender and oversees the drawing up and completion of reparation contracts. She also contacts any direct victims of referred cases in order to gauge whether or not they would be willing to participate in panel proceedings. Within the *RJC* panel structure, there is no Probation Service officer

representation as exists within the *RJS* format, although there is local community volunteer representation which is not directly present within the *RJS* programme. Procedures and dialogues within both panels are relatively similar. However, the *RJC* format does not include the requirement that the participant attend a second panel meeting. Instead, the manager oversees the completion of contract terms and liaises with the courts herself.

As a general overview, and as noted briefly above, both reparation programmes included a range of participant panel representatives each undertaking a specific role within the management of case referrals. It should be underlined at this point that both reparation panel projects have operated from the outset on a non-statutory basis.¹ Practices have developed in a somewhat piecemeal manner over time and continue to develop from case to case.²

Further, although both models employ the same broad restorative principles and strive to successfully attain the same reparative goals, the reparation schemes do differ slightly in both representation and operating procedures. For example, as noted above, a Probation Service panel representative will usually attend *RJS* managed panels and victims will rarely attend panel discussions. Second panel meetings, in which the initial contract agreement is checked and signed off to the referring judge by panel members,

¹ Many similar restorative programmes have their principles and rules embedded in statute. See for example the Vermont Reparation Panel model, wherein Title 28 (Public Institutions and Corrections) of the Vermont Statutes Annotated, Chapter 12, allows for direct referral to a reparation panel; the Garda Diversion Programme which has embedded juvenile group conferencing practice in Ireland under the Children Act 2001, Part 4, as amended by the Criminal Justice Act 2006; and the practice of juvenile group conferencing in Northern Ireland under the Justice (NI) Act 2002. Within the UK, the Youth Justice and Criminal Evidence Act 1999 (consequently consolidated within Section 16-32 of the Powers of Criminal Courts (Sentencing) Act 2000, in turn amended by Section 79 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) first introduced the referral order and Youth Offender Panel, a new sentence for young offenders pleading guilty to certain crimes and convicted for the first time. Further to this, the Crime and Courts Act 2013, Schedule 17 Part 1, allows for a 'deferred prosecution agreement' wherein a sentence can be deferred for certain crimes including theft, if victim and offender agree to specific restorative justice measures. Provision for restorative justice measures is provided for under Schedule 16, Part 2 of the 2013 Act. See generally the Crime and Courts Act 2013, Chapter 22.

² Somewhat due to this non-statutory ingredient, there is a lack of specific written rules as to the particular procedures and roles within both panel programmes. Both programmes have, however, produced leaflets for participating offenders, victims and the public and criminal justice professionals generally which detail their respective policies, aims, the relevant actors and roles, as well as an outline of the restorative justice concept itself. See Appendix 4 for the *RJC* example.

form a regular part of *RJS* practice. In contrast, no Probation Service panel representative will attend the *RJC* panel format and no second panel meeting is required within this model, although the manager of the *RJC* project will check whether or not the agreed reparative acts have been successfully completed within the contract and will then liaise with the referring judge. The community is also, theoretically at least, represented in different forms within both schemes with some representatives volunteering while others are paid on a part-time and full-time basis. For this reason, panel participants and their respective roles, with the exception of Garda panel representatives whose role was almost identical within both schemes, are outlined separately within each reparation panel model. Roles within the ‘city based’ Restorative Justice Services programme are outlined initially, followed by the workings of the ‘town based’ Restorative Justice in the Community programme.³

2.3 Restorative Justice Services: The Role of Chairpersons

Reparation panel cases observed within the Restorative Justice Services programme always included the presence of a chairperson or facilitator. It is submitted that this role was one of the more important within panel practices and for that reason it is outlined in some detail. The chairperson’s role was primarily one of facilitation. They would introduce themselves and the other panel members to the participating offender (the participant) when that participant entered the room. There would then be a brief explanation of the principles inherent within the concept of restorative justice as well as an explanation of the aims of the reparation panel process itself. Regular introductory phrases would include such questions as, ‘do you understand why you are here?’ and statements such as ‘restorative justice is about repairing the harm that has been caused by criminal behaviour’ and ‘this process is about taking accountability for your actions, paying back the victim and moving on with your own life’. The chairperson would facilitate the discussion by allowing the offender and other panel members to each speak for a period of time. They would also manage the reparation phase of the meeting, clarifying and confirming the various reparative and rehabilitative acts that were to form

³ The *RJC* programme has predominantly managed cases in town locations such as Birr and Tullamore in County Offaly, and Nenagh, Roscrea, and Thurles in County Tipperary. This is the reason for the ‘town based’ labelling. However, it should be noted that from mid July 2014 it has begun to manage referrals in Cork city centre. As, the *RJS* model has predominantly managed cases of offending in Dublin city centre and surrounding areas, this programme has been labelled as a ‘city based’ model.

the basis of the contract and writing these up in front of all the participants. If agreement was secured, the contract would then be signed off by the participating offender. Chairpersons could also add reparative terms themselves, or refuse other recommendations if they believed, after discussing with other panellists, that they were unsuitable to the particular case being managed. Thus while their primary role was to facilitate the panel discussion, the chairperson also had an active, 'hands on' role with the other panel representatives in helping to negotiate and finalise agreements within the reparation contract.

Furthermore, the *RJS* chairperson was said to represent one of the main aims of the reparation panel process in general, that of increasing the sense of communitarian ethos within panel practices.⁴ The chairperson role was seen as a symbolic representation of the wider community interest and acted in theory as a bulwark to both the professional criminal justice role within panel practices and to managerial principles generally.⁵ The perception of a chairperson as a 'lay practitioner' rather than as a justice professional can be important in that the 'informality' of the reparation process can be strengthened and participating offenders might relate better to local, non-professional facilitators. For example, although they may view the Probation Service and Garda representatives as impartial actors within actual panel meetings, the possibility remains that they are also seen as representing a branch of the formal criminal justice machine that arrested and charged them initially. For Woolford, the construction of a facilitator as a 'professional' 'presents the danger that restorative justice will lose its local and informal roots and become more fully part of the formal criminal justice system'.⁶ In a similar vein, Clamp has viewed one of the main aims of the restorative justice concept itself as seeking to

⁴ Interview with *RJS* facilitator, Smithfield, Dublin: 28th October 2014. Within this interview, the facilitator argued that his role was that of community representative within panel discussions.

⁵ For example, Shapland has noted the crucial nature of this particular role within restorative practice. She notes that the facilitator should be 'seen as a neutral, helpful figure who is in control of the situation but is not taking on the embodiment of the authority of criminal justice'. See further Joanna Shapland, 'Key Elements of Restorative Justice alongside Adult Criminal Justice' in Paul Knepper, Jonathan Doak and Joanna Shapland, (eds.), *Urban Crime Prevention, Surveillance and Restorative Justice. Effects of Social Technologies* (USA: CRC Press, 2009) 135.

⁶ Andrew Woolford, *The Politics of Restorative Justice: A Critical Introduction* (Canada: Fernwood Publishing, 2009) 111.

“de-professionalise’ justice and emphasise the participation of all stakeholders – victims, offenders and their respective and shared communities – in the response to crime and conflict’.⁷ In addition, the United Nations Basic Principles on the use of Restorative Justice state that

‘facilitators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities. They should be able to demonstrate sound judgement and interpersonal skills necessary to conducting restorative processes’.⁸

Arguably then, panels chaired by locally sourced, lay member facilitators might limit impartiality concerns amongst participating offenders and increase understanding of localised cultures and communal norms. It should be noted here that the Restorative Justice Services programme contrasted with the town based *RJC* model in relation to the chairperson role. Whereas the town based model’s panels were always chaired and co-ordinated by one particular facilitator,⁹ those panels observed within the *RJS* programme tended to have a range of people undertaking the chairperson position. Panels were chaired by the programme manager himself, as well as by volunteers and other programme employees.¹⁰

⁷ Kerry Clamp. *Restorative Justice in Transition* (London and New York: Routledge, 2014) 34.

⁸ Economic and Social Council of the European Union, *Resolution 2000/12, Basic principles on the use of restorative justice programmes in criminal matters*. Adopted July 2000. In Resolutions and decisions adopted by the ECOSOC at its substantive session of 2002 (1-26 July) 54-59. UN ECOSOC E 2002/INF/Add.2.

⁹ All town based panels were facilitated by the project’s manager. She prepared possible victims and offenders for panel appearances, arranged court dates and reparation programmes and facilitated the actual panel meeting. In essence, the town based facilitator was seen to combine the work of both the *RJS* caseworker and *RJS* chairperson within this particular model. It was discovered in November 2014 that a support facilitator had been recruited in order to lend support to the programme manager’s role.

¹⁰ One panel observed was chaired by an unpaid volunteer who had a background in employer mediation services. A number of other panels were chaired by an *RJS* representative who had previously been observed acting as a caseworker. Thus, in this case there appeared to be a crossing over within both roles. It was pointed out during informal discussions after this case meeting that the main reason for this dual role was a lack of resources and staff members within the *RJS* model at that time. The need for reform in this particular area is further explored within Chapter 6.

Moreover, while the project manager in both schemes is not a criminal justice professional in the strict sense of the term, they are in full time charge of a Probation Service funded body which relies on conventional criminal justice managed, judicial referrals from the formal criminal court process. It might be argued, therefore, that an element of confusion surrounds the true level of 'lay' participation within the chairperson role. However, as will be further illustrated below, all facilitators that were witnessed for the purposes of this thesis managed panel discussions in a fair and impartial manner with an emphasis on protecting the procedural rights of both offenders and victims.¹¹

During observations of the chairperson role within the *RJS* panel process, it became clear that the tone of discussions would vary depending on the person chairing respective meetings. For example, one individual (who was very experienced at facilitating both victim offender mediation and reparation panel meetings), routinely began the case discussion by asking the participating offender to talk about their backgrounds, employment and schooling history, hobbies and hopes for the future. This approach, it might be argued, is an early illustration within the initial discussion phase of a type of 'restorative dialogue' being introduced into panel proceedings. Raye and Roberts have argued that this type of 'dialogue' has three characteristics:

‘it is inclusive, in that it invites all stakeholders to participate, and is willing to adjust its processes to meet their needs and interests; it is grounded in restorative principles and values; and facilitation is conducted in such a way that participants are free to communicate as fully as they wish with each other by sharing experiences, perceptions, emotions and perspectives.’¹²

¹¹ This element of representative confusion, and possible conflicts of interest amongst panellists surrounding managerialist and communitarian ideals is explored further within Chapter 5.

¹² Barbera E. Raye and Ann Warner Roberts, 'Restorative Processes' in Gerry Johnstone and Daniel W. Van Ness (eds.), *Handbook of Restorative Justice* (Cullompton, Devon: Willan Publishing, 2007), 218.

The reparation panel model format does appear to touch on all three of Raye and Robert's criteria, with the introductory discussion approach especially resonating within the 'freedom of communication' element. Such an approach allows for participating offenders to discuss aspects of their life stories and share experiences. It allows those offenders the opportunity to open up emotionally before any discussion on the crime and the reason for offending has begun. This approach also allows for panel members to gain a different perspective to the arguably more simplified, conventional dynamic of law breaker versus criminal justice professional.¹³ In this regard, these preliminary introductions were arguably a small but vivid example of how panel practices can begin to challenge the fundamentals of the conventional criminal justice process by increasing normative dialogue and emphasising 'right relationships over right rules'.¹⁴ Moreover, such introductory dialogue between reparation panel offender and chairperson can help to better pinpoint relevant social exclusionary factors and enable all panel members to mould agreement terms that can, as well as repairing the harm caused and increasing the notion of accountability, at least begin to address each offender's particular relational and dependency issues.

It should be underlined at this point that this offender-led introductory discussion to *RJS* based panel discussions was not a uniform practice amongst all chairpersons. During observations, a number of facilitators began panel discussions with only a brief introduction of the offender's background before asking the offender to discuss the criminal act itself. It is submitted that a more detailed introductory discussion surrounding the offender's background, relationship issues and emotional needs could help to put the participant at ease and increase the opportunities for openness and accountability. While offenders were not interviewed for the purposes of this thesis,

¹³ Throughout panel observations this emotional storytelling was evident. Participating offenders would discuss with panellists openly their experiences of familial relationship breakdowns, employment and financial problems and dependency issues with alcohol and drugs. While panellists were careful not to label these factors as excusatory, nevertheless they were factors that helped to illuminate some of the reasons behind the offending acts.

¹⁴ Howard Zehr, *Changing lenses: A new focus for crime and justice* (Scottsdale, PA: Herald Press, 1990), 211.

within observations of a number of *RJS* panels in which detailed introductions of the participant's background were included, participating offenders did appear to physically relax during such dialogue. This was evidenced through observing the body language of some of the participating offenders. Such body language and certain 'rituals' proved good indicators of offender mind sets. Indeed, Collins argues that the emotional energy within a restorative meeting, specifically a restorative conference, can be measured by examining the posture and demeanour of participants.¹⁵ Many participants were visibly nervous and agitated before the panel began and within the early stages of discussions. However, as the process continued, and the discussion turned to participant background, career and future hopes, many of the offenders noticeably relaxed. They looked panellists in the eye instead of looking at the ground or table, their voices became stronger and sentences longer, they laughed with panellists, and at the end of the process they smiled, shook hands with the panellists and thanked them. Such rituals have been previously observed by Rossner within restorative conferences between victims, significant others and serious offenders. For Rossner, these 'interaction rituals', such as participants laughing and crying together, sitting up straight after initially slouching, shaking hands and hugging, were all viewed as examples of a shared morality, solidarity and an emotionally energetic experience generally.¹⁶ Thus, while Rossner's research described rituals between offenders, victims and supporters within a conference model, it is argued within this thesis that such rituals have also been in evidence between participating offenders and criminal justice professional and community representative panel members within the reparation model.¹⁷

In summary, the panel chairperson acted both as a restorative and a community conduit throughout the reparation process. They would facilitate and manage the case discussion carefully and attempt to ensure that each panel member had an opportunity

¹⁵ Randall Collins, *Interaction Ritual Chains* (Princeton: Princeton University Press, 2004) 134.

¹⁶ See Meredith Rossner, 'Reintegrative Ritual: Restorative Justice and Micro-Sociology' in Susanne Karstedt, Ian Loader and Heather Strang (eds.), *Emotions, Crime and Justice* (Oxford and Portland: Hart Publishing, 2011), 178-181. See also generally Meredith Rossner, *Just Emotions* (Oxford: Oxford University Press, 2013).

¹⁷ See Chapter 5 of this thesis for further discussion on Rossner's conferencing research observations. See also within Chapter 5 for an evaluation of the effect of interactive, ritual bonds between panellists and participating offenders due to the reparative discourse employed within Irish panel case management.

to engage with the offender and discuss the crime and its repercussions while also helping to formulate contract agreements. By helping to explain the nuances of restorative justice and the reparation process, and through a practice of introductory dialogue which concentrated on a participant's background, relational bonds and career hopes, chairpersons would also lay the groundwork for an inclusive and detailed case discussion.

2.4 Restorative Justice Services: The Role of Probation Officers

Analysing the role of Probation officers within reparation panel practice serves to illustrate a further difference within the representation of both schemes. Probation officers represented key panel members within the *RJS* model but did not attend *RJC* managed, town based panels. Both programmes developed their format over time and within the *RJC* model, these actors were not utilised in this way. However, Probation officers within the town based programme were responsible for passing on referrals from court to the programme itself. Thus, these officers fulfilled a dual role within reparation panel procedures. They acted as a conduit between the initial judge referral in court and initial contact with both programmes and also provided probation reports on referred offenders pre-panel in order to help determine their suitability for participation within the process. Within the *RJS* programme these officers directly participated in panel discussions and deliberations.¹⁸ Before such direct participation was allowed, probation representatives were required to sit in on a number of panel observations so that, by the time of their own participation, the relevant reparative principles and procedures might be better identified and utilised. Probation officers have been observed representing the voice of both the missing victim and, in the case of a victimless crime, the public interest generally. These panel representatives will discuss with participating offenders the reasons behind the offending behaviour, and propose possible routes away from recognised recidivist tendencies. They also play an important role within the finalising of reparation contract terms, offering up

¹⁸ It is not necessarily the case that the same Probation officer that provides the report will also attend the panel.

rehabilitative options and proposing recommendations for ways in which the offender can repair the harm caused.

During panel discussions there was a variation in experience and prior training levels between attending Probation officers. One such probation officer informed this observer prior to a panel discussion that she was attending a panel for the first time and was not absolutely certain of how the panel operated in practice or what restorative principles were going to be engaged. Other probation officers have been observed debating with fellow panel members, including caseworkers and chairpersons, over contract terms and general procedure. For example, after one case discussion had finished and the offender had left the room, a probation representative questioned reparation contract procedure and argued that a contract should only be recognised as completed whenever all the reparative acts initially agreed had been completed. This was in response to a caseworker's assertion that, due to time constraints between the drawing up of a contract and its return to court for judicial approval and final decision, a contract that had been almost fully completed could still be recognised as falling within a successful reparation process.

Probation panel representatives have also been observed, within a second panel meeting, asking for written work that had already been completed by a participant to be altered. The probation representative argued that she had previous experience in court of the particular referring judge and the method by which he analysed reparation contracts. It was her belief that the letter of apology needed to be written again in order to better highlight and identify the harm caused by the offence in question.¹⁹ Although other panellists appeared initially content with the original letter, the participant was ultimately asked to rewrite it.²⁰ Ultimately it will be the referring judge who makes the final decision on the success or otherwise of an offender's participation within the

¹⁹ This did resemble an element of second guessing by panel representatives. For example, it did appear that they were estimating which particular reparative actions and terms a referring judge might be more agreeable to as part of an overall contract agreement.

²⁰ For an example of a participant's letter of apology within the *RJS* model, see appendix 8. See further appendix 12 for an example of a participant's reflective piece on the harm caused.

process as a whole. However, such examples serve to emphasise the strong voice that Probation officers can possess within panel discussions and consequent deliberations.

In concluding this brief synopsis of Probation Service involvement within both practices, it is important to highlight the fact that many of those Probation representatives observed were fully versed in restorative principles such as remorse, accountability and reparation and successfully added to the dialogue with offenders while attempting to increase awareness of the harm caused to victims and other community members. They would also stress the level of harm caused by a specific offence to participating offender themselves and potentially to their own family members. Furthermore they were able to add their own experiences, of managing offenders within the criminal justice system generally and of rehabilitative elements within probationary reports specifically, to panel discourses.

2.5 Restorative Justice Services: The Role of Panel Caseworkers and Support Caseworkers

The role of reparation panel caseworker and support caseworker represents one of the most important positions within the *RJS* panel process. Caseworkers are not legally trained ‘conventional’ lawyers but consist of community members who are recruited and trained in legal and restorative justice principles.²¹ These reparation programme representatives have been described as coming from ‘all walks of life, backgrounds, interests, professions and age demographic’, and have also been said to ‘demonstrate a shared interest and commitment to (restorative justice) values, to fair play and equality, and a commitment to social justice’.²² It has been further argued that the recruitment

²¹ Those caseworkers interviewed stated that they had replied to a nationwide based online advertisement. As regards the amount of training required, one caseworker stated that she had undergone three weeks of observing panels, seeing approximately 15 cases within that time frame. Much of the information relating to the caseworker and support caseworker roles and referred to within this section was received as part of interviews with a caseworker and support caseworker, Dublin, 11th September 2014.

²² Peter Keeley, ‘Restorative Justice in the Community. A Partnership Approach’. In Kevin Lalor, Fergus Ryan, Mairead Seymour and Claire Hamilton (eds.), *Young People and Crime: Research, Policy and Practice*

and training of people from the community to manage reparation case files can serve to strengthen one of the reparation panel model's fundamental aims, that of active community ownership and participation. The programme has previously highlighted its awareness of the view that facilitating restorative contracts with offenders and between those offenders and direct victims can provide an important and meaningful role for the community generally.²³

The *RJS* model had one full time panel caseworker, one part-time support caseworker and a total of nine part-time panel caseworkers. The support caseworker role was concerned mainly with administration duties and public relations work. For this role, there was no specific restorative justice element to the training given. Other duties included the coordination of particular panels and regular liaison with the courts and solicitors. The other caseworker roles were more directly involved with specific offenders and actual reparation panel dynamics. The part-time staff were paid on a case by case basis. All staff were paid by the Department of Justice and Equality, through the Probation Service. The various backgrounds of these representatives included previous volunteering roles in drug addiction and homelessness projects, as well as full-time social work and Health Service Executive (HSE) roles. The amount of cases managed by these caseworkers from January to September 2014 totalled between 130 and 140 referrals approximately. The support caseworker role was basically to act as liaison between probation officers, solicitors and the court system in managing referrals and placing them with caseworkers.

Some concern should be noted at this point in that it was claimed within interviews that, due to a lack of funding and staff within the process as a whole, there were instances in which a judge would refer a particular case towards reparation but the *RJS* scheme would not receive the relevant information. This was due to a breakdown in, and lack of, communication between Probation officers, solicitors, and *RJS* members. In essence,

(Dublin: Centre for Social and Educational Research, Dublin Institute of Technology, 2007) 91, 93. Available at www.dit.ie/cser/media/ditcser/images/young-people-and-crime.pdf.

²³ Ibid.

this caused a vacuum between a proposed referral and a reparation option. Therefore, some proposed reparation cases were, it was claimed, being lost in the system with the result being that some offenders were not getting the opportunity to participate in the reparation process. While the number of cases this applied to was said to be small, it still asks serious procedural questions as to the fairness of the referral system generally. On occasion, it has been the offender themselves who has contacted the *RJS* scheme after a referral has been proposed in court due to a lack of Probation staff present and a perceived unwillingness by certain solicitors to carry the process forward.²⁴

The importance of both caseworker and support caseworker roles within reparation panel procedure was illustrated on a number of occasions. These particular roles combined tasks such as preparing referred offenders for the reparation process at pre-panel meetings and engaging with rehabilitative organisations as part of the finalised contract agreement.²⁵ They can also act as a valuable conduit between the reparation process and the court, ensuring the correct documentation, such as contract terms and agreements, are available to the referring judge for deliberation. Caseworkers sit directly beside participating offenders during panel discussions and have been seen to clarify disputed facts during case discussions and inform the panel representatives of any additional information.²⁶ For example, during one observation the caseworker was able to inform the other panel members before the offender had entered the room and before any case discussion had begun, of a number of relationship issues relating to that participant.²⁷ In addition, while panel caseworkers are primarily acting as an advocate for the participant, they have also been observed helping to further emphasise

²⁴ It was further claimed by a *RJS* based caseworker that a majority of solicitors would fail to get in contact with their organisation after a proposed referral.

²⁵ Such organisations can include local, community based alcohol and drug awareness groups, financial advice and debt management organisations, either voluntary or professionally managed.

²⁶ For example, some offenders will write letters of apology or offer sums of reparation after they have been referred to the reparation process but before they have attended the actual panel meeting in order to illustrate their remorse. Such letters and offers of reparation will be shown to the panel by the caseworker as evidence of the offender's attempts at repairing the harm. It is then decided at the end of these particular panel meetings whether or not further reparation tasks are needed within the proposed contract agreement.

²⁷ It was noted that the female offender was homeless and living in sheltered accommodation due to the break-up of her marriage and that she was in sole custody of two young children.

restorative principles such as offender accountability within panel discussions. While an element of coercion remains a possibility within this caseworker, participating offender relationship, it should be submitted that this was not evidenced within my series of observations. During one case which involved criminal damage and an attempted car theft, the attending caseworker forcibly outlined to the participant that 'it is not easy to replace a car window. Don't think that it is...the owner might not be able to afford to repair the damage...the owner may need the vehicle to go to work or bring children to school. Jobs can be put at risk due to the lack of transport'. The caseworker within this panel discussion adopted the role of surrogate victim and potential car owner and attempted to increase the accountability factor by illustrating the depth of harm that can ensue due to criminal acts such as car thefts. Such an approach within case discussions, especially taking into account the fact that victims for the most part did not directly attend *RJS* reparation panels, can help an offender to better appreciate the harm caused by their criminal behaviour. It can also serve to limit the various 'neutralisation techniques' with which offenders generally have been argued to employ as a means of diluting the very nature and damage caused by their crimes.²⁸ It could be legitimately argued, therefore, that this caseworker role within *RJS* panel practice was a multi-faceted one. It included administrative and preparative tasks as well as acting as a support to participating offenders within panel deliberations.²⁹ Caseworkers and support caseworkers represented a vital link between the court, the panel process and the participating offender themselves. The role could also include, as illustrated by the example above, lending an authoritative, 'surrogate victim' themed voice within panel discussions in an attempt to further highlight the harm caused by crime.

²⁸ See Gresham M. Sykes and David Matza, 'Techniques of Neutralisation: A Theory of Delinquency' (1957) 22 *American Sociological Review* 664, 667-668. The authors have famously argued that juvenile offenders can 'neutralise' their behaviour by such psychological manoeuvres as denying injury, denying the existence of a victim and condemning those who are charged with punishing their crimes. Although Matza and Sykes were primarily discussing juvenile offenders, it can be argued that some evidence of these stated techniques did appear to be present within a number of the adult based panel discussions. For example, one offender who had admitted to assault argued that the victim had started the confrontation, and that his injuries were not as bad as was initially being claimed. This technique is explored further within Chapter 4.

²⁹ As will be explained later in this chapter, the *RJC* 'caseworker' role fell to the programme manager herself who acted as facilitator, conduit between the courts and the programme, conduit between victims, offenders and the programme, as well as managing the overall process.

2.6 Restorative Justice Services and Restorative Justice in the Community: The Role of the Garda Síochána

The role of the Garda Síochána panel members within both reparation schemes was similar in many respects. They would strive to emphasise the harm caused to both victims and the participating offenders themselves, as well as the wider community. A further element to the Garda role within panel practice was to outline the facts of the referred case as it was described within either the original police report or panel fact sheet. This helped on occasion to dispel confusion over the criminal charge, police procedure and the relevant statutory legislation.³⁰ Garda representatives would usually attend all panels initiated by both the *RJS* and *RJC* co-ordinators.³¹ These representatives, similar to their Probation counterparts, tended to range in levels of reparation panel experience, from one officer who had attended panels for several years and was experienced in juvenile justice and restorative justice techniques to another who was participating in a panel discussion for the first time. As part of the training to become a panel representative, officers will sit in on a number of panel discussions in order to observe procedures and the restorative practices and the principles utilised. In two panel observations within the *RJS* model, two ‘trainee’ uniformed officers, along with the acting Garda panel representative, sat at the back of the room and observed proceedings. The Garda panellist would usually sit at the top of the table with the participant seated at the side alongside the caseworker. The presence of three uniformed Garda representatives within the relatively small panel room appeared to this observer to increase the potential for intimidation of participating offenders and is one practice which could be analysed for possible reform.³² Officers participating as

³⁰ However, there were occasions in which the police file was not presented at the discussion. See Chapter 6 for further analysis.

³¹ There were, however, three *RJS* panels observed on one particular day in which no police representative was able to attend the panel due to work commitments and holiday leave entitlements. This, it is submitted, altered the tone of the panel discussion from other panels observed.

³² See Chapter 6, for a number of recommendations on panel reform generally. For example, it is recommended that those Garda members who attend panels for training purposes should do so without wearing their official uniform. This could help to ease possible feelings of intimidation.

panel mediators were usually in full Garda uniform, although in a small number of *RJS* panel cases one officer would always attend in 'civilian' clothes.³³

The role of participating Garda officers mirrored that of their Probation Service panel counterparts in that they tended to resemble guardians of the missing victims' interests and the public interest in general. They would emphasise the need for reparative acts to make amends for the criminal act and strengthen remorse and accountability. They would also answer questions surrounding any legal confusion. Within one case discussion, an offender was unsure as to the reason why he was charged with criminal damage, due to the fact that he had not set out with the intention of damaging his neighbour's property. The Garda panellist explained that he could be charged under the Criminal Damage Act 1991 for simply being reckless as to any damage caused.³⁴

While the Garda role is a prominent one within reparation practice, it stops short of the referral and facilitator role enjoyed by police officers within juvenile restorative justice schemes in Ireland itself and other jurisdictions such as Australia and the United Kingdom.³⁵ In Northern Ireland, for example, juveniles can be referred by police officers to the Youth Diversionary Scheme (implemented by Part 4 of the Justice (Northern Ireland) Act 2002 which allows for restorative cautioning and group conferencing, although prosecutors will make the final decision based on police recommendations.

³³ One particular officer would always attend the panel without his uniform. This officer happened to be the most experienced of those observed in panel practices and restorative justice principles generally, with an extensive background in juvenile restorative justice practice.

³⁴ See Section 2 (1) of the Criminal Damage Act 1991 (Number 31). The offender on this occasion had attempted to prevent his neighbour from closing the door during an argument and had placed his foot in the way, damaging the doorframe.

³⁵ Although a non-statutory Garda Adult Cautioning Scheme does exist wherein Garda officers can use their discretion in cautioning, rather than forwarding for possible prosecution, minor, first-time offenders. For other jurisdictions, see David O'Mahony and Catriona Campbell. 'Mainstreaming restorative justice for young offenders through youth conferencing: the experience of Northern Ireland'. In Josine Junger-Tas and Scott H. Decker (eds.), *International Handbook of Juvenile Justice* (Springer Netherlands, 2006) 93. For a UK context, see the Thames Valley Cautioning Scheme, in particular Carolyn Hoyle, Richard Young and Roderick Hill, *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning* (York: Rowntree Foundation, 2002). For an Australian context, see David Moore and Terry O'Connell, 'Family Conferencing in Wagga Wagga: a Communitarian Model of Justice' in Gerry Johnstone (ed.), *A Restorative Reader* (Cullompton, Willan Publishing, 2003), 212.

Indeed the Garda role within reparation panels is also somewhat limited when compared to the role of Garda Juvenile Diversion Officers under the Garda Juvenile Diversion Programme. These officers are trained in facilitation as well as mediation and can preside over restorative conferencing between offenders, victims and their supporters.³⁶ Their role, on its face, appears to imitate that of the reparation chairperson and facilitator. Those Garda officers observed within reparation panels were very adept at pushing the restorative ethos within meetings and highlighting the damage crime can cause to both victims and participating offenders, as well as the wider community. The next section will evaluate the roles within the town based, Restorative Justice in the Community scheme. Practice within this scheme differs in a number of fundamental aspects from the *RJS* model as will be further outlined.

2.7 Restorative Justice in the Community: The Panel Co-ordinator/Manager

The role of the town based reparation panel manager encompassed a number of key responsibilities within the process as a whole. The manager acted as panel scheme co-ordinator and facilitator and was employed by way of a contract funded by the Probation Service but managed through a company voluntary board of management.³⁷ The *RJC* co-ordinator acted alone and, in essence, performed the same combined duties as those of the caseworker, support caseworker and chairperson within the *RJS* model, albeit with the help of a small administrative support base.³⁸

This particular reparation role involved liaising with the courts and managing case referrals; it involved contacting direct victims and potential offenders by letter, or in person, in order to discover whether they would be willing to participate either directly or indirectly in the reparation process. A victim can participate directly by actively attending a panel discussion itself in order to describe how the crime has affected their lives, by meeting with the manager to explain the level of harm caused, or by supplying

³⁶ Section 29 of the Children Act 2001, as amended by Section 132 of the Criminal Justice Act 2006 (Number 26), allows for juvenile restorative conferencing. The facilitator must be a member of An Garda Síochána and the conference can only be convened by the Director of the Garda National Juvenile Office.

³⁷ See Chapter 5. The manager stated that, due to this arrangement, it could be legitimately argued that she 'represented the community'. Interview with *RJC* manager, Thurles, 19th November 2014.

³⁸ This was mainly down to a lack of funding. However, further support was added in 2014 with the arrival of another facilitator to help with an increase in case referrals.

a victim impact statement for panel representatives to discuss. When deciding whether referred offenders would be suitable for the process, pre-panel meetings were arranged in order to outline the reparation process and the restorative principles employed within, as well as the offender's role within that process and how the case might develop. The multi-dimensional elements to this particular role included a requirement to ensure the presence of both police officers and community representatives at each panel discussion, as well as managing the completion of contracts and acting as a general focal point between the courts and the panel process. In addition, this role required the facilitation of the panel meeting itself. The co-ordinator observed for the purposes of this research thesis had previous experience as a practicing solicitor and was well versed in restorative practice and theory. Those panels observed within the town based model were expertly facilitated and the process generally appeared to work well, although a case could arguably be made for a greater amount of funding and increased staff base in order to allow for a reduction in, and assistance with, the multi-dimensional elements of such a pressurised role.³⁹

2.8 Restorative Justice in the Community: Community Representative Volunteers

The town based reparation model differed slightly from the Dublin city based programme in the level of community representation. Within the city based model, the community in theory is represented by local caseworkers and support caseworkers on a full time and part-time basis and all are paid for their services on a case by case basis through Probation Service funding. The community is also represented by local chairpersons, some of whom have acted in a voluntary capacity. Within the town based model however, the community is seen to be represented by the attendance of volunteer panel members who attend panels, participate in case discussions and contribute to reparation contract terms and agreements. Their role is purely voluntary in nature and excludes expenses.⁴⁰ The community representatives observed were sourced from other, locally based voluntary organisations and tended to come from a wide range of employment backgrounds including the medical, educational and

³⁹ A case could be made for a general increase in funding and staffing levels across both models. This forms the basis of one of a number of recommendations outlined within Chapter 6.

⁴⁰ Interview with community representative volunteer panel member, Dublin, March 22nd 2014.

workplace mediation sectors.⁴¹ One volunteer interviewed explained how he had been unemployed and returned to education before hearing about the process through ‘word of mouth’ at one of his classes.⁴² All of those wishing to volunteer are vetted through the formal Garda vetting process. Volunteers are also required to attend training sessions on restorative practice and reparation panel practice specifically. One such volunteer was recruited alongside between ten and twelve fellow volunteer representatives and attended two practice sessions, each lasting approximately three hours. The sessions were managed by the *RJC* manager herself. Recruits were taught the basic principles and history of the restorative justice concept both locally and worldwide. For example, volunteers were told about the origins of restorative practice in New Zealand and how that process was replicated by a number of judges within the Irish jurisdiction. As part of reparation panel training, volunteers also had to participate in a mock panel where an imaginary case would be role-played and possible scenarios teased out. This training element was administered by the panel manager herself. The two sessions occurred over a two month period. When asked whether this level of training was an adequate grounding for panel participation, one volunteer representative remarked that it was beneficial, albeit a little different from ‘live’ panel’.⁴³

Volunteer panels would usually consist of four members per area, with one or two attending a panel at the same time. It has been suggested that these volunteer panel members represented ‘a mainstay of the process’⁴⁴ and that the scheme generally ‘seeks to harness the moral resources and local knowledge of the community in identifying and prioritising the concerns surrounding problems of crime, disorder and crime prevention

⁴¹ Of those observed, one man and one woman had a background in workplace mediation, two women were retired teachers, while another had a background in psychiatric medicine. Advertisements are not placed in local newspapers, although some papers have noted the programme and need for volunteers when, for example, seeing a case being referred in court. Caseworkers within the city based model, as noted earlier, applied for the positions as part of a country wide application process. Those caseworkers observed did live within the local geographical area.

⁴² Interview with community representative volunteer panel member, Dublin, March 22nd 2014.

⁴³ Ibid. The scale of case referral within the town based model and the level of volunteer involvement might be illustrated by the fact that the volunteer interviewed noted that he had only participated in between eight and ten cases up to that point, despite being eligible to attend for the previous two years.

⁴⁴ Nenagh Community Reparation Project, *Presentation to the National Commission on Restorative Justice* (Nenagh Community Reparation Project: 2007), 5. Available at www.nenaghreparation.com/report-2007.php.

within the community’.⁴⁵ During the observational process it was clear that the community volunteer representatives were able, on occasion, to add their own particular experiences and local knowledge to panel discussions. During one panel, a volunteer with a medical background was able to clarify certain facts relating to bi-polar disorder to a participating offender who was suffering from the condition. She was also able to pinpoint within the local area a number of places in which the condition might be best managed and further advice given. This personal perspective and expertise is arguably beyond the remit of many criminal justice panel representatives and represents a positive and somewhat unique element within the community representative role generally. Within one panel discussion, the community representative knew the victim of an assault personally and was able to reassure the offender that he would be open to a face-to-face apology.⁴⁶ Another example saw the community representative highlighting the importance of trust within communities. The participating offender within this panel was a member of the traveller community and had been found guilty of assault. The community representative noted that certain stigmas can attach to sections of the local community. She noted that there was a sense of mistrust of the local traveller community by other community members in that area and reiterated that criminal behaviour by one member of the traveller community can then serve to accentuate this perception of mistrust and suspicion of that grouping within the locality as a whole.

While those volunteer representatives observed certainly added their experience and local knowledge to reparation panel discussions, the question should also be asked as to whether they, and the community representative caseworkers, support workers and chairpersons within the *RJS* model, can be said to truly represent the community from which the offending has taken place. It has been argued that a considerable social distance between representatives and participating offenders within reparation board models has the potential to limit any advice, recommendations and reparative sanctions handed down within a contract agreement due to the fact that an offender might

⁴⁵ Ibid, 4. For a substantive discussion on the nature of community and its theoretical and practical relevance within panel practices, see Chapter 4.

⁴⁶ This case is discussed in more detail within Chapter 5.

construe the advice as condescending and ‘preachy’ in nature.⁴⁷ While offender interviews were not possible due to limited access to that particular representative group, those community representatives that were observed did appear to participate with empathy, compassion and a good understanding of both the restorative justice ethos and local area in which the offending had occurred.

2.9 Participating Offenders within Restorative Justice Services and Restorative Justice in the Community

The role of participating offenders will be outlined within both panel projects as a whole. Generally, those offenders who participated in the reparation panel process were either initially found guilty of a criminal offence or had admitted their guilt as part of the conventional court process. The presiding judge would then refer that offender to a reparation panel if they agreed to participate in the restorative process. All participating offenders were eighteen years of age or older. All referrals relied on judicial discretion due to the lack of statutory rules. Thus, an offender may be referred to a panel in one courtroom and in one particular area, but be prosecuted in another depending on the presiding judge and their willingness to engage with restorative justice and the reparation process. This aspect of the process represents a major flaw within panel procedure. The mode of referral is something akin to a ‘Russian roulette’ justice model (my emphasis) and has served to weaken notions of a procedurally fair justice system for all. This concern is reinforced within the town based programme when the number of judges ‘on board’ with the reparation process is taken into account. Across that programme’s remit, only four judges were referring cases to reparation panels, with one judge covering Tipperary, one covering Offaly and two judges covering Cork city, although judicial participation was seen to be increasing as part of the city based reparation model due in some part to its increased caseload. However, full awareness of, and experience in, restorative justice principles and practices generally amongst criminal justice practitioners, including judges, remains relatively low.⁴⁸

⁴⁷ Carolyn Bowes Watson, ‘The Value of Citizen Participation in Restorative Community Justice: Lessons from Vermont’ (2004) 3 *Criminology and Public Policy* 687, 689.

⁴⁸ Shane McCarthy, ‘Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward’ (2011) 8 *Irish Probation Journal*, 185. As noted, judicial awareness has been slowly increasing. During the

It should be noted that, while this is on its face a voluntary process, an argument could be put forward that offenders are not strictly ‘volunteering’ to participate in the panel process but are in fact being coerced into doing so. Some offenders have stated within panel meetings that they had no idea what restorative justice was or how the reparation panel operated in practice. While caseworkers and facilitators have endeavoured to explain the process at pre-panel meetings, it seems to be the case that offenders are ‘volunteering’ for a process that they know little about, apart from the possibility that an almost certain criminal prosecution might be diverted if the process is successfully completed. Ashworth has noted that it is right to be sceptical of the notion of voluntary consent when focusing on the reasons why offenders become involved in restorative processes, especially when the only alternative is a harsher sentence and an entrance into the formal criminal justice system.⁴⁹ Walgrave has further added to the debate by questioning the primary importance of the coercion principle, in that just because a person has voluntarily agreed to participate within a restorative process does not automatically mean that process will prove to be restorative in reality. Further to this, Walgrave argues that only allowing restorative processes to proceed without any coercion element will result in those processes being condemned ‘to the margins of the system’.⁵⁰ For Hoyle, coercion cannot be seen as a relevant issue when restorative justice is used as a diversion from prosecution. However, where it is used as part of a court sentence (with an ordered restorative meeting for example) she has further argued that the issue could become more problematic. While ideally there would be no

2011-12 period, referrals were handed down to the *RJS* model by 13 different judges in courts within Counties Dublin and Wicklow. See The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Projects* (The Probation Service, July 2012) 8. However, as also noted in Chapter 1, from January to November 2014, *RJC* had managed an approximate total of 105 case referrals, while between 2013 and 2014 the *RJS* programme managed over approximately 350 referred cases, a significant increase on previous numbers for both programmes. A policy of advertising the reparation programmes and the advantages of the reparation process would help to further increase awareness of panel practice and increase panel referrals whilst also helping to diminish this current ‘Russian roulette’ version of panel referral. This is discussed further within Chapter 6.

⁴⁹ Andrew Ashworth, ‘Responsibilities, Rights and Restorative Justice’ (2002) 43 *British Journal of Criminology* 578, 587).

⁵⁰ Lode Walgrave, ‘Restorative Justice and the Law: Socio-ethical and Juridical Foundations for a Systemic Approach’ in Lode Walgrave (ed.), *Restorative Justice and the Law* (Cullompton: Willan, 2002) 193. Cited in Kerry Clamp. *Restorative Justice in Transition* (London and New York: Routledge, 2014) 34.

need to use coercion, Hoyle notes that this practice of coercing offenders to participate in restorative practices can be a legitimate exercise, providing the offender has been judged at minimal risk of re-victimising.⁵¹

In this sense, the Irish reparation process works as something of a hybrid model in that an offender can be diverted from prosecution if they successfully complete the panel contract.⁵² However, diversion is not guaranteed and agreements such as reparation and apologies to victims may attach as part of a conventional, retributive sentence. This has been the exception to the rule within the town based *RJC* model. However, within the *RJS* programme research has illustrated that a quarter of those cases referred had additional sanctions attached.⁵³ It is difficult to criticise a process that, to some extent, coerces offenders to participate whenever that participation will, for the majority of participants, result in a diversionary outcome which will see the criminal charge struck off the court books or listed under the Probation of Offenders Act 1907. In saying that however, there should be an element of concern around this diversionary method. Some offenders have contended to panel caseworkers that they did not commit the specific offence with which they had been charged in court, and only admitted to it whenever their solicitor informed them that the reparation panel offer was the best available option.⁵⁴ While it is impossible to verify the truth of such claims, it does resemble some of the potential dangers of ‘net widening’ which have been mooted by other restorative scholars.⁵⁵ It has been argued that restorative justice can widen the

⁵¹ Chris Cunneen and Carolyn Hoyle, *Debating Restorative Justice* (Oxford: Hart Publishing, 2010), 58. It was difficult to personally judge whether or not offenders had been in any way coerced into participating in the reparation process at particular stages of the process. Within the personally observed panel cases, I did not witness any coercion at this particular stage.

⁵² Diversion can mean cases being struck out of court, more generally the outcome within the *RJC* model, or a listing under the Probation of Offenders Act 1907.

⁵³ A Probation Service Pilot Study noted that all of those contract agreements successfully completed (2011-12) within the *RJC* panel were struck out of court. Of those successfully completed within the *RJS* panel process, additional sentences were added in 45 cases (out of 168 cases referred to *RJS*). These included fines, suspended sentences and community sentences. Of those 45 cases, 19 were referred on to the Probation Service for further intervention. See, The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Projects* (The Probation Service: 2012) 15, 16.

⁵⁴ Interview with panel caseworker, Dublin, September 11th 2014.

⁵⁵ See for example, concerns put forward by Young and Goold with regard to restorative conferencing in the Thames Valley Police area in 1999. Richard Young and Benjamin Goold, ‘Restorative Police Conferencing in Aylesbury - From Degrading to Reintegrating Ceremonies?’ (1999) *Criminal Law Review*

net of social control by bringing in low level, minor offenders within its procedures who might otherwise have been warned by police or otherwise diverted.⁵⁶ In the case of the reparation panel process, this widening of social control could involve a low level offender, or innocent person, being referred, then failing to complete the reparation contract and being given a conviction and adjoining sentence. However, there does appear to be a shift within panel practice of managing more serious offending behaviour, including assaults causing harm.⁵⁷ This can serve to limit such 'net widening' concerns if guilt has been properly decided. The higher tariff of some referred cases has been illustrated by way of Circuit Court referrals of assaults causing harm such as the swelling of a victim's brain and the referral to the *RJS* victim offender mediation scheme of a case which involved a guilty plea of negligent manslaughter.⁵⁸

For those offenders who have agreed to participate, a pre-panel meeting will be arranged by a caseworker (*RJS*) or manager-facilitator (*RJC*) in which the reparation panel process will be explained and the offender will be briefed as to the possible panel representatives, type of questions asked and possible reparative tasks that they may be required to undertake. Throughout observed panel meetings, participants were allowed an opportunity to discuss the offending and the possible causes behind such behaviour. All but two of those observed agreed to carry out the reparative tasks within their individual contract agreements at the time of the meeting.⁵⁹ Generally, within the *RJC*

126. See also Richard Young, 'Just Cops Doing Shameful Business? Police-Led Restorative Justice and the Lessons of Research' in Allison Morris and Gabrielle Maxwell (eds.), *Restoring Justice for Juveniles: Conferences, Mediation and Circles* (Oxford: Hart Publishing, 2001). It is argued that some police conferencing practices included diversion for minor crimes and juvenile offenders which were disproportionately severe and potentially brought juveniles into the criminal justice system who might otherwise have been dealt with more informally.

⁵⁶ Daniel Van Ness and Karen Heetderks Strong, *Restoring Justice* (Cincinnati: Anderson Publishing, 2002). See also S. Levrant, F.T. Cullen, B. Fulton and J.F. Wozniak 'Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?' (1999) 45 *Crime and Delinquency* 3, 7-8.

⁵⁷ Interview with panel caseworker, Dublin, September 11th 2014.

⁵⁸ *Ibid.*

⁵⁹ One offender agreed to all contract terms except for the writing of an apology. The panel allowed the contract to be signed despite this refusal. A representative noted that it would be up to the referring judge to decide whether or not the contract could be viewed as being successfully completed despite this refusal to carry out a fundamental contract term. Another offender's meeting was broken up before a contract could be agreed. The panel were of the opinion that the participant was not remorseful and, in fact, was arguing that he should not have been charged with the offence and disputed much of the case facts. The

programme contract completion was said to be high. Out of 105 cases managed between January and November 2014, only eight contracts were not completed.⁶⁰ When the reparative tasks have been completed, the offender would then return for a second panel meeting. This second panel meeting was relevant to the *RJS* model only and did not occur within *RJC* procedures due to a lack of resources within that programme.⁶¹ The panellists within the second panel would not necessarily be the same as those that had managed the initial panel case. If all panel representatives were in agreement that the tasks had been successfully completed, then the panel would sign off on the contract along with the offender. It would then be down to the referring judge to decide on the relevant sentence at the next court appearance after examining the contract. The time frame between the first and second panel meetings within the *RJS* model would vary and will depend on factors such as possible access to rehabilitative courses and backlog of court cases.⁶² Within the *RJC* programme, the timescale would be approximately four months from initial referral to sentence, with judges said to be flexible when arranging adjournments.⁶³

2.10 Reparation Panel Venues: Restorative Justice Services

As well as outlining the participants and their varying roles and responsibilities within the reparation panel process, a necessary aim within this chapter is to describe the venues utilised by the two reparation schemes. The venues used by both models for

panel agreed to discuss the case further at a later date and decide then whether it was a suitable case for the reparation process.

⁶⁰ Interview with *RJC* manager, Thurles, 19th November 2014. The caseworker within *RJS* and the manager/caseworker within the *RJC* programme would liaise with the relevant actors, including victim support services and community based schemes after the contract had been drawn up and check that the relevant tasks were completed as agreed. Ultimately it would be up to the referring judge to decide if the process was successful or not.

⁶¹ *Ibid.*

⁶² An example of the time frames involved are as follows. One case had an initial court hearing on 22/07/2013. The panel meeting convened on 15/08/2013 with the next court hearing set for 23/09/2013. The follow up court hearing can be adjourned if more time is needed to complete the contract. This timeframe was fairly typical although there were examples of cases taking much longer due, for example, to a particularly wide ranging contract agreement involving a number of services and actors.

⁶³ Interview with *RJC* manager, Thurles, 19th November 2014.

reparation panel meetings have illustrated a number of important contrasts and are discussed separately.

Reparation panels managed by Restorative Justice Services met in the headquarters of the Probation Service in the Smithfield district of Dublin city centre.⁶⁴ The venue itself was a collection of conference rooms within a large, modern building. The rooms varied in size and all had a square table with usually six surrounding chairs. While there is no clearly defined seating arrangement, in all the panels observed within the *RJS* model the Garda representative would sit at the head of the table with the Probation representative facing them. The case worker would then be seated at the side of the table beside the offender, while the chairperson would sit on the other side facing both. As an observer, I positioned myself at the back of the room in the corner in an attempt to minimize my presence. Security was paramount within the building with identification passes required to enter floors and navigate lifts. While the building supplied a secure location for reparation panel meetings, it might also have provided a somewhat intimidating backdrop for the offender. The practice of managing restorative encounters, conferences and mediation sessions within the walls of police stations and prisons has been previously frowned upon, with Dignan, Atkinson and others,⁶⁵ as well as Roche,⁶⁶ arguing that such venues have the potential to be both non-neutral and intimidating for the relevant actors. While the location of the *RJS* panels is not part of a specific police station or particular prison complex, the Probation Service ownership and tight security arrangements can still be seen as representing another facet of the formal state controlled criminal justice apparatus. While the safety of those working and visiting the location is an understandable priority, it should be noted that throughout the series of observations there were no violent incidents witnessed between participating offenders and panel members and Probation staff. It has been further argued that one of the primary aims when managing restorative encounters, where no

⁶⁴ Reparation panels and Victim Offender Mediation sessions can take place in the *RJS* offices in Tallaght, several miles from Dublin city centre. No panel meetings were personally observed within the Tallaght venue. Observations did appear to illustrate a greater practice of managing reparation panels within the confines of the Probation Service HQ in Smithfield, Dublin.

⁶⁵ James Dignan, Anne Atkinson, Helen Atkinson, Marie Howes, Jennifer Johnstone, Gwen Robinson, Joanna Shapland and Angela Sorsby, 'Staging restorative justice encounters against a criminal justice backdrop. A dramaturgical analysis' (2007) 7 *Criminology and Criminal Justice* 5, 10.

⁶⁶ Declan Roche, *Accountability in Restorative Justice* (Oxford: Oxford University Press 2003) 136/137.

threat of physical violence exists, should be to 'find a forum which is free from all forms of intimidation, whether this emanates from the physical setting in which the encounter takes place or from any of the participants'.⁶⁷ A failure to achieve such a forum by locating panels within an intimidating location might serve to put offenders on the defensive and discourage full participation.⁶⁸ As an observer, I myself found the *RJS* based surroundings somewhat intimidating. Throughout the Irish reparation panel observations, it has been clear that the actual reparation process can be a stressful and intimidating one for many participating offenders. This sense of offender unease was palpable by way of body language observed and remarks made to panel members throughout many of the observations.⁶⁹ A less formal location, like a community hall that was used in the management of some town based panels, might help to alleviate this sense of intimidation while still encompassing restorative principles such as reparation, accountability and remorse. UK based Neighbourhood Justice Panels, a restorative diversionary mediation scheme with victims, offenders and community representatives discussing crime and the harmful effects of such criminal behaviour, have attempted to hold all meetings in local community halls,⁷⁰ while Vermont Reparation Boards are held in various locations such as town hall conference rooms and public libraries, as well as more formal venues such as rooms within the local probation

⁶⁷ James Dignan, Anne Atkinson, Helen Atkinson, Marie Howes, Jennifer Johnstone, Gwen Robinson, Joanna Shapland and Angela Sorsby, 'Staging restorative justice encounters against a criminal justice backdrop. A dramaturgical analysis' (2007) 7 *Criminology and Criminal Justice* 5, 11.

⁶⁸ Ibid.

⁶⁹ As noted previously within this chapter, certain aspects of the body language observed would include offenders looking at the floor or table in front of them with head bowed slightly instead of addressing the panellist directly, as well as fidgeting and on occasion shaking and stammering. Several offenders would also remark during discussions on how nervous they were. This type of offender nervousness has been observed in other models. See for example Catriona Campbell, Roisin Devlin, David O'Mahony, Jonathan Doak, John Jackson, Tanya Corrigan and Kieran McEvoy (2006) *Evaluation of the Northern Ireland Youth Conferencing Service*, Northern Ireland Office (NIO) Research and Statistics Series: Report No. 12, 61. Within this youth group conferencing, Northern Ireland based, model, it was noted that 71% of young people showed signs of nervousness and intimidation at the beginning of meetings, although as the conferences progressed observations revealed that engagement improved with nearly 98% being able to talk about the offence in a full and frank manner maintaining good eye contact with participating victims. Many reparation panel participants observed within this research thesis replicated these same actions initially, before beginning to engage more fully with panellists as they relaxed and began to realise what the process entailed.

⁷⁰ For an evaluation of UK Neighbourhood Panels, see generally Kerry Clamp and Craig Paterson, 'Rebalancing Criminal Justice Potentials and Pitfalls for Neighbourhood Justice Panels' (2011) 9 *British Journal of Community Justice* 21.

office itself.⁷¹ Such use of these more informal venues within Irish panel practice might also serve to illustrate better the restorative ethos to participating offenders, some of which have stated within panel meetings that they had assumed the process was simply another cog in the criminal justice chain and had no real understanding of restorative justice principles and practices.

2.11 Reparation Panel Venues: Restorative Justice in the Community

The town based reparation panels managed within the *RJC* project tended to take place in much less formal surroundings than its *RJS* counterpart. Panels, observed across a number of counties within this model, have occurred in community halls, disused youth centres and the offices of the *RJC* scheme itself.⁷² A panel observed in Birr, County Offaly took place in a disused building which had previously been used as a youth club. The offender sat on one side of a table, with the police officer at the head and the community representatives placed at the other side. The *RJC* facilitator was seated facing the police representative, while I sat in the corner of the room. Within the offices of *RJC*, panel representatives and participating offenders all entered by way of an intercom system. Those panel discussions observed within the *RJC* complex were held within a small, informal room. The community representatives, Garda officer and facilitator sat around a table with the offender and discussed both the criminal behaviour and possible opportunities for restorative outcomes including reparation and accountability.

One town based panel observed in Thurles, County Tipperary, was held in a community centre. This location introduced a somewhat different element from the *RJS* venue and other town based panel venues in that the participants did not sit around a table. In this case, the panel members and participant sat in a circle within the small room. This particular seating arrangement was interesting in that it resembled some aspects of the

⁷¹ David Karp, 'Harm and Repair: Observing Restorative Justice in Vermont' (2001) 18 *Justice Quarterly* 727, 732. The Vermont model is similar to the Irish reparation model with adult offenders discussing crimes with community representatives finding ways to repair the harm caused. This model is discussed as part of a wider international perspective on the nature of community participation within restorative models in Chapter 5.

⁷² As of November, 2013 the *RJC* programme moved location into more modernised premises. No panel meetings were observed within this location.

circle sentencing restorative practice commonplace in a number of jurisdictions.⁷³ Circle sentencing involves all the stakeholders involved in a criminal event coming together either in a court or community based setting to discuss the crime, reasons for offending and reparation possibilities. There can be a wide variation in circle sentencing processes. These can range from healing and talking circles to community sentencing circles. These models will usually include the victim, offender and community representatives only. There are also community court sentencing circles which involve these same stakeholders but also include conventional justice actors such as lawyers and a presiding judge.⁷⁴ Circle sentencing, as noted by Bazemore and Umbreit, has evolved from traditional sanctioning and healing practices of aboriginal Canadian and American Indian peoples, and has been developed extensively within Canadian communities as well as subsequently spreading to the United States.⁷⁵ The 'circle' theme is said to be more than symbolic due to the fact that all circle members actively participate in deliberating and achieving consensus for a sentencing plan that addresses the needs, hopes and fears of all those participating.⁷⁶

While this notion of inclusivity during case deliberations is similar in theme to the reparation panel process, other aspects of circle sentencing practice can contrast sharply with the Irish based panel model. For example, while a judge can rely on recommendations evolving out of the circle process in similar fashion to the Irish panels, there is also scope for the judge to preside over proceedings directly.⁷⁷ Further, within

⁷³ Barry Stuart, 'Circle Sentencing: Turning Swords into Ploughshares' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Monsey: Criminal Justice Press, 1996) 194. Circle sentencing has been said to have begun in 1992 in Canada due to some concerns that the conventional criminal justice system was seen to be failing many Aboriginal defendants and their community. Judge Barry Stuart of the Yukon Territorial Court conducted the first case, *R v Moses*. See Nicholas A. Jones and Rob Nestor, 'Sentencing Circles in Canada and the Gacaca in Rwanda: A Comparative Analysis' (2011) 21 *International Criminal Justice Review* 39, 50.

⁷⁴ Barry Stuart, 'Circle Sentencing: Turning Swords into Ploughshares' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Criminal Justice Press: Monsey, New York: 1996), 194.

⁷⁵ Gordon Bazemore and Mark Umbreit, 'A Comparison of Four Restorative Conferencing Models' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 233.

⁷⁶ *Ibid.*

⁷⁷ The judge, if participating, will however usually take his or her judicial robes off in order to add to the sense of informality and equality between participating stakeholders. This is similar to some Garda panel

circle sentencing procedures both prosecuting and defence counsel are always present to discuss the case at hand. Crimes managed within community court sentencing circles will usually be serious in nature and the process is normally not diversionary, with all participating offenders receiving convictions and criminal records after a 'successful' circle sentencing outcome.⁷⁸

Similar principles, however, have arisen within both panel models. For example, the circle sentencing process includes a 'circle keeper', rather like a reparation panel manager or chairperson who must ensure the circle's functioning and help to maintain its integrity.⁷⁹ Both models also share a belief in community representation and inclusive dialogue. Stuart further argues that creating a comfortable environment for resolving disputes can be an important factor in procuring a successful restorative outcome and that 'the arrangement of chairs in a circle, without tables, goes a long way towards creating the impression and the fact that all participants equally share the responsibility to resolve issues raised in the circle'.⁸⁰ Within the community hall observation, the general atmosphere was different to the *RJS* Probation Service location. There was a greater feeling of informality, with the participants seated directly beside one another in the circle. However, there was also an added sense of claustrophobia in the lack of space afforded to each participant. The participating offender in this instance appeared to find it somewhat difficult to discuss the facts of the offence and his own personal background and, while there could have been other reasons for explaining the participant's reticence, the claustrophobic nature of this particular case observation may arguably have been a relevant factor.

Panel practitioners did appear to strive to create a comfortable environment from which panel discussions could take place. Even within the Probation Service headquarters

representatives who have been observed within panel discussions in 'civilian' clothes, which in turn can help to dilute the conventional police officer versus offender dynamic.

⁷⁸ Nicholas A. Jones and Rob Nestor, 'Sentencing Circles in Canada and the Gacaca in Rwanda: A Comparative Analysis' (2011) 21 *International Criminal Justice Review* 39.

⁷⁹ Ibid.

⁸⁰ Barry Stuart, 'Circle Sentencing: Turning Swords into Ploughshares' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Monsey: Criminal Justice Press, 1996) 198.

location, while reparation practice here did not include a 'circle' configuration of actors as such, panel discussions occurred with all participants afforded equal amounts of discussion time within the meeting itself. This is in contrast to a courtroom based criminal justice process with its intimidating physical settings and, with the exception of a jury and limited public gallery space, a tendency to minimise public participation and prioritise opportunities for criminal justice professionals to dominate the proceedings.⁸¹ While reparation panels are similarly 'hidden' from general public view, it is submitted that the offender is offered a much greater opportunity to participate within this process and, indeed as will be explained further below, can also participate within the drawing up of their own respective reparative contracts. Thus, the level of informality observed within panel practices and elements of the venues used for case discussions can increase opportunities for restorative dialogue, offender accountability and offender reintegration. The offender is handed the opportunity within a variety of venues to discuss the offending behaviour and possible reasons behind it in an open and informal fashion. They can talk directly to a police representative, sometimes not in uniform, and a community representative volunteer or caseworker and outline personal problems with relationships, debt and substance abuse. This can enable the panel to pinpoint possible rehabilitative strategies, including reparative tasks, which will best focus the offender on attempting to desist from such criminal behaviour.

2.12 The Reparation Panel and Participating Offenders: Profiles, Offending Histories and Types of Offence Observed

Set out below is a table outlining the number of observed panel cases, the offences committed and the age and gender of those offenders participating in the process. There is also a note of known previous convictions listed for those participating offenders. A key failing witnessed within a number of panels was the failure to provide the panel representatives with certain pieces of relevant information, such as up-to-date records

⁸¹ Ibid. Stuart argues that 'a professional monopoly of the (court) process is accentuated by the unique customs, language, dress and culture of professional participants'. In a similar vein, Nils Christie has also seminally argued that the formal criminal justice process has 'stolen' criminal conflicts from those stakeholders who have the major participatory rights, namely victims, offenders and community members. See Nils Christie 'Conflicts as Property' (1977) 17 *British Journal of Criminology* 1.

of previous offending. In a number of meetings, the case sheets distributed around the room by the facilitator to panel members either stated incorrect information or failed to outline any instances of previous offending behaviour.⁸² Information contained within the sheets could come from probation, Garda and court reports. While the facilitator would endeavour to clarify the facts whenever this situation arose, these examples of misinformation for panel members as they prepared to manage cases represented evidence of bad practice within panel procedure. Indeed, within one theft case managed by an *RJS* panel a police representative did ask the facilitator why no previous offending record had been noted on the information sheet; this was despite the fact that the offender himself had admitted to previous theft offences and had also admitted to being convicted for those offences. It should be noted here that a jury would not usually have this information during a criminal trial, however the reparation panel is triggered when guilt is admitted or found in court. The panel programmes have remained, however, a pre-sentence process. There remains the theoretical possibility, although this was not evidenced within personal observations that a string of past offences being made known to panellists within case discussions could potentially sway opinions and lead to a more arbitrary contract being delivered than might be handed out to a first-time offender. Panellists within both schemes continually reminded participants that their main role was to prioritise the current criminal behaviour before the courts and to question the reasons behind that offending behaviour while searching for opportunities to ensure greater accountability, remorse and a potential path towards a law abiding future. A number of participants were asked if they had any previous convictions within meetings as discussions progressed and several admitted to a criminal past not noted within the case sheets.⁸³ This had no adverse effect on the participant, in this observer's opinion, or on their case in general. The theoretical possibility remains however, especially if there has been a long list of previous offences.

⁸² These sheets contained a synopsis of the case, and briefly outlined facts such as the offender's name and age, date of offence and court dates, and detailed the offence or offences charged. It is not the official police record but rather an outline to help panel members manage the discussion. Examples of incorrect information within these sheets included the wrongly stated date of births, incorrect dates of the actual offence committed and also, on limited occasions, a different offence was listed to that which was the subject of the panel referral. For an example of a *RJS* panel case sheet note, see appendix 10.

⁸³ As illustrated below, the participating offenders observed ranged from those with no prior criminal history to one who had a total of 46 previous convictions.

In saying that, in order to broaden the opportunities for remorse and accountability, it might be a necessary component of some panel cases that participants are engaged with their criminal past, if indeed one exists. For example, there may be a particular pattern to the offending behaviour, or an overlap in crimes. Some participants may require a more detailed rehabilitative contract due to a series of dependency driven criminal acts. Taking the offending behaviour as a whole, especially if there are a number of previous offences, rather than as one isolated incident could result in a more rounded reparative discussion and more appropriate contract agreement.

Within the list of forty seven panels observed, there were six further offenders who did not appear before the *RJS* panel even though they were scheduled to do so. One offender, guilty of drug possession with intent to supply, was due to return for a follow up meeting but failed to attend the venue. The case-worker attempted to contact the offender on the day but did not receive a reply. No reasons were given at the time of the observation. Another participant did attend the venue, but after talking to the case-worker it was decided that he should not attend the actual panel discussion. The offender had arrived at the Probation HQ with alcohol in his system. Before the panel discussion was due to begin, panel members debated whether it would be appropriate to allow the offender to participate and decided the integrity of the process could be weakened if the offender was to discuss the criminal behaviour under the influence of alcohol. The crime involved the possession and cultivation of cannabis plants with a value of 9000 euro. Arguably, this is not a surprising outcome for a process such as the reparation panels whereby many of those offenders participating have a history of alcohol and drug dependency issues. The case-worker explained that the offender would be given another, final opportunity to engage with a panel. Generally, it was also explained that those offenders who miss a panel appearance for whatever reason are usually given a second opportunity to participate in the process. However, this can also depend on the ease with which a proposed court appearance can be successfully rescheduled.

During another observation, the panel were due to discuss an incident of the theft of alcohol with a 19 year old male offender. However, despite several pre-panel discussions with the case-worker urging him to participate, the offender did not want to become involved. This was despite initial signs that he might be prepared to participate in the process. This represented one of the few examples witnessed in which the offender chose to return to court rather than attend the panel deliberations. This is despite the fact that as guilt has already been proved or admitted in court and, as he had already foregone the opportunity for a restorative diversionary outcome, a prosecution would arguably be the most likely result. The final case of non-attendance during observations involved a 23 year old female offender. The proposed offences for panel discussion involved public order breaches. The participant had initially agreed to attend during pre-panel discussions. No reasons were given as to the non-attendance.

Table 2.1: Summary of Offences and Participating Offenders Observed within Reparation Panels

Offence Type	Frequency	Age Range	Gender
Assault	10	18-30	All Male
Theft	19	18-39	9 Male; 10 Female
Public Order	9	18-51	All Male
Drugs	3	23-32	All Male
Criminal Damage	4	18-31	All Male
Possession of a Dangerous Weapon	3	18-41	2 Male; 1 Female
Trespassing	2	20-23	All Male
Attempted Robbery	1	37	Male
Road Traffic Offence	1	24	Female

* For further details of all panels observed, see Table 2.1 (i), appendix 15.

2.13 Format of Reparation Panel Cases

The format in which reparation panel cases were managed is now outlined. While certain elements of procedure have already been touched upon when outlining the roles and responsibilities of the various panel representatives, a more detailed illustration of the method and various stages by which individual reparation cases were managed will further help to illustrate and clarify the operation of this otherwise 'closed' justice process. The key stages of the panel process, from before the participant enters the room until the reparation contract is agreed and signed, will be considered. Again, while there were a number of differences within the practices employed by both schemes, general procedure throughout many stages of the reparation process remained similar. Hence, both panel schemes are included together within the one reparation model when discussing case format, with specific differences noted whenever these have applied.

2.14 Introductory Phase

Within the *RJS* programme the caseworker would contact the offender and arrange a date for a pre-panel meeting. Initial information would be provided by the support caseworker by way of probation reports, solicitor phone calls or contact by the offender themselves. Within the *RJC* scheme, this task would be undertaken by the programme manager. Such meetings were usually held in the headquarters of each project. However, they have also been conducted in coffee shops and hotel lobbies in order to accommodate the participant.⁸⁴ During pre-panel meetings the concept of restorative justice and the principles and aims within the reparation panel process are explained to the participant. This groundwork ensures that the participant is aware of their particular role within the panel process and also aware of the expectations of the referring judge and other panel members.

On the day of the case discussion, the participant would again be debriefed before they entered the room. They would then be brought into the room by the caseworker (*RJS*)

⁸⁴ Interview with *RJS* panel caseworker, Dublin, September 11th 2014.

or manager (*RJC*) and introduced to the other participants who would all be seated around the table at this stage. After introductions, the chairperson or manager would then ask the offender a number of brief questions such as ‘do you know why you are here?’ or ‘has this process been explained to you?’ Further statements such as ‘we are here to discuss the offending behaviour’ or ‘this process is about repairing the harm caused to the victim’ were common introductory elements. It was also explained that the case had been referred to the panel by the presiding judge and that the case would be disposed of depending on the success or failure of the reparation process. It was reiterated to the participant that there were no guarantees a conviction would not attach to the final sentence and that the final decision would rest with the referring judge. However, there were instances in which an offender would be told by a panel representative that ‘Judge X refers a lot of cases such as this and is sympathetic if remorse, accountability and the reparative contract is successfully completed’.

The level of explanation of the restorative justice concept at the beginning of case discussions would depend on the particular facilitator. It is submitted that the concept was not explained in enough detail at the beginning of many observed cases. While participants are reminded of many of the principles within the restorative concept before panel discussions, a fuller introduction into what restorative justice entails before discussions begin might help to alleviate participant concerns about the process generally and enable a better understanding of the panel process itself and the restorative ethos behind it.⁸⁵ The introductory stage of proceedings was the quickest panel phase, lasting up to five minutes in total.

2.15 Discussion Phase: Personal Profile Theme

After introductions and brief explanations of the general process, the reparation panel then proceeded further to the discussion phase. This represented the longest stage of

⁸⁵ Several offenders stated within panel meeting discussions that they had never heard of the restorative justice concept and believed that the reparation panel was just another conventional justice ‘add on’. A fuller description of the concept might also need to be included within pre-panel discussions. See Chapter 6 for a series of recommendations aimed at improving panel practices.

panel practice and two main themes would remain constant within both schemes. The first theme would centre on the circumstances leading up to the offending and the actual facts of the crime itself; the second theme would centre on possible outcomes for repairing the harm caused. Within the discussion phase, as noted earlier when outlining the role of the chairperson and facilitator within case dialogues, another theme soon became obvious within both panel schemes, that of discussing the participant's social profile and personal life experiences. The 'personal profile' theme usually occurred at the beginning of the discussion phase but could also arise within the contract formulation stage. The chairperson would begin discussions by asking the offender to outline certain aspects of their lives. Examples would include questions such as 'what school did you go to? How many brothers and sisters do you have? What hobbies are you interested in? Are you working at the moment? Are you completing any courses?' There would also be questions regarding present living arrangements, such as how many people are working and living in the household. This aspect of panel discussions, it is submitted, was important in that it served to help relax the participant and slowly integrate them into the process and also allowed the professional criminal justice representatives and community representative volunteers to gain some intimate background knowledge of the participating offenders. This 'personal profile' theme, while relaxing the participant, has the added potential of leading to a more open and honest discussion of the crime under consideration.⁸⁶

During one particular case observation, the facts outlined within the 'personal profile' stage of the discussion pinpointed the reasoning behind the actual criminal behaviour. The participant described initially how he had become unemployed and was the oldest of a number of brothers and sisters living in the family home. He told the panel that he had felt a certain responsibility for the younger siblings living in the family home and that there was a series of outstanding bills. As he had recently lost his job, the financial pressure was mounting and in order to alleviate that sense of pressure he had stolen clothes with the intention of selling them on and using the money to help with the

⁸⁶ Participating offenders within a number of panels observed, through their body language and eagerness to discuss topics such as areas where they lived, places of work or sports of interest, did appear to become much more relaxed during this line of questioning.

payments. Thus, this 'personal profile' element to panel discussions can allow for a deeper understanding of the circumstances and reasoning behind the criminal act. Further to this, it can also enable panel representatives to choose relevant reparative and rehabilitative contract options such as financial support meetings and dependency advice. More generally, open dialogue within restorative conference research in Australia between offenders and criminal justice representatives, especially police representatives, was seen as one factor leading to increased feelings of respect for both police officers and the law itself when compared to court based processes.⁸⁷

This personal line of questioning has been witnessed in other restorative justice programmes. Lynch has previously stated that discussions relating to a young person's family relationships, living arrangements and school attendance records within family group conferencing mediations in New Zealand has illustrated evidence of a care and protection process rather than a criminal justice process.⁸⁸ Arguably, this personal approach to reparation panel practice indicates something of a social work or social care ethos within panel deliberations rather than the more conventional criminal justice court based conflict of 'us against them', and offender versus the State.⁸⁹ Both restorative justice and social work concepts have been seen to contain overlapping values such as 'social justice, service, dignity and worth of the person, importance of

⁸⁷ Laurence Sherman, Geoffrey C. Barnes, John Braithwaite and Heather Strang: *Experiments in Restorative Policing: A Progress Report on the Canberra Re-integrative Shaming Experiments (RISE)*: (Canberra: Australian Institute of Criminology, 1999) 93. Available at http://www.aic.gov.au/media_library/aic/rjustice/rise/progress/1999.pdf.

⁸⁸ Nessa Lynch, *The Rights of the Young Person in the New Zealand Youth Justice Family Group Conference*, PhD.Thesis, Otago University, New Zealand 171. See also by the same author, 'Respecting Legal Rights in the New Zealand Youth Justice Family Group Conference' (2007) 19 *Current Issues in Criminal Justice* 75, 76 in which she notes that the contents of family group conference plans should reflect the needs of the young person as well as a focus on accountability.

Lynch has further argued that the New Zealand juvenile criminal justice system has continued to promote a system that empowers families and encourages restorative and re-integrative outcomes despite recent 'punitive populist' legislative amendments to the Children, Young Person and their Families Act in 2010. See generally Nessa Lynch, 'Playing Catch Up? Recent Reform of New Zealand's Youth Justice System' (2012) 12 *Criminology and Criminal Justice* 507.

⁸⁹ See Lieve Bradt and Maria Bouverne-De-Bie, 'Victim-Offender mediation as a social work practice' (2009) 52 *International Social Work* 181. Here, the authors have argued that social work principles can complement and improve restorative mediation such as that practiced within the Flemish adult mediation programme in which victims and offenders and family members would come together to discuss serious criminal behaviour.

human relationships, integrity and competence’,⁹⁰ while Umbreit has also concluded that mediation practice generally has been recognised as a method of social work practice for many years.⁹¹ It should be reiterated that, while common within discussions, this ‘personal profile’ theme was not an ever-present practice within all observed panels. However, as this approach did appear to put those participants questioned in this way at ease, and further helped to open up the chain of dialogue, a uniform approach to introducing this particular theme within all panel case discussions could represent a template for improving panel practices in the future.

2.16 Discussion Phase: The Crime and Its Repercussions

The discussion phase would then move on to the chairperson or facilitator asking the offender to describe to the panel the circumstances leading up to the crime and the facts of the crime itself. In the case of the *RJS* programme, the Garda and Probation representatives took it in turns to question the participant. Both professionals attempted to prise out further reasons for the offending behaviour, such as asking if there were alcohol and drug dependency issues. The Garda representative would also clarify the facts of the case with the offender and clarify any confusion over the criminal law. Probation representatives would continue this line of questioning, asking for possible reasons for the offending behaviour and exploring possible familial, financial or dependency factors. Within the *RJC* scheme, the Garda representative undertook the same role as that of their *RJS* counterparts and attempted to clarify case facts and confirm case details by reference to case files.⁹² While no Probation officer was

⁹⁰ Katherine van Wormer, ‘Concepts for Contemporary Social Work: Globalization, Oppression, Social Exclusion, Human Rights, Etc.’ (2005) 3 *Social Work & Society*, 1. See also by the same author, ‘The Case for Restorative Justice: A Critical Adjunct to the Social Work Curriculum’ (2006) 26 *Journal of Teaching in Social Work* 57.

⁹¹ Mark Umbreit, ‘Victim-Offender Mediation in Canada. The Impact of an Emerging Social Work Intervention’ (1999) 42 *International Social Work* 215, 216. Umbreit has noted how social workers themselves have performed important roles within victim offender mediation programmes in Canada, including programme development, training and mediation.

⁹² It should be noted here that the police case file was not always presented within *RJC* panel discussions. This, in turn, led to some confusion when the Garda representative was unable to confirm certain facts of the case being managed. Within *RJS* panels, there was no actual case file presented at those meetings that were observed, only the panel sheet with offender details and limited details of the crime as provided for by the scheme.

represented within the *RJC* scheme, there were one or two community representative volunteers always present.⁹³ These representatives would add their experience of the local area to discussions and would guide offenders on specific organisations within the area which could offer help and advice managing financial and medical concerns.

An important dimension within this phase of panel discussions between the participating offender and the panel members within both schemes was the exploration of the harm that had been caused as a result of the crime. Panel members in both models discussed in detail the damage that had been caused to the direct victim if one existed, for example within a case of assault. They also discussed the possible harmful effects that can attach to criminal behaviour in which there was no direct victim, such as a shoplifting, public order or drugs related offences. Furthermore, the harm caused to the participant themselves was also stressed by panel members, including the possible barriers that a conviction could bring to travel and employment opportunities. The participant would be asked who they thought was affected by the crime and in what ways. They were reminded that a crime can affect many different people in a multitude of ways. One such example involved a case in which a participant had pled guilty to possessing and supplying large quantities of drugs. The Garda representative asked the offender whom he believed was a victim of the offence. The participant struggled to answer immediately. The Garda panellist outlined a wide range of direct and indirect victims attached to the crime, including those buying the actual drugs and the community members who had to live with the results of the drug taking behaviour. While focusing on these victims, he widened the scope of possible indirect victims to include the offender himself and his friends and family members. It was argued that they also suffered in that they were continually worrying about the participant and the result of any possible sentence. The participant was told that a possible conviction for a drugs offence would prevent him from travelling to countries such as Australia where drug offenders were barred from attaining travel visas. Within discussions managing other crimes such as theft and assault, the scope of victimisation would be continually broadened to include indirect community members. For example, a case of assault was

⁹³ Of the six *RJC* panels observed, two cases had one community representative volunteer present while four had two volunteers present.

said to have harmed both the direct victim as well as those community members who had witnessed the act and were shocked and frightened because of it. Further, shoplifting crimes were highlighted as harming the community in general, as well as the shop from where the goods were stolen, in that prices would have to be increased in order to pay for greater security measures and higher insurance premiums. These discussions around the harm caused were vivid examples of panel representatives attempting to defend the general public interest and widening the scope of the offending behaviour by detailing the level of distress and harm that can be caused to both direct and indirect victims.

2.17 Contract Formulation

After the discussion phase targeting the personal characteristics of the offender, the facts of the crime and the level of harm caused by way of the offending behaviour, the next stage of panel practice involved the formation and agreement of a reparation contract. The contract stage was again similar in practice within both panel models. However, within the operation of the town based *RJC* model there was two procedural differences when considering panel agreements and reparative tasks. First, community service tasks were attached to all of the cases observed, as part of contract agreements, within the *RJC* model. It was noted that this would always be the case with offences that did not involve a direct victim. Within those cases that did involve direct victims, the reparation would be tailored around the harm caused directly.⁹⁴ This was not the case within the *RJS* scheme, although Community Service Orders could be attached to a sentence by the referring judge in court. These tasks would generally include litter picking or acts such as repairing buildings within the local community, training local sports teams, working in charity shops or fund raising. Secondly, the *RJC* panel representatives did not agree a set financial reparation amount themselves as was the case within the city based model. Instead this was left solely to the discretion of the referring judge. The reason for these differences in procedure was not made clear.

⁹⁴ Interview with *RJC* manager, Thurles, 19th November 2014.

However, both modes of contract formation practice did appear to work successfully within both panel models.

The contract formulation and agreement stage would begin generally with the facilitator explaining to the participant that a number of tasks had to be completed in order for the offender to make amends to both the victim (if recognised) and the local community generally. It was also explained that the referring judge, in order to decide whether or not a diversionary sentence was a viable option, would need to see evidence that attempts had been made at repairing the harm caused by the initial actions. Zedner argues that the act of reparation should involve

‘more than ‘making good’ the damage done to property, body or psyche. It must also entail recognition of the harm done to the social relationship between offender and victim, and the damage done to the victim’s social rights in his or her property or person’.⁹⁵

Panel representatives did attempt to manage the reparation concept in a similarly broad context. Reparation contracts were detailed and included apologies, written work on the harm caused, financial payments and community service acts.⁹⁶ They also included rehabilitative options such as a requirement to visit an anger management or victim support service or an alcohol awareness programme.⁹⁷ Questions such as ‘how do you think you can make things right?’ were a common feature at this stage of panel proceedings. Indeed, the practice of asking the offender how they themselves might begin to repair the harm caused by the offending behaviour represented a key principle within both panel models. Participating offenders were not viewed as simply passive

⁹⁵ Lucia Zedner, ‘Reparation and Retribution: Are They Reconcilable?’ In Andrew von Hirsch, Andrew Ashworth and Julian Roberts (eds.), 3rd Edition. *Principled Sentencing: Readings on Theory and Policy* (Oxford and Portland: Hart Publishing, 2009) 190.

⁹⁶ For a *RJS* reparation panel contract example, see appendix 13. For an example of financial reparation to a community based scheme, see appendix 14.

⁹⁷ See appendix 1 for an example of a community based alcohol awareness programme’s confirmation of attendance.

actors within contract negotiations. They would be encouraged to put forward their own proposed reparative tasks in addition to the regular contract terms of financial reparation and apologies. This practice of increasing offender input, alongside that of victims and supporters of both sides, within restorative contract outcomes has been further noted in juvenile group conferencing cases within Northern Ireland.⁹⁸ It is submitted that involving offenders at this stage is a worthwhile process and allows for a potentially greater understanding of the level of harm caused by the offence. For a participant, being given the opportunity to take active responsibility for their actions and being given a voice within that decision making process can serve to increase feelings of both legitimacy and fairness within the contract formulation stage of the process. Within family group conferences in New Zealand, young offenders have previously complained about not being involved in the process, with decisions being made 'about them, not with them'.⁹⁹ Duff suggests that

'once we move away from the straightforward repair or replacement of material property, the meaning and efficacy of reparative measures come to depend crucially on who offers them; and there may be kinds of repair that only the offender can provide'.¹⁰⁰

Offenders observed within the panel process have chosen which charities they wanted to pay their reparation fine into, and have chosen community based reparative acts that have taken their own skills and experience into consideration. One *RJC* based participant, for example, was a painter and decorator by trade and agreed to help refurbish a community sports hall. Within the writing of apologies as part of contract

⁹⁸ See Jonathan Doak and David O'Mahony, 'In search of legitimacy: Restorative youth conferencing in Northern Ireland' (2011) 31 *Legal Studies* 305, 319. One example of the active involvement of offenders observed during reparation panels involved one participant who initially refused to write a proposed letter of apology to Garda officers as he did not believe they represented the 'community'. He eventually agreed to write a letter to the parish priest as an alternative.

⁹⁹ Allison Morris and Gabrielle Maxwell, 'Restorative Justice in New Zealand: Family Group Conferences as a Case Study' (1998) (1) *Western Criminology Review*. [Online]. Available at <http://wcr.sonoma.edu/v1n1/morris.html>.

¹⁰⁰ R.A. Duff, 'Restoration and Retribution' in Andrew von Hirsch, Andrew Ashworth and Julian Roberts (eds.), *Principled Sentencing: Readings on Theory and Policy* (Oxford: Hart Publishing, 2009) 179.

negotiations in both programmes, participants were also asked who they believed would benefit most from the letters. Conversely, however, involving participants in this way also invites an element of inconsistency into reparation panel agreements. During the contract formulation within a *RJC* panel, an offender who had admitted to an assault proposed a bungee jump for charity as part of the contract agreement which also included a reparative financial sum and apology.¹⁰¹ This particular example of ‘restoring’ the harm caused might be viewed as problematic by some restorative theorists. Duff, for example, argues that certain reparative tasks are required to be burdensome in nature in order to increase the moral and forceful expression of an apology, while Daly has viewed retributive punishment as an essential ingredient of a successful restorative justice outcome.¹⁰² Ashworth has also noted that ‘sentencing is for an offence and respect for the offender as a citizen capable of choice suggests that the sentence should bear a relationship to the seriousness of the offence committed’,¹⁰³ while for desert theorists such as von Hirsch, it is important that the sentence should always be proportionate to the crime being managed.¹⁰⁴

Further, and perhaps controversially, there have been examples wherein offenders have decided for themselves exactly how much financial reparation they would be willing to pay. It may be submitted here that such a practice should not necessarily be viewed as problematic. Many participants came from socially deprived areas and imposing a large financial burden into the contract, on top of other reparative duties, could potentially weaken a participant’s rehabilitative options. During the series of observations, financial

¹⁰¹ This was not rejected out of hand by the panel representatives, with follow up enquiries made as to the possibility of achieving such a task. However, it is not known whether this type of reparation proposal would have been ultimately accepted as suitable by the referring judge.

¹⁰² See R.A. Duff ‘Restorative Punishment and Punitive Restoration’ in Lode Walgrave (ed.), *Restorative Justice and the Law* (Cullompton: Willan, 2002). See further Kathleen Daly, ‘Restorative Justice: The Real Story’ (2002) 4 *Punishment and Society* 55, 60.

¹⁰³ Andrew Ashworth, ‘Responsibilities, Rights and Restorative Justice’ (2002) 42 *British Journal of Criminology* 578, 585.

¹⁰⁴ The “just deserts” theory of sentencing advocates that punishment should be proportionate to the seriousness of the offense committed. This philosophy became influential in the United States during the 1970s after publication of the book *Doing Justice* by Andrew von Hirsch, a leading proponent of the just deserts model which reported on the findings of the Committee for the Study of Incarceration. See Andre von Hirsch, ‘The Desert Model for Sentencing: Its Influence, Prospects and Alternatives’ (2007) 74 *Social Research* 413.

reparation agreements ranged from twenty euros up to 300 euros in total, while some participants would also have offered large reparation sums to the victim, through the caseworker or panel manager, before the meeting as an initial token of compensation.¹⁰⁵

Along with a financial payment, a typical contract would also include letters of apology to those deemed to be affected by the crime, as well as rehabilitation courses including alcohol and drug awareness classes if the panel concluded that there were relevant dependency issues connected to the offending behaviour. Within one assault case contract, reparation included a written letter of apology to both the direct victim of the assault as well as to the parents of the victim. The panel explained that a crime such as an assault can affect a wide range of people, including both the direct victim themselves as well as their family members and friends. A letter was also agreed to be written to the parents of the offender as they were also deemed to be indirect victims and suffering as a result of the assault.¹⁰⁶ This particular aspect of written apologies to family members of the participating offender proved to be a common occurrence within observations of contract formulations within both programmes. Within the assault case noted above, the offender's parents were described by a police panel representative as 'secondary victims'.¹⁰⁷ As part of another case involving the attempted theft of a number of bicycles, the panel chairperson suggested, as there was no actual victim due to the fact that the offender had been caught by Garda officers in the act, that the participant could perhaps write a 'pseudo victim' apology letter to an imaginary bicycle theft victim. It was noted that this 'pseudo victim' letter should outline the ways in which the crime might have affected the imaginary victim, such as removing a possible means of getting

¹⁰⁵ During initial panel observations of the *RJS* model in 2012, the financial reparative sum appeared to always total 300 euros within contract agreements. However, panellists subsequently explained that the sum was lessened due to economic factors and because it was felt that participants were struggling to pay the full amount. However, a small number of cases saw the victims' families being offered compensation outside the terms of a reparation agreement. One example saw an offer of over a thousand euros by the participant's family. It will ultimately be up to the referring judge as to the final level of financial restitution deemed appropriate with such payments being taken into consideration.

¹⁰⁶ Within this example, the parents of the offender had already paid a substantial financial sum to the victim's family for medical bills. The victim's jaw had been broken by one punch.

¹⁰⁷ The panel practice of utilising apologies generally and the subject of victim participation are discussed in greater detail within Chapter 3.

to work or college and thus putting that job or course in danger. Such a policy again allows for panellists to highlight offender accountability and further illustrate that the harm caused by the criminal actions is usually not only confined to a direct victim but can also affect a wider sphere of family members, friends and community members.

2.18 Agreement and Recording

The offender must agree with the contract terms at the conclusion of the first panel meeting. The *RJS* caseworker, support caseworker and *RJC* facilitator act as the conduit between the rehabilitative and community based organisations, the offender and the court itself. After the contract terms have been completed, the offender would then return for a second panel meeting within the *RJS* model in which the panel representatives would discuss the success or otherwise of the completed contract. These discussions were shorter in duration than was the case when the offender first appeared before a reparation panel. Panellists for second panel meetings did not always involve the same panel members who managed the initial case and contract. Typically participants were thanked by the panellists and congratulated for the reparative work carried out. They were asked how the reparation tasks affected their views of the original criminal behaviour, and asked what they had learnt if anything from the process generally. Those observed within second panel meetings reiterated to the panel that they had learned from the experience and that they would not be repeating the criminal behaviour. One offender, who had admitted dealing drugs, told panellists during his second panel meeting that the reparation tasks, such as writing about the dangers of drug dealing within the community, had made him think more about the drug problem within Dublin's inner city areas and the dangerous and detrimental effects that such drugs can have on others. All offenders attending the second stage were told that a contract programme report would be shown to the judge at the next court hearing when the final decision on sentencing would take place.¹⁰⁸ While it was asserted that there was no guarantee that the case would be struck out of court or diverted from prosecution via the Probation of Offenders Act, the offender was reminded that a

¹⁰⁸ See appendix 9 for an example of an offender reparation programme report (*RJS*).

successfully completed reparation contract would significantly increase the opportunity for such an outcome.

The meeting would conclude with all the panellists shaking hands with the offender after a successfully completed process. Typical phrases such as, 'we hope you have learnt from this process' and 'we do not want to see you again caught up in the criminal justice system' were commonplace at the end of panel meetings.¹⁰⁹ Offenders would also be congratulated with phrases such as 'well done, you have done good work here...you should be proud of yourself and your efforts'. This congratulatory aspect was an important element within second panel meetings and served a useful theoretical purpose within the reparation process as a whole. For example, the participant noted above talking of his realisation of the harm that results in inner-city drug crimes, and the recognition of his successful contract completion by panel members, can be said to resemble an example of the 'redemption script' and 'redemption ritual' theory put forward by Maruna. For Maruna, such recognition within the machinations of the formal criminal justice system can be a rare occurrence. Ex-offenders are usually 'rewarded' for what they do not do, the reward being 'not having something done to them'.¹¹⁰ In this regard, offenders are rewarded for not re-offending or behaving themselves in prison by not being imprisoned again or handed down additional sentences. However, when such recognition does occur, such as within a favourable rehabilitation report by a probation officer in court after a sentence has been deferred, it can have a major psychological impact on an offender. An offender can come to realise for the first time that 'they have some control over their own destinies' and that 'they have done well' and someone 'believes in them'.¹¹¹ The same is potentially true for participants who have successfully completed the reparative contract and have been congratulated and had their hands shaken by criminal justice and community representative panel members. Roche has noted how restorative conferencing and mediation meetings offer 'a wonderful opportunity' for praise to be handed out to successful participants as

¹⁰⁹ In all, seven second panel meetings were observed as part of this research thesis.

¹¹⁰ Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (London: Washington: American Psychological Association, 2001) 162. See also John Braithwaite and Stephen Mugford, 'Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders' (1994) 34 *British Journal of Criminology* 139.

¹¹¹ Shadd Maruna, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* (London: Washington: American Psychological Association, 2001) 161.

‘praise can be as powerful a motivator as punishment, but for many offenders the opportunities to receive praise are few and far between’.¹¹² Perhaps for the first time in their lives, especially with persistent offenders, participating offenders can come to realise that they have ‘done well’, have achieved something worthwhile and can now begin to take some control over their lives. This can still be the case despite the fact that any decision on final sentencing would still be left to the referring judge at that stage of the process. Indeed, although this was not personally observed, the ‘ritual’ can continue on into the courtroom itself with the referring judge also congratulating a successful participant and deferring a possible conviction. Thus, the shaking of hands and congratulatory overtones during the conclusion of both first and second stage panel meetings, and indeed within the courtroom itself whenever a completed contract is shown to a referring judge, can be seen as an important ‘ritual’ within the reparation process. This ritual can help to promote a greater sense of self-worth within participating offenders and illustrate the potential for a non-recidivist future.

2.19 Conclusion

Throughout this chapter the practice, procedure and discourse used within Irish adult reparation panels has been discussed. The roles of the various participants, the venues and the typical format of a reparation panel have also been outlined. As both panel models are as yet not defined by statute, and the process is generally closed to public scrutiny, this chapter has served to enlighten some of the restorative practices and principles employed within panel discussions. It has illustrated how both criminal justice professionals and community representative volunteers and caseworkers have successfully worked in tandem to provide a restorative justice option which can help participating offenders to put their crime behind them and move on with their lives. Discourses within panel cases have centred on the harm caused by the offending behaviour and the accountability of those responsible for that harm. They have also centred on themes of care and rehabilitation where the participant has been treated as a person with hopes, dreams and family and relational bonds, instead of simply an ‘offender’. Chapter Four further illustrates this social care ethos and the means by which

¹¹² Declan Roche, *Accountability in Restorative Justice* (Oxford: Oxford University Press, 2003) 231.

this ethos has served, in part, to enable an exploration of both the theoretical and practical importance of the concept of community within panel operations. Before this, Chapter 3 aims to build on the discussions within, and management of, reparation contract agreements with specific reference to the theoretical importance of the restorative apology, with a critical evaluation of how this important restorative principle has been utilised within reparation panel procedure.

Chapter Three

The Restorative Apology and Reparation Panel Contracts: Evaluating the Restorativeness of Agreements

3.1 Introduction

This chapter builds on previous discussions within Chapter Two regarding reparation panel practice and procedures and provides an overview of a number of key theoretical debates surrounding the application and provision of restorative justice within this model. Specific focus is turned to the general principle of reparation and its practical interpretation within contract agreements. Reparation is an important principle in that it can provide a platform for a participating offender to illustrate to a victim that they are both remorseful and ready to repair the harm caused by their criminal actions. Within the reparation concept, the act of apology has been widely viewed as forming an integral part of restorative justice practice. With this in mind, the method by which apologies are incorporated within the Irish adult schemes frames the discussion.

This thesis aims to address two central questions surrounding the reparation panel process. First, what is the restorative nature of the principles utilised as part of reparation practice? Second, how is the concept of community represented within panel procedures and amongst the participant stakeholders? In this regard, investigating the act of apology within reparation theory and practice helps to further address these questions in a number of ways. The specific means by which apologies are delivered and received within contract agreements; the issue of remorse and the importance of genuine repentance; the position of direct, indirect victims and community members within that process; the legitimacy of agreed contracts in which apologies are not included; how these issues are ultimately managed within reparation practice permeates the very core of the restorative justice paradigm and ultimately stands to distinguish whether or not the reparation panel model can call itself a genuinely restorative process. Addressing how these reparative elements are managed can also help to distinguish whether this model is developing a genuine communitarian ethos as part of an actively owned, citizen representative justice process or whether, in real terms, it merely symbolises a managerial 'tick box' exercise in 'restorative lite' procedure.

3.2 The Restorative Apology: Definition and Purpose

For many theorists, the act of apology plays a defining role within restorative justice practice.¹ In a broader sense, it has also proved to be a vital ingredient in a number of commissions investigating human rights abuses and internal conflicts. The apology act, combined with values such as acknowledgement, truth telling and commemoration, has been said to have represented a key component in the investigation and management of Indigenous human rights abuses in various jurisdictions around the world, including Canada, Australia and South Africa.² Within the criminal justice arena, Tavuchis argues that an apology on the part of an offender can be viewed as a social gesture of symbolic importance, one that serves to constitute 'a tacit acknowledgment of the legitimacy of the violated rule or social norm; an admission of full fault and responsibility; and an expression of regret for having caused the harm in question'.³ It has been further argued that an apology can serve to reinforce one of the main components of a restorative justice system, that of 'amends'.⁴ Similarly, Doak has noted the potential of the apology act within restorative justice models. The apology can represent one of a number of potential 'keys' which can ultimately unlock the therapeutic potential of restorative justice practice,⁵ while for Braithwaite, the restorative apology, along with true remorse, can be viewed as 'the most powerful form of censure as [it] is offered by the person with

¹ Christopher Bennett, *The Apology Ritual* (Cambridge: Cambridge University Press, 2008); Hennessey Hayes, 'Apologies and Accounts in Youth Justice Conferencing: Reinterpreting Research Outcomes' (2006) 9 *Contemporary Justice Review* 369; Carrie J. Petrucci, 'Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System' (2002) 20 *Behavioural Sciences and the Law* 337.

² Chris Cuneen, 'Reparations and Restorative Justice: Responding to the Gross Violation of Human Rights' in Heather Strang and John Braithwaite (eds.), *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press, 2001) 86-88.

³ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*. (Stanford: Stanford University Press, 1991) - cited in Jonathan Doak, 'Honing the Stone: Refining Restorative Justice as a Vehicle for Emotional Redress' (2011), 14 *Contemporary Justice Review* 439, 445.

⁴ Daniel Van Ness, 'The Shape of Things to Come: A Framework for Thinking about a Restorative Justice System' in Elmar G.M. Weitekamp and Hans-Jürgen Kerner (eds.), *Restorative Justice: Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 4. Here Van Ness argues that a genuine apology is an 'acknowledgement of wrongdoing and places the offender in the powerless position of waiting to find out whether the victim will accept that apology'.

⁵ Jonathan Doak, 'Honing the Stone: Refining Restorative Justice as a Vehicle for Emotional Redress' (2011), 14 *Contemporary Justice Review*, 439, see especially 444-447 for a discussion on the benefits and problems of apology acts within restorative models. Doak has listed the other 'keys' within a restorative programme as 'personal narratives, forgiveness and procedural justice'.

the strongest reasons for refusing to vindicate the victim by censuring the injustice'.⁶ Indeed, it has been further argued that a successfully accomplished apology can contain 'almost miraculous qualities' in that it manages to 'undo what has [already] been done'.⁷ That is to say, although the crime has already taken place a successful apology can help to repair the harm in such a way that a victim is almost brought back to the position he was in before the offence took place.

Theoretically, therefore, support for the positive potential of the apology act is clear. It can also serve to represent a number of important aims as part of a restorative based justice outcome. Tavuchis has suggested three functions of a successful apology. A successful apology act will confirm

'what is believed to be true, suggests the need for compensation, and clarifies who is to blame... In the legal setting, if an apology is offered merely as a legal requirement (for instrumental means), and not as a meaningful interaction (for moral purposes), it will have no worth or value, because it will not contain these three important elements'.⁸

The apology, then, can represent another means of making up for the harm caused other than through the more conventional route of material compensation.⁹ Such an act can extend further by 'disarming threats to relationships'.¹⁰ As will be further discussed

⁶ John Braithwaite, 'Setting Standards for Restorative Justice', (2002) 42 *British Journal of Criminology*, 563, 571.

⁷ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*. (Stanford: Stanford University Press, 1991) 5-6 - cited in Anthony. E. Bottoms, 'Some Sociological Reflections on Restorative Justice', in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 94-95.

⁸ Carrie J. Petrucci (2002) 'Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System' 20 *Behavioural Sciences and the Law* 337, 342. See also Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*. (Stanford: Stanford University Press, 1991).

⁹ Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (Canada, UBC Press, 2004) 21.

¹⁰ Linda Radzik, *Making Amends. Atonement in Morality, Law and Politics* (Oxford: Oxford University Press, 2009) 95. See also Christopher Bennett, *The Apology Ritual* (Cambridge: Cambridge University Press, 2008) 112.

throughout this chapter, this ‘relational’ theme was evident within a number of panel observations. Panel members were frequently seen to highlight the wide ranging extent of the harm caused by including family members and friends, as well as direct victims themselves, within reparation apology practice. In a similar vein to the ‘moral’ purpose of apologies as offered by Tavuchis, Duff argues that the apology within the criminal justice setting should represent the central component to the principle of ‘moral reparation’.¹¹ Such ‘moral reparation’ can increase an offender’s understanding that he has harmed another and needs to repent, that he has disowned the criminal behaviour, has committed to avoid doing wrong in the future and desires forgiveness and reconciliation with the person who has been wronged.¹² Outlining the various definitions of the restorative apology, and its purpose within restorative justice processes generally, can help to engender a fuller consideration of the specific role of the apology act and its restorative value within Irish reparation panel practice.

The following section outlines the theoretical ground rules for successfully realising an ‘ideal apology’ act within restorative practice and how this ‘ideal’ blueprint can be seen to clash in a number of fundamental ways with the practical hurdles faced by reparation panellists when managing apologies within contract agreements. Because of these fundamental differences, a number of questions need to be addressed as to whether an apology within the Irish reparation model can be recognised as fundamentally restorative, or whether it merely represents a ‘box ticking’, instrumental legal requirement within the reparation contract as a whole.

¹¹ Anthony Duff, ‘Punishment, Retribution and Communication’ in Andrew von Hirsch, Andrew Ashworth and Julian Roberts (eds.), *Principled Sentencing: Readings on Theory and Policy* (Oxford: Hart Publishing, 2009) 129.

¹² Ibid. 130.

3.3 Reparation Practice and the 'Ideal' Apology: Theoretical Nirvana versus Practical Reality

3.3.1 Theoretical Idealism

For a number of theorists the ideal apology act should be dyadic in nature; that is to say, it should be performed by the two main actors within a criminal event, the offender and the victim.¹³ In this regard, it is argued that any third party influence should remain limited to general advice and support but not intrude into the apologetic discourse itself. Examples of such influences might include friends and supporter groups within family group conferences or, indeed, criminal justice professional and community representative reparation panel members themselves. Ideally, the apology will also attach some form of genuine intent alongside an element of forgiveness. As Bottoms has reiterated, for apologies to be truly meaningful 'one must express genuine regret and remorse for an act that has breached a shared moral code, and the other must forgive. Only in this way can prior social relationships be 'restored', although this process itself requires continual emotional work by the parties'.¹⁴ An 'ideal apology', according to Retzinger and Scheff, can form part of the 'core sequence' of a successful restorative outcome in which 'symbolic reparation' occurs side by side with material compensation.¹⁵ This concept of symbolic reparation can also include concepts such as forgiveness, courtesy and respect. The 'core sequence' of a restorative meeting will see a participating offender offer up genuine remorse for the harm caused by the offence, with the victim also illustrating at least some element of forgiveness for the damage

¹³ For example, see Anthony E. Bottoms, 'Some Sociological Reflections on Restorative Justice', in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003), 93-99 especially 97. Also see Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*. (Stanford: Stanford University Press, 1991) and; Suzanne M. Retzinger and Thomas J. Scheff, 'Strategy for Community Conferences: Emotions and Social Bonds' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Monsey, New York: Criminal Justice Press and Amsterdam: Kugler Publications, 1996).

¹⁴ Anthony E. Bottoms, 'Some Sociological Reflections on Restorative Justice', in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 96.

¹⁵ Suzanne M. Retzinger and Thomas J. Scheff, 'Strategy for Community Conferences: Emotions and Social Bonds' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Monsey, New York and Amsterdam: Criminal Justice Press: Kugler Publications, 1996) 316.

incurred. It has been claimed that, even if this emotional exchange is brief, when both elements are successfully achieved it can lead to the repair of broken bonds and improve opportunities for reconciliation, victim satisfaction and a decrease in recidivist tendencies.¹⁶

Therefore, the theoretical ideal apology can already be seen to be taking shape. It should involve both offender and affected victim and should include at least some notion of forgiveness and genuine remorse. Further, for an ideal apology to be realised it should be verbally offered up, thus requiring a crucial, face-to-face meeting between the core participants. Such an interaction can, it has been argued, provide a basis for communicating emotion, and increases the potential for a more effective apology.¹⁷ For Petrucci, this interaction between victim and offender helps to serve two important functions. It enables the victim to come to a realisation that it is the offender, not themselves, who should be held accountable for the crime. This is achieved by way of the offender accepting blame and demonstrating genuine repentance for carrying out the criminal act. Thus,

‘the offender expresses shame and remorse for the act, thereby accepting responsibility; this then allows the victim to no longer feel shame because the victim sees in this interaction that it is the offender who is responsible for the harmful act, and not the victim. Face-to-face interaction then, is a key ingredient to the communication of emotion in effective apologies’.¹⁸

¹⁶ Ibid.

¹⁷ Carrie J. Petrucci (2002) ‘Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System’, 20 *Behavioural Sciences and the Law* 337, 343. Petrucci has underlined the argument posited by, amongst others, Deborah L. Levi who saw the importance of ‘interpersonal orientation’ as the dominating factor in helping to achieve a successful apology as the communication of sorrow can only be truly recognised in this format. See further D.L. Levi, ‘The Role of Apology in Mediation’ (1997) 72 *New York University Law Review*, 1165.

¹⁸ Carrie J. Petrucci (2002) ‘Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System’, 20 *Behavioural Sciences and the Law*, 337, 343.

3.3.2 Reparation Realities: Voluntary or Coerced Apologies

Within the practical reality of managing and delivering apologies as part of reparation panel agreements in the Irish adult models observed for this thesis, it has been difficult to fully recognise a number of the concepts given over to the ideal apology theory discussed above. In saying that, the apology was always an important element of Irish reparation practice generally. While other reparative acts such as financial compensation, visits to rehabilitative services, and community service acts were regularly added as contract terms, it was the need for an apology to a direct or indirect victim and its underlying message of remorse, acceptance of blame and the need for repair that regularly held centre stage within panel discourses. Participants were asked at the beginning of the contract formulation stage of the discussion how they themselves felt they could repair the harm caused by their offending behaviour. A number of participating offenders realised without prompting that an apology should be included as part of the reparation contract terms during case deliberations. Further, a number of participants wrote out detailed letters of apology after court referral to the reparation process but before the panel meeting had convened. These letters of apology would be initially given over to the facilitator (*RJC*) or caseworker (*RJS*) and presented within the panel discussion wherein panel members would decide on the appropriateness of the initial written attempt and whether or not additional letters to other stakeholders should be added as part of the subsequently agreed contract. Other participants had to be informed by panel members that a written apology would be required as part of a successfully completed contract agreement. This requirement was conveyed to participants during panel discussions with the use of subtle phrases such as, 'do you think there is any other way you might be able to help repair the harm caused to the victim?' and more direct questions such as 'what about an apology...would you be willing to apologise to the victim?'. Such questions were regular examples of the types of approach made by various panel members including Garda representatives and chairpersons. Such methods of persuasion, although less subtle in tone, have been evidenced previously within a number of models. For example, facilitators within Canadian juvenile conferencing programmes were observed questioning the openness and sincerity of offenders and were seen to have 'pushed (offenders) to answer, even

apologise'.¹⁹ Within a UK based restorative family group conferencing model, similar techniques to gain apologies were illustrated.²⁰ These included the arranging by practitioners of 'multiple private meetings, [the] use of praise and encouragement, skilful questioning, [and] evoking empathy in offenders. These techniques were seen to enable participants to believe that they were freely choosing to apologise instead of being required to [do so] under court order.'²¹

The subtle methods observed of introducing the apology concept within reparation panel practice might still be vulnerable to the argument that participants being 'told' to apologise rather than volunteering themselves to do so has introduced another element of coercion into the panel process alongside the questionable quality of the 'voluntary' acceptance of participation into the panel process generally.²² For example, can it be said that offenders have freely volunteered to participate when, in reality, the only alternative will be a prosecution and more retributive criminal sanction? As Clamp has suggested, 'processes that serve to divert cases away from the adversarial system can never be considered completely voluntary given that the offender has to choose between engaging...and proceeding through the normal adversarial system' – what she has labelled a 'latent form of coercion'.²³ For John Braithwaite, participants should not be coerced into either apologising or forgiving during a restorative process because to do so would ultimately 'destroy the moral power' of such concepts.²⁴ Despite these concerns, it is pushing the coercion argument somewhat to argue that offenders were being 'forced' to apologise during panel discussions. In an ideal scenario, the offender will freely volunteer an apology; however, it is not surprising that many participants were unsure of the need to apologise as a number admitted during panel discussions

¹⁹ J. Scott Kenney and Don Clairmont 'Using the Victim Role as both Sword and Shield: The Interactional Dynamics of Restorative Justice Sessions' (2009) 38 *Journal of Contemporary Ethnography* 279, 298.

²⁰ Margaret Zernova, 'Aspirations of Restorative Justice Proponents and Experiences of Participants in Family Group Conferences' (2007) 47 *British Journal of Criminology* 491, 501.

²¹ Ibid.

²² Kerry Clamp, *Restorative Justice in Transition* (London: Routledge, Taylor and Francis Group, 2014) 34.

²³ Ibid. See Chapter 2 of this thesis for further analysis of the coercion principle within reparation panel practice.

²⁴ John Braithwaite, 'Principles of Restorative Justice' in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 12/13.

that they were unfamiliar with the principles enshrined within the restorative justice paradigm and the reparation panel process. This was despite pre-panel discussions aimed at increasing their awareness of both concepts.²⁵ The subtle method by which panellists introduced the concept and, on occasion, teased apologies out of participants as observed, appeared to be fair and reasonable with participants being encouraged, rather than ‘forced’ to illustrate their remorse.

Thus, the apology concept played a fundamental role within the management of panel discussions, centring on the need to repair the harm caused by the criminal behaviour. However, in relation to the conflict between the theoretical nirvana and practical reality of managing and delivering ‘ideal’ reparation panel based apologies, two elements in particular should be highlighted. The first element involves the position of victims within the apology act itself and reparation practice generally, and the second element involves the method of apology delivery. As this chapter will demonstrate, a number of apologies contained within contract agreements were never actually received by either direct or indirect victims. Moreover, the majority of those apologies agreed were completed in written form rather than by way of a verbal exchange. This introduces an element of concern over the restorative quality of many of the apologies engineered as part of panel agreements, as well as concern that a restorative conveyor belt of managerial based criminal justice goals might be superseding the potential for a communitarian ethos during panel meetings. Within the next section, the methods by which both important elements have operated within panel discourses and contract agreements, and the potential repercussions for the ‘restorativeness’ of the reparation panel model generally, is further analysed.

3.3.3 Reparation Realities: Apologies and the Position of Victims

As has been illustrated within a number of theoretical arguments, the victim should be a crucial participant in any apology act. However, the reality of reparation panel case

²⁵ This raises the question as to whether or not panellists within these pre-panel discussions are successfully explaining the importance of restorative principles and the reparative actions required within the reparation process.

management illustrated a general unwillingness of many victims to participate directly within the process. The town based *RJC* project's coordinator writes to every direct victim with a stake in a referred case.²⁶ She may also ring a victim depending on the crime and after consulting Garda officers on the most appropriate approach. That victim is asked whether they wish to be involved either directly or indirectly within the reparation process. Many of those victims contacted have simply not replied, while others have asked to be kept informed of the case's progress or have indirectly participated by, for example, writing a victim impact statement which has been discussed during panel deliberations. Caseworkers in the *RJS* city based model occasionally write to a direct victim in a high tariff reparation case such as one involving serious assault. Not every direct victim will be asked to participate however within the *RJS* model. One reason for this is the two-pronged restorative approach that this model undertakes within the management of referred cases. The model operates a Victim Offender Mediation (VOM) scheme as well as the Offender Reparation Panel (ORP) format. Obviously, the mediation model is grounded on enabling the participation of the victim in a face-to face, or 'shuttle' meeting with the offender.²⁷ The reparation panel format has developed over time to concentrate on the offender's role in the offending and the need for these participants to illustrate a level of accountability for the offending behaviour. While there has been some examples of participating offenders within the *RJS* reparation programme being offered the opportunity, during a panel discussion, to meet a direct victim through a process of mediation, for the most part the panel will concentrate directly on the role and responsibilities of the offender.²⁸ Due to a lack of direct victim involvement, this has also proved the case within the *RJC* model also.²⁹

²⁶ For examples of both an offender and a victim invitation letter as part of the *RJC* programme's policy, see appendices 5 and 6 respectively. An information leaflet was included with both letters. See appendix 4.

²⁷ Shuttle mediation can see a facilitator 'shuttling' from room to room between a victim and an offender relaying information in a case where both participants are unwilling to sit down face-to-face.

²⁸ Out of a total of 41 *RJS* panels observed, the possible opportunity for a mediation was only proposed on five occasions. Obviously, any prospects for a mediation would depend on the victim's willingness to engage with the offender. It was explained during interviews with caseworkers and a chairperson of the *RJS* model that the VOM format had been gradually overtaken by a reliance on the reparation format. However, with the increasing referral of more serious cases, the programme was in the process of deliberating how to better involve a larger number of direct victims.

²⁹ Out of approximately 105 *RJC* managed reparation cases from January to November 2014, 25 victims were either directly or indirectly involved within the management of their particular case. Out of those,

It should again be noted at this point that the apparent lack of direct victim participation within the panel process must, at least in part, serve to weaken restorative principles within this reparation model. In saying that, the Irish model is not alone amongst restorative programmes in struggling to fully engage with victims of crime. However, this deficit in direct stakeholder involvement can be argued to signal something of a weakness in both city based and urban based reparation programmes. Direct victims of crime are, after all, primary stakeholders within any restorative justice process. They are at the forefront when it comes to truly understanding the harmful effects of a particular crime and the potential means by which that harm can be repaired. While reparation panel members, as further illustrated within this chapter, can be said to successfully represent elements of a missing victim's thoughts and emotions, such representation remains secondary in nature. It is only by hearing from the victim themselves, either directly or indirectly by letter, that the full nature of the referred criminal behaviour can be determined. An increase in victim participation would improve panel processes in a number of ways. Participating offenders would be able to hear at first-hand the level of harm that their actions have caused. This, in turn, could improve offender accountability. A participating victim could also benefit in that, potentially, they would be able to hear directly why they had been targeted in this way. Furthermore, both community volunteers and criminal justice professional representatives would be able to better relate reparative terms to respective contracts as they would be discovering at first hand the level of harm caused. As noted previously, both programmes have attempted to increase this element of primary stakeholder participation. The *RJC* model will write to every direct victim of a referred case, while the *RJS* programme has attempted to involve victims within certain cases. Potentially, the quality of restorative principles utilised within reparation panel policy will be ultimately judged by the manner in which both programmes are able to bridge this restorative lacuna going forward.³⁰

This lack of direct victim participation within reparation practice can have an effect on the nature of restorative apologies within contract agreements. Both panel programmes

only two were face-to-face encounters with an offender. However, this does not take into account the number of cases which did not concern a direct victim. Interview with RJC manager, 19th November, 2014.

³⁰ This weakness of limited direct victim participation within reparation panel practice is further explored within the conclusion chapter of this thesis.

have, over time, encountered a 'catch 22' conundrum when managing reparative contract terms. As has already been noted, the ideal apology act will result in a participant freely offering up a full and frank apology face-to-face with a voluntarily participating victim. This apology will be laden with true, genuine remorse and the victim will, at least in part, forgive the transgression and accept the offer. Even if a victim is unwilling to directly participate, symbolic letters of apology backed up by material restitution can successfully illustrate to that victim that the participant has attempted to repair the harm caused by the offending. However, a problem arises whenever a recognised victim does not reply to the programmes' offer of participation and does not wish to be involved under any circumstances in the reparation process. A participating offender still has to illustrate to the panel members that they have recognised the wrongfulness of their actions and the need for repair. Participants are still required to write letters of apology detailing their remorse and accountability. This remains the case even though, for the most part, the victim does not receive the written letter of apology, does not realise that a letter has been written, and has not been made aware of any of the reparative attempts at increasing such restorative principles of remorse and accountability. The question which then arises is whether or not this lack of victim involvement has resulted in a dilution of the restorative quality of a participant's efforts. In theory this should be the case as an ideal apology is seen to involve both direct stakeholders in a 'ceremonial exchange of respect';³¹ however, as will be illustrated, the actual act of writing such an apology can carry with it restorative potential of its own, enabling the participant to think about his actions and understand to a greater extent how these actions have affected other people, including both victims, potential victims and the wider community.

3.3.4 Reparation Realities: Methods of Apology Delivery

The second important element within this conflict between theoretical idealism and the practical reality of managing reparation apologies leads on from the problems of absent victims and relates to the practiced method of apology delivery within panel contract agreements. Within a high number of reparation cases managed between both

³¹ Richard Abel, *Speaking Respect, Respecting Speech*. (Chicago: University of Chicago Press, 1998) 265.

programme models, apologies have been delivered in written form due to the absence of directly participating victims.³² Many of these written apologies were long pieces, numbering several pages and appeared to take a lot of time and effort to complete. Furthermore, as previously identified during the outlining of reparation panel practice and procedure within Chapter 2, these written apologies could be addressed to a single individual or a number of different people within a diverse group. Broadening the recipient pool of written apologies in this way enabled panellists to highlight accountability concerns and substantiate the level of harm caused by the offence. It also helped to widen the scope of the offending to include other community members such as family members, friends and business owners. Garda officers who had been assaulted or verbally abused would also be included on occasion. This also served to widen the communitarian ethos in that participants were told that these officers were also members of the community, and were providing a valuable service to that community, sometimes at great personal risk to themselves. Through subtle coaxing by panellists, participating offenders were observed recognising and pinpointing both direct victims and indirect victims such as their own parents and family members, as well as the victim's significant others. Arresting Garda officers, shop owners, bar managers and security guards have been written letters of apology on occasion, some of which were received. Others received a face-to-face apology. All were listed within panel discussions as additional victims of offences such as theft, public disorder and assault. The written apology format, therefore, was observed to be varied and included a wide range of victims and relational issues. Just as Radzik and Bennett have previously claimed that successful apologies can help to diminish possible threats to established relationships,³³ Schluter has further argued that crime should be primarily regarded within a 'relational justice' dynamic. As part of this relational justice concept,

even in those cases where the offender does not personally know the victim, relationship(s) can be said to exist by virtue of their being citizens together,

³² No victims directly participated within those 47 panels observed across both programmes.

³³ Linda Radzik, *Making Amends. Atonement in Morality, Law and Politics* (Oxford: Oxford University Press, 2009) 95. See also Christopher Bennett, *The Apology Ritual* (Cambridge: Cambridge University Press, 2008) 112.

bound together by rules governing social behaviour. Crime is only secondarily to be regarded as an offence against the state and its laws'.³⁴

Within panel observations, this 'relational' factor could be seen as representing a common theme during the management of referred cases. Some of the crimes managed within observed panels involved disagreements between community members known to each other previously and even, on occasion, good friends.³⁵ Further, it was clear that many victims could be affected indirectly because of the offending behaviour, such as family members of both offender and victim. The approach of widening the scope of the offending behaviour has resonated with Shapland and others, who have argued that, for an apology to be successfully achieved in a restorative justice context within a wider, formal criminal justice system and amongst adult offenders charged with serious offences, it has to be a 'more complex and more evidenced entity—addressed to several audiences and backed up with the symbolic reparation of acting to change one's life'.³⁶ Written letters of apology were indeed 'addressed to several audiences' when relevant due to the nature of the crime referred. Further, these written apologies were also 'backed up' and reinforced by various reparative symbolic acts. For example, as well as the more routine financial and community service reparation terms agreed within panel discussions, all participating offenders had to also sign a 'good behaviour agreement' in which they would promise not to commit further crimes in the future. This 'agreement' was purely symbolic in that no additional legal penalty would have ensued from its signing if further crimes had been committed. It was seen as a gesture of good faith by the participant that they would stay clear of further criminal behaviour and reinforced

³⁴ Michael Schluter, 'What is Relational Justice?' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 309. This relational justice concept is explored further within the 'meso-community of care, concern and accountability' theory introduced within Chapter 4 of this thesis. See also Andrew Ashworth, 'Responsibilities, Rights and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 585 who has questioned the legitimacy of such victim/ offender relationships within the restorative justice concept due to concerns over the proportionality of sentencing.

³⁵ For example, one case involved an offence of fraud between two members of the community who had known each other for many years. The offender had completed numerous jobs previously in the house of the victim. On this occasion, he falsely claimed for materials he did not use, and was found out and reported by the victim herself.

³⁶ Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, 'Situating Restorative Justice within Criminal Justice' (2006) 10 *Theoretical Criminology*, 505, 515.

the good work carried out within the formal contract as a whole. Contract agreements were further reinforced by another written piece of work, what both programmes termed a 'journal', which set out other aspects of the criminal behaviour from the offender's perspective. This journal would outline issues such as future positive hopes, aims and ambitions as well as various methods by which further recidivist behaviour could be avoided. These written exercises within agreement terms were illustrations of the need to help participants to think clearly about the direction their lives were heading in, while also recognising the dangers of crime and the possible advantages of a non-recidivist career path for both the participating offender, their family and friends.

It can be said, therefore, that there were a number of positive elements within the reparation panel format of written rather than verbal apologies, and within the related written pieces as part of the overall contract agreement. However, the written format of apology delivery also leaves the reparation panel process falling somewhat short of the theoretical idealism of the 'fully restorative' face-to-face, verbal apology between participating victim and offender. While Irish reparation panels continue to only manage adult offenders, it has been argued that juvenile offenders are far more likely to apologise to victims in face-to-face meetings than if they do not have face-to-face restorative justice, regardless of the stage of the criminal justice process at which that meeting has occurred.³⁷ In this regard, Tavuchis has contrasted an 'apology' with that of an 'account'. Thus, an apology can be portrayed as a 'speech act that fully acknowledges responsibility for wrongdoing...a genuine display of regret and sorrow', whereas an account can be seen as an 'excuse, defence, justification or explanation' for a criminal act.³⁸ For Tavuchis, an 'apology' is said to represent

³⁷ Heather Strang, Laurence Sherman and Dorothy Newbury Birch, *Restorative Justice*: (UK: Youth Justice Board: 2008) 32. See also, L. Sherman, H. Strang, C. Angel, D. Woods, G. Barnes, S. Bennett and N. Inkpen, 'Effects of face-to-face restorative justice on victims of crime in four randomized controlled trials' (2005) 1 *Journal of Experimental Criminology* 367. Further, see Carrie J. Petrucci (2002) 'Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System' 20 *Behavioural Sciences and the Law* 337, 343.

³⁸ Nicholas Tavuchis, *'Mea Culpa: A Sociology of Apology and Reconciliation'*. (Stanford: Stanford University Press, 1991) cited in Hennessey Hayes, 'Apologies and Accounts in Youth Justice Conferencing: Reinterpreting Research Outcomes' (2006) 9 *Contemporary Justice Review* 369, 375.

‘a special kind of enacted story whose remedial potential, unlike that of an account, stems from the acceptance by the aggrieved party of an admission of iniquity and defencelessness. It is thus about a fall from social grace related to someone ... who has the power to restore the offender to that state.... Needless to say, explanations, excuses, are also stories whose truth value or sincerity may be questioned, accepted, or denied. But they differ from apologies precisely because the narrator invokes something (or someone) to deny or to mitigate responsibility for an offence that undermines that which unites and binds... In practice, it makes a difference to us in our roles as suppliants and recipients if we interpret a speech as an apology or an account’.³⁹

The fact that most reparation panel apologies are in written form and that many victims are not present during the offer of apology is therefore troubling from the perspective of ‘ideal’ apology theorists, although alternatively the absence of victims does limit the potential for such apologies to be rejected. Aligned with these concerns is the further realisation that many victims do not even receive the written apologies that are produced on their behalf due to the fact that they have chosen not to become involved in the reparation process generally. These factors might arguably strengthen the concerns of restorative theorists that the written apology within reparation agreements has resembled a mere instrumental, managerial inspired legal requirement rather than the ideal, communitarian rich, ‘meaningful interaction’ between victims, offenders and community members as recommended by Tavuchis and others.⁴⁰ Being able to hear at first hand the apology from the participant, being able to interpret the act while looking at the participant’s demeanour and facial expressions, could increase the opportunities for victims to believe that such remorse is truly sincere. It might increase the

³⁹ Ibid.

⁴⁰ As noted earlier, Able argues that an apology can represent a ‘ceremonial exchange of respect’. See Richard Abel, *Speaking Respect, Respecting Speech*. (Chicago, Illinois: University of Chicago Press, 1998), 265.

opportunities for a successful 'apology' in Tavuchis' terms, rather than a written, somewhat impersonal 'account'.⁴¹

In counter argument to the benefits of such a first hand, interactional meeting between both victim and offender, there is the possibility that such a personal exchange might increase the potential for a victim to recognise a lack of sincerity, thus increasing their level of trauma.⁴² A failure to apologise by offenders, along with victims' doubts over the legitimacy and genuineness of those apologies offered, can serve to increase this trauma and increase the potential for secondary victimisation. Victims can feel that their case has not been taken seriously and that their harm has not been sufficiently acknowledged despite their willingness to directly engage in the process. This can then have repercussions for future practices which depend on direct victim participation and support. Daly has recognised how there may be an element of pressure placed on participating victims to accept an apology, especially in a face-to face mediation encounter. A victim may feel obligated to accept, regardless of whether the apology is believed to be truly genuine in nature.⁴³ Similar concerns have been highlighted over the use of direct apologies within offences involving domestic violence. For Cossins, an apology within this context can serve to cover up the true objective of the participating offender, a strategic attempt at currying favour with an abused partner after a domestic

⁴¹ It should be considered at this point that an idealized apology, delivered face-to-face and verbally for example, appears to place a primacy on particular forms of communication methods. These methods are for the most part assumed to be neutral but, in reality, are not neutral at all. For example, being able to "hear and interpret while looking" assumes a form of functional neutrality which simply does not exist across the human race. It might be argued that the restorative literature surrounding this aspect of reparative practice has perhaps not caught up with a number of the standards within the United Nations Convention on the Rights of Persons with Disability (UNCPRD).

⁴² As part of the research carried out within the South Adelaide Juvenile Justice conferencing project (SAJJ), Daly found that only 27% of victims believed the sincerity of offenders' apologies, the majority of which were carried out face-to -face. A further 50% of victims did not believe the apology had helped to repair the harm caused by the offence. See Kathleen Daly, 'Mind the Gap: Restorative Justice in Theory and Practice' in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 225.

⁴³ Kathleen Daly 'Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases', (2006) 46 *British Journal of Criminology* 334, 349. Daly's research was one of several studies in a programme of research on Restorative Justice in cases of gendered violence. The study compared the court and conference handling of youth sexual offence cases and whether the court or the restorative conference process was the preferable legal intervention from a victim's perspective.

violence incident,⁴⁴ while Stubbs has also reiterated the danger of apologies being used in 'gendered ways', offered up by abusers as leverage to return to their abused partners.⁴⁵ Indeed, in relation to such concerns, Sherman, Woods, Angel and others found that female victims were more likely than male counterparts to view apologies as more sincere in nature.⁴⁶

Of course, restorative models such as group conferencing, victim offender mediation and circle sentencing programmes are able to offer, in principle at least, more opportunities for a personal and direct apology exchange to take place. Within the New Zealand context, Moore's observations of a family group conferencing juvenile model found that verbal apologies were given by the individual offender to both the direct victim and the victim's supporters, as well as by the offender's supporters to the direct victim and their supporters, and that the overwhelming majority of participating offenders were genuinely regretful and remorseful. Furthermore, most victims and their supporters were seen to reciprocate the apologies with genuine forgiveness, although the question might be asked of Moore's research as to how this somewhat abstract concept of forgiveness can be measured generally.⁴⁷ Thus, within this conferencing model, the apologies utilised resulted in genuine remorse coupled with elements of forgiveness. This was despite the concerns mooted by Tavuchis of moving away from the 'interpersonal apology' between direct victim and offender and including outside influences such as third parties and other collective groupings.⁴⁸ Within another

⁴⁴ Annie Cossins, 'Restorative Justice and Child Sex Offences: The Theory and the Practice' (2008) 48 *British Journal of Criminology* 359, 368.

⁴⁵ Julie Stubbs, 'Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice' (2007) 7 *Criminology and Criminal Justice* 169, 179.

⁴⁶ Laurence Sherman, Heather Strang, Caroline Angel, Daniel Woods, Geoffrey C. Barnes, Sarah Bennett and Nova Inkpen, 'Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized Controlled Trials' (2005) 1 *Journal of Experimental Criminology* 367, 388. See also Carrie J. Petrucci (2002) 'Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System', 20 *Behavioural Sciences and the Law*, 337, 356 wherein she argues that victims rarely do not accept apologies even if they prove to be unconvincing.

⁴⁷ David B. Moore, 'Shame, Forgiveness and Juvenile Justice' (1993) 12 *Criminal Justice Ethics*, 3, 12.

⁴⁸ Ibid. The involvement of third parties, as Tavuchis argues, introduces concerns over neutrality and also serves to 'shift attention from the original trespass to the moral integrity of the interlocutors, in most cases that of the offender'. Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation*. (Stanford: Stanford University Press, 1991), quoted in David B. Moore, 'Shame, Forgiveness and Juvenile Justice' (1993) 12 *Criminal Justice Ethics*, 3, 12.

conferencing example, as part of an evaluation of predominantly adult schemes in England managing serious offences such as burglary and serious assault, both participating offenders and victims recognised a need for something other than the symbolic reparation that apologies can offer.⁴⁹ Research illustrated that a number of participating offenders tended to believe that a simple phrase would not be enough to repair the harm caused and thus offered to apologise to the whole conference group not just the direct victim, as well as offering reparation and promises of future good behaviour.⁵⁰

It is a matter of some debate therefore whether a written apology, without a reply from the victim as has been a common occurrence within observed Irish panel practice, serves to negate a respectful apology exchange whereas a face-to-face encounter in which an apology is offered and accepted, or at the very least received, might help to reinforce this respect principle further. For example, one example of victim feedback to the *RJC* model illustrated the potential of a direct restorative apology exchange. Within this case, managing a criminal damage offence, the person affected by the crime said,

‘thank you so much for the visit to [the property damaged by the offence where restorative conference was held]. The two superb bunches of flowers brought by [the person who caused the damage] and accompanied by his kind and thoughtful words, his courteous manner and interest.....impressed [us both] especially. We both feel he is the sort of young man that could do so well in life and hope that this incident be put behind him and every opportunity be given for him to succeed in life. Just to affirm that we do fully accept his apologies and the very good manner in which he made them. Thank you particularly for all your efforts in restoring relationships’.⁵¹

⁴⁹ Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, ‘Situating Restorative Justice Within Criminal Justice’ (2006), 10 *Theoretical Criminology* 505, 514.

⁵⁰ Ibid.

⁵¹ See appendix 11 for further examples of *RJC* participant feedback within this model.

In this regard, while a face to face encounter might arguably increase the opportunities for genuine remorse to be illustrated and accepted within an apology exchange, it generally remains difficult to measure the depth and genuineness of such emotions. Indeed, there is some disagreement as to whether or not it is important if any apology, written or verbal, contains genuine remorse or is simply seen as a means of exercising a 'strategic ploy' in order to 'buy off' panellists' demands.⁵² The notion of genuine repentance, and its importance within the reparative apology framework, is outlined within the next section.

3.4 The Reparative Apology: Genuine Exchange or Formalised Ritual?

Braithwaite is in no doubt regarding the importance of true remorse and genuine regret following a criminal wrong. For Braithwaite, an apology without remorse will lack restorative power. He argues that an apology, along with forgiveness and mercy, will be rendered meaningless unless they 'well up from a genuine desire in the person who forgives, apologises or grants mercy'.⁵³ Alternatively, for van Stokkom, searching for the sincerity within an apology would be both impractical and insulting to a participating offender and would raise the prospect of a culture of 'forced confessions'⁵⁴ and 'compulsory attitudinising' wherein evidence would be required to back up the genuine nature of the offered apology.⁵⁵

⁵² Bas van Stokkom, 'Forgiveness and Reconciliation in RJ Conferences' (2008) 15 *Ethical Perspectives* 399, 413.

⁵³ John Braithwaite, 'Principles of Restorative Justice' in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 12/13.

⁵⁴ Bas van Stokkom, 'Forgiveness and Reconciliation in RJ Conferences' (2008) 15 *Ethical Perspectives* 399, 414.

⁵⁵ See Andrew von Hirsch, Andrew Ashworth and Clifford Shearing, 'Specifying Aims and Limits for Restorative Justice: A 'Making Amends' Model?' In Andrew von Hirsch, Julian V. Roberts, Antony Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland: Hart Publishing, 2003) 33. An example of such attitudinising, as stated by von Hirsch et al, could see remorse being 'browbeaten' out of participating offenders, an exercise which would result in 'no real apology at all'. See further Andrew von Hirsch, *Censure and Sanctions* (Oxford: Oxford University Press, 1993), 83. Cited in Christopher Bennett, 'Taking the Sincerity out of Saying Sorry: Restorative Justice as Ritual' (2006) 23 *Journal of Applied Philosophy* 127, 130.

With the sincerity of apologies in mind, it might be further argued that there are more opportunities for successfully realising genuine remorse when managing adult rather than juvenile offenders as is the case within the reparation model. For example, research on Youth Offender Panels in England and Wales charged with the task of implementing Referral Orders has emphasised the practical problems that can arise when restorative apologies are included within juvenile restorative practices.⁵⁶ Young offenders, especially males, were judged to find the act of apologising on demand to a group of people 'extremely difficult, if not impossible'.⁵⁷ Reasons for this perceived difficulty for juveniles included perceived threats to both self-esteem and self-identity.⁵⁸ Frankenburger has further argued that youths can struggle to take on the role of 'the other' and to think empathetically.⁵⁹ Furthermore, Hayes has noted that youths might actually be prone to deny harm and injury within a conference and not freely offer up apologies because of 'competing demands'; that is to say, they may acknowledge responsibility but accompany these acknowledgements with excusatory claims surrounding neglectful parents and economic hardship.⁶⁰ Hayes has noted how, through the conference 'speech act', the youth can 'drift' from apologetic discourse back and forth to mitigating accounts for the criminal behaviour. Thus, complete forgiveness may be difficult to achieve due to perceived attempts at 'acknowledging blame but deflecting shame'.⁶¹ Similarly, for Presser and Hamilton, the act of reconciliation is seen to be beyond the moral competence of many juvenile offenders who instead adopt an attitude of defiance.⁶² In this regard, within conference agreements as part of the South

⁵⁶ Alex Newbury, 'I Would Have Been Able To Hear What They Think: Tensions in Restoring Restorative Outcomes in the English Youth Justice System' (2011) 11 *Youth Justice* 250.

⁵⁷ *Ibid.* 261.

⁵⁸ *Ibid.*

⁵⁹ Kristina.D. Frankenberger, 'Adolescent Egocentrism: A Comparison among Adolescents and Adults' (2000) 23 *Journal of Adolescence* 343. Cited in Kathleen Daly, 'Mind the Gap: Restorative Justice in Theory and Practice' in Andrew von Hirsch, Julian V. Roberts, Anthony E. Bottoms, Kent Roach and Mara Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003), 233. Daly argues that juveniles within conference agreements did not think along the lines of how they could help victims but rather 'what they would be made to do by others'.

⁶⁰ Hennessey Hayes, 'Apologies and Accounts in Youth Justice Conferencing: Reinterpreting Research Outcomes' (2006) 9 *Contemporary Justice Review* 369, 378.

⁶¹ *Ibid.*

⁶² Lois Presser and Cynthia A. Hamilton, 'The Micropolitics of Victim-Offender Mediation' (2006) 76 *Sociological Inquiry* 316.

Australia Juvenile Justice Project (SAJJ), managing group conferencing of juvenile offenders charged with violent crimes and property offences, Daly has highlighted concerns over the perceived sincerity of verbal apologies offered to victims. Although most juvenile offenders claimed that they had apologised because they were genuinely sorry for the harm caused, many of the victims who received these apologies remained sceptical of the sincerity of remorse offered.⁶³

Alternatively, however, as part of the Northern Ireland based youth group conferencing model, it has been argued that apologies were offered, by juvenile offenders in the vast amount of conference cases, whether the direct victim attended in person or not.⁶⁴ Moreover, further study in this jurisdiction illustrated a similarly high rate of apology delivery during youth conferences managing serious offences against the person and property, with a high proportion of victims said to be satisfied with the apology received.⁶⁵ Within the Canberra based Re-integrative Shaming Experiments (RISE), which involved the random assignment of juvenile middle-range property and violence offences to court or restorative conferencing, the importance of emotional over financial restoration was argued to be indicative of many conference agreements. Victims attending the RISE conferences were judged to have received more apologies than their court counterparts, and these apologies were seen to be more sincere in tone.⁶⁶ Moreover, as part of a research study in Bethlehem, Pennsylvania, evaluating cases involving violence against the person and property offences, McCold and Wachtel found that, in restorative conferencing cases randomly assigned to conferences, three

⁶³ Kathleen Daly, 'Conferencing in Australia and New Zealand: Variations, Research Findings and Prospects' in Alison Morris and Gabriel Maxwell (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford: Hart Publishing, 2001).

⁶⁴ Catriona Campbell, Roisin Devlin, David O' Mahony, Jonathan Doak, John Jackson, Tanja Corrigan and Kieran McEvoy (2006) *Evaluation of the NI Youth Conferencing Service*. NIO Research and Statistics Series. Report Number 12. Belfast. Northern Ireland Office, 75. Apologies were offered in 87% of all cases reviewed, with 85% of victims satisfied with the apology.

⁶⁵ Jonathan Doak and David O'Mahony, 'The Vengeful Victim? Assessing the Attitudes of Victims Participating in Restorative Youth Conferencing' (2006) 13 *International Review of Victimology* 157, 168. 98 % of victims received an apology, of which 84% were said to be satisfied with the remorse shown. See page 162 for the range of offences managed.

⁶⁶ Heather Strang, 'Justice for Victims of Young Offenders: the Centrality of Emotional Harm and Restoration' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 288.

quarters of victims believed the apologies they had received were sincere. However, almost half of those victims did agree that the sole reason for the offender participating at all was to mitigate for any forthcoming punishment.⁶⁷

Despite these examples, a general case might be argued for adult participating offenders that they, potentially at least, represent a greater opportunity for a more successful series of apology acts. Certainly within the Irish reparation panels observed, while there were a number of cases where participants did on occasion offer up a number of excuses for the offending behaviour, there was only three cases in which the offender failed outright to apologise in any form. While many participants did appear to be genuinely remorseful for the harm caused within panel discussions, evaluating the genuine nature of that remorse was difficult to substantiate. Based on the research for this thesis it can be suggested that, within reparation contract formulation and the delivery of apologies, searching for the sincerity of apologies must be classed as one impractical step too far down the restorative road for reparation panels and should be viewed as falling outside the remit of reparation panellists. While it would be ideal for an offender to illustrate true, genuine feelings of remorse either in a written letter or by way of a face-to-face meeting, actually attempting to measure such genuine emotion would be almost impossible. Many of those letters observed as part of reparation practice did appear to be genuine, heartfelt and sincere. The participants observed within panels directly apologising to panel members, some voluntarily, also appeared to be sincere with one particular participant crying as he did so.⁶⁸ Other participants appeared somewhat less genuine in their attempts at remorse.⁶⁹ However, again it should be reiterated that it is almost an impossible task to attempt to quantify the level of genuine remorse shown within a written apology. While the collective reparative contract terms, if all completed successfully, will help panellists and the referring judge to gauge the general level of

⁶⁷ Paul McCold and Benjamin Wachtel Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project (Pipersville, PA: Community Service Foundation, 1998). The authors found that 44% of victims believed that offenders apologised only because of this fear of future sanctions.

⁶⁸ This was a case regarding a 19 year old student and involved a number of offences including criminal damage and assault.

⁶⁹ One case example involved a participant who refused to apologise at all. This case is discussed further within this chapter.

remorse on offer, practical reality has illustrated that panellists can only hope, through the holding of a reparation panel based on restorative principles, that those apologies delivered within contract agreements contain at least a level of true remorse and genuine regret. That has to be the limit of reparation demands when managing restorative apologies. For Duff, while sincere apologies will contain the most value, insincere apologies can also be at least partly effective. As he has noted,

‘the demand that the wrongdoer apologise, even if we suspect that his apology will not be sincere, can communicate both to him and to the victim our recognition of the wrong that he did: and we hope that the experience of apologising might help to bring him to recognise for himself the wrong that he did’.⁷⁰

In this regard, Christopher Bennett has further argued that remorse within an apology need not necessarily contain the restorative power that Braithwaite has claimed.⁷¹ For Bennett, a written apology, such as that practiced within reparation panel practices, need not necessarily have to succumb in importance to its verbal alternative. Indeed, Bennett argues that the ideal method of an offender giving an apology within a restorative justice model should *be* through a written script and that script should be read aloud to all participants at the end of the process.⁷² In his view, specific illustration of any emotion, including remorse, need not be a requirement within the presentation although words of regret can form part of the scripted apology.⁷³ Van Stokkom, in attempting to clarify Bennett’s ‘apology ritual’ model, has interpreted such a written apology, read aloud and containing phrases such as ‘I regret’ and ‘I apologise’, as

⁷⁰ R.A. Duff, ‘Restorative Punishment and Punitive Restoration’ in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 387.

⁷¹ Christopher Bennett, ‘Taking the Sincerity out of Saying Sorry: Restorative Justice as Ritual’ (2006) 23 *Journal of Applied Philosophy* 127, 130.

⁷² It should be noted at this point that a participating offender within the reparation panels will write out his or her own letter of apology. See appendix 8. Moreover, an additional journal questionnaire outlining the ways in which their behaviour affected themselves and their family has also been included within contract agreements. See appendix 7. Both pieces have been read by panellists during second meetings but not read aloud by the participants themselves.

⁷³ Ibid. Bennett has labelled this form of apology as an ‘apology ritual’.

representing a series of 'speech acts aiming at moral persuasion' rather than an emotional sentiment. Bennett explains his theory of 'apology ritual' thus,

'my aim here has been to propose a view on which restorative justice is made formal and ritualistic, and therefore leaves offenders free to comply with their sentence in a dissenting spirit, but promotes values (of victim-satisfaction and reconciliation of the offender to the community) that proponents of restorative justice are right to prize'.⁷⁴

For Bennett, the offender must go through the ritual and choose a number of emotionally demanding options while declaring that it is right and proper to apologise on this occasion. Therefore there does remain an element of sincerity within the ritual itself. In this way, a victim can then be vindicated by 're-affirming the values by which the community stands'. The offender can be legitimately classed as reconciled after such a ritual whether sincerity is present or not, 'for, by completing his sentence, he achieves formal reconciliation, and formal reconciliation is all that the State can legitimately pursue'.⁷⁵

The format of apology delivery within the Irish adult reparation model shares many of Bennett's 'ritual' characteristics. The written letter can be classed as a type of personal script. It is predominantly used as a form of apology within panel procedures and it is read by all participating offenders, although not read aloud. It is generally only viewed by those victims willing to participate in the process as well as the panellists themselves at second panel meetings within the *RJS* model, or by the facilitator within the *RJC* programme. For Bennett, such written statements of remorse, similar to those examples observed within reparation panel practice, can represent part of an appropriate apology act. Sincerity, for Bennett, does not necessarily have to be present within the act, although it may form later as a by-product of the ritual. For reparation panel members,

⁷⁴ Christopher Bennett, 'Taking the Sincerity out of Saying Sorry: Restorative Justice as Ritual' (2006); 23 *Journal of Applied Philosophy* 127, 140

⁷⁵ *Ibid.*

and indeed for referring judges, some aspects of Bennett's blueprint can be carried forward within future practice. While a fully sincere reparative apology would be the ideal result for all associated with panel procedures, and panellists should always strive to achieve at least some element of sincerity within reparative terms, the fact that genuine sincerity might not be evident within discussions should not automatically result in the participant failing the process. While it is difficult to judge genuine remorse, all panellists can attempt to achieve is a successful completion of all agreed reparative tasks and the formulation of detailed letters of apology outlining the crime and a level of acknowledgement that harm has occurred and should be repaired. Even if a requisite level of sincerity is not initially present, as Bennett has himself noted, such sincerity has the potential to form later as a result of the discussions and reparative acts undertaken.

With this in mind, however, it should also be noted that a number of participating offenders within the panel process tended to struggle with literacy skills. For some, the *RJS* caseworkers would take them through the writing process between first and second panel meetings in order to ensure the letter would be deemed appropriate by other panel members and the referring judge. This would see the offender narrating to the caseworker and the caseworker writing the letter. During one panel managed by the *RJC* programme, an offender was a member of the traveller community and could not read or write at all. The facilitator on this occasion noted that there was a traveller community representative who had worked with the programme in the past and that he would be able to participate with the offender in writing up the apology letter. These case examples of offender illiteracy emphasise further practical difficulties within the written letter delivery format. Such examples were only observed within four of the forty seven panels researched in total. However, it leads to further concerns over who has actually written the letter and to what extent have the participant's own thoughts and feelings been properly presented. Within these cases, whilst not an ideal restorative based scenario, there was no real option for the panellists involved other than to carry the process forward using these methods. An experienced caseworker, or facilitator as within the *RJC* model, should be able to mould the exercise in such a way that it is the participant themselves who is explaining their sense of remorse 'through' the panellist. This process then, further backed up by other reparative acts, can still be classed as at

least partly restorative in nature despite the idealistic lacunas presented. Within the next section, the restorativeness of the reparative apology process, alongside the communitarian value of apologetic discourses within panel case management, is further examined.

3.5 Apology and the Restorative and Communitarian Dynamic

When evaluating the restorative nature of reparation panel apologies, a number of factors have to be considered. The need to apologise for the harm caused by an offence remains an important principle within panel practice generally. The actual act of apology also remains a vital ingredient within reparation contract agreements. As noted earlier within this chapter, out of a total of forty seven panels observed as part of this research thesis, there were only three cases in which an apology was not agreed in principle as part of a contract agreement. In two of those cases, the discussion broke up without any contract agreement finalised, with further panels scheduled in the hope that the participant would be more willing to cooperate.⁷⁶ In the other case, managing a criminal damage and public order offence, the participant refused to apologise at all as part of the agreement. This particular case illustrated the one example from those observed where it could be competently argued that the process was lacking in restorative principles. It also served to emphasise the fundamental importance of the apology act within reparation panel procedure, and what can happen whenever this concept is not fully realised as part of contract discussions. Within this case example, managing offences of criminal damage and public order, there appeared to be a complete lack of accountability generally. While the offender agreed to write a letter of apology to his own parents, he refused to apologise in any form to the direct victims at the centre of the dispute. The Garda panel representative attempted to highlight the need for an apology, stating that such an act would help to significantly repair the harm that had been caused. However, and somewhat surprisingly, the representative then stated that 'you don't have to commit to it'. The chairperson also stated that 'we can only respect the fact that you do not want to make the apology'. The other reparative terms, such as

⁷⁶ One of the downsides of the limitations of observation, due to the reliance on gatekeeper access, was that I did not get to follow cases through the system fully.

a financial compensatory sum, were agreed and the panel signed off on the participant's contract. During a post-panel discussion of the case, the chairperson noted that the judge might well be unwilling to grant a diversionary route from prosecution if no remorse for the victim was evident. The Garda representative also noted that justice had not been fully restored and that this particular case was, as he put it, 'on the cusp' of what should be allowed within the reparation panel process.

This case example illustrated the difficult balancing act faced by panel members. While no offenders should be 'forced' or brow-beaten into apologising, the fact that no apology was forthcoming, despite numerous references from panellists to its importance within the process, suggests that the case discussion should have been halted at that point. While initially this participant may have been judged to have been an appropriate offender for referral to the reparation panel, a careful pre-panel discussion with the relevant caseworker should perhaps have discovered this lack of remorse and accountability. However, even if there were concerns over the participant initially, there is always the possibility that the reparation discussions will 'open the eyes' of the offender and result in a change of attitude. Therefore, while it was fair to allow the offender to participate, once it was clear that it was not having the desired effect, then the process should have stopped with the offender referred back to the judge for sentencing. It should be underlined that this was the only case observed wherein an agreement was signed off without an apology to the victim in any form being required. However, with the general lack of accountability throughout the panel discussion, coupled with the refusal to apologise to the victims, it was surprising that a contract was agreed at all.⁷⁷ This, in turn, accentuates the 'tick box', restorative conveyor belt potential within reparation case management. Panellists should be wary of agreeing contracts which have failed to fully embrace certain restorative principles, due to possible managerial concerns relating to cost effectiveness and increased referral clearance targets. Within this case, it did seem that there was a real possibility the offender would carry out the reparative acts agreed. However, because of the lack of an

⁷⁷ For example, when asked about the neighbours that had been victimised by the offence, and the harm subsequently caused, the participant replied, 'I don't bother with them'.

apology to the victims concerned, a referring judge could potentially refuse to recognise it.

In this regard, without an apology forthcoming, whether the victims wished to participate or not, there is a concern that the restorative quality was considerably weakened due to the apparent lack of accountability and remorse for the damage caused. It is true that a number of reparative acts were agreed as part of the reparation contract, including a letter of apology to his own parents, an agreement to write a journal on drink related actions, an essay on the participant's understanding of the incident and a 50 euros fine to charity. However, the outright dismissal of panel members' recommendations to apologise, and a refusal to acknowledge in any way the harm caused to the victims, represented a fundamental restorative flaw within the management of this particular case. Moreover, this particular case illustrated a link between the restorative principles employed and the nature of the communitarian ethos on display. For example, both offender and victim in this instance were direct neighbours. They had lived side by side for a number of years. Moreover, this dispute had been ongoing for over a decade and had involved other families in the local area. A successful reparation contract, and a genuine apology alongside an element of forgiveness, would have laid some of the groundwork for a reconciliation, at least in part, and, in doing so, would have further strengthened communitarian bonds within that particular neighbourhood area. Alternatively, a contract that was lacking in restorative principles and contained no apology requirement, whether idealised or otherwise, could be viewed as limiting the potential for an increased communitarian ethos. Even after the 'successful' completion of the above case's contract, the feuding between participant and victim, and the reasons for these disagreements, would still not have been fully addressed. It should be noted that, within this case, the victim did not want to be involved in the reparation process. However, the action of apologising by written letter, even if the victim did not wish to receive it, would have required the participant to consider his actions and could have resulted in a better awareness of the harm caused. Theoretically at least, this would have increased the restorative value of the managed contract and could also have increased the potential strength of the relational bonds within that local community.

As has been discussed throughout this chapter, the theoretically ideal restorative apology act is generally perceived as one that includes both victim and participating offender in a face-to-face verbal exchange laden with emotional energy that includes certain levels of genuine remorse and forgiveness. The practical realities of the Irish panel model and format mean that many of these 'ideal apology' ingredients can be missing during reparation discussions. Victims, direct or otherwise, are generally absent from a large number of panel deliberations. Thus, a face-to-face verbal apology between both parties, the necessary 'key ingredient' of a successful emotional exchange as argued by Petrucci, is difficult to convene as part of reparation practice.⁷⁸ The lack of victim participation leads into the apology format itself, with written letters of apology being predominantly asked for by panellists rather than any verbal exchanges. Further, the reluctance of victims to participate then results in these written apologies usually being seen by panel members and referring judges, but not by the very persons to whom they are initially addressed.⁷⁹ These practical limitations to achieving the theoretical nirvana of the ideal apology act might lead many theorists to conclude that the reparation panel based apology act is at its best severely diluted restoratively and, at its worst, not restorative at all.

Despite these concerns, the reparation apology, along with other reparative acts as part of agreed contract terms, can legitimately be called restorative in nature and serves its purpose within the practical limitations of reparation policy. One caseworker within the *RJS* city based model explained that the apology had a dual purpose within reparation contract agreement terms. First, a written apology was simply a practical evidentiary piece to illustrate to the referring judge that the participant had realised the harm that their behaviour had caused; the judge could then make a decision based on this letter, and the other successful or unsuccessful reparative acts, regarding the ultimate

⁷⁸ Carrie J. Petrucci (2002) 'Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System', 20 *Behavioural Sciences and the Law*, 337, 343.

⁷⁹ Offenders have been told on occasion by panellists that the victim did not want to participate, but that the apology letter would represent a good exercise in their ability to illustrate to the second panel and referring judge their remorse and sense of accountability for the harm caused. Others were not told whether the victim was a willing participant or not.

sentence to be handed down. Secondly, the letter of apology served to 'help the offender to reflect on the crime itself and the harm caused'.⁸⁰

Within panel observations, these aims appeared to be successfully realised within the majority of cases. Written letters of apology could be long and included a wide range of affected victims. One case involved an assault between two community members whose girlfriends had been close friends. In the aftermath of the assault, as the panel discussion duly uncovered, it was discovered that both girls were no longer friends. Panel members, with the aim of illustrating to the offender the wider repercussions of the criminal behaviour, included letters of apology to the direct victim, the participant's own girlfriend and his parents. Thus, regardless of whether or not these letters were received, the written exercise itself held the potential for that participant to better understand the depth of harm caused by the act. Indeed, during initial discussions the participant believed that only the direct victim had been affected by the assault and it was only through panel members probing deeper into the offence, and the secondary relational damage caused, that he began to realise that other people had indeed been harmed.⁸¹ Such reparative exercises can help to increase the potential of a number of restorative principles, including that of holding the offender accountable, despite the lack of direct or indirect victim participation. It can also increase the understanding amongst participants that crimes can affect a number of community members and locally based relationships other than those of the offender and victim directly.

A second panel case within the *RJS* programme, illustrated that apology letters would not be accepted by panel members if they were viewed as insufficient in detail and incomplete according to the original contract terms. It also contrasted sharply with the case above wherein no apology letter was agreed as part of the contract. One participant, a Georgian national, had not fully completed an apology letter to his parents even though this term had been a condition of the initial agreement. The case involved

⁸⁰ Interview with *RJS* based panel caseworker, Dublin, 11th September 2014.

⁸¹ For example, panellists asked the participant 'has there been anyone else harmed by your actions? What about your girlfriend and her relationship with her friend? What about the worry caused to your parents?'

a theft offence. He wanted to know whether or not the letter was necessary as he did not want to 'bring shame on my family'. The Garda panel member told the participant that the initial letter had to be rewritten as it was 'not thought through enough'. It was agreed that the offender could write another, more detailed letter of apology explaining how the theft had affected his parents and the local businesses within the community. Panel members reiterated that there was a question mark over whether this case could be ultimately successfully managed within the reparation process if important reparative terms were not completed as originally agreed. The participant on this occasion was afforded more time in which to complete the letter and another panel was rearranged. This case example illustrated that the apology letters had to be correctly detailed and fully completed within the originally agreed terms. This is despite the fact that, ultimately, the parents of this participant would in all probability not have received the letter. Panel members regularly explained to participants that apology letters would be carefully scanned by the referring judge in court. Thus, the more detailed and seemingly 'heartfelt' the letter, the greater the opportunity that the judge will accept the level of remorse offered up as part of the reparation contract.

Reparation panel members then, for the most part, have striven to uphold the legitimacy of the written letter format despite the lack of victim participation. Furthermore, the fact that a victim has attended a restorative conference or mediation does not automatically result in an enhanced set of restorative values. While it has been shown that victims can receive much satisfaction when attending certain restorative models, other case examples have illustrated a tokenistic flavour to victim participation.⁸² Zernova, for example, voices concerns that victims can remain peripheral to the process despite their supposedly 'active' involvement. She argues that, for a number of attending victims within UK based juvenile conferencing schemes,

⁸² See, for example, Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford: Oxford University Press, 2002). Within the Re-integrative Shaming Experiments (RISE) project in Canberra, it was found that 40% of victims forgave their offenders, with many others believing the apology to be genuine in nature.

‘the amount of power given to them was rather insignificant. Victims hardly had any real say over how crime should be responded to, or in defining offenders’ obligations. Yet, by allowing victims to attend conferences, express emotions, ask offenders questions and receive an apology, an illusion might be created that victims play an active role in the criminal justice process, and the restorative process ‘belongs’ to them’.⁸³

In this respect, within a US based victim offender mediation programme, victims were generally viewed as marginalised participants, with a number said to have been unprepared for the mediation process and pressurised by facilitators into behaving in a certain way. In addition, a number of victims were said to have been intimidated by participating offenders and their families.⁸⁴ Ironically then, the reparation model format with its lack of victim participation, could be adding to the restorative value of discussions rather than diluting it. The fact that victims do not, for the most part, attend reparation panels would lessen opportunities for the examples of marginalisation and intimidation noted above. Furthermore, criminal justice professionals and community representatives may be able to view the referred case in a more objective and measured manner than a resentful direct victim. Of course, within panel practices the lack of victim participation has been compensated for in some respect by the attending panel members themselves successfully taking on ‘surrogate victim’ roles when discussing the need to repair the harm caused by the crime and the need to apologise for the criminal behaviour. During a burglary case, one Garda representative told the participant of his own experience of this family home being burgled and the fear and harm that this continued to cause both him and his family for a number of years after the offence. During the contract negotiations within a theft case, the caseworker representative described to the participant her own particular distress at having a sum of money stolen from her bag in the past. Within a number of observed cases, participants, as well as writing the letter of apology, agreed to also meet with victim support groups as part of

⁸³ Margaret Zernova, ‘Aspirations of Restorative Justice Proponents and Experiences of Participants in Family Group Conferences’ (2007) 47 *British Journal of Criminology* 491, 503.

⁸⁴ Jung Jin Choi, Michael J. Gilbert and Diane L. Green ‘Patterns of Victim Marginalisation in Victim-Offender Mediation: Some Lessons Learned’ (2013) 59 *Crime Law and Social Change* 113.

their contracts to hear how crime can affect victims generally. These examples of indirect emotional exchanges, rather than the direct exchange between victim and offender, were further illustrated when a number of participants backed up their written apologies with additional verbal claims of remorse and regret to panel members on behalf of the missing victim. In noting the concerns of marginalised victims within a number of programmes, it should be underlined that the preferable option remains that an affected victim will themselves hear or read their own respective apology. In line with this, as Radzik has noted,

‘the fact that apologies are ideally made directly to victims is telling. Communicating one’s guilt and remorse through a third party is less worthy...He must also redress the damage caused by the insult to the victim’s self-respect or self-esteem. In apologising directly to the victim...the offender acknowledges that the victim’s resentment of him is reasonable. He sends the message that her reaction matters to him, which is another way of acknowledging her status as a valuable person. For these reasons, apology can be empowering for the victim and aid the restoration of her relationship with herself’.⁸⁵

Furthermore, Tavuchis argues that in relation to third parties and apologies that, ‘once others take part, there is some loss of personal sovereignty and flexibility on the part of one or both contestants’.⁸⁶ However, the compensatory methods noted above by which reparation panels have catered for the unwillingness of victims to become directly involved can serve to uphold a number of important restorative principles, including offender accountability and a greater realisation of the level of harm caused and the need to repair that harm.

⁸⁵ Linda Radzik, *Making Amends. Atonement in Morality, Law and Politics* (Oxford: Oxford University Press, 2009) 94-95.

⁸⁶ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford, California: Stanford University Press, 1991) 52.

It also served to help increase the communitarian ethos within panel discussions. Panellists were adept at outlining the harm caused to members of the greater community generally, as well as to the direct victim. Even with low level crimes such as shoplifting and public order, they would highlight the importance to the local area of both large scale retail businesses and family run establishments. The need to support, rather than damage and steal from these community based businesses was stressed to offenders. It was also stressed during panel discussions that fellow community members relied on these businesses for both jobs and important amenities. Thus, apology letters were written to shop owners, managers and security guards. They would underline that those security guards and Garda officers were themselves members of the community and that they should be treated with respect. One panellist was seen to remark to participants that 'a security guard serves the community in preventing retail theft and keeping community members safe. He is as much a member of this community as you and me'. Panellists would regularly highlight the effects that public order offences and assaults could have on those community members who witnessed them, frightening them and potentially preventing them from socialising and supporting local clubs, bars and restaurants.

As a restorative model, it should always be remembered that the reparation panel is, at its root, offender centric and no panel meeting will occur without that particular participant. However, the surrogate victim approach within panel discussions; the broadening of the victim concept within written apologies to include relational issues and those indirectly affected by the crime such as family members, friends and other community members; the inclusion within contract terms of visits to victim support services in order to hear indirectly how crime can affect victims; and, the visits to Garda stations in order to view at first hand the pressures that officers are under while managing crime in their local area.⁸⁷ All these restorative and communitarian ingredients can all help to neutralise to some extent the lack of victim participation and lack of a theoretical ideal ceremonial exchange of remorse and forgiveness and serve to

⁸⁷ This contract term was agreed as part of one case managing a public order offence.

uphold the restorative value of the written rather than verbal apology format within the reparation process.

3.6 Conclusion

This chapter has provided an overview of the methods by which the Irish reparation panel model has managed the issue of apologies within contract agreements. The principle of symbolic reparation, within which the apology remains the most important concept, has been generally viewed as resting at the heart of a restorative justice process'.⁸⁸ It has been considered within this chapter how a successful apology has the potential to repair the harm caused by a criminal event, morally compensate any number of affected victims and illustrate to offenders that they have wronged. The theoretical notion of the ideal apology has been compared with the practical realities of managing reparation contracts within format limitations which have included a lack of victim participation and a preference for written apologies over verbal exchanges. These limitations might allow restorative theorists to condemn panel practices as lacking in restorative value. Indeed, there is scope for increasing the level of victim participation within panel practice in general, and within the apology act specifically. However, despite these limitations, this chapter has considered the management of panel apologies and argued that the process on the whole can be classed as restorative and community led. Factors such as the careful overseeing of written apology letters, the combination of these letters alongside a thorough discussion on the harm caused and the inclusion of additional reparative and rehabilitative, community based, contract terms, as well as the widening of the victim persona within apology discourses to include the effect on relational bonds, community businesses and those charged with protecting community interests generally, have all served to bridge the gap between theoretical nirvana and reparation reality.

⁸⁸ Kathleen Daly, 'Revisiting the Relationship between Retributive and Restorative Justice' in Heather Strang and John Braithwaite (eds.) *Restorative Justice: Philosophy to Practice* (Aldershot: Ashgate Publishing Company, 2000) 48.

Chapter Four

Community Part One

The Theoretical and Practical Context of Community and its Role within Irish Reparation Panel Practice

4.1 Introduction

As has been initially explained within the introductory chapter, this thesis has a two-fold aim: to analyse the practices and restorative principles in evidence within panel case management and to tease out the concept of community within panel procedures. The following two chapters will consider the concept of community within the restorative paradigm. This chapter will outline the theoretical arguments surrounding the importance of the community concept within restorative justice practice generally, as well as consider whether the concept's practical relevance within the workings of both reparation panel programmes under investigation. Chapter 5 will then go on to outline the potential conflict between managerial and communitarian principles within Irish reparation practices. An investigation into this potential conflict is important when considering the overall legitimacy of the claims of both programmes that community ownership remains a paramount principle within reparation case management.

Within this initial chapter, the concept of community as was initially advanced within the introductory chapter of this thesis is further developed. It is necessary to explore these theoretical foundations due to the perceived importance of the community concept within the criminal justice literature.¹ For example, McCold and Wachtel have argued that a greater awareness of the role of stakeholders, including community members, in the response to crime lies at the centre of a better understanding of the restorative justice paradigm generally.² The Irish reparation panel models have themselves regularly stated the importance of the community concept as they strive to improve stakeholder participation, local partnership building and the reintegration and

¹ See for example, Nicola Lacey and Lucia Zedner, 'Discourses of Community in Criminal Justice' (1995) 22 *Journal of Law and Society* 301; and Gordon Bazemore, 'The 'Community' in Community Justice: Issues, Themes and Questions for the New Neighbourhood Sanctioning Models' (1997) 19 *The Justice System Journal* 193; and Howard Zehr and Harry Mika, 'Fundamental Concepts of Restorative Justice' (1998) 1 *Contemporary Justice Review* 47; and Nancy Rodriguez, 'Restorative Justice, Communities and Delinquency: Whom Do We Reintegrate?' (2005) 4 *Criminology and Public Policy* 103. Also see generally Joanna Shapland, *Justice, Community and Civil Society. A Contested Terrain* (Cullompton: Willan Publishing, 2008).

² Paul McCold and Benjamin Wachtel, 'Community is not a Place: A New Look at Community Justice Initiatives' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 296.

rehabilitation of participating offenders. There is, however, little theoretical and practical consensus on what the concept actually represents. The chapter outlines the many difficulties faced by restorative justice advocates, practitioners and theorists as they attempt to succinctly define both the boundaries of the concept itself and its particular role within practice and procedures. It also illustrates how the concept of community can be evidenced in both practical and theoretical form within Irish reparation discourse and procedures. In this regard, an original theoretical moulding of the individual 'communities of care' and 'communities of interest' concepts previously put forward by McCold and Wachtel, and Braithwaite and Daly has been identified within reparation panel practice.³ This reparative community, a 'meso-community of care, concern and accountability', has been personally observed in the research carried out for this thesis within the management of a number of panel cases and it has offered a clear and novel illustration of the successful realisation of the community concept within this specific restorative model.

4.2 The Apparent Importance of 'Community'

Before beginning an investigation into the concept of community and the nature of its role, both practically and theoretically, within restorative justice practice, it is necessary to outline the reasons why such a level of importance has been placed on the concept and whether this level of importance can be seen to be justified. What is it that places community alongside other important restorative principles such as reintegration, rehabilitation and remorse? Certainly, within the restorative justice literature there have been a number of examples of the concept being highlighted as a key ingredient in

³ Paul Mc Cold and Benjamin Wachtel, 'Community is not a place: a new look at community justice initiatives' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003), 294. This 'community' represents the relational supports around a particular offence for offender and victim. For an explanation of the 'communities of interest' concept, see John Braithwaite and Kathleen Daly, 'Masculinities, Violence and Communitarian Control', in Tim Newburn and Elizabeth A. Stanko (eds.), *Just Boys Doing Business* (London and New York: Routledge, 1995), 189. Braithwaite has also classified a 'community of care' within the restorative process. See John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002).

both principle and practice.⁴ Moreover, within this jurisdiction, the town based *RJC* reparation panel model continues to include the concept as part of their programme title.⁵ In this regard, the *RJC* programme has previously reiterated that one of their main aims is to ‘strengthen the community by involving victims, offenders and community members in a balanced approach to criminal behaviour’.⁶ Furthermore, the model has underlined the perceived uniqueness of its workings in that it operates through the criminal justice system, but can be seen as being ‘based solely in the community; an example of the community taking care of its own’.⁷ Similarly, the city based Restorative Justice Services programme has previously underlined the importance of community within its policy aims, stating that it strongly believes that

‘the role of the community and voluntary sector in the criminal justice process within the context of a partnership model should be encouraged and enhanced in order to promote a sense of ownership and meaningful participation in the criminal justice process’.⁸

Such references to community within the restorative literature might be problematic without a clear and concise definition of what the concept actually means and represents. There is a potential danger of idealising the community concept without

⁴ See generally Charles Barton, *Restorative Justice: The Empowerment Model*. (New South Wales: Hawkins Press, 2003); and Howard Zehr, *Changing lenses: a new focus for crime and justice* (Scottsdale: Herald Press, 1995); and, Gerry Johnstone, *A Restorative Justice Reader* (Cullompton: Willan, 2003).

⁵ Formally known as Nenagh Community Reparation Project, the scheme has since changed its name in 2014 to Restorative Justice in the Community.

⁶ See the Nenagh Community Reparation Project. *Presentation to the National Commission on Restorative Justice* (July, 2007), 3. Available at <http://nenaghreparation.com/report-2007.php>.

⁷ Nenagh Community Reparation Project. *Presentation to the National Commission on Restorative Justice* (July, 2007), 11. See further, the Nenagh Community Reparation Project (NCRP), *NCRP Evaluation*, 2004. in which it is noted that reparations are given to ‘the victim and/or the community’ (at 3), the importance of ‘community interests’ and ‘community voluntary activity’ (at 6), and ‘community managed adult reparation panels’ (at 23). Within this 2004 Report the scheme argues that panel members ‘gain knowledge and practical expertise in diversionary aspects of criminal justice systems and the restorative justice process. This results in a better informed, *more active community* and the transference of skills and knowledge to others’ (at 23). Despite the proliferation of the term ‘community’, both reports appear to lack any clear and concise definition of what the concept might actually represent.

⁸ Restorative Justice Services. *Who We Are*. Available at <http://www.rjs.ie/pages/Who we are.html>.

actually defining its precise boundaries and membership. This is apparent in references to the reparation model as an example of ‘the community taking care of its own’; in the suggestions that its practices can result in a ‘more active community’; and in the call for the ‘role of community [to] be enhanced’. The question should be asked as to exactly what section of the community is ‘taking care of its own’. How do you begin to enhance the community’s particular role if you cannot distinctly define that actual community? The temptation to promote restorative justice and community as a symbiotic relationship, to link it in with some vague notion of an ideal communitarian ethos, has been further evidenced within other discourses. For example, within the context of a number of National Commission on Restorative Justice Reports, the community concept has been continually identified as an important element within restorative practices without any concrete definition of what such a community might represent and for whom.⁹ Within the National Commission literature, it has been argued that ‘the community in which the offence took place is also a stakeholder’ and that ‘the support and engagement [of the community] with the process is vital to ensuring legitimacy of the programme’.¹⁰ The Irish Probation Service has previously stated that its main goal is to provide ‘safer communities through respect, accountability, restoration and social inclusion’.¹¹ Further, one of their core values is said to enhance public safety and reduce recidivism by way of ‘engaging effectively with communities, particularly through a restorative justice model to address crime’.¹²

⁹ In January 2007, the Joint Oireachtas (Irish Parliament) Committee on Justice, Equality, Defence and Women’s Rights issued a report with twelve recommendations for strengthening restorative justice in Ireland. Among these was the recommendation that a cross-sectoral working group be created in order to develop a national strategy based on international best practices. From that, the National Commission on Restorative Justice was formed in March and began its work on a full time basis in August 2007. For the Joint Oireachtas report, see Joint Committee on Justice, Equality, Defence and Women’s Rights: *Report on Restorative Justice* (Dublin: House of the Oireachtas, 2007). Available at <http://www.oireachtas.ie/documents/committees29thdail/committeereports2007/Restorative-Justice.pdf>.

¹⁰ National Commission on Restorative Justice: *Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009), 2.22. Also see National Commission on Restorative Justice: *Interim Report* (Dublin: Department of Justice, Equality and Law Reform, 2008).

¹¹ The Probation Service: *Supporting and Delivering Change*. Strategy Statement, 2006-2007. Available at http://justice.ie/en/jelr/pages/restorative_justice.

¹² The Probation Service: *Supporting and Delivering Change*. Strategy Statement, 2006-2007, 4.

The community concept is upheld as an important, if not a vital, cog both within the restorative and criminal justice system machinery and is said to occupy 'a central position' within restorative ideology.¹³ If this level of importance is justified, it should then be a necessary aim to unravel its contours so that practices and principles can be improved and the full potential of such practices realised. Despite this notion of importance, the community concept has been generally viewed as one that remains vaguely defined.¹⁴ For Verity and King, such definitions within the restorative literature problematically centre around a 'narrow and simplistic' identity and they suggest that 'there is much that restorative practitioners could gain from engaging with both long standing and more recent debates within community development, about the contested nature of 'community' and participation'.¹⁵ In this regard, Woolford has suggested that 'restorativists must be extremely careful in the image of community life they construct when constructing their programmes', and that inherent appeals at idealising the concept as community centred might result in 'strict social and spatial boundaries' being drawn around such 'centred' restorative communities.¹⁶ While it is easy to agree with Woolford's assertion that 'restorative justice must work with a notion of community that is open, multiple and flexible',¹⁷ it is also the case that a lack of specificity might result in empty promises and idealised 'jargon' within which the promise of restorative justice and restorative principles such as reintegration and rehabilitation can become diluted to the point of being meaningless. Certainly within observations of the reparation panel models, as this chapter will go on to detail, any sense of a practical community presence was limited to a small selection of caseworkers, facilitators and volunteer panel members from the local geographical area along with a number of

¹³ Lode Walgrave, 'From Community to Dominion: In Search for Social Values for Restorative Justice' in Elmar G. M. Weitekamp Lode and Hans-Jürgen Kerner (eds.), *Restorative Justice: Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 71.

¹⁴ Paul McCold and Benjamin Wachtel, 'Community is not a Place: A New Look at Community Justice Initiatives' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 296. See also Jonathan Doak and David O'Mahony, 'State, Community and Transition: Restorative Youth Conferencing in Northern Ireland' in Paul Knepper, Jonathan Doak and Joanna Shapland (eds.), *Urban Crime Prevention, Surveillance and Restorative Justice* (Boca Raton: CRC Press, 2009) 158. Here the authors have argued that the concept can be 'vague and contested'.

¹⁵ Fiona Verity and Sue King, 'Responding to Intercommunal Conflict – What can Restorative Justice Offer?' (2008) 43 *Community Development Journal* 470, 473.

¹⁶ Andrew Woolford, *The Politics of Restorative Justice. A Critical Introduction*. (Halifax and Winnipeg: Fernwood Publishing, 2009), 109.

¹⁷ Ibid.

connections with geographically local rehabilitative and reparative services. Moreover, these services were centred for the most part on the participating offender only. It should be recognised that the question of how the concept of community is defined, and who exactly should be represented within it, is difficult to accurately answer. However, there is a need for restorative justice practitioners and advocates, as well as criminal justice policy makers and legislators to reduce the idealistic rhetoric and understand more clearly what the concept represents and how it can be best utilised within practices and principles.

4.3 Community and the Challenge of Definition

In order to further clarify the various definitions of the community concept as it appeared in Irish reparation panel practice, the various definitional strands which can attach to the concept generally, and within other restorative justice models specifically, are investigated within this section. Practical and theoretical discussions surrounding the definition of community and its particular role within restorative justice practice have been a common theme within criminal justice literature.¹⁸ For Schiff, attempting to pinpoint the very 'notion of community' and what it might represent within a restorative process can serve a number of purposes and normative functions.¹⁹ It can create a vehicle for representing those stakeholders who have been indirectly harmed by an offence, and give them a forum for 'communicating that harm, its degree and their expectations for repair'.²⁰ In this regard, Schiff has further argued that clarifying a certain 'notion of community' can help to develop standards and values for community members, while also opening up avenues for members to take responsibility for the

¹⁸ Gordon Bazemore and Jeanne Stinchcomb, 'A Civic Engagement Model of Re-entry: Involving Community Through Service and Restorative Justice' (2004) 68 *Federal Probation* 14; Gordon Bazemore, 'Whom And How Do We Reintegrate? Finding Community in Restorative Justice' (2005) 4 *Criminology and Public Policy* 131; Patrick Gerkin, 'Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice' (2012) 15 *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 277. For a discussion of the community concept as it appears within Northern Ireland youth conferencing, see David O'Mahony and Jonathan Doak, 'The Enigma of 'Community' and The Exigency of Engagement: Restorative Youth Conferencing in Northern Ireland' (2006) 4 *British Journal of Community Justice* 9.

¹⁹ Mara Schiff, 'Satisfying the Needs and Interests of Stakeholders' in, Gerry Johnstone and Daniel W. Van Ness (eds.), *Handbook of Restorative Justice* (Cullompton: Willan Publishing, 2007) 235.

²⁰ *Ibid.*

development of a 'collective ownership of the problem of crime, such that a collective efficacy for responding to crime – informal control, social support and informal sanctioning – can be developed'.²¹ Similarly for Walgrave, community can take on a number of important roles within restorative justice practice. It can represent a direct stakeholder in a restorative event (wherein an offender is asked how they can repair the harm to both the victim *and* the community); it can be an extension of both offender and victim (for example, within the context of a restorative group conferencing model in which friends and family members of the direct stakeholders might attend); and it can be put forward as the ideal outcome to a restorative process wherein the community is healed through social relationship building and the enhancement of feelings of safety and security.²² It has been further argued that a two-fold benefit can attach to community involvement within restorative practices. First, the community is 'close' (in principle at least and presumably within a geographical sense) to the primary stakeholders of a crime and their families. Thus,

'the community is in a better position to identify needs and support efforts to change behaviour to prevent re- offending. It can offer opportunities for involvement in local community services and programmes enabling the offender to address her offending behaviour with an improved prospect of success'.²³

Second, close family ties and support structures within the notion of community can help with the successful evoking of what John Braithwaite has famously termed 're-integrative shaming'. This process involves extracting a sense of shame from participating offenders, for, as Braithwaite argues, both shame and guilt are closely

²¹ Ibid, 236.

²² Lode Walgrave, 'From Community to Dominion: In Search for Social Values for Restorative Justice' in Elmar G. M. Weitekamp Lode and Hans-Jürgen Kerner (eds.), *Restorative Justice: Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 75.

²³ National Commission on Restorative Justice, Final Report (Dublin: Department of Justice, Equality and Law Reform, 2009) 6.45-6.46. Certainly, this definition is one that is recognisable within the reparation panels observed in that many reparation contracts contain agreements wherein participating offenders will attend community based services for addiction needs and financial and career advice in the hope of increasing the possibilities for rehabilitation and a curb on recidivist tendencies.

intertwined. Thus, 'guilt is only made possible by cultural processes of shaming'.²⁴ When this disapproval targets the actual offending behaviour rather than stigmatising the individual, then that individual has an opportunity to repair the damage, illustrate their remorse and in so doing can then be accepted back into the community. They have in essence been successfully rehabilitated and reintegrated through the shaming of those closest to them, for the shame that matters most is said not to be that of criminal justice professionals but of those closest to each offender. If the 'shaming' theory is successful, the offender can then restore the trust and respect which was lost within the criminal act.²⁵ It should be noted that Braithwaite's theory might have more opportunities to flourish within a group conferencing or circle sentencing model wherein family supporters are able to directly access the process rather than the Irish reparation model where such participation is usually on an indirect basis only.²⁶

4.4 The Geographical and Relational Macro Community

The community concept therefore, can take on a number of personas and potentially fulfil a number of differing roles within a restorative process. As part of this definitional process, there is little doubt that many theorists have struggled to agree on a precise description of the concept. Indeed, many of the classification attempts have appeared to stretch the concept beyond realistic boundaries in order to legitimately merge the concept within the criminal justice lexicon.²⁷ However, when attempting to succinctly

²⁴ John Braithwaite, *Crime Shame and Reintegration* (Cambridge: Cambridge University Press, 1989) 57.

²⁵ Ibid, 55-64 for a more thorough outline of the theory. Also see National Commission on Restorative Justice, Final Report (Dublin: National Commission on Restorative Justice, 2009) 6.46. Meredith Rossner, while agreeing with Braithwaite's evidence that such shaming is more effective at controlling crime and reintegrating offenders than more traditional stigmatic shame policies, has also questioned that the theory fails to explain why or how such shaming techniques can actually lead to successful reintegration. See Meredith Rossner, 'Restorative Justice and Micro-Sociology' in Susanne Karstedt, Ian Loader and Heather Strang (eds.), *Emotions, Crime and Justice* (Oxford and Portland: Hart Publishing, 2011) 171. For a further critique of Braithwaite's theory, see Bas van Stokkom, 'Moral Emotions in Restorative Justice Conferences: Managing Shame, Designing Empathy' (2002) 3 *Theoretical Criminology* 339.

²⁶ Although, within one particular panel case a participant did state that he felt 'ashamed' after the specifics of the crime, a fraud offence, were discussed. Panel members have the potential to 'shame' in the non-stigmatic way that Braithwaite argues, however for his theory to be fully realised the shaming will be ideally carried out by 'close' family members and friends.

²⁷ Mark S. Umbreit, Robert B. Coates and Betty Vos, 'Restorative Justice versus Community Justice: Clarifying a Muddle or Generating Confusion' (2004) 7 *Contemporary Justice Review* 81, 85.

define the community concept, theorists have usually concluded that any definition will include either a geographical element, a relational element or a combination of both. In this regard, the concept has been defined as an illustration of the geographical area or place from where the restorative justice models are operating and from where the models draw their client base such as victims, offenders and family and friends as well as participating state professionals and volunteers.

In relation to this definitional dilemma Ashworth argues that, while some restorative justice practitioners and supporters will often claim that they have an 'open and inclusive approach to 'community'', within the reality of restorative practice the concept will usually be made up of only two elements; first, it will be defined by the geographical area in which the model is situated and from where it draws its representatives, and second by those actors most closely affected by the actual crime being managed such as victims, offenders, friends and supporters.²⁸ Moreover, Shapland has noted that the community concept will tend to represent a neighbourhood, a territorial space or a geographical area in certain situations.²⁹

Similar geographical elements were evidenced within Irish reparation panel practices. Both models used localised rehabilitative and re-integrative services when managing certain offender dependencies and needs. Services catered for anger management, debt management, alcohol and drug dependency issues as well as employment guidance and advice on educational courses. These services were based in and around the locality in which the offender lived and in which the offending behaviour took place. Thus, for the *RJS* city based model these services were based within Dublin city centre and the surrounding areas, while the town based *RJC* model worked with service suppliers from

²⁸ Andrew. Ashworth 'Responsibilities, Rights and Restorative Justice' (2002) 42 *British Journal of Criminology* 578, 582.

²⁹ Joanna Shapland, *Justice, Community and Civil Society: A Contested Terrain* (Cullompton: Willan Publishing, 2008) 19. Here the author argues that where community courts and community policing is a factor, as it is in some jurisdictions such as England and Wales, the 'community' can be said to represent a particular neighbourhood, whether or not bonds and relationships exist between the residents living there.

within the particular county in which the crime has occurred.³⁰ As part of reparation agreements within the town based model, for example, offenders have completed community service collecting litter as part of the Nenagh 'Tidy Towns' initiative.³¹ They have also agreed to explore the possibility of training local sports teams, and have helped to refurbish locally based, community owned halls and other venues. Other contract agreements within the town based programme have included voluntary work in local charity shops and sponsored events, wherein money has been raised for locally based, voluntary organisations.

These geographically based elements of the community concept, both within the Irish panels themselves and as part of more widespread restorative practice, have represented a macro-community dynamic to restorative practice.³² For McCold, a macro-community can be made up of geographical influences outside the more personal, relational sphere of an 'individual community of care'.³³ This particular community can include state institutions, church and neighbourhood groups, and clubs and associations. It can also include citizen lay members of a restorative scheme, much like the citizen volunteers, programme caseworkers and facilitators active within the Irish reparation model. These 'secondary justice stakeholders' have been said to lack the emotional connectivity of its more personal, relational counterpart, and are judged to be more concerned with 'aggregate' rather than specific harm, their primary aims being the results of the restorative process and the 'specific actions taken to repair the harm'

³⁰ Examples of those local services utilised within panel contract terms included Addiction Response Crumlin, the Ballymun Youth Action Project, Tallaght Community Drug Team and Chrysalis Community Drug Project within County Dublin, and North Tipperary Drug and Alcohol Service within County Tipperary.

³¹ The Nenagh Tidy Towns Committee is one of a number of similar initiatives within County Tipperary. It has been labelled as a community sustainability initiative which allows for volunteers (and participating offenders) to come together and help to clean up certain sites within the local area.

³² Paul McCold, 'What is the Role of Community in Restorative Justice Theory and Practice?' In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004) 158.

³³ This 'community of care', introduced by McCold, can represent the primary stakeholders within a crime such as close familial and friendship support systems. This is outlined further within the 'micro-community' analysis in the next section.

rather than the actual process itself.³⁴ However, as this chapter will go on to demonstrate, the panellists within the reparation programmes, the ‘secondary justice stakeholders’ as McCold has identified them, were observed within discourses outlining specific harms around a wide range of victims. They were also seen to emotionally connect with the participating offender in much the same way as a close family member might have done. Indeed, this emotional bonding represented a surrogate support system around the participant, and was specific to each panel case discussion. Such surrogate relational bonds formed the bedrock for the reparation based meso-community identified as part of this research thesis. This meso-community was identified through secondary justice stakeholders (macro-community members) demonstrating the relational support bonds usually only identified as part of a primary stakeholder (micro-community) support base. Thus, the surrogate bonds revealed connections falling in between both micro and macro community levels.³⁵

Alongside the geographical, macro-community element, the community concept has been further defined within certain relational bonds and connections. These can include personal, familial, micro bonds, as well as secondary macro connections with friends and other groupings such as work colleagues and recreational groups. Such relationships and the bonds within can vary in strength of connection and have been seen to include the relational dynamic of a restorative justice mediation, conference or panel meeting.³⁶ Etzioni has fused both geographical and relational definitions of the community concept and defined it as ‘a place in which people know and care for one another’, an interconnecting web of both local and national areas and groups wherein moral claims are laid down through the reinforcing of common values.³⁷ Similarly, both Karp and

³⁴ Paul McCold, ‘What is the Role of Community in Restorative Justice Theory and Practice?’ In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004) 158.

³⁵ This meso-community element is outlined in more detail within the next section.

³⁶ For example, see Tony Marshall, *Restorative Justice: An Overview*. (Home Office: Research Development and Statistics Directorate, London, 1999), 29 in which he argues that ‘the circle of relatives, supporters and significant others that each party (within a restorative meeting) has is sufficient as a basis for involvement and intervention...each person has their own community centred on themselves’.

³⁷ Amitai Etzioni, *The Spirit of Community: The Reinvention of American Society* (New York: Simon and Schuster, 1994) 31- 32.

Selznick have further reiterated both relational and geographical ingredients when attempting to define the concept. For Selznick, the spirit and idea of community can represent a group which 'embraces a wide range of activities and interests and insofar as bonds of commitment and culture are shared'.³⁸ Furthermore, it is a place where people are not 'abstract or detached individuals'. A communitarian ethos, according to Selznick, is one which sees 'the experience of community [being] nurtured by and anchored in person-centred relationships'.³⁹ Similarly, Karp argues that community can be best defined as both a 'place' and a series of 'natural networks of personal relationships'. Thus, community can be thought of as

'the place from which we hail and the safe haven to which we owe our self-knowledge. In this sense, community is an entity—a geographic area or a group—to which we belong. But we also think of community as a quality of social existence: an indication of solidarity, shared practices and traditions, and emotional connectedness. This kind of community cannot be located on any map...For each of us, community is the complex interlocking of human relationships upon which we rely to live daily life'.⁴⁰

This relational themed community definition has been further outlined by Putnam. Putnam offers up the notion of 'social capital' in the search for a communitarian ethos; in this regard, social ties are said to have an important and valuable role to play, in that they can 'affect the productivity of individuals and groups... social capital refers to connections amongst individuals - social networks and the norms of reciprocity and trustworthiness that arise from them'.⁴¹ On initial inspection therefore, the community concept has been seen to include a myriad of various participants, roles and functions. Predominantly it has tended to be represented by restorative theorists in either a

³⁸ Philip Selznick, 'Thinking about Community: Ten Theses' (1995) 32 *Society*, 33.

³⁹ Philip Selznick, 'Thinking about Community: Ten Theses' (1995) 32 *Society*, 34.

⁴⁰ David R. Karp, 'Birds of a Feather: A Response to the McCold Critique of Community Justice' (2004) 7 *Contemporary Justice Review* 59, 62.

⁴¹ Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000) 19. See also generally by the same author, *Democracy in Flux: The Evolution of Social Capital in Contemporary Society* (Oxford: Oxford University Press, 2002).

geographical or a relational context, or as a combination of both elements. These particular elements have been evidenced within the Irish reparation panel case observations within this thesis. As this section has outlined, within the relational community dynamic, a macro-community can generally form around the less personal bonds of friends, community organisations and work colleagues. These bonds can also develop within a restorative mediation, conference or a reparation panel format with temporary relationships forming between direct stakeholders, practitioners, volunteers, justice professionals and community based service operators as all parties strive to manage issues of criminal offending, accountability, victims' harm and restoration within a restorative framework. Within the next section, this relational community concept is explored further by way of an analysis of the micro-community theory and the means by which this aspect of community has related to reparation panel procedures.

4.5 The Relational Micro-Community

As illustrated previously, the relational dynamics between families, colleagues, friends, and neighbours, and of support mechanisms and 'interlocking human relationships', has been a common theme within descriptions of the community concept and its relevance within restorative practices.⁴² For McCold and Watchel, community encapsulates 'a perception of connectedness' and relates to meaningful interrelationships between the direct stakeholders of a restorative justice event, victim, offender and family and close friends, all coming together under the umbrella of a restorative model such as a family group conference to mediate how best to resolve the criminal wrongdoing and repair the harm caused.⁴³ Both authors do not see community as a defined geographical area or place. Instead, that space is viewed as a mere coincidence of where a particular criminal event has occurred.⁴⁴ Selznick has further argued that, ideally, communities

⁴² David R. Karp, 'Birds of a Feather: A Response to the McCold Critique of Community Justice' (2004) 7 *Contemporary Justice Review* 59, 62.

⁴³ Paul McCold and Benjamin Watchel (1998) 'Community is not a Place: A New Look at Community Justice Initiatives' in Gerry Johnston (eds.), *A Restorative Justice Reader* (Cullompton, Devon: Willan Publishing, 2003), 294. The authors further argue that community cannot be predetermined, depending as it does on the particular offence and various actors affected.

⁴⁴ *Ibid*, 295.

should be viewed as ‘settings within which mediated participation takes place’,⁴⁵ while Barton has recognised community within a criminal justice context as consisting largely of ‘a collection of both primary and secondary stakeholders’ around the criminal offence itself.⁴⁶ The previous section served to outline the dynamics of the geographical macro-community and ‘secondary stakeholder’ relational theory and its resonance within restorative practice. Alternatively, the community concept can also be illustrated by way of a relational micro-community at play within the restorative paradigm.⁴⁷ The ‘micro-community’, or ‘individual community of care’ is said to consist of the close friends and family members within the life circle of both victim and offender who have been directly affected by a particular crime. These primary stakeholders are said to ‘provide the personal, emotional and material care and support we need to face problems and make difficult decisions in our lives’. It best represents ‘a network of relationships, [and] is not dependent on geography’.⁴⁸ From this ‘micro’ perspective, the harm from a criminal justice act is ‘specific’ to those relationships most deeply affected by the criminal behaviour.

This identified ‘community of care’ has been further elaborated on by Braithwaite and Daly in relation to restorative family group conference participants. They have included a ‘community of concern’ concept, again consisting of close family members, friends and extended family of primary stakeholders within a particular criminal event.⁴⁹ Both authors have argued that the close relationships and ties within such a ‘community of concern’ as part of a group conferencing model might be better equipped to successfully resolve crimes of family violence and male violence against women victims than the

⁴⁵ Philip Selznick, ‘The Idea of a Communitarian Morality’ (1987) 75 *California Law Review* 445, 449. Indeed Selznick might almost be describing restorative justice models such as victim offender mediation and group conferencing when he talks about ‘the individual (being) bound into a community by way of more limited, more person centred groups’. As will be further illustrated within this chapter, the reparation panel itself can be shown to be a similarly ‘person centred’ group.

⁴⁶ Charles Barton, *Restorative Justice: The Empowerment Model*. (New South Wales: Hawkins Press, 2003) 41.

⁴⁷ Paul McCold, ‘What is the Role of Community in Restorative Justice Theory and Practice?’ In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004), 155.

⁴⁸ *Ibid*, 156.

⁴⁹ See John Braithwaite and Kathleen Daly, ‘Masculinities, Violence and Communitarian Control’, in Tim Newburn and Elizabeth A. Stanko (eds.), *Just Boys Doing Business* (London: Routledge, 1995) 189.

more conventional court based justice model. For example, they argue that 'as a flexible process of community empowerment, conferences permit more latitude for redressing power imbalances than the inflexible procedures of the court'.⁵⁰

It should be highlighted, at this point, the difficulties in identifying such a micro-community within Irish reparation practices. The adult reparation panel model under investigation does share a number of restorative principles with other comparable restorative justice models. The reparation panel aims to open up levels of accountability for the participating offender by exploring the reasons behind the offending and outlining the harm caused to victims while underlining the need for both financial and symbolic reparation.⁵¹ It aims to improve the opportunities for reintegration and rehabilitation by utilising local services while also highlighting the advantages of non-recidivist life choices. In essence, the panel model aims to reduce future offending behaviour and increase accountability, remorse and the awareness of victim harm. These restorative principles are in line with other restorative schemes such as victim offender mediation and group conferencing programmes and with the restorative justice paradigm generally.⁵²

The reparation model, however, can be distinguished from a number of these restorative models in that it has utilised a much more streamlined format in terms of direct participants. Within restorative conferencing and restorative circle schemes the number of active participants can be large, with some UK based conferencing schemes managing victims, offenders and large groups of their family members and friends, as

⁵⁰ Ibid, 208.

⁵¹ For an explanation of symbolic reparation, see Chapter Three. See further Suzanne M. Retzinger and Thomas J. Scheff, 'Strategy for Community Conferences: Emotions and Social Bonds' in Burt Galaway and Joe Hudson (eds.), *Restorative Justice: International Perspectives* (Monsey, New York and Amsterdam: Criminal Justice Press: Kugler Publications, 1996) 316.

⁵² Howard Zehr, 'Journey to Belonging' in Elmar G.M. Weitekemp and Hans-Jürgen Kerner (eds.), *Restorative Justice: Theoretical Foundations* (Cullompton: Willan, 2002) 29. Zehr argues that the true nature of restorative justice concerns 'the acknowledgement of victims' harms and needs combined with an active effort to encourage offenders to take responsibility, make right the wrongs and address the causes of their behaviour'.

well as criminal justice professionals.⁵³ Restorative circle schemes can also include a large grouping of both direct and indirect actors, including justice professionals and various representatives of the local area around which a crime has occurred.⁵⁴ Within Irish reparation panel practice, such levels of active participation were minimal in comparison. As previously illustrated within Chapter Two, the city based Restorative Justice Services model will usually have a chairperson, caseworker, a Garda and a Probation Service representative alongside the participating offender. The town based Restorative Justice in the Community reparation panel will normally be made up of an even smaller selection of participants, namely the facilitator, Garda representative and one or two volunteers based in and around the area in which the managed offence has taken place.⁵⁵ Victims can also directly participate within the *RJC* reparation model, although such participation has been limited. Within a number of city based panel observations, there have been cases managed without either a Garda representative or a Probation Service officer present due to factors such as conflicting work commitments and holiday leave entitlements.⁵⁶

Thus, participant numbers within the management of panel cases were limited when compared with other victim and offender support structured models. Importantly, this streamlined reparative format proved initially problematic when attempting to define a recognisable sense of the micro-community concept within panel practices. A certain level of direct community involvement was gauged by way of macro-level local volunteers, chairpersons and caseworker roles undertaken by a collection of lay representative and programme members, as well as through the utilisation of locally

⁵³ See Joanna Shapland, 'Key Elements of Restorative Justice alongside Adult Criminal Justice' in Paul Knepper, Jonathan Doak and Joanna Shapland (eds.), *Urban Crime Prevention, Surveillance and Restorative Justice* (Boca Raton: CRC Press, 2009) 125.

⁵⁴ Paul McCold, 'The Recent History of Restorative Justice: Mediation, Circles and Conferencing' in Dennis Sullivan and Larry Tift (eds.), *Handbook of Restorative Justice: A Global Perspective* (New York. London: Routledge, 2006) 27-30.

⁵⁵ By way of recap, Probation Service officers did not attend the town based panel model as they did in the city based format. Further, the facilitator within this model acted as both the caseworker and the probation representative. The town based model generally attempts to include victims if they are willing to participate, while the *RJS* model will usually concentrate on the offender alone due to its adjoining victim offender mediation programme.

⁵⁶ See Chapter Six for proposals on combatting observed limitations such as the lack of attendance of various criminal justice professionals.

sourced rehabilitative and re-integrative service suppliers. However, attempting to procure a wider practical or theoretical illustration of the micro community concept amongst such a small pool of active criminal justice professional and lay member representatives proved a more difficult task. As previously noted, as part of restorative conferencing practices the community can include 'supporters' of both offender and victim. Both offender and victim are then given the opportunity to reconnect to their respective 'support systems'.⁵⁷ Although some commentators have viewed these systems as somewhat ambiguous, within Irish reparation panel practice there was no direct provision for such support structures within case discussions.⁵⁸

Moreover, the general theory of a relational community dynamic has been frowned upon by a number of theorists. For example, Umbreit, Coates and Vos argue that the very idea of close relational bonds within a collection of primary stakeholders enabling a 'community', be that 'micro' or otherwise, only results in stretching the concept to breaking point. The authors have taken issue with McCold's definition of a 'micro-community' and suggest that,

'to speak of the victim, the offender, their relatives, and their friends as community in the way [he] does not only is a stretch; it is inconsistent with the origins and intent of restorative justice. A more sensible term to describe such a collection of persons is 'social network'. In reality, one may see present in such a meeting of individuals two social networks or possibly overlapping social networks. But we believe this collection of people is not a community by most definitions or understandings of community. It is certainly acceptable to limit a mediation, meeting or conference to members of the victim and offender's social networks but there is no particular reason to label that collection of persons a

⁵⁷ Gordon Bazemore and Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, Juvenile Justice Bulletin (U.S Department of Justice, 2001) 5-6.

⁵⁸ See Robert Weisberg, 'Restorative Justice and the Danger of Community' (2003) *Utah Law Review* 343, 355, in which he argues that 'the notion of 'support' or a 'supportive environment' 'is ambiguous between a natural social or familial grouping or a more contrived arrangement, and even more ambiguous as to what "support" substantially means – empathy, instruction, moral guidance, and so on'.

‘community.’ At best, it represents elements of one’s larger community of association [that is, one’s social network]’.⁵⁹

In addition, idealistic notions of an interconnecting web of attached community members, of shared interests and obligations, have been similarly noted by Durkheim, who argues that modern day societal structures do not contain such shared relational bonds. For Durkheim, community could at one time have been conceived of ‘mechanical solidarity, or solidarity by similarities’ wherein people lived and worked together and values and roles were agreed and handed down through generations.⁶⁰ However, this solidarity then changed to a society now distinguished by difference. This ‘organic solidarity’ now represents a modern social cohesion based on a complicated system of interdependence which only recognises the pursuit of, legally and socially accepted, individual goals.⁶¹ In this regard, Nils Christie has added to the debate surrounding the possibility of either a macro or micro relational community presence. While famously recognising and indeed championing the need for greater social participation within criminal justice processes, he was also aware that ‘a lack of neighbourhoods’, or ‘killed neighbourhoods’ and ‘killed local communities’ served to represent a potentially fatal flaw to the non-professionalised, lay orientated justice ownership ideal that he supported.⁶²

In concluding this section, it again should be underlined that a relational theory of community can be somewhat easier to identify in those restorative models which allow for direct participation of family members and friendship support structures alongside both victims and offenders. The streamlined reparation panel model, therefore, represented a challenge in attempting to identify and define the reparative community concept. Despite the format differences, I have identified a novel relational based

⁵⁹ Mark S. Umbreit, Robert B. Coates and Betty Vos, ‘Restorative Justice versus Community Justice: Clarifying a Muddle or Generating Confusion’ (2004) 7 *Contemporary Justice Review* 81, 85.

⁶⁰ Emil Durkheim, *The Division of Labor in Society*, Introduction by Lewis Coser. Translated by W.D. Halls (New York: Free Press, 1984) 31.

⁶¹ Ibid, 68.

⁶² See Nils Christie, ‘Conflicts as Property’ (1977) 17 *British Journal of Criminology* 1, 12.

community within reparation case management practice. This relational themed community added to the more practical geographical elements within panel practices and was personally identified as a 'meso-community of care, concern and accountability'. I identified this particular community by way of the relationship between participating offenders and panel members including criminal justice professionals, local representative programme workers and volunteers. Such a community was further observed through the rehabilitative, re-integrative and welfare themed discourses throughout panel case deliberations, aligned with a strong emphasis on the need for both responsibility for, and repair of, any harm that had been caused. While this specific community concept has built on previous theories put forward by McCold and Wachtel, and Braithwaite and Daly amongst others, it has been developed from a more confined reparative participatory model. The fact that such a community could be eventually identified within the more confined contours of the panel format serves to illustrate the communitarian potential of reparation panels generally. Within the next sections, the contours of this originally identified reparative meso-community are explored, alongside a number of panel case illustrative examples of the type of relationship building and panel discourses that were observed.

4.6 Irish Reparation Practice and the Meso-Community of Care, Concern and Accountability

Through a series of reparation panel observations I was able to identify the concept of a reparation community in both practical and theoretical form. In the first instance, a practical community was identified through the use of locally based services and support groups within reparation contract agreements. Such agreement terms included rehabilitative measures such as attending alcohol and drug counselling services based within the local area. A geographical notion of community was further evidenced by locally based justice professionals who brought their local knowledge and expertise to panel deliberations. Moreover, it was realised through the recruitment and participation of non-criminal justice professional lay panellists such as caseworkers and facilitators within the city based model, and volunteer panellists representing the local area within the town based model. Such representation helped to increase awareness of the

manner in which criminal behaviour can affect local businesses and their employees. It also served to provide first-hand knowledge of the damage that can be caused to a locality by anti-social behaviour and petty crime, as well as an intimate knowledge of the rehabilitative services managing mental health and other dependency issues within that local area. Indeed, some volunteer panel members had previous experience within these fields of expertise and personally knew some of the professionals and practices involved in those services. They were, therefore, in the best position to recommend the allocation of the ideal rehabilitative or re-integrative service with the respective participating offender.

In addition to this practical, geographical notion of community within reparation practice, I was also able to identify a novel theoretical community. This community was observed as part of the discourses and principles engaged within the management of reparation cases. These discourses, between professional criminal justice actors, community based volunteers, programme representative panel members and participating offenders themselves, allowed for a reoccurring 'welfare' theme to emerge within case deliberations.⁶³ Thus, while the harm caused by the crime and the need for symbolic and financial reparation was a constant focus of panel practice, the welfare based theme was also illustrated in introductory case discussions surrounding the individual social needs, concerns and background of participants, through to rehabilitative contract agreement terms addressing issues such as alcohol and drugs dependency, financial problems and future career plans. Moreover, many of these rehabilitative social and welfare based concerns were discussed outside the parameters of the reparation contract and represented the cornerstone of the newly identified reparative 'meso-community of care, concern and accountability'. This welfare based discourse contrasts fundamentally with the adversarial dynamic within a courtroom justice encounter in which, as Doak argues, the trial process tends to 'crush' the narratives of both victims and offenders.⁶⁴ This particular community concept was moulded on a number of elements within both the 'micro' and 'macro' community

⁶³ This welfare themed panel management approach is one of the main principles within the 'community of care and concern' element and is further outlined within the following section.

⁶⁴ Jonathan Doak, 'Honing the stone: refining restorative justice as a vehicle for emotional redress' (2011) 14 *Contemporary Justice Review* 439, 443. It is acknowledged, however, that such a welfare ethos might prove more practical within the reparation process wherein guilt has already been proved or admitted.

theories put forward by McCold.⁶⁵ However, the novel reparation community I have identified within this thesis fundamentally contrasts with this version in that, first and foremost, it was the panel members themselves rather than close familial support structures that were predominantly building this sense of welfare ethos. In effect, the community identified within the reparation panel process represented a relational ‘macro community’ delivering the emotional support structures more prevalent within the familial ‘micro community’ noted by McCold.⁶⁶ That is to say, theoretically thinner relational bonds between the offender and criminal justice professionals, programme members and local volunteers came to represent, in reality, the thicker bonds more expected between family members and close friends of victims and offenders within a restorative meeting. Bottoms has previously argued that the ‘social mechanisms of restorative justice’ depend on ‘adequate meso-social structures [existing] to support restorative justice – type approaches’.⁶⁷ Daly has broken down the significance of these particular structures, noting that they refer to

‘ordered sets of relationships that are part of pre-modern societies (for example, residence, kinship, or lineage). These relationships embed elements of “intra-societal power” and coercion, which make dispute settlement possible. A second feature of relationships in pre-modern societies is that disputants are “part of the same moral/social community.” They live in close proximity to one another or are related to one another, and typically wish to continue living in the community. These meso-social structures and “thick” social ties, which are

⁶⁵ Paul McCold, ‘What is the Role of Community in Restorative Justice Theory and Practice?’ In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004), 155.

⁶⁶ Ibid.

⁶⁷ Anthony Bottoms, ‘Some Sociological Reflections on Restorative Justice’ in Andrew von Hirsch, Julian Roberts, Anthony Bottoms, Kent Roach and Maria Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Oxford: Hart Publishing, 2003) 79. Cited in Kathleen Daly, ‘The Limits of Restorative Justice’ in Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice: A Global Perspective* (New York: London: Routledge, 2006), 137.

commonly associated with pre-modern societies, are not present in modern urban contemporary societies'.⁶⁸

It can be argued that the panellists within reparation case deliberations have themselves, at least in part, demonstrated a surrogate version of these general 'meso social structures and thick social ties'. They have represented missing familial interests within case discussions. They have broadened the familial and communitarian structures within cases by adding apology letters to a wide range of indirect victims, such as family members and close friends. They have increased these structures further by adding rehabilitative options within agreed contracts that have specifically linked local service suppliers with individual dependencies and social care concerns. Many of these options have been discussed outside actual contract negotiations, thus representing more of a conversational, social well-being approach rather than a criminal justice sanction stipulation. Furthermore, in line with Bottom's argument that 'thick' social ties are limited in modern day society, some of the participating offenders observed within panels had damaged and broken off their respective social ties and were unable to avail of family support structures. Therefore, the surrogate relational meso-bonds within panel case deliberations provided the only welfare based option for these participants.

Thus a 'meso-community' was seen to emerge within the micro and macro community dynamic. This specific reparation community was moulded around each participating offender and within each referred case managed by the panel members. It was also moulded without the direct familial support structures more obvious within other restorative models such as family group conferencing and circle sentencing cases. Instead, the panellists illustrated a series of surrogate familial relational bonds around the participant, outlining the potential damage caused to the participant themselves as well as to the direct victims, the need to direct their thoughts and actions towards a non-recidivist future, and the need to focus on rehabilitative options. In addition, panellists

⁶⁸ Kathleen Daly, 'The Limits of Restorative Justice' in Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice: A Global Perspective* (New York. London: Routledge, 2006), 137.

would also congratulate the participant after a contract had been fully completed, shake their hands and thank them for their efforts, and wish them well in the future. In terms of the welfare themed elements to panel deliberations, much of the groundwork for utilising this approach lay in the preliminary discourse between offender and panellists at the beginning of each panel meeting. Within one city based panel case, an eighteen year old female participant was asked how many brothers and sisters she had, and what schools she had attended. Through this line of questioning, the panel then discovered that she had left school at fifteen because she had been bullied. The chairperson also asked her to think about possible further education courses. The detailed introduction also included questions such as, 'how do you relax...do you have any hobbies...are you presently in a relationship?' The participant described how much of her time was taken up looking after her younger brothers and sisters at home and that she had few friends with whom she associated. The offence occurred whenever the girl's boyfriend gave her a set of knives as 'a present' for her parents. The Garda officers stopped and searched the girl and charged her with possession of the knives. The acting community representative caseworker stated to the girl that 'you are not a bad person. You were carrying a present for your mother'. She was told to 'stop feeling guilty' and that 'you need a friend'. The panellists reinforced the idea that because she was usually at home helping out other family members she had then little time for hobbies, friends or relaxation. They all agreed that this was not a healthy situation for a young girl.

Within the terms of the contract agreed for this particular case, a letter of apology to her family was included and the potential harm caused by the event was forcibly highlighted. However, combined with this there were also proposals for possible rehabilitation by way of a requirement to establish a connection with a local job centre to inquire about courses as well as a visit to the local community centre to check out the activities being arranged there. The participant was also required to write a plan for the future. This can represent a useful exercise for participating offenders in that it requires thought on possible educational and career opportunities and the means by which these life goals can be attained. The chairperson added further to the welfare ethos by explaining that he was one of eight children himself, but that a balance was needed between helping out with family duties and taking time for yourself. The preliminary

discussion had also brought up issues with debts within the family home, issues unrelated to the crime being managed. The Garda representative asked if she was in a local credit union. All the panellists agreed that, instead of a reparative sum to a charity being included within the contract, the participant should lodge 50 euros with a local credit union. It was decided that another monetary reparation fine and the pressure that would bring for the girl and her family would be inappropriate on this occasion. Thus, within this particular case the care and concern elements within a welfare based discourse were fully evidenced. This was the case even within the supposedly 'reparative' terms of the agreed contract.⁶⁹

Alongside the relational bonds between offender and panel and the sense of welfare ethos as illustrated in the previous case, reparation discourses also included an element of 'accountability' when striving to agree a contract. Participants were continually made aware by panellists of the harm that had been caused by their offending behaviour, of the needs of direct victims as well as the potentially wide net of indirect victims, of the requirement to make amends for the crime in material and symbolic fashion, and of the necessity for taking responsibility and exploring their personal potential for a non-recidivist future. Thus, a 'meso-community of care, concern and accountability' was originally identified within reparation panel discussions and contract agreements. In this regard, the different components of this reparation community will now be dissected further and a broader evaluation offered by way of a number of case examples illustrating how the community was seen to operate within the management of referred offenders.

4.7 The Reparative Community of Care and Concern

As has been touched upon previously within this chapter, the 'care' and 'concern' elements within the reparation community have been recognised in large part due to a particular welfare ethos evident within all of the observed panel discussions to varying

⁶⁹ In effect, the offender was being asked to 'repair the harm to herself' by setting up a savings account that she could benefit from in the future. Such a reparative term might open up a debate around the level of 'punishment' deemed to be appropriate within contract agreements.

degrees. This welfare ethos was evident within the introductory stage of panel case proceedings, as well as within the subsequent reparative contract agreement terms drawn up and agreed at the conclusion of case deliberations. This ethos was illustrated in a number of ways. For example at the beginning of many of those observed panel meetings, and before a discussion surrounding the actual offending behaviour itself and the consequences deriving from such behaviour, the facilitator of the *RJC* model and the chairpersons from the *RJS* programme would ask the offender a number of questions. This initial pre-panel discussion would generally involve questions about the offender's family, friends, hobbies and work experience. Such discussions tended to have the effect of both relaxing the participant and helping them to settle in slowly to the reparation process.⁷⁰ Within this phase of the panel discussion, it can be argued that the participant was being treated as an individual first and foremost and as an offender second. They were not being, initially in any case, labelled or tagged by the crime for which they had been referred but were being recognised through personal characteristics such as their background, career, relationships and family status.⁷¹ Participants would be asked questions such as where they lived, what school they went to, if they were married and had children, how many brothers and sisters they had, if they had a career and how they filled in their time if they were not working. It should be noted here that the length of such discussions would depend on the particular facilitator involved on the day, with some allowing for more time on this stage of the discussions than others. However, such discourse was present within every panel case observed to a varying degree. Those chairpersons within the *RJS* model who were interviewed noted that this welfare based introductory discourse was not something that could be strictly

⁷⁰ Many participating offenders appeared very nervous when first entering the panel room. However, through various body language examples such as smiling and laughing with the facilitator, and looking at the panel members' faces instead of looking down at the floor during this initial stage of panel proceedings, there appeared to be a more relaxed attitude as a result of this more informal, 'familiar' line of questioning. See Chapter 2 for further discussion on the nature of introductory discourse between facilitators and offenders within panel management.

⁷¹ For a classic evaluation of labelling theory, which argues that delinquency in part increases due to the negative consequences of state intervention on educational and employment opportunities see Howard Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963); and, Edwin Lemert, *Human Deviance, Social Problems and Social Control* (Englewood Cliffs, New Jersey: Prentice-Hall, 1967). For a more recent endorsement of these claims, see Jon Gunner Bernburg and Marvin D. Krohn, 'Labelling, Life Chances and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood' (2003) 41 *Criminology* 1287.

identified within panel policy but was an approach they preferred in order to get to know the individual appearing before the panel. Consequently, the policy did appear to have arrived by way of an ad hoc basis rather than by way of any discernible programme aim.

Moreover, this 'community of care and concern' could be further illustrated within the discussion stage of proceedings outlining the actual criminal behaviour and within the reparation agreement terms that followed. Many of the cases involved alcohol and drug dependency issues. These issues could be discussed in detail by the panellists present. Questions such as 'why do you drink...do you think you have a drink problem...what does your family think of your dependency issues...have you tried to stop taking drugs...are you aware that you can get help for these problems?' The panellists therefore, as well as debating the crime and the respective harm caused, elaborated on certain mental health and dependency concerns in detail. It appeared that the participant's well-being was carefully considered within many panel meetings, and helpful advice handed out as to the possible means of managing such dependency problems. Within contract terms, meetings would be arranged with service suppliers in order to address to some extent the respective dependency issues. On many occasions, these issues were a direct factor in the offending behaviour. However, as noted earlier, what served to embellish this notion of care and concern further was the fact that many of these discussions within the panel took place outside of the drawing up of reparation contract terms addressing the specific crime and its consequences. Some of those cases observed centred on the mental well-being of participants generally. Within these cases there would be self-esteem problems due to a broken relationship, debt concerns or a lost job. Panellists would suggest methods of addressing these problems and organise meetings with local community centres, mental health clinics and advice centres who could help with managing financial and career concerns. This advice, encouragement and referral policy would occur both as part of the reparation contract agreement terms themselves and, perhaps more importantly, within general discussions surrounding the physical and mental well-being of the participant outside of the actual offence being managed.

It can be noted at this point that such a positioning of the welfare approach within the 'punishment' stage of the panel process renders itself vulnerable to a claim of 'soft justice'. Restorative justice generally within the Irish jurisdiction has been seen by one practicing judge to be 'a tad woolly, namby-pamby, excessively liberal, genteel, well-meaning but ineffective'.⁷² However, such a welfare approach within reparative contract terms also corresponds somewhat with the approach argued by theorists such as Christie and Zehr. For Christie, punishments should inflict as little pain as possible as we should be striving for 'alternatives to punishments, not only alternative punishments'.⁷³ He has further argued that in addressing acts as crimes, emphasis should be put on solving conflicting interests between people. In a similar vein, Zehr talks of crime as 'fundamentally a violation of people and interpersonal relationships', with a priority on addressing the harm caused to those relationships between victim, offender and the wider community.⁷⁴ Conversely, Duff suggests that 'restoration through retribution' should be the desired outcome of restorative processes; that truly understanding restoration within the context of criminal justice, and understanding what retribution stands for in the criminal punishment context, can then help to illuminate the fact that 'restoration is not only compatible with retribution and punishment but requires it'.⁷⁵

Many varying theories exist as to what the 'punishment' concept should represent within both criminal justice and restorative justice processes, and there is much discussion around the concepts of 'retributive' and 'restorative' paradigms.⁷⁶ However,

⁷² This was a statement by one judge interviewed about his reflections on the restorative justice paradigm by a solicitor attempting to discover the general awareness of the concept within criminal justice professionals. See Shane McCarthy, 'Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward' (2011) 8 *Irish Probation Journal* 185, 194. The concept of 'punishment' and how it is represented within the reparation model is further discussed within Chapter 3.

⁷³ Nils Christie, *Limits to Pain* (London: Martin Robinson, 1981).

⁷⁴ Harry Mika and Howard Zehr, 'A Restorative Framework for Community Justice Practice' in Kieran McEvoy and Tim Newburn (eds.), *Criminology, Conflict Resolution and Restorative Justice* (Basingstoke: Palgrave MacMillan, 2003) 143.

⁷⁵ R.A. Duff, 'Restorative Punishment and Punitive Restoration' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 382.

⁷⁶ For example, see Andrew Ashworth, 'Some Doubts about Restorative Justice', (1993) 4 *Criminal Law Forum*, 277. Also see Kathleen Daly, 'Restorative Justice: The Real Story' in Gerry Johnstone (ed.), *A Restorative Reader* (Cullompton: Willan Publishing, 2003) 365/366; and Kathleen Daly and Russ Immarigeon, 'The Past, Present and Future of Restorative Justice: Some Critical Reflections' (1998) 1 *Contemporary Justice Review* 21.

for the purposes of this chapter it is argued that such a welfare approach within reparative contract agreements can enable participating offenders to engage with rehabilitative services and groups and learn how to manage finances, career plans and dependency issues. It is also necessary to underline that panel agreements and discourses are not solely concerned with this welfare element. Contract terms will include letters of apology to direct victims as well as a wide range of indirect victims, community service and financial reparation. Such acts, as has been remarked during follow up second panel meetings, have proved to be difficult and time consuming for the participants involved. Even then, after a successfully completed panel agreement, there is no guarantee as to how a presiding judge will dispose of the case. Within the evidence from the series of personal observations, it seems that this welfare combined with accountability dual approach worked successfully within the dynamics of the panel discussion itself.

The care and concern themed procedural approach to discussions was further underlined during the pre-discussion stage of another city based panel case. Before the participant was brought into the room, the designated caseworker explained to the other panel members that the female offender was suffering from minor mental health issues and was attending counselling services within the community. It was further explained that the participant was estranged from her partner, homeless and living in temporary accommodation, and was looking after two young children alone. The caseworker, based on her knowledge of the offender's circumstances, was thus able to relay the relevant personal circumstances to the Garda representative and facilitator before the panel discussion began.⁷⁷ She was also able to propose a somewhat 'softer' approach to be taken within the discussion while not forgetting the offence itself and the need for the harm to be addressed.⁷⁸ Indeed it was discussed and proposed by the

⁷⁷ This particular case involved a theft offence of more than 800 euro worth of clothes. Within this particular series of panels, no probation officer was in attendance. No reason for this omission was put forward. This, it is submitted, is an indication of bad practice procedure and is discussed further within Chapter 6.

⁷⁸ Again it should be noted that this 'softer' approach might be viewed by some critics of restorative justice as problematic in itself. It opens up the potential for criticisms relating to a lack of uniformity of procedure and highlights the different balancing exercise which panellists must undertake between principles of care and support and accountability. It might be argued that this is a balance which has proved successful

caseworker, and ultimately agreed in principle by the other panellists, that a reparation sum might not be 'achievable' and that other contract terms should therefore be explored. The chairperson agreed that 'taking money from people who cannot afford it' might prove self-defeating within the contract terms. However, this case proved interesting in that the participant herself proposed to the panel members that she would be willing to pay a charitable donation. A 50 euros donation was initially discussed with the offender who appeared willing to pay that amount. It has been argued that such an example of 'active accountability' can represent a 'shift in the public identity of the lawbreaker' and illustrate that the participant is ready to take active responsibility for the offending behaviour and pay back the community in a positive way.⁷⁹ Within this case, the caseworker reiterated that any sum 'needs to be affordable' and the sum was reduced to a 40 euros donation. Within this example then there was real evidence of the community sourced caseworker, acting as a surrogate relational support mechanism, safeguarding the welfare and interests of the participant both before the panel discussion and during the subsequent drawing up of agreed contract terms.

As the above cases serve to illustrate, reparation panellists have been observed coming together and forming a novel reparation based community around the participating offender within the boundaries of case discussions and deliberations. This community, espousing elements of rehabilitative care and relational themed concern for offenders' well-being and future choices, is all the more noteworthy as it is primarily made up of criminal justice professionals and state funded programme actors as well as community representative volunteers, each unknown to the other before the offending took place.

within the majority of observed panel meetings. For example, on this occasion, and because of the specific circumstances of the offender and the mental health related problems, a 'softer' approach was arguably the correct course of action. Within this approach, the harm caused by the offending was still highlighted and other stringent contract terms were also drawn up. These included letters of apology to the store where the goods were stolen from and to her grandmother, a written piece about who she believed was affected by the offending and an obligation to enrol with and attend a community outreach programme.

⁷⁹ Gordon Bazemore and Jeanne Stinchcomb, 'A Civic Engagement Model of Re-entry: Involving Community Through Service and Restorative Justice' (2004) 68 *Federal Probation* 14, 17. This also ties in with Eglash's theory of creative restitution in which offenders can be free to choose themselves which reparative act they would wish to deliver, within the parameters of the general process. See Albert Eglash, 'Beyond Restitution: Creative Restitution' in Joe Hudson and Burt Galaway (eds.), *Restitution in Criminal Justice* (Massachusetts: Lexington Books, 1977) 94.

Panellists offered advice on personal development and financial concerns and laid out contract terms that included engagement with rehabilitative service suppliers and hoped for reintegration with family and the wider community generally. It should also be noted that both cases outlined above did not involve a direct victim.⁸⁰ Further, within the 'knives' case example, the panel were unanimously of the opinion that the boyfriend of the offender was a bad influence. It might also be argued that the actual criminal charge appeared unfair when the facts of that particular case were laid out.⁸¹ Such a case, with a first time offender and a relatively minor crime, was originally a staple of reparation panel business and such crimes are still being managed. A case such as this, then, could be judged as relatively easy for panellists to engage such care and concern principles. There had been no direct victim and any 'harm' was restricted to the emotional harm caused to the offender's family. However other reparation cases managing crimes of a more serious nature also illustrated that this welfare ethos centred around panel members and participating offenders continued to play an important role within both preliminary panel discussions and subsequent contract agreements.

An example of one such 'hard case' involved an offender who had pleaded guilty to the criminal damage and attempted theft of a car. He had a remarkable offending history of forty six previous convictions.⁸² The introductory background questioning had uncovered major alcohol dependency issues. These were said to have been partly a result of an incident several years ago wherein his friend had been a passenger and been killed in a car accident in which he was driving. The participant had served eighteen months in prison as a result of the crash and subsequent death. However, the panel discovered that this was the first time in two years that there had been a repeat of the

⁸⁰ Panellists are quick to underline to offenders however that with shoplifting cases, although there is not a direct victim as such, the business owners themselves are victims in that it is their goods that are being stolen, and it is through such acts that extra security staff may have to be employed, in turn raising prices and insurance premiums which ultimately have a detrimental effect on those within the local community who shop there.

⁸¹ Indeed, the Garda panellist himself did appear to query whether or not such a charge was ultimately necessary within this case.

⁸² This offending history mostly consisted of car crime generally, including thefts and driving without insurance. The participant was 23 years old. A table containing the facts of all those cases observed as part of the research is included in appendix 15.

offending behaviour. The offender explained to the panel that he needed help with his particular addiction, which included drug use on occasion. Thus, the contract agreement was tailored towards alcohol and drug treatment and counselling courses within the local community. This case illustrated how locally based resources are attempting to reintegrate and rehabilitate offenders and is a further example of task sharing between professional justice institutions and local community based assets. Lay member activism was further illustrated when the caseworker herself added the requirement of a written piece within the contract agreement terms of a 'plan for the future' in order to help manage the feelings of restlessness and boredom that the offender had admitted during the preliminary discussion. Such an approach then, of informal discussion of background, family relationships and interests enabled this participant to noticeably relax and open up to the panellists about his past convictions and dependencies and the reasons behind these.⁸³ Within this case the panellists, through careful and gentle probing into the participant's past life history, enabled the groundwork to be laid for discussing the actual crime itself, the reasons why such behaviour occurred in the past and continued to occur, and an evaluation of how best to limit such criminal tendencies. Indeed, the offender felt comfortable enough to tell the panel that he had also used drugs, a fact that was not disclosed within the case sheet notes.

This 'hard case' was a good illustration of how panellists addressed the 'damaged' past of the participant as well as his future rehabilitative needs. When, during a post panel informal discussion with the caseworker involved in this case I asked why such a high recidivist was being referred to the panel process, she replied that nothing else had

⁸³ Within panel observations, body language and certain 'rituals' proved good indicators of offender mind sets. Many participants were visibly nervous and agitated before the panel began and within the early stages of discussions. However, as the process continued some of the offenders noticeably relaxed. They looked panellists in the eye instead of looking at the ground or table, their voices became stronger and sentences longer, they laughed with panellists, and at the end of the process they smiled, shook hands with the panellists and thanked them. As noted above, such rituals have been previously observed by Rossner within restorative conferences between significant others and serious offenders. Here the author argues that 'rituals' such as participants laughing and crying together, sitting up straight after initially slouching, shaking hands and hugging were all examples of a shared morality, solidarity and an emotionally energetic experience. See Meredith Rossner, 'Reintegrative Ritual: Restorative Justice and Micro-Sociology' in Susanne Karstedt, Ian Loader and Heather Strang (eds.), *Emotions, Crime and Justice* (Oxford and Portland: Hart Publishing, 2011) 178-181.

seemed to work so ‘why not try the reparation panel?’ In other jurisdictions which utilise similar restorative models, such as the Vermont Reparative Boards and within UK accountability pilot panels,⁸⁴ this level of offending would usually not be managed using restorative principles. Moreover, as can be seen within the next section wherein the accountability element of this case is discussed further, the welfare ethos was counter balanced by a detailed reparative plan of action and a strong denouncing by all the panellists, including the caseworker, of the offending behaviour and an acknowledgement of the type of harm that such crimes can bring to direct victims and indirect local community members alike. Alongside this principle of teasing out accountability for the offending behaviour, there is also evidence of empathetic words and an exploration of re-integrative and rehabilitative options such as support service referrals and words of encouragement to desist from recidivism. Moreover, it is an interesting caveat that the lack of direct victim attendance within Irish panel practice, although seen by some observers as a weakness, might actually be improving opportunities for offender accountability and restoration. Panel members can strive to get to the core of the offending by discussing with participants issues such as relational problems, lack of employment opportunities, debt concerns and dependency issues. Community representatives and community sourced caseworkers can then explore community based support services without the fear of possible accusations of offender bias and instances of ‘victim lecturing’ witnessed in other jurisdictions.⁸⁵ However, as one of the following case discussions will serve to illustrate, there remains a danger within panel procedure that an over-emphasis on welfare concerns might on occasion

⁸⁴ See, for example, David R. Karp and Lynne Walther, ‘Community reparative boards in Vermont: Theory and practice’ in Gordon Bazemore and Mara Schiff (eds.), *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati, Ohio: Anderson Publishing Company, 2001) 199. Also see David Karp, ‘Harm and Repair: Observing Restorative Justice in Vermont’ (2001) 18 *Justice Quarterly* 727. For an analysis of UK based Community Accountability Panels, see Kerry Clamp, ‘Rebalancing Criminal Justice: Potentials and Pitfalls for Neighbourhood Justice Panels’ (2011) 9 *British Journal of Community Justice* 21. The Vermont panel model is evaluated further within Chapter 5.

⁸⁵ For example, see Patrick Gerkin, ‘Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice’ (2012) 15 *Contemporary Justice Review* 277, 289-90 wherein conference facilitators were seen to limit their potential for support, advice and the promotion of community interests due to a need to remain ‘neutral’ during discussions. For a description of ‘victim lecturing’, see Patrick Gerkin. ‘Participation in Victim-Offender Mediation. Lessons Learned from Observations’ (2009) 34 *Criminal Justice Review* 226. See Chapter 5 for further discussion around the issue of facilitator neutrality.

trump the requirement for accountability, with care and concern for the participant masking the detrimental effects of the crime being referred.

4.8 The Reparative Community of Accountability

As the 'community of care and concern' has illustrated above, managing the welfare of the participating offender can be an important tenet of panel practice both within the discussion stage centring on the crime itself and possible reparation agreement terms, and also within discussions centring on the general well-being of the participant. However, a further 'accountability' element of this relational meso-community was also discovered by way of panel member management and their ability to pinpoint any harm that had attached to the crime along with the need for repairing that identified harm. This notion of accountability revolved around the efforts of criminal justice professionals, lay facilitators, caseworkers and local volunteers from both programmes to ensure that the criminal behaviour being managed was adequately addressed, that the harm caused, both directly and indirectly, was acknowledged and that some level of accountability was achieved by way of reparation and apology. This accountability based community element served as a further surrogate support system wherein absent direct familial micro-bonds were replaced by the panellists themselves reinforcing the damage caused by the offence. This discourse included both the damage caused to the participants themselves, in terms of educational, travel and employment prospects, as well as the damage done to the direct victim. It also included the effects of the crime on the victim and offender's relational bonds with family and friends. In this regard, evidence has illustrated that adult – child parental bonds and other familial relationships can prove important in providing for a successful diversion from delinquency and allowing for greater opportunities for desistance.⁸⁶ Consequently, Marder argues that for young adult offenders the fall-back position of the criminal justice system is to remove families, including parents, from the process altogether despite evidence of the

⁸⁶ See John Paul Wright, Francis T. Cullen and Jeremy T. Miller, 'Family Social Capital and Delinquent Involvement' (2001) 29 *Journal of Criminal Justice* 1; and, Ryan D. Schroeder, Peggy C. Giordano and Stephen A. Cernkovich, 'Adult-Child-Parent Bonds and Life Course Criminality' (2010) 38 *Journal of Criminal Justice* 562.

importance of such familial bonds in the reduction of continuing criminal behaviour. He suggests that,

‘there should be an even stronger presumption in favour of family member involvement in the restorative process of a young adult offender whenever possible, which would require the facilitator to make the appropriate arrangements and obtain an understanding of the dynamics of the family relationship as part of their preparation for the process’.⁸⁷

This may be something that the reparation panel process could consider in future policy guidelines. However, in present day reparation case management, panellists themselves have been observed successfully bridging this gap in familial, and indeed victim, participation by undertaking the role of the surrogate moral guardian in describing the harm caused to both victim and the offender themselves as well as the harm caused to general community members. During a number of panel cases, participating offenders were observed attempting to ‘neutralise’ aspects of the harm caused by their various offences by stating that they did not remember the criminal act, or that they were assaulted themselves by security staff or by the victim after a theft or assault offence.⁸⁸ Famously, Sykes and Matza argue that many offenders are able to keep hold of a positive self-image while carrying out criminal acts because of the way in which they dismiss the negatives of that offending behaviour. They note that ‘much delinquency is based on what is essentially an unrecognized extension of defences to crimes, in the form of justifications for deviance that are seen as valid by the delinquent but not by the legal

⁸⁷ Ian Marder, *Restorative Justice for Young Adults: Factoring in Maturity and Facilitating Desistance* (Barrow Cadbury Trust; The Transition to Adulthood Alliance and Restorative Justice Council, 2013) 10.

⁸⁸ During one case, a participating offender was observed arguing that she did not remember shoplifting almost 1,000 euros worth of goods, and only remembered the details after the offence had been carried out. During another theft case, the offender argued that she had been assaulted by security staff despite offering no resistance to arrest, while two men that admitted to an assault argued that the victim had initiated the fight and that they were only defending themselves. See further Gresham Sykes and David Matza, ‘Techniques of Neutralisation: A Theory of Delinquency’ (1957) 22 *American Sociological Review*, 664. See also J. Scott Kenney and Don Clairmont, ‘Using the Victim Role as both Sword and Shield’ (2009) 38 *Journal of Contemporary Ethnography* 279. Here, the authors have also argued that offenders can adopt victim characteristics during restorative conferences.

system or society at large'.⁸⁹ While the level of truth of such claims by offenders within the reparation panels cannot be accurately measured, such examples did appear to align with certain aspects of Sykes and Matza's theory. However, the accountability factor utilised by panellists during case deliberations did help with attempts to clarify such 'neutralised' claims. Panellists were observed on occasions challenging participant claims of memory loss and self-defence arguments while also underlining the potential harmful feelings of those victims involved. The need for reparation and apology would also be highlighted in order to reduce participating offenders' feelings of their own personal victimhood. The list of indirect victims within cases would be stressed by panellists in order to reinforce the level of harm involved. It would be made clear that a car theft did not only affect the owner but also neighbouring families who were frightened of such crimes happening within their local streets and homes. In this regard, thefts from local businesses were shown to have affected other community members in that prices would then have to increase to cover the costs of higher insurance premiums, and local jobs could be potentially put at risk. Furthermore, assaults in nightclubs were shown to not only have affected the victim but also onlookers who would then be frightened of revisiting the establishment or going out generally due to an enhanced fear of crime. Reparation panellists were also observed stressing the fact that indirect victims usually included the family members and friends of both victim and offender, many suffering both financially and emotionally as a result of the participant's criminal behaviour.

Panellists, therefore, have strived to increase the concept of offender accountability and highlight the voice of both the non-participating victim and moral based familial bonds within panel discussions. By way of case illustration, one city based panel involved a participant who had committed a theft offence. He had stolen over 700 euros worth of

⁸⁹ Gresham Sykes and David Matza, 'Techniques of Neutralisation: A Theory of Delinquency' (1957) 22 *American Sociological Review*, 666. As way of example, the authors argue that certain answers are given in response to a possible guilty conscience such as 'they can afford it' (theft); 'he started it/ he was abusing me/ I was only defending myself' (assault); 'they made me do it' (peer group pressure); 'it was the drink, not me'. Four levels of neutralisation are offered; thus, offenders may deny responsibility, deny injury (the harm is minimised), denial of the victim themselves (rightful retaliation/ more acted upon than acting) and condemnation of those in authority (the police are corrupt).

clothes and was adamant at the beginning of the panel discussion that there was no intention to sell the clothes on and that they were for his personal use only. The panellists however, perhaps not unreasonably, strongly disputed the offender's story, noting that the amount of clothes which had been stolen was substantial and appeared to be more than was required for simple personal use. While the offender's personal situation was addressed (it was discovered that he was recently unemployed and, as the eldest in the family, believed it was his responsibility to help to pay for outstanding bills and debts), the panel were also able to tease out the fact that he would have 'probably sold the clothes on in order to help pay some of the bills'. Within another *RJS* city based panel case discussion, the participating offender had admitted to the theft of car wheels, but had argued that he did not initially intend to steal the wheels and that the act was purely spontaneous. This was despite the fact that he was carrying a wheel brace at the time of the arrest. Again, this story was given short shrift by panel representatives who were dubious as to the claim that attempting to steal the wheels, with the intention of selling them on to a recognised source, had not been carefully planned and intended all along. Questions were put to the participant such as 'what then were you doing with the wheel brace if you did not initially intend to steal the wheels' and 'put yourself in our position...would you believe this version of events?' Eventually the offender admitted that this had indeed been his intention all along. The harm caused by the offence was further highlighted by the Garda panellist who noted that the participant was well built and tall and would have frightened the potential victims and owners of the car. He asked the participant, 'how do you think the householders felt when they saw such a large person approaching their property armed with a wheel brace in the dark? Do you think they would have been frightened?' The participant agreed that he had not thought about this element of the offence. Other participants have been forcibly reminded about the importance of the reparation process and the need to take responsibility for the criminal actions. One participant had argued that a bicycle he had stolen had actually belonged to his friend and he was unaware that what he was doing constituted a crime. This was despite the fact that he had previously been convicted of a similar offence and the victim of the most recent offence did not know the participant. He was told by the Garda panellist and chairperson that 'you are slow to accept blame for the behaviour...this is not simply a one, two, three process and then tick the box...we need to be reassured that you are aware of the harm caused and the wrongfulness of

your actions'. The participant did eventually admit to 'stealing' the bicycle.⁹⁰ Thus, both professional criminal justice and community and programme representative reparation panel members were not averse to asking difficult questions, disputing relevant case 'facts' and teasing out levels of true accountability within case discussions.

In this regard, and returning to the discussion above surrounding the 'hard' case and the participant who had pleaded guilty to car theft with forty six convictions, a strong element of accountability was also seen to reinforce the initial care and concern elements surrounding the alcohol dependency and relational factors, including the death of the participant's friend. Within this case, all the panellists condemned the theft forcibly and highlighted the harm arising out of the act. The participant was told that such offences affected the direct victim along with the general local community; that what can result is inconvenience and financial problems for the victim whose car he had attempted to steal and that such crimes can provoke feelings of fear and insecurity amongst the residents of that area. Community members' interests were also being protected within the condemnation of the crime itself. It was pointed out that the car, if successfully stolen, could have been driven into another family's car and someone else could have been seriously injured or killed. The list of possible victims was extended to the Garda officers themselves in that it was explained by the Garda representative that it can be dangerous for these officers when in the process of chasing and attempting to recover stolen vehicles. The offender himself also noted that his family were very stressed and worried by the offending. He told panellists that his mother was very angry with him, as was his girlfriend with whom his relationship was suffering because of the act. The reparation contract was also detailed and required much work. As well as the community based rehabilitative counselling, letters of apology had to be written to both the victim and to his girlfriend and other family members explaining and recognising the hurt and harm caused. Financial compensation was also agreed at 200 euros. The element of accountability was highlighted within panel case management even within minor offending examples such as public order offences. Participants were reminded

⁹⁰ Within this particular case, the participant did not appear to fully grasp the reparation panel concept and the restorative principles at play. The possible reasons for this are discussed further within Chapter 5.

that Garda officers were putting themselves in a potentially dangerous situation when attending disturbances involving alcohol and the potential for violence. It was noted by both a Probation Service representative and a Garda panellist that Garda officers were themselves victims of assaults and that their jobs could be very stressful. It was also noted that such minor offending was putting a burden on the Garda's capabilities of managing more serious offences to the detriment of other community members.

As has been illustrated within a number of case illustrations, reparation panellists have been adept at managing offender accountability along with welfare needs. This balancing act, however, is a difficult one to manage successfully. While, for the most part, panellists within both programmes did appear to successfully balance both elements within case discussions, there was one particular case example in which I would suggest that this balancing act broke down. There is, of course, always the theoretical danger that such an emphasis on the social needs of the offender might dilute the reparative principles inherent in the process, of holding the offender to account for the wrongdoing and law breaking itself and making good the harm that has been caused. The case, discussed below, illustrates that this theoretical danger can become a practical reality within reparation practice. While it should be noted that this example of welfare needs appearing to trump the principle of accountability occurred only once within those panels under observation, nonetheless there was such an over-emphasis that this example can be viewed as important within the observation series as a whole.

4.9 Balancing the Reparative Elements: The Dangers of Over Emphasis

What was initially striking about the following observation case sample, and the series of panel meetings on that particular day, was the absence of a Garda representative. While the reparation panels will ideally include a Garda representative at all times, and this was the only scheduled day of observations in which a Garda panellist did not attend, it was explained that this is not always possible due to annual leave, sickness and other work commitments within the active 'pool' of officers regularly involved in

the process.⁹¹ In attendance then was the caseworker, chairperson and probation officer. The case itself involved a 29 year old female who had initially pleaded guilty in court to a theft offence of almost 500 euros worth of goods from a large scale food retail outlet. There was no previous offending history. From the outset of the panel discussion, the offender's mental health problems were highlighted by the panel. The offender noted that she was suffering from depression and had a history of minor drug abuse. She explained her family situation wherein her sister, a heroin user, had moved into her house along with her children. The participant appeared very nervous throughout the panel discussion. She explained that she was 'very ashamed' and that the incident was 'out of character'. While this did appear to be the case, due to the fact that there was no known previous criminal behaviour listed, it is submitted that the crime itself was a high monetary value theft and needed to be addressed in greater detail by the panellists present. The participant claimed that she did not remember anything of the incident. This aspect should have been explored further within the case discussion. The participant claimed that 'I didn't know what I was doing'. When the caseworker tried to guide the offender towards the actual crime itself, the offender again claimed that she did not know why she stole the goods and could not remember any of the facts as they happened. While there was some level of accountability, wherein the offender did admit to abusing her drug prescription for depression, accountability for the crime itself appeared to be somewhat lacking.

On this occasion the welfare element appeared to trump the principle of accountability. The participant explained further to the panellists that her mother was suffering from a brain tumour, her brother was also a heroin user and she was taking care of her sister's children as well as her own. She claimed that the pressure was building all the time and she had little support of her own while trying to solve everybody else's problems. Further, she also noted within discussions that she suffered from depression and that she had thought about suicide. The chairperson attempted to increase the accountability theme by highlighting the fact that big retail stores are as much a victim of retail crime as individual victims. The chairperson also noted that her children, and

⁹¹ This was a vivid example of perceived bad practice within panel procedure and the need for an identifiable grouping of permanent panel members. This is explored further within Chapter 6.

the people within her family who are depending on her, would end up victims as well due to the fact that an escalation of such offending behaviour could lead to prison and the children potentially being taken into care due to the lack of a parenting influence. The Probation Service representative thought that the participant was both genuine in the problems being outlined and remorseful. Counselling was discussed. It was noted that services within the local area provided free counselling and that something within that organisation could possibly be arranged. The offender had already written a letter to the store manager detailing her remorse. However, within this discussion phase there were further claims that 'I was not in my right mind'. It was further alleged that the security guard had assaulted her in the aftermath of the crime, thus claiming an aspect of victimhood status for herself. It might be argued here that the presence of a Garda officer within the panel could have helped to better steer the discussion closer to the facts and consequences of the actual theft. While there were undoubtedly social and welfare issues involved within the facts of the case, the attempted theft was of a high financial value. Furthermore, the constant denials of any remembrance of the act did appear to dilute notions of remorse and accountability which should always remain paramount principles within the management of reparation cases. Contract terms within the case included counselling for the mental health problems and a letter of apology, including a written piece on who was affected by the crime. Also, a letter was to be written to the Garda officer who had carried out the arrest. The caseworker also noted that a follow up panel meeting would be arranged to further determine the social and welfare advice handed out. Within the reparation terms agreed there was to be a small donation to St. Vincent de Paul of 50 euros. These terms did appear to be fair and proportionate. However, the case discussion should have addressed the criminal offence itself in more detail.

Within this case example, it might be argued that the accountability principle was overtaken by the welfare themed elements as discussions around the criminal behaviour developed. While the welfare elements were undoubtedly important factors within the case as a whole, the actual crime itself, the reason why the participant was initially referred to the panel, should have been discussed in greater detail while accountability for the act itself and a need for remorse should also have been explored more

thoroughly. Whether this particular trumping of the accountability principle was due to an absence of Garda representation within panel discussions is difficult to conclusively prove. It is, however, interesting that this issue was only observed when the panel was limited to a probation officer, chairperson and the caseworker herself.⁹² It is necessary to again reiterate that this was the only case example where such an emphasis on social welfare principles appeared to trump those of accountability and remorse. However, it can prove an important reminder that, while such a social welfare ethos is an important and necessary ingredient within panel discussions and procedure generally, accountability for any harm caused, the need for remorse and a sustained willingness to prevent recidivist behaviour must remain priority principles within panel practice and procedures. In concluding, it has to be noted that this observation, as with all the panel meetings in which personal access was granted, is a subjective analysis and the argument surrounding a perceived imbalance between care and concern on the one hand, and accountability on the other hand, should be assessed with this in mind.

4.10 Conclusion

This chapter has considered the practical and theoretical notion of the important concept of community within reparation panel practice. While the concept is continually held up as a fundamental tenet of both the restorative justice paradigm generally, and the reparation panel model itself, the form in which it is actually represented has proved difficult to refine. Within reparation panel practice, a two-fold community was established. A geographical and relational macro-community was identified by way of panel programme links with both locally based service suppliers and lay member and criminal justice professional actors. In addition, welfare and accountability themed discourses between the participating offenders and the small grouping of panel members illustrated a novel reparative community at work within panel case management. This reparative ‘meso-community of care, concern and accountability’ formed a surrogate support structure specific to each panel participant and each particular case managed, and successfully replicated the micro relational community

⁹² Other observed cases have taken place without a probation officer on occasion. However, the problem of an over-emphasis on welfare principles was not observed within these cases.

bonds that have been in evidence in other restorative programmes. While this case by case community has considerably strengthened restorative principles within the programmes, nevertheless care must be taken that the elements of care and concern are carefully and equally managed alongside the important restorative principle of accountability for any harm that has been caused.

The following chapter expands on the specific nature of the reparative community concept, outlines the potential conflict between communitarian and managerial principles within panel case management and analyses whether the idyll of a bottom-up, actively owned community representative justice process can be legitimately realised or what has in fact been realised is a restorative tinged process dominated by an over-reliance on government sponsored representatives, resources and other priorities.

Chapter Five

Community Part Two

Reparation Panels and the Conflict between Managerialist and Community Led Ideals

5.1 Introduction

As has been illustrated, part one of the investigation into the concept of community within restorative practice identified a reparative meso-community within panel practices on the basis of surrogate relational bonds within case discourses. This notional meso-community has added significantly to the overall community-led ethos within the reparation panel process. However, within this process, potential remains for the dilution of restorative principles and community based ideals due to an over-reliance on government sponsored resources and managerial demands. Indeed, such a conflict between managerial and community led ideals and between informal and formal modes of crime resolution lies at the heart of the theoretical and practical exploration of the restorative justice paradigm generally. There have been a number of critical examples within the socio-legal literature of informal justice processes being seen to increase rather than decrease the sphere of state influence over minor criminal disputes.¹ Other scholars have downplayed the apparent divisions between state control and community ownership.²

This chapter, part two of the reparative community investigation, provides an overview of the theoretical arguments surrounding the conflict between managerial and community ownership of restorative justice processes. It examines the dangers inherent in over-idealising the concept of community and investigates the potential within reparative practices for power abuses. It analyses the nature of the conflict within other comparable restorative models and, finally, examines how successfully the reparation model has managed to balance these competing ideologies in its own right. This, as will be illustrated, has important implications for the nature of the restorative principles and community ethos utilised within the Irish reparation model going forward.

¹ See for example, Christine B. Harrington, *Shadow Justice: The Ideology and Institutionalizing of Alternatives to Court* (Westwood, Connecticut: Greenwood Press, 1985); and, Richard Abel, *The Politics of Informal Justice Volume 1: The American Experience* (New York; London: Academic Press, 1982).

² Roger Matthews, 'Reassessing Informal Justice' in (ed.), Roger Matthews, *Informal Justice?* (London: Sage Publications, 1988) 1.

5.2 Managerialism and the Threat to Community Ethos

For many theorists, fully fledged claims by community led justice models that they are fundamentally different to other more conventional, court dominated, professional justice processes should be viewed with caution. For Richard Abel, neighbourhood based, informal legal institutions will ‘constantly speak about community’; however, what they actually achieve is the individualising of criminal conflicts and grievances.³ Furthermore, such ‘informal justice’ processes may be seen to ‘satisfy nostalgia for a mythical past’; however, in reality they merely result in tightening the grip of state social control.⁴ Abel has further argued that, for these informal institutions,

‘what they actually require and reproduce is a collection of isolated individuals circumscribed by residence. Informalism appropriates the socialist ideal of collectivity but robs it of its content. The individual grievant must appear alone before the informal institution, deprived of the support of such natural allies as family, friends, work mates, even neighbours’.⁵

In this regard, Abel was specifically addressing the role of informal institutions in the management of conflicts such as domestic disputes and consumer grievances. Nevertheless the same principle can be transferred to the criminal justice arena. Indeed, as this chapter will go on to examine, this ‘individualising’ of the conflict could potentially offer a cautionary warning on reparation panel practices in which participating offenders have attended without the wider help and support of friends and family members. Cohen has also cautioned against the true nature of the community based ownership of justice ideal, arguing that criminal justice models appearing to promote community interests can alternatively serve to extend and strengthen

³ Richard Abel, *The Politics of Informal Justice Volume 1: The American Experience* (New York; London: Academic Press, 1982) 289.

⁴ Ibid, 276.

⁵ Ibid, 289.

government influence and power over such practices.⁶ For Cohen, such programmes have been,

‘sponsored, financed, rationalised, staffed and evaluated by state-employed personnel...it is unlikely, to say the least, that the very same interests and forces which destroyed the traditional community – bureaucracy, professionalism, centralisation, rationalisation – can now be used to reverse the process’.⁷

Moreover, according to Garland, previous decades have seen a change in the objectives and priorities of criminal justice organisations and a reworking of management styles and practices. Sentencing has changed from ‘a discretionary art of individualised dispositions’ to a ‘rigid and mechanical application of penalty guidelines and mandatory sentences’, while probation and parole agencies have ‘de-emphasised the social work ethos that used to dominate their work and instead present themselves as providers of inexpensive, community based punishments, orientated towards the monitoring of offenders and the management of risk’.⁸ For Garland, this configuration of criminal justice aims represents ‘a new and all-pervasive managerialism’. Within this managerialism concept, ‘specific agencies and organisations, performance indicators and management measures have narrowed professional discretion and tightly regulated working practice’ with an emphasis now on the ‘cost effective management of risks and resources’.⁹ In a similar vein, Shapland has viewed the concept of managerialism as one that highlights the importance of ‘efficient administration by salaried officials, managing to hit a basket of targets within tight time limits’.¹⁰

⁶ Stanley Cohen, *Visions of Social Control* (Cambridge: Polity Press, 1985) 123.

⁷ Ibid.

⁸ David Garland, *The Culture of Control* (Oxford: Oxford University Press, 2001) 18. Although Garland is specifically concerned about a US based justice model, the same potential for state sponsored domination can be illustrated within reparation practices.

⁹ Ibid, 18-19.

¹⁰ Joanna Shapland, *Justice, Community and Civil Society. A Contested Terrain* (Cullompton: Willan Publishing, 2008) 6.

Within the reparation panel model itself the potential for a conflict of interests between fundamental managerialist and community led approaches has also arisen. The reparation programmes have remained under the close supervision of a number of government agencies since their inception. They have continued to rely on agency funding and judicial referrals and have always been dependant on the close cooperation of criminal justice professionals within the management of reparation cases. At the same time, the reparation programmes have claimed that they employ restorative principles and represent real community-based ownership and active stakeholder participation within the delivery of a 'bottom up' response to offending behaviour.¹¹ This danger, of restorative justice outcomes underlining healing and rehabilitation for both victims and offenders becoming undermined by the development of a primary focus on serving justice system goals and alleviating over-burdened courts, has been labelled by Umbreit as the potential 'McDonaldization' of restorative justice.¹² Within the following sections this ideological conflict, and its practical relevance within Irish reparation practice and procedure, will be explored further. First, however, some of the theoretical dangers of presupposing an overly idealistic notion of the concept of community within restorative discourses generally will be outlined, as well as a brief examination of how this 'dangerous idealism' can bolster the managerialist ethos by increasing the potential for a weakening of community bonds, partnerships and overall communitarian principles.

5.3 Idealisation and the Threat to Community Ethos

Alongside the various criticisms of the reality of community justice initiatives in their ability to deliver tangible community ownership of criminal conflicts has been a warning over the potential danger of over-idealising the community paradigm generally. As has

¹¹ The concept of 'bottom up' justice ownership is detailed further within the introductory chapter of this thesis. See Anna Eriksson, 'A Bottom-Up Approach to Transformative Justice in Northern Ireland' (2009) 3 *International Journal of Transitional Justice*, 301. See also Kieran McEvoy and Anna Eriksson, Restorative Justice in Transition: Ownership, Leadership and 'Bottom-up' Human Rights' in Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice: a global Perspective*, (New York; London: Routledge, 2006) 321.

¹² Mark Umbreit, 'Avoiding the Marginalization and 'McDonaldization' of Victim-Offender Mediation: A Case Study in Moving Toward the Mainstream' in Gordon Bazemore and Lode Walgrave (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Monsey, NY: Criminal Justice Press, 2001) 213.

been illustrated throughout this research thesis, the exact form and function of the community concept can prove difficult to pin down in clear and absolute terms. Definitions have tended to rely on a somewhat idealistic notion of community. It can be defined as that which represents a particular geographical area or, alternatively, can be illustrated by micro and macro support and social bonds within a support structure that can include both direct and indirect stakeholders.¹³ This premise of an idealised, community rich utopia has been previously addressed by Bauman who has asked the question,

‘who would not wish to live among friendly and well-wishing people with whom one could trust and on whose words and deeds one could rely?...community stands for the kind of world which is not, regrettably, available to us – but which we would dearly wish to inhabit and which we hope to repossess...community is nowadays another name for a paradise lost – but one to which we dearly love to return, and so we feverishly seek the roads that may bring us there’.¹⁴

Moreover, the somewhat oblique and multi-stranded categorisation of community and the norms it may or may not represent can arguably serve to endanger the informality and ‘bottom up’ control that restorative justice so often promises. With this in mind, Crawford has warned that the pessimistic reality of many communities is that they are too often ‘marked by social exclusion, forms of coercion and the differential distribution of power relations’.¹⁵ For Pavlich, the idealisation of community is also problematic in that such an idealisation, the idea of a better past, of an ‘icon’, has the potential to lend

¹³See further Paul McCold, ‘What is the Role of Community in Restorative Justice Theory and Practice?’ In Harry Zehr and Barry Toews (eds.), *Critical Issues in Restorative Justice* (Monsey, New York: Criminal Justice Press, 2004), 155 for a discussion on ‘micro’ and ‘macro’ relationships. As has been previously outlined in some detail within Chapter 4, these relationships involve close familial support at the ‘micro’ level, and indirect stakeholder support at the ‘macro’ level.

¹⁴ Zygmunt Bauman, *Community: Seeking Security in an Insecure World* (Cambridge: Polity Press, 2001) 2-3.

¹⁵ Adam Crawford, ‘Salient Themes towards a Victim Perspective and the Limitations of Restorative Justice: Some Concluding Comments’ in Adam Crawford and Jo Goodey (eds.), *Integrating a Victim Perspective within Criminal Justice*. (Aldershot: Ashgate Publishing, 2000), 290-291.

itself to the contributory means of producing exclusion.¹⁶ He has further argued that the promise of a free and un-coerced community made up of an un-coerced collective membership is in danger of being 'offset by a tendency to shore up limits, fortify a given identity, and rely on exclusion to secure self-preservation'.¹⁷ Indeed, he has queried the utility of any attempts to identify clear limits to 'proper' community structures in that,

'such unifying strategies gather together notions of community by pointing to others who are not the same as, and who may threaten, 'normal' members of a shared, moral and peaceful community. The normal (the same) is thus demarcated from the other, the familiar from the strange...we face the difficult issue of many locally produced strangers being simultaneously identified by different quests for the community...this local proliferation of strangers may help to shore up specific claims to community, but it can also lead to dangerous patterns of exclusion that limit, if not preclude, the possibility of a wider solidarity'.¹⁸

Thus, as Pavlich asserts, a binary culture of 'us' and 'them' has the potential to develop wherein those on the outside, the 'significant minorities' recognised by Selznick, may be stigmatised and cut adrift with conflicts then arising which can become enhanced and entrenched.¹⁹ Theoretically then, such idealisation of the community paradigm possesses the potential for weakening any notion of communitarian ethos. Idealising community in this way has the added potential of creating possibilities for the abuse of

¹⁶ Lode Walgrave, *Restorative Justice and the Law* (Cullompton: Willan Publishing, 2003), 79.

¹⁷ George Pavlich, 'The Force of Community' in Heather Strang and John Braithwaite (eds.), *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press, 2001), 58.

¹⁸ Ibid. In order to combat this danger, Pavlich has asserted that one should not become too concerned with preserving any actual concept of 'community' per se, rather we should attempt to erode the possibilities for totalitarian exclusions by imagining a 'collective solidarity through memories of spontaneous, peaceful and autonomous association'. Ibid, 67. He has further classified this notion of collective solidarity as one of 'hospitality', a place where guests are welcomed and received, where what is offered is 'an invitation to the other to cross the threshold of place'. See further George Pavlich, 'Deconstructing Restoration: The Promise of Restorative Justice. In Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003), 457.

¹⁹ Philip Selznick, 'Thinking about Community: Ten Theses' (1995) 32 *Society*, 36. See Chapter 4 for further analysis of Selznick's definition of the community concept.

power towards those not recognised as belonging to that imagined community idyll. While this theoretical argument relates chiefly to a prominent geographical area and population, such stated 'minorities' could also be potentially replicated in the participating offenders caught up within the criminal justice system and the reparation model specifically. By way of example, the Irish reparation panel model is firmly entrenched within the aegis of the state managed criminal justice system. It is reliant on government funding, judicial support and referrals and a viable working relationship with criminal justice professionals and government sponsored agencies. Through this symbiotic criminal justice based relationship, the potential for a reliance on managerial principles such as target hitting and cost effectiveness, and a preference for rules over relational and other socio-economic factors, can be seen as a realistic concern within the reparation model as a whole. Furthermore, there appears to be some ambiguity as to the representative nature of a number of the community actors within panel management. Within the *RJC* programme model the manager, who has also acted as sole facilitator, is paid by way of a contract administered by a limited company, run by a voluntary board of members. Although it can be legitimately argued that that they are 'employed by the community', the programme still relies on the Probation Service for funding support.²⁰ Those caseworkers and facilitators representing the *RJS* programme are paid through the funding supplied by the Department of Justice and Equality, yet are seen to 'represent' the community interest and that of the participating offender.²¹ Furthermore, the majority of panel cases managed by *RJS* are located within the headquarters of the Probation Service itself.²² One facilitator within the *RJS* programme claimed that their primary role within panel deliberations was that of community representative, yet admitted to being on the board of the government sponsored reparation programme and living in a different county from where the panels, and the actual offending, had taken place.²³ There is, therefore, the potential within reparation

²⁰ The *RJC* based manager has as of 2014 been joined by another support facilitator. Up to that point, the manager acted alone, apart from one administrative support worker, as facilitator, conduit between the courts and the programme, conduit between victims, offenders and the programme, as well as managing the overall process. The company is called Community Reparation Programme Company Limited. She stated that she believed she was 'employed by the community'. Interview with *RJC* manager, Thurles, 19th November 2014.

²¹ The position with the *RJC* facilitators is somewhat different and is outlined further within this Chapter.

²² See Chapter 2 for further examination of reparation venues.

²³ Interview with *RJS* facilitator, Probation Service HQ, Smithfield, Dublin 1: 28th October 2014.

panel management, for managerialist agendas to trump the notion of communitarian ethos if the reparative relationship between criminal justice professionals, programme and lay member panellists and state managed institutions does not work as an equal partnership. Traditionally it can be said that managerial based, professional criminal justice priorities have contrasted with restorative themes such as the image of crime as a breakdown in relationships rather than statute based rules, and the promotion of normative, problem solving discourses. Conventional justice ideology has concentrated on the harm caused to the state itself as much as to direct victims, and on managerial targets, time constraints and financial monitoring over and above the social, economic and communitarian contexts surrounding many criminal events. In this regard, community representative panellists and programme lay actors could theoretically find their roles undermined because of an overt professional-led domination of panel dialogues and agreements and an emphasis on securing blame and the promotion of retributive rather than rehabilitative reparative elements.

It should be stated at this point that within the majority of those panels observed as part of this research thesis, the relationship between criminal justice professionals, programme representatives and community based volunteers worked relatively seamlessly. All panellists were given equal opportunities to actively participate within case discussions and contract deliberations with individual expertise shared and accepted. However, the potential exists for a professional criminal justice dynamic to dominate proceedings and weaken restorative principles.²⁴ Reducing the influence and support of, theoretically at least, offender-representative panel actors such as caseworkers and local volunteers, might then lead to the abuse of reparative based agreements such as overly retributive community service terms and excessive restitution payments by offenders who themselves have been marginalised within the

²⁴ Previous concerns have been offered regarding juvenile based restorative cautioning schemes within the Thames Valley Cautioning Scheme in the UK. During the implementation stage, police facilitators were seen to dominate proceedings, reducing other participants to passive observers and, in turn, reducing the restorative nature of the caution. Overall, however, the process was viewed as a considerable improvement on previous 'traditional cautioning' practices. See Carolyn Hoyle, Richard Young and Roderick Hill, *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning* (York: Rowntree Foundation, 2002).

community through economic and social factors. Indeed, in this regard, the potential for such abuses and general dilution of restorative principles is increased within a restorative model such as the reparation panel. This is due to the specific panel format which allows for a participating offender to attend and discuss their offending behaviour alone, and without the support of friends and family members. These support mechanisms have been a common feature within other restorative models such as family group conferencing and circle sentencing programmes.²⁵ Moreover, it has been argued that such support mechanisms can aid in building solidarity between the relevant stakeholders through 'interaction rituals' which can 'force emotional energy and successful interaction from parties that would generally be averse to it'.²⁶ For example, Rossner has provided an illustrative summary of Randall Collin's theory of 'interactional ritual chains' in which, 'in successful rituals a conversational and bodily rhythm develops over time. This is marked by a shared focus of attention and understanding that culminates in a distinct feeling of solidarity and group membership, where participants feel strong positive emotions of goodwill'.²⁷ Within one example of Rossner's observational accounts of restorative conferencing models, an offender and mugging victim, and their supporters met in a disused police station. The 'interaction ritual' that followed, with the participants seen to move from 'hesitant and awkward conversation to instances of high solidarity and shared emotion', was so successful that the referring judge ordered 240 hours of community service in lieu of an expected prison sentence.²⁸

²⁵ All of the panels observed were managed through the offender reparation format. However, the *RJC* manager did state that their programme had carried out a group conferencing meeting as part of one case involving damage done to a church and a victim offender mediation as part of another case involving a neighbourhood dispute and criminal damage. Interview with *RJC* manager, Thurles, 19th November 2014.

²⁶ Meredith Rossner, 'Reintegrative Ritual: Restorative Justice and Micro-Sociology' in Susanne Karstedt, Ian Loader and Heather Strang (eds.), *Emotions, Crime and Justice* (Oxford and Portland: Hart Publishing, 2011), 175. See for a general description of the theory, Randall Collins, *Interaction Ritual Chains* (Princeton: Princeton University Press, 2004).

²⁷ Meredith Rossner, 'Emotions and Interaction Ritual: A Micro Analysis of Restorative Justice' (2011) 51 *British Journal of Criminology* 95, 96.

²⁸ *Ibid*, 116.

5.4 Maturity and Restorative Participants

In this regard, it should be remembered that the Irish reparation panel model manages adult offenders only, and that these familial support structures are predominantly reserved for juvenile restorative justice schemes, although they have been represented within UK based adult conferencing models managing serious crimes as illustrated above.²⁹ Indeed, this exclusion of familial support for young adults has been said to extend to the criminal justice process generally.³⁰ Although participating offenders within reparation panels are classed as autonomous adults as they are 18 years of age and over, nevertheless it should be a concern that many young adults arguably lack the mature capacity required to successfully participate within restorative justice and criminal justice initiatives, and that the level of maturity can vary widely depending on the individual. It can also, according to Marder, manifest itself in different ways such as with low levels of emotional literacy, a lack of a sense of urgency, a chaotic lifestyle and a varying dependency on family members.³¹ Such a perceived lack of maturity within young adults is very relevant when the age of participating offenders within the reparation panel process is considered. The majority of those participants observed were between 18 and 25 years old.³² It has been generally argued that, within this type of age grouping,

‘there is considerable scientific evidence showing that key competences regarding maturity typically do not fully develop in the individual until between the ages of 21 and 25, including impulse control, planning, reasoning, thinking before acting, the regulation of emotions, abstract thinking, resistance to peer influence and the ability to delay gratification. Maturity, therefore, is something

²⁹ See Rossner above. See also Joanna Shapland, *Justice, Community and Civil Society. A Contested Terrain* (Cullompton: Willan Publishing, 2008). This research has also illustrated examples of significant groups attending as support mechanisms for both victims and serious adult offenders (burglary) within UK based conferencing models. These are discussed further as part of the international comparative perspectives outlined within this Chapter.

³⁰ Ian Marder, *Restorative Justice for Young Adults Factoring in Maturity and Facilitating Desistance* (Barrow Cadbury: Restorative Justice Council and Transition to Adulthood Alliance, 2013) 10.

³¹ Ibid, 8-13.

³² Of the 47 panels observed within both programmes, 29 cases involved participating offenders within the age range of 18-25.

which must be considered on an individual basis, and is significant and relevant to criminal justice professionals and restorative practitioners working with 18-25 year olds, who need to respond appropriately to its absence among some members of this age group'.³³

During panel observations, one potential example of this proposed lack of maturity within young adult offenders was observed within an *RJS* based panel. The case involved an 18 year old offender charged with a theft offence wherein it did appear from the panel discussion and body language of the participant that he did not fully understand the restorative process he had been referred into, or the restorative principles he was being asked to embrace. Within the panel discussion, the participant became increasingly frustrated and angry, shifting in his seat and waving his arms. He continually asked the panellists involved, 'what do you want me to do? I don't understand what you want me to do'. This was despite repeated attempts by the panellists to clearly explain the process and arrive at a reparative contract agreeable to all. The participant was asked on a number of occasions, for example, if he would agree to attend an anger management session, to which he made no reply. What made this example all the more interesting was that it was actually the second time that this offender had attended such a panel.³⁴ On this occasion, the case was postponed for further discussions on how best to proceed as no breakthrough seemed imminent. The Probation Service representative panellist believed that the participant was simply looking to 'tick another box' rather than fully engage with the restorative process. There did seem to this observer a complete lack of understanding of the process generally despite participating previously, as well as a complete lack of accountability for any harm that had been caused. Panellists did attempt to explain fully what was expected; however, the participant appeared unwilling, and perhaps unable, to grasp the relevant restorative principles. This then led to clear evidence of frustration and anger from the participant.

³³ Ian Marder, *Restorative Justice for Young Adults Factoring in Maturity and Facilitating Desistance* (Barrow Cadbury: Restorative Justice Council and Transition to Adulthood Alliance, 2013) 8.

³⁴ The participant had attended initially for another theft offence and had successfully completed the process. The probation officer and chairperson within this panel explained that some offenders can be referred twice to the process. This raises more questions about procedure and accountability concerns and is discussed further within Chapter 6.

After a short recess during which the participant left the room, it was decided to postpone the process for further analysis. The level of maturity among participating offenders, therefore, can be an important factor within the reparation process as a whole. The fact that all participating offenders are adults tends to presume that they are also equipped emotionally to fully understand and navigate their way through the rigours of the reparation process. However, as research has illustrated, this is not necessarily the case and, certainly within some of those cases which I attended, participants appeared to struggle to understand what was required of them in order to successfully complete the process.

Overall, there remains the possibility of an abuse of reparative measures within panel agreements and a weakening of both the communitarian ethos and the restorativeness of employed principles within the reparation process generally. The grounds for such concerns lie partly with the lack of familial support mechanisms within the panel discussion itself, a potential over-reliance on managerialist demands and goals, and the possible lack of maturity and understanding amongst the young adult offenders referred to the process.³⁵ This chapter will go on to address the question of whether this seemingly fundamental clash of ideals, and the potential abuse of panel powers, has been illustrated within the practical reality of Irish reparation panel practice. It is argued that the panel programmes have demonstrated a successful bulwark against many of the concerns previously highlighted. This has been possible due to the successful meshing of managerial principles within an overall, community led ethos. It has achieved this by way of the successful interplay between a variety of criminal justice professionals, programme actors and local volunteers in the delivery of reparative, restorative justice principles. Both programmes have managed to maintain a successful balance between both fundamental approaches due to a reworking, at least in part, of mainstream criminal justice boundaries and identities. In many respects, the very concept of restorative justice represents a different way of imagining and managing

³⁵ As noted within Chapter 2, the aims and principles of the process and brief descriptions of the restorative justice concept will usually be set out in detail during pre-panel discussions with participating offenders generally within both programmes. Letters of apology within contracts to family members directly or indirectly affected by the offence can also help to reinforce familial bonds despite the absence of such groupings within actual panel discussions.

crime, and its inherent appeal rests with its ability to offer more than simply adversarial, legal rules and principles, professionalised and state sponsored activism and the determination of guilt.³⁶ This alternative viewing of criminal justice conflicts has been a common feature within reparation processes. In many ways, the reconceptualization of a number of mainstream criminal norms has been made all the more noteworthy due to the influence of professionalised, state representative actors throughout the process. The means by which reparation panels have achieved a successful, working balance between managerialist demands and community led ideals is explored further within the following sections.

5.5 Reparation Panels and the Redefining of Criminal Justice Boundaries

Throughout proceeding chapters within this thesis, it has been argued that the Irish reparation panel model has added to the potential for successfully viewing criminal justice conflicts through a different type of justice lens. This particular ‘reparative lens’ has tended to view participating offenders as ‘a person first’ and ‘offender second’ within a proposed ‘meso-community of care, concern and accountability’. Participating offenders have been managed within case discussions in a sympathetic and non-judgmental way. A welfare ethos has been identified as an important principle within panel discussions wherein participants have been asked to describe their personal backgrounds, individual concerns and personal dependency issues. This welfare ethos has been further reinforced by an emphasis on the principle of accountability and the need to repair any harm that has been caused by the criminal act. This emphasis on offender needs as much as on offender deeds, and the participation within both reparation programmes of community representative actors and community based service suppliers, has improved the potential for fully realising the ideal of community within panel procedures. Moreover this reparative practice of managing participants within a welfare based, panel structured and surrogate bonded community has

³⁶ Howard Zehr, *Changing lenses: a new focus for crime and justice* (Scottsdale: Herald Press, 1990) 211-214. For example, Zehr argues that a ‘retributive lens’ represents state monopoly and a fixation on secondary needs and the past, while also ignoring the social, economic and moral context of the offending behaviour. The ‘restorative lens’, conversely, is seen to highlight the relational nature of justice conflicts and seeks to retain the normativity of dialogue, restoration and reparation while centralising victims’ rights.

increased the potential to reimagine certain fundamental beliefs of how the very concept of crime should be ultimately perceived.

In this regard, the conflict between state managed and resourced professionalised justice models and the principle of the community owned, restorative ideal can be further illustrated within the theoretical 'imitator paradox' put forward by Pavlich. This paradox is said to exist 'within two bifurcated strands of thought associated with restorative justice that amount to a paradox at the heart of its governmentality'.³⁷ Pavlich has outlined the paradox thus;

'on the one hand, restorative justice is presented as a distinct form of justice that exists sui generis, making sense of advocates' claims that they are offering/deploying a form of justice which is ethically and practically distinct from criminal justice institutions. On the other hand the restorative paradigm claims relevance and success by presenting itself as a component of reform within existing criminal justice systems.'³⁸

For Pavlich, the former would seem to suggest 'an image of justice deliberately contra to criminal incarnations and having a coherence in its own right'. However, as he has also noted, 'the overall effect is to generate an irresolvable, aporetic structure that simultaneously sees itself as independent of, yet is constitutively dependent upon, criminal justice'.³⁹ In this regard, Pavlich has also outlined how restorative justice continually claims to be different from state-based courtroom justice in that it deals with the aftermath of criminal wrongdoing from within the community itself. Indeed the Irish reparation programme literature has included these very claims.⁴⁰ Taking this possible

³⁷ George Pavlich, *Governing Paradoxes of Restorative Justice* (London: Glasshouse Press, 2005), 20.

³⁸ Ibid.

³⁹ George Pavlich, *Governing Paradoxes of Restorative Justice* (London: Glasshouse Press, 2005), 20.

⁴⁰ See for example Nenagh Community Reparation Project, *Presentation to the National Commission on Restorative Justice* (2007) 4, in which it is stated that 'the Community is often the principle victim and Restorative Justice offers the community the opportunity to take the responsibility of dealing with offending behaviour'.

paradox into consideration, the community should then, if the pretence is logically followed, exist outside the realm of state agency influence and oversight as much as possible.⁴¹ However, in the view of Pavlich, restorative justice communities do not question what 'crime' itself is. They do not challenge the conventional image of crime, that 'founding concept of criminal justice'; they do not challenge what a crime is, whether harm has to be always a product of crime, whether specific definitions of crime can themselves be harmful. Furthermore, the restorative community itself can be made up of individual identities such as 'the victim' and 'the offender', identities which are cemented in conventional criminal justice dialogue. Therefore, a paradox presents itself in which,

'the image of community used to differentiate restorative from criminal justice rests on empowering identities of key figures – victims and offenders - as defined within the courtroom...the strength of this community is thus, paradoxically used to signal the distinctiveness of a restorative justice founded upon the active participation of such adversarial personae as victims and offenders as the basis of strong, democratic, communal formations'.⁴²

Within reparation panel practices, elements of Pavlich's theoretical paradox can be seen to have been clearly illustrated. As noted previously, the programmes are state funded, state managed, and rely completely on judicial discretion. The concept of community, alongside community representative roles, have been defined by the programmes themselves. This research thesis has unearthed a number of potential problematic questions in this regard. For example, community representative caseworkers are paid on a case-by-case basis by the Department of Justice and Equality which in turn funds the reparation model. As noted earlier within this Chapter, one *RJS* based facilitator, whose perceived role was again to represent the community within panel discussions, was on the programme board and lived in another county while another facilitator was

⁴¹ George Pavlich, *Governing Paradoxes of Restorative Justice* (London: Glasshouse Press, 2005), 95.

⁴² Ibid 98. See generally 97-103. See also Andrew Woolford, *The Politics of Restorative Justice. A Critical Introduction*. (Halifax and Winnipeg: Fernwood Publishing, 2009), in particular Chapter 5.

the manager of the programme itself. While there was no evidence of any conflict of interest arising within those cases observed as part of this thesis, and in the main these actors expertly and fairly managed the participants involved, the potential for agency bias and a conflict of interests between government led, agency priorities and restorative principles remained. Furthermore, the more mainstream, conventional labels of victim and offender and the fundamental concept of 'crime' itself have also been replicated within programme case management.

There has been, therefore, clear evidence of government, criminal justice professional, and judicial oversight within reparation practices. In addition, all reparation practices continue to take place under the overall aegis of the Irish Department of Justice and Equality and both reparation programmes have been operational largely due to a dependence on Department funding. In highlighting these factors, however, community ideals have also blossomed alongside these more representatively conventional justice elements. The Irish panel programmes have utilised a welfare care ethos within panel discussions, have largely incorporated community representative activists and locally based service suppliers, and have replicated a reparative meso-community of care, concern and accountability around reparation panellists and the participating offender. This has all been achieved in tandem with state-run professional bodies and justice professionals amid overall judicial discretion and supervision. This reparative community has allowed for a process in which the hopes and concerns, familial relationships and rehabilitative needs and future plans of participants can all be explored within panel discourses, as well as addressing the facts around the referred offence itself and the individual factors behind each case. In this regard, panel members have been observed successfully teasing out the deeper reasons behind the offending behaviour. Indeed, during a number of observations several participants admitted to a number of previous offences and current offending behaviour within the management of a particular unrelated offence.⁴³

⁴³ Such admittances have included previous convictions that the panel were unaware of, as well as one such offender admitting to using recreational drugs 'on occasion'. Another participant admitted that he had shoplifted for many years previous to his referral and that this was the first time he had actually been caught. These admittances have no legal significance to the participating offender as the panel are only

As Pavlich argues above, restorative processes tend to rely on courtroom based 'empowering identities' that can serve to limit restorative and community led ideals. Alternatively, these mainstream criminal justice Identities of 'offender', 'victim' and 'criminal justice professional' have been seen to evolve and be challenged within a number of reparation panel discussions.⁴⁴ Reparation practice generally is duty bound to address the criminal behaviour and work out the best ways in which to repair the harm caused to the relevant stakeholders and prevent the recidivist tendencies of the participating offender. Irish reparation panels are no different in this respect. However there has also been, within the series of cases observed, a noticeable shift away from the more adversarial conventional criminal justice game play of offender versus police, 'us versus them', and the shifting of blame and the denial of guilt and accountability. Garda officers have been observed, on occasion, not wearing their uniform to meetings, thus adopting an arguably less intimidating tone to offenders for whom the reparation process can be an intimidating process.⁴⁵ Many of those Garda representatives observed during the panel process have employed elements of a 'humanistic dialogue' within case discussions.⁴⁶ Such dialogue has been said to 'rest on client empowerment, recognition of each other's humanity despite the conflict, and the building of a deeper, mutually respectful relationship'.⁴⁷ Umbreit has further reiterated the notion of a 'humanistic model of communication'. He has viewed humanistic dialogue, as used by restorative facilitators, as part of a process that is not concerned with driving settlements but,

'facilitating dialogue and mutual aid...connecting with the parties through building rapport and trust, while not taking sides; identifying the strengths of

interested in managing the criminal act to which they have been initially referred. It is perhaps fair to argue that the possibility of such acts being admitted to within a court room based process would be very low.

⁴⁴ See pages 204 and 205 below for further discussion surrounding the importance of restorative justice in challenging these conventional criminal justice labels.

⁴⁵ Many Garda officers did wear their uniform to panel meetings. However, one Garda panellist in particular was never observed wearing his uniform to a panel. He was also the most experienced of those Garda representatives with an extensive background in juvenile restorative justice practice. See Chapter 4 for an outline of how some offenders have appeared to be intimidated within discussions by way of such factors as their body language and mumbled responses to panellist questions.

⁴⁶ See Mark S. Umbreit and Mark P. Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (New York: Springer Publishing, 2011) 21.

⁴⁷ Ibid.

each party; using a non-directive style of mediation that creates a safe space for dialogue and accessing the strengths of participants; and recognizing and using the power of silence'.⁴⁸

An example of this approach was observed during one *RJS* panel case managing a burglary offence. Within this case, the Garda representative detailed his own experience to the offender and other panellists of how his home had been burgled when he was a child and the subsequent feelings of fear that had gripped his whole family. He explained how he had to watch his father, himself a Garda officer, leave the family home in an attempt to apprehend the offenders. He explained to the participant that he was unsure at the time whether or not his father would safely return. This type of dialogue can help to 'humanise' the policeman in the eyes of the offender. It can help to turn conventional justice labelling on its head in that the Garda officer illustrated a level of vulnerability that is rare within the offender/police dynamic. Within another case discussion, the Garda representative promised to check with a particular Garda station regarding the possibility of outstanding warrants in relation to an offender's past behaviour.⁴⁹

Thus, reparation panels have been observed as spaces in which conventional criminal justice norms, at least at part, are being challenged. The needs of participating offenders have been addressed alongside the criminal deeds; discussions within meetings have represented a conversational rather than adversarial discourse; criminal justice professional panellists have illustrated a sympathetic tone when managing offences, while also underlining the need for reparation for the harm caused; participants have illustrated victim traits of their own due to addiction issues and relational breakdowns; and the reasons for the offences committed have been shown to be multi-dimensional. The notion of oversimplified, mainstream criminal justice labelling has been further

⁴⁸ Mark Umbreit, 'Restorative Justice through Victim- Offender Mediation: A Multi-Site Assessment' (1998) 1 Western Criminology Review (Online), available at <<https://wcr.sonoma.edu/v1n1/umbreit.html>>.

⁴⁹ The offender was unsure whether or not such warrants had been issued in the past. He thought they may have been but could not say for certain. Some other participants have been unsure as to the specific nature of past criminal penalties and also unsure as to the specifics surrounding their presence at the panel itself.

illustrated within other restorative mediation studies. For example, within a UK based victim offender youth justice mediation model, a victim of a house burglary was surprised and relieved that the offender, on meeting him face to face, was 'no bigger than my ten year old son'.⁵⁰ Thus the victim's perceptions of the offender, and offender stereotypes generally, were challenged. Within another Irish reparation case example, the Garda representative voiced surprise that the offender, charged with possession of a dangerous weapon (a lock knife), had pleaded guilty to the offence in the first place. The participant had argued that he was going fishing and had equipment on his person that seemed to back up that account. Nevertheless he had pleaded guilty in court to the charge. While the potential for serious harm while carrying such dangerous items was clearly outlined within the overall case dialogue (and this was not the offender's first offence), the Garda panellist introduced an element of sympathy into proceedings and noted that there may have been some misfortune attached to this particular case. Moreover, the specifics of the particular criminal charges being managed within panel practices have been clearly defined by participating Garda officers on occasion. Such examples of panel dialogues and communication can help to break down initial barriers between offenders and panel members generally and at the very least provide a platform for increasing the opportunities for remorse and true accountability.

This element of challenging certain mainstream criminal justice identities has been illustrated further within the town based reparation panel model. Here, *RJC* has employed a policy which involves the facilitator writing letters to both offenders and relevant victims to gauge their willingness to become involved in the reparation process. The language within these letters overtly side-steps the more conventional labels of 'victim' and 'offender'.⁵¹ For example, victims and offenders have been classified as 'people affected by crime', thereby departing from the 'adversarial personae' language of which Pavlich has warned can result in the dilution of true restorative ideals.⁵² This

⁵⁰ Aidan Wilcox and Catherin Hoyle, *The National Evaluation of the Youth Justice Board's Restorative Justice Project* (Youth Justice Board: Oxford, 2004) 42. Available at yjbpublications.justice.gov.uk/.../restorativejusticefull.pdf.

⁵¹ See appendices 5 and 6 for examples of the introductory letters used by the *RJC* programme.

⁵² Interview with *RJC manager*, Thurles, 19th November 2014. See also George Pavlich, *Governing Paradoxes of Restorative Justice* (London: Glasshouse Press, 2005), 98.

challenging of conventional criminal justice labels can be seen to be important in a number of ways. For example, Woolford has noted that the 'victim' tag can be overly simplistic at times with many offenders having themselves been victims of crimes in the past. Also in relation to victims, he argues that 'trauma narratives' can empower the state and 'reinforce structures of inequality'. Certain narratives can engender a sense of public fear, thus legitimising increased government surveillance and control. For Woolford, it is about 'broadening our sense of what we mean when we use these terms'.⁵³ Moreover, such terms can become 'corrupted' due to their frequent use within formal criminal justice systems and ideally 'restorative justice must strike out and find a new language',⁵⁴ as the town based reparation model has itself attempted to do. Many participating offenders within the panel process could themselves be legitimately labelled as a type of victim. A number of those whose cases were referred had dependency issues in relation to drugs, medication and alcohol. Others were classified as 'homeless' and living in temporary accommodation and hostels due to the breakdown in various relationships. Within similar UK based restorative community panel models, the 'victim' and 'offender' labels have been rebranded to 'harmed persons' and 'wrongdoers'.⁵⁵ Such rebranding can represent a renewed effort to tackle what has been seen in other jurisdictions as the 'ideological challenge' faced by restorative models generally in which front-line police officers are more concerned with conventional criminal justice frameworks which tend to emphasise managerial targets and adversarial court-room battles between conventional 'victims' and 'offenders'.⁵⁶

If restorative justice is to stay true to its informal, voluntary, community led and relationally based roots, it should seek to define criminal justice differently. Within the

⁵³ Andrew Woolford, *The Politics of Restorative Justice. A Critical Introduction*. (Halifax and Winnipeg: Fernwood Publishing, 2009), 112.

⁵⁴ Ibid, 97. See in particular Chapter 5 of Woolford for a breakdown on identities within criminal justice systems.

⁵⁵ Linda Meadows, Kerry Clamp, Alex Culshaw, Nichola Cadet, Dr Katherine Wilkinson and Joanna Davidson, *Evaluation of Sheffield's City Council Community Justice Panels Project* (Hallam Centre for Community Justice: Sheffield Hallam University, 2010), 4.

⁵⁶ Kerry Clamp and Craig Paterson, 'Rebalancing Criminal Justice Potentials and Pitfalls for Neighbourhood Justice Panels' (2011) 9 *British Journal of Community Justice* 21, 31.

ongoing practice of reparation and the utilization of restorative principles in the Irish adult reparation models, Garda officers and other criminal justice professionals have been successfully viewing criminal justice through a different, 'reparative' lens, in which cases of offending were viewed as harmful events affecting a wide range of local community members. Crime has, in many ways, been 'repackaged' as a breakdown in relationships between individuals and community members rather than the more conventional relationship between the prosecuting state and the accused.⁵⁷ Locally based volunteers, panel caseworkers and programme facilitators have been observed taking more responsibility for addressing offending behaviour by facilitating dialogue and managing reparation and rehabilitation within panel practices. It is perhaps fair to state, as Kerry and Clamp have previously outlined, that a failure to face this 'ideological challenge' head on could result in limited police referrals to restorative justice programmes generally, as well as over-zealous contract oversight.⁵⁸ Within a Sheffield based community panel model, researchers found that a 'cultural change' was required due to a general resistance to embrace restorative justice principles within police ranks. This, it has been argued, was the result of a general perception within these ranks that restorative justice represented something of a soft option when compared to more mainstream policies. This 'cultural change' was seen to be 'one of the most challenging features of successfully implementing the community panels'.⁵⁹ A further evaluation of the South Yorkshire Restorative Justice programme, unrelated to the Sheffield based community panel model above, uncovered concerns that police officers were being

⁵⁷ For examples of restorative justice observed as 'relational justice', see Michael Schluter, 'What is Relational Justice?' in J. Burnside and N. Baker (eds.), *Relational Justice: Repairing the Breach* (Winchester: Waterside Press, 1994). See further R. A. Duff, 'Restorative Punishment and Punitive Restoration' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 383, 385-386. Here, Duff notes how crimes and wrongdoing can produce, as well as material and psychological harm, damage to a wide range of relationships. These broken relationships can include those between direct victim and offender and between close family members and friends. They can also include less intimate relationships between relatively local community members. For Duff, the best way of repairing and rebuilding these relational bonds is through 'the three 'R's of apology; recognition, repentance and reconciliation'.

⁵⁸ As judges are presently the sole arbiters of whether or not an offender can participate in the reparation panel process, this concern is not directly applicable to the panel process. It might, however, become the case if the Gardaí are given increasing powers of referral in line with current juvenile diversionary and adult cautioning practices.

⁵⁹ Linda Meadows, Kerry Clamp, Alex Culshaw, Nichola Cadet, Dr Katherine Wilkinson and Joanna Davidson, *Evaluation of Sheffield's City Council Community Justice Panels Project* (Hallam Centre for Community Justice: Sheffield Hallam University, 2010), 27.

discouraged in the use of restorative justice as it was being perceived as conflicting with district targets including sanction detection rates.⁶⁰ An interview with a Garda officer for the purposes of this thesis also uncovered claims of indifference towards the restorative concept generally amongst colleagues, with many others seeing it as something of a 'soft option'.⁶¹

The opportunity to attend reparation panels for the purposes of this thesis and to listen first hand to the discourse between panellists and participating offenders has enabled a deeper understanding of the reasons how and why crime can occur. The reasons for offending were multi-stranded. Substance abuse, mental health disorders, debt concerns, previous relationship breakdowns and the deaths of friends and loved ones were all cited by participating offenders as factors in their offending behaviour. This has illustrated that, by implementing a principle within panel discourses of viewing the participant as a 'person', a 'community member', and indeed on some occasions a 'victim' in their own right, as well as simply and procedurally an 'offender', any concerns relating to the over-reliance on 'adversarial personae' within restorative practices have been at the very least addressed. It is also noteworthy that this policy within panel practices is not stated policy but has emerged on an ad hoc basis as the programmes have developed. The personal circumstances of certain participants involving issues with alcohol and drug related dependencies and the breaking up of familial bonds, and how these problems were managed within panel agreements, has also helped to re-evaluate the boundaries surrounding the very concepts of 'crime', 'offender' and 'victim' and what these concepts and identities ultimately represent. The panel based 'meso-community of care, concern and accountability' has then, to some extent, helped to answer concerns that, as a rule, 'so called' restorative justice communities are not capable of questioning and challenging the conventional image and specific definitions

⁶⁰ Linda Meadows, Katherine Albertson, Daniel Ellingworth and Paul Senior, *Evaluation of the South Yorkshire Restorative Justice Programme* (Hallam Centre for Community Justice: Sheffield Hallam University, 2012) 24.

⁶¹ Interview with Garda panellist, Thurles, 19th November 2014.

of crime, that 'founding concept of criminal justice', and questioning whether or not harm has to always be a product of the crime itself.⁶²

The reparative meso-community within panel discourses has been identified as one that manages case referrals by way of a two pronged approach. The panel has managed the well-being of participating offenders through in-depth discussion and referrals to dependency and advice support services. It has also highlighted the harm caused by the offence itself and the need for accountability and reparation. These principles have been illustrated within a panel based community of indirect relational influences which has included professionalised actors and state sponsored elements. It has successfully emphasised principles of accountability alongside sympathetic and empathetic concern, concepts arguably more prevalent within the thicker relational bonds of a closer, familial support structure. In this regard, such a reparation based ethos has only been possible due to a successful merging of both managerial and community based ideals. This successful panel based relationship can be classified as one which has illustrated many of the theoretical components of the 'democratic professionalism' concept put forward by Olsen and Dzur.⁶³ The boundaries of this concept, and its particular relevance within reparation panel case management are outlined below.

5.6 Reparation Panel Practice and the Democratic Professional Approach

As has been illustrated, certain aspects of reparation panel practice have helped to redefine a number of more conventional criminal justice ideals. Leading on from this, panel practices have also served to broaden in general terms the very notion of the concept of 'crime' itself while, at the same time, upholding the principle of accountability and highlighting the need to repair any harm that has been caused. Such aims have been successfully achieved due in large part to the almost seamless integration of both criminal justice professional, programme representative and locally based volunteer roles within reparation case management.

⁶² George Pavlich, *Governing Paradoxes of Restorative Justice* (London: Glasshouse Press, 2005), 98.

⁶³ Susan M. Olson and Albert W. Dzur, 'Revisiting Informal Justice and Democratic Professionalism' (2004) 38 *Law and Society Review* 139, 142.

This relationship between justice professionals, programme representatives and community based volunteers, has mirrored many of the characteristics of the 'democratic professionalism' theory. Furthermore, such a relationship has enabled a successful meshing of criminal justice professional and local programme representative and volunteer responsibilities within panel procedures. This, in turn, has resulted in a symbiotic partnership of panel actors which has successfully balanced competing managerialist and community led ideals. The 'democratic professionalism' concept has been previously illustrated within the US-based 'Passages' Community Review Panels in Salt Lake City.⁶⁴ Within this model, participating offenders must take responsibility for their crimes and pay restitution and complete groups and classes.⁶⁵ For Olsen and Dzur, such a concept has proved important in that it has helped to address the apparent conundrum within the restorative justice concept wherein 'restorative justice theory leaves virtually no role for professionals, yet in practice they are deeply involved in restorative justice programmes'.⁶⁶ The case can indeed be argued that much restorative justice theory tends to concentrate on the need for informal control and voluntary, lay orientated participation and ownership.⁶⁷ It is also the case that almost all restorative justice models involve criminal justice professionals to varying degrees. The Irish panel models are of course fully dependent on these very professionals, alongside the community representative element, from the judicial referral at the initial court appearance through to the participation of Probation Service and Garda officers within actual panel discussions. Within the democratic professionalism theory, it is argued that

⁶⁴ These panels are similar in practice to the Irish reparation model and consist of criminal justice professionals, such as the city prosecutor, public defender and case manager and volunteer community members. Meetings are held every two weeks for progress reports and can take up to a year for overall contract completion.

⁶⁵ See *Salt Lake City Prosecutor's Office Programs*. Available at <http://www.slcgov.com/prosecutor/programs>.

⁶⁶ Susan M. Olson and Albert W. Dzur, 'Revisiting Informal Justice and Democratic Professionalism' (2004) 38 *Law and Society Review* 139.

⁶⁷ See for example the famous critique of Nils Christie who argues that criminal justice conflicts have been for years 'stolen' by professionals and should be reclaimed by voluntary, lay orientated and victim centred courts. See Nils Christie, 'Conflicts as Property', (1977) 17 *British Journal of Criminology*, 1. Christie has also recently warned against the 'professionalisation' of restorative facilitators. See also Nils Christie, 'Restorative Justice: Five Dangers Ahead' in Paul Knepper, Jonathan Doak and Joanna Shapland, (eds.), *Urban Crime Prevention, Surveillance and Restorative Justice. Effects of Social Technologies* (Boca Raton: CRC Press, 2009) 200.

criminal justice professionals should ideally act as ‘social trustees’ in that ‘professionals have social responsibilities in addition to their fiduciary and function-specific obligations to their base of clients’, and that such professional expertise should be ideally directed towards ‘facilitating public participation and control...they do not inevitably reduce the sphere of lay or citizen involvement, but share decision-making domains rather than monopolizing them’.⁶⁸

Within reparation panel practice, justice professionals such as Garda and Probation Service representatives have been observed acting as ‘task sharers’ with their community representative counterparts.⁶⁹ Both programme groupings have researched and debated possible re-integrative options and rehabilitative pathways for offenders, including organising meetings within drug and alcohol treatment and awareness centres. Each panellist has been awarded equal amounts of time in which to put across their thoughts and recommendations. The practical relevance of this theory within reparation practice was illustrated within the previously examined case of the single mother with mental health issues charged with a theft offence.⁷⁰ The Garda officer and chairperson in this case took on board the information provided by the community representative case worker regarding the participant’s state of mind and agreed with her recommendation that a softer approach should be taken within the panel discussion itself. This element of task sharing, of finding a middle ground between overly technocratic professionalism and parochial communitarianism, shares a further resonance with Crawford’s notion of ‘deliberative justice’.⁷¹ This notion of justice can be

⁶⁸ Susan M. Olson and Albert W. Dzur, ‘Revisiting Informal Justice and Democratic Professionalism’ (2004) 38 *Law and Society Review* 147.

⁶⁹ See Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby ‘Situating Restorative Justice within Criminal Justice’ (2006) 10 *Theoretical Criminology* 505, 517.

⁷⁰ See Chapter 3 for further discussion of this particular case.

⁷¹ Adam Crawford, ‘In the Hands of the Public?’ (2002) 13 *Relational Justice Bulletin*, 6. John Braithwaite has similarly noted such a concept. For Braithwaite, restorative justice also allows for the promise of ‘deliberative justice’. This particular form of ‘justice’ is concentrated on relationship repair between all the stakeholders, including community members, within a criminal conflict. It refers to...‘people deliberating over the consequences of crime, how to deal with them and prevent their re-occurrence’. See John Braithwaite, ‘Restorative Justice and a Better Future’ (1996) Dorothy J. Killam Memorial Lecture, Dalhousie University. *International Institute for Restorative Practices*. Available at http://www.iirp.edu/article_detail.php?article_id=NDk4.

illustrated when public participation in the consequences and recurring nature of criminal acts is corralled within a framework of fairness of process and human rights consideration. For Crawford, such justice 'encourages public discussion, and emphasises reasoning, debate, communication and normative appeals while offering proposals for how best to solve problems or meet legitimate needs'.⁷² Indeed, such a phrase could almost be the *raison d'être* of the panel model itself. Observations have illustrated the importance of communication, discussion and reasoning, as well as the importance of safeguarding the rights of participating offenders.⁷³

During the contract agreement phase of a town based panel managing a case involving a series of public order offences, this task sharing notion of 'deliberative justice' was again in evidence. As part of this case discussion, panellists debated whether it would be practical for the participating offender to apologise in person to the manager of the fast food outlet in which the public order offences had taken place. The offender had been intoxicated and had used threatening words and behaviour towards another man and a Garda officer in the establishment. The community representative on this particular panel told the facilitator that he knew the manager personally, and that he would be open to such an apology in person. He told the participating offender, 'he will sit down with you and discuss the incident...he will respect you for apologising in this way...he is a good guy'. The offender was agreeable to the term but appeared somewhat anxious as to what such an apology might entail. The representative added that 'you will find this challenging but it will be good for you...keep it simple...you do not have to regurgitate everything that happened'. Thus, the Garda representative and programme facilitator actively sought out the community representative volunteer's inside knowledge of the local area and contacts within it, and the apology was included as part of the agreed reparation terms. Furthermore, the Garda panellist indicated that she knew the arresting officer personally and that she would also be very approachable to the prospect of a face-to-face apology. This term was also included within the reparation

⁷² Adam Crawford, 'In the Hands of the Public?' (2002) 13 *Relational Justice Bulletin*, 6-8.

⁷³ For example, regarding the safeguarding of participant rights, offenders are told within discussions that any previous criminal acts that they may divulge will have no legal bearing on the case at hand. It has been asserted by panellists that 'we are only here to discuss this particular crime, the reason why you have been referred to us'.

agreement. This case example clearly illustrates the task sharing ethos within panel discussions. Within this task sharing, partnership ethos the community representative's knowledge and proposals were both utilised and included as important reparative and potentially rehabilitative aims. This is but one example of the meaningful impact of the community representative role within overall panel deliberations and provided an answer in some ways to the concern that 'the quality of lay participation is crucial from the perspective of democratic professionalism, because merely symbolic task sharing where citizens are present but have no real authority is worse than no task sharing at all.'⁷⁴

Ideally, as Olson and Dzur have pointed out, democratic professionals will attempt to 'rebalance competing values of rule following versus holistic engagement and of fairness to individuals versus responsiveness to community'.⁷⁵ Such task sharing can help ensure that the process remains fair to those offenders attending and can also help to nurture an improved notion of both citizen participation and legitimacy within practices.⁷⁶ Such a notion of legitimacy is important on a number of levels. First, it can help to delimit certain aspects of what Sherman has called the 'defiance theory'.⁷⁷ This assumes that when an offender views a sanction as illegitimate, when they have a weak relationship, or no relationship at all, with the sanctioning agent and when they deny any element of shame attached to the offence, then the result can see such offenders continue to break the law. Alternatively, future recidivist tendencies may be reduced if sanctions are viewed as fair and relational bonds are reattached to mainstream society.⁷⁸ Sherman argues that restorative mediation and conference models are more likely to achieve these desistance patterns, whereas a court room based justice model is more likely to

⁷⁴ Susan M. Olson and Albert W. Dzur, 'Revisiting Informal Justice and Democratic Professionalism' (2004) 38 *Law and Society Review* 161.

⁷⁵ Ibid, 171.

⁷⁶ Ibid, 172.

⁷⁷ Laurence Sherman, 'Defiance, Deterrence and Irrelevance: A Theory of the Criminal Sanction' (1993) 30 *Journal of Research in Crime and Delinquency* 445. Also see Tom R. Tyler and Yeun Huo, *Trust in the Law; Encouraging Public Cooperation with the Police and the Courts* (New York: Russell Sage Foundation, 1990) where it has been argued that trust and legitimacy can prove key to sustaining compliance with the law.

⁷⁸ Also see Meredith Rossner, 'Restorative Justice and Micro-Sociology' in Susanne Karstedt, Ian Loader and Heather Strang (eds.), *Emotions, Crime and Justice* (Oxford and Portland: Hart Publishing, 2011) 172.

illustrate defiance. In this regard, previous research within youth family group conferencing practices in New Zealand has further argued that reconviction rates can be decreased if offenders agree with the outcome, believe the process is fair and feel generally involved in the decision making process.⁷⁹

Reparation panel practices and the task sharing roles within case management can also illustrate to participants the fairness and reasonableness of agreed contract terms. This emphasis on procedural justice within restorative practice has been seen to potentially 'reinvigorate democracy by creating new community bonds and strengthening existing ones'.⁸⁰ As the case examples within this chapter have served to illustrate, having the reparative tasks broken down and outlined by a local community representative who has a relationship with the victim or local community member caught up in the act itself can illustrate to the offender that the task is at least achievable. Also, rehabilitative courses and community service tasks within agreements, as well as letters of apology, can help to repair and further build upon the 'broken' societal bonds within Sherman's theory. Agreements to train local sports teams, litter pick within the local area and utilise certain skills and expertise can help to further this aim.⁸¹ Moreover, the fact that many participants are asked during contract negotiations how they themselves might be able to repair the harm caused through the offending behaviour can also tighten communal bonds in that they are now taking responsibility for their past actions; they are assuming 'a new role', a sense of 'active responsibility' and by contributing to the reparative process they can change their delinquent identity into one that is trustworthy and reliable.⁸² Such a change in identity can then, as Bazemore and Stinchcomb have argued,

⁷⁹ Gabrielle Morris and Allison Morris, *Understanding Re-offending*. Wellington, New Zealand: Institute of Criminology, 1999). For the importance of processes being perceived as fair, see further Tom Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990).

⁸⁰ Jonathan Doak, 'Honing the Stone: Refining Restorative Justice as a Vehicle for Emotional Redress' (2011) 14 *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 439, 450.

⁸¹ Some participants have agreed to utilise their painting and decorating skills into refurbishing local community halls while those with a sporting background have agreed to enquire about helping to train local junior GAA teams. Moreover, letters of apology to family and friends as well as to the direct victim can also help to repair familial relationships that may have broken down due to the offending behaviour. See Chapter 3 for a fuller evaluation of the practice of apology within reparation panel contract agreements.

⁸² Gordon Bazemore and Jeanne Stinchcomb, 'A Civic Engagement Model of Reentry: Involving Community through Service and Restorative Justice' (2004) 68 *Federal Probation* 14, 17.

help to further expectations of panellists and the wider community membership that the participant 'is capable of meeting these obligations, actively making amends, and ultimately making positive contributions to their community'.⁸³ It can also increase the participant's perception that their particular reparative contract aims are legitimate, fair and proportionate. Within observations it has become clear that even a relatively 'small' financial sum given to charity can enrich the sense of community ethos. One participant, when asked where he would like to see his reparation sum paid over to, replied that it should go to a cancer charity as his mother had been cared for by the charity before she died of the disease. Thus, the participant can ultimately feel that he is putting something back into his community and making a positive contribution within it, even if the reparation sum itself was only twenty euro as was the case here. Within other cases, professional criminal justice panellists and their reparation programme counterparts as well as community representative volunteers have debated as equals the various reparative sums that should be included within contract agreements. Garda and Probation Service panellists have been observed on occasion altering reparative financial sums after being reminded by programme caseworkers of the financial and employment based struggles that certain participants have had to overcome. All panellists, therefore, have illustrated a task sharing ethos, not only with their lay member counterparts but also with participating offenders themselves as they have striven to increase ownership and legitimacy in the panel process, as well as accountability for the harm caused.⁸⁴

To conclude this section, it has been illustrated that meaningful lay participation combined with criminal justice professional discretion and expertise, within a task sharing philosophy grounded in the equality of participatory roles, has the potential to successfully plot a reparative course through the middle ground between the managerialist ethos of more conventional, state representative, justice systems which tend to delimit lay member participation and prioritise performance targets within a

⁸³ Ibid.

⁸⁴ Participants within both programmes were regularly asked in what way they themselves thought they could make amends for any harm caused. See Chapter 2 for a deeper discussion on practice and procedure, and Chapter 3 with regard to panel contract agreements.

cost effective framework, and what Dzur has labelled the 'democratic logic' of informal, lay member justice with its emphasis on restorative ideals.⁸⁵ This task sharing concept within panel practices has continued to provide real benefits to all involved within the reparation process. Local representative volunteers and programme caseworkers and facilitators have continued to play an active role within case discussions and the drawing up of contract agreements. Community service providers have worked with participants referred initially by their professional counterparts. All panellists have been observed working in tandem, task sharing and spreading their expertise and experience across case discussions and contract agreement negotiations. Indeed, this type of successful partnership sharing ideal has been seen as unfortunately lacking within certain UK-based victim offender mediation and conferencing models.⁸⁶ Although the theoretical concept of restorative justice sees criminal conflicts managed differently to that of court based processes, in reality almost all restorative justice programmes have to exist alongside Government oversight and, in most cases, only continue to operate due to continued state funding and a reliance on case referrals. However, such a working relational, democratic professional ethos as evidenced within panel practices can improve the possibilities of restorative principles coming to the fore and lessen Cohen and other theorists' concerns that de jure 'community control' has actually come to represent the de facto 'control of communities'.⁸⁷

In order to further outline the conflict of ideological interests within restorative justice as a whole, a number of comparable restorative models have been chosen in order to place into context the managerial/communitarian dynamic within Irish reparation practice. Correctly defining the community concept and successfully measuring the

⁸⁵ Albert Dzur 'Restorative Justice and Democracy: Fostering Public Accountability for Criminal Justice' (2011) 14 *Contemporary Justice Review* 367, 373. This 'democratic logic' according to Dzur is one that 'disperses rather than centralises authority, responsibility and accountability for decisions' and is in conflict with 'the default logic of mainstream organisations...who favour a more technocratic perspective', at 369.

⁸⁶ Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby 'Situating Restorative Justice within Criminal Justice' (2006) 10 *Theoretical Criminology* 505, 517. It was suggested here that a better collaboration might improve information and access to a more varied system of potential offender rehabilitative options.

⁸⁷ Stanley Cohen, *Visions of Social Control* (Cambridge: Polity Press, 1985) 127

extent of its influence within the restorative justice paradigm can prove to be a difficult task. These examples have been chosen as elements of the communitarian ethos within such models have been specifically investigated and illustrated to differing extremes. The examples include United States and United Kingdom based conferencing, victim offender mediation and reparation style programmes which have managed both adults and juveniles. While some of the restorative examples chosen are more comparable in format and procedure to reparation panel procedure than others, all the models investigated address the nature and perceived success of community led principles within the overall 'bottom up' justice ideal. By gauging the level of community involvement and managerial influence within other restorative schemes, and by comparing and contrasting the levels of active participation, defining roles and substantial duties of the various community representative actors within the Irish reparation panels, a number of questions can be addressed. Best practice guidelines, and any noted deficiencies, can be teased out as a possible means to future recommended reform, allowing for a more rounded understanding of how community based principles and the communitarian ethos can be better realised within this jurisdiction.

5.7 Active Ownership or Communitarian Camouflage: International Perspectives

The Vermont Department of Corrections introduced their Reparative Probation Programme in 1995 after a favourable public response questioning the public's appetite for justice programmes which included enhanced community participation and a greater use of reparative measures within sentencing outcomes.⁸⁸ The Board programme has represented, theoretically at least, an active communitarian ethos in that reparation panels have been made up exclusively of community representative volunteers within the management of predominantly adult, low level offenders. This exclusivity of lay membership within panel practice, alongside a recognised freedom to make substantial autonomous decisions, has been seen as 'unique among volunteer probation

⁸⁸ Gordon Bazemore and Mark Umbreit, 'A Comparison of Four Restorative Justice Models' (February 2001) *Juvenile Justice Bulletin* 1, 4.

programmes'.⁸⁹ As is the case within Irish panels, volunteer decision making within the Vermont model has gone beyond mere recommendations and has formed the basis for concrete rehabilitative and re-integrative terms within contracts. As well as possessing 'real' decision-making responsibilities, Vermont volunteers have also acted as victim liaisons, case worker assistants and community service coordinators. They have also managed offender intake within the programme.⁹⁰

The community led ethos within this model has appeared at first glance to be on a par, if not even more actively engaged, than its Irish reparative counterpart. Indeed, an increased number of community representative volunteers have participated actively, and within panel discussions exclusively, in the management of adult offenders and in the finalising of reparative contracts. The Vermont model has also managed juvenile offenders charged with minor crimes.⁹¹ However, within the Vermont model the managerial influence has never been far from the restorative surface. Although actively engaging with participating offenders and finalising contract details, all panel decisions have had to be approved by the professional agencies engaged with the process. Community representative panellists, similar to the Irish model, have also had to rely on judicial referrals and state managed funding support. Furthermore, a stated criticism of Vermont practice has been a perceived inability to successfully link reparation tasks with repair of the harm caused. This inability has been referred to by Karp as an example of 'thin' rather than 'thick' justice.⁹² A 'thick justice' settlement will see the dependencies of offenders being effectively tackled through mediation and rehabilitation services, while any reparative acts will directly target any harm that has been caused. It has been claimed that the Vermont model has not managed to engage with participants in order to fully realise the rehabilitative and re-integrative potential of contract agreements and their potential for community engagement. Within observations of the Irish model, as

⁸⁹ David Karp and Kevin Drakulich 'Minor Crime in a Quaint Setting: Practice, Outcomes and Limits of Vermont Reparative Boards' (2004) 3 *Criminology and Public Policy* 655, 658.

⁹⁰ Ibid.

⁹¹ David Karp, Matthew Sweet, Andrew Kirschenbaum and Gordon Bazemore, 'Reluctant Participants in Restorative Justice? Youthful Offenders and Their Parents' (2004) 7 *Contemporary Justice Review* 199.

⁹² David Karp, 'Harm and Repair: Observing Restorative Justice in Vermont' (2001) 18 *Justice Quarterly* 727, 737.

has been underlined throughout this thesis, reparative contract agreements have included examples of such 'thick' justice initiatives thanks to well-developed community service supplier contacts and underlying social and welfare care principles.

Finally with regard to this US based comparable reparative panel practice, there has also been evidence of a tentative approval for ex-offenders to sit on panels.⁹³ Allowing ex-offenders to sit on panels is controversial, but might benefit Irish reparation panel practices in that participating offenders could relate more to panel members. Within research of the Vermont Board model, it was discovered that volunteers participating on panels were 'very different from the offender populations participating on all available indicators other than race'.⁹⁴ Within those Irish panel meetings observed, volunteer panellists had a range of different backgrounds and all came from the geographical area around which the offence had taken place. The *RJC* programme's main facilitator did state that the programme was open to the possibility of involving ex-offenders within panel discussions, and had involved one such participant within a training panel exercise.⁹⁵ However, the overriding policy within both schemes is to involve participants who have been initially vetted by the Garda for previous criminal prosecutions and found not to have had any criminal past. Involving ex-offenders however, could potentially help to further increase a sense of community ethos and improve principles of community based rehabilitation in that participants would be able to observe at first hand a concrete example of the benefits of a non-recidivist life choice, as well as the potential for the renewed trust of their fellow community members.

⁹³ Carolyn Bowes-Watson, 'The Value of Citizen Participation in Restorative Community Justice: Lessons from Vermont' (2004) 3 *Criminology and Public Policy* 687, 690. This was considered one year after successful completion of any sentence and after further recommendations from volunteer service coordinators.

⁹⁴ David R. Karp, Gordon Bazemore and J.D. Chesire, 'The Role and Attitudes of Restorative Board Members: A Case Study of Volunteers in Community Justice' (2004) 50 *Crime and Delinquency* 487, 493. See Chapter 2 within this thesis for a breakdown of Irish reparation panel volunteer backgrounds.

⁹⁵ Interview with *RJC* programme manager. Thurles, 19th November 2014. The manager reiterated that the programme would be willing to include such participants. She also noted that the participant that had been included was not deemed suitable for a 'working' panel meeting as he had tended to focus on their own offending background rather than attempt to gain an understanding of the reparative justice concept itself during the training stage.

The level of community active participation and ownership within victim offender mediation and family group conferencing at Balanced and Restorative Justice Programmes in the United States (BARJ) has been further investigated.⁹⁶ With regard to participating offenders and victims and the level of micro-community participation within each conference, Gerkin discovered an overall trend of non-participation within offender support groups during conference mediations, although actual attendance within this grouping was seen as high.⁹⁷ The victims' micro-community was seen as almost non-existent within observed mediations,⁹⁸ while the majority of conference agreements included no record of community service or community involvement generally.⁹⁹

In comparing reparation panel procedure and that of the BARJ conferencing and victim offender mediation model, both programmes have striven for active, community volunteer participation in the restorative process. Locally based volunteers serve as mediators within the BARJ process while community representative full time and part

⁹⁶ Patrick Gerkin, 'Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice' (2012) 15 *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 277. The Balanced and Restorative Justice model originated in the United States as part of a major reform initiative of the Office of Juvenile Justice and Delinquency Prevention and operates as part of a juvenile justice reform strategy. It has been neatly summed up by Thompson, who describes the BARJ approach as one that 'emphasizes accountability, competency development, and public safety in dealing with delinquency. Considered by many as a form of restorative justice and by others as a type of community justice, (it) seeks to hold youths accountable for their delinquent acts, to support them in making amends, and to discourage further offending. It also challenges conventional responses to juvenile delinquency, by seeking to attend to the needs of victims including encouraging their participation in the process'. See Douglas Thompson, 'Balanced and Restorative Justice' (2014) *The Encyclopedia of Criminology and Criminal Justice* 1. See also Paul McCold, 'Paradigm Muddle: The Threat to Restorative Justice Posed by its Merger with Community Justice' (2004) 7 *Contemporary Justice Review* 13, 14 who argues that the BARJ program has 'merged the practice of community justice with restorative justice without regard for critical distinctions. In doing so, BARJ has muddled the restorative justice paradigm, diluting and distorting it almost beyond recognition'.

⁹⁷ Patrick Gerkin, 'Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice' (2012) 15 *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 287.

⁹⁸ Ibid. 288-289. Of the 17 victims involved in the mediations, only two had any support group members present. The author did note that it was unclear how much support from the relevant micro-communities was available outside of the actual conference mediation. Such support generally he argues, 'is important to the success and social well-being of the participants'.

⁹⁹ Ibid, 290-291.

time case workers, community representative facilitators and locally based volunteer representatives have successfully and actively participated within Irish reparative case discussions and contract formulations. Ideas on how participating offenders might best repair the harm caused, and how they might successfully put the offending behaviour behind them, are routinely offered up by the community representatives during Irish based reparation panel meetings. In short, they can be classed as valuable members of the reparation panel process. Conversely, however, and as initially outlined within Chapter 4, within the US based example it has been argued that the volunteer community mediators are somewhat handcuffed in their mediation activities due to an over-reliance on the neutrality factor when managing both offenders and victims within group meetings. As Gerkin has explained,

‘...the individuals are limited in the contributions they can make. These community representatives are trained to be neutral and are identified to the participants as such in the pre-mediation meeting and discussion. These community members are not in a position to offer kind words, emotional support, forgiveness, or to take steps towards reintegration of the offenders involved. Given their obligation to serve as a neutral party, with the intended role of facilitation in these matters, these community members are limited in their ability to represent community concerns, needs, or to speak collectively as a community voice of forgiveness or reintegration’.¹⁰⁰

Of course, this neutrality is deemed necessary due to the attendance of both victims and offenders within BARJ conference and mediation sessions. This perceived inability to fully engage with participating offenders in a sympathetic and emotionally supportive fashion is not a problem that has been in evidence within many Irish reparation panel meetings. Concepts such as forgiveness, reintegration and rehabilitation are collectively discussed within panels by community representatives and community based caseworkers, along with the criminal justice professionals and participating offenders

¹⁰⁰ Patrick Gerkin, Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice (2012) 15 *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, 289.

themselves. Indeed such discussions have illuminated the ‘social care ethos’ personally observed within many panel mediations and strengthened the relational bonds around the panel based meso-community structure also identified. Somewhat ironically it might be argued that this level of input into reparation panel discourses by community representative volunteers, caseworkers and facilitators might be largely possible due to a lack of direct victim participation. An increase in victim participation within reparation practice has been recommended in the past within various reports and by a number of organisations.¹⁰¹ Panel facilitators have continually strived to further increase the involvement in panel mediations of those victims directly harmed by the offending behaviour. However such a proposed increase in direct victim participation might potentially deflect welfare concerns away from participating offenders due to a greater managerial themed concern over neutrality. It might also result in the ‘realising’ of victim fears over perceived notions of an over-emphasis on offender welfare and rehabilitative needs. This is despite previous research claims that participating victims can add much value to mediations involving offenders, contributing in a non-vengeful way in helping to finalise contract agreements and reparation plans. For example, Doak and O’Mahony have found that reasons for victim attendance at youth conferences in Northern Ireland were not linked to retribution but rather based on ‘seeking an understanding of why the offence had happened; that they wanted to hear and understand the offender; to explain the impact of the offence to the offender - so that others would not be victimised and to help the young person’.¹⁰² This non-retributive

¹⁰¹ Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* (Dublin: School of Applied Social Science, University College Dublin, 2014). See also the National Commission on Restorative Justice, *Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009), 12. The Report notes that ‘the absence of a direct victim (at a restorative event) reduces the potential for getting the offender to appreciate the harm done by his or her offence’. See also The Probation Service, *Report on Pilot Expansion of Probation Funded Adult Restorative Justice Schemes* (2012), 21 wherein it was recommended that ‘engagement with victims on a direct or indirect basis should continue to be prioritised within the overall process.’

¹⁰² See Jonathan Doak and David O’Mahony, ‘The Vengeful Victim? Assessing the Attitudes of Victims Participating in Restorative Youth Conferencing’ (2006) 13 *International Review of Victimology*, 157, 164/165. Within this particular model. It was found that at a significant number of representative victims (87%), asked why they had wanted to attend the conference, stated that they ‘wanted to help the young person’. 83% stated that they wished to hear what the offender had to say, to listen to their side of the story while others thought that the offender should be given a second chance. For a further review reiterating this rehabilitative rather than retributive theme with participating victims, see Jennifer Tufts and Julian V. Roberts, ‘Sentencing Juvenile Offenders: Comparing Public Prejudices and Judicial Practice’ (2002) 13 *Criminal Justice Policy Review* 46.

attitude by direct victims might arguably be easier to understand within the management of minor crimes by juvenile offenders. Further in this regard, within the Re-integrative Shaming Experiments in Canberra, Heather Strang concluded that many participating conference victims thought that 'wanting to help the offender' was an important reason for their attendance.¹⁰³ She noted that 'a sense of forgiveness often accompanied the feeling that offenders had a proper understanding of the harm caused, a belief that (they) had learnt their lesson and deserved a second chance'.¹⁰⁴ Moreover, while no direct victim participation was observed within the Irish panel models there was one town based case which produced as part of the discussion a victim impact letter detailing the financial and physical harm that had occurred due to an assault; however, within the letter read out by the facilitator to all the panellists and the participating offender, the victim and his family reiterated that they wished that all parties could put the incident behind them and they were adamant that they did not wish to see the offender, whom they knew indirectly, receive a prison sentence.¹⁰⁵ Thus, within this case example the victim and his family were sympathetic to the offender's case and possible sentence. However, the potential remains that an overtly neutral stance will be the priority for panel facilitators and other members in those cases that allow for direct victim attendance; consequently, this could result in the reigning in of the welfare and rehabilitative ethos observed within those panels that have concentrated on participating offenders only.

Within restorative conferencing and direct and indirect mediation schemes mostly involving adult offenders charged with violent offences in the UK, researchers found

¹⁰³ See Heather Strang, 'Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2001), 291. This model involved the random assignment of middle-range property and violence offences to either court processing or restorative justice conferencing alternative. Offences were committed by juveniles who had admitted their guilt and who would normally have been dealt with in court. The model built on the re-integrative shaming theory of John Braithwaite. This theory is described in more detail within Chapter 4.

¹⁰⁴ Ibid, 291.

¹⁰⁵ Darren McStravick, 'Behind the Restorative Veil: An Insight into Irish Reparation Panel Practice and Theoretical Principles' (2015) 13 *Contemporary Issues in Law* 193, 208 for further discussion regarding this particular case.

limited community involvement.¹⁰⁶ That is to say, none of the schemes explicitly invited participants on the basis that they were community representatives.¹⁰⁷ However, the local community and community resources were said to have been mentioned in a number of outcome agreements.¹⁰⁸ Such resources included the use of alcohol and drug rehabilitation centres, while community work suggestions such as voluntarily helping elderly people, gardening and fundraising for victims groups were also mooted within conference agreements, in a similar vein to those tasks proposed within Irish reparation contracts. However, these adult based UK conference and mediation schemes contrasted with the Irish reparation model in that they predominantly managed serious offences and dangerous offenders either post sentence and in prison, or pre-sentence and awaiting a prison term. Therefore, while community sourced outcomes were regularly proposed, any reparation beyond the symbolic level was rightly seen by the authors as unrealistic. Even within less serious juvenile offending conference cases, community resourced contract agreements were difficult to fully engage due to 'health and safety' concerns.¹⁰⁹

Within one of these UK based group conferencing models, that of the Justice Research Consortium (JRC) scheme, researchers considered whether or not participating offenders were successfully reintegrated into the 'community' either in a 'geographic or interest community' sense or one made up of a close-knit group of families and friends. Such a notion of reintegration was seen as rare, not because of any perceived failure of restorative justice as a process in itself but, as the authors have reiterated, due to the

¹⁰⁶ Joanna Shapland, Gwen Robinson and Angela Sorsby, *Restorative Justice in Practice. Evaluating what works for victims and offenders* (Oxon; Routledge, 2011). The three schemes observed were CONNECT, originally based in London, the Justice Research Consortium (JRC) which had operational sites in London and Northumbria, and REMEDI based in Sheffield and serving the whole South Yorkshire area.

The authors noted that, in terms of restorative justice process, there was 'no obvious 'community' presence'. Ibid, 135.

¹⁰⁷ Ibid, 135. There were, as Shapland, Robinson and Sorsby have noted, limited occasions where a direct relationship existed between a community leader, such as a faith healer, and either a victim or an offender that a community representative would then attend as a supporter.

¹⁰⁸ For example, 42 % of outcome agreements mentioned community resources while 11% made 'considerable mention of such resources'. This included outcomes with youth offenders and adult offenders, the latter charged with serious crimes such as burglary.

¹⁰⁹ Ibid, 155.

perception simply that ‘a community in this sense did not exist’.¹¹⁰ This aligns somewhat with Walgrave’s assertion that ‘community is a mental category which does not allow for legal characterising’ and, for that reason, finding a recognisable role for such a ‘community’ within general restorative practice is difficult.¹¹¹ Furthermore, within this particular conferencing model, there was little evidence of micro relational groupings. Offender supporter groups were seen as small in number and not in constant contact. Furthermore, while some relationships between offender and supporter did contain ‘thick’ elements (described by the researchers as relationships that were ‘many-stranded, laden with emotional content, and containing some form of mutual interdependency’), many others did not.¹¹² Offender and victim were often connected merely through the offence itself. Thus the prospect of any real feeling of successful reintegration, without a community base or close interdependent micro-ties, was said to be difficult to achieve.¹¹³ Although some elements did illustrate a welcoming back into society of sorts, for example through conference members shaking hands with the offender or wishing them well, similar to the actions employed within second panel meetings as part of the *RJS* programme,¹¹⁴ there was rarely a sense of welcoming the offender back into a specific community as such. Rather, the researchers found that the more specific sense of reintegration was that of strengthening or thickening the individual bonds between offender and supporters, or victim and supporters, or, very occasionally, creating ‘bridging’ social capital through new bonds between victim and offender.¹¹⁵

¹¹⁰ Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, ‘Situating Restorative Justice within Criminal Justice’ (2006) 10 *Theoretical Criminology* 505, 521.

¹¹¹ Lode Walgrave, ‘From Community to Dominion: In Search for Social Values for Restorative Justice’ in Elmar G. M. Weitekamp and Hans-Jürgen Kerner (eds.), *Restorative Justice: Theoretical Foundations* (Cullompton: Willan Publishing, 2002) 78.

¹¹² Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, ‘Situating Restorative Justice within Criminal Justice’ (2006) 10 *Theoretical Criminology* 521.

¹¹³ *Ibid*, 521.

¹¹⁴ See Chapter 2 for further discussion regarding ‘re-integrative ceremonies’ within second panel deliberations.

¹¹⁵ Joanna Shapland, Anne Atkinson, Helen Atkinson, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, ‘Situating Restorative Justice within Criminal Justice’ (2006) 10 *Theoretical Criminology* 521. See Chapter 4 of this thesis for further evaluation.

Although not directly comparable as a justice model to the reparation process, nevertheless the active nature of community within the youth conferencing programme utilised within Northern Ireland's criminal justice system, has provided possible avenues of reform as part of future reparative practice. This model has been closely attached to the formal criminal justice system since its inception, allows for both diversionary and court ordered family conferences, is statutorily defined and remains heavily reliant on Police Service of Northern Ireland (PSNI) and Probation Service cooperation within panel meetings, judicial referrals and overall state sponsored supervision.¹¹⁶ While investigating this restorative model, O'Mahony and Doak observed that, although levels of community participation were increasing, there was also scope to further develop partnerships with certain community sector elements.¹¹⁷ Evidence of a communitarian ethos was seen to include active involvement in conference discussions by various micro-communities, including friends and supporters, attached to both participating offenders and victims. This support structure might be seen as all the more important when the role of the participant's legal representative within this process is considered. Although the participant is entitled to legal representation at the conference, their role is an advisory one only, with no recourse to speak for the juvenile during the case.¹¹⁸ The reparation panel caseworker role contrasts favourably with its Northern Ireland based professional counterpart in this respect, with programme caseworkers regularly speaking up on the participants' behalf during panel discussions and actively defending their interests.

¹¹⁶ This conferencing model is contained within the Justice (NI) Act 2002 (Chapter 26, Part 4), which established the referral of cases by youth courts and the Public Prosecution Service to youth conference co-ordinators. All juvenile first-time offenders must be initially referred to this scheme.

¹¹⁷ See David O'Mahony and Jonathan Doak, 'The Enigma of Community and The Exigency of Engagement: Restorative Youth Conferencing in Northern Ireland' (2006) 4 *British Journal of Community Justice* 9. These elements included the informal schemes within nationalist and loyalist areas which have since been brought under the formal oversight of the PSNI. For some background to these models, see Kieran McEvoy and Harry Mika, 'Restorative Justice and the Critique of Informalism in Northern Ireland' (2002) 42 *British Journal of Criminology* 534.

¹¹⁸ David O'Mahony and Jonathan Doak, 'The Enigma of Community and The Exigency of Engagement: Restorative Youth Conferencing in Northern Ireland' (2006) 4 *British Journal of Community Justice* 19.

Moreover, within the Northern Ireland youth conferencing programme, active community involvement was also observed through the use of victim representatives or 'proxy victims'.¹¹⁹ These victims representatives were made up of community centre and local business representatives who would take an unwilling victim's place at the conferencing table, or in cases in which no direct victim was involved, and attempt to outline the extent of the harm caused. This use of 'proxy victims' could be better utilised within adult reparation procedures, especially when the relatively low participatory rate of direct victims is considered. As illustrated previously within Chapter 2, the Restorative Justice Service model does not, for the most part, include direct victims and has involved surrogate victims within panel discussions only on limited occasions. The Restorative Justice in the Community model does apply a process wherein letters are written or phone calls made, to all direct victims asking if they would be willing to participate either directly or indirectly in the reparation process. The numbers of victims who agree to directly participate in the service, however, is again relatively low. The criminal justice professionals and community representatives and case workers were observed to be very adept at focusing on the harm caused and victim feelings and fears. However, the example of proxy victims within juvenile conferencing practice in Northern Ireland might, arguably, transmit well to the reparation model. While both reparation panel models do allow for such use of surrogate victims within mediations, it might be argued that such a policy is being underused.¹²⁰ Many of the panel cases observed involved crimes such as assault in fast food outlets and public houses and thefts from shopping centres. These are community based businesses and used by many local residents. Inviting the bar managers and shop owners and managers to such panels to discuss the offending behaviour might better illustrate to the participating offender the level of harm that can develop both physically and financially. Such actors would have first-hand knowledge of this particular criminal behaviour and the repercussions that can develop for all concerned. There would be no guarantees that such proxy victims would be themselves willing or able to attend. However, it might prove less burdensome for this group than a direct victim possibly concerned about meeting the offender and

¹¹⁹ Ibid, 19. Of the victims who participated in group conferences within this model, 60% were proxy victims who attended whenever the direct victim was unable or unwilling to participate.

¹²⁰ For example, throughout the series of observations the option of such a meeting was mentioned on only two occasions.

reliving the offence.¹²¹ Furthermore, such participation might help to reduce the level of future theft and assault type crimes within their respective businesses in that the offender can not only hear how the offence has the potential to affect others but also how effectively these businesses can intercept and aid in the prosecution of offenders, thus highlighting the futility of such behaviour. Further evidence of community involvement within the Northern Ireland model was evidenced by way of the scheme's use of both 'micro-communities' and community based organisations in managing contract agreements. The community sector was seen to be involved through the use of community based voluntary work programmes, alcohol and drug awareness and counselling courses, and one-to-one mentoring services.¹²² These active community elements within this conferencing model were seen to represent 'a victim and community perspective...whereas it might not otherwise have occurred.'¹²³

This brief analysis of a number of comparable restorative justice models, each of which has attempted to employ a community led ethos at some level, has illustrated some of the difficulties and inconsistencies faced by advocates when attempting to successfully identify active, 'bottom up' community based principles and actors within restorative practices existing alongside professional and Government sponsored management oversight. Within UK based conferencing schemes, reintegration into any sense of a recognised community, in which personal bonds were already enriched, was not in

¹²¹ Although there are many examples citing the advantages of victim participation within the restorative paradigm generally, there are also concerns that such benefits are over-simplified. Chris Cunneen, for example, argues that the idea a victim can resolve their grief or loss, especially where a serious crime has been committed, by way of simply meeting and mediating with the perpetrator is 'seriously misplaced' due to the level of unresolved trauma. See Chris Cunneen and Carolyn Hoyle, *Debating Restorative Justice* (Oxford: Hart Publishing, 2010), 138. Kathleen Daly has further noted that some victims who are deeply affected by the crime will need more than a restorative meeting (or court process) in order to fully recover from the harm caused. See Kathleen Daly, 'The Limits of Restorative Justice' in Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice: a global perspective* (New York. London: Routledge, 2006) 141. She notes that 'in general...victims who are only lightly touched by a crime orient themselves more readily to restorative behaviours'.

¹²² The authors noted that the juvenile scheme heavily relied on the voluntary and community sector with 83% of conference plans including activities or programmes which were usually provided through that sector. O'Mahony and Doak have argued that the scheme's use of such community resources illustrates a 'commitment to community participation and engagement'. See David O'Mahony and Jonathan Doak, *Ibid*, 19.

¹²³ *Ibid*, 20.

evidence. The use of proxy victims within the Northern Ireland youth conferencing model was seen to better illustrate the harm caused to missing victims and to the wider community interest generally when direct victims were not involved. This could be a potentially useful policy within Irish reparation practice, especially with the recognised low level of victim participation within this model. Within the US based restorative mediation and conferencing models analysed, the social and welfare interests of the offender were seen to be hampered due to the direct attendance of victims and a fear by facilitators of possible claims of bias. Moreover there was little evidence of micro-community within both participating offenders and victims, as well as minimal community service terms within contracts generally. While the Vermont reparation model has successfully utilised community lay volunteers exclusively within panel discussions, it has remained open to the dominance of managerialist supervisory concerns, the true representative nature of participating lay members, the quality of contract agreements regarding successful community based rehabilitation and re-integration and the lack of victim participation. Controversially, the lack of direct victim attendance within Irish reparation practice, might be improving the opportunities for participating offenders' welfare and rehabilitative needs to be successfully managed within reparation discussions.

5.8 Conclusion

This Chapter has outlined the ideological conflicts between managerialist and communitarian led ideals within the restorative justice paradigm and has outlined the practical relevance of this conflict within Irish reparation panel practices. As has been illustrated, restorative programmes have continued to claim, on the whole, that they espouse restorative, community based principles and provide an alternative criminal conflict setting to that of conventional, court based justice processes. These programmes however, in whatever restorative format they may resemble, continue to rely on the state and criminal justice professionals for expertise, funding and referrals, and their overall recommendations in order to safeguard levels of legitimacy. The Irish reparation panel model is no different in this regard. However, it has been illustrated that this model has managed to successfully merge these competing ideals. It has done

so in a number of ways. The close links with community based service suppliers and the use of an active, engaged and localised community membership has illustrated the potential for improving and enlarging 'bottom up' local ownership. While the harm caused and the necessity for reparation and remorse, as well as the need to negate future recidivist tendencies is, for the most part, strongly reiterated within both panel models, a welfare and social need ethos has enabled many participants to get to the root of the offending behaviour and the reasons behind that behaviour. Such a needs based ethos has been represented by caseworkers preparing offenders and explaining the restorative process to them within pre-panel discussions and actual case deliberations. It has been represented by the use of introductory dialogues by facilitators in order to help relax participants into the process, as well as discussions centred on their hopes, concerns and general backgrounds. It has also been represented by community representative volunteers who have provided support within the panel discussion itself and helped to determine and finalise workable contract obligations that participants have found legitimate and practical.¹²⁴ Within those panel discussions observed, these particular actors took on a 'surrogate family or friend' support role. These surrogate relational bonds identified within panel discussions replicated in some way the familial bonds, and interactive rituals, identified by Rossner and others within group conferencing cases. Such surrogate bonds have formed the basis for the reparative meso-community originally identified within this research thesis.¹²⁵ Moreover, these bonds have been developed between criminal justice professionals, programme and community representative actors, and participating offenders alike, each with no relationship prior to the initial case referral. These bonds have been strengthened due to a successful task sharing ethos amongst all panel members. This democratic professionalism, allied with a welfare based, relational and overall humanistic themed dialogic approach to panel deliberations, has enabled the reparation process to address, and at least on occasion question, more mainstream, conventional criminal justice concepts such as 'offender', 'victim' and the notion of 'crime' itself. It should be kept in mind that there remains the possibility of an abuse of power within

¹²⁴ These volunteers are sourced from other volunteer organisations within the local area. Interview with RJC manager, Thurles, 19th November 2014.

¹²⁵ See Chapter 4 for further examination of the meso-community, and surrogate bonds, identified within panel case management.

panel based agreements due to such factors as a lack of familial support structures and possible emotional immaturity amongst young adult participants, as well as an over reliance on state support mechanisms. However, both reparation programmes have been seen to balance the competing ideologies and have managed the balance between an over-reliance on criminal justice professionalism and governmental mechanisms, and active community based activism as successfully, if not more so, than other international restorative models.

Chapter Six

Conclusion

6.1 Introduction

This thesis has set out to analyse a relatively new and continually developing criminal justice model within the Irish jurisdiction. The adult reparation panel diversionary programmes have been managing judicially referred participating offenders, and to a lesser extent direct victims, for over a decade. While traditionally both the city based Restorative Justices Services programme, and the predominantly town based Restorative Justice in the Community scheme have dealt with only minor offences and first-time offenders, the panel model on the whole has progressed to include higher tariff offences and repeat offenders within their management remit. In this regard, the reparation panel programmes have become an important and increasingly relevant model within the continuing search for a restorative and community-led solution to criminal offending and the harm that can result.

I have primarily chosen to examine the reparation panel model due to the limited nature of previous investigations into both reparation programmes, which have been confined to a number of government sponsored bodies and programme developers.¹ Whilst these reports evaluated such factors as recidivism statistics, general procedures and the type of crimes managed, this research thesis has uncovered the restorative minutiae of panel meetings. That is to say, it has provided a unique independent insight into the roles of reparation panellists, the discourses used in the management of referred crimes, the specific individual issues behind many of those offences and the relationships that have emerged between participants and professional and lay member panellists as part of the reparation process.

By way of a methodological approach that has included a series of personal observations of both panel programmes across a number of sites, a selection of semi-structured interviews with panel stakeholders, and an academic desktop analysis of theoretical

¹ See the Nenagh Community Reparation Project (NCRP), *NCRP Evaluation*, 2004; and, Nenagh Community Reparation Project, *Presentation to the National Commission on Restorative Justice* (Nenagh Community Reparation Project: 2007; and, Department of Justice, Equality and Law Reform, *National Commission on Restorative Justice Final Report* (Dublin: Department of Justice, Equality and Law Reform, 2009).

propositions and comparative models, two specific research questions have been addressed. First, how has the supposedly integral restorative ethos of panel practices been represented? In this regard, have idealistic restorative principles such as accountability, reintegration, rehabilitation, remorse and financial and symbolic reparation been fully evidenced within the reality of panel procedures, or have these restorative ingredients proved beyond the reparative scope of this pre-sentence based justice model? Second, this thesis has examined the concept of community within the restorative justice paradigm as a whole, as well as the Irish reparation model specifically. As discussed in Chapter 4, the community concept has been continually highlighted as an important cog within the restorative machinery of conferencing, mediation and reparation justice models. Moreover, the Irish reparation programmes have regularly underlined their commitment to a recognised, active communitarian role as part of reparative panel discourses.² This has been the case despite a lack of clarity as to what the concept actually means. Therefore, in addressing these two main questions, this thesis has sought to further clarify and confirm the restorative and communitarian legitimacy of this developing reparation model.

In addressing these questions, a number of key findings have emerged. First, a 'meso-community of care, concern and accountability' has been identified within panel case management procedures. This was represented by way of a case specific, victim aware, welfare themed discourse and rehabilitative and re-integrative principled approach to solving criminal disputes by traditionally macro-level, secondary stakeholders. As is further noted within this conclusion, such a panel-led communitarian ethos is transferrable to other jurisdictions and restorative justice models. Second, and building further on the theme of community within reparation practices, the potential for managerial domination of the reparation process has been recognised. This potential domination is in danger of diluting the community-led aspirations of the programmes involved, and is all the more acute due to the specific reparation panel format with its lack of familial support mechanisms and its close attachments to the conventional criminal justice system. While a task sharing philosophy amongst all panel members was

² See Chapter 4, for examples of these claimed commitments.

ably illustrated as part of a 'democratic professionalised' approach, the possible expansion and future statutory implementation of reparation practice has highlighted the potential for conflict between these managerialist and communitarian ideals. Third, the nature of restorative outcomes within panel contract agreements has been analysed. The programmes have claimed to operate a restorative process which prioritises the principle of reparation. However, a conundrum has emerged for both programmes wherein the recognised primary stakeholder in a restorative event, the direct victim, is not actively involved in a large number of referred cases. This thesis has asked the question as to whether reparation contract agreements, especially surrounding the symbolically important act of apology and the method by which such apologies have been formed and delivered, can legitimately be labelled as restorative or community-led. It has been found that the restorative value of reparation apologies has been upheld due largely to a widening of victim-led discourses. This has proved to be the case despite the general lack of participating direct and indirect victims and the written rather than verbal nature of the apology act within panel agreements. Fourth, and finally, a series of fundamental procedural weaknesses have been identified within reparation case management. A number of recommendations for improving the restorative value, as well as the communitarian potential, of panel practice in the future are outlined within this concluding chapter. The core findings are further summarised below.

6.2 The Meso-Community of Care, Concern and Accountability: A Generalised Restorative Opportunity

The reparation programmes illustrated a novel, panel based community which evolved as a result of case discussions and formed a series of bonds around each participating offender. This originally identified meso-community emerged by way of the restorative principles, and welfare themed discourses between panel members and each participant. It emerged within the community-led, rehabilitative and re-integrative elements as part of reparation contract agreements, as well as the constant emphasis on the need for participants to be fully accountable for their actions and to make amends for the harm caused. Furthermore, the meso-community emerged outside the

actual sphere of offending. The relational bonds within meetings were strengthened by discussions and recommendations surrounding the personal lives of participants. Introductory discussions, and recommendations throughout case deliberations, focused on their backgrounds, familial relationships, aspirations and individual concerns. This enabled panellists to outline an appropriate contract agreement strategy which could ultimately increase opportunities for rehabilitation, reintegration and a non-recidivist future. Such an approach can help to address the concerns put forward by Levrant, Cullen, Fulton and Wozniak wherein restorative conferences will promise to make wide ranging changes to offender behaviour without addressing the dilemma of how to alter the daily living conditions which were conducive to the initial offence.³ This discourse also allowed for an element of context in which to place the criminal behaviour. Factors external to the offending behaviour emerged such as drug and alcohol dependency, relationship breakdown, debt and employment concerns and issues with mental health problems. This level of discourse between panel participants, the bedrock of the identified reparation case-specific, meso-community concept, emerged on an ad hoc basis without any practice guidelines or statutory rules. This should be seen as an encouraging development in that it served to illustrate the potential of both programmes to promote restorative principles within a 'bottom up' styled approach without the need for outside agency guidance or recommendation.

One interview, with the manager of the *RJS* programme model, illuminated some of the thinking behind this approach. When asked why the programme tended to manage those cases referred with a strong emphasis on individual needs as well as specific deeds, the manager stated that it was all about the principle of 'respect'. In that regard, he noted that

'these participants have not been shown a lot of respect, either in their journey through the criminal justice system up to this point, or within their lives generally. Treating these participants with respect can help to settle participants

³ Sharon Levrant, Francis T. Cullen, Betsy. Fulton and John F. Wozniak 'Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?' (1999) 45 *Crime and Delinquency* 3, 17.

into the panel dynamic, can increase the opportunities for greater participation and awareness of the process, and can challenge the mind-set of 'us against them'.⁴

Thus, the identification of the reparative panel-based community represented one key finding of this research thesis. The meso-community was represented by a band of supposedly secondary justice stakeholders acting as a micro-relational support structure usually only found in familial and close friendship bonding rituals. This particular community was specific to the Irish reparation model and the particular panel practices and discourses within. However, and importantly for the restorative justice paradigm moving forward, there is a possibility that this reparation styled community, and the principles engaged, can be transferred over and supplanted into other restorative models and jurisdictions. Such a transfer of restorative process based, meso- relational bonds would potentially improve the restorative value and communitarian ethos of the practices within these alternative models. This would be the case despite the greater participatory stakeholder involvement within conferencing and circle based programmes. As an example, and as previously illustrated within Chapters 4 and 5, restorative facilitators in US based conferencing schemes have been reluctant to fully engage with participating offenders in discussions and contract outcomes. Gerkin argues that those conference facilitators have diluted levels of advice and encouragement, and toned down the promotion of community interests, due to fears over participating victims' claims of favouritism and the over-indulgence of offender needs over those of the victim.⁵ That is not to say that the identified Irish based meso-community would only work in a model with reduced victim participation. The social and welfare needs of participating victims, and the relevant community based rehabilitative support structures, could similarly be addressed by the secondary stakeholder panel members as part of case deliberations.⁶ Within another US based reparation model the rehabilitative needs of participating offenders were also seen to be 'thinly' attached to

⁴ Interview with *RJS* Programme manager, Tallaght, 17th December 2014.

⁵ Patrick Gerkin, 'Who Owns this Conflict? The Challenge of Community Involvement in Restorative Justice' (2012) 15 *Contemporary Justice Review* 277, 289-90.

⁶ Indeed this is already the case, albeit on a reduced basis, within victim offender mediation as part of the *RJS* programme and a limited number of reparation cases within the *RJC* model.

the offence and the offenders' personal needs.⁷ In this regard, Gray has further argued that restorative interventions can be wrongly used to harness and reinforce the use of 'moral discipline' of offenders instead of engaging with 'social justice' and reintegration concerns. As part of UK based juvenile victim offender mediation practice, and similar in line to many of those adult participants observed within reparation panel practice, Gray identified how offenders were exposed to 'a range of personal, interpersonal and social difficulties, and that the severity and interrelated dynamics of these problems amounted to critical levels of social exclusion'.⁸ Furthermore, these UK based restorative interventions were seen to prioritise the 'responsibilising' and accountability of participants and 'did little to provide participants with sufficient social support to establish stable familial relations, resolve health issues and realise their aspirations in education, training and employment'.⁹ This 'responsibilising' technique, and lack of focus within restorative outcomes on how social constraints can define juvenile offending behaviour, has been further replicated within UK juvenile referral order panels.¹⁰

With this in mind, the welfare and personal needs dynamic within Irish panel practice can improve restorative mediations in other formats. It can reduce the concerns over limited rehabilitative outcomes, a lack of social support and the overtly 'responsibilised' discourses witnessed within other restorative models. Such an approach, of panellists and locally based support structures managing relevant offender needs as well as offender deeds within an individualised focus on a participant's past history, dependencies, relational problems and concerns, can allow for the personalised sphere of the offending to be better considered. Within the Irish panel cases, many of these personal issues were directly relevant to the offending behaviour being managed. Therefore, a widespread restorative approach to managing participants within this 'care, concern and accountability' communitarian based model, can allow for all the factors

⁷ David Karp, 'Harm and Repair: Observing Restorative Justice in Vermont' (2001) 18 *Justice Quarterly* 727, 731. See further Patrick Gerkin, 'Participation in Victim Offender Mediation. Lessons Learned from Observations' (2009) 34 *Criminal Justice Review* 226 for examples of 'victim lecturing'.

⁸ Patricia Gray, 'The Politics of Risk and Young Offenders Experience of Social Exclusion and Restorative Justice' (2005) 45 *British Journal of Criminology* 938, 952.

⁹ Ibid.

¹⁰ Introduced by the Youth Justice and Criminal Evidence Act 1999. See Adam Crawford and Tim Newburn, *Youth Offending and Restorative Justice* (Devon: Willan Publishing, 2003) 93.

surrounding the crime to be addressed including the reasons behind the offending behaviour and the ideal rehabilitative route away from repeat criminal behaviour.

6.3 The Communitarian Idyll: Reparation Reality or Managerial Mock-Up?

The discovery of a meso-community at work within Irish reparation panel practice was a very positive finding within this research thesis. The second key finding is positive on the facts observed also, though it relates to the theoretical potential for mismanagement of restorative principles within the panels due to both the streamlined format of the reparation model itself and its reliance on the conventional criminal justice system and government funding support. As discussed within Chapter 5, the reparation panel format does not usually include the close familial and friendship support structures more in evidence within other restorative models. In this regard, the participating offender attends the panel model alone, with only the support of the caseworker within the *RJS* programme, and the support of community volunteers within the *RJC* scheme. This introduces the theoretical possibility of panel power abuses and a dilution in restorative ideals wherein criminal justice professional panellists could deliver onerous contract terms and retributive dialogues to offenders without the possibility of offender assistance or review. Moreover, while the programmes have claimed to offer a 'bottom up', community-led response to criminal behaviour, the reparation model on the whole has been dominated by managerial influences. It has relied on the participation and expertise of criminal justice professionals, on financial support from statutory criminal justice agencies, and on judicial referrals for their client base. Such reliance has represented a major challenge to the restorative and communitarian ethos within general panel practice. Due to the reality of managing a justice diversionary model within compressed timeframes, financial constraints and staffing limitations, there is an ever present danger that reparation panels would manage cases with an over emphasis on swift offender turnaround and quantity of cases over restorative quality, and the promotion of retributive elements such as blame and guilt over restorative principles such as rehabilitation and re-integration. This, in turn, could result in a weakening of relational bonds with community based service suppliers

and an overall ‘McDonaldization’, of the reparation process.¹¹ To explain further, and as summarised by Arrigo, Umbreit argues that, within US based victim offender mediation programmes, there has been a danger of restorative principles being consumed by a process of ‘fast food mediation’. In this regard, he has recognised a number of practical concerns surrounding the management of criminal conflicts, including,

‘agreement-driven rather than dialogue driven sessions; the pressure for mainstream acceptance resulting in less risk taking, more efficient negotiation, and easy case referrals; and institutional representations without face-to-face dialogue (for example, probation officers representing the view of victims)’.¹²

Chapter 5 has already examined the theoretical and practical difficulties of developing a genuine informal diversionary justice model alongside managerialist-style priorities which can include the ‘cost effective management of risks and resources’.¹³ Furthermore the concerns and pressures noted by Umbreit above are theoretically heightened within a restorative model such as the reparation panel with its close, institutional attachments. Despite these theoretical dangers, observations of reparation panel practices have demonstrated that a restorative justice themed symbiotic relationship can exist between both professional and lay member actors and organisations in the overall pursuit of increasing accountability, remorse, restoration and rehabilitation within the sphere of criminal offending. Panellists have been seen to further symbolise the ‘relational justice’ elements of restorative theory by creating a panel based relational bond as part of case deliberations.¹⁴ All panellists have been given equal time to speak out within meetings, with community volunteers and programme based actors, alongside their professional counterparts, actively involved within case discussions and contract agreements. Those judges who have referred cases to the reparation panel

¹¹ See generally, Mark Umbreit, ‘Avoiding the marginalization and ‘McDonaldization’ of victim-offender mediation: A case study moving toward the mainstream’ in Gordon Bazemore and Lode Walgrave (eds.), *Restoring juvenile justice: Repairing the harm of youth crime* (Monsey: Criminal Justice Press).

¹² Bruce A. Arrigo, *Rethinking Restorative and Community Justice: A Postmodern Enquiry* (2004) 7 *Contemporary Justice Review* 91, 98.

¹³ David Garland, *The Culture of Control* (Oxford: Oxford University Press, 2001) 18.

¹⁴ This theme is summarised further within this conclusion.

have illustrated a patience and understanding in the restorative nature of the process by adjourning cases whenever required in order to increase the opportunities for both accountability and rehabilitation. Moreover, all panellists have recognised the specific qualities and expertise that each member can bring to the reparation paradigm. Community volunteers have been listened to by their professional panel colleagues and their recommendations acted upon through contract terms. Panel caseworkers have supported the rights and concerns of participants while task-sharing panel commitments with Garda and Probation Service representatives. Community representative facilitators have also highlighted restorative principles whilst upholding the fairness and legitimacy of panel discourses and agreements. Rather than the 'easy case referrals' and 'agreement driven rather than dialogue driven' policy concerns mooted by Umbreit, both reparation programmes have managed high tariff offences and repeat offenders, and have incorporated a respectful and personalised dialogue within case discussions. That is to say, the social factors behind each offending incident have been explored in detail with discourses going beyond the driving of the reparation contract settlement to include future life choices and options. This has resulted in a full investigation of the possible reasons behind each specific case and, for the most part, a fully developed restorative discourse between professional and lay member panellists alike. With this in mind, the panel programmes can be said to have foregone the 'assembly line justice' efficiency of Packer's theoretical crime control model with its emphasis on speed and uniformity; rather, they have acknowledged that each case, and each participating offender, has individual characteristics which have to be explored in a detailed fashion.¹⁵ Managing criminal case referrals in this way has enabled the reparation programme model to highlight rather than diminish the restorative paradigm, while simultaneously working in tandem within a managerial framework. Indeed, the task sharing ethos identified between professional, programme representative and volunteer panel actors has pointed to a realisation that an ideological change to the manner in which professional justice agencies and

¹⁵ To summarise, Packer introduced two theoretical models into the management of crime and offenders; the 'due process' model, chiefly concerned with rights and correct procedures, and the 'crime control' model, or 'assembly line justice', which highlighted efficiency and the enforcement of guilt. See Herbert Packer, *The Limits of the Criminal Sanction* (Stanford, California: Stanford University Press, 1968). See also, Herbert Packer, 'Two Models of the Criminal Process' (1964) 113 *University of Pennsylvania Law Review* 1.

representatives have previously viewed and managed crime and offenders has been ultimately required.¹⁶ Such an ideological shift can help to move away from the 'us versus them', police and the state versus offender, mind-set and promote the relational and social elements of crime, thereby allowing for a new direction in the way that criminal acts might be ultimately perceived.

6.4 Solving the Reparation Conundrum

The third key finding of this thesis surrounds the question of reparation agreements and key restorative principles of accountability and making amends for any harm caused.¹⁷ The Irish reparation model is, on its face and as noted within Chapter 3, an offender-centric restorative model. No cases are managed within this format if the offender refuses to become involved in the process. However the lack of participation of any relevant direct victims will not prevent the reparation panel from operating. This is not unique to the Irish reparation model, with a number of restorative models having also operated without victim participation. This has included group conferencing models in which, theoretically at least, the victim's voice is one of the most important elements of the mediation process.¹⁸ Whilst the *RJC* programme will write to or phone every direct victim of those cases referred, and the *RJS* model has also on occasion written to victims, the rate of both direct and indirect victim participation has been low within the model generally.¹⁹

¹⁶ For further discussion on the nature of the ideological challenge facing professional justice institutions, see Kerry Clamp and Craig Paterson, 'Rebalancing Criminal Justice Potentials and Pitfalls for Neighbourhood Justice Panels' (2011) 9 *British Journal of Community Justice* 21, 31.

¹⁷ See generally Declan Roche, *Accountability in Restorative Justice* (Oxford: Oxford University Press, 2003); and, Linda Radzik, *Making Amends: Atonement in Morality, Law and Politics* (Oxford: Oxford University Press, 2009).

¹⁸ For example, see Gabrielle Maxwell and Allison Morris, 'Youth Justice in New Zealand: Restorative Justice in Practice' (2006) 62 *Journal of Social Issues* 239, 253. Within the New Zealand based juvenile family group conferencing model, only 50% of conferences were attended by victims and their representatives, while approximately 50% reported that they also did not feel involved in the decision making process.

¹⁹ One *RJS* based caseworker noted that, out of approximately 20 victims contacted, only two will agree to become involved in the reparation process. Interview with panel caseworker: Dublin, 11th September 2014. Indeed, the *RJS* programme was from the outset a victim offender mediation model only but had to change its focus to a reparation style format due to a lack of willingness on the part of affected victims to become directly involved in that process.

This low rate of participation, of such an important, primary stakeholder grouping, can be said to represent a general weakness in reparation panel policy and procedures. As will be illustrated further within this final chapter, there are a number of potential methods by which panel administrators can aim to further improve crime victim participation rates. At this point however, this weakness within reparation restorative practice has left itself open to criticism that it is, at best, a partly restorative criminal justice model only or, at worst, not a restorative model at all. McCold argues that when victims of crime have no direct control over the outcome of their particular case, they can become 'disempowered and revictimized through exclusion'.²⁰ In this respect, he further argues that

'practices involving victims, offenders, and their families are fully restorative. Practices involving two of the three are mostly restorative, and practices involving only one are partly restorative. Programs not involving a cooperative approach toward offender responsibility, victim reparation or communities-of-care reconciliation are not restorative, no matter how helpful they might be in other ways'.²¹

Thus, according to some theorists, the reparation panel models should only be classed as 'partly restorative' in nature due to the majority of panel cases that do not involve direct victim participation. Such an assertion can, it is submitted, be legitimately levelled at the reparation programmes. There is little doubt that a fully restorative criminal justice process should include all primary stakeholders of a particular crime, including both victim and offender. Victims can gain a sense of closure by hearing from the perpetrator directly as to the reasons why they were targeted. They can also help mediators and participating offenders by outlining the particular ways in which the crime has affected them and the best means by which that harm can be repaired. There is also greater potential for elements such as remorse and forgiveness to be successfully expressed within a face-to-face offender/victim direct encounter. The small numbers of

²⁰ Paul McCold, 'Paradigm Muddle: The Threat to Restorative Justice Posed by its Merger with Community Justice' (2004) 7 *Contemporary Justice Review* 13, 22.

²¹ Ibid. 28/29

direct victims willing to participate within reparation panel practices have, therefore, provided the reparation programmes within this jurisdiction with a challenging dilemma. How have they managed to accentuate the specific harm caused to victims, and more generally to community members, within reparation deliberations when one of the primary stakeholders in the reparative process has been generally unwilling to become engaged? Furthermore, how have panellists maintained the restorative integrity of agreed reparation contract terms, especially the act of apology, without widespread active victim commitment?

Based on the evidence gathered from observing 47 reparation panel meetings between both programmes, I have concluded that panellists have successfully solved, at least in part, this reparative conundrum in the majority of those cases witnessed. Although it can be argued that the lack of direct victim involvement within a large number of reparation cases has resulted in a 'partly restorative' reparation process, community volunteer, caseworkers, facilitators and criminal justice professional panel members have managed to retain and promulgate many of the restorative principles inherent in other, more 'inclusive' restorative justice models. This has been achieved by way of panellists increasing the scope of the victim pool around the offence to include, not as direct participants but as key stakeholders and points of reference within reparation discourses and contract agreements, those family members and friends, local businesses and services, as well as community members and neighbours indirectly affected by the offence. By increasing this indirect victim pool around each specific offence, panellists have, in turn, accentuated the communitarian ethos within panel case outcomes as well as the cumulative levels of harm that can flow from the offending behaviour. Again, and in similar tone to the origins of the identified meso-community within panel deliberations, this practice of widening the scope of the offending behaviour has developed on an ad hoc basis and without any clear procedural guidelines and has illustrated an unfettered ability to successfully integrate restorative principles within the realities of reparation practice. Within those cases observed for the purposes of this thesis, there were numerous examples of this reparative element being deployed. One female participant in a theft case was reminded that she was in danger of going to prison and losing contact with her two young children. She was told by panellists that

the children represented further potential victims in the overall sphere of her offending behaviour. While it could be argued that shoplifting crimes such as this one have no direct victims, the caseworker in this case widened the potential victim pool to include the security staff in the shop. The participant was told that, 'they do not know what you are capable of, or who you are...they might have been frightened of being attacked, or of losing their job if you were not apprehended'. Thus, the community based scope of the offence was being widened to include other community members as well as the participant's individual close familial bonds. Another theft case involved a female participant who had agreed to write letters of apology to both the arresting officers and the store manager. Within this case, the scope of the offence was broadened to include community based Garda representatives. The participant had also stated in the letter that her son was with her when she had been caught and that the Garda officers had treated her with respect and shielded her son from the incident as best they could. She added within the letter, 'thank you for treating him the way that you did'. This case illustrated the potential for improving community bonds within reparation contract agreements with the participant coming to realise a sense of humanity within the Garda officers and signified a further example of how the panel discourse can divert away from the more conventional focus on offender versus policeman, of 'us versus them'. Panellists within this case also reminded the participant that her son had witnessed the incident, would have been frightened to see his mother in that situation and was therefore an indirect victim of the offence.

As part of the discussions surrounding another theft case, which involved the robbery of a wallet, the participant was asked how she thought this crime had affected the victim. The Garda panel representative noted that the victim would be frightened when going to cash machines and wary of strangers walking closely by. His trust in people generally would have been badly affected. Furthermore, the offender had a small daughter and the panel attempted to highlight the problems that offending of this type might have on that relationship. She was asked, 'who would look after the child if prison was enforced? What sort of a role model are you being?' As well as the effects on the direct victim, the panel reinforced the potential harm that could attach to the participant herself and the damage to the relationship between mother and daughter.

It should be noted within this case that the emphasis on harm was balanced with a 'care and concern' approach to the issue of drug dependency and discussions over the amount of methadone being used and the possible medical help available.

Throughout panel discourses and contract outcomes, the widening of the potential victim pool within panel discourses to include family members and friends and indirect Garda officers and security guards has filled, at least in part, the direct victim lacuna within reparation procedure. Other cases observed involving drugs possession and intention to supply saw panel members reinforcing to participants the harm caused to neighbours and local community members. In cases of assault, it was regularly highlighted that frightened community members who had viewed the violent incidents were also victims alongside those directly harmed. Therefore, the reparation conundrum has been addressed within case management deliberations. The identification of this specific reparative conundrum and the means by which panellists have attempted to address it, holds important lessons for the future restorative health of both programmes. With the increasing number of higher tariff crime referrals to the reparation model generally, the victim conundrum will only become more relevant. While, presently, both programmes can be legitimately labelled as a viable and legitimate example of a restorative and community-led process, further attempts at reinforcing and increasing direct victim participation can help to substantiate these values. Panellists within the model generally have managed cases in such a way that the indirect harm caused by an offence has been visibly highlighted. In this regard, the relational justice dynamic argued by Schluter, Zehr and Duff has been encouraged wherein family members, friends, neighbours, community members and local businesses and services have been identified within case discussions as additional affected victims of the fallout from the criminal act.²² Such panel discourses have successfully compensated for the unwillingness of those direct victims to become involved in the reparation process. In doing so, these discourses have also served to

²² Michael Schluter, 'What is Relational Justice' in J. Burnside and N. Baker (eds.), *Relational Justice: Repairing the Breach* (Winchester: Waterside Press, 1994) 17-27; and, Howard Zehr, *Changing lenses: a new focus for crime and justice* (Scottsdale: Herald Press, 1990) 181. See further, Anthony Duff, 'Restorative Punishment and Punitive Restoration' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) at 385.

uphold the inclusiveness of the process, what Braithwaite has termed the ‘deliberative democracy’ of restorative justice’, and reinforced the reparation model’s status as genuinely restorative and community relevant diversionary justice schemes.²³

6.5 Reparation Panels and Community-Led Restorative Practice: The Way Ahead

The fourth and final key finding of this thesis relates to the possibilities for reparation panel reform. The direct observational analysis of panel deliberations allowed for the identification of a number of apparent flaws within the reparation process. Overall, panellists were seen to combine their roles and expertise well. They possessed a good understanding of the principles contained within the restorative justice paradigm, and a realisation of how those principles should be translated into reparation case management procedures. Participating offenders were treated with respect and dignity. As part of the second panel meetings within the *RJS* programme, participants remarked to panellists that they had found the process and contract agreements fair and proportionate.

In saying that, however, I witnessed a number of flaws in practice and procedure which specifically related to the potential legitimacy of the panel model’s claims of a restorative and communitarian-led core within case management. First, as noted within Chapter 2, the case sheet notes made available to panellists at the beginning of a number of *RJS* managed panel meetings regularly contained the wrong information relating to various aspects of the participant’s case, including age, address, date of offence and next arranged court date, previous offending history and even, on occasion, a number of facts relating to the actual offence itself.²⁴ While caseworkers and facilitators were adept at clearing up any discrepancies as regards case facts, such incorrect reportage of important details could potentially impact on the nature and outcome of panel discussions. For example, on a number of occasions panellists had to

²³ John Braithwaite, ‘Restorative Justice: Assessing Optimistic and Pessimistic Accounts’ (1999) 25 *Crime and Justice* 1,

²⁴ The reasons for these mistaken facts appeared to derive from court based probation officers not listing the correct information at the time of the initial hearing, and a general breakdown in communication between these actors and their reparation programme counterparts.

pause within case discussions to clarify certain issues such as arranged court dates, previous offences and specific facts of the crime being managed.

It should be noted at this point that this particular flaw has begun to be addressed by the *RJS* programme model. An incremental practice has been adopted in which the information that arresting Garda officers read out in court as part of the initial court hearing is now being presented at panel meetings alongside the case sheet notes.²⁵ This practice is likely to improve reparation case management procedures in that it can provide panellists with a clearer picture of the offence and limit the potential for arguments between participants and panellists over the clarification of specific case facts and details. This can then result in an uninterrupted process wherein restorative principles such as accountability can be fully explored. It is recommended that this practice should be introduced across the management of all referred cases, alongside an improvement in the quality of information within the case sheet notes. Furthermore, within the *RJC* programme model, the police file relating to the offence was brought into the panel meeting by the Garda representative on some occasions but not on others. It is similarly recommended that the police file be included within all town based panel deliberations in order to help clarify case facts and improve the possibilities for a fair and proportionate process.

Second, the restorative and communitarian principles illustrated within panel practices could be better publicised. This could take the form of radio, television and newspaper advertisements and could improve the programmes in a number of ways. It could increase the level of community based volunteers within panels. At the moment, the *RJC* model only locates volunteer participants within other voluntary organisations.²⁶ Increased publicity in this sense could widen the volunteer representative pool, thus increasing the communitarian ethos of panel discourses. Increased publicity would also potentially improve the perception of the reparation model in the eyes of criminal justice professionals and lay members alike. As noted in Chapter 5, a number of Garda

²⁵ Interview with *RJS* manager, Tallaght, 17th December 2014.

²⁶ Interview with *RJC* manager, Thurles, 19th November 2014.

officers were said to be sceptical of the benefits of the reparation model. Furthermore, judicial awareness of the model has traditionally been low. While judicial referrals have been slowly increasing within both programmes, increased publicity would help to address the 'reparation Russian roulette' nature of case referral. The city based programme had, up to December 2014, a total of 24 different judges referring cases from both District and Circuit Courts.²⁷ This represented a significant increase in the previous 'buy in' levels of individual criminal justice judges. However, within the *RJC* model, up to December 2014, there were only four individual judges in total referring cases for reparation diversion throughout County Tipperary, County Offaly and Cork city.²⁸ This has resulted in the roulette referral concerns I have identified. That is to say, one offender may be afforded the opportunity by a supportive judge to attend a panel in one courtroom, whereas another offender who has committed an identical crime might be prosecuted in a different courtroom within the same County without any recourse to the diversionary possibilities of the reparation process. This anomaly could be due to either judicial indifference towards the restorative paradigm in general or a lack of awareness of the reparative based option. Whatever the reasons, this opens up genuine concerns over the uniformity, fairness and legitimacy of reparation procedure generally. Better advertising of the restorative and community-led rehabilitative benefits of panel practice, and an improvement in information streams to professional criminal justice outlets as well to general community members and possible future panel actors, could reduce these roulette referral fears and increase locally based lay member and professional participation and case referral numbers as acceptance and knowledge of the process continues to grow. The importance of increasing the panel pool was identified personally when a number of cases were observed without the required criminal justice participants present due to factors such as sickness, overriding work commitments and holiday leave.

A further related recommendation is the need to improve the restorative and community-led values of panel procedures. Increasing general awareness of the panels and their core principles could also improve the level of victim participation in panel

²⁷ Interview with *RJS* manager, Tallaght, 17th December 2014.

²⁸ Interview with *RJC* manager, Thurles, 19th November 2014.

procedures. Highlighting the benefits and opportunities that restorative justice can hold for participating victims would help to diminish victim fears and scepticism. As noted in Chapter 3, the theoretical ideal of a truly restorative process will always include direct or indirect victim participation. While both panel programmes have illustrated a particular skill in developing the wider sense of harm caused by criminal acts, and the effects such acts can have on locally based businesses and community members, victim participation on the whole needs to increase as part of a legitimate, restorative based case management process.

There are a number of ways in which increased victim participation, either directly or indirectly, within future reparation case practices can be successfully realised. One method of circumventing the lack of direct victim involvement would be by increasing indirect participation through the use of proxy victims. Both programmes have utilised this practice at times, with participants agreeing to visit victim awareness centres and meet with victim advocates. However the increased use of direct proxy victims, such as locally based entertainment club and public house owners, as well as retail managers, within panel discussions could directly highlight to participants the damage caused to the wider local community population. This practice has been illustrated previously within juvenile conferencing procedures and was observed as adding to the sense of community ownership of that process.²⁹ While a similar challenge to that represented by direct victims would have to be faced, as regards agreeing and maintaining high levels of participation, such a practice would serve to improve accountability levels within the overall reparative aim of a restorative and communitarian rich process.

Statutory implementation of reparation panel services could also improve victim participation. Within UK based restorative practices, one of the current limitations discovered by the Ministry of Justice was a need to strengthen the statutory footing of restorative justice in the criminal justice system, especially with adults.³⁰ Leaving aside the potential conflict noted earlier within this chapter between communitarian, 'bottom

²⁹ David O'Mahony and Jonathan Doak, 'The Enigma of Community and The Exigency of Engagement: Restorative Youth Conferencing in Northern Ireland' (2006) 4 *British Journal of Community Justice* 19.

³⁰ Ministry of Justice, *Restorative Justice Action Plan for the Criminal Justice System* (London: The Stationary Office, 2014) 4.

up' idealism and state regulated, statutory based and target led managerialism, such statutory embedding of reparation principles and procedures could improve public awareness of the process and clarify misunderstandings of what the restorative concept actually represents. This could be the case with criminal justice agency actors and actual and potential crime victims. Furthermore, procedural guidelines on reparation practice, within a Code of Practice, including references to the importance of including direct victims and the potential benefits that can accrue for this primary stakeholder group, could be introduced by Irish criminal justice agencies and the reparation programmes themselves. As part of England and Wales based criminal justice practice, the Ministry of Justice have previously published a Code of Practice for Victims of Crime as of October 2013 which for the first time has provided information about restorative justice for victims of crimes committed by adult offenders as well as young offenders. This includes a requirement for police officers to contact relevant victims with information and support as to the restorative justice options available.³¹ Furthermore, it has noted that, for restorative practices to improve within England and Wales, there is a need to have 'consistent messages related to the purpose and value of restorative justice, presented in a way that captures the victim's attention and builds confidence. Information and guidance needs to be shared between the local CJS (Criminal Justice System), community services and networks, including local authorities'.³²

This policy of consistent information giving either by way of statutory legislation or procedural guidelines and recommendations, as well as more developed programme brochures could increase victim awareness and illustrate the potential restorative benefits of becoming engaged in the reparation process, including the opportunity to gain more information regarding the case itself, and the opportunity to achieve an element of closure and financial and symbolic reparation for the harm caused.

³¹ Ministry of Justice, *Code of Practice for Victims of Crime* (London: The Stationary Office, October 2013). See specifically Section 7.

³² Ministry of Justice, *Restorative Justice Action Plan for the Criminal Justice System* (2014) 5.

As noted earlier within this thesis, the *RJC* programme model does provide an information pamphlet when contacting direct victims in order to gauge their willingness to participate in the process, while the *RJS* programme has a similar information leaflet. A further possibility, in increasing victim support and participation, could involve a Garda officer or programme actor initially ringing a victim and explaining the reparation process in detail. This practice, in combination with the brochure after a specific period of time and a final, follow up phone call, could help to further convince victims to become either directly or indirectly engaged. As Umbreit argues, 'by giving the victim more time to think about mediation, along with a brief and persuasive letter/flyer, the likelihood of the victim agreeing during the next phone conversation to a separate meeting with the mediator, if not mediation itself, increases'.³³

In more general terms, the reparation programmes can further improve the sense of restorative ethos by continuing, and increasing, their informal justice dynamic. As has been illustrated throughout this research thesis, the restorative justice paradigm can be viewed as a different way of observing criminal based conflicts. Indeed, it has been previously identified as a 'new paradigm' by Zehr. In this regard, restorative justice can move away from the traditional, conventional theories of crime as a violation against the state and a safeguarding of individualistic values. Alternatively, it can promote crime as a violation of people and relationships; it can promote the utilisation of normative dialogue, problem solving and the repair of social injury; and, it can represent a paradigm that understands a criminal offence across moral, social and economic contexts.³⁴ Moreover, the restorative paradigm has assumed a relational importance within criminal conflict management. As Pranis argues, restorative justice recognises that 'there is a fundamental human need to be in a good relationship with others. Restorative approaches recognise and work with that core human need'.³⁵ Reparation panel programmes have illuminated these restorative signposts themselves by

³³ Mark S. Umbreit, with Robert B. Coates and Boris Kalanj, *Victim meets Offender. The Impact of Restorative Justice and Mediation* (Monsey: Criminal Justice Press, 1994) 167.

³⁴ Howard Zehr, 'Retributive Justice, Restorative Justice' in Gerry Johnstone (ed.), *A Restorative Justice Reader* (Cullompton: Willan Publishing, 2003) 81-82.

³⁵ Kay Pranis, 'Restorative Values' in Gerry Johnstone and Daniel W. Van Ness (eds.), *Handbook of Restorative Justice* (Cullompton: Willan Publishing, 2007) 65.

promoting relational problem solving, underlining the importance of social, moral and economic factors within case management and utilising normative and humanistic dialogues between panellists and participants.³⁶ These factors, added to the general theme of accountability through respect, have proved successful tools in the reparation model's quest for a community owned and fully restorative answer to criminal offending. Further tweaks to this mode of practice could improve the dynamic further. In this regard, Garda representatives should consider the benefits of attending panel case discussions without the need for full uniform. Such a practice could help to limit the agitation I personally observed of certain participants as they initially entered the panel room. It could also dilute the 'us against them' adversarial role play that many participants would have been accustomed, especially those with numerous previous convictions. These tweaks in reparation procedures could potentially allow the participant to become more relaxed and willing to fully engage in the process, thereafter helping the panellists to get to the bottom of the behaviour being managed. Furthermore, the *RJS* model should give some thought to the ongoing use of the Probation Service Headquarters as a suitable venue for a restorative based process. The issue of reparation venues has been explored in detail within Chapter 2. The *RJC* programme managed a number of cases in informal community halls and disused youth centres. The city based model has convened victim offender mediation cases and a number of reparation panels within its Tallaght based headquarters. In my opinion, these headquarters were less formal and less intimidating than its Probation Service counterpart. It was stated by the *RJS* manager that the Probation Service location was not an ideal venue in which to stage restorative dialogues because of its connections with the formal criminal justice system.³⁷ It was, however, conceded that such a venue was 'necessary' due to a lack of suitable options, the ease of city centre based access for participants and panellists alike, alongside the fact that the Probation Service provided

³⁶ Mark S. Umbreit and Mark P. Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (New York: Springer Publishing, 2011) 21. See Chapter 5 for further discussion on this 'humanistic' element to case dialogues.

³⁷ The *RJS* manager also noted the small differences in detail within the Tallaght and Dublin city centre based venues. For example, the Tallaght panel room had a round table whereas the Probation Service HQ had a square table in all the rooms used, with the Garda representative always placed at the top. The manager noted that this round table was specifically chosen in order to bring a more inclusive feel to the panel discussion, similar in principle and procedure to restorative circle practices.

the space on a rent free basis.³⁸ However, if both programmes can continue to explore and build on the informal, unconventional ethos within reparation panel deliberations, it could help to cement the restorative and community-led ideal of relationships over rules.³⁹ It could also delimit the opportunities for an overt managerial influence to take precedence over restorative aims and 'bottom up' ownership as analysed within Chapter 5.

6.6 Conclusion

In concluding this thesis, two further points should be underlined. First, and as noted throughout, the reparation panel model is relatively new compared to other restorative models. Furthermore, it is an ever-developing process that is always looking for possible ways in which to improve and increase its restorative and communitarian capacity.⁴⁰ With this in mind, there is further scope for increased examination and analysis into panel practices and the principles utilised therein. The programmes have been managing a greater uptake of referred cases while remaining within tight financial budgets and limited staff resources. The communitarian and restorative capacity of both schemes has proved all the more remarkable because of these limitations and the absence of recognised guidelines. In saying that, there is the possibility that future government emphasis on cost effective practice and programme accountability may reduce this ad hoc approach, resulting in the statutory implementation of policy aims. This may, as noted earlier with regard to victim participation, increase awareness, clarity of policy requirements and referral numbers. However, it may also lead to a more rigid, controlled process in which the manoeuvrability of panellists to explore restorative and community-led factors could be diminished in favour of set targets and rules. A number of questions remain suitable for further investigation including the following: by what further means can victim participation be increased? Should the reparative format be

³⁸ Interview with *RJS* manager, Tallaght, 17th December 2014.

³⁹ Howard Zehr, *Changing lenses: a new focus for crime and justice* (Scottsdale: Herald Press, 1990) 184.

⁴⁰ Indeed, as of December 2014 the *RJS* manager noted that the programme was investigating new ways in which victim participation could be increased. It was noted that a victim based audit exercise was continuing between all relevant panel stakeholders with the ultimate aim of engaging this group more directly within the reparation process as a whole. Interview with *RJS* manager, Tallaght, 17th December 2014.

altered in any way to improve restorative practice and participation generally? Is there scope for juvenile participation and greater use of support structures within the reparation model? How should the programmes continue to manage the increase in referrals of higher tariff offences and repeat offenders? How can the conflict between the theoretical freedom of ad hoc practice and the possible limitations of statutory implementation be resolved? In what ways can the programmes increase case and staff capacity within confined budgets? In what ways can the communication strands be improved between initial court referrals and ultimate introduction into the panel programme? And, how can participants be better informed of the restorative and communitarian potential of the reparation process? There is, therefore, within the expanding and developing pre-sentence and adult based reparative genre, scope for further investigation into the practices and procedures deployed by both city based and town based programmes.

Second, it is important to stress that the general limits of restorative practice should always be remembered when researching and recommending improvements within this paradigm. Daly argues that caution is needed when faced with the idealism and ‘nirvana story of repair and goodwill’ that can attach to restorative justice as a whole.⁴¹ Keeping this in mind, I would nevertheless conclude that the reparation based community I have identified has improved panel practices by widening the scope of stakeholders, both directly and indirectly involved, within case discourses and agreements. The harm caused by the initial offence has always been forcibly highlighted. However, the social justice elements of the referred crime have been equally explored, and this in turn has helped to uncover a number of relevant factors which played prominent roles within that offending. Respectful dialogue, and rehabilitative recommendations relating to the offence itself, as well as further recommendations aimed at improving future life choices in general, has allowed many of those offenders observed to fully participate within the reparation process. In this regard, these evolving communitarian bonds between panellists and offenders, as well as the successful relational dynamic and task-sharing ethos between professional and lay member panel representatives, can be transferred

⁴¹ Kathleen Daly, ‘Restorative Justice: The Real Story’ (2002) 4 *Punishment and Society* 55. 70.

to other restorative schemes and formats, managing both adult and juvenile offenders, and prove a practical working restorative template for restorative justice practices moving forward.

Finally, it has been extremely interesting to have been given first-hand access to the work currently being carried out by both the *RJS* and the *RJC* reparation panel models. These observations have allowed for not only an examination of the reparation process itself but also a renewed illustration of the weaknesses and limitations of the traditional criminal justice system. A number of those participants observed had lengthy criminal records and had been in and out of the conventional justice system for several years. What soon became clear was that this conventional route had not served to address the relevant social factors behind the specific offending behaviour. These factors included relational breakdowns, financial problems and job losses, dependency issues, mental health concerns, traumatic incidents in the past such as the death of a friend or relative, and the general complexities and pressures that can attach to everyday lives. Completing this research thesis has also allowed for a greater understanding of the potential of informal, non-conventional schemes, such as the reparation panels, to successfully manage these social and welfare based concerns. This potential was identified despite the real financial and staffing limitations evident within panel practices. Panellists illustrated a relational ethos both between themselves and around participating offenders as part of case deliberations. Restorative and communitarian principles developed organically over time, as part of a meso community of care, concern and accountability. This reparation panel based community has been newly identified and has drawn on a number of previous theoretical restorative models. The emergence within both programmes of this meso-community is a very positive finding within this research thesis. It is also a surprising development given the streamlined format of panel procedures and the predominant influence of justice professionals throughout the Irish reparative system. The panel model is not a perfect restorative idyll, with further scope identified for future improvements. It is, however, a process that has been underpinned by a strong restorative ethos. Furthermore, it is a process that has striven to deliver an active and recognisable sense of community-led empowerment within criminal conflicts. The needs as well as the deeds of each referred participant

have been carefully considered. The work done to date has laid firm foundations for future reparation panel practice. It is to be hoped that the restorative and communitarian die already cast can help to mould both panel programmes as they continue to manage offenders within the shadow of financial and staffing constraints, professional and managerial influences, possible future expansion concerns and other such threats.

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Appendices

Appendix A Community Alcohol Service: Confirmation of Attendance (RJS)

 Feidhmeannacht na Seirbhíse Sláinte Health Service Executive	Programme for Health Promotion, Mental Health, Addiction & Social Development Community Alcohol Services Glen Abbey Centre Belgard Road Tallaght Dublin 24 Tel: (01) 451 6589 (01) 451 6754 Fax: (01) 462 1283
 To Whom It May Concern:	
 Alcohol Education Programme –	
Course Duration: 1 Morning a week for 4 consecutive weeks consisting of lecture + discussion.	
Time: 10.00 – 11.30	
Mr/Ms	_____
Address:	_____ <u>17</u> _____ <u>COUSCENT</u> _____
	_____ <u>DUBLIN 16</u> _____
D.O.B.	_____ <u>23/08/</u> _____
 has attended all of the above lectures and discussion groups on Alcohol Related Problems.	
 Yours faithfully,	
 Addiction Counsellor m.a.c.i. m.i.a.c.p.	
Date:	_____ <u>26/</u> _____

Appendix B Ethical Agreement Statement (RJC)

This research is funded by a Daniel O'Hare Scholarship within the School of Law and Government, Dublin City University. The thesis title is *The Irish Restorative Reparation Panel and the Search for Community. Idealised Rhetoric or Practical Reality?*

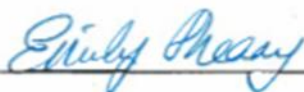
Based on an in-depth empirical analysis of both reparation panel programmes, this thesis seeks to evaluate the restorative practices and principles operating within the reparation model. It also attempts to clearly identify the theoretical and practical elements of the concept of community within panel practices.

After initial meetings with the managers of both reparation panel programmes, Restorative Justice Services and Restorative Justice in the Community, access to panel meetings was agreed. The research took the form of observations with no direct interaction with the participating offender. In order to protect the anonymity and confidentiality of all participants, tape recordings of panel discussions did not take place, with shorthand notes only permitted. All information provided by the programme coordinators, including case notes, was returned at the conclusion of each meeting.

A necessary ethical component of the research was the consent of participants. All participating offenders were initially asked pre-panel by programme managers and caseworkers as to their willingness to allow an observer to attend their case discussions. Before oral consent was obtained from each participant, the background of the researcher and the research aims were explained and assurances given that anonymity was guaranteed. Immediately before the panel discussion proceeded, participants were again asked by programme facilitators if they consented to the presence of an observer. Only when consent was obtained would the panel discussion begin.

In agreement,

Restorative justice in the Community: Manager



Appendix C Ethical Agreement Statement (RJS)

This research is funded by a Daniel O'Hare Scholarship within the School of Law and Government, Dublin City University. The thesis title is *The Irish Restorative Reparation Panel and the Search for Community. Idealised Rhetoric or Practical Reality?*

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In agreement,

Restorative Justice Services: Manager



Appendix D Information leaflet (RIC)



WHAT IS IT?

- Restorative Justice in the Community (RJC) is a restorative justice project supported and funded by the Probation Service.
- Restorative Justice brings together everybody affected by a crime to decide how to repair the harm caused. It allows victims to say how they have been affected and allows those involved the opportunity to accept responsibility and to make amends.

Restorative Justice believes that crime hurts

Victims and their families	Offenders and their families	Community
----------------------------	------------------------------	-----------

- RJC is based in Nenagh, County Tipperary and currently works with communities in Munster and the Midlands.
- In most circumstances your meetings with RJC will be facilitated in your local area.
- RJC works alongside the traditional Court System and is a different way of dealing with some of the cases that come before the Courts.

YOU HAVE BEEN REFERRED TO RJC, WHAT HAPPENS NEXT?

- Your case has been put on hold to allow you to work with RJC. You will be asked to attend an initial meeting with the Project Co-Ordinator and to meet the reparation panel. This is a group of people who come together to discuss the offence and how to repair the harm caused.
- The panel meeting will be attended by you, the Project Co-Ordinator, a member of the Gardai, two volunteers from the community and the victim of the crime, if there is a direct victim.
- You will be asked to discuss the offence and to agree the steps you will take to make amends. This agreement is called the Contract of Reparation.
- On the next Court date if the Judge is satisfied with the Contract they will put your case on hold to allow you to complete the tasks on your Contract before your case returns to Court.

If you successfully complete your Contract the Judge will take into account your efforts in carrying out your Contract as well as any efforts to make amends to the victim and/or community when deciding your case

THE CONTRACT OF REPARATION:

- The aim of the Contract of Reparation is to make amends for the harm caused by the offence.
- The Contract also aims to help you understand how your behaviour has affected you and others and how you might prevent this behaviour in the future.
- Every Contract is different and involves different tasks.

Some examples of the tasks that may be included in your Contract are....

- Carrying out voluntary work in the community.
- Writing about the offence and your attitude to it.
- Attending for drug or alcohol education and/or counselling.
- Attending NA or AA meetings.
- Paying the cost of repairing any damage you may have caused.
- Meeting with and apologising to the person / people affected by the offence.

Appendix E Invitation Letter to Offender (RJC)

Mr XxX
Co. Xxxxxy

09th April, 2014

Dear Xxxx,

At Xxxx Court on the xx March, Judge xxxx adjourned your case to allow you to meet with this project in relation to an offence of Burglary.

We are a project that works with people affected by crime to help find a way to make amends for what has happened.

It is important to note that should you decide to participate in this project you will be expected to be totally honest throughout the process. Each person referred to this project is also expected to try and make reparation (make amends) to the people or community affected by their actions.

Please carefully consider the contents of this letter and the enclosed leaflet and consider what type of activity or action you could carry out which might have a positive effect for you, the person affected by your actions and your community and which might form part of your reparation contract. This may be something creative that uses the skills you already have. For example, some of our participants have volunteered their time with community organizations, others have used their skills or trades to make items that are useful to groups within their community.

I would like to meet with you to discuss the project and the offence. I am offering you an appointment at 10am on Friday xxxxxxxx at xxxxxxxx.

Please contact this office on 0xxx and confirm that you will attend this appointment.

Kind Regards,

Private and Confidential

Mr XXXXX
XXXXXXX

County xxxxx

09th April 2014

Dear Mr XXXXX,

I hope that you are well.

I am writing in relation to the burglary of your property in 20Xx.

Judge Xxxxx, the Judge in your case has referred the case to this project to see if we can be of any assistance to you.

We are a project funded by the Department of Justice which works with people affected by crime in a way that allows them to have a say in deciding how the damage or harm caused might be repaired.

Part of my job is to talk to you, the person affected by the crime and convey any information that you wish to share back to Judge Xxxx or see if I can be of any assistance to you. There is no obligation on you to meet the person who entered your home or to do anything that you would not like to do.

I am based in Xxxx and I also travel to XXXX to meet with people. If you were happy to meet with me to discuss your case I can offer you an appointment on Friday 2nd xxx at 12.30pm in the XXXXXXXXXXXX. I absolutely understand that you might prefer not to have any involvement with the project. Perhaps you could ring me on 08xxxx and you can decide whether you would like to discuss what happened or just to let me know if you would prefer not to become involved.

This is a voluntary process and there is no obligation on you to participate. However the process has been of assistance to other people affected by crime and there may be some issue(s) that you wish to have addressed. Support is also available from the Crime Victims Helpline on Free Phone 116 006 or by Text on 085 133 77 11.

Kind Regards,

Journal 2

- In What Way has your behaviour affected you and your family?

My drinking has affected everyone in my family
They have all had to witness my
bad and aggressive behaviour whilst we
been drunk and have also had to
put up with not knowing when I would come
home. This has serious effects on my family especially
Do you feel you have made responsible choices and decisions after drinking? ^{my mother}

While drinking my ^{decision} choice making is
very poor but since the last time
I have drunk I have made the decision
to never drink again so that I believe
is a responsible choice I have made after
drinking.

- How will you avoid situations that result in you being arrested?

I will avoid situations that will result in
me being arrested by stopping drinking
altogether and by stopping being with
groups that drink in public

- Does drinking change your personality? How?

Yes drinking changes my personality. When
I have too much drink on me I
normally become very aggressive and
I also become very easily led

- What would you like to do in the future and how can you achieve this?

I plan on studying leisure and fitness management in Sallixagen College. I have already been accepted and have paid the entrance fee. In the meantime I also plan on getting a job.

- What was the most important thing you learned from your contract and while on the Offender Reparation Programme?

The most important thing I learned was that I actually was an alcohol abuser because I never believed that I had a problem with alcohol. Because I had realised this I learned that my problem with alcohol was having serious affects on my family.

Signed: _____

Date: 5/14

Appendix H Letter of Apology Example (RJS)

To whom it may concern of _____

My name is _____ I am writing you to apologise for my action that took place when I shoplifted goods worth €80 from your store, Pet Shop.

I am genuinely sorry. I can understand now that my actions can cause people to lose their jobs and also loss of income for the shop. I had a good relationship with the shop, as I have a dog and a hamster and always bought goods from them. Because of my actions, the trust I had with staff is broken and cannot be fixed.

I understand my actions were completely wrong and out of character and I will never do it again.

I apologise again and thank you for taking the time to read this letter.

RESTORATIVE JUSTICE SERVICES

Restorative Justice - Reparation - Mediation for Victims - Offenders - The Community

2014


OFFENDER REPARATION PROGRAMME REPORT

To: Judge

Re :

Please be advised that Ms. has met with the Reparation Panel on 2 occasions and we confirm that she has now completed her contract to the satisfaction of the Reparation Panel. Her contract, written work and associated paperwork is attached for the consideration of the court.

Ms. understands that the final decision on sanction on this matter remains with the Court.


Peter Keeley
Manager
Restorative Justice Services

Offices: Village Green, Tallaght, Dublin 24.
Tel: 01 - 4515022 / Fax: 01 - 4515025 / e-mail: office@rjs.ie / Web: www.rjs.ie

Chair: Maria Flynn | Directors: Clara O'Connor, Donald Colgan, Supe, Joseph Gannon, Frank Schmitzger
Restorative Justice Services Ltd is a registered Charity. Reg. CIV No: 14363. Company Reg. No: 359505

Appendix J Panel Case Notes Example (RJS)

RESTORATIVE JUSTICE SERVICES

JUDGE : _____

No: 14BL.DMH1/1196/3/ORP3

REFERRING COURT	ORP	VOM	Probation	Other
_____	X			

DEFENDANTS NAME: _____

PULSE NO: _____

ADDRESS: _____

Dublin 15.

AGE: 27

DATE OF BIRTH: 22/04

TELEPHONE NO: 084

GENDER: female

NATIONALITY: Irish

DATE OF OFFENCE: 19/1

DATE OF COURT HEARING: 1/14

NEXT COURT DATE: 14

CHARGES BEFORE THE COURT: Theft x7.

PREVIOUS OFFENDING HISTORY: 2007, Theft.

REFERRED TO PROBATION SERVICE PREVIOUSLY Yes

CURRENT No NAME OF PROBATION OFFICER _____

REQUEST FOR PROBATION REPORT: EMPLOYED: No

ANY AREAS OF PARTICULAR FOCUS REFERRED TO BY JUDGE

No

GARDA IN CASE: _____

STATION: _____

DEFENCE SOLICITOR: _____

VICTIM OR CONTACT NAME and ADDRESS (if any): _____

TELEPHONE NO: _____

NOTES

Appendix K Participant Feedback (RJC)

Quotations from feedback gathered from offender participants / persons who have caused harm: (spelling left as in original)

"I have learned so much from this offence and from my experience of meeting with [the persons affected by this offence]. I now realize the huge implications my actions even at 18 can have on others and I am truly sorry for the hurt I have caused as a result of my participation in the events of that night. I am a far more conscious person and never drink to the excess that I am unaware of my behaviour. I am working hard to better myself, have completed a horticulture course and security course. Hoping to contribute in a positive way to my community"

"It gives people a second chance and lets them do something worthwhile for themselves and the community "

"I have a new look on everything. I look at alcohol differently"

"It gives people who have made a mistake a chance to redeem themselves. People are only human and people make mistakes but their whole lives shouldn't be ruined because of one moment. "

"It gives you a second chance and it explains what you do wrong. Helps you through your problems and gives advice to steer you away from trouble in the future."

"A good way to make you think about your actions and how it affects you and others around you"

"Since taking the Contract I agreed to do anger meetings and these meetings have helped me so much with my drinking. I have really turned my life around thanks to the Project. "

"It was a fair contract and it has helped to so much. If I hadn't have done this contract I probably would have got into more trouble but instead I have really improved my ways of drinking and my life."

"Ashamed, embarrassed, sorry, just really wanted to take back what I have done when I seen the expression on the victim's face."

"I felt meeting [the panel] was very beneficial. Getting an insight from people who were not related to my case in anyway helped me understand how my offence affected the victims and their family. [The Contract] was fair to me because it required me to spend time thinking on the offence.....and helped me to see the

offence from the victim's viewpoint. I think the panel members are a very important aspect of the project. If I could help out with that part of the process [in the future] I would carefully consider...."

Quotations from Feedback completed by persons affected by an offence:

"Thank you so much for the visit to [the property damaged by the offence where restorative conference was held]. The two superb bunches of flowers brought by [the person who caused the damage] and accompanied by his kind and thoughtful words, his courteous manner and interest.....impressed [us both] especially. We both feel he is the sort of young man that could do so well in life and hope that this incident be put behind him and every opportunity be given for him to succeed in life. Just to affirm that we do fully accept his apologies and the very good manner in which he made them. Thank you particularly for all your efforts in restoring relationships."

"good to see offenders making a contribution to the cost of the damages with their own time and effort"

"Found this process very beneficial"

"Received an apology and was satisfied with that apology"

"satisfied with the Contract of Reparation and satisfied with the final outcome of the matter in Court"

Feedback from two community volunteers:

"All the people I met deserved a chance. It is a good opportunity for learning and to give someone a chance to learn from their mistakes. A very positive development in the Justice System. The person has an opportunity to speak and it is interesting to hear their perspective"

"I have really enjoyed volunteering. I felt I could see the benefit of the process for young people and I feel it is a positive development. It is also positive for parents of young people who are in trouble to know that people are willing to work with them"

Appendix L Reflection on Harm Caused by the Offender (RJS)

Reflective Piece on who was Effected and Why

I understand that by shoplifting I am putting people into awkward and difficult situations by seeing people like myself getting arrested or getting in trouble for what I have done. For those people, it could be very frightening and shocking to see something like that.

I am also putting people out of business as many people shoplift and this can affect their profits and with having no profits coming in they have to close their shops. Loosing staff is another consequence of shoplifting. People are losing wages and it can also affect taxes.

My son was with me and I completely understand that this is a horrible situation to put him in. He is everything to me and I hope he doesn't remember this when he is older. But as his mother I will always remember what I did to him. I have realised that I am not only effecting my own life but I am effecting the people who work, the public, the suppliers of the shops, the shop owners and most important my son.

From reflecting on what happened I can also see how I wasted security time and police time and will never do this again.

I am so very sorry for what I have done and I realise that now more than ever. What I did was wrong and I shouldn't have done it. I understand now the consequences of shoplifting and I will never put myself or my son in a situation like this again.

Thank you for reading my letter,

Appendix M Reparation Panel Contract Example (RJS)

RESTORATIVE JUSTICE SERVICES
CONTRACT WITH OFFENDER REPARATION PANEL

I, _____ MET WITH THE OFFENDER REPARATION
PANEL ON 27 12/14 AND AGREE TO THE FOLLOWING

1. WRITE A LETTER OF APOLOGY TO THE SECURITY
SERVICE W SHOPPING CENTRE AND
TO THE GARDIA SIOCHANA BLANCHARDSTOWN
2. WRITE A LETTER OF APOLOGY TO "PET STOP" AND
POSSIBLY MEET WITH A REPRESENTATIVE OF THE SHOP
3. WRITE A ~~REPORT~~ PIECE REFLECTING ON WHO WAS
AFFECTED BY MY ACTIONS AND HOW
4. MEET WITH A COUNSELLOR THROUGH MY G.P
5. WRITE A PLAN FOR MY FUTURE SETTING OUT
MY GOALS
6. BE OF GOOD BEHAVIOUR IN THE FUTURE

Signed: _____

Signed on behalf of Reparation Panel: _____

Appendix N Reparation Receipt (RJS)

**RESTORATIVE
JUSTICE
SERVICES**

Restorative Justice Reparation Mediation For Victims Offenders The Community

RECEIPT

DATE 1 14

RECEIVED FROM

THE AMOUNT OF € 100

FOR Childrens Breakfast Clubs .

SIGNED A. Carol

Offices: Village Green, Tallaght, Dublin 24.
Tel: 01-4515022 Fax: 01-4515023 e-mail: office@rjs.ie Web: www.rjs.ie

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Appendix O

Table 2.1 (i) Reparation Case Observations of Offences and Participating Offenders Observed within Reparation Panels.

Case	Offence(s)	Age	Gender	Previous Convictions
1	Section 3 Assault & Criminal Damage	18	Male	None
2	Trespassing & Possession of a Dangerous Weapon	23	Male	>30
3	Section 3 Assault	24	Male	1
4	Section 3 Assault	30	Male	Unknown
5	Section 3 Assault	28	Male	Unknown
6	Theft of bicycles	25	Female	Unknown
7	Theft / Shoplifting / 800 euros worth	27	Female	None
8	Section 4 Assault	23	Two Males (managed together)	None
9	2 nd Panel Meeting Theft / Shoplifting / 200 euros worth	24	Female	None
10	Theft of Wallet / Attempted Fraud	23	Female	1
11	Section 6 Public Order	25	Male	4
12	2 nd Panel Meeting Sale and Possession of Drugs	32	Male	>2
13	Section 3 Assault	23	Male	3
14	Section 6 and Section 8 Public Order	18	Male	32

Case	Offence(s)	Age	Gender	Previous Convictions
15	Section 6 and Section 8 Public Order	24	Male	Previous Offences Admitted – Number Unknown
16	Trespassing / Theft / Handling Stolen Property	20	Male	Unknown
17	2 nd Panel Meeting Theft (case 7)	27	Female	None
18	Criminal Damage – Theft	36	Male	4
19	Section 4 Assault	19	Male	1 juvenile caution
20	Section 6 Public Order	41	Male	>19
21	Section 2 Assault	21	Male	Previous Convictions Noted by Panel – Number Unknown
22	Possession, Sale and Supply of Cocaine	24	Male	Previous Convictions Noted by Panel– Number Unknown
23	Possession of a Dangerous Weapon	41	Male	17
24	Theft – Possession of Certain Articles (Section 15)	18	Male	None
25	Theft and Fraud (Section 6)	39	Male	1
26	Theft / Shoplifting / 114 euros worth	35	Female	Previous Convictions Admitted – Number Unknown

Case	Offence(s)	Age	Gender	Previous Convictions
27	2 nd Panel Meeting Theft / Shoplifting/ 60 euros worth	28	Male	Unknown
28	2 nd Panel Meeting Theft / Shoplifting / 60 euros worth	30	Female	None
29	Theft – Possession of Certain Articles (Section 15)	19	Male	Previous Offending Admitted – No Listed Convictions
30	Theft / Shoplifting / 490 euros worth	29	Female	None
31	Attempted Robbery	37	Male	1
32	Criminal Damage	23	Male	46
33	Knife Possession	18	Female	None
34	Section 6 and Section 8 Public Order	51	Male	18
35	Section 6 Public Order and Criminal Damage	31	Male	14
36	Theft and Handling Stolen Goods	22	Male	1 adult caution
37	Section 4 + Section 6 Public Order	22	Male	Unknown
38	Section 2 Assault	27	Male	Unknown
39	Section 4 Public Order	22	Male	1 known previous conviction
40	Section 4 and 6 Public Order	23	Male	None

Case	Offence(s)	Age	Gender	Previous Convictions
41	2 nd Panel meeting RTA Offences	24	Female	None
42	Drugs Offences	23	Male	None
43	Theft & Handling Stolen goods	19	Male	None
44	Section 3 Assault	22	Male	8
45	2 nd Panel Meeting Theft	27	Female	1
46	Theft	25	Female	None
47	Theft	22	Male	1