

Hate Crimes Hurt More:

Can Restorative Practices Help Repair the Harms?

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Abstract

The current retributive approach to tackling hate crime, while intuitively grounded in the principle of proportionately, does little to either repair the harms caused by incidents of hate or engender greater levels of acceptance of those deemed as “different”. This thesis therefore explores whether restorative justice, a relatively new theory and practice of criminal justice, is better placed to tackle the causes and consequences of hate victimisation.

The 18 month empirical study, carried out to examine the thesis’ aims, uses a triangulation approach by incorporating observations of restorative justice meetings, semi-structured interviews with victim participants and semi-structured interviews with restorative practitioners who have experience facilitating hate crime cases. The mainly qualitative data collated provides for a detailed evaluation of the various processes found within restorative practices that: 1) helped to alleviate the distress caused by hate victimisation and 2) prevented the recurrence of hate-motivated incidents.

A broad conceptualisation of hate crime was used within the thesis that included “hate incidents”. This allowed me to explore the utility of restorative practices in cases involving serious violence and the more pervasive “low-level”, but nonetheless highly deleterious, non-criminal incidents of hate that are frequently committed against minority group individuals.

There were also several unanticipated findings from the study. First, data emerged which highlighted various aspects of the restorative practice which were unforeseen as being central to the successful application of restorative processes, these are discussed throughout the thesis. Second, great insight was gained into the nature of hate victimisation, helping to unravel some of the complex socio-cultural factors pivotal to both the cause and effect of hate victimisation. It is hoped that these additional findings provide important epistemological advancements in both fields of study.

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Table of Abbreviations

HCP	Hate Crimes Project
SMC	Southwark Mediation Centre
RD	Restorative Disposal
RJ	Restorative Justice
UK	United Kingdom
US	United States
YOS	Youth Offending Service
YOT	Youth Offending Team
YOP	Youth Offending Panel

Tables of Cases

DPP v Woods [2002] EWHC Admin 85

R v Rogers [2007] UKHL 8.

R v SH [2010] EWCA Crim 1931

Table of Statutes

Anti-terrorism, Crime and Security Act 2001

Crime and Disorder Act 1998

Criminal Justice Act 1991

Criminal Justice Act 2003

Criminal Justice and Immigration Act 2008

Hate Crime Statistics Act 1990 (USA)

Public Order Act 1986

Race Relations Act 1976

Racial and Religious Hatred Act 2006

Youth Justice and Criminal Evidence Act 1999

Introduction

Hate crimes occur when, on the commission of an offence, the offender demonstrates hostility towards the victim, based on the victim's actual or presumed identity characteristic, such as their race, ethnicity, nationality, sexual orientation, religious beliefs and/or disability.¹ Despite hate crimes being documented throughout history, it has only been in the past few decades that scholars and governments alike have recognised them as a “social problem” (Jenness & Grattet 2001). The emergence of an anti-hate crime movement during the 1970's in the United States (US) (Jenness & Grattet 2001) and later in the 1980s in the United Kingdom (UK) (Witte 1996; Bowling 1998), both propelled by the efforts of interest groups, has placed hate crime on the agendas of governments across the world. The resulting political and public interest in hate crime has resulted in a proliferation of laws that specifically criminalise hate-motivated offenders (Hare 1997; Malik 1999).

While many US states set about enacting new hate crime laws during the late 1970s and early 1980s (the first being California passed in 1978, see Lawrence 1999) it was not until 1998 that the UK finally passed into law the new offences of “racially aggravated” assault, criminal damage, public order offences and harassment (ss 28-32 *Crime and Disorder Act 1998*). Central to the new legislation was the enhancement of punishments for offenders who had demonstrated hostility towards victims based on their actual or presumed identity. This first step onto the hate crime legislative ladder was to make way for a raft of other hate crime laws over the next decade, each providing for the enhanced punishment of various types of hate offender. In 2001 hostility based on religious belief was added to the *Crime and Disorder Act* (amended by section 39 of the *Anti-terrorism, Crime and Security*

¹ See for example, the *Crime and Disorder Act 1998* ss 28-32. Other identity traits may include gender, age, political affiliation, homelessness etc.

Act 2001). Later in 2003, hostility based on race, religious belief, sexual orientation and disability were added as aggravating factors at sentencing (ss 145 and 146 *Criminal Justice Act 2003*).² And most recently new crimes of incitement to hatred have been introduced for both religious hatred (*Racial and Religious Hatred Act 2006*) and sexual orientation (*Criminal Justice and Immigration Act 2008*), adding to the pre-existing laws covering incitement to racial hatred (*Public Order Act 1986*).

The retributive approach to hate crime

The increased politicisation of hate crime and the resulting retributive legislative response has propagated a lively academic debate focusing, in the main, on retribution theory and arguments relating to the levels of *harm* and the *offence seriousness* of hate crimes (see for example, Jacobs & Potter 1998; Iganski 1999: 2001; 2002; 2008; Lawrence 1999; Dixon & Gadd 2006). In many respects the criminal justice debate on hate crime has been polemic; the tendency being to focus on arguments in favour of introducing new hate crime laws and punishment enhancers (Iganski 1999; Lawrence 1999; Walters 2005) as against those in favour of retaining the status quo of traditional criminal laws (Morsch 1991; Jacobs & Potter 1998).

This thesis does not aim to critique the effectiveness of hate crime legislation. Indeed, at least at a theoretical level, the arguments in favour of criminalising hate and enhancing punishments seem to be persuasive (Walters 2005). The claims for censure are intuitive and the enhancement of punishment clearly recognises the heightened levels of harm that such crimes cause to victims, minority communities and society more broadly (Lawrence 1999). Moreover, the censuring of “hate offenders” is fundamental to the state’s symbolic

² The Government has recently pledged to include hostility based on the victim’s transgender under section 146 of the Criminal Justice Act 2003, (Home Office 2011).

condemnation of prejudice and to the future reduction of hate-motivated offences (Iganski 1999; Lawrence 1999; Walters 2005). I have argued elsewhere that although the expressive denunciation contained in hate crime legislation is unlikely to have any direct individual deterrent effect, it may play an important longer term role in society's evolving attitudes towards racism, homophobia and other pernicious prejudices (Walters 2006: 75). In other words, hate crime laws (like other laws) help to create a social climate that rejects public displays of identity prejudice which, over time, potentially brings about a reduction in hate-motivated incidents.

While hate crime legislation is cogently grounded in retributive theory, there are two main criticisms of hate crime laws that can be proffered and which have influenced the direction of this thesis:

- 1) The enhancement of punishment and additional criminalisation of hate-motivated perpetrators does little to *repair the harms* caused by incidents of hate (Hudson 1998; Whitlock 2001; Dixon & Gadd 2006).
- 2) Enhancing the penalties of offenders is unlikely to effectively challenge the underlying causes of prejudice, at least at an individual level (Moran et al 2004a).

These criticisms stand in stark contrast to the Government assertions made in their Home Office report *Improving Opportunity, Strengthening Society* which argued that by ensuring racially motivated crimes are “vigorously prosecuted” the underlying causes of hate crime can be effectively addressed (2005a: 50). This commitment is contained within the same chapter on “helping young people from different communities grow up with a sense of belonging” (Home Office 2005a: 43), hinting that hate crime laws improve the social

wellbeing of minority groups. Such laws are therefore being promoted by the Government as a means of creating “cohesive communities” (Dixon and Gadd 2006).

On the contrary, opponents of hate crime laws have argued that legislation does little to change the vulnerability of hate crime victims and minority communities in the short term; whom it has been shown frequently experience heightened levels of anxiety, fear and depression due to the symbolic nature of hate incidents (see below and Chapter Two). Moran et al, for example, have argued that punishment enhancements act only to uphold victims’ emotional attachments to “hate, anger, malice and revenge” (2004a: 42), none of which are likely to help reduce the emotional trauma that can be caused by hate victimisation. Moreover, researchers have found that hate crime laws are being used disproportionately to prosecute minority individuals (Burney & Rose 2002). Thus rather than protecting minority community members from victimisation and improving “community cohesion”, hate crime laws may in fact add to the criminalisation of those from disadvantaged backgrounds (Burney & Rose 2002; Dixon & Gadd 2006).

The punitive ideology which has informed the promotion of hate crime law has even led some to argue that current legislation punishes offenders based on a form of institutionalised vengeance (Moran et al 2004a: 32); a practice which is akin to “institutionalised cruelty” (Moran et al 2004a: 32; see also, Hudson 1998; Whitlock 2001). This, in part, is fuelled by the demand for vengeance by those interest groups who have demanded greater protection by the state against hate crime (populist punitiveness) (Bottoms 1995; Jacobs & Potter 1998; Moran et al 2004a). The Government, realising that the criminal justice system can do little to prevent hate crime or protect minority communities from it, use punitive measures to send symbolic messages of support to minority communities (Moran et al 2004a). In fact, some have gone as far as to suggest that hate crime laws work only to encourage identity groups to feel a sense of victimisation, thereby promoting a sense of

injustice which can contribute to the balkanisation of society (Jacobs & Potter 1998). Inevitably, this leads to minority groups competing to obtain “legislative protection” (Jacobs & Potter 1998).

The problem for those who aspire to reduce the harm of hate crime is that populist punitivism is based on the very emotion that it is attempting to combat – hate. Moran et al (2004a) describe this as using “the violence of the law” to reduce the violence of prejudice. Using the law in this way may actually antagonise offenders (and would-be offenders) who see “Others” (i.e. the victims of hate crime) as undermining their legitimate role as dominant members of society (Hudson 1998; Jacobs & Potter 1998; Whitlock 2001). In this sense, it has been argued that the divisive use of expressive denunciation and revenge promoted by hate crime laws potentially creates further social problems by fuelling the very feelings it symbolically aims to eradicate (Hudson 1998; Whitlock 2001: 8). Under this interpretation of the utility of hate crime legislation it is difficult to see how the criminal justice system adequately supports the needs of victims *and/or* helps to increase tolerance of social and cultural difference.

Repairing the harms?

Whether one agrees with the use of punishment enhancers or not, it is doubtful that the current offender based response to hate crime does much to heal the harms experienced by victims. This is of some concern when we consider how damaging hate abuse is to those who are targeted. Research (examined in greater detail in Chapter Two) has shown that a large proportion of hate crime victims experience heightened levels of emotional trauma such as fear, anxiety, depression and feelings of insecurity when compared to non-hate victims. Heightened levels of emotional harm are connected to the fact that hate victimisation goes to

the very core of the victim's "self", i.e. incidents tear at the very essence of who a victim is (Herek & Berrill 1992; Herek et al 1997; 1999; 2002; McDevitt et al 2001; Iganski 2008). As a result, victims can become anxious about leaving their homes and often avoid certain locations where they fear repeat victimisation (Moran et al 2004b; Iganski 2008: 78-79). Many even change their appearance in order to "fit in" with society (Attorney General's Department 2003; Moran et al 2004b; Dick 2008).

The Government's continued emphasis on prosecuting and punishing offenders inevitably leaves victims on the periphery of the criminal justice system. We need only consider findings that persuasively evidence the damaging impacts of hate incidents in order to see that a new or additional approach to tackling the phenomenon is required if we are to take the reparation of hate harms seriously (Whitlock 2001; Perry 2003: 44). In this respect, a small group of academics have begun to ask normative questions about the potential of restorative justice (henceforth RJ) as a response to hate crime (see Shenk 2001; Gavrielides 2007).

Restorative justice practices aim to repair the harms of crime by bringing the stakeholders of an offence together via a dialogic process that enables the parties to explore what has happened, why it has happened, and how it can be repaired (Braithwaite 1989; Zehr 1990). Shenk (2001) argues, for example, that "victim-offender mediation fills many of the gaps in hate crime legislation. By placing emphasis on the victim's needs, victim-offender mediation will likely encourage victims to report future incidents of hate crime". A number of case studies have also emerged where RJ has been used as a response to various forms of hate crime (Umbreit et al 2002; Gavrielides 2007). These case examples have identified the potential benefits of the restorative approach in repairing hate harms. They have also suggested that identity or cultural differences between victims and offenders may be overcome or even broken down via the dialogic processes typical of RJ interventions (Shenk

2001; Umbreit et al 2002; Gavrielides 2007). As such, the promise of RJ is that the dialogic process may successfully help to repair the harms of hate crime while *also* effectively tackling the underlying causes which gave rise to the offending behaviour.

Despite a small but growing number of advocates favouring the use of RJ in hate crime cases, there has yet to be any extensive empirical research into its use as a way of responding to such offences (see Umbreit et al 2002). This thesis seeks to address this lacuna through an empirical exploration of whether RJ practices, used by criminal justice agencies and third sector organisations, can:

- First and foremost, *help* to repair the harms caused by hatred, and
- Second, effectively address issues relating to identity and/or cultural differences between participants, those which are causal to the offence/incident.

Within the empirical study, a broad definition of hate crime was used that included “hate incidents”. The Association of Chief Police Officers (ACPO) defined such incidents as “any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate” (2005: 2.2.1; the potential complications of using of a liberal victim-centric definition of hate crime is discussed further in Chapter One). Hate incidents therefore included both crimes and other wrongdoing such as anti-social behaviour. The broadening out of hate crime conceptualisation to include “low-level” hate incidents was important to the endeavours undertaken in this thesis. It is these latter cases that are most difficult to deal with retributively, with most “low-level” incidents seen by police officers as falling outside the purview of traditional policing. However, as we will see in Chapter Two and beyond it is the regular commission of so called “low-level” hate incidents which can cause the greatest

amounts of harm to victims and minority communities, and therefore in many cases are the types of hate-motivated behaviours that are in greatest need of being tackled by the state (see Bowling 1998).

The thesis explores four categories of hate, including incidents motivated by the victim's (perceived or actual) race, religion, sexual orientation and/or disability. Other forms of hate crime (such as transphobic) incidents are outside the scope of this thesis. This was an unfortunate reality for the type of research that was undertaken for this thesis; even more so when considering the fact that transphobic hate crime remains an under-researched area of hate victimisation and is therefore in need of greater attention from criminologists. However, reported incidents of transphobic crime remain relatively low in comparison to other types of hate crime; especially when compared to racist and homophobic incidents. This may partly be due to victims of transphobic hate crime being unwilling to report incidents. It is also likely to be due to the fact that there are many more *visible* Black and minority ethnic, and gay and lesbian individuals in society and therefore hate incidents against these groups are inevitably more prolific.

The result of both under-reporting and a lower number of transgendered individuals being victimised means that transphobic incidents are less likely to come to the attention of restorative justice practitioners³; at least in a number great enough to draw credible assertions about how effective restorative practices are at helping to repair the harms caused. Furthermore, at the time of empirical research the victim groups included under hate crime legislation did not include transphobic offences, meaning that these “types” of victim were unlikely to be specifically identified by practitioners throughout the criminal justice system.

Notwithstanding the absence of transphobic cases in the thesis, the examination of four types of hate crime, as proscribed by law, as well as the inclusion of “hate incidents” in

³ Of course other forms of prejudice may well be highlighted during a RJ meeting but at this point it will be too late for me to research the process.

the study, allowed the thesis to explore the potential benefits of RJ, not only for different types of prejudice, but to both criminal and non-criminal acts of hatred. In doing this, I researched three different justice practices that implement restorative processes in hate crime/incident cases. These were: family group conferences at Oxford Youth Offending Service; community mediation at Southwark Mediation Service, South London; and a police restorative disposal used by Devon and Cornwall Police Service (explained in detail in Chapter Four).

Chapter 1 begins by looking at both legal and criminological definitions of hate crime. Understanding these different conceptualisations of the phenomenon is intrinsic to the application of RJ. As cases filter through from conventional criminal justice measures, the types of cases that RJ practitioners will respond to will largely be determined by legal definitions given to hate offences. Criminological conceptualisations of hate crime then become important to how RJ might effectively tackle both the *causes* and *consequences* of hate-motivated incidents (dealt with later in Chapters Five and Seven).

Chapter 2 provides a comprehensive analysis of the harms caused by hate crime/incidents. I argue that hate incidents make up part of a continuum of prejudice which is rooted to socio-structural inequality. The chapter examines how those who display identity difference become subjugated through a process of what Barbara Perry terms “dominance over difference”, resulting in the “othering” of certain minority individuals (Perry 2001). Such individuals experience various forms of structural and institutional discrimination that affects almost all aspects of their life. The targeting of individuals because of their identity characteristics therefore acts to compound pre-existing experiences of structural disadvantage. Moreover, the targeting of victims because of their identity damages individuals’ ontological security within society and thus compounds even further their

feelings of fear, anger and anxiety. This chapter provides theoretical grounding for the findings reported in Chapters Five and Six.

Chapter 3 introduces the reader to the theory and practice of RJ. Drawing on a largely reparative conception of the theory, the chapter explores how this dialogic and participatory response to crime attempts to repair the harms it causes. Both normative assumptions and empirical findings about RJ's repairing benefits are examined, while the limitations of existing research methods are outlined. The chapter concludes by summarising the potential benefits and pitfalls of using RJ for hate crime. In particular, the chapter highlights how the restorative process attempts to reduce levels of fear, anxiety and anger by breaking down identity and cultural differences. The challenges of bringing vulnerable and marginalised victims together with dominant aggressive offenders are also highlighted.

Chapter 4 describes the methods used when carrying out the empirical study for the thesis. The chapter uses a chronology of events that occurred and examines whether the practices researched adhered to the values of RJ as outlined in Chapter Three. The chapter also discusses some of the limitations faced when researching RJ and hate crime, often a result of the ways in which hate crimes have been proscribed under legislation. The chapter then provides a reflexive account of my time in the field, drawing upon the impact that my identity had on the research process.

Chapter 5 presents the findings from the empirical study and provides a detailed analysis of whether the restorative practices researched *helped* to repair the harms of hate crime. Both qualitative themes are drawn from interviews as well as quantitative data on levels of emotional harm that victims experienced directly before and after the restorative process. In particular, the chapter highlights the significance of active participation and the obtaining of assurances of desistance from offenders as aiding the healing process.

Chapter 6 examines the use of multi-agency partnerships within RJ practice – partnerships often ignored by other studies. Using data gained from victim interviews, the chapter first illuminates the secondary harms that were often caused by local state authorities who had initially responded to reports of hate crime. The chapter then provides a detailed analysis of the notion of “community” and conceptualises the role that local agencies – as part of the stakeholders’ “community of care” – can play within the restorative framework. This part of the chapter argues that a more nuanced picture of “community” is required in order for RJ to fully appreciate both the harming and harm repairing qualities of different aspects of “community”. Case studies are used to show how community mediators often incorporated various agencies into the dialogic fold, some providing emotional and social support for victims, while others helped to repair the secondary harms that their organisation had previously caused to the victim. The chapter highlights that certain restorative practices can help to, not only repair the harms of hate victimisation, but the institutional harms caused by state agencies, as examined in Chapter Two.

Chapter 7 finally moves away from harm reparation to an analysis of the impacts that cultural and identity difference had on the restorative process. Using both observational data and qualitative information gained from interviews with both victims and RJ practitioners, the chapter examines: whether cultural and identity differences (including language skills and accents) inhibited the dialogic process; whether facilitators could effectively challenge prejudice (the causal mechanisms of which are detailed in Chapter One) and enhance mutual understanding by encouraging inclusive dialogue; and finally, whether in practice victims experienced domination and/or re-victimisation during meetings.

The conclusion reflects back on the study looking again at why there is a need to use an alternative or additional approach to dealing with hate crime. Here I draw together the themes found from the empirical study, summarising both the benefits and limitations of RJ

for hate crime. This final part of the thesis reflects on what the exploration of RJ told us about the nature of hate crime and what the nature of hate crime told us about the theory and practice of RJ, providing epistemological value to both fields of study.

Chapter One: Conceptualising Hate Crime for Restorative Justice

Introduction

Understanding the term “hate crime” and examining how hate-motivated offences have been defined by legislatures and other state agencies is intrinsic to the exploration of whether RJ can help to heal the harms it causes. The complex nature of “hate” and the difficulties which arise in investigating its causal relationship to crime have been thoroughly examined within legal scholarship (see for example, Jacobs & Potter 1998; Lawrence 1999). For the purpose of this thesis it is important that the complexities faced when conceptualising hate crime are re-examined in order to appreciate the types of cases that will be dealt with restoratively, and which were therefore researched as part of the empirical study. These conceptual complexities, however, mark only the beginning of our consideration of both the risks and opportunities posed for RJ in responding to this type of crime. The exploration of hate crime causation is also central to whether RJ can effectively tackle this invidious type of offending, while later in Chapter Two the examination of how damaging hate incidents are towards victims, minority communities and wider society illustrates how difficult a task reparation will be.

This chapter therefore begins by examining what is meant by the phrase “hate crime”. This entails an analysis of how the term has been conceptualised within the legal framework and more broadly within the field of criminology. The chapter describes how both legal and criminological conceptualisations of hate crime are important to the practical application of RJ processes for this type of crime (examined in Chapter Three). In particular, the chapter explores some of the difficulties found when defining hate, including the problems posed when attaching hate-motivation to the *mens rea* element of criminal law offences. The

potential repercussions that hate crime laws have on offenders, victims and wider communities, including concerns relating to labelling and stigmatisation are also detailed. The analysis presented in this first chapter helps to inform the broader practice of RJ by providing theoretical grounding on the complex nature of hate crime. Subsequent chapters illuminate further some of social factors introduced here that must be addressed if restorative processes are to effectively bring about harm reparation caused by hate victimisation (see more specifically, Chapter Seven).

What is “hate crime”?

Where did the phrase come from?

Academics and government agencies have spent considerable resources conducting crime surveys in general and researching various aspects of victimisation in particular over the past 30-40 years (Hoyle & Zedner 2007). Yet in the United Kingdom (UK) it has only been in the past 20-25 years that victimisation studies have focused on more specific, previously invisible areas, such as “hate crime” offending. British society has a long history of persecuting Others (Witte 1996; Bowling 1998; Hall 2005; Iganski 2008). However, only in recent years have crimes motivated by “hate” or “prejudice” been identified as a serious “social problem” (Bowling 1998; Jenness & Grattet 2001). The desecration of Jewish cemeteries and synagogues (Iganski 1999; 2008), violence against people because of their race or ethnicity (Home Office 1981; Sibbitt 1997; Witte 1996; Bowling 1998) and “gay bashing” (Moran et al 2004b; Dick 2008) are but a few types of hate crime that have caught the attention of governments in the UK and elsewhere across the globe (see Levin & McDevitt 1993; 2002 and Perry 2001 for US context).

The emergence of the term “hate crime” and its proliferation in both public and academic discourse is rooted in the anti-hate crime movements in the United States (US) and the United Kingdom (UK), which promoted domestic awareness of hate-motivated violence in both countries (in the UK context see Witte 1996 and Bowling 1998; in the US context see Jenness & Grattet 2001). In the UK, problems associated with racial violence and race relations during the 1970s and 1980s have become instrumental in promoting a UK anti-hate crime movement (Witte 1996). Throughout the 1970s high profile incidents of racist violence began to penetrate the public consciousness, a result of the prolific actions of the National Front and so called “skin heads” (Witte 1996; Bowling 1998). Benjamin Bowling (1998) points out that it was during this period that a “moral panic” about racist attacks occurred and public opinion slowly began to move in favour of an anti-hate crime policy.⁴ In response, the Government set up the 1981 Joint Committee Against Racism (JCAR) to investigate the problem of racial violence. The committee was made up of representatives from the major political parties as well as members of large ethnic minority pressure groups (Bowling 1993; 1998; Witte 1996). Directly after the 1981 report, the Government commissioned its first study into racial attacks and harassment (Home Office 1981). The report highlighted the widespread problem of racial attacks, focusing in particular on the disproportionate level of violence experienced by Black and minority ethnic (BME) citizens (Home Office 1981). It finally gave validity to the concern, consistently vocalised by lobby groups, that racial violence was a social problem in the UK (Bowling 1993). The Government responded by implementing new policies directly aimed at tackling racist crime and the floodgates were opened for an array of reports into racist violence and later, statutory proscription (see Bowling 1993 footnote 6).

⁴ In 1976 the Government introduced the offence of incitement of racial hatred under the *Race Relations Act* (later transposed into the *Public Order Act 1986*).

Nevertheless, it would be almost two decades later before the UK introduced hate crime laws that specifically proscribed racist violence. The murder of Stephen Lawrence in 1993 proved to be a seminal moment, bringing prolonged national media attention to the problem of racially motivated violence.⁵ The ensuing public inquiry into the police investigation and finally the publication of the Macpherson Report (1999) created the impetus for government and police services to make sweeping changes to their policies and practices on tackling hate-motivated crime (Chakraborti & Garland 2009: Chapter Two).

In 1997 the ‘New’ Labour Government, then led by Tony Blair, responded to the growing social unease about racist violence by legislating to specifically criminalise and enhance the punishment of those who demonstrated racial prejudice during the commission of an offence. During the second reading speech of the Crime and Disorder Bill Lord Williams of Mostyn set out why the UK needed new racially aggravated offences stating, “These [racist] crimes are particularly odious, damaging, as they do, not just the victim but the very fabric of the multi-racial society in which we live” (16.12.97, HL Deb. c. 534).

The act of promoting racial hatred had been on the statute books since 1965 (*Race Relations Act 1965* and 1976, later transposed into *Public Order Act 1986*)⁶, however it was not until the new racially aggravated offences introduced under the *Crime and Disorder Act* that the UK really had any impactful laws that criminalised offenders motivated by “hate”. Moreover, it was these new offences which were to set the scene for what later became a whole raft of hate crime laws in this country.

Following the initial introduction of racially aggravated offences, the Government further established various other forms of hate crime law. In 2001 religiously aggravated

⁵ Similarly, the London nail bomber, David Copeland, who carried out attacks in Brixton, Brick Lane and the Admiral and Duncan gay bar on Old Compton Street Soho, London in 1999 amassed widespread public attention.

⁶ The narrow definition given to the word “hatred” in the offence when first enacted meant that its remit was restricted and rarely used in prosecutions. Similar problems persist in this regard (Chakraborti & Garland 2009: 30-31)

offences were added to the *Crime and Disorder Act 1998* (see ss 28-30). And later, in 2005, the commencement of new sentencing provisions also allowed the courts to enhance the punishment of offenders who have been proved to have demonstrated hostility towards the victim based on the victim's actual or perceived race, religious beliefs, sexual orientation and/or disability (ss 145 & 146 *Criminal Justice Act 2003*).⁷ Most recently, the Government has established new offences of incitement of hatred based on religious beliefs and sexual orientation (s 29B *Public Order Act 1986*).⁸ Disability hate remains absent from incitement laws.⁹

Defining "hate"

The largely legislative response to hate-motivated crimes throughout the Western world has meant that to a great extent it has been defined within a legal framework. For example, Gerstenfeld (2004:9) defines hate crime as "a criminal act which is motivated at least in part by the group affiliation of the victim". While Craig (2002:86) states that hate crime is "an illegal act involving intentional selection of a victim based on a perpetrator's bias or prejudice against the actual or perceived status of the victim."

The new wave of hate crime laws during the 1980s and 1990s in both the US and UK caught the attention of legal scholars who began to critique the legal conceptualisation of the phenomenon (Jacobs & Potter 1998; Lawrence 1999). In particular, the use of the word "hate" provoked considerable academic debate as to how this word could be transposed within the legal lexicon. As is clear from the definitions of hate crime reproduced above, the word "hate" was really a misnomer. An offender need not actually *hate* his victim in order to have committed a hate crime; indeed he may feel no personal animosity towards that

⁷ The Act did not commence until December 2005.

⁸ Amended by the *Racial and Religious Hatred Act 2006*.

⁹ There are no current plans to include transgender hatred under incitement laws either.

particular individual, but rather feel *prejudice* or *bias* against the group that the victim is seen to be part of. Hence, hate was conceptualised by many to mean “prejudice” or “bias” (Jacobs & Potter 1998). This has led some (particularly in the US) to re-term hate crime as “bias crimes” (Lawrence 1999: 9). However, while this phrase gained some currency within the US the term “hate crime” remains dominant in both the US and the UK (Hall 2005; Chakraborti & Garland 2009).

Conceptualising hate to mean prejudice has, however, created further confusion as to how it can be attached to various forms of offending. For Jacobs and Potter (1998), there are two important questions to be asked when defining hate crime. First, how do we define prejudice in the criminal context and second, what prejudices are deserving of criminal attention? Defining prejudice can be extraordinarily difficult. Some prejudices may be viewed as positive, such as anti-fascist or anti-racist. Other prejudices are innocuous such as a dislike of the colour green (Jacobs & Potter 1998). Still, certain prejudices are deemed to be wholly unacceptable and socially damaging to the cohesiveness of society. These may include, amongst various other forms of prejudice, racism, homophobia, and anti-religious views (Jacobs & Potter 1998: 12).

Gordon Allport in his seminal book *The Nature of Prejudice* (1954:10) defines “ethnic prejudice” as, “an antipathy based upon a faulty and inflexible generalisation. It may be felt or expressed. It may be directed towards a group as a whole, or towards an individual because he is a member of that group”. Clearly under this definition of prejudice, a person must feel or express animosity towards a whole group based on generalisations made about that group. Such generalisations are often the result of stereotyping. Negative stereotypes attached to certain identity groups are perpetuated through communication networks, most notably between family and friends (Byers et al 1999), but also via news and television media (see Green et al 2001).

Others have argued that Allport's definition of prejudice may be restrictive if used to define hate crime. Green et al (2001) point out that hate crime can be influenced by economic competition and resentment rather than a faulty generalisation about a group of individuals. However, as this chapter will illustrate, the economic strain and the ensuing resentment felt towards some minority groups may well intertwine with false generalisations about their worthiness as community members as well as their perceived economic prosperity, including the preferential access to state welfare they are *supposed* to receive (see for example, Ray & Smith 2002; Gadd et al 2005).

Notwithstanding the definitional complexities of prejudice, there are also difficulties in linking it to the *mens rea* (i.e. the intention element) of a criminal act (Gadd 2009). Of greatest complexity is that prejudices can vary dramatically in degree. At one end of the spectrum, a prejudice against an identity group may involve a mild dislike or suspicion of members of the group, usually based on ignorance and/or general stereotypes about their worthiness as a people (see further below). People who hold such prejudices may occasionally verbalise their negative feelings to other close friends and family members who by and large unwittingly proliferate negative sentiments about those they know little about (Levin & McDevitt 1993). Such people are likely to deny that they are "racist" or "homophobic" by proclaiming that they "know" someone who is "black" or "gay". We might label such prejudices as "superficial".

At the other end of the spectrum, feelings of prejudice may consume an individual's consciousness so as to produce a deep seated hatred of all people who display certain identity characteristics. Such individuals may make it their "mission" in life to eradicate all individuals who display such an identity (Levin & McDevitt 1993; 2002; see further, "Challenging prejudice", Chapter Seven). Their deep rooted bigotry may arise after years of

learning to hate, having been subjected to macro and micro level messages about the immorality of certain identity groups (Levin & McDevitt 1993).

Once it is determined at what threshold prejudice should be criminalised, the courts will then need to set about proving a “causal relationship” existed between the offender’s bigotry and the commission of the offence (Jacobs & Potter 1998: 23). If the threshold for prejudice is set very low and a relationship between prejudice and conduct can be shown (however slight) a substantial amount of crime will be classified as “hate crime”, leading to what Stanley Cohen terms as “net-widening” (Cohen 1985). Jacob and Potter’s (1998) famous table illustrates the vast differences which arise under this conceptualisation between different levels of prejudice and their connection to an offence (see Table 1.1).

Table 1.1 Labelling Hate Crime: The Prejudice and Causal Components

Strength of causal Relationship		High Prejudice/ High			Low Prejudice/ High		
		Causation			Causation		
	High	I			II		
	Low	III			IV		
		High			Low		
		Degree of offender prejudice					

(Jacobs & Potter 1998: 23)

The table shows how different crimes may be constructed as “hate crimes” depending on how narrowly or broadly the prejudice and causal relationship is defined. Low causation and low

prejudice would cast a “hate crime” net over a wide range of conduct, including incidents where a minor interpersonal dispute, unrelated to the identity of the victim, later culminates in one party sniping a racist or homophobic remark in the heat of the moment (see case examples in Chapter Five & Seven). In such examples, the “crime” is not the *direct* result of prejudice, but rather includes an element of vocalised racism or homophobia that is primarily used as a means of venting frustration at the victim.

At the other end of the prejudice spectrum are crimes where prejudice is the sole or main reason for the commission of the offence (see examples Chapter Five). These types of crime are most commonly recognised as “hate crimes” by the media and often include extremist actions by what Levin and McDevitt (1993) classify as “mission offenders”. Crimes of this nature would include, for example, the actions of David Copeland who unleashed a tirade of nail bomb attacks against various minority groups in London during 1999.

The proscription of prejudice-motivated crimes is further complicated by the fact that many offenders will have mixed motivations (Lawrence 1999). Their reasons for committing an offence may include elements of prejudice as well as other motivating factors such as provocation or the acquisition of material goods. In such circumstances how does one determine whether the crime is a “hate crime” or otherwise motivated? Lawrence (1999:10) argues that we should ask whether the offence is a *sine qua non* of the offender’s prejudice. In other words, *but for* the victim’s (perceived) identity would the offence have been committed? Where it can be determined that the offence would not have occurred but for the victim’s (perceived) identity (regardless of other motivating factors) the crime can truly be conceived as one of hate.

However this may still leave confusion over whether to prosecute a crime as a “hate crime”. Take, for example, an ongoing conflict between two neighbours which is initially triggered after Neighbour A plays his music too loudly late at night. The constant noise

frustrates Neighbour B until she has had enough and bangs on her neighbour's front door. This confrontation leads to an abusive altercation between the neighbours who are both left feeling aggrieved. Over the following weeks the relationship between the neighbours deteriorates and frustration and anger starts to grow between the parties. Further noise pollution by Neighbour A leaves Neighbour B so upset that she rushes next door and again bashes on his front door. Knowing that Neighbour A is gay, she begins to make homophobic remarks while threatening him with physical violence if he does not turn the music off.

The conflict has morphed from one of interpersonal conflict about noise to that of a public order offence where the "offender" has demonstrated hostility based on the "victim's" sexual orientation (see legal definitions below). The hate incident arises primarily as a result of noise pollution. Yet, both parties are likely to be culpable for the ensuing acrimony which followed the first altercation. The homophobic abuse and threat of violence is the culmination of an ongoing conflict between neighbours who will need to live side by side for the foreseeable future. However, to some extent we are left unsure as to what role the victim's sexual orientation played in the overall conflict. For example, would Neighbour B have approached the victim differently had he not been gay? Was her homophobia to blame for threatening him with violence or would she have done the same regardless of his sexual orientation? Moreover, what role did Neighbour A's noise pollution and his responses to his neighbour's complaints play in his own victimisation? These questions can become far too complex for an adversarial system that seeks to determine guilt of one party beyond reasonable doubt (Gadd 2009). As we will see in Chapters Four, Five and Six, the commonality of conflicts that involve hate incidents such as these cannot always be effectively dealt with by conventional justice practices. In the vast majority of these cases the police will be unable to pursue the case beyond an initial warning to both of the parties (or recording it as a hate incident) let alone lay charges or refer the case to the Crown

Prosecution Service (CPS) for prosecution (Burney & Rose 2002; Gadd 2009). It is these most complex of hate crime cases that alternative interventions, such as community mediation, are required in order to resolve the conflict and prevent future hate incidents from recurring (see Chapter Four, Five, Six and thesis Conclusion).

Clearly, determining how much hate crime there is and how we respond to it depends on how hate crime is conceptualised and defined. In constructing a definition of hate crime, Jacobs and Potter (1998) state that choices must be made regarding what prejudice means and how it is linked to the offender's motivation to commit the crime (Jacobs & Potter 1998: 27). The courts have struggled with this linkage. Burney and Rose (2002) have noted that many sentencers feel that:

...the law came down rather hard on people who, in the course of "normal working class mayhem" as one person put it, uttered words which were part of their natural vocabulary (Burney and Rose 2002: 20; see for example, *DPP v Woods* [2002] EWHC Admin 85).

Other legal practitioners, however, have taken a more liberal approach to finding the racial element proved, where for example any mention of the victims' racial or religious identity has been made (Burney & Rose 2002; see *Rogers* [2007] UKHL 8, where the House of Lords confirmed that the phrase "bloody foreigners" amounted to a racial group and therefore if used towards the victim could amount to racially aggravated hostility).

Such a broad construction of "hate" has led Jacobs and Potter to argue that hate crimes are no more morally reprehensible than other crimes motivated by "greed, power, lust, spite, desire to dominate, and pure sadism" (Jacobs & Potter 1998: 80). As such, "hate" should be treated no differently to any other motivation under the criminal law, i.e. as irrelevant to intention. However, this is perhaps where Jacobs and Potter's conceptualisation begins to falter. The authors pay little regard to the harm element of hate crime, instead

arguing that suggestions that hate crime cause heightened levels of harm (Iganski 1999; Levin 1999) are yet to be substantiated. It is worth remembering that Jacobs and Potter's assertions about harm were made over ten years ago. Since then a growing body of research has shown the damaging consequences that hate crime has on both individual victims and minority communities. Various studies have suggested that for a high percentage of victims, expressions of hate by offenders (regardless of how deeply held the prejudice actually is) causes greater levels of emotional and physical trauma when compared to similar crimes that are not motivated by hate (Herek et al 1999; McDevitt et al 2001; see further, Chapter Two).

The emphasis placed on harm in the conceptualisation of hate crime is therefore of particular significance to our appreciation of its deleterious effects. It is here that we can really distinguish why treating hate crime differently to other crimes is fundamental. For instance, in our case example above involving Neighbour A and B, despite the difficulties posed in determining the causal link between B's prejudice and her actions, we can still show that her homophobic comments and threat of violence may have caused A, and other local gay community members, heightened levels of emotional trauma when compared to threats that are not directed towards a victim's identity (Herek et al 1997; 1999; 2002; Ahn Lim 2009). This is primarily because her vociferous attack contains a symbolic message to the victim, and others who share similar identity traits, that they are unwelcome and undeserving of social respect. Such a message creates immense fear and anxiety amongst gay people who become concerned about their individual safety within the local community (see further, Chapter Two).

Determining the seriousness of any criminal offence involves an examination of the offender's culpability for the act as well as the amount of harm the offence causes. Thus an offender who attacks his victim while demonstrating some form of racism or homophobia is not only culpable for the wrongful act of assault, but he is also responsible for the harm that

his demonstration of prejudice causes to the victim and minority communities (Walters 2005). Ultimately, the various forms of hate-motivated offences that pervade communities tear at the cohesiveness of the multicultural society that we live in (Lawrence 1999).

Baroness Hale delivering a unanimous decision in the House of Lords sums up this rationale in the case of *R v Rogers* (2007)¹⁰:

The mischiefs attacked by the aggravated versions of these offences are racism and xenophobia. Their essence is the denial of equal respect and dignity to people who are seen as somehow other. This is more deeply hurtful, damaging and disrespectful to the victims than the simple version of these offences. It is also more damaging to the community as a whole, by denying acceptance to members of certain groups not for their own sake but for the sake of something they can do nothing about.

The justification behind hate crime legislation is convincing, it seems fair that enhanced punishments fit the enhanced seriousness of hate crime. However, disagreement amongst governments and academics is not only caused by the difficulties of attaching hate-motivation to offences or the rationale for establishing such crimes. Further complications arise when deciding which types of victims should be covered by hate crime legislation. Unlike Jacobs and Potter 1998, Lawrence (1999) examines the normative question as to which victims ought to be protected by hate crime laws. He argues that victim status should only be based on group antipathy which has a social context. Legislatures must ask the following questions: is there a history of discrimination against people from this identity group? Or is there any ideology or “world view” as a result of which the identity group is mistrusted (Lawrence 1999: 12)? And importantly, is there a group with whom individuals identify? If the answer to these questions is yes the legislature should then determine whether the group

¹⁰ UKHL 8, paras 12-13.

is implicated in what Lawrence states as “social fissure lines”, i.e. “divisions that run deep in the social history of culture” (Lawrence 1999: 12). Race is a prime example of this given the long history of racial division and segregation extending back to slavery and beyond (see Bowling 1998; Lawrence 1999: 13). Other groups, including those defined by sexual orientation and religious belief, have similarly experienced a history of prejudice and discrimination which runs deep through the social structures of society (see further below “Criminological definitions of ‘hate crime’” and Chapter Two).

Hate crime as defined in legislation

In general, governments in the US and UK have implemented two models of hate crime legislation when proscribing prejudice-motivated offences (Lawrence 1999). The first type uses a “hatred motivation” model to produce offences where the offender acts out of hatred or prejudice for his/her victim’s group identity (Walters 2005). The second type of offence is based on a “group selection” model. Under these offences the offender need only “select” his/her victim from a particular protected group. Proof of prejudice, bias, hostility or hatred is not necessary. Under this interpretation of hate crime, definitions of prejudice such as those put forward by Allport (1954) become irrelevant. Instead, the offender’s intention to choose a victim *because of* their perceived association with a particular group is all that is required.

Legislatures have been far from consistent in their implementation of hate crime laws. It is therefore difficult to place jurisdictions into either the “hatred motivation” or “group selection” model without some ambiguity. In some US states the words “intentionally selects” have been used (for example, Virginia). More commonly used phrases are, “because of” or “by reason of”. Under these phrases, a penalty enhancement will be enforced where the

offender has committed a parallel offence because of, or by reason of, the victim's group identity. For example, the legislation in Maine reads as follows:

17-A MRSA §1151. The selection by the defendant of the person against whom the crime was committed or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or homelessness of that person or of the owner or occupant of that property.

Under this Act, the offender's sentence will be increased when he or she is convicted of an offence that has been committed "because of" one of the specified characteristics of the victim. It is evident from the wording of this Act that "hatred" (or prejudice or bias) for the victim is not a prerequisite of the offence. Other "because of" legislation in the US works similarly to this, but may include an intent element such as "malice" or "ill will" (see Lawrence 1999). This model of legislation makes the burden of proof more onerous as prosecutors must prove beyond reasonable doubt that the defendant demonstrated "ill will" towards the victim based on the victim's identity. Finally, other legislatures have created new substantive laws which are not tied to existing criminal offences. These laws are less popular, not least because they involve the reformulating of entirely new offences (see for example California Cal. Penal Code s 422.6(a) & (b)).

The UK was relatively late to legislate against hate crimes as compared to the US. As mentioned above, in 1998 new offences covering hate crimes were introduced under the *Crime and Disorder Act 1998* (UK). The Act does not use the words "hate crime", relying instead on more traditional criminal law language to create the specific offences of "racially or religiously aggravated assault". When enacted, sections 28-32 and 96 of the Act included

racially aggravated offences only. Three years later this was amended by section 39 of the *Anti-terrorism, Crime and Security Act 2001* (UK) to include religiously aggravated offences. Section 40 also amended section 27(3) of the *Public Order Act 1986* (UK) to increase the penalty for racial hatred offences from two years to seven. Section 28 of the *Crime and Disorder Act* now states that:

(1) An offence is racially or religiously aggravated for the purposes of sections 29 to 32 below

if –

- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group; or
- (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

The legislation is similar to many US statutes that include sentence enhancers. As a hatred model statute, the *Crime and Disorder Act* incorporates “hostility” as part of the necessary *mens rea* of the offence. There are two parts to the section which work to cover different levels of prejudice and their causal relationship to the crime. Subsection (b) uses the terms “motivated” or “partly motivated” and covers situations where there is evidence that the offender committed an offence because of (or partly because of) a hostility for the victim's identity. The evidentiary threshold for this subsection will be relatively high as the prosecution will have to prove beyond reasonable doubt that the offender feels a genuine hostility towards the victim's group identity.

Subsection (a) incorporates a lower burden of proof. It states that the offender must have “demonstrated hostility” during, before or directly after the commission of an offence. This means that prosecutors do not need to prove that the offender was motivated by a prejudice against the victim’s identity, but rather that he or she simply demonstrated hostility based on the victim’s identity at the time of the offence. This will typically translate in court as simply proving that the offender used prejudiced language during the commission of the offence.

The inclusion of this subsection is perhaps recognition of the complexities, explored above, involved when deciphering how the law should define prejudice and how it should be attached to the *mens rea* element of an offence (Jacobs & Potter 1998). The word “hostility” is a more neutral term, one which is not directly rooted to the concepts of bigotry and/or hatred. The application of the phrase within the hate crime context therefore provides for the prosecution of offenders who demonstrate hostility based on the victim’s identity regardless of whether they genuinely feel ill will towards an entire identity group. This ensures that those offenders who argue that they are not prejudiced, or that they honestly did not aim to convey hatred towards an entire group, remain culpable for the additional harms that are caused when prejudiced remarks are conveyed during the commission of an offence. In other words, the legislation recognises the harmful effects of demonstrating bigotry over and above proving that the offender is *truly* prejudiced (see *R v Woods* [2002] EWHC Admin 85).

It should also be noted at this point that UK legislation does not provide for specific offences where hostility is demonstrated towards a victim’s sexual orientation or disability. Instead, the *Criminal Justice Act 2003* (UK) provides for sentencing provisions allowing judges to increase an offender’s penalty where there is evidence that proves he or she demonstrated hostility towards the victim based on the victim’s disability and/or sexual

orientation (ss 145 and 146).¹¹ It is unclear why there remains a juxtaposition between different types of hate crime; leading one to question why racially and religiously aggravated offences are deserving of protection under the criminal law while disability and homophobic hatred falls only under sentencing provisions.¹²

Prior to the 1998 and 2003 statutes, the promotion of racial hatred was proscribed under the *Race Relations Act* of 1965 and 1976 (often referred to as anti-vilification laws). This was later amended by the *Public Order Act 1986*, section 17 of which prohibits the use of words or behaviours that are “threatening, abusive and insulting” and that are intended “to stir up racial hatred” or where “having regard to all the circumstances racial hatred is likely to be stirred up thereby”.

In more recent years other hate crime laws have been introduced which criminalise various forms of incitement to hatred. After a prolonged period of lobbying by religious groups, the *Racial and Religious Hatred Act 2006* was enacted implementing incitement to religious hatred provisions into the *Public Order Act 1986* (Idriss 2002; Hall 2005: 124). Following this, the *Criminal Justice and Immigration Act 2008* amended the *Public Order Act 1986* to include sexual orientation as a basis for the incitement of hatred; again after Stonewall (the UK’s leading LGBT lobby group) argued for the implementation of incitement laws to protect gay, lesbian and bisexual people from public vilification. These newer laws create an offence of deliberately provoking racial hatred or hatred based on someone’s sexual orientation within the public domain. Disappointingly, disability motivated crimes remain absent from both the *Public Order Act* and the *Crime and Disorder Act*; perhaps due to the absence of unified lobbying from disability interest groups (Mason-Bish 2010).

¹¹ These sections also provide for racial and religious aggravation.

¹² Including transphobic incidents which the Government had pledged to include under section 146 of the *Criminal Justice Act 2003* (see Home Office 2011).

Demarcating the various hate crime laws that now exist in England and Wales is important to the endeavours of this thesis. In particular, it will be these types of hate offences, as defined by hate crime laws, which will ultimately come to be dealt with by RJ practitioners working within and outside the criminal justice system.¹³ It remains unclear whether RJ practitioners will be aware of hate-motivations in cases where homophobia and/or disability are highlighted only at sentencing.¹⁴ This may also be especially the case where criminal justice measures have failed to uncover offenders' prejudices, even though their animosities may have been intrinsic to the causation of the offence. In other cases there may be a lack of evidence to prove beyond reasonable doubt that a hate-motivation existed and evidence of such may be lost by the time that the offender reaches any form of restorative process. While in some cases, RJ will be used as an alternative to prosecution and therefore the identification of a hate-motivation may depend on communication between restorative practitioners and police officers, or more directly with the participants of the process themselves during indirect restorative meetings. Whether issues of prejudice and individual identity are raised and discussed during restorative justice processes is central to the analysis of this thesis. Data collated from interviews and observations, carried out for the empirical study, will therefore be used to explore how issues relating to prejudice and identity are dealt with in restorative meetings (see Chapters Four, Five, Six & Seven).

Criminological conceptions of hate crime

Unlike legal scholarship, the emergence of criminological discourse on the causes of hate crimes has led to the development of a conceptualisation of hate crime which takes into consideration both the sociological and cultural nature of prejudice-motivated offending.

¹³ In particular, those who work within the youth justice system see Chapter Three.

¹⁴ Explored further in Chapter Four.

These explorations are more helpful to our understanding of both hate crime's aetiological determinants and the harms it causes to victims and minority communities (see Chapter Two). Important to this thesis is that criminological analyses have begun to illuminate the socio-cultural underpinnings of hate crime, thus providing important background information as to how restorative practices might impact upon those involved in hate crime cases.

In 1994 Wolfe and Copeland (1994: 201) defined hate crime as, “violence directed towards groups of people who generally are not valued by the majority of society, who suffer discrimination in other arenas, and who do not have full access to remedy social political and economic justice”. This definition begins to include the social harms already experienced by certain members of the community who are vulnerable to prejudice based violence and who, as a result, will be impacted more severely by it (see further, Chapter Two). Sheffield (1995: 438) shares a similar view of hate crime stating that:

Hate violence is motivated by social and political factors and is bolstered by belief systems which (attempt to) legitimate such violence.... It reveals that the personal is political; that such violence is not a series of isolated incidents but rather the consequences of political culture which allocates rights, privileges and prestige according to biological and social factors.

Hall (2005) argues that such a definition provides context and understanding about cause and effect which other legalistic definitions fail to provide. Barbara Perry (2001) in her influential book, *In the Name of Hate: Understanding Hate Crime* also argues that these broader definitions are more meaningful because they not only highlight the political and social context in which hate violence is incubated, but also refer us to the hierarchical nature of collective identity which underpins hate violence (see further below). However, Perry (2001) also states that while helpful, Sheffield's definition is also incomplete as it does not take into

account the effects that hate crime has. Instead, Perry (2001) argues that hate crime should be defined by taking elements of Wolfe and Copeland's (1994) definition together with that of Sheffield's (1995). Perry (2001: 10) accordingly defines hate crime as:

...acts of violence and intimidation, usually directed towards already stigmatised and marginalised groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrators group and the "appropriate" subordinate identity of the victims group.

This definition includes both the social position of the victim and the oppressive power dynamics of society as expressed through violence.

Perry (2001) goes on to argue that hate crime is better understood as the extreme form of discrimination which emanates from a culture of segregation, discrimination and marginalisation of individuals who are somehow "different". As such it is important to consider the power dynamics that demarcate modern society when explaining hate crime (Perry 2001). Perry (2001) states that within modern society, power hierarchies are now constituted by dominance over "difference". Difference has been used to construct intersecting social hierarchies pertaining to gender, race, sexuality and class, amongst others (Perry 2001: 46; see also, Spalek 2008). Paradoxically, the notion of "difference" results from people "belonging" to groups whose members they see as having the same or similar identity characteristics as them. People become bound to their cultural and ethnic identity through common interest or, as Green and Seher (2003: 520) state, through a "natural – some might say spiritual – affinity". Identity groups may coalesce around ethnicity, religion, sexual orientation, or other such characteristics (forming "in-groups"). Categories of identity often assume binary classifications. One is either white or black, white or Asian, gay or straight,

Christian or Muslim (Perry 2001: 47). In creating an “in-group” we seek out the Other; the person who is most definitely not like “us”.

Positioning our own identity entails the creation of a hegemonic form, “what Audre Lorde refers to as a ‘mythical norm’” (Perry 2001: 47). Inevitably those who fall outside society’s construction of identity are seen as “different” (Perry 2001). Individuals fear that which they do not understand and that which threatens their own individual security. They become fearful that Others will encroach upon the “in-group’s” identity and cultural norms, potentially changing the quality of their lives. For some individuals, this creates a feeling of helplessness and insecurity about their place in society. In response to these negative emotions, people frequently transpose their feelings of helplessness into those of animosity. This is little more than the projection of angst which is used to gain a sense of control over those who they see as causing their insecurity (Gadd 2009). This emotive reaction temporarily relinquishes their original negative feeling of fear and instead fills them with a determination to suppress the threat (Ray & Smith 2002; Ray et al 2004).

Ultimately, Others who continue to transcend the identity ideal threaten dominant normality and are forced to take a subordinate position within society whereby individual members receive unequal distributions of wealth and access to housing and education (Perry 2001; see also, Home Office 2005a; 2005b). Subordination is also played out through private and state agencies (including the criminal justice system) that systematically discriminate against Others via the practices and policies that they implement (Macpherson 1999; Phillips & Bowling 2007; explored further in Chapter Two).

The various forms of discrimination endured by marginalised identity groups – a product of what Perry terms “doing difference” – can be taken a step further to include more severe acts of prejudice, such as hate violence (Perry 2001). For example, gay people who make public their sexual orientation through visible displays of affection or by opening

establishments patronised predominantly by gay people, threaten the heteronormativity of civilised society (Bibbings 2004). In response to this blatant deviation from society's sexual norms, many people will act to suppress gay people for fear that they will increasingly encroach upon society's sexual identity. In some cases people will believe that "gayness" will pervert their children and lead to the degradation of society. Violence and other forms of intimidation are therefore used to vanquish gay people and various Others for having overstepped social and cultural boundaries (Perry 2001: 59).

Socio-cultural structures and the social hierarchies that they give rise to become important to understanding why certain individuals become victimised simply for displaying certain identity traits. However, this does not necessarily provide a holistic criminological picture of why hate crime occurs. Other criminologists have concentrated their analyses within the context of socio-economic strain. For example, from a Mertonian conception of strain (Merton 1968), we might also view violence committed against BME groups, or other identity groups, as possibly rooted to the perceived socio-economic instability in a perpetrator's own life, which he or she believes is the fault of the Other. As minority identity groups move into new locales they will often be seen as invaders of indigenous (or dominant) group territory (Green et al 1998; Perry 2009: 67). Those already residing in the community can become fearful that incoming groups will impose upon their already unstable social and economic security and encroach on the positively valued goals that they hold (Green et al 1998; Levin & McDevitt 2002: 57; Ray & Smith 2002). Some individuals become resentful towards "foreigners" for obtaining what are primarily *perceived* as "British" homes and social benefits (Ray & Smith 2002; Bowling & Phillips 2003; Gadd et al 2005). Rumours that certain minority groups receive extra benefits from the government fuel the disgruntled sentiments towards their perceived economic advantage (see Sibbitt 1997; Ray & Smith 2002; Gadd et al 2005). Levin and McDevitt (2002: 33) state that in some cases certain

groups are perceived to be “the undeserving recipients of extraordinary treatment”, to such an extent that people begin to believe that the good old days of yesteryear have been destroyed by foreign invaders (Levin & McDevitt 2002: 52; Gadd et al 2005).

As a result of peoples’ own fears relating to socio-economic security, various minority identity groups become the scapegoats for the woes felt by society (Young 1999; Ray & Smith 2002). Blaming Others for frustrations relating to unemployment, housing and jobs is amplified as certain media outlets portray immigrants (and other identity groups) as the root cause of society’s ills (Gordon 1994; Sibbitt 1997: 13-14). At the heart of these feelings of animosity towards immigrants and other “foreigners” is a sense of unfairness, frustration, anger and even a sense of victimisation against white British folk (Ray & Smith 2002).¹⁵

It is by considering the socio-cultural and socio-economic contexts in which hate crime occurs that criminological definitions allow us to conceive it as a social rather than just a criminal phenomenon. Such an analysis is important to the application of RJ processes which aim to explore the causes and consequences of any given crime. Thus, within the context of hate crime, RJ practitioners must appreciate the complex social structures that underpin hate offending and the socio-economic backgrounds of the stakeholders which shape their experience of it (see further, Chapters Five, Six & Seven).

¹⁵ For more detailed analysis of how Perry’s “doing difference” and conceptions of strain theory intersect see Walters (2011).

Defining hate crime for restorative justice

The legal and criminological definitions of prejudice-motivated offences, as articulated throughout the extant literature, help us to conceptualise the types of incidents which we might fairly describe as “hate crimes”. This thesis attempts to develop further the idea that hate crime is a socio-cultural phenomenon by encompassing not just those conducts that have been criminalised under hate crime laws but also incidents that are often labelled (perhaps unfairly) as “low-level” acts of prejudice and hatred. These latter incidents are often the most pervasive forms of hate that pervade almost all sections of society (Iganski 2008).

Some criminologists have begun to uncover how these frequent but discernibly minor acts of prejudice produce far-reaching social harms for victims (Sibbitt 1997; Bowling 1998; Iganski 2008). Such acts may include verbal abuse, spitting, physical gestures of intimidation such as menacing looks, and the throwing of stones and eggs at property (Garland & Chakraborti 2006). Garland and Chakraborti (2006) found in their study of rural racism that “low-level” forms of racist harassment, such as verbal abuse and throwing stones or eggs, were commonplace to many of the minority ethnic populations they researched in Suffolk, Northamptonshire and Warwickshire. Some of these conducts will fall fail of criminal laws (most commonly as public order offences, *Public Order Act 1986*), however, viewed in isolation they are often deemed simply as acts of anti-social behaviour that need not be reported to the police, or if they are reported, the police will do little more than warn the accused party about their behaviour.

Of greatest concern is that far from isolated incidents of intimidation, such forms of abuse frequently form part of a continuum of victimisation that accumulates over prolonged periods of time (Bowling 1998; Garland & Chakraborti 2006). The protracted experience of hate victimisation can cause immense damage to victims’ emotional wellbeing. In many cases hate incidents escalate over time ultimately reaching apoplectic levels whereby anti-

social behaviour turns into serious encounters of violence. As we will see in Chapter Two, these not so uncommon hate-motivated conflicts can have disastrous outcomes (see also, Bowling 1998: 189).

Legislators' and governments' focus on "hate crimes" – as differentiated from the more common "hate incidents" – means that the ongoing forms of "low-level" hate-motivated abuse and the devastating harms that these cause to communities remain largely ignored by the state and, to some extent, criminology (Bowling 1998; see for example the "Pilkington case" explored briefly in Chapter Two). Broadening out the scope of hate crime discourse and scholarly debate to include "low-level" hate incidents therefore creates much needed space within criminology to investigate the impacts that a wider variety of prejudiced-motivated incidents has on individuals and society. With regards to this thesis the expansion of hate crime scholarship to include "hate incidents" has enabled me to explore in greater detail the restorative approaches that have been used to repair the harms caused by a broad array of prejudice-motivated conducts that occur throughout different communities in England.

In particular, the empirical endeavours undertaken for the thesis have relied heavily on the definitions of both "hate crime" and "hate incidents" provided by the Association of Chief Police Officers (ACPO). In their 2005 good practice and guidance report they define "hate crimes" and "hate incidents":

A hate incident is defined as:

Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.

A hate crime is defined as:

Any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate.¹⁶

These definitions provide a liberal and victim centred definition of hate crime/incidents. While they do not in themselves provide any further information as to the socio-cultural nature of hate crime or what is meant by the term “prejudice”, the definitions do allow for a broad array of prejudice-motivated incidents to be included within their scope. ACPO includes five separate victim groups within its definition of hate crime/incidents including prejudice based on the victim’s race (including ethnicity and/or nationality), religious beliefs, sexual orientation, disability, and transgender.¹⁷

While ACPO’s liberal definition of hate crime/incidents may have several detrimental consequences if applied within a retributive framework (see discussion directly below), its broadness ensures that a vast array of prejudiced-motivated action is captured by state agencies who must then respond to reported incidents. For instance, ACPO’s (2005) guidelines note that, “making inappropriate reference to the colour of someone’s skin, in a non-confrontational social setting, may well be perceived as a racist incident. However there may be insufficient evidence that it would constitute a racist crime” (ACPO 2005). Still, in such cases the police should contact the complainant and record the incident as “hate incident”.

¹⁶ ACPO is yet to release an updated version of these guidelines. At the time of submission of this thesis the guidelines have been removed from ACPO’s website with no new guidelines in its place.

¹⁷ Though this thesis includes only four victim groups including, race, religious beliefs, sexual orientation and disability due to limited accessibility of other types of cases. Please see further explanation of why transgender hate crimes are not included in the Introduction, p 16.

It is worth my noting here that the two main sources of data used in the empirical study came from institutions that employed ACPOs definitions. It is for these reasons that the definitions provided by ACPO are used in this thesis as a working definition of hate crime/incidents. However, I wish to note that the definitions are used for the purposes of exploring the hate crimes/incidents that were referred to the restorative practices that were observed for this thesis. Other criminological and legal definitions remain of immense importance to our understanding and appreciation of the nature of hate-motivated behaviours and ultimately to the way that restorative justice practitioners might facilitate the resolution of such cases.

It is only by appreciating that hate crime can occur in a variety of ways, motivated (or partly motivated) by intersecting prejudices, that we can investigate further the nuances between different *types* of prejudice (Garland et al 2006). As we will see from the empirical research carried out for this thesis, not only will hate crimes be marked by different *levels* of prejudice but the prejudices which are demonstrated towards victims may be interconnected with various identity traits pertaining to such characteristics as race, ethnicity, nationality, sexual orientation, disability, as well as age and social class (see Chapter Five).

The problems with retributive approaches to hate crime

Although a broad definition of hate crime, which includes “hate incidents”, widens the scope of criminological investigation (including the use of restorative justice) and hate crime discourse more generally, it also means that considerable social activity is open to being labelled and/or recorded as motivated by “hate” (i.e. “net-widening”, Cohen 1985; Jacobs & Potter 1998). ACPO’s wide interpretation of hate crime, for example, has meant that England and Wales records vastly higher amounts of racially and religiously aggravated

offences/incidents when compared to other European countries (see ODIHR 2009) and the United States where more restrictive approaches to defining “hate crime” have been implemented (Hall 2005: 10-14).

Jacobs and Potter (1998) have argued that labelling an offence as a “hate crime”, where any type or level of prejudice is demonstrated by an offender, potentially leads to a vast amount of criminals being unfairly classified and ultimately disproportionately punished – when compared to other equally morally blameworthy non-hate offenders. The potential for over criminalisation means that we must remain alive to the risks of automatically conflating victim perceptions of motivation with the “actual” intention of the offender.¹⁸ There will inevitably be cases where an incident is perceived to be motivated by prejudice but is in fact motivated by something else. It seems unfair that the police label offenders as “racist” or “homophobic”, for example, when in fact in some of these cases this may have been the result of a mistaken belief. If we pay regard to the stigma that labelling someone as racist or homophobic entails (see Burney & Rose 2002) such an approach to recording hate crimes/incidents may appear somewhat unjust.

If hate crimes carry enhanced penalties it becomes essential that evidence of the offender’s prejudice, or the demonstration of hostility towards the victim’s identity, be proved beyond reasonable doubt before he or she is labelled and additionally punished as a “hate offender” by the courts. In fact, bearing in mind that labelling vast amounts of offenders as “hate offenders” may have a negative effect on their (and others’) future behaviour (Becker 1963), it may be prudent of the courts to ensure that offenders are only labelled as such where there is unequivocal proof of racial, religious, homophobic and/or disablist hostility.

¹⁸ A concern that the victim-centric definition of hate crime provided by ACPO may give rise to.

Several academics have highlighted the potentially antagonistic effects that hate laws may have on offenders (and would-be offenders). They argue that hate crime legislation may be perceived by some as simply amounting to another form of “state protection” that provides minority groups with further preferential treatment over dominant members of society (Jacobs & Potter 1998; Whitlock 2001). The use of enhanced penalties for hate offenders acts only to reaffirm their sense of being victimised by a society that is increasingly pandering to the needs of the Other (Hudson 1998; Whitlock 2001: 8). In turn, this gives rise to an even greater sense of grievance; one which emphasises the ever expanding threat that minority groups pose to the social normativity of British society.

In stark contrast to the concerns detailed above is the fact that very few offenders *accused* of racial hostility are ever *convicted* of a racially aggravated offence (Burney & Rose 2002; Gadd 2009). For example, Gadd (2009) notes that the British Crime Survey (BCS) 2006/2007 reported 184,000 racially motivated incidents as having been experienced by the populations researched.¹⁹ However, this translated into just 42,600 racially and religiously aggravated offences being recorded by the police during 2006. Out of this total, just 5,166 offenders were convicted of a racially aggravated offence (Gadd 2009: 757). Gadd calculates that “The net effect of this steady attrition makes for a ratio of racially aggravated offenders convicted to racist incidents lower than 1 in 35” (2009: 757). Other studies have provided similar evidence of the low attrition rates for hate crime. For example, Sam Dick’s study into homophobic hate crimes reported that only one per cent of victims stated that a hate crime/incident resulted in conviction (2008: 25).

The failure to prosecute and convict hate offenders is likely to be partially the result of, what in reality, is a highly complex task of proving prejudice-motivation beyond reasonable doubt, especially in cases where the offender has a multitude of motivations

¹⁹ He notes that this number is a “gross underestimate, given the survey’s continued use of a five-fold ethnic typology into which it is almost impossible to fit the sizeable asylum-seeking and refugee populations living in Britain” (Gadd 2009: 757).

(Burney & Rose 2002). However, low conviction rates are also a product of the social contexts in which hate crimes frequently occur. As we will see in the next chapter, the occurrence of “low-level” incidents between individuals known to each other are often viewed as lacking in a level of seriousness that is required before the police will take any direct action against accused perpetrators.

The example provided in the section above “Defining hate” involving Neighbour A and B illustrates the complex nature of many interpersonal conflicts which result in accusations of hate crime/incidents. Such disputes are rarely resolved by the police charging one of the parties with a racially/religiously aggravated offence. This means that the majority of incidents involving racial/religious hostility, whether involving a high or low causal relationship to the offender’s prejudice, fall outside the ambit of criminal punishment. This means that despite the police’s liberal definition of “hate crime/incidents”, which has resulted in high levels of *recorded* incidents, prosecution/conviction rates remain comparatively low (Burney & Rose 2002; Gadd 2009). The concern that hate crime legislation will result in unfairly labelling and punishing swathes of offenders therefore remains to an extent unfounded.

Conversely, such a revelation gives rise to the much greater concern that the vast majority of hate offenders are not being challenged, punished or rehabilitated by the criminal justice system at all. As a direct consequence most victims of hate crime are left without any form of justice. The failure to offer victims justice or even emotional support in the aftermath of victimisation can be seen as a form of secondary victimisation in itself (see Chapter Six).

In the minority of cases where an offender is convicted of a hate crime he or she is unlikely to participate in an intervention, either in prison or via the probation service, that directly tackles the hate element of his or her offending behaviour (Gadd 2009). This means that the overwhelming majority of hate offenders are never challenged, in any way, about

their prejudiced-motivated actions. Without alternative or additional measures to tackle hate crime, hate offenders and their victims will continue to remain neglected by the state.

The conceptual complexities outlined in this chapter clearly give rise to a variety of issues that potentially impede the utility of the criminal law and more broadly the criminal justice system in tackling prejudiced-motivated offending. Accordingly, we must pay regard to these concerns when considering the potential use of RJ for hate crime. It is not within the scope of this chapter to explore the aims and objectives of restorative theory or practice – these will be introduced in Chapter Three. It is, however, perhaps helpful at this point to summarise the conceptual and practical difficulties that RJ *may* face, but also potentially be better equipped to overcome when responding to hate crime/incidents:

- 1) How will legislative definitions of “hate crime” impact upon the types of cases disposed of via restorative practice? Will restorative measures only ever deal with cases where an offender has been convicted of a hate offence or can restorative practices be used as an alternative to prosecution in “low-level” cases?
- 2) Will a broad definition of “hate crime”, one which includes “hate incidents”, pose a similar threat of “net-widening” and additional labelling within the restorative framework? Or can restorative practices provide for an effective alternative to tackling incidents in cases where the police have failed to?
- 3) Are the concerns relating to unfairly enhancing the punishments of offenders, whose prejudice is only marginally causal to their offending behaviour, also relevant to reparation agreements signed during the restorative process?
- 4) Are restorative practices more amenable to responding to the different levels of prejudice and the varying causal relationships that these prejudices have with the offending behaviour, compared with policing and criminal prosecution?

The answers to these questions begin to become clearer in Chapter Three where I examine in detail the theoretical aims of RJ and the empirical research that has evidenced its effects on victims' recovery from crime. The chapters that follow provide detailed analysis of: the types of hate crime/incidents that restorative practices currently deal with (Chapter Four); the role that victims and offenders play during restorative processes (Chapter Five); the undertakings that offenders agree to during restorative meetings (Chapter Five); the healing qualities of RJ (Chapters Five & Six); and finally whether RJ can effectively challenge the varying degrees of prejudice which give rise to hate incidents (Chapter Seven).

Conclusion

The conceptualisation of hate crime is a perplexing task. The juxtaposition between legal and criminological definitions can at times muddy the waters of what, at first, appears to be a phenomenon that is easy to understand. The various types of prejudice that exist, combined with the levels of prejudice which can be demonstrated by perpetrators, means that finding a single definition that fits all is fraught with ambiguities. Proscribing offences as racially, homophobically, or religiously aggravated, for example, means that motivation must be attached to the *mens rea* element of a criminal offence, something that the criminal law has previously resisted (Morsch 1991). Proving intention as well as hate-motivation is an intricate task and prosecutors will find it difficult to prove beyond reasonable doubt that the defendant demonstrated hostility based on the victim's identity traits (Burney & Rose 2002). Moreover, there is no easy way of deciding what types of victims can truly be classified as "hate victims". Indeed, the lack of uniformity between legislatures that have implemented hate

crime laws acts to remind us of the disparate conceptualisations that have been articulated throughout different jurisdictions (Lawrence 1999).

Criminological analysis of hate crime, on the other hand, has helped to illuminate both its aetiological determinants and how such offences affect victims and communities that experience various forms of marginalisation (Perry 2001). By examining both legal and criminological conceptions of hate crime, this chapter has introduced the reader to the definitional issues as well as some of the socio-cultural and socio-economic concerns which will become relevant to the exploration of hate crime within the restorative context. In particular, understanding the legal definitions given to hate crime provides us with an appreciation of the types of offences that are likely to be referred to restorative practitioners employed within the criminal justice system, such as those working for youth offending panels or police services offering restorative interventions (see Chapters Three & Four).

The broader criminological conceptualisation of hate crime is also important to the focus of this thesis. Researching both “serious” and “low-level” hate incidents will become vital to exploring whether restorative practices, both within and outside the criminal justice system, can effectively tackle the causes and effects of different types of hate crime/incidents of varying degrees of seriousness. The potential benefits and pitfalls of using RJ are explored in the chapters to come (introduced in Chapter Three). Before this, however, we need to turn to the main focus of this thesis – harm. Before we examine whether RJ can help to repair the harms of hate crime, we need first to know what these harms are. Chapter Two therefore examines in greater detail the impacts that different types of hate crime have on victims’ physical and mental health, including the damage that such incidents cause to the safety and wellbeing of minority communities more generally.

Chapter Two: The harms of hate crime – from structural disadvantage to individual identity

Introduction

The damaging effects of hate crime can be far reaching. Those directly victimised are most susceptible to psychological, behavioural, financial and/or physical harms (Garnets et al 1992). However, the symbolic nature of hate crime also sends a clear message to other identity group members that they too are unwelcome and unworthy of social respect (Weinstein 1992; Lawrence 1999; Ahn Lim 2009). The negative effects of individual incidents of hate can therefore quickly ripple out, creating immense fear and distrust between identity groups; such that they tear at the social fabric of local communities, ultimately damaging the cohesiveness of our multicultural society (Lawrence 1999).

This chapter examines the growing body of literature which has explored the harmful effects of hate crime on individual victims and the communities they come from. Analysis of both theoretical and empirical research illustrates how hate victims are frequently exposed to feelings of immense fear and insecurity about their personal safety. The studies examined will also show that hate victims frequently experience heightened levels of anxiety and depression when compared to victims of non-hate-motivated incidents (Herek et al 1997; 1999; 2002; McDevitt et al 2001). The emotional traumas endured by hate victims are deeply embedded in the identity of a victim, such that incidents go straight to the heart of an individual's "self", damaging the very essence of who they are.

However, in order to fully comprehend the emotional traumas caused by hate incidents, we must also re-examine the socio-cultural and socio-economic contexts in which they occur (Perry 2001; Hall 2005; see Chapter One). To this end, the chapter begins by re-

examining how processes of othering, explored already in Chapter One in the context of causation, create socio-economic inequalities that inevitably compound an individual's experience of hate victimisation (Perry 2001). By exploring the structural disadvantages that are experienced by many of those deemed to be "different", we begin to more fully comprehend the social harms that hate victims are likely to experience. Linked to processes of othering, and the discriminatory practices which subjugate minority communities, is research which has highlighted the frequently repetitive nature of prejudice-motivated abuse.²⁰ The frequency of hate crimes create cumulative effects on victims and other "in-group" members of society. This process-based analysis helps to create a vision of hate harm which shows how acts of hatred form part of a continuum of prejudice that is ingrained in almost all aspects of a victim's life.

Exploring hate crime as a process allows for a more holistic picture of hate harm to be created. This is a picture which further illuminates the serious consequences of hate crimes, both to individual victims and minority communities. It also highlights the need to focus attention on criminal justice measures (and other community based initiatives) that might better respond to this type of victimisation. Such analysis is of central importance to the research carried out within this thesis. Hence, this chapter will provide important theoretical and empirical grounding from which the exploration of whether RJ practices can *help* to repair the harms of hate crime will be based (see further, Chapters Five & Six).

²⁰ Already highlighted in Chapter One with regards to persistent "low-level" hate incidents.

Structural inequality: The beginnings of hate harm

The social harms of being “different”

Barbara Perry’s seminal work on “doing difference” has gained much currency within hate crime literature. The notion of “difference” and the process of othering, is re-examined here within the context of harm. In essence, I have already explored how social hierarchies and the resulting distribution of wealth and resources can be constituted by what Perry (2001: Chapter Four) refers to as “dominance over difference”. The oppression of minority groups finds its roots in expressions of *fear*. People who display identity and cultural characteristics which differ from hegemonic norms are frequently perceived as posing a threat to dominant culture. Such a threat increases as certain identity groups become more visible within society (Perry 2001). Differences in cultural tradition, customs and general ways of living can be seen by many dominant group citizens as being an affront to their civility. Threats to cultural norms and the potential loss of power and control over the way that society is structured destabilises many individuals’ sense of ontological security. In response to this, dominant group members develop mechanisms to suppress the social mobility of Others, thereby ensuring that they do not encroach upon established socio-cultural norms (Perry 2001; see also, Spalek 2008).

As the threat of “difference” increases so does dominant groups’ use of various forms of violent and non-violent oppression – including hate violence (Levin & McDevitt 2002). More subtle, but equally damaging, are the negative labels which are attached to particular minority groups. Labels are applied to whole groups who display certain characteristics (a process of stereotyping) in an attempt to stigmatize the group (othering). In some cases, labels are extremely pernicious and lead to the demonizing of entire identity groups as immoral or abnormal. Labels can also give rise to beliefs about certain groups’ worthiness as

respectable citizens as well as their “rights” to jobs and other state resources (Levin & McDevitt 2002). Other stereotypes may appear innocent or harmless. However, the odd black or gay joke stokes the flames of prejudice (Levin 2002). This can be more harmful than one might generally think. By stigmatising certain groups in society, dominant groups actually begin to dehumanise minority individuals. Over time, prejudices become entrenched and are difficult to change (Craig 2002; Levin & McDevitt 2002).

Through the process of othering emerges a culture of prejudice which can permeate entire communities (Sibbitt 1997). Some members of the community perpetuate feelings of animosity towards Others via channels of communication; be that interpersonal or through media networks (Craig 2002). Inevitably, those who are “othered” become subordinated and marginalised within society (Perry 2001). Discriminatory practices – the behaviours of prejudice – within both private and public sector organisations become institutionalised (see for example Macpherson 1999). It is these practices that reinforce Others’ unequal position in society.²¹

Dominance over difference can therefore impact the lives of many community members in a variety of insidious ways. The subordination of certain identity groups leads to various “social harms”, including economic, personal or financial inequities (see generally, Hillyard et al 2004; more specifically Bibbings 2004). For example, hegemonic norms, as constructed through dominant culture, produce indirect harms by enforcing upon a minority individual customs and behavioural norms that are an affront to that person’s “self” (essentialism) or to his or her cultural ways of living. Thus those individuals who fall outside of racial, ethnic, religious or sexual norms can often be subjugated and quickly become ostracised from mainstream cultural activities (Perry 2001). For instance, those who fall outside of dominant sexual norms have often been labelled as deviant and a threat to

²¹ See more analysis of these processes in Chapter One.

heterosexual normality. The social construction of heterosexual normality is not just about sexual activity and sexual orientation, but also about “ways of being” (Bibbings 2004). The ontology of heterosexuality is dimorphic and hierarchical. There must be one masculine male and one feminine female. The male is dominant and is the basis from which the Other is measured (hegemonic masculinity). The female comes second and is passive and accommodating. Sexualities which stray outside of this construct become an affront to the decency of heterosexual normality (known as heteronormativity) and are therefore resisted (Bibbings 2004). This resistance is borne out of fear of the Other; a fear that translates into prejudice and hatred. Prejudice is then demonstrated through homophobia, exclusion of Others and discrimination against them in public spaces, and of course through the commission of hate crimes (see Tomsen 2009).

In the UK and many other countries, this has led in the past (and present) to the criminalisation of homosexual activity. Criminalising same sex sexual encounters delegitimizes gay men as “normal”, and punishes them for acting outside of the heterosexual norm (see generally, Tomsen 2009).²² In turn, the pressure to conform which arises out of suppressing difference through heterosexual dominance has meant that many gay men and women have gone about changing the way they act, dress and even speak in order to be perceived by others as “heterosexual” (Moran et al 2004b; Dick 2008). Within various religious contexts homosexuals have often been urged to remain celibate in order to maintain a moral lifestyle (Johnson et al 2007; see for example, “Church to let gay clergy ‘marry’ but they must stay celibate” *The Times* May 29 2005) thus restricting any sexual urges so as to purge themselves from what has been constructed as “unnatural”. More troubling is the disproportionately high rate of suicide amongst young gay men associated “with discriminatory practices of homophobia, transphobia and heterosexism that are embedded

²² In other countries, sexual intercourse between two men is still punishable by death, for example Iran, Saudi Arabia, Yemen, United Arab Emirates, Sudan, Nigeria, Mauritania.

within institutions such as education, health, religion, media and the family...” (Johnston et al 2007: 57; see also, Chakraborti & Garland 2009: Chapter Four; Tomsen 2009).

Similarly, immigrants and asylum seekers can face various forms of structural harm. The process of assimilation, whereby immigrants attempt to integrate into society, can be fraught with difficulties that inevitably place them in a disadvantaged position. Jiwani’s (2005) research into young female migrants in Canada highlights the various difficulties faced when integrating into a new culture; including limitations within schooling systems for people who speak English as a second language. Pressures also exist for migrant individuals to fit into society and to conform to the various customs and norms that have been established (see Part I, Chapter Seven). Jiwani (2005: 866) states that, “the isolation and ostracism experienced by girls who are immigrants and refugees living in rural communities are compounded by the fact that they do not have peers who share their cultural background” (see also, Garland & Chakraborti 2006). Pressure to fit in can itself be harmful to an individual who denies his or herself cultural and identity heritage in an attempt to assimilate. Jiwani (2005) states that the negation of “self” through the process of being othered is the ultimate form of violence. Minority communities of all types may find that “fitting in” leads to a multitude of social harms that deny them of their “essence” as a people.

Legalising harm

Prejudice and the social harms it causes can also be woven into legislation. The enforcement of which can indirectly target certain minority identity groups (McGhee 2008). Take, for example, the response to terrorism post 9/11 and the raft of anti-terrorist legislation which has been proffered by right-wing movements across the globe. The laws are ostensibly aimed at preventing terrorism but are disproportionately used to target members of Islamic

communities. The targeting of minority communities and the media coverage this attracts fuels the anti-Islamic sentiments which promulgated after 9/11 and 7/7 (Fekete 2009).

Media coverage of terrorist activity, combined with right-wing propaganda and political discourse on Islam and immigration, help to spread fear and animosity towards those who display Islamic characteristics, which may include both their racial appearance and the wearing of religious garments, such as the burka and/or the turban. Those who display Islamic traits are perceived as a threat, not just to Western culture, but to the safety and security of the state (McGhee 2008). To many, Islam equates to fundamentalism and terrorism. Even sections of the feminist movement have been accused of oppressing faith based custom by advocating for the ban of the burka (Fekete 2009). They have argued that the treatment of women within the Islamic community is an affront to women's rights, a form of oppression amounting to gendered violence (Fekete 2009). In fact, in some countries the wearing of niqabs or burkas has been banned altogether as part of a crusade to protect the rights of women. In France, for example, the wearing of any religious garment is expressly prohibited within public spaces and institutions such as schools or hospitals, disproportionately affecting Muslim women who by custom wear religious headscarves and other faith specific garments. The growing animosity towards the wearing of Islamic clothing and the use of legislation in some jurisdictions to ban them adds to the acceptance of public displays of social condemnation against Muslim customs and inevitably to incidents of anti-religious hate (Fekete 2009; McGhee 2008).²³

²³ The criminalisation of homosexuality throughout various parts of the world is also evidence laws creating immense social harms. Other laws which prevent gay and lesbians from marrying, adopting, serving in the military etc can also be seen as a source of marginalisation and oppression.

Institutional discrimination

Structural disadvantage and the social harms that it gives rise to will be played out through both private and state agencies that systematically discriminate against certain individuals via the practices and policies that they implement (see Macpherson 1999; Phillips & Bowling 2007). Within the criminal justice context, research has frequently evidenced the unfair or unequal treatment of certain minority ethnic groups by state agencies. For example, in his report on the failed police investigation into the murder of Stephen by the Metropolitan Police Service, Sir William Macpherson identified the process of “racial stereotyping” as a key indicator of the unfair treatment of BME groups (Macpherson 1999). He pointed to the fact that the police failed to treat Stephen Lawrence’s (the victim) parents with due care and respect. They were constantly “patronised and fobbed off” during the investigation while the family consistently expressed their concern that the police treated them with distrust; especially after they were accused of being primed by their Asian lawyer to manipulate the police into looking racist (Macpherson 1999). Moreover, the report highlighted the disproportionate use of stop and search powers by the police against BME individuals as evidence of what was termed “institutional racism” within the Metropolitan Police Service (Bridges 1999; Macpherson 1999).

There have been various other studies into the effect of direct and indirect racism on criminal justice processes including arrest rates, sentencing, and particularly the use of custody (Hood 1992; Kalunta-Crumpton 1998; Bowling & Philips 2002). Research has also shown that BME people are disproportionately strip-searched while in custody (Newburn et al 2004), while indirect discrimination has had a disproportionate effect on remand status and ensuing sentencing practices (Bowling & Phillips 2002). For example, there is an increased

likelihood that a BME suspect who has been placed on remand will be sentenced to custody if convicted (Bowling & Phillips 2002). One of the most common criteria for refusing bail is homelessness or “no fixed address”. People with African-Caribbean or Black-African heritage are more likely to fall under this criterion due to socio-economic conditions which disadvantage BME communities (Home Office 2005a; 2005b).

Research therefore suggests that the unequal treatment of some minority communities is the result of an interaction that exists between unwitting prejudice, ignorance and racial stereotyping *and* inequality in socio-economic conditions. This rather short and somewhat superficial examination of discrimination within the criminal justice system does not provide evidence that the entire criminal justice system is biased against minority groups, but illustrates the frequently discriminatory nature of many criminal justice processes.

The examination of discrimination within the criminal justice system does not suggest that *all* minority individuals will experience unequal treatment by state organisations. Indeed, many minority individuals are moving into the middle classes, a product of improvements in 21st century meritocracy and equality laws, obtaining greater wealth and, with it, greater socio-economic power. However such individuals continue to be exceptions rather than the rule and for many, socio-structural factors ensure that they remain marginalised (O’Brien 2000; Home Office 2005b). In particular, unemployment levels continue to be much higher within BME communities than for their white counterparts, irrespective of qualification, age, gender or geographical location (Home Office 2005a; 2005b). Average income among BME groups tends to be lower, while they are more likely to live in deprived areas and in poor housing (O’Brien 2000; Home Office 2005a; 2005b). Such groups are also disproportionately excluded from good quality schools and have limited access to other social goods (Bruce et al 1998; O’Brien 2000; Home Office 2005a; 2005b), inevitably pushing many minority

community individuals to the outer limits of “decent” society.²⁴ Abbas (2007: 10) states, for example, that Muslims often “live in poverty, in overcrowded homes, segregated areas, declining inner city zones, face educational underachievement, high unemployment, low graduate employment, and experience poor health”. The Home Office’s *Strength in Diversity* consultation strategy (2004: 5) similarly states that, “Structural inequalities and the legacy of discrimination have resulted in whole groups that are effectively left behind, with young people failing to share in the opportunities that should be available to all, which in turn fuels their disengagement from mainstream society...”.

The socio-economic and socio-structural disadvantages that many minority individuals face, inevitably places them in a distinctly vulnerable social position. The lived experience of socio-economic disadvantage and various forms of prejudice that individuals face will inevitably compound any direct form of hate crime victimisation. Access to state agencies such as the police, the courts, and in many cases housing associations, will be vital to the support of victims of crime (Victim Support 2006). Support from employers and other work colleagues can also be instrumental in helping victims to come to terms with what has happened to them. Yet despite the introduction of a raft of new criminal justice policies post Macpherson (1999), aimed at improving responses to hate incidents (see Hall 2005: Chapter One), many victims still believe that state agencies do little to prevent hate crime, or otherwise respond ineffectively to it (Victim Support 2006; Dunn 2009). In some cases individuals may even fear that agencies will make matters worse (see for example, Dick 2008; and further McGhee 2005: Chapter Five). Of course the picture of discrimination and structural disadvantage painted here is not one which is static. Improvements made to equality law, evolving attitudes towards certain groups and general wealth creation amongst minority communities, all impact upon the ways in which such groups function in society.

²⁴ See further discussion by Shedd & Hagan 2006 in the American context on racial minorities’ perceptions of injustice in relation to criminal justice, education, employment, health care and housing.

Nevertheless, the various processes of minority oppression discussed here illustrate how victims of hate are likely to endure social harms far beyond those experienced by those within more privileged socio-economic and socio-cultural sections of society. Intrinsic to the occurrence of hate incidents, therefore, is the broader understanding of the socio-structural contexts in which acts of hatred take place. It is important to consider this “social harm” perspective when examining the harms caused by hate crime (see more broadly, Hillyard et al 2004). We are better able to understand how hate incidents harm victims if we first consider how minority groups are affected by prejudice and institutional forms of direct and indirect discrimination. This social harm vision also allows us to better comprehend the extent to which hate victims will be equipped to deal with their experiences of victimisation. The next section builds upon this approach by examining the disproportionate and frequently repetitive nature of hate incidents.

The prevalence of hate crime: a cumulative effect

Frequency

It is generally thought that levels of crime motivated by prejudice are disproportionately high compared to other types of crime. However, estimating how much hate crime exists is no easy task (see Hall 2005: Chapter Four). The difficulties encountered when attempting to calculate the number of hate-motivated incidents is partly complicated by the fact that “hate crime” is a social construct with no agreed definition (Hall 2005; Chapter One). State agencies have also differed in their interpretation of what amounts to a hate crime both in terms of how “hate” is defined and what types of victims are included within its remit (see for example, ACPO 2005 and ss 28-32 of the *Crime and Disorder Act 1998*).

Despite the difficulties found in defining hate crime, many jurisdictions have begun recording levels in an attempt to gauge the extent of the problem. The collection of a broad range of hate crime statistics in the US has been a legal requirement since 1990 (*Hate Crime Statistics Act 1990*), while in the UK, racially and religiously aggravated offences must also be published by law (section 95 *Criminal Justice Act 1991*). Police authorities also record various different types of hate crime/ incidents since the Association of Chief Police Officers (ACPO) produced guidelines on hate crime in 2000.²⁵ Although helpful in capturing trends in recorded levels of hate crime, the reliability of these statistics remains questionable, as with much recorded data on crime (Perry 2009).²⁶ Statistics are reliant upon police officers identifying hate-motivation at the scene of the incident and then recording incidents as such. As a result, many “hate crimes” go unreported or unidentified by the police, or alternatively are misinterpreted by victims or other members of the public as having a prejudice-motivation. Perry (2001: 11) opines that “for the most part, existing methodologies are both too new and too badly flawed to give us an accurate picture of changes [in hate crime] over time”.

There have, however, been some attempts to provide a more accurate picture of the true levels of hate crime through the British Crime Survey (BCS) and other academic studies. Using BCS data, Jansson (2006) estimated that the “dark figure” of racially motivated crimes was 179,000 between 2004 and 2005. The BCS data also estimated that there were 84,900 racially motivated common assaults and 24,600 cases of racially motivated wounding between 2005 and 2006 (Jansson 2006). The BCS does not include religiously motivated crimes. Instead, it simply publishes the *recorded* levels of racially and religiously aggravated crimes (grouped together; see Walker et al 2009).

²⁵ These now include racist, anti-religious, disablist, homophobic and transphobic crimes/incidents (see ACPO 2005).

²⁶ For example, they are unlikely to show the true extent of hate crime as many incidents go unreported (Moran et al 2004b; Dick 2008). Statistics are also difficult to interpret due to the disparate definitions given to hate crime by different jurisdictions and agencies (Hall 2005; ODIHR 2009).

Less information is available on the levels of homophobic crimes, other than those recorded by police services across the country. In response to this, various third sector organisations and academics have attempted to fill the lacuna by investigating the hidden levels of homophobic incidents. In 2004 a report entitled '*Count me in!*' by Moran et al (2004b) for the gay and lesbian criminal justice organisation GALOP found that 38% of gay and lesbian respondents in two boroughs of London²⁷ had experienced homophobic crime such as harassment and/or threats in the past 12 months, with just under 50% of gay men experiencing such abuse (Moran et al 2004b: 36). Out of the total 38% who had experienced abuse, 14% had experienced physical violence; 35% threats; 37% harassment; 2% rape; 2% sexual assault, while 11% had experienced damage to their property (Moran et al 2004b: 40).

In 2008, Stonewall published a report on homophobic crime for the Equality and Human Rights Commission showing that one in five gay and lesbian people have experienced a homophobic hate crime or incident in the last three years (Dick 2008). Of those who experienced an incident one out of six had suffered a physical assault (Dick 2008: 7; see further, Chakraborti & Garland 2009: 61ff; see Attorney General's Department 2003 in the Australian context). Other reports into religious hate crime (Poynting & Noble 2004; Dreher 2006) and disablist abuse (Hunter et al 2007; MIND 2007; Quarmby 2008) have similarly highlighted the disproportionately high levels of abuse which minority victims experience.

Such high levels of hate crime highlight the pervasive nature of victimisation as experienced by those deemed as "different". Yet, merely highlighting the high levels of prejudice-motivated abuse tells us little about victims' actual experiences of it; other than that it is likely for a minority individual to be victimised in such a way. It is important therefore to explore further the harms of hate crime by examining the theoretical explanations and empirical evidence of the nature of hate victimisation.

²⁷ Greenwich and Bexley.

Hate crime: part of the prejudice continuum

Extreme forms of hate violence often capture the attention of media outlets. Coverage of particularly brutal cases helps to promote an image of hate crime as one-off acts of violence committed by hardened bigots (often labelled as “stranger danger”; see Mason 2005). However, such an interpretation of hate crime fails to consider the pervasive and often ongoing nature of “low-level” acts of harassment and verbal abuse (mentioned briefly in Chapter One; see Bowling 1993; 1998; Chakraborti & Garland 2009 129ff). Various studies have begun to uncover the persistent and damaging nature of hate crime in local areas (Bowling 1998) showing that many incidents do not just occur through the extraordinary actions of extremists, but unfold in the everyday lives of minority individuals (Iganski 2008; see Chapter Five).

In his book *Hate and the City*, Paul Iganski (2008) argues that we must take seriously the “everydayness” of hate crime in order to better understand its effects. As such, an examination of the impact of hate crime must encompass “the day-to-day reality of how bigotry is manifest in the lives of offenders and their victims” (Iganski 2008: 20). Hate incidents arise most frequently from opportunity and provocation, at least that which is perceived (see thesis Conclusion). Iganski (2008) explains that prejudices which simmer under the surface frequently boil over when people come face-to-face through their daily routine activities (Iganski 2008). The irritation of next doors’ music or the person who pushes past on the bus can instantly trigger a (partly) hate-motivated reaction (see Chapter Seven).

Ben Bowling’s influential book *Violent Racism* (1998), also illustrated the repetitive nature of racist abuse by referring to police records of racial incidents in North Plaistow (1998: Chapter Seven; see further, Bowling 1993; 1994). During 1987-1988, 53 incidents of racist abuse against families in two streets were recorded by the police. In the vast majority of

these cases incidents involved verbal abuse and harassment, egg throwing, damage to property and door-knocking. Bowling notes that many of these incidents were regarded by the police as “minor” (Bowling 1998: 189). However, it is only when one considers the fact that “minor” incidents are often repeated over an extended period of time that we begin to appreciate their devastating effects. Bowling also refers to the fact that other subtle behaviours, which amount to no more than an individual being aware that someone is annoyed or disgusted by their presence, all have the effect of compounding a victim’s experience of victimisation (1998: 230). Levels of abuse may build up over time with many cases escalating into more severe acts of violence (Bowling 1998: 189). Bowling argues, therefore, that the experience of racist hate crime cannot be “reducible to an isolated incident, or even a collection of incidents.” (1998: 230). Instead, racial victimisation (and by analogy other forms of hate crime) should be seen as cumulative processes comprising of a continuum of victimisation (Bowling 1993; 1994; 1998) or, more specifically, a continuum of structural disadvantage made up of processes that promote general climates of prejudice which in turn fuel interpersonal acts of hatred (Sibbitt 1997; Garland & Chakraborti 2006).

As prejudice and acts of hatred become ingrained within many individuals’ lives, their experiences of hate victimisation can become normalised. This does not, however, equate to a dissipation of its harmful effects. Rather, normalisation occurs only to the extent that hate incidents become an expected part of a person’s life. Over extended periods of time, the acceptance of hate as an unavoidable fact of life is not only demoralising but extremely damaging to a victim’s mental health (Herek & Berrill 1992). A relatively recent example of disablist abuse serves to illustrate the disastrous effects that persistent hate victimisation can have. In 2007 the bodies of Fiona Pilkington, 38, and her daughter Francecca Hardwick, 18, were found in a Leicestershire lay-by. At the inquest into their deaths the jury heard that Ms Pilkington had apparently poured a 10-litre can of petrol over the back seat of the car, while

both she and her daughter were in it, before setting it alight. It was revealed that the family had endured over ten years of abuse at the hands of neighbours' children who had repeatedly harassed them by throwing stones at their house and verbally abusing them and their relatives. On one occasion a group of teenagers marched Ms Pilkington's son into a shed at knife point before locking him in there. Over seven years the family made a total of 33 calls for help to Leicestershire Police. The inquest found that the council and police officers had "contributed" to the deaths by failing to recognise the family's vulnerability and take action against those who made sustained efforts to victimise the family because of their disabilities ("Police errors in 'bullying' deaths revealed at inquest" *The Guardian* 18th September 2009; see also documentary *Tormented Lives* BBC1 shown 20th Oct 2010; see further, case examples in Chapter Five).

The Pilkington case illustrates how repetitive hate abuse is compounded by the already disadvantageous socio-economic position that many minority individuals occupy, sometimes having disastrous consequences. One might credibly posit that had Ms Pilkington been in a more privileged socio-economic position she may not have found herself in an environment where such anti-social behaviour occurred²⁸ or, if she had, she may have had the means and resources to cope better with her situation (see *Tormented Lives* BBC1, 2010). Accepting that socio-economic disadvantage cannot be changed overnight, we must look to the state to provide greater protection for those who experience hate abuse, such as that endured by the Pilkington family. Clearly, in that case the local authorities failed Ms Pilkington and her children. Had the council and the police spent more time supporting those with severe disabilities, the victims may well have been moved, or at least provided with greater protection against the abuse they suffered. This, of course, is hypothetical, but one cannot help but hypothesise that such abuse would not have continued to the extent that it did

²⁸ Though see Garland and Chakraborti (2006) who explored the experiences of racism by those who live in rural areas.

had the victims been in a stronger socio-economic position and provided with greater state protection (see Chapter Six for how a multi-agency approach can help to prevent the recurrence of hate abuse).

Victim-offender relationships

Linked to the “everydayness” of hate crime is the fact that many hate crime victims and offenders will be known to each other, often as neighbours, work colleagues or through commercial transactions (Sibbitt 1997; Ray & Smith 2002; Mason 2005).²⁹ Previous conceptualisations of hate crime have suggested that offences are committed at random by those unknown to the victim (Mason 2005). Levin and McDevitt’s (1993) typology of hate offenders, for example, suggests that most perpetrators of hate crime will be “thrill seeking” youths unfamiliar with their victims (see also, Craig 2002). Some will even travel into communities at a distance from their own in order to seek out potential targets. Perry’s (2001: 29) influential work also states that, “These brutal acts of violence are commonly perpetrated on strangers – people with whom the perpetrator has had little or no personal contact”. There is certainly no shortage of examples of stranger danger cases; from the racist murder of Stephen Lawrence in 1993 to the brutal homophobic killing of Jody Dobrowski in 2005, there are undoubtedly many random acts of hate violence committed by those completely unknown to the victim (see further examples in Chakraborti & Garland 2009).

More recently though, there has been a shift away from conceptualising hate crime as a form of “stranger danger” (Mason 2005). The broadening out of hate crime research to include “low-level” forms of harassment and abuse has begun to illuminate the types of personal relationships that exist between victims and offenders (Sibbitt 1997; Mason 2005).

²⁹ Although it is unlikely that the relationship is intimate.

Gail Mason's (2005) study of homophobic harassment complaints recorded by the Metropolitan Police Service found that 90% of incidents occurred at or near the victim's home. A vast majority of cases were committed by neighbours (82 per cent) while a further seven per cent knew the perpetrator as being local to where they worked. Other studies have reported similar findings; Moran et al (2004b: 42-44) for example found that two thirds of homophobic hate victims knew their perpetrators and most of these were neighbours. While in Ray et al's (2004) research, 60 out of 64 individuals who had committed a racist attack knew their victim. Most knew each other as a result of commercial transactions, for example in shops, restaurants, takeaways or taxis (see further, Chakraborti & Garland 2009: 129-132). This thesis will further highlight the close relationships that often exist between offenders and victims (see Chapters Five, Seven & thesis Conclusion). For now it is important to highlight the interpersonal familiarity of those involved in hate crimes as underpinning the pervasive nature of the phenomenon (Iganski 2008).

The analysis of repeat victimisation by people known to victims helps us to better understand the cumulative effects that hate victimisation can cause. Yet, this analysis still leaves us unclear as to the *precise* impacts that hate victimisation has on the emotional, psychological and physical wellbeing of individual victims. The following sections therefore complete the examination of hate harm by analysing both the theoretical reasons as to why incidents cause heightened psychological harm and empirical studies that have explored the physical and emotional injuries sustained by hate victims.

Psychological harm

Attacking identity

Victimisation can impact individuals and other affected community members in a multitude of ways. Generally, victims may experience: fear, anxiety, anger, insecurity, nightmares, loss of property, loss of wage-earning family members and weakened social ties (Garnets et al 1992; Spalek 2006). Sullivan and Tifft (2008b) describe these harms as “socio-political experiences” that not only affect the lives of victims but also the victim’s family and sometimes members of the affected community.

The emotional traumas caused by crime/victimisation occur for several reasons. The first is that it fractures a victim’s sense of individual security. Sullivan and Tifft (2008b: 208) describe this as disruptions to the beliefs, values and concepts of a person which make up the “self”. Victims’ perceptions of their place within the world can become destabilised. Within what is now perceived as a less stable environment, others suddenly appear more malevolent and less trust-worthy (Garnets et al 1992; Kauffman 2008). Zehr (1990: 24) explains that:

Crime is... a violation of the self; a desecration of who we are, of what we believe, of our private space. Crime is devastating because it upsets two fundamental assumptions on which we base our lives: our belief that the world is an orderly, meaningful place and our belief in personal autonomy. Both assumptions are essential for wholeness.

Crime and other targeted anti-social behaviours communicate a message to the victim that they do not count and are not worthy of respect (Harris et al 2004). As victims try to grapple with this violation they ask themselves “why did it happen to me?” (Garnets et al 1992). In many cases individuals experience self-blame, having “allowed” themselves to be violated in

such a way. In turn, self-blame can lead to feelings of shame and embarrassment (Garnets et al 1992).

The emotional harms of victimisation can have short or long term impacts (Garnets et al 1992; Kauffman 2008). Morten Bard and Dawn Sangrey posit that there are three stages of emotional trauma which directly result from victimisation (Bard & Sangrey 1979: cited in Garnets et al 1992). Stage one is the “impact phase” and occurs when victims start to feel vulnerable and confused. In this early stage victims can become dependent on others to help them with even small matters of decision making. They feel exposed and may be shocked by feelings of disbelief. Stage two is the “recoil phase” and can swiftly follow stage one. It is characterised by changes in mood and feelings of fear, rage, frustration, denial, guilt, self-blame, shame, humiliation, grief, revengeful thoughts and the projection of anger onto others (see further, Sharpe 2007; Kauffman 2008: 217). The third stage is the “reorganising phase” where victims begin to process their experience and place it into broader perspective. At this stage victims begin to move on with their lives after regaining a renewed sense of security.

The majority of victims negotiate successfully through these stages aided by time and the support of family and friends. Some may experience all of these emotions while others experience just a few. The phases may also come at different times and in a different order (Bard and Sangrey 1979 cited in Garnets et al 1992). Longer term, some victims can experience post traumatic stress disorder or clinical depression as they re-live the incident over and over in their minds (Kauffman 2008).

Victims' experiences of crime may differ depending on their age, gender, class, life experience and personality (Daly 2002a). The frequency with which a person experiences victimisation may also colour their reaction to it. For example, individuals who experience victimisation on a daily basis may have different reactions to those who experience it for the first time. Similarly, men may experience violent crime in different ways to women, while

elderly people may find victimisation more difficult to recover from than those of younger generations. These differences cannot be ignored. They mean that there is no hard and fast rule to healing victims' emotional traumas. Nonetheless, by appreciating that victims will respond to crime differently does not deny the commonalities of victimisation that can be found amongst most victims. Establishing common themes in victimisation can provide essential information from which we might explore ways to mitigate different types of harm.

Commonalities in hate harm

Every hate crime is an attack on the victim's identity; whether it be a brutal racist assault by a gang of extremists or an off the cuff homophobic insult made by a neighbour. In each case the victim and others who display similar characteristics will know that they have been targeted because of the way they look, what they believe in or because of who they are sexually attracted to. That is not to deny that subtle differences exist between the effects of different types of hatred.³⁰ However, most will create a similar set of unique challenges for victims (Garnets et al 1992) due to the fact that that part of the victim's identity which has been targeted becomes central to their internal awareness of why they have been victimised. This general commonality amongst all hate crimes remains consistent regardless of the level of seriousness or type of victim group.

Attacking a person's identity will heighten his or her sense of vulnerability (Garnets et al 1992; Herek et al 1997). Vulnerability relates to two elements of victimisation. The first is the *risk of victimisation* posed to certain groups or individuals, while the second relates to the *level of harm* one is likely to suffer as a direct result of victimisation (Green 2007). In the first sense, hate crime victims' vulnerability becomes heightened due to the personal danger

³⁰ In particular, differences in the cause and effect of disbalist abuse may give rise to a different analysis of hate harm, see Hunter et al (2007).

which is associated with their belonging to a particular identity group (Herek & Berrill 1992; Herek et al 1997; 1999). This elevated sense of vulnerability has been highlighted above both in regards to the disproportionate levels of hate crime and in the repetitive nature of the phenomenon (see also section below on the “wider impact on minority communities).

Victims who grapple with their experience of victimisation will attempt to make sense of the world as a just and fair place (Garnets et al 1992). In trying to bring about a renewed sense of security, non-hate victims may attempt to rationalise the behaviour of the offender as having nothing to do with them; perhaps thinking that they were merely in the wrong place at the wrong time. However, in hate crime cases the victim cannot rationalise the crime in this way as the message attached to the incident clearly demonstrates that they have been specifically targeted because of who they are. Prior victimisation or knowledge that other in-group members have been targeted means that many hate victims will have already internalised the prejudice which has been evinced towards them (Noelle 2009). Consequently, the impact of a hate incident is built upon a foundation of oppression and/or persecution that other types of victim do not necessarily experience.

In coming to terms with their experience of hate, some victims may feel that they have been *rightly* punished for being different. Some may even experience a sense of self-blame combined with feelings of helplessness and, later, depression (Garnets et al 1992; Noelle 2009). Prejudice is often internalised, bringing about a sense of shame. The victim will be aware that they have attracted their own victimisation because of what their identity represents (Ahn Lim 2009). For instance, those who have to come to terms with their homosexuality in an environment hostile towards gay people and who have parents who disapprove of homosexual relationships will have had emotional burdens placed upon them to conform to a heterosexual lifestyle (Bibbings 2004; Noelle 2009). Such a situation can give rise to feelings of internalised homophobia, a sense that being gay equates to their being less

decent, to being dirty and even immoral when compared to others (Noelle 2009). Being the victim of anti-gay abuse can therefore create “characterological self-blame... in which one feels there is something they could do differently if faced with the situation again” (Noelle 2009: 86).

In Sam Dick’s study into homophobic hate crime for Stonewall one respondent sums up this process by stating, “I am the one who feels ashamed because the inference is that they abused me in this way because of my body language or the way in which I looked at them...” (2008: 31). Questioning one’s own value as a human being like this will eventually destabilise a person’s sense of “self”. As a result of both internalised and externalised experiences of hate, victims will often attempt to adjust the way they portray themselves to the world in order to “fit in” (see further, below “The wider impact on minority communities”)

The fear of victimisation and internalised expressions of prejudice ultimately act to aggravate other feelings of isolation, anxiety and depression arising from their victimisation (Garnets et al 1992; Herek et al 1997; 2002; McDevitt et al 2001). Attacking someone’s identity consequently leads to the second element of vulnerability (level of harm) becoming elevated as victims endeavour to come to terms with what has happened to them.

It should be noted at this point that the concept of vulnerability is one which, in some contexts, has been considered as counterproductive (Quarmby 2008: 33ff). The main concern is that if certain individuals are perceived as being inherently “vulnerable” they become viewed as incapable, even child like; leading to their being viewed as less able to fend by themselves. This can give rise to a form of disbalism in itself as these individuals are treated by others like helpless children (infantilization). Such perceptions of vulnerability may also give rise to the belief that some victims of hate abuse are partially to blame for their own

victimisation where they have acted recklessly, for example by venturing out into the community when they should “know better” not to place themselves in danger.

Labelling certain individuals as “vulnerable” can also blur the line between hate motive and the situational context in which they were victimised (Quarmby 2008). By this I mean it can be difficult, especially within a courtroom context, to determine whether an offender is motivated by a hostility (i.e. a prejudice) towards the victim’s disability or whether they are taking advantage of the victim’s disability (Mason-Bish 2010: 70-71). Is a hate motive based on the victim’s identity the same as a motive based on situational context that is intrinsically linked to identity? The term “hostility” within the current body of legislation certainly leaves enough room for the courts to interpret the actions of offenders who abuse disabled individuals, either because of their prejudices against disabled people or because they view the victim as “vulnerable”(itself disablist), as proof of hate motivation.³¹ Whether the police and other criminal justice practitioners appreciate the subtle differences (similarities) between vulnerability and hostility is less clear (Mason-Bish 2010:70-71).

While the complexities involved in determining the meaning of vulnerability in hate crime cases remain important, they do not mean that the concept is in itself counterproductive. Rather they remind us that the pre-labelling of some individuals in certain contexts as “vulnerable” may have an insidious impact that must be guarded against within legal and criminological discourse. However, vulnerability remains central to explanations of the impact that hate crimes have on minority communities. As we have seen above, “dominance over difference” not only acts to increase the likelihood of hate victimisation, but it also compounds victims’ experience of it. This can be directly linked to the social harms caused by socio-structural marginalisation, but it is also because victims will struggle to cope with their victimisation while they grapple with their own cultural and identity difference.

³¹ It seems that the courts are slowly coming round to this way of thinking and the CPS guidance now makes it clear that vulnerability and hostility may be two of the same coin (CPS 2010).

Such differences provide a sense of the “self”, not viewed through a prism of unified empowerment, but through a socially constructed lens of shame.

Empirical studies on the emotional harm of hate crime

A growing body of research has begun to provide empirical evidence supporting the theoretical assertions that victims of hate crime are likely to experience heightened levels of psychological and emotional harm³² (Herek & Berrill 1992; Garofalo 1997; Herek et al 1997; 1999; 2002; Levin 1999; McDevitt et al 2001; Iganski 2008). While various studies in the 20th century highlighted the traumatic emotional impact that hate crimes can have (Barnes & Ephross 1994) it was not until comparison groups were used over the past 10-15 years that it has been possible to determine whether hate crime harms were significantly different to non-hate incidents.

Iganski (2008) has demonstrated the heightened levels of emotional harm via the presentation and analysis of data from three British Crime Surveys dating 2002-2005. He found statistically significant higher levels of victims involved in racially motivated incidents (compared to non-hate related incidents) had reported feelings of: shock, fear, depression, anxiety, panic attacks, feelings of loss of confidence, feeling vulnerable, difficulty sleeping, and crying (Iganski 2008: 12, 13, 82 & 83). Feelings of fear yielded the highest differential amongst emotional reactions (Iganski 2008: 81; elevated levels of fear for hate victims are also reported in Herek et al 1997; 1999; 2002; Bowling 1998; and McDevitt et al 2001). Iganski also found that a slightly higher proportion of victims of assault, burglary, theft,³³ and threats, where the victim believed that the offender was racially motivated, reported an “emotional reaction” compared to victims of incidents not believed to be motivated by racism

³² Compared to other similar (parallel) non-hate-motivated crimes.

³³ And attempted versions of these offences.

(2008: 12). For example, victims of assault³⁴ who had believed the attack was racially motivated had an emotional reaction in 92.4% of cases. This is compared those who did not believe the attack was racially motivated where the emotional reaction occurred in 86.8% of cases. By itself this is not a significant difference, however Iganski documented higher levels of emotional reactions for victims who had believed their offender to be racially motivated in *all* types of crime (Iganski 2008: 12).³⁵

Various other studies support such findings. In Gregory Herek et al's (1997) study the psychological sequelae of hate crime victimisation among 2259 lesbian, gay, and bisexual adults were examined. The study found that victims of homophobic crime showed significantly more signs of emotional trauma including, anger, stress and depression when compared to victims of non-hate-motivated incidents (see also, Herek et al 1999; 2002). Higher levels of anxiety and feelings of anger were also reported in Barnes and Ephross (1994) and by Bowling (1998) (see also, Victim Support 2006). While Levin has reported that victims of hate-related criminal attacks experienced 21% *more* adverse psychological symptoms than those who had suffered similar attacks that were not hate related (1993-1994; see also, McDevitt et al 2001).

Not only are the psychological harms experienced by hate victims likely to be more severe, but they can also last longer than those experienced by non-hate related victims. Victims have been shown, for example, to suffer from periods of depression, stress and anger for as long as five years after their primary experience of a hate crime (Herek et al 1997; see also, Garofalo 1997; Herek et al 1999; 2002). In contrast, non-hate related victims have shown vast improvements within two years (Herek et al 1997). Supporting these findings, McDevitt et (2001) also found that victims were three times more likely to report that overcoming the crime was very difficult compared to non-hate victims.

³⁴ Or attempted assault.

³⁵ Though it should be noted that only five out of the six types of offences researched showed a statistically significant result.

The prolonged periods of enhanced emotional trauma that hate victims endure are likely to be linked to a heightened perception of future victimisation (Herek et al 1997b: 205; 1999; see also, Garnet et al 1990; Victim Support 2006). Iganski, for example, found that higher proportions of hate victims reported being “worried” or “very worried” about future victimisation (2008: 83). Qualitative research carried out by Victim Support (2006) also found that underpinning most victims’ experiences of hate crime was the loss of security for their personal safety. Connected to the fear of victimisation is the fact that many hate victims no longer feel safe in their own neighbourhood and therefore refuse to return to where the incident took place (McDevitt et al 2001: 710; Iganski 2008: 78-79).

Again we see here an interconnection between an individual’s ability to heal from his or her experience of hate crime with the broader disadvantages which emulate from “difference”. The everydayness of hate as experienced through both interpersonal interactions and through institutional practices acts to antagonise victims’ feelings of vulnerability about possible future victimisation. This is unsurprising given the often repetitive nature of hate incidents and the pervasiveness of cultures of prejudice. The constant fear of hate victimisation will inevitably penetrate a victim’s cognition at a much deeper level.

It is not just feelings of anger, anxiety and fear which cause problems for hate victims. Other research has also found that hate crimes cause higher levels of post traumatic stress (Herek et al 1999; Ehrlich et al 1994)³⁶, and lower levels of self esteem (Herek et al 1997b: 205; see also, Garofalo 1997).³⁷ Such emotional traumas can adversely affect other areas of a victim’s life. For example, a higher percentage of hate victims have reported that they lost their jobs and suffered from significant health problems after a hate attack than did non-hate

³⁶ Using a national telephone survey of 2,078 respondents, Ehrlich et al (1994) found that hate victims experienced more symptoms of post traumatic stress and behavioural changes than did non-hate victims.

³⁷ Though it should be noted that these latter two results in Herek et al’s study did not quite reach the statistically significant probabilities of less than 0.05.

victims (McDevitt et al 2001: 710; Victim Support's 2006 report also found that hate victims experienced a deterioration of physical ailments). Other hate victims have reported experiencing disruptions to their daily routines and breakdowns in relationships with spouses and friends (Chahal & Julienne 1999).³⁸

Hate victims' dissatisfaction with the criminal justice system

In almost all hate crime studies victim satisfaction with the criminal justice system is low (see Victim Support's 2006 overview). The ongoing nature of hate crime is bound to effect victims' belief that "the system" provides them with help and support (Victim Support 2006). The discriminatory practices found in many parts of the justice system (see above) are also likely to leave minority individuals sceptical about the levels of support they are likely to receive. Victim Support has shown that for some hate victims their levels of anger were exacerbated by their experience of criminal justice agencies, "some of which seemed to compound the sense of powerlessness that hate crime engenders" (Dunn 2009: 128; see Chapter Six). Dunn (2009) explains that victims often displayed a need to regain some control over the situation which had been taken away from them because of their victimisation. He states, "rather than help people regain control, in some instances, criminal justice agencies did the opposite... Some people wanted to engage with the criminal justice system, perhaps as a way of working out their anger towards the offender" (Dunn 2009: 129). Significantly, when victims were asked what could be done to help them, many spoke of the need to tackle the root causes of their victimisation while also wanting better support. They also spoke of the need for raising awareness about hate crime and particularly about the harm prejudice causes, especially among young people (Dunn 2009). We will see in the next

³⁸ The types of harm experienced by victims who went through a restorative process are reported in Chapter Five.

chapter how restorative processes aim to respond to each of these concerns by encouraging victims to take part in a dialogic process that focuses on empowering participants and repairing harm (see further, Chapters Six & Seven).³⁹

The wider impact on minority communities

Beyond the direct impact on individual hate victims, are the negative consequences that hate crimes have on minority communities more broadly. In many respects this aspect of hate harm becomes central to the utility of restorative processes, which are supposed to include community participants (Zehr 1990). The symbolic nature of hate incidents has a damaging effect not just on individual victims but on other “in-group” members of an identity group (the minority community). The message of hate crime rings loud and clear: certain identity groups are unequal, unwelcome and undeserving of social respect (Byers et al 1999; Ahn Lim 2009). Hate incidents have far reaching impacts upon minority groups as a whole (Lawrence 1999). The reporting of hate violence cases by local and national media helps to promote a message of *danger* to minority communities (Herek & Berrill 1992: 3; Iganski 2001: 630-31; Herek et al 2002; McGhee 2005: 126). The threat has been characterised as a form of “terror” as the fear of violence spreads to other like people within minority groups (Weinstein 1992; Lawrence 1999: 43-44; Iganski 2001: 629). The constant worry of potential victimisation, often compounded by experiences of prejudice in the past, permeates the consciousness of many minority community members who may live with the fear of possible victimisation at all times (see *inter alia* Dick 2008: 29ff). Other people in society may feel sympathetic and want to help but choose not to for fear that they may become targets (Lawrence 1999: 43-44).

³⁹ The results on victim satisfaction with RJ are reported in Chapter Five.

Dick's study into homophobic crime is illustrative of how oppressive hate crimes can be to other members of the gay community (Dick 2008). He found that three quarters of 18-24 year old gay and lesbians feel that they are more at risk of being assaulted for being gay, while around 40 per cent of all lesbian, gay and bisexual (LGB) people said they are worried about being the victim of a crime (Dick 2008: 30). Research carried out by Bowling (1998: 195) similarly found that 58 per cent of Asian women and 51 per cent of Asian men were worried about being victimised. A further 37 per cent of African and African-Caribbean women and 26 per cent of African and African-Caribbean men feared victimisation, compared to only 20 per cent of White women and 13 per cent of White men who feared being victimised.

Most respondents to hate victimisation surveys have indicated that their behaviour in public is restricted through the fear of violence (Herek & Berrill 1992). Such fears mean that many minority group individuals feel it necessary to adjust their behaviour and/or appearance in order to assimilate into dominant culture (Chahal & Julienne 1999; Dick 2008).⁴⁰ Dick (2008) found that a third of lesbian and gay people alter their behaviour so as not to appear lesbian or gay to prevent being a victim of crime. One respondent within that study stated that, "we censor our behaviour so much. If I behaved as I would like to – holding hands... in public etc, then things would be very different" (2008: 32; see also, Gordon 1994: 48; Attorney General's Department 2003: 26).

Minority backlashes

A major concern that derives from the symbolic nature of hate incidents is that it gives rise to the potential for minority groups to "fight back". Levin (1999) notes that hate crimes can

⁴⁰ This is often referred to as "code switching" and allows individuals to switch from one form of cultural behaviour to another depending on their environment (Shedd & Hagan 2006).

pose a potential risk to social order as identity groups seek to find redress via reprisal attacks (see also, Levin & McDevitt's (2002) typology of offenders). Individual incidents of hate crime can even spark larger scale rioting as already tense community relations come to a head. There are many examples of hate incidents resulting in large-scale violence. In the UK, race riots erupted during the months of May, June and July 2001 within the Northern towns of Oldham, Burnley and Bradford. In Oldham, 200 Asian youths rioted after an elderly white pensioner was mugged by an Asian male and a group of White men attacked a house in the predominantly Asian Glodwick area (McGhee 2005: Chapter Two). Similar events occurred in Burnley after a clash between a group of Pakistani and White Youths. Later on in Bradford, clashes between Pakistani and White youths occurred after the British National Party announced it would march through the town (McGhee 2005: Chapter Two). More recently the English Defence League has held demonstrations in Burnley against the Muslim community leading to minor clashes with anti-fascist groups and to a number of arrests ("Ten charged after English Defence League protest" *The Guardian* 10 October 2010).

Tensions within communities which culminate in rioting must be dealt with at a grass-roots level. Initiatives which bring various members of the community together to discuss local conflicts must be encouraged if we are to help prevent the escalation of "lower-level" hate incidents turning into larger scale race riots. Left unchallenged, simmering prejudices within a community will inevitably spark violent clashes between identity groups. Key to this thesis is an emphasis on processes that encourage dialogue, empathy and understanding between individuals of difference (see Chapter Three). As tensions increase within an area and hate incidents begin to occur more often, bringing community members together to discuss incidents of hatred may well enable communities to find resolutions to their fears and anxieties about each other (see more on this in Chapter Five & Seven).

Does hate harm matter more?

Needless to say, minority groups' experiences of hate crime can have far reaching consequences both in terms of individuals' emotional wellbeing and other minority community members' reactions to hate incidents. Even so, some academics have argued that hate victimisation is no more harmful than any other form of crime. At the close of the twentieth century, Jacobs and Potter (1998) asserted that all crimes have impacts which go beyond that of the individual victim and therefore hate offences are no different to any other type of crime (Chapter One; see also, Sullivan 1999). They disputed the validity of contrasting research evidence, stating that, "These assertions depend on empirical assumptions that seem dubious and have not been substantiated" (Jacobs & Potter 1998: 90). Some thirteen years later, a growing body of research, much of which is based on large random samples with statistically significant results (such as McDevitt et al 2001 and Herek et al 2002), suggests they were wrong. That said, more attention should be given to the diversity of victims and their experiences of crime (Spalek 2006). With this in mind, it is important that the field of hate victimisation continues to grow.

We must also be alive to the fact that not all victims of hate crime will be harmed more than other victims. We must resist assuming that a whole group will be disproportionately affected by a particular type of crime; inevitably there will be variability (Sullivan 1999). People experience crime differently according to a whole host of personal and social variables such as age and gender (Green 2007). Not only will victims from different identity groups experience crime differently but there will be variations within a group. One concern regarding differentiating hate harm from other types of harm is that we may unintentionally set up "a contest of vulnerability in which one group vies with another to establish its particular variety of suffering, a contest that can have no dignified solution" (Sullivan 1999: 8). In this regard, Sullivan (1999) suggests that responding differently to hate

victimisation works simply to highlight the social divisions that exist between identity groups.

It is worth highlighting the tensions that can be caused when differentiating between the harms experienced by different identity groups. By highlighting one group as more deserving of support than another we may unintentionally create further tensions between groups of different people. For example, one causal mechanism of hate crime established in the previous chapter was the perception that certain minority groups obtain greater support with regards to social benefits and resources from the state when compared to dominant white groups. In most cases such perceptions are created by unsubstantiated rumours (Levin & McDevitt 2002), however such perceptions will only lead to resentment and further frustration at certain groups if they are seen to be getting more than everyone else. In this sense we must be cautious not to over-emphasise the needs of minority groups in *direct* contrast to the needs of other groups in society for fear of pitching identity groups against each other. It is also important that we do not simply assume that all hate crime victims will experience incidents in the same way. To socially construct hate victims as always experiencing heightened levels of vulnerability – both in terms of risk and level of harm – may be to provide a false generalisation of hate victimisation (see generally, Green 2007).

Paying regard to these cautionary notes does not, however, mean that we must ignore differences between victims of crime, as evidenced by empirical studies. When investigating the harms caused by hate crime we do not aim to set up a “contest” between different types of victim. Rather, we attempt to identify commonalities in victims’ experiences, brought about by the very nature of the offending behaviour. This must be done by acknowledging disparate experiences within identity groups and across different groups. If we are to provide the best possible measures for tackling different types of crime and supporting different types of victims, we must not ignore that “difference” in both these respects is fundamental to the

challenge. In other words, findings that hate crimes cause greater harms when compared to non-hate offences must not be disregarded as divisive but as important to the task of effectively responding to disparate forms of victimisation.

Conclusion

The examination of hate victimisation clearly shows that there is a need to find ways to help support victims of hate crime and to reduce the damaging effects it has on minority communities. The vulnerability of hate victims has been highlighted by studies which show that minority group members frequently experience ongoing targeted forms of violence and harassment. The harms caused by incidents, that become weekly or even daily occurrences, will inevitably accumulate over time – sometimes to disastrous effect (see Pilkington case above). It is unsurprising that such crimes cause enhanced levels of emotional trauma, such as fear, panic, anxiety and depression, or that these psychological harms often persist for longer periods of time compared with those suffered by non-hate victims. The fact that hate victims are targeted because of who they are inevitably impacts upon their emotional wellbeing at a much deeper emotional level.

In order to understand the emotional harms caused by hate crime, it has been important to view experiences of victimisation within the broader socio-structural contexts in which they take place. The chapter therefore began by exploring some of the social harms experienced by marginalised identity groups. By viewing hate-motivated crime within its social context we can begin to see how, for many victims, hate incidents become just one part of a continuum of prejudice and victimisation.

The heightened levels of harm commonly experienced by victims demonstrates a clear need for measures specifically aimed at reducing harm – rather than solely focusing on

enhancing the punishment of offenders (see Introduction). RJ may be one measure through which the harms of hatred can be addressed. We must not, however, be too idealistic in our expectations as to how far restorative processes can aid this process (see Chapter Three). As this chapter has highlighted, hate victimisation is symptomatic of a much broader socio-structural problem. In attempting to put right the wrongs of a crime, justice processes cannot be expected to repair the structural ills of society (Kelly 2002).⁴¹ In this sense, this chapter is to be used as theoretical and empirical background from which the following chapters will assess the extent to which restorative processes can *help* victims to recover from their experiences of hatred (see in particular Chapter Five).

⁴¹ Although some scholars have posited a vision of RJ as a way of ordering society (see Sullivan & Tifft 2001) most see it only as a means through which justice can be served (Braithwaite 1989; Zehr 1990).

Chapter Three: Repairing the harms – reconceptualising restorative justice for hate crime

Introduction

The term restorative justice emerged in the latter part of the 20th century as both a theory and practice of criminal justice (Barnett 1977; Christie 1977; Eglash 1977; Braithwaite 1989; Zehr 1990). Since then it has become one of the most debated areas of criminology within the western world (Cunneen & Hoyle 2010). In general, advocates of RJ have argued that conventional methods of criminal justice fail to respond adequately to the needs of victims, offenders and the communities they come from (Braithwaite 1989; Zehr 1990). Instead, the criminal justice system has tended to view crime as a violation against the state which, as representative of society, has punished offenders for wrongdoing. Victims and other affected community members remain on the periphery of justice, typically seen only as a source of evidence for criminal prosecution.

Restorative justice, on the other hand, proffers a more inclusive form of justice, seeing crime as interpersonal violations which are best resolved within the communities they occur (Christie 1977). Central to RJ practice is the reparation of harm caused by criminal or otherwise wrongful acts⁴² (Zehr & Mika 1998: 52; Strang 2002). And rather than punishing and stigmatising perpetrators of crime, RJ is primarily concerned with the *engagement* of those affected by wrongdoing in a dialogic process which aims to achieve *reparation* – be it emotional, material or to relationships.

⁴² Wrongful acts or “wrongdoing” will be referred to as behaviour which causes harm but which may not be deemed as criminal. In Chapters One and Two I referred to these as “low-level” incidents. They often involve anti-social behaviours that when viewed in isolation do not amount to a specific hate offence.

It is outside the scope of this chapter to review the vast literature on RJ. Instead, in line with the thesis' focus on repairing the harms of hate crime, this chapter examines the reparative capabilities of RJ. It begins by introducing the central tenets of RJ theory and outlining several modern justice practices that have incorporated its values. This part of the chapter reflects on the importance of victim participation in RJ as central to its harm repairing capabilities. Part II then explores the normative assumptions made within the literature about how restorative processes help to repair the harms of crime. Within this section I also review empirical studies that have investigated the emotional healing effects of RJ and which have provided persuasive evidence of its therapeutic effects. Part III moves on to an examination of some of the methodological limitations of the current body of research and to a discussion on what is meant by the RJ "ideal". It is here that I argue that the aims of RJ should not be confused with what the process can realistically be expected to achieve within the complex societies we inhabit. Finally, in Part IV I reconceptualise RJ for hate crime and introduce the reader to the theoretical benefits and possible pitfalls of giving effect to restorative goals in such socio-culturally sensitive cases.

PART I: What is Restorative Justice?

Restorative justice can take a variety of different forms (Braithwaite 1999).⁴³ This has led academics to conceptualise it in different ways. For some, it is simply a set of practices (the "encounter conception" – Ashworth 2002: 578), while for others RJ is an overarching theory of justice (Dzur 2003). A few have even conceptualised RJ as a means of transforming the way that we live our lives; from criminal justice to social ordering (the "transformative conception" – Sullivan & Tifft 2001). Divisions have also appeared within the extant

⁴³ Victim-offender mediation, family group conferences, healing circles, restorative cautioning, amongst others.

literature as to: whether RJ is a type of practice or an outcome (Daly 2002a); whether it incorporates retributive elements as well as restorative (Ashworth 2002; Daly 2002a); what practices should officially be labelled as “RJ” (McCold 2000); whether RJ processes should focus on reducing reoffending or on repairing the harms of crime (Braithwaite 1989; Zehr 1990), and finally, whether RJ is a totally separate system of justice or a process that can be incorporated into the current criminal justice system (see Gavrielides 2007). Such a broad range of views has meant that a single unifying definition of RJ remains elusive. Theo Gavrielides (2007) reflects thus, that the only consensus on the conception of RJ is that there exists no consensus of its exact meaning.

To some extent, the failure of restorativists to form a common definition of RJ has meant that it has failed to gain currency within most criminal justice systems (Cunneen and Hoyle 2010). Nonetheless, while conceptual perplexities persist, several *values* of RJ are consistently articulated throughout the literature. Gerry Johnstone and Daniel Van Ness (2007a: 16) for example, state that regardless of whether RJ is deemed to be a practice, theory or ideology, the same concepts of “encounter”, “repair” and “transformation” are embraced by all. In this sense, it is perhaps best to view RJ, not as a theory divided by opposing camps (Daly 2002a), but as a set of values, beliefs, processes and outcomes all of which will constantly intersect.

The aims of restorative justice

Howard Zehr in his seminal book *Changing Lenses: A New Focus for Crime and Justice* argued that crime is a “wound in human relationships” which requires convalescence (Zehr 1990: 181). Perpetrators of crime have “obligations to restore and repair” the interpersonal harms that they cause. This is best achieved by bringing together the “stakeholders” in the

offence – typically the victim, offender and other affected community members (Daly & Immarrigeon 1998) – who discuss the harms caused and the ways they might best be repaired (Zehr 1990; Considine 1995; Zehr & Mika 1998).

This dialogic process begins by focusing on the offender's accountability for the crime or wrongdoing committed (Braithwaite 1989). Typically, an offender will have admitted to the offence before being asked to explain the motivations behind his or her offending behaviour.⁴⁴ Braithwaite argues that part of the communication process within RJ is the shaming of the offender:

Because shaming is a participatory form of social control, compared with formal sanctioning which is more professionalized than participatory, shaming builds consciences through citizens being instruments as well as targets of social control. Participation in expressions of abhorrence toward the criminal acts of others is part of what makes crime an abhorrent choice for us ourselves to make (1989: 80).

The social condemnation conveyed by restorative participation helps offenders to understand the hurt and suffering experienced by the victim as well as the immorality of their actions. This is likely to induce a feeling of remorse in offenders who feel contrition for what they have done (Harris et al 2004: 201). In turn, an offender is likely to offer some form of reparation for his or her wrongdoing, most commonly an apology, which arises organically from the emotional dynamics of restorative dialogue. In some cases this *may* be followed later by forgiveness by the victim and victim's family (Strang & Sherman 2003: 22; Harris et al 2004).⁴⁵

⁴⁴ Though as we will see in some restorative practices (such as community mediation) the offender may never fully admit to his or her crime, while in other cases both parties may be responsible for anti-social behaviour.

⁴⁵ The showing of remorse by the offender can often represent the turning point in offender-victim communication. Strang and Sherman (2003) argue that an apology can be central to the victim healing and that for some victims to fully recover they will need to be able to forgive (Strang & Sherman 2003: 28).

Maxwell and Morris (2002) explain that feelings of remorse can be the result of “empathy or understanding the effects on victims” (Maxwell & Morris 2002: 280-81). Harris et al (2004) support this contention by arguing that offenders confronted with the victim’s traumas, will more often than not feel compassion for them. Offenders are like any other human being in that they will feel empathy for those who are suffering (Harris et al 2004: 200). The shaming process and/or empathy will be the catalyst for attitudinal change. If this is possible, the benefit to the community as a whole is that the victim and offender are involved in reconciliation and the road to recovering the injuries is galvanised (Dzur & Olson 2004; see further analysis on empathy and attitudinal change in Chapter Seven).

Vital to the restorative process is that all voices are heard with no stakeholder silenced by domination (Braithwaite 2003: 157). Ultimately, the objective is for the parties to find restoration through inclusive discussion followed by some form of restorative agreement (Zehr & Mika 1998). In most cases this should entail the offender (or both “parties” in community mediation meetings⁴⁶) putting right the wrongs they have committed via some form of reparative action, such as making a verbal or written apology, rectifying damaged property, paying financial compensation, and/or giving assurances that they will not repeat their harmful actions (Braithwaite 1989).⁴⁷ Offenders are then reintegrated back into the community, free from punitive labelling or stigmatisation (Braithwaite 1989).

⁴⁶ See further below.

⁴⁷ Although outside the scope of what this chapter, it is worth noting that some academics have questioned whether the inclusiveness of RJ might have detrimental impacts upon due process rights prescribed under the current justice system, see Ashworth (2002; 2003).

What practices are “restorative”?

Johnstone and Van Ness (2007a: 7) state that for a justice process to be considered as credibly “restorative” it must encompass a number of aspects. First, the process must be relatively *informal* and aim to involve the victim, offender(s) and others closely connected to them (or the crime) in a *discussion* about what happened, why it happened, what harms resulted from it and what should be done to repair those harms. Second, emphasis must be given to *empowering* other people who have been affected by the crime. Third, facilitators of any RJ practice must promote a response to the crime that focuses on *responsibility* and making *amends* rather than on labelling, punishing and stigmatising offenders. Fourth, decisions should be based on set values such as *respect* and *inclusion*. Fifth, there should be time devoted to talking about *harms*, the needs of victims and what is required to help victims recover from their experience. Finally, emphasis should be placed on strengthening *relationships* and resolving the situation (see also, Zehr & Mika 1998 and Braithwaite 2003 for RJ “signposts”).

There are a growing number of justice processes which have acquired the label of “RJ” (see below). Some of these encompass all of the values expressed above, while others will incorporate just several restorative principles within their practice. Most worrying is that some practices claim to be “restorative” but in reality fail to incorporate RJ values, at least as they have been envisaged by restorative scholars (see Chapter Four).

Two of the most frequently discussed practices that incorporate restorative principles are victim-offender mediation (VOM) and family group conferences (henceforth conferences – I will at times refer to these collectively as “RJ meetings”) (see Gavrielides 2007). Both practices are alike and typically involve a face-to-face meeting⁴⁸ between the victim and offender in a safe environment to discuss the incident, the harms it has caused and how these

⁴⁸ Indirect meetings are discussed below.

harms should be repaired (Zehr & Mika 1998). However conferences, unlike VOMs, usually include other community members who have been affected by the crime. Most conferences include family members or friends of victims/offenders but can also involve state agency workers such as police officers, social workers and/or housing officers.⁴⁹

In both “types” of RJ meetings the facilitator typically starts by asking the perpetrator to explain his or her actions.⁵⁰ The facilitator then encourages all parties to talk about how the incident/s has affected their lives. The aim of such meetings is for the wrongdoing to be discussed in a calm and empathic environment (Braithwaite 1989). The participants decide together how the harm should be repaired. This will often involve some form of agreement as to how the offender will repair the harm caused (known as a reparation agreement or mediation agreement; Johnstone & Van Ness 2007a). Having been confronted with the harms that the incident has caused, many offenders respond by apologising to their victims (see Part II). However, an apology should never be forced, but rather flow organically from the dialogic process. In turn, victims often accept perpetrators’ apologies and in some cases go on to offer forgiveness (see further, Part II below). Both VOMs and conferences have been described as “fully restorative” (as opposed to other “partly restorative” processes) as they include all the recognised elements of a RJ practice (described above) (McCold 2000).

RJ practices in the United Kingdom

It has only been in the last 15 years that RJ has found a legislative footing within the UK. Before then restorative approaches to crime were developed through various criminal justice institutions, notably the probation service in the 1980s (Van Ness 2007) and Thames Valley Police in the 1990s (Hoyle et al 2002). Within the “third sector”, mediation centres were

⁴⁹ This is especially the case in community mediation meetings where a multi-agency approach is frequently implemented (see Chapter Six).

⁵⁰ Many practices use a script to follow, allowing the meeting to be informal but simultaneously structured.

opened during the 1970s in order to resolve interpersonal conflicts within local communities (see further below). More recently, restorative approaches have been utilised in schools as a means of resolving cases of bullying and other student disputes (Morrison 2007).

The *Crime and Disorder Act 1998* formally introduced concepts of RJ into the criminal justice system by replacing police cautions for young offenders with reprimands and warnings, *supposedly* based on restorative principles (Hoyle & Zedner 2007).⁵¹ The Act also established the “reparation order” used by the courts to ensure that offenders undertake reparative work directly to the victim or community. Shortly after in 1999, the *Youth Justice and Criminal Evidence Act* established the “Referral Order”, a mandatory sentence imposed on young offenders (10 –17 year-olds) pleading guilty to an imprisonable offence (Morgan & Newburn 2007: 1041). Previously, a referral order could only be imposed on a first-time offender. However, as of 2009 orders can now be made for first and second time offenders (s 35 *Criminal Justice and Immigration Act 2009*).⁵² Orders are administered by Youth Offender Panels (YOPs) and managed by Youth Offending Teams (YOTs). Panels consist of two trained volunteers who are advised by a YOT member. Victims are often invited to take part in panel discussions, however the offender and his or her guardian must attend. As part of the referral order, YOTs often set up RJ meetings (family group conferences) facilitated by a restorative practitioner and attended by the victim and his/her supporters and the offender and his/her supporters.⁵³ The young offender is asked to sign an agreement, a legally binding document, which summarises the outcome of the panel, including any reparation agreed

⁵¹ The Act also established the Youth Offending Teams (YOTs) whose responsibility is to manage young offenders.

⁵² Unless the crime is serious enough to justify a custodial sentence or unless the court orders an absolute discharge.

⁵³ Though it was my experience during this study that not all Youth Offending Services use restorative justice practitioners to facilitate family group conferences. And in some cases areas, YOT members simply ask victims to attend panel meetings without any preparation (see Newburn et al 2002).

through family group conferences (Morgan & Newburn 2007; see Case Study 2, Chapter Seven).⁵⁴

The implementation of RJ within the criminal justice system has not just been through legislative means. One year prior to the enforcement of the *Youth Justice and Criminal Evidence Act* Thames Valley Police Service, under the leadership of Chief Constable Charles Pollard, established a restorative justice cautioning scheme (Hoyle et al 2002). The model was based on structured dialogue about an offence, whereby victim and offender would come together to discuss ways in which the offender might help to repair the harm he or she has caused. Facilitators of the process are given a script that provides an “ordered set of explanatory statements, questions and prompts” (Hoyle 2002: 101). Unlike agreements made in family group conferences carried out through referral orders (see above), the restorative caution does not provide means through which victims could get redress if acts of reparation are not carried out. Nevertheless, the development of restorative cautions has proved popular and similar schemes have proliferated across the country as police services find new ways of disposing of minor offences, often in cases where prosecution is not deemed viable (Hoyle 2002; see Chapter Four).⁵⁵

⁵⁴ For example, a letter of apology, manual work done for the victims, or compensation. The Government has also introduced several other restorative measures under the *Criminal Justice Act 2003*. Section 22 of the Act introduces the conditional caution allowing police officers to impose conditions to a caution “ensuring that... [the offender aged over 18] makes reparation for the offence” (s 22(3)(b)). Section 142 of the Act consolidates the use of RJ within the criminal justice by introducing a new purpose of sentencing at subsection (e) which states “the making of reparation by offenders to persons affected by their offences”.

⁵⁵ During 2008-2009 a Youth Restorative Disposal was piloted in eight police forces across the country as a means of disposing of minor “low-level” offences and anti-social behaviour. The scheme proved popular but is yet to be rolled out nation-wide. Other restorative work continues to be undertaken by probation services under the auspices of Victim Liaison Officers, though due to government cut backs this work has recently been restricted.

RJ practices outside of the criminal justice system

The advancement of RJ both statutorily and via criminal justice institutions is still a relatively recent phenomenon. Before this, community mediation centres opened, guided by RJ principles, to find resolutions between victims, offenders and other community stakeholders. These bodies continue today, working alongside conventional justice processes either as an alternative to traditional methods of crime control or in addition to them (Gavrielides 2007).⁵⁶

Community mediation, like VOM, uses both direct and indirect meetings between the stakeholders of a crime or those embroiled in anti-social behaviour, in order to repair the harms they have caused. As with other forms of RJ, at its heart are the notions of “encounter”, “repair” and “transformation” (Johnston & Van Ness 2007a). In conflicts where one party has been accused of a crime the aim will be: to explore what has happened and why; to consider how the alleged incidents have affected participants’ lives; to enquire into issues around causation; and finally to find a resolution that is acceptable to all or most. Community mediation typically ends with a mediation agreement outlining the undertakings that both parties have agreed to.⁵⁷ This may include an apology⁵⁸, but in most cases it will include a promise to cease certain activities and to avoid combative communication if similarly provoked in the future.

While community mediation is largely based on restorative values, it lacks certain attributes which have prevented some restorativists from labelling it as “fully restorative” (McCold 2000). Unlike other RJ meetings, the parties do not arrive with the pre-existing labels of “offender” and “victim”. Instead, the “parties” will commonly be referred to

⁵⁶ Such organisations became central to the empirical endeavour of this thesis, see Chapter Four.

⁵⁷ These agreements are not legally binding but can in some cases have implications for participants who break the agreement. For example, where housing officers are party to a mediation meeting, breach of the agreement may also result in breach of the participant’s tenancy agreement (see Chapter Six).

⁵⁸ It should be noted that, while community mediation rarely results in direct apologies or material reparation, participants frequently make physical gestures, such as shaking hands and facial expressions, such as smiling, during meetings which indicate apologetic gesturing (see Chapter Five).

community mediation by other organisations, such as the police and/or local housing authorities who have made previous attempts at resolving accusations and counter claims of crime or anti-social behaviour. In many of these cases it is common that police investigations into reported incidents, especially those involving neighbours, will have lacked the evidence required for individuals to be charged with an offence. This means that those accused, rather than convicted, of wrongdoing are less likely to show willingness to take responsibility for their actions prior to the start of the mediation process.

However, as we will see in the chapters that follow, the non-stigmatising process found in community mediation does not prevent the parties from taking responsibility and/or making reparations for their actions. In fact, in many cases it is the non-labelling of parties that gives mediation its greatest potency (see Chapter Four), allowing meetings to explore both context and culpability before finding resolution and reparation for the harms that have been inflicted by both sides (see Chapters Five, Six and thesis Conclusion).

Victim Participation

Victims meeting offenders

This chapter has already begun to highlight how harm reparation is contingent on victims participating in RJ practices. Hence the effectiveness of RJ is largely diminished if the victim fails to take part directly in RJ meetings (Strang & Sherman 2003). Of some concern then, is that studies in the UK have found that victims are frequently absent from direct RJ meetings (Hoyle et al 2002; Newburn et al 2002; Crawford & Newburn 2003; Sherman & Strang 2007⁵⁹). Victims' reluctance to take part has been attributed, at least in part, to feelings of

⁵⁹ For example, Hoyle et al (2002) found that only 14% of victims were present at a restorative cautioning scheme. Crawford and Newburn found that only 13% of victims attended referral panels.

anger and fear held towards the offender (Sherman & Strang 2007: 62). Concerns about confronting offenders and the potential for repeat victimisation can also hold victims back (Hoyle 2002: 105; Green 2007: 180).

On the other hand, research in Australia has documented much higher rates of attendance (Wundersitz and Hetzel 1996; Strang 2002). For example, Strang et al (2006: 288) reported victim attendance rates of up to 90 percent in Canberra (RISE); the authors suggesting that this may be due to Canberra being a “well-bonded city” with a strong sense of “civic duty” (Strang et al 2006: 288). It is also likely to be a result of the way in which victims were asked to attend conferences. Instead of inviting participants to consider participating, they were simply asked “when” would be a good time to attend (Strang et al 2006), inferring that the meeting was not something they might wish to consider but rather something they *should* attend.⁶⁰

More recently, Peter Merry, ACPO lead on Youth Restorative Justice, reported victim attendance rates of 84 percent in RJ conferences held by Norfolk Police (Merry 2009). Merry (2009) asserted that such high attendance rates were the result of effective dissemination of information to victims about the purpose of RJ and expectations about what might be achieved. Two teams worked on providing RJ meetings. The first team prepared cases by contacting victims, providing them with information about the process, while the second team facilitated meetings. By working together in this way, Merry explained that participation rates could be dramatically increased.

There will continue to be limitations to harm reparation if victim participation remains low. This is inevitably connected to the dissemination of information about RJ which, in turn, is linked to organisational constraints including limited resources, particularly for effective facilitator training and the allocation of sufficient time to prepare cases (Maxwell & Morris

⁶⁰ This, of course, has implications for the notion of “informed consent”.

1993: Crawford & Newburn 2003: 187). Dignan (2005) notes that RJ programmes that run outside or on the margins of the criminal justice system will continue to experience developmental problems, including difficulties attracting referrals and tensions between programme managers and mainstream criminal justice agencies. In the longer term, increasing public knowledge about RJ processes may help to improve victims' willingness to participate. The continued proliferation of RJ practices within the criminal justice system will also increase the acceptance of it as a legitimate form of justice by other criminal justice agencies.⁶¹ Indeed, unless RJ practices become embedded within both youth and adult criminal justice, the public will continue to focus their expectations of "justice" on conventional retributive punishments.

Indirect participation

While the involvement of victims in structured meetings with their offenders can prove highly beneficial to both parties, the failure of victims to take part in such meetings should not equate to their not having taken part in RJ. Rather, victim participation refers to active participation at some point during the restorative process (Hoyle 2002). Indirect mediation (often referred to as shuttle mediation), for instance, involves participants discussing their case with a RJ practitioner (or mediator) separately from other parties involved in the offence or incident and (in best practice) getting feedback from the facilitator about his or her meetings with the other party.⁶²

Indirect mediation will inevitably lack much of the emotional empathy gained from face-to-face communication. It will be much more difficult for an offender to appreciate the

⁶¹ The coalition Government's 2010 Green paper, "Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders" has emphasised greater use of RJ in the criminal justice system.

⁶² Such practices have been described as "partly restorative" as the victim and offender never meet face-to-face (McCold 2000).

harms he or she has caused without witnessing first-hand the pain that the victim has suffered (Hoyle 2002). Yet this does not mean that indirect mediation fails to provide various benefits to victims and offenders (Hoyle 2002; Hoyle et al 2002). Many of the benefits that victims gain will occur through their engagement with the justice system and the obtaining of some form of reparation from the offender (see Part II). For example, indirect mediation still provides victims with an opportunity to express how the crime affected them, allowing victims to feel that they are taking an active role in the justice/conflict resolution process. Information about why the wrongdoing was committed and whether the perpetrator feels contrition can also be conveyed through letters or by mediators themselves (Hoyle 2002). Hence, a key component to the reparative conception of RJ is not necessarily face-to-face communication between offender and victim (though this can often enhance the process), but rather the engagement of victims in a process that aims to bring about some form or restitution.

PART II: Repairing harms? Normative assumptions and empirical findings

Acts of Reparation

Conventional justice processes have been criticised for exacerbating victims' emotional turmoil, such as where the police, the CPS and defence lawyers question and interrogate the victim's side of the story (a form of secondary victimisation) (Zehr 1990; Strang & Sherman 2003; see Chapter Six). Advocates of RJ, on the other hand, argue that restorative practices avoid this more formalistic process of justice, and instead attempt to aid victim healing in a variety of different ways (Considine 1995; Zehr & Mika 1998). The next section explores further how RJ practice can do this by analysing some of the normative assumptions made

about how RJ helps to heal both material and emotional harm. Further to this, empirical research is analysed to see whether these *potential* reparative benefits have been realised in practice.

Material reparation

In cases of material loss, such as property damage or theft, reparation agreements will often include a form of material restitution (Sharpe 2007), such as financial compensation and/or an order to return property (for example, a stolen mobile telephone). Material reparation can also take the form of reparative work such as mending a damaged fence or painting over graffiti. Such acts of reparation help to restore those material possessions taken or damaged and, in this sense, can help to return victims to a position (at least materially) to that prior to the incident.

However, material reparation can also help with emotional healing (Strang 2002). The fact that the offender is working to repair the harm, in itself, suggests that he or she is taking responsibility for his actions. Demonstrating responsibility in this way indicates that the offender is accountable for his actions and it is this accountability which can potentially help vindicate victims from feelings of self-blame. The act of “repairing” creates a new message to the community that the offender’s actions were wrong and that the victim has suffered. In some cases this can give victims a renewed sense of “righteousness” (Strang 2002).

Taking part

While material reparation is important when repairing the harms of some crimes, various victim surveys have shown that it is often emotional reparation (such as an apology) which is of greatest importance to victims (Strang 2002: Strang & Sherman 2003). Advocates of RJ

argue that emotional healing can be facilitated when victims become actively involved in the justice process (Zehr 1990; Strang 2002). By providing victims with authentic information about the offender(s) and his or her reasons for committing the offence, victims often gain a greater sense of satisfaction with the justice process. The inclusion of victims in the justice (or conflict resolution) process is recognition of the impact that the incident has had on them. Provided stakeholders are not given false expectations as to what they will gain from the process, participants may gain a sense of self-worth simply by taking part (Strang 2002).

If most victims feel satisfied with the RJ process an inference can be drawn about its efficacy. Victim satisfaction reflects the experience a victim has of RJ as a whole. It should therefore encompass all components of a restorative practice, from how victims obtained information about their case to how victims' opinions were taken into consideration when a determination was made about appropriate reparation. If victims are satisfied with the RJ process, more often than not this is *one* indication that the process is effective at responding to victims' needs.

Gwen Robinson and Joanna Shapland (2008) note, however, that many RJ advocates have been keen to distance themselves from notions of therapeutic treatment because of scepticism as to whether the criminal justice system should, or is capable of, providing such a service (Robinson & Shapland 2008: 339). Yet while studies into the crime reduction capabilities of RJ remain largely inconclusive, a growing body of research has begun to provide persuasive evidence as to its healing qualities. Many of these studies have used quasi-experimental methods comparing the satisfaction outcomes among participants in RJ meetings with a sample of those who have attended court proceedings (see for example, Strang 2002). Those studies which have examined conferences have, in particular, used rigorous long term research methods of observations, interviews and self-administered questionnaires (see for example, Daly 2001). The statistical analysis of resulting data has

enabled researchers to identify a number of process-related factors relevant to harm reparation (see further, Part III).

Sherman and Strang's review of RJ research findings states that studies "almost always indicate a high level of satisfaction with the process" (2007: 62; see also, Green 2007: 177ff). For example, in Shapland et al's (2007:27) research into RJ processes in three locations in England, 85 percent of victims were satisfied with "their" conference (all other studies reviewed for this thesis showed that the majority of victims were "satisfied" with the RJ process, see: Umbreit & Coates 1992: 24; Umbreit & Coates 1993: 574; McCold & Wachtel 1998: 51; Strang et al 1999: 125; McGarrell et al 2000; Umbreit et al 2000: 220; Daly 2001; Umbreit et al 2001; Hoyle et al 2002; Sherman et al 2005: 390; Triggs 2005; Strang et al 2006; Shapland et al 2007).

Procedural fairness

Strang and Sherman (2003) assert that "information" and "participation" are key components in obtaining victim satisfaction (see further, Miers et al 2001: 33). In comparing family group conferencing with court processes, Strang (2002: 119) found that conferences provided victims with information about their case in good time in 76 percent of cases, compared with only 14 percent of victims who went to court. Linked to the obtaining of information is the victim's perception of "procedural fairness". This means that all stakeholders have had an opportunity to engage in the process, that perpetrators (or participants) take responsibility for their actions, and that facilitators act impartially in mediating an agreement between stakeholders. Ensuring that these components of RJ are perceived to be fair increases the

probability that victims will experience genuine healing. Again the majority of studies have revealed that victims find RJ processes procedurally fair (see references directly above).⁶³

The role of the facilitator becomes pivotal in ensuring that victims and offenders feel safe in meetings and are provided with an opportunity to communicate with each other. Studies which have asked questions about the facilitator's role in RJ indicate that most participants feel that facilitators are in control of meetings (see for example, Shapland et al 2007: 26). While research has also found that the majority of victims are given the opportunity to express their feelings about how the crime affected them (see McCold & Wachtel 1998: 55; Miers et al 2001: 31; Triggs 2005: 5.7; Shapland et al 2007: 24).⁶⁴

The consistently high levels of satisfaction reported in RJ studies show that victims find restorative practices to be a largely positive experience. However, satisfaction and procedural fairness cannot itself be used as a benchmark for assessing the effectiveness of RJ (Braithwaite 1999; Green 2007). For instance, satisfaction does not tell us directly whether RJ repaired the harms of crime, or indeed whether it reduced reoffending rates. Thus, there are several other processes within RJ which must be examined in order to more thoroughly assess its harm repairing capabilities.

“Story-telling”

Restorativists often assert that one of the most helpful ways to allow victims to recover from their experiences of victimisation is to provide them with the opportunity to tell their side of the story (Zehr 1990; Kay 2008). Victims who are invited to play a central role in the justice process can gain therapeutic benefits by describing how the crime has impacted upon their

⁶³ For example, McCold & Wachtel (1998: 51) found that overall 96% of conference participants experienced fairness in their case compared to 79% who went to court.

⁶⁴ Though it should be noted that Maxwell et al's (2004) study found that only about half of victims felt that they were involved in the decision making process.

life (Braithwaite 2002). Judith Kay (2008) describes this process as “story-telling” and argues that it enables victims to be rescued from the shadows of silence, isolation and despair, by bringing them forward into a place of greater security. Victims who vocalise their experience of emotional pain will often find a certain therapeutic release from doing so, allowing them to feel more supported by those who are interested in hearing their story and who sometimes follow this up by providing additional support (see “The role of mediators in supporting parties”, Chapter Five).

Lawrence Sherman et al (2005) refer to cognitive behavioural therapy (CBT) research in explaining how victims recover via the communication process. They state that victims who discuss their previous traumas in a secure and safe environment can experience what is termed a process of “deconditioning”. This process relates to conditioning theory about the way that fear is acquired and relinquished. It is argued that feelings of fear can be extinguished by deconditioning memories of the trauma through associating them with safe settings such as an RJ conference. The process involves victims being exposed to “prolonged periods of anxiety provoking stimuli” (Sherman et al 2005: 369) which in turn helps to decondition their cognitive attachments to fear. This is achieved by victims confronting their fears and by reliving their experiences and by meeting with people involved in the traumatic events. Victims who confront their trauma in this way are able to challenge their fears, which, in turn, begin to dissipate as the memories and feelings associated with the events begin to change. RJ, as a process of “deconditioning”, therefore allows victims to take back the power they lose through victimisation; a process less likely to occur through conventional practices where the state has traditionally denied victims an active role in the resolution of their case (Christie 1977; Zehr 1990).

Understanding why: the power of empathy

Facilitating structured dialogue also allows victims to ask offenders why they committed the crime (Sherman et al 2005). This time it is the offender's story that can help victims' emotional wellbeing. In some cases victims will come to realise that they were not to blame for their own victimisation, providing them with further means through which they can address issues of self-blame (Sherman et al 2005: 369).⁶⁵ The offender's own story, can in some cases, act to bridge the emotional gap between the parties as the victim comes to appreciate the motives of the offender, as well as the socio-economic and personal background factors relevant to his or her offending behaviour (see Chapter Seven).

RJ meetings can also provide an opportunity for victims to ask offenders questions without the fear of violent retaliation, though facilitators cannot guarantee that victims will not be abused in some way by participants (see Part IV, Chapter Seven). Victims do, however, frequently obtain assurances that the offence will not happen again; ultimately reducing their fears of repeat victimisation (Sherman et al 2005: 369; see Chapter Five). It is through this inclusive process of dialogue that both victim and offender can begin to empathise with each other, paving the way for the rebuilding of individual and community relationships (Zehr 1990; Maxwell & Morris 2002; Harris et al 2004).

Sherman et al (2005) link the process of empathy with the sociological theory of "interaction ritual". This theory suggests that victims' traumas can be repaired through stakeholders better understanding each others' experiences of harm. Interaction ritual occurs where people come together to discuss a matter. It involves clearly defined communication boundaries being drawn between participants, who focus on a common purpose, using a

⁶⁵ However, this aspect of RJ is complicated in hate crime cases where the victim will be aware that they have been targeted because of who they are. Though it may be of relief for some victims, who believed their victimisation to be motivated by prejudice but who find out through restorative dialogue that it was in fact not.

common emotional mood (Strang et al 2006: 285-86). RJ, as a form of interaction ritual, gives participants a sense of social solidarity (at least for the time a RJ meeting lasts). Longer term, it can produce positive emotional outcomes such as increases in confidence and even elation (Sherman et al 2005: 371). It is the intensity of emotions which is the driving force behind the success of interaction ritual. The innate ability of humans to feel compassion for one another allows stakeholders to find new connections, not just with each other, but with themselves.

Empirical research has shed positive light on the empathic aspect of RJ. Shapland et al's (2007: 37) study reported that conferencing provided 69 percent of victims with an understanding of why the offence was committed against them. McCold and Wachtel (1998) also found that 62 percent of victims agreed that they now had a better understanding of why the offence was committed. In line with these findings, Hoyle et al (2002: 36) showed that victims often felt differently about their offenders post conference, suggesting that their experience of RJ had helped to break down "stereotypes" held about each other (see further, McCold and Wachtel 1998: 56; Miers et al 2001: 34; Umbreit et al 2001: 18; Shapland et al 2006: 63).

Receiving apologies

In response to the victim's vocalisation of harm and ensuing empathy, offenders often go on to display remorse and contrition (Harris et al 2004). This is typically expressed via a verbal or written apology from the offender; though other physical gestures such as a hand shake, smiling and changes in body language can also display the offender's regret for wrongdoing (see Chapter Five). Physical gestures can be crucial to a victim's sense of the offender's genuineness. A positive change in body language may be indicative of the offender's

contrition. A genuine apology suggests that the offender is truly sorry for what he has done (Strang 2002: 56). This allows for the emergence of a new relationship based on acceptance. In turn, the offering of genuine apologies provides victims with an opportunity to relinquish their attachment to feelings of resentment and frustration, allowing them to move on with their lives more peacefully (Strang et al 2006). This is perhaps why many studies have shown that victims find “closure” – an under-researched concept but generally taken as meaning that victims’ experience emotional healing – enabling them to put the incident behind them before moving on with their lives (Hoyle et al 2002; Maxwell et al 2004; Shapland et al 2007).

The offender’s sincerity is of central importance to a victim’s ability to move beyond their experience of crime (Strang et al 2006: 286). Apologies which are viewed as disingenuous are likely to adversely affect the victim’s sense of being wronged (Daly 2001). In such cases the victim will be angry that the offender has not taken seriously the harm he or she has caused or, worse, they may view the apology as a means through which the offender can manipulate the process in order to receive a lesser punishment (Daly 2001). If the process fails to elicit a genuine reaction of contrition it risks exacerbating rather than repairing the harms caused.

There is some division in the literature over whether victims perceive apologies to be genuine. While some studies report that most apologies are considered by victims to be genuine (Strang 2002: 18; Sherman et al 2005: 388), others have highlighted the fact that many victims simply do not believe that the offender was truly sorry (Daly 2001; Hoyle et al 2002: 35). For instance, Daly (2001) found that a year after conference only 28 percent of victims felt that the offender “was really sorry”. Of the rest, 31 percent of victims felt the offender had not been sorry but would get off easier if he/she apologised, while 26 percent thought that the offender was pushed into saying sorry (see also findings in Chapter Five).

The power of forgiveness

Forgiveness is not a goal of RJ but some believe it is not only desirable, but achievable (Strang & Sherman 2003: 23). Potentially it offers offenders a renewed sense of self, while at the same time providing therapeutic benefits for victims (Strang et al 2006; see also, Holter et al 2007). In particular, it has been shown that forgiveness can reduce feelings of anger and resentment and lead to later reductions in anxiety and depression as victims release negative thoughts associated with the crime (Holter et al 2007: 313; see further, Enright & North 1998).

Studies have shown that in some cases where an apology or some other physical gesture displaying remorse has been given, the victim may respond by offering forgiveness directly to the offender (Maxwell & Morris 2002). Shapland et al (2007: 24) reported in their study that in 91 percent of those cases where an apology was made, the victim either accepted it or offered the offender forgiveness (Shapland et al 2007: 24; see also, Sherman et al 2005; Shapland et al 2007). Other studies have, however, shown lower rates of acceptance and/or forgiveness (see for example, Strang et al 1999).

Reducing emotional harms

Fear and anger

In Chapter Two we saw how feelings of fear and anger can have deleterious effects on victims, often preventing individuals from moving freely within a community. Reducing these emotional traumas is therefore a central part of restoring the harms of crime through RJ. There are various studies which have attempted to measure levels of fear amongst victims before and after RJ meetings. Strang et al's (2006) study, for example, which covered four

different locations comprising, Canberra (RISE), London, Northumbria and the Thames Valley, reported that in all four studies victims' levels of fear were substantially reduced after conferencing. In particular, within the London study – which included victims of violence – the level of fear experienced by victims dropped from 30 percent before conference to zero percent after (Strang et al 2006: 293). Strang's (2002: 98) earlier study similarly found that while 38 percent of victims of violent offences were afraid of their offender before conference this reduced to 14 percent after (20 percent to nine percent respectively in property offence cases). Moreover, only two percent of victims of violent offences anticipated that the offender would repeat the offence against them after the conference, compared to 18 percent who went to court (reductions in feelings of fear after RJ are also reported by: Umbreit & Coates 1993: 574; Sherman et al 2000; Umbreit et al 2000: 224; Daly 2001: 78; Hoyle et al 2002). Such findings suggest that RJ practices consistently help to reduce levels of fear and therefore help to free victims from its oppressive effects.

Feelings of fear are often associated with those of anger as victims become frustrated and resentful towards their offender. Anger is a dangerous emotion and is a key factor in violent retaliations between identity groups (see McGhee 2005). As with findings on fear, research has also suggested that reductions in anger can be achieved through RJ meetings. For example, Strang et al's (2006: 295) study reported that while 87 percent of victims felt anger towards their young offenders before a conference, this dropped to just 17 percent after. Results from the RISE study also showed that conferencing led to a decrease in levels of anger from 63 percent before to only 29 percent after (Sherman et al 2000). Of particular pertinence to the exploration of hate crime are findings that suggest victims who go to conference are less likely to want to retaliate against the offender, compared to those who attend court (Strang 2002: 138; see also, Strang et al 1998; 1999; Daly 2001: 78).

Increasing security

If victims are to regain their confidence within the local community they must feel secure when going about their daily routines. Increasing an individual's sense of security is imperative to the healing of the "self". Correlated to reductions in fear and anger are findings that also show that the majority of victims who lost their sense of security regained this after conference, especially in cases involving violence (Sherman et al 2000; Hoyle 2002). Still, not all victims regain a full sense of security. Strang (2002), for example, reported that "only" 46 percent of victims said the conference had partly or completely restored their sense of security. While this rate is less than half, it should be noted that 35 percent of victims in this study had stated that they had not lost their sense of security in the first place, meaning that 71 percent of those victims who had lost their sense of security had it restored after conferencing (Strang 2002: 100 and Strang et al 2006 both report similar findings).

Indirect mediation

Finally, research has provided some tentative indications about the healing potential of indirect mediation. While some offenders have been disappointed that victims have not attended meetings, one report showed no real statistical difference between levels of support and apologies received between RJ processes which involved the victim and offender meeting and those that did not (Shapland et al (2006: 64). Hoyle et al (2002) also reported that victims who were involved indirectly with the RJ process – as opposed to having no involvement – were much more likely to report moderate therapeutic benefits, as well as being less likely to feel afraid or angry (Hoyle 2002). While current research findings on

indirect mediation are somewhat more limited, they suggest that victims may still gain significant emotional reparation through their indirect participation in RJ.⁶⁶

Of course, a *full* experience of the type of healing which RJ *might* offer is only obtainable if each stage of the RJ process is successfully completed. In many cases victims will only complete part of this cycle and in a minority of cases victims will inevitably come away from RJ meetings feeling worse (Morris & Maxwell 1993; Strang 2002: 56). Nonetheless, it is clear that the growing body of research now strongly suggests that RJ practices provide both material and emotional reparation to a greater percentage of victims when compared to those whose cases go to court.

PART III: The limits of restorative justice

Methodological issues

The growing body of research studies, most of which have been cited above, have used rigorous research designs incorporating a variety of quantitative and qualitative methods comparing RJ with conventional justice processes such as court. From these findings it is fair to surmise that the body of research provides persuasive evidence that restorative practices frequently *help* to repair the harms of crime.

Nevertheless, the extant research into the reparative effects of RJ, while cogent, is not yet conclusive. There are some limitations relating to methodology which must be noted. Firstly, some studies (especially those examining VOMs) have not included control groups, the most reliable of which should involve random allocation of participants to either mediation or court (or other non RJ disposal). Other VOM studies have made comparisons with participants who are assigned to mediation but fail to attend. The benefit of using a

⁶⁶ The following chapters explore further the potential benefits of using indirect mediation.

control group is that results from the study can be compared and contrasted, giving weight to differences in outcomes between the groups. Dignan (2005) notes that findings from studies that use mediation participants only may be skewed as they represent outcomes from RJ practices where the stakeholders are enthusiastic about participating compared with those who are not. Furthermore, studies which fail to make observations of RJ meetings and rely simply on interviews or questionnaires may miss “process variables”, such as whether the victim received a genuine apology, which relate to process outcomes (Dignan 2005). In this respect, researchers may miss important data that help to explain how RJ impacts on participants.

Such methodological limitations, however, do not negate the value of interviews and questionnaires. Studies which use such qualitative techniques provide vital information about participants’ perceptions of, and opinions about, RJ practices. While findings are not directly comparable to conventional justice processes, much insight can be gained into victims’ experiences of the practices currently on offer and therefore they are better able to show *how* the restorative processes work, rather than merely showing that they do work. Moreover, one might also argue that exploring the value of a process does not necessarily require its direct comparison with an alternative process in order to evidence its utility or validity as an effective justice intervention (Wilcox et al 2005). Rather, what is of greatest importance is that empirical studies are rigorously administered while ensuring that they consider their own limitations (Wilcox et al 2005).

The restorative justice “ideal”?

Despite various studies suggesting that RJ can *help* to repair the harms of crime, Daly (2002b) argues that we must remain cautious about the reparative benefits of its practices.

She argues, persuasively, that there is a gap between the “ideals” of RJ and that which can be achieved in practice. Referring to research findings from the South Australia Juvenile Justice Research project (SAJJ), Daly (2001; 2002b) notes that a significant proportion of participants do not obtain “full reparation”. This is partly because victims experience crime differently; some are only mildly affected by feelings of insecurity and fear while others experience more severe emotional turmoil (Daly 2008). There are also varying degrees of distress relating to gender, type of offence and relationship to offender (Daly 2008). Daly argues that those victims who are more distressed by the crime are less likely to embrace RJ values and more likely to remain angry and fearful of the offender (Daly 2008). For example, within her 2001 study, 43 percent of high distress victims still had a negative attitude towards the offender after conference. She also notes that “*just* 38 percent” (emphasis added) of victims said that the offender’s story had an effect on them and “*just* 53 percent” (emphasis added) said that they had a better understanding of why the offence was committed (Daly 2001: 77).

Daly (2002b: 13) therefore expresses caution about RJ, explaining that “a prudent interpretation of [victims’] ... responses would be that while conferences do assist victim recovery, victims also rely on personal resources and support from others”. The “nirvana story” of RJ is an “ideal” that simply assumes people are ready to empathise, apologise and forgive and move amicably on with their lives (Daly 2002b). These are things that should happen most of the time yet SAJJ research shows that this happens only “some of the time” (Daly 2002b).

Expressions of concern about the true effectiveness of restorative practices, such as those noted by Daly, encourage us to pause and reflect on the aims and objectives of RJ. This cautious approach is helpful in that it reminds restorativists that RJ will rarely be the panacea that some might have hoped or advocated for. Equally, however, Daly’s note of caution must

not be used to disparage the use of RJ. No criminal justice system, or social justice measure for that matter, will rehabilitate *all* offenders and repair *all* the harms for victims. Thus we must not confuse the *aims* of RJ with our *expectations* about harm reparation.

The attainment of justice requires an ongoing struggle to reach an ideal goal, whether that be complete retribution, deterrence, rehabilitation or restoration (or an amalgamation of all these purposes). As Barbara Hudson asserts, justice is “...an aspiration, which is supremely important and worth striving for constantly and tirelessly” (2003: 192). However our *expectation* as to whether any of these aims can be fully achieved is somewhat different to the actual targeted goal. Failure to reach the ultimate goal of a justice measure is of little surprise. Sociological, cultural, individual and statutory (including human rights) constraints will inevitably limit the effectiveness of any justice process. In this sense, RJ, as with any practice, must operate within society’s socio-structural parameters, ultimately limiting its ability to provide “full reparation”.

Does RJ need to repair *all* the harms of crime before it can become a legitimate practice of criminal justice? I suggest not. Instead what is fundamental to the utility of RJ is whether a *substantial*⁶⁷ amount of victims obtain some form of reparation through restorative practice. As we have seen, both theoretical and empirical explorations of RJ suggest that practices do in fact help to repair the harms of a substantial number of victims who participate.

⁶⁷ What amounts to substantial is a question that requires further development. It may well depend on what form of reparation is under scrutiny. If the majority of victims obtain some form of reparation, be that emotional or reparation, we might say that a substantial amount of victims have attained restoration. In reducing feelings of fear, we might say that a significant minority is “substantial” where, for example, other conventional forms of justice provide even lower levels of reparation.

PART IV: Using RJ for hate crime? Challenges and opportunities

In Chapter Two I explored how and why hate crime victims frequently experience heightened levels of emotional trauma, including feelings of fear, anxiety and anger. We also saw that the often ongoing and regular abuse directed towards already marginalised identity groups results in their disempowerment and disenfranchisement from society (Perry 2001; Iganski 2008). Within this chapter we have explored how RJ attempts to re-orientate victims of crime from a position of disempowerment to become central players within the justice process. This is best achieved by encouraging victims to voice their experiences of crime and by offenders attempting to repair the harms they have caused.

The exploration of empirical research into RJ in this thesis suggests that, for a substantial number of victims it helps to reduce the emotional traumas caused by crime, improving levels of fear and anger while simultaneously increasing individual security. It is this reparative component of RJ which yields the greatest potential for victims of hate crime (see McConnell & Swain 2000; Shenk 2001). However, the dialogic process also promotes an empathic response from offenders who, having witnessed first-hand the harms they have caused, frequently go on to offer reparation for their wrongdoing. Hence, RJ not only helps to repair the harms of crime but may additionally engender a change in offenders' behaviours.

It is, however, overly simplistic to draw inferences about RJ's harm repairing capabilities by referring to theoretical goals and empirical research that shows victims of non-hate-motivated crime frequently obtain emotional benefits. In particular, we must remain cautious about the impact that RJ may have on stakeholders from different identity and social

backgrounds (Smith 2006). Issues pertaining to power imbalances, social inequalities and cultural differences may yet create vulnerabilities which prove inhibitive to the RJ process.

While some have begun to critique RJ in terms of social inequality and cultural difference (Hudson 1998; Busch 2002; Coker 2002; Daly 2002c; Strang & Braithwaite 2002; Stubbs 2007), few have carried out empirical research into these issues. Before this thesis moves on to an empirical exploration of whether restorative processes can first, help to repair the harms of hate crime and second, break down empathic divides between stakeholders of hate crime, the final section of this chapter introduces the theoretical opportunities and pitfalls that RJ might hold for hate crime victims.

Repairing the harms and engendering tolerance: the *theoretical* promise of restorative justice

The most important promise of RJ for hate crime is that it will provide victims with a platform to vocalise the pain that prejudice-motivated incidents have caused – including the heightened levels of fear, anxiety and anger that many will experience. The significance of “story-telling” for hate victims is amplified by the very fact that such individuals will have previously been without a voice, it being lost at the margins of society where minority groups are oppressed by hegemonic norms and cultural values which shape the socio-cultural dynamics of our modern society (see Chapters One & Two). As with other types of victims, the hope is that victims of hate crime will be able to better recover from their experiences of victimisation and move on with their lives with a greater sense of personal security.

The restorative values of “encounter”, “repair” and “transformation” (Johnstone & Van Ness 2007a) are therefore an attempt to strike down forms of cultural subjugation by bringing victims out from the shadows of disempowerment onto the centre stage of criminal justice. In particular, if participants are properly prepared and firm ground rules are set

before meetings begin⁶⁸, hate victims will have the opportunity to question offenders about their motivations, while the victim's community supporters help to demonstrate appropriate social condemnation against bigotry and prejudice (McConnell & Swain 2000). In turn, it is hoped that offenders will gain insight into the effects that their actions have had, not just on the primary victim, but to others who display similar identity traits.

Of particular importance in hate crime cases will be the emotion of fear, for both victims and offenders. With regards to victims, it is the fear of repeat victimisation that will have had serious emotional and physical repercussions (see Chapter Two). Promises made by the offender that the offence (or anti-social behaviour) will not recur will help to reduce the often enhanced levels of fear experienced by hate victims, allowing them to gain a greater sense of safety in the community; something which is less likely to be obtained through conventional justice practices. Of course the actions of others may still prevent victims from fully recovering from such emotional feelings, but by bridging the empathic divide between offender and victim it is hoped that victims will begin to rebuild their levels of individual security. In the longer term, reductions in levels of anxiety and anger will also be central to hate victims' recovery, allowing them to move on with their lives free from the fear and traumas of hate victimisation (see Chapters Five & Six).

For offenders, it is the fear of "difference" and the threat that their victim, and others like him or her, represent to the offender's own "in-group" (Chapter One). Important, therefore, is that inclusive dialogue holds the potential to evoke in hate offenders that which they have previously resisted – empathy. The vocalisation of harm and the emotional trauma caused by prejudice-motivated crimes may act to induce a natural response of contrition in offenders. In some cases both victim and offender will find some common ground. And although the parties will frequently come from different cultural worlds the emotional

⁶⁸ The importance of ground rules and preparation is examined in Chapter Seven.

empathy that most human-beings feel for each other may well supersede the “superficial” prejudices that *most* hate offenders possess (see Levin & McDevitt 2002; Walters 2011; Chapter Seven).

Greater understanding of cultural and identity difference, a direct result of inclusive dialogue, can act as a catalyst for attitudinal change, which can benefit both parties and the wider communities to which they return (Dzur & Olson 2004). If this is possible, the benefit to the community as a whole is that the victim and offender are involved in reconciliation and put on the road to repairing the harms (Dzur & Olson 2004). It will be important during structured communication that attempts are made to humanise gay, disabled, or minority ethnic individuals to the offender. Hence, unlike the retributive approach to hate crime, the hope is that RJ will actively help to bridge the cultural or identity differences that previously divided participants (Chapter Seven).

In his book, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Gavrielides (2007) documents various RJ case studies which have benefited victims in hate crime cases (see also, Umbreit et al 2002). In one case study an armed robbery was committed by two Arab men against a female Israeli who had perceived the attack to be racially motivated. Afterwards her relationship with Arab people became strained. Through a RJ programme of family group conferencing, the victim retold the events she had experienced. The perpetrators spoke of their involvement and of their sorrow, fully accepting responsibility. The process allowed the victim to vent her feelings and anger and was a successful part of her healing process, allowing her to again feel safe in the community. It allowed the perpetrators to seek forgiveness and reintegration back into the community by renewing trust in them. All parties expressed feelings of satisfaction and emotional relief after

the process (Gavrielides 2007: 203; see also, Rice 2003 who explores her own journey of hate victimisation and RJ).⁶⁹

From this example, and other similar case studies (Umbreit et al 2002), we can see that RJ has the potential, if managed sensitively, to diffuse conflict and expose ignorance and bigotry to critical scrutiny. Once prejudices are explored in a safe environment there is scope for effective challenge and subsequent modification of perspectives. Thus, it is *hoped* that RJ will help to reduce the levels of anxiety, anger, fear and frustration experienced by hate victims simply by allowing them to become a central part of the justice process. Ultimately, victims of hate crime may find some form of closure by receiving reparation, including, from the offender, assurances of desistance (see empirical analysis of these potential benefits in Chapter Five).

The potential pitfalls: power imbalances and re-victimisation

Taken at face value the promises of RJ for hate crime seem persuasive, both in terms of its harm repairing and offender edifying capabilities. However critics of RJ have expressed concern that the informal setting of most restorative processes will potentially lead to the manipulation of power differentials between stakeholders (Cunneen 2003). In cases where the offender holds a dominant position over the victim, RJ may simply become another means through which the victim is re-victimised (Busch 2002; Stubbs 2007). The vulnerability of certain victims and their pre-existing unequal relationship with their abusers certainly complicates the RJ process (see Cossins 2008). For instance, Stubbs (2007), referring to domestic violence cases, argues that the state may inadvertently put victims' welfare at risk by bringing them together with their offender. Many abused women wish to escape their

⁶⁹ See other case studies in Gavrielides 2007: 201-210.

abusive partners but fail to do so for fear that they do not have adequate means (emotional and/or financial) to leave (Busch 2002). Instead of offering such victims separation, RJ could bring victims and offenders closer together in an attempt at repairing their relationships and restrict the victim's choice about leaving their partner. Of most concern is that abusive partners may regain or maintain control over the victim's life by simply offering an apology (Busch 2002). In this sense, Stubbs (2007) asserts that RJ is unlikely to change the future behaviour of domestic abusers and therefore acts to maintain gendered control over female victims (see also, Coker 2002).

Such concerns are relevant in others types of crime demarcated by power imbalances, including hate crime. In Chapters One and Two, I referred to Perry's structured-action theory of "doing difference" to show how socio-cultural divisions lead to individuals from minority communities experiencing marginalisation and various forms of interpersonal and institutional discrimination. Experiences of structural inequality make up part of a continuum of prejudice which leads to many victims of hate crime experiencing regular forms of abuse by people they know (Bowling 1998). If we are to support victims of hate crime through empowerment and reparation, it is therefore imperative that the restorative process does not perpetuate the power imbalances inherent in most hate crime cases.

This process becomes complex when bringing stakeholders together in locales where individuals reside in fragmented, hierarchical and unequal communities (Crawford 2002; Smith 2006). This is made all the more difficult when we consider that the social distance between offender and victim may mean that neither party can identify with each other's cultural and/or identity backgrounds (Smith 2006). Stakeholders may live in different neighbourhoods, hold different beliefs and will typically socialise in different groups (Smith 2006; Crawford 2002). This may mean that participants of cross-cultural dialogue will

struggle to form the empathic connections central to the repairing of damaged relationships (Smith 2006).

In some communities a culture of prejudice is cultivated and nurtured within families, friendship circles and by neighbours (Byers et al 1999). Their negative views on race, religion and sexual orientation (and other identities) have been normalised by media (mis)representations and political discourse on race, immigration, and sexuality etc (Sibbitt 1997: 14). Thus rather than inducing contrition, victims' revelations may be viewed as provocative and elicit a hostile response from the offender (Smith 2006). In such circumstances, ineffective facilitation by a RJ practitioner who does not fully understand the cultural tensions between stakeholders may fail to prevent further victimisation.

Social distance also has serious implications for the notion of "community", central to the application of RJ (see further analysis of "community" and RJ in Chapters Six and Seven). If the restorative process fails to elicit social condemnation from community members for the offender's wrongful actions, victims are unlikely to obtain genuine forms of reparation, while offenders will be reintegrated back into a community that supports their hateful actions. Cultural and identity difference has therefore led some to question the potential efficacy of RJ for those without a shared community (Kelly 2002) if, for example, minority groups are viewed with scepticism or as deserving of discrimination (Sibbitt 1997; Levin & McDevitt 2002). Offenders emboldened by a sense of justification (Byers et al 1999) may manipulate the more informal restorative process to diminish their guilt, trivialise their prejudice and potentially shift the blame onto the Other. This, of course, will not be the path to healing victims of hate crime (see further theoretical and empirical analysis of these potential pitfalls in Chapter Five).

Conclusion

This chapter has introduced the reader to the main aims and objectives of RJ. Analysis of both theoretical and empirical research provides persuasive evidence of the harm repairing qualities of restorative practice. The promise of RJ for hate crime is that it will help to heal the harms caused by acts of hate by engaging and empowering victims. The very fact that many hate victims experience heightened levels of emotional harm, disempowerment and disenfranchisement means that, *theoretically*, RJ is most ideally suited to respond to this type of crime. Furthermore, the engagement of offenders in the dialogical process may also have a reforming effect, far beyond that which can be provided by a retributive approach to tackling hate crime. The inclusivity of RJ combined with its focus on “story-telling” promotes empathic connections between stakeholders that ultimately help to humanise the participants.

However, the difficulties posed by cultural and identity difference, highlighted above and in Chapters One and Two, may yet deal an inhibitive blow to the restorative process. The challenge for RJ practice will therefore be to create safe environments where victims are able to communicate openly, free from the fear of re-victimisation and free from domination by other stakeholders, including the RJ practitioner. Whether RJ can help to repair the harms of hate crime and/or break down fallacious stereotypes is explored in detail in Chapters Five, Six and Seven. Before then we turn next to an examination of the methodologies used for the empirical study and to an analysis of the how “restorative” each of the practices under research were.

Chapter Four: Researching restorative justice for hate crime – the importance of identity

Introduction

The previous three chapters have provided the theoretical grounding upon which this thesis is based. This chapter now moves away from theoretical analyses to discuss the methodologies used to gather the empirical data. Unlike more conventional chapters on methodology, I do this by creating a narrative of my time as a researcher. In Part I I use a chronology of the events that took place to explore the methods used, including the people I met and the organisations I became involved with. Part II then considers the impact that my identity had on the study as I investigated the consequences of hate victimisation and the restorative responses that victims subsequently participated in.

AIMS

The general aims of the thesis are made clear in the introduction but it may be helpful at this stage to clearly restate these aims in the context of the empirical research that was undertaken. The three main aims were:

- 1) **To review what RJ practices are being used nationally in response to “hate incidents”** - and to assess whether and in what ways they diverge from the mainstream principles and practices of RJ, as described in the extensive literature.
- 2) **To analyse whether restorative justice practices can alleviate the distress caused by hate incidents** – looking in particular at the extent to which they reduce the

heightened levels of anxiety, fear and anger commonly experienced by victims of hate abuse.

- 3) To explore whether restorative justice practices effectively address cultural/identity differences between participants – and, in particular, whether the dialogic process helps to break down “empathic divides” between participants allowing them to better understand each others’ identity.

While these three aims continue to underpin the goals of the thesis, the exploration of each aim helped to uncover several other aspects of both hate crime and RJ that were unanticipated at the beginning of the thesis. Some of these discoveries will be discussed in brief in this chapter as part of my reflexive account of events. However, all findings will be analysed in greater detail in the chapters that follow.

Background

Several of my colleagues were sceptical about my undertaking this research; not least my supervisor who feared that I would not gain access to sufficient hate crime cases in order to make a valid study to explore whether RJ helps to repair the harms of hatred. The main hurdle to contend with was that RJ is very rarely used in cases involving hate crime. There are various reasons for this, some of which will be elaborated on below, but perhaps the main reason is that the legislative response to hate crime has focused its attention on enhancing the punishment of hate offenders (see Introduction; Chapter One), while the criminal justice system has sought to separate them from their victims. This means that there is currently no RJ initiative within the justice system that is used *specifically* to deal with hate crime.

The disparate implementation of RJ practices across the UK and the lack of any specific criminal justice process that uses RJ to respond to hate crime meant that a randomised control study, often thought to be the “gold standard” in RJ research (Strang 2002: 63; but see, Wilcox et al 2005) was not feasible. Using such an experimental method would require a RJ pilot scheme to dispose of hate crimes and a control group where other randomly selected hate crime victims’ cases would be disposed of via court or (non-restorative) police cautioning, for example. Without such a control group I was unable to produce statistically significant quantitative data comparing the outcomes of different practices.⁷⁰

Nevertheless, I was sure that with the growing body of organisations in the UK using restorative practices (see Chapter Three) and the high levels of hate incidents recorded by academics and state agencies alike (see Chapter Two), I would – with some tenacity – be able to source enough cases to make a credible study. In fact, finding different cases from across the country would allow me to draw from a broad spectrum of restorative practices relating to different types of hate crime from various locales.

I therefore moved forward with the study by incorporating a triangulation approach to the research. This entailed using observations of RJ meetings, interviews with restorative practitioners who had facilitated hate crimes cases, and interviews with hate victims who had participated in a restorative intervention. Triangulation is defined as “the mixing of data or methods so that diverse viewpoints or standpoints cast light on a topic” (Olsen 2004: 3). In particular, by interviewing both victims and practitioners, I was able to obtain both quantitative and qualitative data allowing me to correlate process variables with process outcomes (Wilcox et al 2005). Comparisons between the different types of RJ disposal and the outcomes that they delivered could then be made (see Chapter Five). In so doing I was

⁷⁰ Though there are many criticisms which can be made about the use of RCTs and the results they can produce; see Wilcox et al (2005).

able to examine each process to ensure that it adhered to the restorative principles examined in Chapter Three.⁷¹

PART I: The Empirical Study

Negotiating access: Oxford Youth Offending Service, Southwark Mediation Centre and Devon and Cornwall Police Service.

During March 2009 I arranged to meet my first contact, a senior RJ practitioner at Oxford Youth Offending Service (YOS) whom I had met via my academic supervisor. Enthusiastic about the purpose of my research, Oxford YOS granted me access to observe hate crime cases over the next 12 months where the victim participated in either direct or indirect restorative meetings and to interview the victim about his or her experiences of the process thereafter.⁷² Cases would involve young offenders who had been convicted of an offence and sentenced to a referral order (see Chapter Three). Most “hate crime” cases would be highlighted as racially and/or religiously aggravated offences (ss 28-32 *Crime and Disorder Act 1998*), though it was also hoped that where evidence of homophobic and/or disablist motivation had been admitted to the court this would be included in the court papers received by YOS. At this very early stage of the study, gaining access to criminal justice institutions appeared relatively easy and my expectations about gaining access to a wide range of cases were high.

While waiting for my first case in Oxford I attended a hate crime conference at Middlesex University. It was at this first conference that I met the project manager of the Hate Crimes Project (henceforth HCP), at Southwark Mediation Centre (henceforth SMC), in

⁷¹ As we will see in this chapter some of the practices I researched were indeed more restorative than others, and of course this will have repercussions for the findings that I make (see Chapters Five, Six & Seven).

⁷² With the victim’s informed consent.

South London.⁷³ The project was set up over 10 years ago to specifically deal with conflict in local communities where an incident of hate or prejudice had been reported. The HCP's caseload includes all types of hate crime/incidents as defined by the Association of Chief Police Officers (ACPO)⁷⁴ and uses both direct and indirect forms of community mediation, as explained in Chapter Three. Cases are referred to the HCP by various state agencies, most commonly the police, housing associations and anti-social behaviour units.⁷⁵

In many of the cases referred to the HCP, a hate incident had already been reported to the police but there is little tangible evidence to pursue the allegations. Faced with one person's word against another there is little officers can do other than to warn the parties about their behaviour. In a large proportion of cases one or both parties will have also complained to a housing officer about their neighbour's anti-social behaviour. In return, housing officers frequently write letters to the respective parties restating the terms of their tenancy agreements and warning them that breaches may lead to eviction. Housing officers also frequently notify the local Anti-Social Behaviour Unit (ASBU) in cases where such behaviours persist. In many of these cases the inability of the police, housing officers and ASBUs to resolve ongoing conflicts involving prejudice means that disputes commonly escalate over a period of weeks, months, or even years, often culminating in acts of violence (see Chapters Two & Five). It is during such escalation that cases are often referred to the HCP in order to resolve the conflict and any allegations of hate crime.

Within a week of my attending the hate crime conference at Middlesex I had arranged to meet the HCP manager in order to discuss the purpose of my research and, it was hoped, to gain access to the Centre's mediation meetings. I worked hard in this meeting, as I did in many other meetings to come, to be articulate about my study, to build rapport with my new

⁷³ Finding cases through new contacts and other contacts that they are familiar with is called the snow-balling effect of sampling and is used where subjects are difficult to locate (Hagan 119-120).

⁷⁴ See Chapter One.

⁷⁵ In some cases the parties themselves contacted the SMC.

contact and to be as flexible as they might require me to be if and when cases were referred (see Corcoran 2005). In this case, the Centre was very keen to support my research project. After sending them more information about the study and copies of my University ethics approval, I gained clearance from the Centre's director and subsequently, access to cases referred to the HCP. Like Oxford YOS, it was agreed that I would be contacted as and when cases arose. Again, I would also be able to interview participants who had participated in the mediation process. This was my second successful negotiation within the first few months of my DPhil and I became confident that I would secure a sufficient amount of cases to make the study a success. I therefore set what I felt was a realistic target of observing at least 25 RJ meetings involving hate crime.⁷⁶

The third and final organisation that I gained access to was negotiated at the very end of my time in the field. During September 2010 (one month before my final doctoral year) I heard back from a contact I had made earlier in the year. He had managed to talk to the Force Restorative Justice Support Officer at Devon and Cornwall Police who was willing to lend his support. In 2008, the service had implemented a new restorative disposal which all police officers were trained to use. The disposal is used for minor offences where the victim agrees to take part in either a direct VOM or accepts some form of reparation indirectly. Unlike the Thames Valley restorative cautioning model, meetings are not scripted (Hoyle et al 2002). However, officers have received training on the principles of RJ and aim to encourage the offender to provide either material or emotional reparation for their crime. In most cases this takes the form of a written apology to the victim. Unlike Oxford YOS and Southwark Mediation I was not able to observe meetings as and when they arose. This was primarily because I had run out of time to carry out such research. However, it was also due to the fact that the disposals are frequently used contemporaneously with the reported incident. I simply

⁷⁶ There is no exact science in determining how many observations are needed to obtain a credible dataset. However, it was felt that 25 observations would provide adequate information from which I would be able to draw out credible themes.

would not have had enough time to travel the long distance to observe meetings. Instead, I was given a list of all cases involving racial or religious aggravation that had been disposed of via the RD over the past 12 months. I could then contact the victim in each case to arrange an interview (see further under “Interviews”).

OBSERVATIONS

Observations are used primarily as a form of data collection in which the researcher attempts to keep his or her presence to a minimum, in some cases even secret (Hagan 2010: 227). In this study I used an overt and passive role when observing meetings. I was known to all research subjects as a university student researching the use of RJ (or mediation) in cases involving an incident/s where the victim’s cultural or identity background had been perceived by the victim as being “an issue” before or during the incident. The term “hate crime” was never used when explaining the study. The term can be emotive and has the potential to confuse and/or induce a visceral response from participants, potentially creating bias in the study (see for example, Tjaden and Thoennes 1998). Informed consent to participate in the study was then obtained from each participant/victim, primarily by the practitioner who had been given a short summary of the purposes of my research (see Appendix A). However, on meeting each participant I would again explain the aims of my research before seeking informed consent for my presence during the meeting/s (see Hagan 2010: 119-120).

Over an 18-month period I observed a total of 18 RJ meetings from Oxford YOS and the HCP relating to 14 separate cases – seven less than I had anticipated. Out of these 18 meetings, three were carried out at Oxford YOS while the remaining 15 were observed at Southwark. At Southwark five observations were of direct mediation meetings between the parties while the remaining 10 meetings were indirect. In all three of the Oxford meetings the

observation was of an indirect meeting between the practitioner, the victim, and in two cases the victim's parent.

Taking notes

To remain as unobtrusive as possible, I rarely spoke in meetings and I was careful not to disturb the natural course of the dialogue (Hagan 2010: 235). I made an attempt to write down everything that was said by each participant, including the facilitator. This was difficult at times due to the speed with which some individuals spoke and due to the varying language skills and different accents that I heard in meetings. This meant that inevitably I did not transcribe every word that was said, but I was confident that most of the central points of dialogue were included in my detailed notes. I was also careful to include, where possible, notes on body language and facial expressions, especially where these changed throughout a meeting, as well as notes on the impact that participants' identities and cultural backgrounds (including my own presence) seemed to have on the flow of communication.⁷⁷ These notes are used in later chapters to examine the barriers to communication, including whether participants from different socio-cultural backgrounds are able to find common ground through the development of empathy (see Chapter Seven).

⁷⁷ Discussion on the impact of identity on meetings is included below.

Difficulties finding cases

Having aimed to observe 25 RJ meetings, the final total of 18 observations with only 5 being direct was clearly less than anticipated.⁷⁸ The lower than expected number of observations was a reflection of the difficulties both in finding relevant hate crime cases that were dealt with restoratively and the prolonged task of negotiating and maintaining access with the relevant organisations (Ackers 1993; Corcoran 2005). It became apparent some months into the study that RJ practitioners had more cases than they had time to facilitate. Although apparently enthusiastic about my research, keeping in contact with me when cases arose was not necessarily high in their priorities. This meant that I spent a lot of my time contacting practitioners to see if any cases had been referred. In Oxford this was difficult as it appeared that very few racially or religiously aggravated cases were referred to them.

Inadequate resources at the YOS also meant that RJ practitioners did not have time to arrange a restorative conference or VOM for every referral order that came their way. Despite the fact that the paperwork for all referral orders are sent to a restorative practitioner at Oxford, it was clear from my discussion with the senior RJ practitioner that only some of the victim would be offered a direct RJ meeting. This meant that in most cases a Youth Offending Panel would deal with the offender without the presence of the victim and without any additional restorative conference (see also, Newburn et al 2002). Furthermore, in those cases where a RJ meeting was arranged, the identification of hate-motivation – present at the time of the offence – would not always be highlighted on referral papers. This meant that issues around prejudice would sometimes only be uncovered when the practitioner met with the victim to discuss what had happened, potentially too late for me to become involved in the case.

⁷⁸ This was, however, strengthened by the triangulation approach taken to this study and the high number of interviews completed with both practitioners and victims.

What appeared to be a lack of hate crime cases being referred to Oxford YOS was also partly due to the fact that only two “types” of hate crime (racially and religiously motivated) are specifically proscribed under the *Crime and Disorder Act 1998*. As a result there were only two identifiable hate offences, as specified in referral orders, which filtered down into the youth justice system. It appeared that homophobic and disablist incidents continue to be neglected by certain sections of the criminal justice system. As a direct result of this, I suspected that hostility based on homophobia or disablism that was demonstrated during or immediately after an offence, would not always appear in the paperwork of offenders by the time that their case had been referred to a RJ practitioner. Indeed, the only hate cases that Oxford YOS ever brought to my attention were those that related to racist and anti-religious offending. It was also highly likely that many hate-motivated offences existed within the youth justice system, but due to evidentiary problems during trials and the frequency by which the CPS drops the higher burden of proof required to prosecute a racially or religiously aggravated offence, such prejudiced-motivations were not clearly identifiable by the time paper work was submitted to the YOS (see Burney & Rose 2002).⁷⁹

Cases referred to the HCP in South London were less difficult to find. Over the 18 months spent at SMC I built up a very strong relationship with the HCP manager which helped to improve my access to her case-load. However, many cases that were referred to the HCP did not necessarily involve what could be classified (using the definitions in Chapter One) as a “hate crime” or “hate incident”. As a result, at the start of the project I spent some of my time attending mediation meetings that were not wholly relevant to the study. For example, in several cases a complaint about noise had been reported by one of the parties to a housing officer who had then referred the case to mediation, stating that he or she believed an

⁷⁹ This does not mean, however, that RJ cannot tackle hate-motivation. The role of prejudice is likely to come to the fore during indirect meetings between the facilitator and the offender and victim. It is during this stage of the process that facilitators engage the participants in discussion about what happened, why it happened and how it has affected the stakeholders (see Chapter Seven).

issue of cultural difference may have been to blame for the conflict. Once at the HCP, it turned out that no such cultural or identity issue existed and moreover, no real incident or crime which could be classified as one motivated by “hate” was present. This could be frustrating but it allowed me to gain more insight into the process of community mediation and of the various conflicts that arise in the multicultural communities that exist in London. It also demonstrated how mediation could unravel the underlying causes and motivations central to a conflict. In cases where no hate-motivation existed, complainant victims were immensely relieved that they had not been targeted because of their identity. Having observed several of these types of cases, the mediator made sure that I was only invited to observe cases where one or both of the parties had made it clear that some form of “hate incident” had been committed.

INTERVIEWS

In order to triangulate the data gained from observations of RJ meetings, it was important that I also carried out interviews with participants to allow me to explore further the impact that such processes had on them. By including interviews with participants, the process variables that were highlighted during observations could be better linked to process outcomes (Wilcox et al 2005). For example, where common goals were established in meetings and/or physical gestures were made, such as handshaking (process variables), these could then be linked to reductions in feelings of anger or fear towards the other party (process outcomes). Moreover, the potential empathic difficulties highlighted in Chapter Three regarding cultural difference and domination during the restorative process could also be explored by linking my notes on

verbal and non-verbal communication within meetings with qualitative information gained from interviewing participants (see Chapter Seven).⁸⁰

Interview design

I made use of semi-structured schedules in interviews. This allowed me to use open-ended and closed questions, providing the study with both quantitative and qualitative information (Bachman & Schutt 2007; see Appendix B).⁸¹ The mixing of data types created a fuller picture from which I could analyse the effect that hate crime and subsequent restorative processes had on participants (Wilcox et al 2005). In order to support the content validity of the study, the full range of the concept under examination (i.e. harm and harm reparation, Chapter Two & Three) was covered:

Who, what, where and how harmful?

The interview schedule began by documenting the personal details of each subject, including their age, ethnicity, sexual orientation, religious beliefs and disability status (see Appendix B, Section 1). In defining each of these identity traits a flexible approach was taken using self-identification by means of open questions (Eisner & Parmar 2007).⁸² Interviewees were then asked to describe in their own words: what had happened, when it first occurred, how many people had been involved in the conflict/incident, whether they knew the perpetrator/the other party, as well as whether they believed it to be motivated (or partly motivated) by one or more of their identity traits (see Appendix B, Section 2). Questions then allowed individuals

⁸⁰ See below “Identity Impact”.

⁸¹ Again, the term “hate crime” was not used.

⁸² Though identity classifications can be fluid over the life course and may also depend on how each individual interpreted the meaning of, for example, “ethnicity” or “sexual orientation”, the method meant that I did not impose upon any participant an identity classification that was not precise to how they themselves identified.

to explore how the incident had affected them emotionally and/or materially and closed questions allowed me to document the types of emotional impacts that incidents had caused; such as feelings of anxiety, anger, sleeplessness, a fear of going to certain locations (amongst others).

Procedural fairness

The second part of the interview moved on to explore the victim's participation in the restorative process (community mediation, RJ meetings at Oxford YOS, or the Devon and Cornwall Police Restorative Disposal). I asked victims questions relating to how they became involved in the restorative process, why they agreed to take part and whether they had been provided with adequate information about how the process would work, including what it aimed to achieve (see Appendix B, Section 3). I also documented whether victims took part in a face-to-face meeting or indirect meetings.

Questions then focused on whether the RJ facilitator acted with impartiality during the process and whether the victim felt that he or she attempted to help the parties resolve the conflict. Interviewees were also asked if they had been given an opportunity to explain how the incident/s had affected them.

Emotional reparation

A large part of the interview was designated to exploring what parts of the restorative process helped to repair the emotional, physical or financial harms caused by the incident (see Appendix B, questions 29-41). Victims were asked if they received any form of reparation – including an apology – and whether they felt this was a genuine expression of regret by the

other party. I then used likert-type scales to obtain ordinal and interval levels of measurement for different types of emotional harm/reparation. For example, I used numbered scales of 1-10, 1 being very low and 10 being very high, to gauge levels of anxiety and anger “just before” and “directly after” the RJ process.⁸³ I also used a range of agree/disagree questions to determine levels of fear before and after RJ. Before each of these questions was asked I stated to interviewees that they may have found that their levels of emotional harm went up, down or stayed the same and that before indicating a level they should take time to think about how they felt before and after the process.

To improve the study’s internal validity, I enhanced its inter-item reliability by including multiple items within the schedules in order to fully explore the variables causal to harm reduction. For example, when asking questions about harm reparation I asked interviewees whether they felt the restorative process had aided their recovery and if so what parts of the process had helped. I then included questions on whether other factors such as the passing of time, support from friends, support from other organisations, also helped with the healing process and if so which of these were most helpful (see Appendix B, question 32).⁸⁴

Feelings of domination and disadvantage

This part of the interview was designed to determine whether victims ever experienced any form of domination during the process. Questions asked victims to think about whether they felt at a disadvantage at any point during the process because of their cultural or identity background and, if so, in what ways were they disadvantaged (see Appendix B, questions 27

⁸³ Instead of using the more common 1-7 scale I opted for a scale of 1-10. This was a result of various discussions with my supervisor, other academics, friends and the organisations I was working with. It was felt that the victims I would be interviewing would relate to a scale of 1-10 more than any other. This of course is not a scientific method to determine the scale but one which was helpful in making this decision.

⁸⁴ This became important when comparing the harm repairing capabilities of community mediation with the police restorative disposal.

& 28)). The aim of this section was to explore any occurrences of repeat-victimisation during meetings.

Participant empathy

Linked to victims' experiences of harm, harm reparation and whether they had experienced any forms of domination during the process, was their perception of the other party/offender throughout the process. Questions were therefore asked about the victims' feelings towards the other party before and after mediation/RJ and whether they felt that the offenders' feelings and/or attitudes had changed towards them (see Appendix B, Section 4). If their feelings had changed towards the offender (either negatively or positively) a list of possible parts of the restorative process were read out for the interviewee to agree or disagree as to whether it had helped to make these changes. Using a likert-type question, I then asked victims whether they felt that the process helped to give the other party a better understanding of their ethnic, cultural or identity background.

Satisfaction and recommendation

The last part of the schedule was devoted to the interviewees' satisfaction with the process. Both closed ended questions and agree/disagree questions were used to determine whether participants found the process to be a positive or negative experience, whether they were happy with the outcome of their case, whether they felt they could now put the whole incident behind them and finally, whether they would recommend mediation/RJ to other individuals involved in similar conflicts/incidents (see Appendix B, Section 5). Interviewees

were then given one final opportunity to add any further comments about the process that they felt I may have missed.

Ethical concerns with researching vulnerable populations

At the beginning of each interview, interviewees were given an information sheet detailing the purpose and aims of the study (see Appendix A). In most cases I read this information out to avoid embarrassing any interviewee who had limited literacy skills.⁸⁵ I also made sure that interviewees understood what I was saying and frequently reminded them that they should tell me if they were unsure about any aspect of the study.⁸⁶

Digitally recording interviews allowed me to maintain better eye contact and promote comfortable body language with the interviewee, helping to facilitate greater rapport (Bachman & Schutt 2007: 243; Chapter Five). It also allowed me to focus on the questions I was asking and to prompt interviewees where necessary.⁸⁷ During interviews I made an effort to be sensitive to the interviewees' demeanour, offering a break in, or termination of, interview when some interviewees seemed distressed. I also made a conscious effort to bear in mind my own use of language and body language as well as the impact that my cultural identity could have on interviewees' responses (Phillips & Bowling 2003).⁸⁸

In most cases it was not possible for me to interview victims directly after RJ meetings. This was mainly due to logistical and time issues. Victims and practitioners that I had observed directly in RJ meetings were often on tight time schedules. Having been called to the meeting at short notice, it was not always easy for me to arrange a room to carry out the interview. It was therefore decided that I would interview participants at a later date. The

⁸⁵ I was warned about this by the project manager of the HCP.

⁸⁶ Each interviewee was also given a consent form (see Appendix A).

⁸⁷ None of the interviewees refused the use of the digital recording device.

⁸⁸ See below further discussion on identity.

time gap between the meeting and my interviewing the participant allowed them to absorb what had happened in the meeting/s and to reflect on the process, while it was also beneficial to the study to document whether any further incidents had occurred over the period of time since the meeting/s.

Each interviewee was asked to choose a location for us to meet. Most invited me to their home but some interviews were arranged in a public location such as local cafe. Conscious of my own wellbeing in each case I always contacted my partner to let him know where I was and for how long. I also carried my mobile phone with me at all times. However, as the mediator had already visited individuals in their homes and had asked them similar questions to those that I would be asking, I felt that the risk to my own safety was minimal. The fact that interviewees were “complainant victims” of hate abuse, as against accused perpetrators, also provided me with a greater sense of personal safety.⁸⁹

Interviewing *past* participants

As I had only observed three cases in Oxford, with two of the victims having since moved house, I interviewed just one victim from this scheme. In order to have a sufficient sample of interviewees, the majority had to come from elsewhere. I had observed just 15 meetings at the HCP, involving 11 separate cases, two cases, it transpired, involved no hate incident,⁹⁰ so I decided that to strengthen the empirical data I should also interview complainant victims who had *previously* participated in the Southwark HCP.

⁸⁹ Though I was never complacent about my safety.

⁹⁰ During mediation it was possible to explore the role that prejudice played in a conflict without labelling a party as a “hate offender”. See further “Challenging Prejudice” in Chapter Seven.

The project manager of the HCP and I examined the list of past cases – taking an 18 month period⁹¹ from January 2009 to July 2010 – in order to select *all* cases where there had been either a “hate crime” or “hate incident” (or accusation of hate crime/incident) as defined by Association of Chief Police Officers (a sampling technique called purposive sampling: see Hagan 2010: 116) and where one or both parties had taken part in the mediation process. In most cases, both parties took part in mediation, whether through direct or shuttle meetings. However, in a few cases only the complainant victim had participated. This was because the other party either refused to participate or could not be contacted. One unanticipated finding was that the restorative process does not always achieve resolution through offender reparation but often through a multi-agency approach that involves other community organisations, including local authorities, who join the dialogic process in order to bring about victim support and healing (see Chapter Six).

This sampling technique enabled us to create a list of 26 separate cases whose participants (only those who had complained of being the victim of a hate incident) we could then contact. In each case a letter was sent out by the HCP manager to the complainant victim outlining the purpose of the research study and inviting them to take part in an interview.⁹² After two weeks of the letters being sent out the project manager then telephoned each participant, explaining who I was and asking for their informed consent for me to call them to arrange an interview.⁹³ I was grateful for her efforts as ethically it was imperative that participants were able to give informed consent *before* I contacted them (Bachman & Schutt 2007: 197-98).

Of the 26 cases, five people proved to be uncontactable, while two complainant victims did not cooperate with the research beyond an initial telephone conversation. In the

⁹¹ This period was chosen so as to gain a large enough sample of victims to interview whom would still remember the details of the conflict and the mediation process that they had participated. It also allowed me document whether future incidents had occurred after the mediation process took place.

⁹² Participants were compensated with a £10 supermarket voucher.

⁹³ Again the term hate crime was avoided.

remaining 19 cases a face-to-face interview was arranged (73% of the total sample; 86% of the contactable sample). Four of these interviews involved two complainant victims – typically other family members, so I interviewed 23 complainant victims, which included five from mediation meetings that I had directly observed. The other 18 interviewees had participated in the mediation process prior to my involvement with Southwark Mediation.

Interviewing victims from Devon and Cornwall

Using a similar approach to that taken at Southwark Mediation, the RJ co-ordinator at Devon and Cornwall was also able to provide me with a list of all racially and religiously aggravated offences which had been disposed of via the RJ scheme over the past 12 months.⁹⁴ As with the HCP, the RJ Support Officer sent out letters to each victim explaining the purpose of my research and inviting them to take part in the study.⁹⁵ After two weeks the RJ Support Officer agreed to contact each of the victims, amounting to 32 cases, in order to ensure they had received the letter, to reiterate the purpose of the study and to ask for their informed consent for me to contact them. Of the 32 cases, three victims asked that I did not contact them; some stating that they wanted to put the incident behind them. Of the remaining 29, 15 victims were uncontactable (either the telephone number no longer worked or was not answered⁹⁶). One interview could not take place due to a lack of English proficiency (there was no interpreter available in this case and I could not travel to Cornwall to carry out the interview). That left me with a total of 14 interviewees (44% of the total sample; or 78% of the contactable sample).

At this late stage in the study I no longer had sufficient resources to make numerous visits to Devon and Cornwall to meet interviewees face-to-face. So unlike the interviews in

⁹⁴ Again, homophobic and disbalist incidents could not be highlighted.

⁹⁵ Interviewees were also offered the £10 supermarket voucher.

⁹⁶ I tried each number a total of three times, on different days.

Southwark, all interviews were conducted by telephone. It is often stated that the advantage of face-to-face interviewing is that a greater degree of rapport can be built between interviewer and interviewee (Hagan 2010: 149). The interviewer also has the advantage of observing body language and other physical displays of communication. Additionally, it is easier to clarify questions and clear up any misunderstandings in a face-to-face interview (Hagan 2010: 149). Telephone interviews, on the other hand, can make it difficult to obtain in-depth responses and some qualitative detail may therefore be lost (Hagan 2010: 158). Still, telephone interviews do have the advantage of being convenient for both interviewee and interviewer, particularly in light of limited resources.

Having successfully completed half of my interviews with practitioners over the telephone (see below), who had provided highly valuable data, I was optimistic that this method could also work for victims. It quickly became apparent, however, that interviewing hate crime victims via telephone was fraught with difficulties. Unlike practitioners and the majority of my interviewees from Southwark, most interviewees from Devon and Cornwall did not speak English as a first language. This was perhaps a reflection of the overwhelming majority of cases in Devon and Cornwall involving victims of a racially motivated offence, most of whom were foreign immigrants. In London I had observed a more varied caseload, including homophobic and disablist hate crime cases, while many of the racist cases involved victims who were second or third generation immigrants.

As a result, I had to conduct most interviews at a much slower pace, while also explaining the meaning of many words, such as “depression” or “nightmare”, in order that the interviewee properly understood me. This proved to be inhibitive in several cases. In one interview the call had to be terminated as the interviewee could not understand my questions, nor I his answers. In one other case I carried out the interview through a translator (in this case the interviewee’s wife) who relayed back and forth the questions and answers. This was

highly time-consuming and I cannot be certain that she translated my words verbatim; though I have no reason to believe she did not.

During one of my first interviews, the interviewee, after struggling with one of the likert-type questions, responded, “this is strange language for me, the way we are talking, I feel like we are in court, speak simple English you know what I mean”. Slightly embarrassed by this I quickly adapted my language, realising that my typical phone manner was too formal. I changed my tone and used a more basic structure to my sentences. Conscious about every word I used, I felt awkward, trying to find a balance between being articulate but not patronising. Unsurprisingly, I found it difficult to build and maintain rapport in some of these interviews (see Bachman & Schutt 2007: 239). Nevertheless the majority of interviewees seemed to relax into the flow of the interview after just a few minutes and the majority appeared to be more than happy to answer my questions. Several even asked me to stay in touch and to let them know when I publish my findings. Thus although many of the answers were not as detailed as my other interviews, the information contained in each answer still provided valuable data.

Interviewing restorative justice practitioners

Having spent considerable energy locating and interviewing victims of hate crime, I felt the study would be enhanced further by interviewing RJ practitioners who had direct experience of arranging and facilitating such cases. During my 18 months in the field I had attended a number of conferences and established numerous contacts as I progressed. As a result, I had managed to track down over 20 RJ practitioners who had previous experience dealing with one or more cases involving hate crime. Each had agreed to be interviewed and to come prepared to discuss the case/s they had previously facilitated.

Interview schedules were semi-structured, though, unlike victim interviews, questions were mostly open-ended, allowing practitioners to fully describe their case examples (see Appendix C). The interviews also asked practitioners about reparation agreements, whether they perceived the victim in their cases to have gained any emotional benefits from the process, and, finally, how they had dealt with issues of prejudice and, importantly, the potential for repeat victimisation during meetings. At times I used prompts to help practitioners elaborate but, in most part, the interviewees were left to talk openly about the cases they had facilitated.

By the end of the study I had interviewed 23 practitioners, some of whom I had also observed facilitating RJ meetings. Most practitioners worked full-time as RJ facilitators at: community mediation centres (7); Devon and Cornwall Police (5)⁹⁷; Youth Offender Services (4); NACRO's Restorative Justice Centre (2); schools (2); independent RJ practitioners who had previously worked in the criminal justice system (2); and the probation service (1). Inevitably, the types of RJ practices that were used by the practitioners differed but in most part practitioners had used victim-offender mediation, family group conferencing or community mediation meetings based on restorative principles.⁹⁸ The data from these interviews is used to further explore the efficacy of RJ in hate crime cases, taking into account the facilitators perspectives as to whether the process helped to heal the harms of hate crime and whether identity and cultural differences could be bridged in attempting to the repair fractured relationships (see Chapters Five & Seven).

⁹⁷ Discussed in more detail below

⁹⁸ Just over half (13) of practitioner interviews were carried out fact-to-face with the remaining (12) being completed over the telephone.

How “restorative” were the practices researched?

YOS meetings

From my analysis of observations and the single interview carried out at Oxford⁹⁹, it was evident that practitioners implemented core restorative principles within meetings, allowing each participant to explain how the incident had affected them, while the practitioner also fed back information about the offender’s progress, including the reparation work he or she was carrying out (see, in particular, Case Study 2 in Chapter Seven) and any apologies that had been offered. In all three of the meetings I observed, the facilitator was also keen to offer additional support to assist the victims’ healing process. In one case, a DVD about how restorative conferencing worked was posted to the victim, while another young victim was offered enrolment onto a self-esteem course.

It also became apparent from my observations that victims were not actively *encouraged* to meet with the offender, but rather were given information about what the RJ process aimed to achieve. Participants were then given the option of meeting the offender if they wished to. My general observation of practitioners was that they were very thorough in providing information and in offering their support to the victim, but victims were also given complete freedom to decide whether they wanted to meet with the offender or not. In the cases I researched the victim chose not to, replicating findings from UK studies into victim attendance rates (Hoyle et al 2002; Newburn et al 2002; Crawford & Newburn 2003; Sherman & Strang 2007). In two other cases which I failed to observe, but where a restorative justice approach was taken, the victim also refused to meet with the offender. This, however, did not mean that the victim failed to obtain the benefits which RJ offers. Rather, it is simply

⁹⁹ And later on, interviews with RJ practitioners from the YOS.

more difficult to gauge the levels of empathy and emotional reparation that can be gained more readily through a face-to-face meeting (Hoyle 2002).

Community mediation

Kurki (2000) explains the goal of RJ is “to rebuild ruptured relationships in a process that allows three parties (victims, offenders and the wider community) to participate”. Community mediation was clearly about repairing relationships by allowing the parties, as well as other community members, to resolve conflict (including any hate incidents) that had harmed them. By creating space for each party to vocalise their side of the story and to discuss the harms that the conflict had caused, the facilitator was able to draw upon common goals between the parties. Typically, the mediator focused on the fact that all stakeholders wanted an end to the conflict. Although direct offerings of reparation were atypical, such as an apology or compensation, other displays of contrition were displayed through physical gesticulation, such as shaking hands and by the parties signing a mediation agreement that outlined the undertaking both parties had agreed to (such as desistance from further hate incidents; see Chapter Five).

The non-labelling process of community mediation was both its strength and weakness. The main criticism which can be made about community mediation is that unlike VOM the “offender” will not necessarily wish to take responsibility for the alleged wrongdoing. Many RJ theorists argue that it is essential that offenders take responsibility for their actions before attending a RJ meeting in order for them to have demonstrated willingness to repair the harms they have caused (Braithwaite 1989; 2002). In community mediation meetings therefore, not only were “accused perpetrators” less likely to admit to

wrongdoing, but they were also less likely to provide adequate reparation to other stakeholders. After all, the process was voluntary and lacked any legal base.¹⁰⁰

The fact that “the parties” did not take the specific roles of “victim” and “offender” was, however, where community mediation gained its greatest potential in both resolving hate incidents and potentially repairing harm. Other RJ practices, particularly VOM, assume a binary classification of the parties dividing those involved into “victims” (those who have been wronged) and “offenders” (those who have wronged). These labels suggest dichotomous roles in the offence and therefore diametrically opposed responses by the criminal justice system (Christie 1986). However, as is made clear in the following chapter, many “hate conflicts” involve highly complex and multi-layered disputes between parties who have *both* taken part in various anti-social behaviours. It also becomes apparent that although responsibility is not always apportioned before mediation, the open discussion within meetings and agreements later made between the parties that draw on the common goals of participants, hints at both responsibility and reparation. Indeed, it is the exploration of the social contexts in which such crimes and anti-social behaviours occur combined with discussion on the cause and effect of the actions committed by *both* parties that provides for the best opportunity for resolution (see further, Chapter Five & thesis Conclusion).

In other words, in many of the conflicts which involved allegations of hate crime, labelling one party as “wrongdoer” and the other as “victim” would not have necessarily reflected the true nature of the complex social conflicts that parties were embroiled in; even though one party may well have committed an actual hate offence. The inclusive approach taken to resolving hate crimes at the HCP – combined with its emphasis on empowering participants in a dialogic process that aimed to find resolution to conflict – meant that while

¹⁰⁰ Though as we will see in later chapters there is often pressure on those accused of wrongdoing to take part in the process from certain organisations (see Chapter Six).

community mediation could not be classified as a “fully restorative” practice (see McCold 2000) it drew heavily on RJ principles.

The restorative disposal

An examination of the role that the disposal played (or failed to play) in victims’ healing will be discussed in Chapter Five. It is worth noting here though the extent to which the restorative disposal may be labelled as a “restorative justice” measure. Of some concern was that when interviewing victims at Devon and Cornwall the overwhelming majority had not heard of the term “restorative disposal” or “restorative justice”. My initial conclusion was that officers had simply failed to explain to the victim the purpose and aims of RJ; an intrinsic part of the process. However, later, when interviewing the RJ Support Officer, it was suggested that many victims *may* have heard the term but not registered it due to their limited English vocabulary. Some may even have forgotten the term, as some disposals had taken place up to 12 months before the interview. My own experiences of communicating with the victim interviewees gave credence to this suggestion. In fact, most interviewees went on to agree that they had participated in the RD when I mentioned to them that the offender may have offered some form of reparation, typically an apology.

Most victims stated that they had received either a written or verbal apology from the offender, indicating that facilitating officers had sought restoration for the victim. However, on further inspection it became clear that the circumstances in which apologies were offered did not necessarily adhere to restorative values. Many victims told me that they had been presented with two different options. The first was that the officer could pursue the case by charging the offender; which would involve a written statement from them and potentially a court appearance (several victims stated that it was pressed upon them that this was not

desirable). The second option was for the officer to talk to the offender and for him or her to provide an apology. Some victims felt that they were pressured into accepting this latter option, which in several cases transpired to be a single sentence scribbled on a piece of paper (see Case Study 3, Chapter Five).

At face value, the disposal appeared to include the values of “encounter”, “repair” and “transformation” as highlighted by Johnstone and Van Ness (2007a) (see Chapter Three). In my interview with the RJ Support Officer I was told that officers should spend some time, even if limited, explaining the aims and expectations of RJ. Officers should then attempt to organise a victim-offender mediation meeting where appropriate, placing emphasis on the offender repaying the harms that he or she has caused, either via an apology or through some material or community reparation. Examples were also given to me during my interviews with police constables in Devon and Cornwall of direct meetings where hate victims were able to express to offenders their feelings and where offenders made genuine attempts to repair the harms caused. I am confident that these officers and others will have made genuine attempts at adhering to restorative principles. Other findings from my victim interviews also highlighted that while the disposal was not always implemented effectively there were several restorative values that they adhered to. In particular, just over half of victims felt that they had been given an opportunity to explain to the officer how the offence had affected them and that the offender now had a better understanding of this.

Still, the failure of the disposal to be “fully restorative” was disappointing. My interview data indicated several reasons for this. Most apparent was the lack of training that each officer had received on RJ (see discussion of this in Chapter Five). The emphasis placed on making offenders apologise, rather than on a dialogic process built on inclusivity that allows for discussion on appropriate reparation, was perhaps testament to a lack of appreciation and understanding of the aims of RJ. Given the importance of participant

preparation and the need for effective facilitation, it is difficult to see how a two-hour training session can ensure effective facilitation (Maxwell & Morris 1993: Crawford & Newburn 2003: 187). The need for adequate training and later regulation of standards is even more pressing when we consider the challenging issues that hate crimes present (see Chapters Five, Seven & thesis Conclusion).

Data analysis

By the end of the study I had carried out 60 interviews (23 with RJ practitioners, 23 with complainant victims in Southwark, and 14 with victims in Devon and Cornwall) and 18 observations of RJ meetings in Southwark and Oxford. After transcribing my observation notes and interview recordings I formulated the transcripts into themes from which I arranged the data into categories. From here I created subthemes found within the transcripts. A technique of case-orientated understanding was then applied to the data (Fischer & Wertz 2002). This process involved a recounting of the victims' experiences, which produced a story of what had happened and how they had experienced the restorative process. Common themes between victims' accounts were identified allowing me to determine common factors that affected victims' experiences of victimisation and emotional convalescence. During this process I constantly remained open to new themes emerging from the transcripts (Noaks & Wincup 2004: 131).

Data gained from closed questions and likert-type responses (using both ordinal and interval scales) were used to determine levels of emotional harm (indicators) before and directly after a RJ process (see Appendix B). Descriptive statistics could then be linked to the qualitative information that each interviewee provided about their cases and linked back again to the observations that I made of individual case meetings. The mixed method approach allowed me to connect process variables (such as an apology) with process

outcomes (such as reduced levels of anxiety) (see Hoyle et al 2002; Wilcox et al 2005). For example, using the concept of harm (the central theoretical theme of the thesis), I was able to examine how many victims experienced emotional harms (using qualitative and quantitative data gathered from open and closed questions) and then how many victims felt that the restorative process (the variable) helped them to recover from their experience of hate crime (for each type of practice examined).

Diagram 4.1: *Mixed Methods Approach to the Study*



One criticism of the study's external validity might be that final outcomes can only be related to the particular practices I examined or even to particular practitioners (especially as the HCP had only one mediator). Put another way, my findings cannot be generalised to all RJ practices in all types of hate crime, as a randomised sample of cases from across the country may have permitted. However, by combining quantitative and qualitative methods taken from a sample of 38 interviews with victims and a further 28 case examples – as explored through 23 practitioner interviews from across the country – credible themes could be identified. I believe that the multiple method approach to this study has enabled me to make valid assertions about the utility of RJ for different types of hate crime cases. Additionally, I have also been able to comment on the efficacy of different types of restorative practice used in three separate locations in the UK. And although the results cannot be generalised to *all* hate victims in *all* types of RJ processes, I am confident that the study's findings will have applicability to future evaluations of the use of RJ in cases marked by prejudice and identity difference.

PART II: Reflections from a world of hate crime: issues of identity

The final part of this chapter examines the impact that identity – a concept central to the endeavours of this thesis – had on the research process. Phillips and Bowling (2003) argue that a “minority perspective” in criminology is required in order to understand the cultural hybridity of research subjects. This perspective does not look at racial minorities as exclusive units or groups but instead encompasses and emphasises the marginal and excluded status of both visible and other racial and ethnic minorities (this approach also allows for the consideration of other minority groups such as gay, lesbian, bisexual and disabled). The use of broad categorisations of racial groups, such as Black or Asian for example, can mask the

differences (often subtle) found between and within different identity groups (Garland et al 2006). Carrying out field work into hate crime, for example, is therefore best achieved via the discovery of knowledge through experience (Phillips & Bowling 2003). By adopting the standpoint of the research participants, researchers can produce a truer version of reality by engaging in a reflexive struggle intellectually in order to understand distinctive social experiences (Phillips & Bowling 2003).

Phillips and Bowling (2003) further suggest that in attempting to collate data from minority groups, the research process can be enhanced where researchers have shared experiences with those they are researching. This does not necessarily mean that white gay male researchers should research only white gay male victims, but where there is a shared experience of minority status or experience of prejudice this may help to improve the quality and openness of participants' responses (Eisner & Parmar 2007). Common identity traits such as race, ethnicity, sexuality, and/or cultural and social values, may help to ensure that the data gathered is experientially grounded – be it quantitative or qualitative (Phillips & Bowling 2003; Garland et al 2006: 432).¹⁰¹

In fact, the “insider status” that I often assumed within this study frequently helped me to gain access to research subjects and to build rapport with those who I interviewed (see example below). Moreover, the broad victim-centric definition given to hate crime in this thesis (see Chapter One), when combined with a qualitative approach that allowed subjects to identify their own identity characteristics, provided a more holistic and open approach to examining the harms of hate crime and the reparative capabilities of RJ.

As we will see in the chapters that follow, victims' identity traits often intersected, both with regards to the demonstration of hostilities by the offender and/or how the victim

¹⁰¹ This however, does not mean that “outsider” researchers cannot obtain rich and valuable data. For example, a British-Muslim subject may be more forthcoming about his or her alcohol consumption with a white-British interviewer than with someone of the same religious/ethnic background (see Eisner & Parmar 2008: 190). Moreover, outsider researchers may also be more detached from the participants and therefore not overlook the important questions which other ethnically matched researchers may simply assume.

experienced victimisation (for example, the victims' race *and* religion or their sexual orientation *and* disability became mutually reinforcing identity characteristics that shaped their experience of victimisation; see Walters & Hoyle 2011). I was able to explore with the victims themselves those parts of their identity that were central to both the harms they experienced and the reparation they did or did not obtain (see also, Garland et al 2006). The exploratory processes used in restorative practices also highlighted other relevant social factors, such as mental health issues and alcohol and drug abuse that had become intrinsically infused into the broader conflict that parties had become embroiled (see Chapter Five). In turn, this also allowed me to analyse the complex social identities and interpersonal relationships that existed between hate victims and offenders and how these affected the restorative processes and outcomes that followed.

The impact of identity

Throughout the empirical study I reflected back on my subjectivity of the subject matter, including how my own experiences of hate victimisation affected my reactions to the stories I heard and observed. Ackers (1993: 236) states that “good research is that which accounts for the conditions of its own production... in order to achieve this, the researcher must concern herself with how she reacts to and experiences the research process”. With this in mind, I now turn to a consideration of how my own identity affected the subjects I came into contact with.

My identity background never completely matched the subject I was researching; indeed it would be extraordinarily rare for there to be complete matching (Eisner & Parmar 2007). However, while I never assumed an identical identity to a subject, for most part I had one identity trait in common with interviewees, be that my race, ethnicity, sexual orientation,

sex, and/or common experience of hate victimisation.¹⁰² The socio-economic environment in which I frequently found myself (most often local authority housing blocks) was also familiar to me. While my social class has inevitably changed as I have undertaken various degrees, my working class roots in East London meant that I had spent much of my time growing up in areas of social housing, socialising with people in similar socio-economic conditions. Understanding and using certain social dialects was helpful when forming rapport with individuals, further helping me to develop a trusting relationship with interviewees. Though in some cases, where interviewees came from different countries and spoke little English, my social background was less valuable.

The correspondence between researchers' identity traits with those of their subjects certainly helps to shape the personal relationship between them. Miller notes:

In the face-to-face interviews with neighbourhood police officers it was my sense that being a woman facilitated the conversation... Men may be more comfortable speaking of intimate topics with women than with other men... It made sense to the police that a female researcher would ask them about gender issues and that, as a criminologist, I would ask these questions in the context of community policing (1999: 232, cited in Bachman & Schutt 2007: 277).

In interviews with gay men, my own sexual orientation, clearly affected the openness of the research subject. In one case, on arriving at the interviewee's (Mr V) apartment, I was greeted with great warmth and a kiss on the cheek. I remember being slightly taken aback by this. Not because I was affronted by him kissing me, but because in my mind I had assumed the role of a "professional", arriving to carry out my job as a researcher. Being kissed was not something I had anticipated, even though it is a social norm within the gay community to kiss

¹⁰² Although most interviewees did not know of my previous experiences of hate crime.

male friends on the cheek, I hardly knew this gentleman, having only spoken previously on the telephone. Nonetheless, I was not put off by his welcome but actually encouraged by his cordial reception. It provided an instant bond between us which later translated into a lengthy and emotional discussion about his experiences of homophobic violence.

While my identity and social background clearly helped me to gain access and to build rapport with most victims, it cannot be said that my identity, *by itself*, explicitly evoked a richer account from interviewees. It is important to understand how other variables (including tactics used to build rapport) interact with the identity of the researcher and subject when in the field. Bachman and Schutt (2007) note that there is no one formula to successfully manage the personal dimension within empirical research. They contend that, “It is much more art than science and flows more from the researcher’s own personality and natural approach to other people than from formal training” (Bachman & Schutt 2007: 277).

During my interviews I found that having a common identity trait with the participant when *combined* with my showing warmth and empathy towards them encouraged participants to be open and honest with me. Building rapport was achieved by using general conversational techniques, having knowledge of the local area to draw on and, most importantly, showing the subject that I *cared*. In those cases where my identity was distinctly different to that of the victim, for example when interviewing Black African females, I was still able to encourage openness by engaging in general conversation before interview and by demonstrating to the interviewee that I cared about the emotional traumas. In fact, interviewees came from a very broad social and cultural spectrum, many of which were dissimilar to my own. Victims were young and old, able and disabled, and from a variety of racial and ethnic backgrounds. Yet in most cases, participants welcomed me into their homes, offered me food and drink and spoke at length about their experience of victimisation.

Only in a few cases did I experience an unfavourable reception from the interviewee. In one case a younger interviewee (Miss W) of “Black African” decent – whom I previously observed at a direct mediation meeting – had agreed for me to interview her at home. During the mediation meeting she had spoken infrequently, often looking down towards the table we sat around. After the meeting both the mediator and I reflected that her reservedness was unlikely to be a result of my presence but was more probably a product of her general demeanour, combined with the fact that she was a single mother of two, living in local authority accommodation in a foreign country where she spoke English as a second language, not to mention that she had recently experienced hate abuse. In such a situation, she was bound to feel at least a little vulnerable if not intimidated by the direct mediation process (see Chapters Five & Seven).

Nonetheless, when I later arrived at her home for interview I was unprepared for the reception I received. On opening her front door the interviewee simply walked back inside without formally greeting me or inviting me in. I gingerly entered her apartment and asked where I should sit, upon which she just pointed at a chair. I had to move several toys but found a spot to perch. I tried to strike up conversation but with little success. I began to feel very awkward as the interviewee sat in her chair looking away from me. Most of her answers were merely “yes” or “no”, and on some occasions she just grunted at me, leaving me to ask her several times to elaborate. Needless to say, the interview lasted less than 20 minutes, after which I left, relieved to have come to the end of it.

I cannot be sure whether this interviewee was indifferent or even hostile towards me or the interview process on that day, or whether her responses were a reflection of her general demeanour and normal method of communication (see Part II, Chapter Seven). Perhaps it was because it was a hot afternoon and she was heavily pregnant. I had woken her when I rang the door bell. Her other children played with their toys, while she sat slumped in her

armchair visibly exhausted. She appeared to be isolated and weighed down by her responsibilities. As I left I felt a pang of sadness for her situation but equally a feeling of guilt. Here I was, a young white man from Oxford University, all smiles and enthusiasm and curious about her thoughts on mediation. I could not have been further from her social and/or identity background. And I could not help but feel that had I been a young female of a similar ethnic and social background, the interviewee, while perhaps never going to be the most verbose, may have been somewhat more forthcoming.

My identity as a young(ish) white gay male from “Oxford” clearly had some impact on my research, both with regards to the decisions I made when interviewing victims and perhaps how some interviewees answered my questions. I can only hope that overall my identity enhanced rather than limited the data I collected. One cannot ignore the affect that identity has on criminological investigation (Phillips & Bowling 2003), nor how this impacts upon the emotions of the researcher (Bachman & Schutt 2007: 276-278). Very few people can say that they are immune to the identity of those around them. Perhaps it is only the very young who blissfully see others simply as human beings; having yet to learn to perceive others through a prism of identity difference (Stern-LaRosa & Bettmann 2000). As we grow older our own identities provide us with a lens through which we unconsciously judge others. We naturally feel affinity with those who share similar identities, be that our ethnicity, nationality, our religious beliefs or simply our gender (Miles 1989). However, for most part, these instant connections, based on the sharing of identity traits, are superficial. The more we get to know someone the less our visible identities become important. Field researchers are likely to overcome such barriers where they spend prolonged periods of time with those they research. However, for the short lived semi-structured interview it will remain that the researcher’s identity can play an important role in the quality of data collated (Phillips & Bowling 2003).

Conclusion

My time in the field has been an emotional journey through a complex world of prejudice and conflict. I have learnt a great deal about the nature of hate crime and the use of various restorative processes aimed at repairing the harms it causes. Using a triangulation approach to collecting data, I have been able to utilise both qualitative and quantitative data obtained from observations and interviews. The slow process of transcribing interviews and observations has allowed me time and space to draw out many themes that have helped to illuminate the varied experiences of hate victims. Such a process has enabled me to correlate process variables to process outcomes.

The chapter also explored how “restorative” each of the interventions examined were in practice. We have seen that restorative practitioners at Oxford YOS strictly adhered to the values and principles of RJ (at least as they are envisaged within the literature). Although the meetings I observed were indirect, it was clear that practitioners provided each participant with adequate information as to what RJ aims to achieve, leaving them with the choice to participate in direct dialogue if they so wished.

Community mediation was also clearly a restorative practice that aimed to achieve resolution and transformation through direct or indirect encounters between the parties. The use of inclusive dialogue and mediation agreements that included promises of desistance, and sometimes apologies, also illuminated community mediations restorative credentials. However, several components of the mediation process prevent it from being labelled as “fully restorative”. The main factor being that the parties do not attend mediation with the predefined labels of “offender” and “victim”. This means that perpetrators of hate crime are not always fully prepared to take responsibility for their prejudiced-motivated actions, while

reparation, as it is often conceived by restorativists – such a written apology or community work – is only rarely a viable option. Nevertheless, as we will see in the following chapter, this does not prevent community mediation from resolving conflicts or from helping victims to recover from their experiences of hate victimisation. Indeed, it is the restorative values of inclusive dialogue and “story-telling”, that mediation promotes, which we will see as being vital to hate victims’ emotional reparation.

Finally, we have seen that the restorative disposal used by Devon and Cornwall Police, though labelled as a “restorative” intervention, lacked many of the attributes of other restorative practices. Still, the fact that officers aimed to provide victims with some form of reparation while also giving the majority of victims a chance to vocalise their experiences of hate crime suggested that the disposal remained, at least to some extent, a restorative measure.

Chapter Five now begins to present the findings from the empirical study, outlining both the harms that hate incidents caused to victims as well as whether restorative processes aided the recovery of those who were victimised. In exploring the harm repairing potential of RJ the data gained from Southwark Community Mediation, the Devon and Cornwall Police Disposal, and RJ practitioner interviews are examined separately and comparatively in order to highlight the common themes that were identified as both helping and hindering victims’ emotional recovery from hate victimisation.

Chapter Five: Repairing the harms of hate

Introduction

Chapter Two explored the current theoretical and empirical research on the harms of hatred, acknowledging that “hate crimes” make up just one part of a continuum of victimisation faced by victims; sometimes on a daily basis. From the structural inequalities of modern society to the individual actions of hate offenders, hate victims frequently experience various social harms which act to sustain their position of vulnerability. Compounding their precarious social position is the fact that targeted abuse attacks the very core of a victim’s identity. This tears at their “essence”, resulting in the destabilisation of victims’ ontological security (Garnets et al 1992). Researchers have provided substantial evidence that victims of hate crime suffer heightened levels of fear, anxiety and anger when compared to victims of non-hate-motivated crimes (see for example, Herek et al 1999; McDevitt et al 2001). Such emotional traumas are often endured for protracted periods of time as victims struggle to come to terms with their victimisation, often attenuated by the fear of repeat abuse.

As part of the empirical research for this thesis, victims (and complainant victims¹⁰³) of hate crime were asked to explain in their own words how their experience of victimisation affected them. Although these harms were not compared to those who had suffered non-hate related incidents, the qualitative data helps us to explore further the harmful effects of hate crime, while the various datasets are used to examine whether RJ *helped* to repair these harms.

¹⁰³ As per Chapter Four, “complainant victims” have reported incidents to the police or other local agencies but the accused perpetrator has not been charged or convicted of an offence.

Part I begins by exploring the types of hate crime that were researched in South London, Devon and Cornwall and Oxford. I then explore the various emotional and physical harms that were experienced by victims as a direct result of their victimisation.

Part II provides the first set of empirical findings regarding the main aim of this thesis, evaluating whether community mediation *helped* to repair the harms of hate crime. I begin this section of the chapter with an analysis of interviewees' satisfaction of community mediation and their perceptions of procedural fairness. I then examine the qualitative and quantitative data on the levels of emotional harm experienced by complainant victims directly before and after mediation. This part of the chapter also identifies the various parts and processes within community mediation that were highlighted by interviewees as being *helpful* to their emotional recovery.

Part III repeats a similar pattern of analysis by exploring the harm repairing qualities of the Restorative Disposal (RD) used by Devon and Cornwall Police. In this section I compare and contrast the findings between community mediation and police led RJ, reflecting on the differing roles that police officers and community mediators undertake and the effect this has on successful application of RJ.

In Part IV I move on to briefly explore the results of practitioner interviews, highlighting again the various parts of the restorative process that were viewed by practitioners as being helpful to victims' emotional wellbeing. It is at this point that I illuminate the importance of victims and their family members exploring, not only the harms caused by prejudice, but what their identity means to them.

Finally, I draw the chapter to a close by setting out the common aspects of RJ – as found across the datasets – that aided victims' emotional wellbeing; highlighting in particular the importance of: “story-telling”, support offered by facilitators, *genuine* offerings of reparation, and promises made by offenders that incidents would not be repeated.

PART I: The harms of hate crime

Types of hate crime

A broad range of hate crimes/incidents were investigated during the 18 months spent observing restorative meetings and interviewing victims. At times it has not been easy to classify which forms of prejudice were central to the victim's¹⁰⁴ experience of victimisation and as we will see a combination of identity traits can affect both the causation of hate incidents and how victims react to them. Nevertheless, in the majority of cases a clear "type" of prejudice was identified by the victim and other stakeholders as causal to the incident. In total 38 victims were interviewed from South London (23), Devon and Cornwall (14) and Oxford (1). In this first part of the chapter all 38 victims are aggregated in order to explore the harms that victims experienced and the types of hostility that were demonstrated by perpetrators.

Twenty-seven victims stated that they believed the incident was motivated by their race, ethnicity or nationality.¹⁰⁵ In one case the victim identified the incident as being solely motivated by his religious beliefs; in another by sexual orientation, while one case was believed to be motivated by the victim's disability. However, various other cases were thought to be motivated by a combination of different prejudices. For example, in a conflict lasting over 18 months, the victim was targeted not only because of his sexual orientation but because of his HIV status and other physical disabilities (see Case Study 1). Other victims believed that the offender had targeted them because of their race *and* disability, race *and*

¹⁰⁴ For reasons of simplicity, in Part I I refer to victims and complainant victims collectively as "victims". This is because all interviewees self-identified as having been victimised. The differentiation between "victim" and "complainant victim" made elsewhere in this chapter/thesis is recognition of the slightly different roles that are played by participants within the restorative practices researched and not a reflection of differing levels of the harm suffered by individuals (see further, thesis Conclusion).

¹⁰⁵ See Appendix B, question 11.

religious beliefs, race *and* sexual orientation, and in one case the victim expressed that the offender had abused her in terms of her race, disability *and* sexual orientation.¹⁰⁶

Hate incidents also varied in seriousness¹⁰⁷, ranging from verbal abuse and intimidation to grievous bodily harm. The majority of cases researched at Devon and Cornwall involved public order offences (usually offences proscribed under sections 4 and 5 of the *Public Order Act 1986*), mostly relating to racial abuse that led to the victim fearing violence. In a high proportion of these cases victims were harassed or verbally abused while at work, commonly in takeaway shops. Although some of the incidents in Devon and Cornwall had been ongoing (four), the majority of cases (eight) were “one off” incidents, typically involving offenders out late at night while intoxicated by alcohol.

At the Hate Crimes Project (HCP), cases were often marked by *ongoing* conflict that had escalated over a long period of time. Complaints about noise between tenants in large local authority housing blocks often sparked tensions between neighbours which, when left to fester, developed into larger scale conflicts. It was common for such disputes to culminate in verbal outbursts, at which point comments about the race, religion, sexual orientation and/or disability of the complainant victim were made. This changed what was initially a neighbour dispute about noise or rubbish into a “hate incident”.¹⁰⁸ In a significant minority of other cases (seven) it was clear that the complainant victim had been specifically targeted over a sustained period of time by someone who held animosity against his or her cultural and/or identity background (see similarly, Bowling 1993; 1998; Garland & Chakraborti 2006). Some of these cases were marked by extreme episodes of violence (see examples below and thesis Conclusion).

¹⁰⁶ The variety of different prejudice-motivated incidents researched enhances the validity of the study’s exploration of RJ and hate crime. However, due to the relatively small sample of disabled and homophobic incidents there is little room to explore the nuances between different types of hate victimisation or how RJ might respond differently to different types of hate crime.

¹⁰⁷ “Seriousness” refers to the severity of an offence based on its classification under the criminal law and not necessarily on the level of harm that an incident causes.

¹⁰⁸ See further analysis of these types of conflict below, “Resolving multi-layered hate disputes”.

In several other cases the victim had suffered damage to their property. While in all other cases, conflict involved one or more incidents of: verbal abuse, harassment, or persistent complaints made about an individual to the police and/or housing associations that were perceived by to be racially motivated.

The harms of hatred

In cases where the victim had suffered serious forms of violence it was likely that he or she would also sustain psychological trauma. But what of the other cases where physical violence is absent? In Chapter Two we explored how “low-level” but persistent abuse has a cumulative effect which, when left unchallenged, has serious consequences for victims’ wellbeing (Bowling 1998; Garland & Chakraborti 2006). In exploring further the harms of violent and non-violent hate incidents, interviewees were asked to explain how the incident/s had impacted upon their emotional wellbeing.¹⁰⁹ Interviewees were then read a list of emotional harms and asked to agree or disagree whether they had experienced each as a direct result of the incident/s (see Table 5.1 below; see Appendix B, question 17 for list of emotional harms).¹¹⁰

Anxiety and fear

The vast majority of victims interviewed agreed that they had experienced feelings of anxiety (33) and a fear of being re-victimised (32) directly after the hate incident.¹¹¹ These findings concur with other research into the harms of hate crime (Herek et al 1997; 1999; Iganski 2008; Chapter Two). In particular, the fear of repeat attacks or abuse left victims anxious

¹⁰⁹ All 38 interviews agreed that the incident had affected their emotional wellbeing.

¹¹⁰ Those who agreed to certain harms were then asked to elaborate on their experiences.

¹¹¹ HCP and Devon and Cornwall victims aggregated.

about their personal safety (see similarly, Victim Support 2006; Iganski 2008). As one interviewee succinctly put it, “I am always on my guard.” While another commented, “Just to be frightened in the communal hallway. Yesterday he spat all over me while shouting. Today would he touch me, would he do something?”

Incidents clearly destabilised victims’ feelings of security within the community, leaving many with the constant fear that they would be attacked when going out into public (Iganski 2008). However, it was also common for interviewees to explain how feelings of fear and anxiety spread to other affected community members (Iganski 2001; Ahn Lim 2009). In many cases entire families become the targets of abuse, or in cases involving young victims, parents became fearful that their children would be seriously hurt. One father of a young victim whose arm had been broken in a racially motivated attack spoke of the effect the incident had on the entire family:

...the fear whenever he went to school or went out, that was a nightmare for us... The mother was screaming all the time thinking that something is going to happen to him, it was really affecting us emotionally.

Table 5.1: *Number of victims (complainant victims) who experienced emotional harms – grouped by type of restorative intervention*

Emotional harm suffered	HCP* <i>N</i> = 23	D&C** <i>N</i> = 14	Oxford*** <i>N</i> = 1	Total <i>N</i> = 38 (aggregated percentage)
Feelings of anxiety	19	13	1	33 (87)
Fear of being attacked / victimised again	22	9	1	32 (84)
Anger	17	13	1	31 (82)
Depression or feeling depressed	17	10	1	28 (74)
Loss of self esteem	14	8	1	23 (61)
Sleeplessness	11	8	1	20 (53)
Loss of confidence	10	9	1	20 (53)
Nightmares or bad dreams	5	4	0	9 (24)
Self-blame	3	0	0	3 (8)

*Hate Crimes Project, Southwark Mediation. Total number of interviewees 23.

**Devon and Cornwall Police, Restorative Disposal. Total number of interviewees 14.

***Oxford restorative conferencing. Total number of interviewees 1.

NB: Interviewees were asked “did you experience any of the following emotional or psychological impact/s because of the incident/s?” See Appendix B, questions 16 and 17.

Spatial and behavioural implications

The constant fear of repeat victimisation clearly had implications for victims’ spatial mobility. Interviewees were asked whether, as a result of the incident, they: avoided certain locations; were now more careful about what they said and did; and/or tried to change their appearance or the way they acted when out in the community (see Appendix B, question 18 & 19). Twenty-seven out of the 38 interviewees agreed that they now avoided certain locations as a direct result of their victimisation. Many went on to explain that they would no longer visit certain areas of town, with some now refusing to walk by themselves late at

night. This finding replicated those from other studies that have shown that victims of hate crime frequently avoid certain locations in order to evade harassment, or worse violence (Gordon 1994; Garland & Chakraborti 2006; Iganski 2008). For instance, a victim of racist abuse commented:

...living with the fear all the time... I have this fear of walking in the night. I still feel now if I go out at night... I might be attacked [or]... abused.

Changes made by victims to their day-to-day behaviours could be directly linked to their feelings of anxiety about what had happened to them and to their fear that they would be targeted again (see similarly, Garland & Chakraborti 2006; Iganski 2008). For others, the frequency of incidents also acted to compound their emotional turmoil, leading to self-imposed restrictions on where they were prepared to go and what they would now say to others within the local neighbourhood. One interviewee summed up the oppressive nature that incidents could have when he explained how he frequently sat indoors with all the lights off so as to avoid the attention of his neighbour. He also stated that he waited until the middle of the night before cautiously venturing out to purchase groceries (see Case Study 1; see also, Garland & Chakraborti 2006: 14).

Table 5.2: *Number of victims (complainant victims) whose social behaviours were affected by a hate incident/s – grouped by type of restorative intervention*

Behavioural impacts	HCP* N = 23	D&C** N = 14	Oxford*** N = 1	Total N = 38 (aggregated percentage)
Avoid certain locations	17	9	1	27 (71)
More careful about what you say or do	13	8	0	21 (55)
Try to change your appearance or the way you act	5	6	1	12 (32)

*Hate Crimes Project, Southwark Mediation. Total number of interviewees 23.

**Devon and Cornwall Police, Restorative Disposal. Total number of interviewees 14.

***Oxford restorative conferencing. Total number of interviewees 1.

NB: See Appendix B, questions 18 and 19 for exact questions asked.

Depression, loss of confidence and self-esteem

It was clear that feelings of fear and anxiety frequently kept individuals from living freely within the community, but other emotional traumas also acted to damage the wellbeing of victims. A high proportion of victims stated that they had: felt depressed (27); lost self-esteem (22); and lost confidence (19). These interlinking emotions all stress the damaging impact of targeting an individual's identity (Herek et al 1997; 1999; see also, Garland & Chakraborti 2006). One interviewee commented, "it makes me depressed sometimes", while another admitted that her ordeal left her feeling "sad" and "tearful". Several victims stated that they had also been prescribed anti-depressants as a means of dealing with their victimisation.

Physical harm

Interviewees were also asked whether they sustained “any physical injury resulting from the incident/dispute?” If they answered yes they were then asked what their injury was and whether this required medical attention (see Appendix B, question 14). Seven interviewees indicated that they had suffered some form of physical violence. In two cases this entailed a common assault, including one victim being “shoved” and another being slapped on the face. More serious forms of violence involved a brick being thrown at a young victim’s head resulting in an injury that required several stitches, a victim of homophobic abuse being pushed to the floor causing a gash to his chin and his teeth to penetrate his upper lip, and a case involving racially aggravated grievous bodily harm wherein the young victim’s wrist was broken.

Many other victims, whose victimisation was characterised by long-term abuse, developed physical illnesses that they directly attributed to their victimisation. For example, in a case that had lasted over ten years the victim stated:

The hair just started dropping out.... I’ve got high blood pressure from all of this... my record was completely clean from when I was born... but then BAM! 1998 and 1999, the whole affects just started coming up one after another. So, it’s like you can see there is a pattern here and it is because of her... having all these things happen... to me... I don’t like saying it ruined my life, but it took a big portion of my life.¹¹²

Other interviewees encountered symptoms of stress such as “heart palpitations”, “high blood pressure”, “nightmares”, “sleeplessness” and “headaches” (see also, Victim Support 2006).

Anger

¹¹² See further Case Study 1, Chapter Six.

Most victims (31) also spoke of the immense anger they felt about the incident/s. One interviewee tried to express this stating, “I wanted to explode, I don’t know how to explain it... to put it into words”. The danger of anger is that it can lead to a desire to retaliate (see Chapter Two). A victim of racist abuse summed this up:

Hatred is a bad thing, hatred leads to violence and violence leads to crime. You hate, you hate... You might do me things... and I might take it but after a while I might lash out because I can only take so much.

Ongoing conflicts that were left to escalate commonly led to greater levels of violence between community members (see also, Garland & Chakraborti 2006). For example, one RJ practitioner spoke of a case involving a young white British student who had made a racist comment to his classmate who was of Pakistani heritage. Frightened to go back to school the victimised student asked his cousins to protect him. Retaliatory intimidation then resulted in the original perpetrator becoming afraid of going back to school. As the case escalated into what the school feared might result in a white against Asian gang fight, a restorative justice practitioner was brought in by the headmaster in order to bring the parties together to discuss what had happened. It was felt that in order to prevent such incidents from escalating into serious forms of violence, a new relationship built on trust needed to be established between victim and offender, allowing for the dissipation of previous tensions (see more on how RJ might challenge prejudice in Chapter Seven).

Social harms

Finally, interviewees were also asked whether they experienced any financial costs, housing difficulties and/or employment difficulties as a direct result of the incident/s (see Appendix B, questions 15, 18 & 19).

Two victims stating that they lost their job as a direct result of their ordeal.¹¹³ Six victims had incurred financial costs associated with their victimisation, while many victims (17) also spoke of housing problems that the incident had caused. Most of these victims wished to move away from their abusive neighbours but were unable to obtain enough “housing points” to be relocated by their local housing officer. Other victims spoke of persistent false complaints made by their neighbours to the housing association which they believed were racially or homophobically motivated. This led to some victims receiving letters and threats of eviction from the housing association. It should also be noted here that many interviewees also spoke of secondary victimisation that resulted from reporting incidents to local agencies (see Chapter Two). Due to the commonality amongst interviewees of such encounters, the subject of secondary victimisation and harm reparation via multi-agency partnerships through mediation will be dealt with separately in Chapter Six.

The study’s findings on harm concurred with other research that was reviewed in Chapter Two. In particular, the documentation of high levels of fear and anxiety here was consistent with findings from across the body of research (see for example, Herek et al 1997; 1999). Moreover, the empirical study supported the contention made by other researchers (such as, Bowling 1998; Garland & Chakraborti 2006; Iganski 2008) that a high proportion of hate incidents make up part of an ongoing campaign of abuse targeted towards certain minority individuals. Combined, the results highlighted both the damaging and persistent nature of hate crime. However, as we will also see below, many other hate incidents occur, not just through the hateful motivations of offenders, but from within the broader context of

¹¹³ A total of six interviewees stated that they experienced employment difficulties as a direct result of their victimisation.

interpersonal conflicts. This means that in many cases hate incidents are not just rooted to an offender’s prejudice, but to an array of other social and economic factors such as those relating to relating housing, noise, mental health and alcohol and drug abuse (see below “Resolving multi-layered hate disputes”).

Table 5.3: *Number of victims (complainant victims) who experienced financial costs, and housing and employment difficulties – grouped by restorative intervention*

Social harms	HCP* <i>N</i> = 23	D&C** <i>N</i> = 14	Oxford*** <i>N</i> = 1	Total <i>N</i> = 38 (aggregated percentage)
Housing difficulties	15	2	0	17 (45)
Financial costs	6	2	0	8 (21)
Employment difficulties	3	3	0	6 (16)

*Hate Crimes Project, Southwark Mediation. Total number of interviewees 23.

**Devon and Cornwall Police, Restorative Disposal. Total number of interviewees 14.

***Oxford restorative conferencing. Total number of interviewees 1.

NB: See Appendix B, questions 15, 18 and 19 for exact questions asked.

PART II: COMMUNITY MEDIATION: The Hate Crimes Project

Satisfaction and procedural fairness

Before I analyse the emotional benefits that might be gained from participating in community mediation, it is instructive for us to begin by examining how satisfied participants were with the process, as well as whether they found it to be procedurally fair. At this point I review the two main sources of data separately¹¹⁴ considering the markedly different approaches taken to RJ by each practice (see Chapter Four).

¹¹⁴ I.e. community mediation and the police restorative disposal. The one interviewee from Oxford is not included in this analysis but is used as a case study in Chapter Seven.

Out of the 23 interviewees from Southwark Mediation, 11 had taken part in both direct *and* indirect mediation meetings with the other party, leaving 12 complainant victims who had participated in indirect (shuttle) mediation only. Twenty out of the 23 interviewees stated that they were either “very satisfied” or “satisfied” with the mediation process, with only two stating they were either “dissatisfied” or “very dissatisfied” (see Appendix B, Sections 3 & 5).¹¹⁵ All but one interviewee agreed that the mediator explained to them how mediation worked and what it aimed to achieve, while 20 interviewees also stated the mediator acted fairly throughout the process. As one interviewee remarked:

... I felt that she gave us both exactly the same amount of time to speak, to talk about what we were going through. So we both talked and it was there that she was able to see that these are the issues that we were both experiencing and this is where it started from.

In total, 21 complainant victims expressed that they found the mediation process to be either a “positive” or “very positive” experience. Based on these findings it was unsurprising that 22 out of the 23 participants went on to state that they would recommend mediation to other individuals who were involved in a similar incident/s.

In Chapter Three we saw that provided stakeholders are not given false expectations about what they could gain from RJ and participants are given the chance to describe how the crime has impacted upon them, participants should gain a sense of empowerment and emotional healing from participating in inclusive dialogue (Zehr 1990; Kay 2008).¹¹⁶ It was important, therefore, that the vast majority (21) of interviewees felt that the mediator

¹¹⁵ One other interviewee stated that they were neither satisfied nor dissatisfied.

¹¹⁶ See below how ineffective facilitation can lead to dissatisfaction and in some cases greater levels of anger and anxiety.

provided them with an opportunity to explain how the incident had affected them.¹¹⁷ One interviewee remarked:

She wanted to know in detail what happened and how do we feel now and how we were feeling before he [perpetrator] moved in. She asked us all different questions which I never thought she would ask. And she was interested in what we were going through... Just sitting down and talking it through with [her]. She has tried to comfort us, it was very helpful.

This finding was supported by observations of meetings where parties were clearly given several opportunities to express how they were feeling and to explain how the incident/s had affected their emotional wellbeing (see similarly, Strang 2002).

HEALING EMOTIONAL HARMS

Anxiety, fear and anger

Previous research studies, reviewed in Chapter Two, and the analysis of interview data above, highlight the fact that hate victims often endure heightened levels of fear and anxiety as they anticipate repeat attacks or abuse by the perpetrator (see Herek et al 1997; McDevitt et al 2001; Iganski 2008). It was therefore important that the study explored whether community mediation helped to improve these emotional traumas. I did this by asking both open and closed questions about complainant victims' experiences of the mediation process (see Chapter Four).

¹¹⁷ With one stating "no" and another stating they were "unsure". All 11 interviewees who participated in direct mediation stated that they had been given an opportunity to express how the incident had affected them.

To begin with, interviewees were simply asked whether the mediation process *directly* helped to improve their “emotional wellbeing”. Seventeen agreed that it had, one stated they were unsure, leaving five who did not feel that it helped to improve their emotional wellbeing.¹¹⁸ One positively affected interviewee explained:

I’m more out there... I feel like I have gotten my confidence back. I am... looking for a job... There is peace in my [housing] block... for me and my family so I’m back to being myself.

Using a 10 point scale, one being very low and ten very high, interviewees were additionally asked to indicate a level of anger and a level of anxiety (that they felt towards the other party/about the incident) directly *before* and directly *after* mediation (see Appendix B, questions 37-40). The most common level of anxiety indicated by 9 complainant victims was 10; two recorded an anxiety level of 3 or below (indicating a mild level of anxiety), with the remaining 10 stating that their level was between five and nine (with only two stating that the question was not applicable to them). For a majority of complainant victims (fifteen of the 21), their levels of anxiety decreased, albeit not dramatically, directly after mediation. A Wilcoxon Signed-ranks test indicated that median levels of anxiety were higher directly before mediation (Mdn = 9) than they were directly after (Mdn = 5, $Z = -3.313$, $p = .001$). No interviewee indicated a higher level of anxiety after mediation. Similar results were recorded for levels of anger (see Table 5.1).¹¹⁹ These results indicated that the mediation process had the effect of *partially* reducing these negative emotions. The findings are consistent with

¹¹⁸ Though some of these five also indicated that the incident/s had only a limited impact on their emotional wellbeing to begin with. There was little variation between those who had participated in direct mediation compared to indirect mediation. Nine out of the 11 interviewees who took part in direct mediation stated that the process helped their emotional wellbeing, compared with 8 out of the 12 who participated indirectly.

¹¹⁹ Mdn = 10 before, Mdn 7 after, $Z = -3.317$, $p = .001$.

other studies which have shown that restorative processes can help to reduce feelings of anger and anxiety (see for example, Daly 2001; Strang 2002; Strang et al 2006).

A slightly different method of data collection was used when measuring levels of fear by using likert-type questions (see Appendix B, questions 33-36) that asked interviewees whether they were fearful of the accused offender (or what he or she might do) before and after mediation.¹²⁰ Eighteen interviewees stated that they either “agreed” or “strongly agreed” that they were fearful before mediation (five were not fearful before or after mediation). Of the 18 interviewees who were fearful before mediation half (9) stated that they “disagreed” or “strongly disagreed” that they were fearful of the other party directly after mediation, indicating that the mediation process had significantly reduced their fear of the other party. A complainant victim who had been racially assaulted remarked:

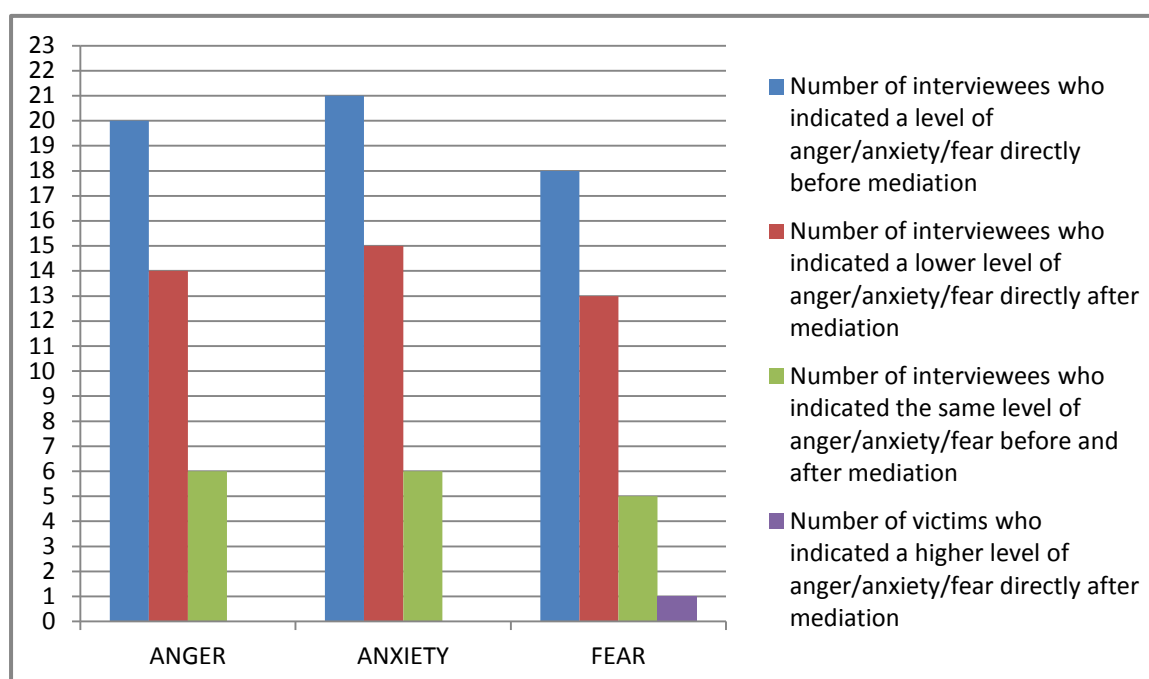
Before mediation I was scared to do anything as I thought they might come. So I didn't want to, like, do anything wrong to them or go near them basically. But after I was more confident to mix with other people.

It was important for some victims that the process gave them the confidence to get back out into community. A complainant victim of disability abuse commented:

I'm more happy, it [direct mediation] made me talk more, I'm more confident, back to my old self and I'm enjoying my working, enjoying talking to people...

¹²⁰ Based on a scale of strongly agree, agree, neither agree nor disagree, disagree and strongly disagree.

Graph 5.1: *Number of complainant victims who indicated that their level of anger, anxiety and fear decreased/stayed the same/ increased directly after mediation*



Total $N = 23$.

NB: Measurement of fear was carried out on 6-point ordinal scale. The measurement of anger and anxiety was based on a 10-point interval scale. See Appendix B, questions 33-40 for exact questions/scales.

What helped heal the harms?

It was clear from the interviews that the vast majority of participants found mediation to be a positive experience that aided their recovery from hate crime (see similarly, Strang 2002). However, this finding alone does not show how or why mediation was able to help repair emotional traumas. Hence, the research was also focused on exploring what parts of the process helped or hindered participants' emotional wellbeing. For those interviewees that had stated that the mediation process had aided their emotional recovery, a list of different parts/processes (i.e. process variables) involved during mediation was then read out and interviewees were asked to state yes or no as to whether it each part/process had helped to improve their emotional wellbeing. The most common process variables, identified by interviewees, included: "having the opportunity to take part in the process"; "explaining

(directly or indirectly) to the other party how they felt”; “explaining how the incident had affected their life”; “meeting the other party face-to-face”; “witnessing the other party’s comprehension of how the incident/conflict had affected them”; “receiving an apology from the other party”; and “obtaining assurances that the incident(s)/dispute would stop”.

Talking about harm

Two of the most common (and connected) variables elaborated upon by the majority of interviewees, as aiding their recovery, were: being able to explain how they felt to the other party (directly or indirectly); and having an opportunity to express how the incident/s had affected their life.¹²¹ During observations of both direct and indirect meetings, the mediator clearly gave both parties the opportunity to explain how the incident had affected them and for the other party to respond to this. Restorative justice scholars argue that victims who are given the opportunity to describe how a crime has impacted upon their life can gain a sense of empowerment (Braithwaite 2002). As one interviewee explained, “that’s the main thing, being able to talk to someone about it, because initially you don’t think anyone is interested.”

Judith Kay (2008) explains that this amounts to a process of “story-telling” that enables victims to be rescued from the shadows of silence, isolation and despair, bringing them to a place of greater security. Victims who vocalise emotional pain often gain therapeutic release and feel emotional support from those who listen (see Chapter Three). One interviewee explained:

¹²¹ Twenty of the 23 interviewees stated that they were either “very satisfied” or “satisfied” with the mediation process; 21 had found the mediation process to be either a “positive” or “very positive” experience; and unsurprisingly 22 of the 23 participants also stated that they would recommend mediation to other individuals who were involved in similar incidents.

It helped me because I talked to them and they [the other party] listened to me. The way that she [the mediator] was talking, she know where I was coming from and she know that I was getting intimidated and bullied.

Another interviewee who had experienced ongoing racial abuse expressed how important it was to her that she and her husband were able to take part in a process that gave them an active role in their own conflict resolution:

It's like they opened the door to us. If we know of anyone else in trouble we can always advise them to go to the mediation and do something about it instead of sitting there suffering.

Mediation therefore created the space for many individuals to explain to the accused perpetrator, either directly or indirectly, how they had been affected by the incident/s. In fact, there was little qualitative difference between indirect and direct meetings with regards to complainant victim's ability to express how they had been affected by the incidents. For example, in one case where the complainant victim took part in indirect mediation only he stated:

...they don't actually see the effect that it [prejudice] is having on you, so it's great to sit down and actually say [to the mediator] this is what it is doing.

Of course the communication of harm during indirect meetings will be dependent on how much trust is built between the mediator and complainant victim. Mediators must then relay these harms back to the accused perpetrator. During the observations that were made, the mediator made detailed notes of what had been said by both parties. She then asked

participants for their permission to explain to the other party what they had said during the meeting. The relaying of information was in most occasions expressed articulately and accurately. In cases where a direct mediation meeting was arranged the parties were encouraged to explain in their own words how the incident/s had affected them. The mediator also asked the complainant victim before direct meetings took place whether they felt comfortable with her raising the issue of identity prejudice if they did not feel comfortable doing this themselves during the meeting.

Talking about harm in cases involving learning impairments

Mediators will also frequently come across children and adults with learning difficulties, mental health issues and language impairments (particularly in cases of disability hate crime). In a recent study into the special needs of young offenders, Talbot (2010) found that over 60% had communication difficulties and 25% had special educational needs. Significant numbers of offenders also had “very low IQs of less than 70 (possible learning disabilities)... attention deficit hyperactive disorder (ADHD), autistic spectrum disorder, low levels of literacy... and specific learning difficulties such as dyslexia.” (Talbot 2010: 5).

Applying the “normal” rules of communication to participants with such difficulties is unlikely to support inclusive dialogue. Restorative practitioners must therefore use the flexibility of restorative practice to find innovative ways for participants to express themselves during meetings. This will entail facilitators using different methods of communication that encourage participants to express themselves. Holland (2011) has highlighted several methods of improving communication between children with learning difficulties and language impairments. Some such methods include: rehearsing what might be said to others before saying it out loud; providing a mind map and highlighter pen for them to

use to follow the restorative process; and using visual comic strips so participants can draw their stories.

Practitioners may also wish to explore the physical effects of a crime rather than simply asking victims to talk about their emotional problems. In several of the interviews carried out for this thesis, interviewees did not understand terms such as “anxiety” or “depression” and I often struggled to explain what these meant. Instead, children were often more readily able to explain physical reactions to a crime such as that they had a sick feeling in their stomach or that they felt shaky or that could not sleep at night. Exploring such physical sensations may help to elicit the emotional sufferings that children find difficult to verbally articulate.¹²²

Reparation: non-verbal expressions of contrition

It was unusual in community mediation meetings for verbal apologies to be offered, with only four interviewees stating that they had received a direct apology.¹²³ Instead, it was more common for participants to offer subtle forms of apologetic gestures, such as offering a handshake and/or placing a hand on the other party’s arm. Changes in participants’ physical demeanours were also indicative of their willingness to rebuild their damaged relationship. For example, participants often began meetings with their arms folded; some even sat to the side of their chair facing away from the other party and refusing to make eye contact. However, throughout the meeting the mediator would focus on general points of agreement that were drawn out during discussion and as the parties began to find points of mutual understanding their body language often softened.

¹²² The fundamental importance of victims explaining the effects of prejudice and detailing their experiences of “difference” is discussed below in Part IV and further in Chapter Seven.

¹²³ This finding was supported by observations.

In a case involving an elderly participant and her housing officer in a complex case involving disability hate crime and false accusations of racism, I noted in my fieldwork diary:

Mrs A [complainant victim *and* accused perpetrator] was shaking and very tearful... She maintains most of her eye contact with me, the only other White person in the room... she is very defensive towards the other party and refuses to look her in the eye... As the meeting has progressed her body language has dramatically changed... Mrs A smiles and Mrs B smiles back at her, she then touches Mrs B's hand, Mrs B smiles widely... By the end of the discussion both Mrs A and B are laughing and they again hold each others' hand.

Such observations were indicative of the non-verbal means of communication that often acted to help renew the parties' damaged relationship (see further, Part II, Chapter Seven). These symbolic gestures worked to support conflict resolution by sending non-verbal messages of contrition and mutual understanding.

The role of mediators in supporting parties

One unanticipated finding, common amongst half of those interviewed, was the importance placed on the "support" as provided by the mediator. Support was especially significant for those who had suffered ongoing forms of abuse. Such support is intrinsically linked to the facilitator's role in engaging victims and their supporters and listening to their stories (Sawin & Zehr 2007: 53-54). One complainant victim explained, "I needed that support, I don't want to be shoved in a corner, it is something that should be followed up. I am glad that she [the mediator] does that." Unsurprisingly, all interviewees agreed that the mediator had tried to help them to resolve the problems that the incident had caused.

The role of the mediator was therefore seen by complainant victims as a vital part of their re-empowerment and ensuing restoration. In Chapter Six, I examine the secondary victimisation caused by local authorities and state agencies who became involved in hate crime cases. In many of these cases, complaints made to housing authorities led to further frustrations as housing officers failed to react to complaints of hate crime, or worse, their insensitive dealings with complainant victims acted to exacerbate their ordeal. In cases where interviewees had reported their abuse to the police, a lack of evidence often meant that officers could not take any action. Many interviewees also stated that the police simply redirected their complaints to the council as a “domestic dispute”.

Experiences of secondary victimisation often compounded complainant victims’ trauma, supporting the theoretical assertions made in Chapter Two relating to structural disadvantage (Perry 2001). Hence, when the mediator became involved in complainant victims’ cases a great sense of relief was experienced by those who had felt “let down” by other agencies. Victims’ sense of relief was predicated on their desire to be listened to and for their complaints to be taken seriously. Additional support offered by mediators post mediation was also seen as “caring”, reassuring individuals that they mattered. This often involved mediators telephoning participants periodically to ensure that they were not experiencing any further problems (see Case Study 1 below).

The extension of the restorative hand was clearly an important source of comfort during a time when complainant victims felt at their most vulnerable. In this sense, the support offered by mediators to victims of hate crime must not be underestimated as an essential source of victim healing (see Case Study 1). It means that facilitators become pivotal stakeholders within hate crime cases who actively cultivate the engagement of the parties via a dialogical process that encourages the vocalisation of victimisation (see more generally, Sawin & Zehr 2007).

Assurances of desistance

It was clear that the process of mediation brought about a variety of emotional benefits to the majority of complainant victims, allowing them to voice the harms that prejudice had caused to them, for those harms to be taken seriously, and for them to actively participate in resolving their own conflict. However for many complainant victims the road to emotional wellbeing remained partially blocked unless the offender provided them with an assurance that their prejudiced actions would not be repeated. A victim of disablist harassment commented, “They [the group of teenage offenders] said they would go a different way. At first I was not sure but they do that nowadays...” Similar comments were made during many of the interviews, suggesting that although the process of mediation *partially* helped to improve levels of fear, anxiety and anger, such feelings were not reduced to any great extent until the complainant victim had tangible evidence that the perpetrator had kept to his or her promises of desistance. At the end of one meeting a father of a young victim of religiously aggravated harassment rather poignantly opined, “the proof will be in the pudding”.

Promises of desistance were typically contained within mediation agreements which outlined the undertakings each party had agreed to. In some cases this was spelt out specifically, for example, as a promise *not* to use racist language or *not* to direct animal sounds at the other party.¹²⁴ In other agreements, more subtle wording was used such as “ceasing to use abusive language”. All agreements were written in neutral terms, i.e. undertakings were not party specific, though it was usually evident to whom certain undertakings were directed. Of particular significance was that in the majority of cases the

¹²⁴ In several cases the making of monkey sounds, which were perceived as racially motivated, had caused distress to the complainant victim. Such sounds can amount to proof of racial aggravation, see *R v SH* [2010] EWCA Crim 1931.

accused perpetrator desisted from further abuse¹²⁵ having signed a mediation agreement to such effect (explored further in Chapter Seven).¹²⁶

Signed agreements were not legally binding, however for many victims they were perceived to be valid. Furthermore, the breaching of agreements could have consequences for one or both parties. In cases where housing authorities had tried and failed to resolve hate conflicts, letters were typically sent to one or both parties outlining their tenancy agreement and warning that anti-social behaviour and/or the commission of hate offences would breach these terms. This meant that for some parties the mediation agreement was the last attempt at remedying their case. If incidents continued post mediation, the mediator could contact the parties' housing officer, at which point either the complainant victim/s could be relocated or the accused perpetrator would be found in breach of his or her tenancy agreement and their lease rescinded. Such recourse occurred in several cases (see Chapter Six).

The next case study demonstrates how the odious harms of ongoing hate abuse can begin to be repaired via restorative dialogue, with particular significance given to tackling prejudice, receiving support from facilitators and obtaining assurances of desistance.

¹²⁵ Hate incidents stopped in 11 out of the 19 cases researched directly after mediation. In six cases the mediator used a multi-agency approach, bringing in various other agencies into the mediation process to help resolve the conflict (see Chapter Six). In two cases the complainant victim stated that he or she continued to experience hate abuse post mediation.

¹²⁶ A further two interviewees were still fearful but less so than before mediation. In only one case did the interviewee indicate that he felt more fearful directly after the mediation process, though one week later the incidents ceased and he told me that he now feels much safer in his neighbourhood.

Case Study 1: *Mr V: Persistent homophobic and disablist violence*

Mr V, a 42 year-old “gay man” of “mixed Afro-Caribbean-European” heritage, lives in a small block of flats in South London. He is HIV positive and registered disabled. In 2007 a new neighbour (Mr X) moved into the flat directly above his. At first their relationship was cordial but after finding out that Mr V was gay Mr X became hostile towards him calling him, among other offensive names, a “queer cunt” and an “aids spreader”. On one occasion Mr V came home to find “AIDS FUCKER” spray painted onto his front door. After waiting several days for the council to clean it off, Mr V purchased his own solvents and erased it.

The homophobic abuse continued and escalated. Over the next 18 months Mr V had his car scratched with a key, rubbish and fluids poured onto his head from an upstairs balcony, and his and his partner’s face was spat on by Mr X. The harassment came to a head when, on one occasion, Mr V returned home from hospital on crutches (having broken his toe in an unrelated incident) only to be met by a group including Mr X and his friends. After taunting him, one group member pushed Mr V to the ground whereby his two front teeth cut through his top lip and later needed replacing, while his chin required several stitches. Mr V described the impact of his ordeal in the following terms:

I’d been a kick boxer up until my mid 30s... so to suddenly find yourself in a position where you are so ill that you have no strength and you can barely walk and somebody is attacking you and pushing you over and causing you injury ... it’s really hard to explain, it’s almost soul destroying... it took away everything I had and am as a person.... I used to sit in here in the dark because I didn’t want anyone to know I was in because I was frightened... that they would do something. I was terrified because I literally couldn’t, I couldn’t ... *(At this point Mr V became distressed).*

The mediation process provided space for Mr V to express in detail his experiences of homophobic abuse. He stated that the dialogic aspect of mediation came as immense relief to him and that simply by having someone listen to his story he felt that someone was finally taking his victimisation seriously. The fact that Mr X was asked to explain his behaviour, and to then think about the effects

that it had, led Mr V to believe that mediation had improved Mr X's understanding of his identity background (see further, Chapter Seven). As with many other complainant victims, he found the continuing support provided by the mediator after the mediation process of great comfort:

...it didn't just stop... even after the mediation [the mediator] rang me three or four times at regular intervals of a couple months to establish that everything was still OK, that I wasn't having anymore problems, that I was still feeling fine and that things were improving... it didn't you know, O.K. we're done, we've dealt with that, let's move on to the next case... It felt personal.

While the process of mediation clearly aided Mr V's recovery he, like various other interviewees, additionally spoke of the significance of observing that the offender kept to his promises of desistance:

After the mediation process I was initially still afraid of being attacked or, you know, spat on, but as each day went past you grow more in confidence that nothing is going to happen to you and I felt well supported at that time as the mediation process had taken place...

This case study is representative of several of the cases where the complainant victim had been targeted over a sustained period of time. It illustrates how community mediation can *help* to repair the harms of hate crime, and importantly prevent targeted abuse from recurring.

Resolving multi-layered hate disputes

Seven of the 19 cases researched at Southwark Mediation were characterised by persistent targeted abuse that had been motivated (or partly motivated) by the accused perpetrators prejudice towards the complainant victim. This left 12 other cases that did not fit neatly into the conceptualisations of hate crime found within the broader literature (see Chapters One &

Two). Deconstructing the characteristics of these highly complex conflicts was perhaps the most unanticipated component of the empirical study. In these cases, hate incidents often occurred within a broader context of interpersonal conflict between neighbours, most frequent of which had primarily been sparked by complaints about noise (highlighted in Chapter Four). In these more intractable conflicts it was not uncommon for *both* parties to engage in various anti-social acts towards each other. This meant that in some conflicts both parties shared, at least to some extent, culpability for the broader conflict within which they had become embroiled.

In most of these types of conflict the parties lived close by in social housing and conflicts began with, or were further provoked by, frustrations and anger over loud music.¹²⁷ In other cases, screaming children or inconsiderate disposal of refuse lead to altercations which later resulted in a hate incident. Some interviewees also felt that their ordeal had been exacerbated by the other party's drug and alcohol misuse. For instance, one interviewee noted, "the neighbour next door was making this expression like a monkey noise... especially when he was drunk".

In some cases complainant victims also felt that the accused perpetrator's mental health had been partly to blame for their behaviour. One interviewee commented:

...it could have been [racism] but I think part that and part that I later learned that he has got mental illness as well... his brother said at the mediation he has depression because he is sick. He might be sick but it doesn't mean you can carry on like that.

Such disputes typically escalated into protracted conflicts and eventually to accusations of racist, homophobic or disablist abuse. Failure to explore these crucial precipitating social factors is likely to compromise conventional criminal justice processes and even some RJ

¹²⁷ Noise was a factor in the majority of cases.

practices employed within the current justice system where focus is given to the pre-defined roles of “victims” and “offenders” (see further, thesis Conclusion). Responses that focus only on the cause and effect of an isolated crime or incident, without exploring its context and the relationships that exist between the parties, are likely to be of limited success. Furthermore, there is likely to be little empathy between the parties unless interventions explore *all* the causal factors and consequences of the broader conflict. The following case study shows how the use of dichotomous labels and assumptions about “victim” and “offender” status, would have served to deny the messy reality of some hate conflicts, and further explores the potential efficacy of mediation in such complex cases.

Case Study 2: Homophobic intimidation and racial and age stereotypes

Mr J, a young “gay man” of “mixed race”, perceived himself to be the victim of homophobic harassment from his elderly neighbours, Mr and Mrs M (a black Caribbean man and a white British woman). They were accused of giving Mr J “dirty looks”, and pointing at him in the street. Frustrated by their behaviour, Mr J confronted Mr and Mrs M by knocking on their front door. Mr J stated that on doing this he had been met with “a barrage of abuse”, with Mr and Mrs M both repeatedly shouting “*people like you* are sick in the head” [my emphasis]. They also called him “a thief, a drug addict and a psycho”. Mr J perceived these words to be homophobic. He responded by calling Mrs A an “old witch”. Soon after this altercation other neighbours became involved in what became a complex conflict involving a multitude of disputants. At interview Mr J explained how many people had been involved in the conflict:

Well ... for and against, so the people that was arguing for them there was them two and a man and his wife... after this happened they basically tried to force me out of here, getting my neighbours upstairs involved, the neighbours next door, the neighbours up the road, the neighbours next door to them... I would say by the end of it... like 15 people were involved.

Mr M was later approached by his housing officer about the conflict and he told the officer that he would hit Mr J with a bat if he came back. This resulted in an intervention by the neighbourhood policing team and later a referral to the HCP. Both parties took part in indirect mediation meetings before participating in a face-to-face meeting.

During indirect mediation Mr J explained that the incident had made him feel “really worried” that he may be physically assaulted and that he wanted someone to “make them understand” how he felt and for them to stop harassing him. The mediator raised the issue of identity, and Mr J said, “people have misconceptions about gay people, especially elderly Caribbean people. There is a misconception that gay people are drug addicts and steal from people to feed their habit”. The mediator interjected, “not all Caribbean people” feel like this and Mr J agreed. In a separate meeting Mr and Mrs M explained that Mr J often had friends over and that he had a “chip on his shoulder”.

At direct mediation the issue of homophobia and the effects that this had had on Mr J was explored in detail (see further, Chapter Seven). Mr and Mrs M responded by denying they were homophobic. However, they engaged in a discussion about how homophobia could affect people and later remarked that they had a gay nephew that they would “never turn away”. Finally, Mr J apologised to Mr M for appearing rude when he knocked at their door, in response to which Mr M smiled and shook Mr J’s hand. An agreement was drawn up stating that the parties would not use prejudiced language towards each other and neither party should talk to other neighbours about the dispute. Finally, the parties agreed that the next time they saw each other on the street they should say hello. The parties shook hands again and thanked the mediator before leaving.

This RJ intervention illustrates how the process, if managed sensitively and according to RJ principles, can diffuse conflict and expose ignorance and bigotry to critical scrutiny. Once prejudices are explored in a safe environment there is scope for effective challenge and subsequent modification of perspectives. However, prejudice is often just one factor that is

infused into a complex conflict involving multifarious relationships and various social factors. Such factors need to be explored and addressed together with issues of prejudice and identity if victims are to obtain emotional restoration. In this case, both parties benefited from the discussion which included “victim” healing and “offender” edification. The parties continue to live as neighbours and no other incidents have thus far occurred.¹²⁸

Community mediation: a panacea?

The mediation process clearly promoted emotional benefits for the majority of complainant victims. However, it would be idealistic to assume that the process can provide complete emotional reparation for all those who participate. There will inevitably be a variety of other factors that are important to emotional healing. Interviewees were additionally asked what “other factors have helped with your emotional wellbeing since the incident?” A list of other factors was read out including: the passing of time; support from a partner; friends and/or family; support from a housing officer; support from a non-government/charity organisation; other (see Appendix B, questions 31 & 32). Several interviewees spoke of the importance of emotional support from family, friends and other neighbours in helping them to feel secure again. In some cases additional support from charitable organisations was also helpful. One interviewee, for example, felt that his employer MENCAP was very supportive in helping him recover, while Mr V (from Case Study 1) mentioned that contact from “the Metropolitan Gay Policing Group... was reassuring”. Although these additional factors were commonly helpful in supporting their emotional wellbeing, it was clear from the interviewees other answers that the mediation process had remained a key component in their emotional recovery.

¹²⁸ This case is re-examined in Chapter Seven.

Despite the fact that mediation had aided the majority of victims' emotional recovery, there remained two cases where the complainant victim stated that the process had made matters worse. In one case the interviewee explained, "it has made it worse... because I haven't been able to get where I want to get to, I wanted to be on band 1 – 3 but I am still on band 4 [referring to housing bands in order to move]". In this case the victim was clearly angry that the mediator had not changed her housing band. It was evident that she did not appreciate that the mediation service was not in a position to change individuals' housing bands, or that this is not a legitimate role for mediators.¹²⁹

It should also be noted that for a minority of victims (5) mediation was simply unable to aid their emotional wellbeing. In one case, lasting over ten years, direct mediation between the complainant victim and the accused perpetrator could do little to heal the trauma that the victim had endured. Rather, it was only once she was moved away from the offender that she could start to rebuild her life. She explained:

I don't think any service can improve you emotionally. Emotionally that is something you have to do yourself. So I wouldn't say they improved me I would just say that they are there to help.

Long term abuse that persisted over a period of years often left victims with emotional trauma that could not be entirely repaired by community mediation. This was reflected in the findings on closure. All victims were asked if they could now put the whole incident behind them. Only eight agreed that they could. Seven interviewees stated that they "neither agreed nor disagreed" that they could; some of these stating that they were somewhere in the "middle" with regards to moving on from the incident. This left eight interviewees stating

¹²⁹ Though, as we will see in the next chapter, mediators sometimes work with housing officers in order to relocate victims.

that they disagreed that they could put the whole incident behind them. Such a finding was not surprising given the persistent and long term nature of many hate conflicts. Moreover, in most cases the complainant victims still lived next door, or close by, to the perpetrator, acting as a constant reminder of their previous victimisation.

Also linked to the failure of RJ to heal *all* victims of hate crime were the socio-structural disadvantages that are endured by minority identity groups, as explored in Chapters One and Two. The “process” of prejudice that many minority communities experience inevitably leaves hate victims feeling vulnerable to future hate abuse; whether that be to the possibility of further victimisation from their neighbour or attacks by other members of the local community (Ahn Lim 2009). Because of the pervasive nature of hate abuse, it will not always be possible for criminal justice measures to offer victims a clear pathway to emotional recovery. Even those victims who stated that their levels of fear, anxiety and anger had been reduced post RJ, many did not feel they were completely free of these negative emotions.

Hence, we might best view RJ as only ever really *helping* to repair the harms of hate crime, as against providing full reparation for victims. This is because hate victims’ experience of harm will remain attached to a continuum of social, structural and cultural disadvantage; those which cannot be rectified by short-lived restorative interventions. Such a conclusion does not mean that RJ fails in its aims to repair harm, far from it. Indeed, we have seen how restorative dialogue can play a pivotal role in aiding the recovery of a substantial number of hate victims and, importantly, prevents repeat victimisation from occurring. In the next chapter we will also see how community mediators have implemented a multi-agency approach in an attempt at repairing some of the institutional harms caused by local state authorities, while in Chapter Seven we will see how inclusive dialogue may help to humanise

“difference” and challenge offenders’ prejudices, potentially reforming those who participate in the restorative process.

PART III: Devon and Cornwall Restorative Disposal

Satisfaction and procedural fairness

The chapter now turns to analysis of police led RJ for hate crime. Throughout this section, some of the findings will be compared and contrasted with those from the community mediation study. The same interview schedule was used for those who had participated in the RD as was used for those who had participated in mediation. The terms “Restorative Disposal” replaced “mediation” where applicable and “police officer” replaced that of “mediator”. As with Part II above, I begin by evaluating victims’ satisfaction with the process. A lower proportion of victims in the Devon and Cornwall scheme, although still a majority (8 out of 14), were either “satisfied” or “very satisfied” with the restorative disposal (RD). Four interviewees stated that they were “very dissatisfied” with the disposal, while two victims said that they were “unsure”. Similar results were recorded when victims were asked if they found the RD to be a positive experience with the same eight interviewees stating that it had been either “positive” or “very positive”. Table 5.4 shows the different levels of satisfaction and perceptions of procedural fairness between community mediation and the RD.

Table 5.4: *Perceived procedural satisfaction and fairness among interviewees participating in Community Mediation and the Restorative Disposal*

Procedural satisfaction	Community Mediation <i>N</i> = 23 (%)	Restorative Disposal <i>N</i> = 14 (%)
Provided with information about how the process worked	22 (96)	7 (50)
Provided with information on what the process aimed to achieve	22 (96)	5 (36)
Satisfied with process	21 (91)	8 (57)
Positive experience	21 (91)	8 (57)
Facilitator acted fairly	20 (87)	11(76)
Facilitator helped (or helped to some extent) to resolve the problems caused by the incident	23 (100)	13 (93)
Had an opportunity to explain how the incident/s affected them	21 (91)	7 (50)

See Appendix B, Section 3 for exact questions asked.

NB: Percentages are used for illustrative purposes in comparing levels of satisfactions between community mediation and the restorative disposal. These should be treated cautiously due to the small sample sizes.

Several observations can be made about the lower levels of satisfaction amongst interviewees in Devon and Cornwall when compared to those at the HCP. First, as mentioned in Chapter Four, most interviewees had not heard of the phrase RJ or RD, suggesting that officers had not spent sufficient time explaining restorative measures. Further, the majority of victims also felt that officers had not provided them with information as to what would happen during the disposal. In fact only five interviewees agreed that the officer facilitating their case had explained to them what the RD disposal aimed to achieve.

Although most victims did not understand what RJ was, a majority agreed that the officer involved in their case had acted fairly when implementing the disposal (see Appendix B, question 24). Nine interviewees also agreed that the officer had tried to help to resolve the

problems the incident had caused, or did so at least “to some extent” (see Appendix B, question 25). Yet when victims were asked questions more specifically focused towards the goals of RJ, the results were less favourable. For example, interviewees were then asked “Did the facilitator provide you with an opportunity to explain how the incident had affected you?” Only half of victims agreed that the officer had given them an opportunity to express how the incident had affected them, an essential aspect of RJ (Zehr & Mika 1998). One interviewee, slightly irritated by my question, simply responded, “No Mark, they did not have time to do that”. Such statements were indicative of the rushed manner in which RDs were sometimes implemented, with some disposals being implemented on the spot at the scene where offences took place. This was often late at night. Two victims even spoke of officers who had wanted to resolve the situation very quickly so they could go off duty.

Only one out of the 14 cases at Devon and Cornwall involved a direct mediation meeting between the victim and offender, with all other cases being dealt with indirectly (compared with almost half at Southwark Mediation). Two interviewees stated that they wanted to meet with the offender through a direct mediation meeting but were never given the opportunity to do so. The precipitancy in which the disposal was applied was noted by five interviewees, all of whom complained about the lack of effort and time that had been put into dealing with their case. One victim remarked, “she was very stern and she wanted to get on with her work.”

Perhaps of greatest concern were the reasons given as to why victims took part in the police RD, as against pursuing other avenues of criminal justice, such as arrest and caution (see Appendix B, question 22). Two victims felt that they had no other choice but to participate in the RD, while several other participants felt that they were pressured into it by police officers. A victim of racist and homophobic intimidation told me:

The police woman... was like “it keeps kids off the street” and she was very strict... and I was “whoa, ok, well if that’s the best way then O.K. I’ll go for that one”. But it was a bit pressurised. I really wish I had gone for the harassment order straight away.

The lack of free and informed consent given by some victims was concerning given the importance of voluntary participation in restorative practice (McCold 2000). However, it would be unfair to suggest that all victims were pressured into participating in the RD. In four cases victims stated that they wished to pursue the restorative disposal because they wanted the other parties to understand the consequences of their actions in order that they would “learn from their mistakes”. The owner of a petrol station who was the victim of racist abuse explained:

I’m quite concerned about their age and their drunkenness and about their future. [If] they will get a chance to go to another country they will know what it is like to be a foreigner.

These few cases suggested that the RD may have enabled some to experience the value of “learning” and “understanding” about the harms of hate crime (see further, Case Study 2, Chapter Seven).

The ineffective application of many disposals, however, meant that some victims were left feeling unsupported and vulnerable. Pressure placed on victims to participate in RDs has direct implications for its restorativeness. It meant that some victims were not entirely willing participants and were therefore less likely to be fully engaged in what is supposed to be an empowering and engaging process. The fact that only half of interviewees felt that they were given an opportunity to express how the incident had affected them indicated that the RD lacked inclusive dialogue – a process central to RJ theory and practice.

It was perhaps for these reasons that a significant (although minority) proportion of victims stated that they were negatively affected by the disposal.

Emotional wellbeing

When victims were asked if the RD had improved their emotional wellbeing, just over half (eight) agreed it had. The remaining six stated it had not helped. Several reasons were given by those who agreed that the RD improved their emotional wellbeing, the most common being that the victim felt that the police officer had tried to “help” them. One stated that, “I find in this country that the police try and help you if you have a problem”. A young woman who had been subjected to racial abuse by an ex-colleague similarly explained that it was because “he [the officer] contacted me after the incident to ask if I am OK.”

“Support”, as offered by facilitators, was therefore a common factor to both community mediation and the police RD as being helpful to victims’ emotional wellbeing. For victims participating in the RD, this appeared to be especially the case where facilitators had made an effort to re-contact them in order to see how they were getting on. Related to this was that the vast majority of victims in Devon and Cornwall felt that the officer tried to help resolve, at least to some extent, the problems that the incident had caused, with only one interviewee stating that the officer had not done this. For example, when asking one young female victim whether the police helped her to resolve her problems she answered “yes [because]... they explained to them [the offender] that I was hurt and that they had been racist to me.”

Anxiety, anger and fear

As with those who participated in community mediation, victims were also asked to indicate a level of anxiety and anger caused by the incident on a scale of 1-10 directly before and after the RD (see Appendix B, questions 37-40). Thirteen out of the 14 interviewees indicated a level of anxiety before the RD, with the remaining victim stating that he did not feel it was applicable to his case. Eight victims went on to indicate a lower level of anxiety after the RD. The median level of anxiety before the RD was 8, falling to 4 directly after the RD ($p = 0.03$).¹³⁰ The reduction in anxiety was experienced by the same eight victims who were both satisfied with the process and who found it to be a positive experience, suggesting that the process itself helped to reduce emotional harm for just over half of victims. Similar results were recorded for victims' levels of anger, with eight victims indicating a lower level of anger directly after the RD.¹³¹ However, two victims stated that their level of anxiety and anger had increased directly as a result of the RD (compared with none at Southwark Mediation).¹³² For one victim this was because he did not want to pursue the RD and felt let down by the lack of attention the police paid to his complaints (see Case Study 3 below).

Using the same six point ordinal scale as used for mediation interviewees, levels of fear were then explored (see Appendix B, questions 33-36). Just over half of the sample agreed or strongly agreed that they were fearful of the offender before the RD. However, only one victim disagreed or strongly disagreed that they were fearful after the RD. A further three victims who had indicated that they strongly agreed before the RD went on to agree after, indicating a small reduction in level of fear. Five victims disagreed that they were fearful

¹³⁰ A Wilcoxon Signed-ranks test indicated that median levels of anxiety were higher directly before mediation (Mdn = 8) than they were directly after (Mdn = 4), $Z = 2.204$, $p = .003$. Mean levels of anxiety fell from 8.75 to 5.5.

¹³¹ Mdn = 9 before, Mdn 5 after, $Z = -2.504$, $p = .001$. Mean levels fell from 7.5 to 4.9.

¹³² The final two stated that their anger was not applicable to the case.

before or after and one stated that it was not applicable. This left one victim who stated that they were more fearful after RD, moving from agree before to strongly agree after.

The quantitative findings on anxiety, anger and fear *suggested* that the RD, like community mediation, aided the emotional recovery of a majority¹³³ of victims. However, qualitative information taken from interviewees offered a more nuanced picture than this preliminary conclusion had conveyed. For example, on asking interviewees why they felt that their anxiety or anger had decreased only four (half those whose levels had decreased post RD) explained that this was *directly* related to the RD; a less positive finding when compared to community mediation. This left four victims whose feelings of anger and anxiety had dissipated post RD but *not* as a direct result of the intervention. Such a finding therefore diverged from those at Southwark Mediation.

Three of the four victims who agreed that the RD had helped to decrease their levels of anger and anxiety explained that this was because the disposal had helped to prevent the offence from recurring. This finding concurred with the importance placed on promises of desistance by those who had participated at the HCP and again highlighted the need to address victims' fear of hate abuse.

The other four victims, whose anxiety and anger decreased but not as a result of the disposal, spoke of the passing of time and support from friends and family as aiding their recovery. For instance, a victim of racial abuse and intimidation told me, "the reason is not because of the restorative process but because of my friends and girlfriend." Thus the interim reliability incorporated into the schedule helped to highlight those other healing factors which had resulted in partial decreases in emotional harms. This had also been illuminated in the data collated in South London, however it remained clear from the qualitative information

¹³³ Although for the RD this was a small majority.

gained in that study that the mediation process had been central to their emotional recovery. In Devon and Cornwall this could not be said to be the case for half (4) of those victims who had indicated lower levels of emotional trauma post RD. I explore further below why only a minority of victims participating in the RD experienced healing compared with a majority of those who had participated in community mediation.

Reparation

One key finding from Devon and Cornwall was that the officers who facilitated RDs almost always encouraged offenders to actively repay the harm they had caused. Therefore, unlike the HCP, victims obtained a direct form of reparation in the majority of cases (11) (see Appendix B, question 29). In those cases where reparation was offered, this involved either a written or verbal apology.¹³⁴ So why did offenders apologise in Devon and Cornwall but not in Southwark? One significant difference between the practices was the pre-assigned roles given to the stakeholders prior to the intervention.

As previously discussed in Chapter Four, and elsewhere in this thesis, community mediation participants do not arrive at meetings with the assigned labels of “victim” and “offender”. Avoiding the label “offender” at community mediation meant that accused perpetrators were not expected to restore complainant victims to a position prior to the conflict. It also meant that they were not compelled to accept responsibility for their prejudiced actions prior to the process – an undertaking which many advocates of RJ state is imperative to its practices (Braithwaite 1989). The result was that most complainant victims did not obtain direct apologies or any other form of direct reparation. Rather, it was the ability of complainant victims to vocalise their experiences of victimisation combined with

¹³⁴ We will see further below how these apologies were perceived by victims of hate crime.

the exploration of harms caused by hate incidents, which resulted in the parties finding a common understanding (see Case Study 2). Through their newly found mutual respect for one another, participants then frequently offered more subtle forms of apologetic gestures, such as smiling and hand shaking. Essentially, this then often resulted in promises made by accused perpetrators that they would desist from any future hostilities. Such gestures hinted at both responsibility and contrition without formally labelling or shaming participants (see further, thesis Conclusion).

The RD, however, involved clearly defined victims and offenders. Victims were asked to consent to the disposal and offenders were specifically asked by police officers to make reparation for their offence. Yet despite reparation being offered, most disposals did not involve direct meetings between the parties and it was not uncommon for indirect meetings to be very short, some even taking place over the telephone. This clearly had repercussions for the effectiveness of the disposal and, in particular, the perceived *genuineness* of reparation.

Genuineness

The 11 victims who had received an apology from their offender were then asked “How did it feel to hear the offender/other party apologise?” and “did you feel the apology was genuine?” Seven out of the 11 interviewees stated that they did not feel that it was a genuine offering of remorse. Of the remaining four, only two felt that it was genuine, with the remaining two stating that they were unsure whether it was genuine. The benefits of receiving a genuine apology were explored in Chapter Three. In summary, genuine apologies help relieve victims from feelings of self-blame while helping to bridge the empathic divide between stakeholders. In turn, victims relinquish their attachment to feelings of resentment and

frustration allowing them to move more swiftly beyond their experience of victimisation. Paradoxically, offenders who offer emotional reparation that is perceived as disingenuous can exacerbate psychological harms, antagonising victims' feelings of anger and frustration and ultimately jeopardising their road to recovery (Daly 2001).

Interviewees frequently spoke of officers who had asked them whether they would accept an apology from the offender in order to resolve their case. It became clear that for many victims this entailed the officer simply asking offenders to write a short note of apology which was then handed back to the victim. Letters typically consisted of one sentence stating that the offender was "sorry for the incident". The lack of details and reasons given in letters led victims to believe that it was not a true display of contrition. In two cases the apology was derided for having been made on a "scrap of paper". While in another case the victim refused to accept the letter, she explained:

It wasn't genuine. He was a little bit like "it's your fault"... and it was so sarcastic and rude. It wasn't an apology!

The perception that most apologies were disingenuous meant that most acts of reparation did not fulfil their restorative purpose of helping to repair the harms of crime.¹³⁵ The failure of apologies to repair was intrinsically linked to the arbitrary way in which reparation was sought and then offered back to victims. In particular, the minimal amount of time offenders spent writing letters, combined with the way in which they were then presented, left victims feeling "let down" by RJ.

It is essential that restorative practitioners do not become enablers of disingenuous reparation. Facilitators can prevent this by spending sufficient time preparing participants

¹³⁵ Conversely, two victims who received what were perceived as disingenuous apologies still felt that they were partially helpful, but not for the reasons restorativists would hope for. One interviewee said "I guess it was [helpful] in some sense, it wasted a bit of his time which was quite good but it wasn't a big deal."

and ensuring that both parties are provided with the space to communicate with each other, as was observed at the HCP. In cases where the offender does not wish to apologise, victims may well find other aspects of the process reparative (see for example, Part II). Genuine apologies must therefore arise organically during a dialogue that focuses on the harms caused. It is imperative that apologies arise organically through dialogue and are not the result of facilitators insisting that offenders write letters devoid of genuine sentiment.

The indirect approach to the Restorative Disposal

The perceived genuineness of apologies is also likely to be linked to the indirect way in which they were offered. Victims' stories were more likely to be lost when translated by busy police officers short of time and therefore less likely to have an impact upon the offenders' sense of wrongdoing.¹³⁶ This is particularly concerning considering that only half of victims felt that the officer asked them how the incident had affected them (see Appendix B, question 26). Indeed, only one victim took part in a direct mediation meeting, meaning that most victims could not gauge for themselves how genuinely sorry the offender was. Even in the one direct meeting, held at a police station, the victim felt the offenders were cajoled into saying sorry. Later, when the victim saw the offenders on the street one yelled, "if we see you outside or in an alleyway or any club you're gone." There was little doubt in this case as to the sincerity of the offenders' apology.

In two cases, interviewees stated that they had hoped to meet with the offender in order to explain how they had been affected and to obtain assurances that their actions would not be repeated, but were never given this opportunity. The failure of the police to arrange direct meetings adversely affected victims who felt that officers were uninterested in helping them

¹³⁶ Though this was often successfully done by the mediator at Southwark who took detailed notes and spent time conveying how the incident/s had affected the other party.

to resolve their anguish. The wife of one victim who had experienced racist abuse at his place of work translated:

When this was reported to the police we always had hope that there would be face-to-face meeting and there would be some opportunity to explain and to talk and to give both sides the opportunity to tell what they feel, but we never got the opportunity. And then the anger from the [victim and offender's] manager after we reported to the police... was higher and automatically our fear was higher. We are afraid now that he [the victim] will be attacked in the street, not just by the offender but by his friends.

In this case the officer facilitating the case went on holiday without handing over the case to another officer, leaving the victim feeling helpless and unable to go back to work for fear of reprisal attacks.

Training

Restorative practitioners can only provide effective facilitation if they have received sufficient training on RJ principles as well as how to prepare and facilitate restorative dialogue (Maxwell & Morris 1993). Without adequate knowledge of the aims and goals of RJ, and how these should be properly administered in practice, facilitators will be unable to repair the harms of hate crime.

The Restorative Justice Council, a third sector organisation, currently provides a code of practice and a register for all RJ trainers to sign up to in order to maintain nationwide quality assurance (RJC 2011). Facilitators who register with the RJC must have undertaken 20 hours of face-to-face training before beginning practice (RJC 2011). There is, however, no government regulated training standards. This means that “restorative” facilitators can

continue to practice RJ without a professional qualification, resulting in some practitioners having a lack of knowledge of the fundamental principles of restorative theory. The danger of practices that claim to be restorative, but which lack strict adherence to its principles, is that they may harm rather than repair those who participate.

A lack of training at Devon and Cornwall Police Service is likely to have contributed to their failure to fully adhere to the values of RJ when implementing the RD. During interviews with police officers who had implemented the RD for racially aggravated offences, I asked each interviewee to detail the training they had received on restorative justice. I was told by most officers that they received a three hour training session on RJ, with one officer stating that she had received only a 20 minute session on the “virtues of RJ”. Such a short training period, especially if not followed up with additional learning, is unlikely to promote effective facilitation.

Moreover, police officers that facilitate hate crime cases must understand the complex socio-cultural issues which are central to cross-cultural conflict (see generally, Bell 1997). Institutional cultures may prove inhibitive in this regard (Reiner 2000). Traditional values that have been identified by researchers as making up part of “cop culture” include (amongst others): a sense of “fighting crime”, pragmatism, conservatism, machismo and racial prejudice (see Reiner 2000; Macpherson 1999). Reiner (2000) argues that racial prejudice emanates from wider racism within society which permeates police forces at all levels (see also Chan 1997). Prejudices are not just confined to race. Other criminologists have drawn attention to the homophobic nature of much police culture (Burke 1993) and to the suspicion and vilification of certain Others such as gypsies by officers (James 2007). Unless these cultural barriers can be broken down it seems unlikely that the police, at least at an institutional level, will be responsive to the needs and harms experienced by the stakeholders of hate crime.

Police restorative facilitators will therefore need additional training on the cultural issues intrinsic to cases involving prejudice and identity difference, if identity bias is to be challenged and officers are to successfully negotiate the minefield of culturally sensitive topics that inclusive dialogue inevitably stimulates (see Chapter Seven). Some improvements have been made to police training schemes which deal with community and race relations (CRR, known colloquially as “diversity training”), a direct result of Macpherson’s (1999) various recommendations after finding that the Metropolitan Police Service was “institutionally racist”. Other improvements include the establishment of Community Safety Units (CSU), set up in order to provide specialised investigations into domestic violence and hate crime (Stanko 2001). Beat officers can refer cases to CSUs where a hate crime has been reported. An officer specifically trained in hate crime will then investigate the offence.

Still, if all officers are to provide restorative interventions for “low-level” hate incidents they will need to be trained on issues of diversity and minority identity if they are to provide an effective service to victims of hate crime.

Rowe and Garland’s (2007) research into the implementation of training recommendations post Macpherson found that officers were highly cynical of programmes which address issues of race. However, once courses were completed many officers went on to reflect on their usefulness, indicating that such schemes may be of some benefit to officers. One such benefit identified by the authors is that CRR training encourages officers to consider the language that they use and the impact this has on the public, hence avoiding secondary victimisation (Rowe & Garland 2007: 50). However, in order to improve the delivery of such programmes the authors note that better leadership is required, and the inclusion of minority community representatives into course interface sessions should be used to help break down stereotypes (Rowe & Garland 2007). Unless effective training

schemes can be implemented, one must remain sceptical about the successful facilitation of restorative justice for hate crime by police officers.

Case Study 3: Racist intimidation – the effects of poor facilitation

Mr S, an “Asian Indian” male in his early 30s was racially abused and intimidated while closing up a shop he manages in Devon. Two white men began banging on the window of the shop shouting, “Fuck off Paki”, while using their hands to make a gesture of a gun, indicating that they were shooting at Mr S. The targeting of Mr S in this way had a profound impact on him, he told me:

You think you are in a place [referring to England] which is safe and which is full of people who treat everyone equally and then this thing happens and I think no I didn’t do anything to deserve that, so why? You become sceptical when you are walking and someone looks at you, you feel they might have a go at you as well... are they going to hit you, attack you, harm you?

On the evening of the incident Mr S dialled 999 and waited for the police. After 25 minutes the police telephoned Mr S and asked if the offenders were still there but by this point they had left the scene of the incident. Instead of attending the scene, an officer arranged to visit Mr S the next day to take a statement and to look at CCTV footage. However, the police failed to arrive at the arranged time and the meeting was rearranged for another day. On this new date the police called again and rearranged another date a week later. Then on this date Mr S received another telephone call from another officer asking why he had not turned up to the police station, even though the meeting was arranged to take place at Mr S’s place of work. By this point Mr S had become frustrated at what he perceived as a total lack of concern about his victimisation. He explained:

I wanted to report it all the way through but they didn't turn up the day the incident happened... and I was really really shocked. I felt like a child who needed someone but no one was there to extend a helping hand.

Finally the police received the CCTV footage from Mr S and later arrested the offenders responsible. Mr S was then contacted and was asked "do [you] *really* want to report this incident as it happened over three weeks ago" [emphasis added]. Shocked by this Mr S said that he wanted to pursue the case. The officer then told Mr S that the situation would best be resolved by him accepting an apology through the restorative disposal. Mr S did not wish to pursue this but reluctantly agreed:

It was forced onto me... [the] officers... talk to you in a very nice way but they talk to you in a way and use certain words which make you feel that they are on your side but they were pressuring me into something that I didn't really wanted.

Mr S later received an apology on "A3 small paper that has been torn out of someone's diary". He did not "know whom it had been written by, what date it was written and nobody [had] signed it". I asked Mr S how he felt when he received the "apology" from the offender, he replied:

It was a scam, it wasn't really an apology. It made me feel really upset. If someone had really felt that they had done something wrong they would have written something in a way to express their feelings...

I then asked Mr S whether he would have felt differently had the apology been more genuine, he replied:

Yes, at least that would have made me feel OK, I understand. But this thing, sending me a piece of paper was like rubbing salt into the wound. I would have been more happy not receiving anything, it was like making fun of it.

Not surprisingly, Mr S was extremely dissatisfied with the RD and the

apology. And the process as a whole increased his levels of anger, anxiety and fear.¹³⁷

This case illuminates the damaging effects that ineffective application of restorative practices can have on victims of hate crime. Mr S was left feeling helpless when the police failed to meet with him directly after the incident. The constant rearranging of meetings throughout the preceding weeks indicated to Mr S that they were not taking his report seriously. He was then pressured into accepting an intervention that he did not really understand. It is unsurprising that victims who experience RJ in this manner fail to appreciate its potential value. In this case Mr S ended up feeling let down and more traumatised by a process that offered little by way of restoration.

Can police officers administer RJ effectively?

The ability of police officers to effectively facilitate RJ is questionable for several reasons. Scholars have primarily criticised police involvement in restorative programmes by arguing that it gives too much power to individual officers (Ashworth 2002; see further analysis of the role of the state in RJ in Chapter Six). The facilitation of RJ practices by the police certainly complicates the central restorative principle that communities should resolve their own conflicts (Christie 1977). Officers who exert control over restorative dialogue will inevitably limit community stakeholders' autonomy to determine what they deem is appropriate reparation.

The police are already tasked with enforcing the law, arresting suspects and, in some cases, punishing offenders (such as serving fixed penalties, warnings etc). Police led RJ may

¹³⁷ See further, Chapter Seven.

therefore become just another means through which they control the criminal process (Hoyle 2007: 294-295). Linked to the issue of control is a concern that police led restorative schemes will contribute to “net-widening” (Cohen 1985), as officers dispose of cases that would not have previously required a criminal sanction (Hoyle 2007: 297). This has led to a further assertion that police run restorative interventions, especially for “low-level” offences, is yet another extension of the significant powers that police services already have over our local communities (Cunneen 1997).

Furthermore, without adequate measures in place to ensure that due process is adhered to, there are genuine concerns that officers implementing RJ schemes may abuse their burgeoning powers (Ashworth 2002; see also, Cunneen 1997). One might view the increased control of RJ processes by the police as particularly concerning given the large evidence base which suggests that certain identity groups are already disproportionately targeted by the police (Macpherson 1999; Bowling & Phillips 2002). Restorative facilitators who do not understand the needs and vulnerabilities of minority victims will potentially subject them to a process through which they impose their own cultural norms (Burke 1993; Bowling & Phillips 2003). This has led to the charge that police led RJ simply becomes another means through which hegemonic ideals are imposed upon marginalised minority groups (Cunneen 1997).

The comparatively low levels of satisfaction and emotional reparation amongst hate victims interviewed in Devon and Cornwall was evidence, if only limited, of the difficulties that are faced by police officers attempting to implement restorative principles in cases of hate crime. As pseudo RJ practitioners, police officers are unlikely to have the necessary time and resources to adequately prepare and properly effectuate restorative practice. Their domineering approach to restoration failed to consider the intrinsic importance of voluntary participation and inclusive decision making. Instead the pressurised manner in which many

officers facilitated the disposal led to reluctant participation and insincere apologies. Inevitably this limited the disposal's ability to repair the harms of hate crime.

Notwithstanding the problems found at Devon and Cornwall, it cannot be said that *all* police officers will fail to successfully facilitate restorative practices (Hoyle et al 2002). In fact, for as many victims dissatisfied with Devon and Cornwall's RD, just as many were satisfied. Moreover, almost all victims stated that the police had tried (or tried to some extent) to help them resolve the problems that the offence had caused to them, suggesting that officers had made at least some attempt to help repair the harms victims had suffered.

Advocates of police led RJ have argued that the presence of police in uniform can actually help victims and their supporters to feel more secure (Hoyle et al 2002). The issue of personal security is vital in cases involving hate crime. The inclusion of police officers within restorative meetings may well help victims to feel protected against repeat abuse. Furthermore, police facilitation of RJ has also been shown to increase the likelihood that any agreed undertakings are carried out (Hoyle et al 2002).

Still, if RJ is to fall within the purview of contemporary policing, forces must implement practices using properly trained practitioners who have proficient comprehension of the principles of RJ. Hoyle (2007) notes that despite traditional cultures remaining dominant in many parts of the force, there are many officers who are more than willing and capable of signing up to the values and principles of RJ. She states that "Those engaged *exclusively* in restorative work are likely, after only a few months, to adopt restorative values and behave in more inclusive and restorative ways" (Hoyle 2007: 301).

Perhaps then, the only way to ensure that RJ is effectively administered by police officers is make sure facilitators work solely or predominantly on implementing restorative disposals. This might be done using a collection of officers within each force who specialise

in RJ. Such officers will require extensive and ongoing training on RJ (as against attempting to superficially train the entire force). These specialised officers can then dedicate a significant proportion of their time to preparing and facilitating the cases that have been referred to them by colleagues called directly to incidents. Forces that implement RJ without dedicated practitioners are unlikely to effectively administer restorative values and principles, ultimately failing victims of hate crime.¹³⁸

PART IV: The experiences of RJ practitioners who facilitate hate crime cases

During the empirical phase of the thesis much time was spent interviewing RJ practitioners who had previously facilitated hate crime cases. A total of 23 interviews were completed with practitioners, who together described 28 separate cases of hate crime. The types of hate crime referred to varied, but most common were racially aggravated offences, followed by cases involving homophobia and anti-religion.¹³⁹

Exploring harm *and* prejudice

For most part, the information provided by practitioners concurred with that which had been offered by victims. Practitioners were asked both open and closed questions relating to the reparation process (see Appendix C). By far the most common theme relating to emotional reparation noted by practitioner interviewees was that victims were able to explain how the hate crime had affected them and their families' lives. The social and individual insecurity caused by hate victimisation resulted in a desire for victims to reclaim lost stability by

¹³⁸ It is still unclear what impact the Government's spending cuts will have on the training of police officers in restorative justice.

¹³⁹ None of the interviewees spoke of disability hate crime cases.

reasserting their identity. Discussion about identity was therefore often an integral part of the dialogic process for hate victims. One practitioner interviewee explained:

In cases where I've worked with homophobia the party has wanted them [the offender] to know... what it's like to be a gay man or a woman in the community, what it's like to experience... homophobic prejudice, so there's a lot of learning that can be gained.

Another practitioner facilitating an anti-Semitic harassment case told me:

They [victims] went to great lengths telling me about their own family history and who of their own family members they'd lost during periods of time [referring to the Holocaust], and showing me memorabilia in the house, paintings and things which had been done by relatives who were no longer with us, very personal stuff... Their identity was very, very important to them. And they went to lengths to tell me how proud they were to be Jewish. And they certainly want to maintain and hang on to that identity and those roots.

It had been essential for this family to talk at length about their identity, to emphasise the effects that attacks against them based on their identity had had. The family's Jewish roots and their attachments to those killed during the Holocaust became central to the restorative process of "story-telling"; allowing them not only to explain how the harassment had affected them on a basic level but also why targeting them because they are Jewish had such an odious effect (see Case Study 2, Chapter Seven). In this sense, RJ might be viewed as a means through which victims of hate crime can reassert their identity (a form of essentialism) within a safe and empowering environment. Processes that fail to provide victims with a secure space to talk about their identity and the impacts of prejudice will potentially miss an invaluable tool

that enables victims to reclaim, at least in part, the individual security they lose because of hate crime.

Reparation: apologies and promises of desistance

The offering of genuine apologies was also a common theme amongst interviewees. As with the criticisms made above regarding the harmfulness of disingenuous apologies, practitioners spoke of the importance of sincerity, most believing – in their cases – that apologies had been genuine. However, for some practitioners the obtaining of apologies was not sacrosanct to the process. This was explained by one practitioner who stated:

Apologies are a very adult sign of showing remorse. What was more important was showing the different perspectives in the room. Because by doing that you get to understand the rationale for that person's actions; why they are doing this? And why are they doing this to me?

Such statements emphasised the importance of “story-telling”, as against direct forms of reparation, as fundamental to the restorative process.

The importance of offenders offering promises of desistance was also mentioned by many of the practitioners interviewed. For example, one practitioner stated:

...we moved on to questions to the victims [such as] what would make things better for you? They were saying things like, “I just really want to be happy that you're not going to do this again.”... Just assurance. And at the end of the day, nobody's got a cast iron guarantee that they won't set fire to something in their house again, but... they thought that this was a genuine assurance that he wasn't going to do anything like this again...

Practitioners additionally stated that victims' acceptance of other reparation could turn on whether they received an assurance that the crime would not be repeated. The common theme of assurances of desistance therefore ran across all datasets, making this aspect of the restorative process one of the most imperative components that aided victims' recovery.¹⁴⁰

Common themes

The common themes found within and across each dataset have been highlighted throughout this chapter. However before concluding it is worth reiterating them here.

- **Harms**

Common to all datasets was the deleterious impacts that hate-motivated incidents had on victims' emotional wellbeing. In particular, the majority of victims spoke of feeling anxious, angry and fearful about what had happened to them. A majority of victims also spoke of feeling depressed, experiencing a loss of self-esteem and confidence, while many also had difficulties sleeping. These emotional impacts also had spatial and behavioural consequences. For most victims, their experiences of hate caused them to avoid certain locations for fear of being re-victimised. A high proportion of victims also stated that they were more careful about what they now said or did in their local community (see also, Chapter Two).

¹⁴⁰ Practitioner data relating to repeat victimisation, domination and inequalities during meetings are analysed in Chapter Seven.

- **Story-telling**

The importance of “story-telling” was of particular salience to complainant victims at the HCP and for practitioners who had facilitated hate cases, though half of those interviewed in Devon and Cornwall also felt that they had been given a chance to explain the impact of the crime. It became evident throughout interviews and during observations of mediation meetings that victims gained considerable emotional release from being able to articulate the harms that they had endured. In many cases this entailed the victim talking at length about their identity and the impact that prejudice, both with regards to the offender’s actions and other community members more broadly, had had on them (see further, Chapter Seven).

- **Promises of desistance**

The fear of re-victimisation meant that promises of desistance became pivotal to most victims’ emotional recovery. Although active participation and the vocalisation of harm helped to reduce levels of anger, anxiety and fear, it was not until victims obtained assurances of desistance, and in some cases observed that the offender had adhered to his or her promises, that victims could finally move on from their experience of targeted abuse.

- **Facilitator support**

One of the unanticipated findings within the studies was the significance that victims placed on the support given by restorative practitioners. Although practitioners are supposed to be impartial facilitators, it became clear that the support they offered to victims was of great help to their emotional wellbeing. This support was offered by way of facilitators/officers simply

listening to the victim's side of events, by co-ordinating meetings where offenders offered reparation and, fundamentally, by re-contacting victims after meetings to check that they were O.K.

- **Reparation**

Most examples of direct reparation throughout the study involved the offender apologising for his or her wrongdoing. At the HCP, direct apologies were infrequently offered. Instead physical gestures such as hand shaking, smiling and laughing were suggestive of a new relationship that indicated a certain level of contrition by one or both parties.

Within Devon and Cornwall most victims who had received an apology were clearly unhappy about its lack of sincerity. In most cases this led to further feelings of anger and frustration. It was clear from these interviews that apologies were not offered as an organic part of the restorative process, but instead forcibly obtained by police officers, clearly going beyond facilitators' remit.

Conclusion: Does restorative justice *help* repair the harms of hatred?

The triangulated approach taken in this study revealed a myriad of hate crimes/incidents, hate harms and processes of reparation. Aggregated, the data suggest that restorative practices, if implemented in accordance with RJ values and principles (Chapter Three), *help* to repair the harms of hate crime. This was especially so in community mediation where victims were able to express how the incident had harmed them and, importantly, for the parties to obtain assurances of desistance. Careful preparation of cases combined with the mediators experience in dealing with cases involving prejudice and identity difference helped them to

facilitate dialogue through which the parties could form new relationships built on a foundation of renewed understanding. In most cases, restoration was consolidated by mediation agreements signed at the end of the process. This process ultimately helped to reduce the majority of victims' levels of anger, anxiety and fear. These findings provide persuasive evidence of the reparative qualities of the restorative process for hate crime. Furthermore, the high levels of desistance recorded were impressive, especially considering that all cases at the HCP involved ongoing conflict that had escalated over protracted periods of time (see further, Chapter Six & Seven).

Findings on the use of the RD at Devon and Cornwall Police Service were more mixed. Just over half of those interviewed found that the disposal helped their emotional wellbeing, and only in a minority of cases was the disposal helpful at reducing levels of anger, anxiety and fear. However, the lack of emotional reparation was less a reflection of the efficacy of RJ for hate crime and more cogently linked to the way in which the disposal was implemented by officers. The extemporaneous approach taken by police officers when implementing the RD meant that participants lacked preparation and information about what the intervention aimed to achieve. Of particular concern was that many victims were denied the opportunity to engage in detailed dialogue with either the facilitator or the offender. In turn, this led many victims to believe that their case had not been taken seriously, cultivating a sense of being "let down" (see Chapter Six). Perhaps most concerning was the failure to provide *genuine* reparation to victims with brief letters of apology only acting to antagonise victims' emotional trauma.

A note of caution must be added to these findings. The results from the HCP, though encouraging, showed that community mediation could not aid the recovery of *all* victims of hate abuse. Furthermore, the levels of fear, anxiety and anger that were documented before and after mediation showed only partial reductions for most victims, meaning that many

victims remained to some extent angry, fearful and anxious about their experience of hate crime. The reasons for the failure of community mediation to fully repair the harm of hate crime are complex and multifaceted. First, the fact that in many cases neither party took *full* responsibility for their actions meant that direct reparation was not always possible. This meant that complainant victims did not always receive apologies or material reparation for the harm they had received. Yet as we have discussed, it was not direct emotional or material reparation that was of greatest concern for victims, but instead that they were given an opportunity to take an active role in the resolution of their own conflict; during which their voice was heard by the other stakeholders.

A more compelling reason as to why participants did not indicate full reparation was that most victims continued to face socio-economic disadvantages that were beyond the control of restorative practice (see Chapter Two). Complex social conditions limited RJ's ability to repair harm. In some cases, issues of alcoholism and drug abuse made relationships difficult to rebuild, while mental health problems were also believed by many to be inhibitive to restoration. The fact that most complainant victims lived in old local authority apartment blocks with poor insulation meant that issues of noise pollution were also difficult to rectify. These multifaceted social issues meant that there was no silver bullet that could cure the intractable hate conflicts that neighbours become embroiled in.

The continued emotional trauma experienced by many hate victims could be linked to the process of prejudice and to the continuum of harm that we explored in detail in Chapter Two. Socio-structural inequalities meant that despite the best attempts by mediators to help resolve individual episodes of hate conflict, such a process could not combat the overarching systemic prejudices within society or change the victims' experiences of socio-economic disadvantage. Indeed, as we have seen in this chapter with regards to police led RJ and as will see in the next chapter, the responses by local authorities to complaints of hate abuse often

exacerbate victims' trauma, leading to a form of secondary victimisation. Such responses clearly affect victim's anxieties about the support they are likely to receive if and when future incidents (re)occur. Community mediation may be able to help repair some of the harms caused by institutional responses to hate crime, however RJ more generally will not always have the resources or the independence necessary to challenge the harms caused by the state (see Chapter Six).

If more successful rates of emotional reparation are to be achieved across restorative practices, the principles of RJ must be administered with rigour. The HCP was testimony of how effective restorative practice can be in helping to repair the harms of hate crime. However, if this is to be replicated, facilitators must understand the complex nature of hate-motivated conflict. Moreover, practitioners must receive sufficient training on the principles and application of RJ, with particular focus given to dissemination of information, preparation of cases and opportunity for inclusive dialogue between participants.

Chapter Six: Secondary victimisation, “community” and the importance of multi-agency partnerships

Introduction

Chapter Five highlighted the far-reaching effects of hate crime, illustrating how incidents affect not only individual victims, but also their families and other members of minority communities. Fundamental to the emotional wellbeing of hate victims and minority identity groups more generally is the way in which state and third sector agencies respond to complaints of hate victimisation. Within this study, the vast majority of victims reported incidents to either a housing association¹⁴¹ and/or to the local police service, before being referred to a restorative practitioner. It was therefore essential that both housing and police officers treated victims with due care and attention, paying particular regard to the victim’s vulnerability.

Agencies that fail to provide adequate protection, support and advice to hate victims are likely to expose them to what has been termed “secondary victimisation” (Herek & Berrill 1992). Previous research has indicated that agencies who respond to hate incidents frequently compound victims’ experience of it (Victim Support 2006; Dunn 2009). For instance, Dunn (2009: 129) found that, “rather than help people regain control, in some instances, criminal justice agencies did the opposite...” Even though many hate crime victims “wanted to engage with the criminal justice system, perhaps as a way of working out their anger towards the offender.” Linked to the secondary victimisation of hate victims is the institutional prejudices found within state organisations. In Chapter Two we explored how certain identity groups

¹⁴¹ Only in cases where the victim lived in local authority housing. In South London this was the vast majority of complainant victims.

often become subjugated by state agencies who unwittingly perpetuate oppressive hegemonic norms (Bowling & Phillips 2002). In some cases, criminal justice agencies themselves pursue discriminatory practices and adopt policies which support what has been famously labelled “institutional racism” (Macpherson 1999); or other culturally constructed prejudices (Bowling & Phillips 2002).

In response to concerns about institutional prejudice – partly the result of the highly critical Macpherson Report (1999) into police racism – the state has set about improving its responses to hate crime (see Chakraborti & Garland 2009: 118-121). The literature on the developments since Macpherson has suggested that the police and other criminal justice agencies have become considerably more expedient at tackling prejudice-motivated crimes (see *inter alia* Chakraborti & Garland 2009: 118-121; HCHAC 2009). Thus before commencing the empirical research for this thesis, there was some expectation that victims would find the state authorities involved in responding to their complaints of hate crime responsive to their needs; or at least they would not perceive them to have been unhelpful. This was not, however, what my observations of mediation meetings and interviews with complainant victims revealed. In fact, in some cases the involvement of state authorities proved to be highly detrimental to the victim’s emotional wellbeing, and in several cases their (lack of) involvement caused heightened emotional turmoil to that which was caused by the victim’s original hate victimisation (see Case Study 1 below).

This chapter begins by examining the various forms of secondary victimisation that were experienced by the victims interviewed for this thesis. In most part, victims were frustrated and angered by what they perceived as apathetic and neglectful responses from the housing officers and police officers who had dealt with their complaints of abuse. Using various case studies, the chapter highlights how the harms caused by secondary victimisation can be resolved and ultimately repaired where community mediators implement a multi-

agency approach to restorative practice. Such an approach requires additional dialogue between victims, offenders and the state agencies that came into contact with them.

The chapter argues that these local agencies should be included within the restorative framework through the notion of “community”. Although not originally envisaged by restorativists as making up part of the notion of “community” (McCold 2004), such organisations will frequently become important “community supporters” who can assist in the resolution of hate crime cases. Furthermore, it can be argued that agencies which cause secondary victimisation become direct stakeholders within a conflict and, as such, should be encouraged to engage in restorative dialogue in order to repair the additional harms they themselves have caused to victims.

By broadening out the scope of “community” to include state and third sector agencies (both as supporters and as wrongdoers), RJ can enhance the likelihood of victims obtaining the support and restoration they require to convalesce, while agencies can also be encouraged to actively prevent hate incidents from recurring (see further below “Community agencies as ‘community supporters’”). In this sense, the multi-agency approach to RJ, mainly implemented through community mediation centres, may help to repair some of the individual *and* structural harms caused by the process of prejudice.

PART I: The harms of state involvement in hate crime cases

Housing officers

A high proportion of complainant victims at the Hates Crimes Project (HCP) (Southwark Mediation) were highly critical of the state's involvement in their case. This was especially so in cases that came to the attention of housing officers, who appeared to be the source of much frustration and anxiety. Such a finding is consistent with Ben Bowling's earlier research into racial harassment in East London in the early 1990s, where 55 per cent of those surveyed had reported incidents to a Housing Department (Bowling 1994). In that study only 8 per cent of victims were satisfied with the way in which the housing department had handled their case. Bowling noted that most victims felt that the department did "not do enough, that they appeared uninterested, and that they failed to keep the victim informed about the progress of their case" (1994: 24).

Almost two decades later it appears that little progress has been made. Many interviewees spoke of housing officers who had been insensitive, and in some cases negligent, when dealing with their complaints. For instance, when asking one interviewee whether her housing officer helped with her complaints, she responded:

Oh please! He actually made things worse. He came here and went to the wrong house and started talking to her about the incident. She happened to be her [the accused perpetrator's] best friend. She thought we were complaining about her. It made things worse.

Other victims felt that housing associations took an indifferent approach to dealing with their complaints of hate crime, meaning many housing officers failed to discern what amounted to

serious forms of victimisation. The perception that housing officers were apathetic about hate victimisation angered victims, leaving many feeling frustrated that nothing was being done to protect them (see similarly, Garland and Chakraborti 2006: 18). The perceived failure to take victims' concerns seriously acted to compound their experiences of what often amounted to ongoing hate abuse. This resulted in some interviewees feeling that *no-one* cared about their experiences of victimisation.

In one case of ongoing racist abuse and intimidation, the complainant victims had made several complaints to the housing association which they explained had largely fallen on deaf ears. It was only when a new housing officer visited the accused perpetrator on an unrelated matter that the victims' complaints of racism were taken seriously. The interviewees explained:

I brought it up with the council... They didn't do anything about it. I called the council again and they [said they had] nothing on record... In January we had a new housing officer, she went up to see him about something and he racially abused her... calling her a "fucking black bitch, no fucking nigger is going to tell me what to do"... And he physically assaulted her as well... So then I phoned her and she said "now I know what you have been going through".

It was lamentable that it took a direct hate attack on a housing officer before the victims' complaints about hate crime were taken seriously by their local council. During this time the victims were referred to Southwark Mediation. The mediator contacted the Housing Association and facilitated indirect dialogue between the housing officer and the victims. Only then was something done about the victims' constant harassment, "and within the space of a week or so he [the offender] had to move out..."

Prejudice, what prejudice?

In Chapter One we explored the complex nature of hate, noting that hate offences are committed where an offender demonstrates hostility towards the victim's actual or "presumed" identity. This means that some victims can become "hate victims" even if they do not actually belong to the presumed identity group that the offender demonstrates his hostility towards. For example, the use of the word "Paki" was common to many of the racist incidents under research, especially during incidents committed in Devon and Cornwall. However, most of these victims were not of Pakistani decent and they frequently remarked upon the inaccurate use of the word. Inaccuracy notwithstanding, the label "Paki" still had a hurtful affect, due to the fact that victims knew their offender had targeted them because of their "otherness".

State agencies must therefore understand the complex dynamics of hate, in particular that hostility, whether directed towards a "presumed" or "actual" identity, has a potentially insidious impact on those targeted (see also, Garland & Chakraborti 2006 & 2007 in relation to police responses to hate victimisation in rural contexts). For the most part, restorative practitioners appreciated the subtle nuances that exist between identities and prejudices and that targeting individuals based on a mistaken identity could still have damaging consequences. Nonetheless, in several cases where the victim's identity did not match the prejudiced language used against them, victims commented that housing officers and/or police restorative facilitators had been insensitive about the issue of their identity. For example, one victim had complained that her neighbour had been both racist and homophobic towards her, even though she was not in fact gay. She explained:

...the first thing they [the housing officer] asked me was, was I gay? I said no. They said why are you bothered by it? I don't think I have to be gay to be bothered by it, it's just ridiculous. When I said he called me a "half-breed" [referring to her mixed race] they said that's just a technical... so it doesn't count. I said what do you mean, "well he didn't call you a "nigger" or a "honkey" so that doesn't count as being racial abuse", which makes no sense whatsoever.

The council's lack of understanding as to the nature of hate abuse meant that the victim in this case felt the seriousness of her complaints was trivialised by them. Instead of considering the severity of the racist and homophobic comments made by the accused perpetrator, the victim was instead met with excuses as to why she could not be classified as a "hate victim". In other words, because the victim was not gay and because the term "half-breed" was not considered derogatory enough to be classified as racist, the council was not prepared to treat the case as a "hate incident".

Similarly, a victim of racially aggravated abuse in Devon and Cornwall felt that the attending police officer had missed an important point when she considered the racial element of the offence (see also, Garland & Chakraborti 2006; 2007). In this case, the victim had been called a "Chinky cunt" after telling the offender that he had been born in Taiwan. He was in fact of white British heritage and did not look in the least as if he was of Asian origin. The victim stated, "I am not even Chinese, I don't even look Chinese. I wouldn't say I was devastated but it still pissed me off." The officer facilitating the RD in this case also noted the disparity between the racial slur and the victims' racial background; the interviewee commented:

I remember her [the officer] saying a couple of times, it's silly what he said because you are clearly not Chinese... I wouldn't say that annoyed me but I didn't want her to miss the

point that regardless of whether I am Chinese or not I was born in Taiwan and I am quite proud of that and it still pissed me off!

Although not particularly upsetting to this victim, the fact that the facilitator had slightly missed the point regarding his heritage meant that she failed to consider the gravity of his victimisation. Perhaps had the victim been visibly “ethnic” her response may have been markedly different. Such cases demonstrate how important it is for agencies and RJ practitioners to be sensitive when considering the complainants’ ethnic heritage, while also realising that the prejudice against a *presumed* cultural or sexual identity can be similarly harmful.

Police responses to hate incidents

The policing of minority communities has often been viewed through a lens of suspicion. Historical studies of the police service portray an institution based on the maintenance of a “white, straight, middle class and male hegemony” which has supported the practice of homophobia (Burke 1993). The documentation of police brutality towards ethnic minorities and gay and lesbian communities has inevitably led to certain identity groups viewing the police as just another mechanism through which they are oppressed (see for example, Herek & Berrill 1992). Williams and Robinson (2004: 214-215) suggest that there is sometimes a:

...tendency for working groups of police officers to display hostile, negative and stereotyped views about LGB people. The occupational culture of police officers appears to instil negative attitudes about minority individuals, especially those identifying as lesbian, gay or bisexual (cited in Chakraborti & Garland 2009: 69).

In response to the criticisms made about racism within the police service (Macpherson 1999), a raft of new initiatives have been introduced into police forces across the country in an attempt to rid the service of its institutional prejudice (Rowe & Garland 2007). Many of these policies have been heralded as a success, and the increasing number of victims prepared to report hate incidents is testimony to the increased levels of trust now placed in local police forces (HCHAC 2009).

Some evidence of the improved confidence in reporting hate incidents to the police can be found in the fact that in the majority of cases at Southwark Mediation the complainant victim had originally reported the incident/s to the police.¹⁴² However, in many of these cases the police refused to investigate the case beyond their initial contact with the victim, declaring that the conflict amounted to a “domestic dispute” and therefore fell outside the purview of traditional policing. Garland and Chakraborti (2007) similarly found in their study into the policing of racial victimisation in rural England that officers frequently fail to appreciate the seriousness of “low-level” racist incidents, tending instead to deal with cases in an informal way potentially serving only to maintain the victim’s process of victimisation (see also, Bowling 1998).

Victim interviewees in this study supported such an assertion. A victim of homophobic harassment and violence in Southwark noted, “I did call the police and they said it’s not our job... that it was a council job... you have a problem with your neighbour you call them and they will deal with it.”¹⁴³ Such responses angered victims who felt that the police, like housing officers, were not taking their experiences of hate crime seriously. In one case involving the painting of racist symbols on the victim’s front door, and later where the accused perpetrator threatened the victim with a hammer, the interviewee told me:

¹⁴² Obviously, in all cases at Devon and Cornwall the incident had been reported to the police.

¹⁴³ See Case Study 1, Chapter Five.

I said to the police I am pressing charges but they never got back to me and they dropped the case without ever letting me know about it, they didn't take the matter further... The police didn't help me at all, they let me down, they let me down!

A lack of evidence appeared to be a common excuse as to why police officers would not pursue allegations of hate crime. Some officers may have also treated victims with suspicion, rather than sympathy, when reporting racist incidents (see also, Garland & Chakraborti 2007). For instance, in one indirect mediation meeting that was observed, an elderly Caribbean gentleman, aged 80, had been punched in the face outside a local shop by his neighbour, a much younger White male who was a suspected member of the local Bermondsey Taxi Club (a racist organisation). The victim wished to press charges against the accused perpetrator but was told by the attending police officer that because there was blood on both parties he could not arrest anyone. The local shop owner who had witnessed the incident also refused to make a statement.¹⁴⁴ Notwithstanding the victim's old age, the fact that he had been covered in blood and despite having previously made a series of previous complaints about the racist behaviour of the offender to the council over a period of several years, the attending officer still felt that there was no action he could take.

The only option left for this victim was to refer *himself* to the mediation service in the hope that a mediator could persuade the offender and his children to leave him alone.¹⁴⁵ Unfortunately, the accused perpetrator refused to engage and therefore the mediator could only work with the victim and his housing officer in order to improve his safety. Yet ultimately, little could be done for this victim without the support of the police or the

¹⁴⁴ The victim felt that this was most likely due to the fear of reprisal attacks.

¹⁴⁵ The offender's children had also harassed the victim. On one occasion they had illegally entered his garden and tore down his Jamaican flag. On another they were suspected of removing the numbers from the victim's front door.

engagement of the accused perpetrator, meaning that in this case the victim remained vulnerable to future attacks (see further, below “The cases left unresolved”).

Police Restorative Facilitators

A (significant) minority of victims participating in the Devon and Cornwall scheme were also dissatisfied with the way in which the police had treated them. The reasons for this were discussed in some detail in the previous chapter. Most notable were: the pressure placed on some victims to participate; inadequate preparation; a lack of information; and the obtaining of disingenuous apologies. This left some victims feeling let down by RJ and angry that their victimisation had not been taken seriously by the police. For many victims, this meant that their levels of anger, anxiety or fear towards the perpetrator was not reduced post RD, while in two cases the victim stated that their levels of anger and anxiety had actually increased as a direct result of police involvement in their case.

One victim described how her increased level of anxiety had been a direct result of what she perceived as the trivialising of her case, which she believed led to her re-victimisation by the offender. Another victim believed his treatment by the police to be racist. I asked him whether he had ever felt at a disadvantage during the RD, he responded “yes... because it would have been... different if I was not of a foreign origin... they have not given me all the help and support that they should have or that they have given to other people.” I asked this interviewee whether he felt that had he been white and British he would have received a different level of support, he replied, “I feel so, yes I do. Unfortunately, yes.” Whether the police had discriminated against this victim based on his ethnicity is uncertain. However, what was evidently clear was that the police had not provided him with the level of support that he required (see Case Study 4, Chapter Five).

The next case study illustrates the harmful consequences of state agencies that fail to provide victims with adequate support.

Case Study 1: Part 1 - Miss J, Long term racial harassment

Miss J, a “Black British” female, had been subjected to regular racist abuse by her downstairs neighbour (Miss Y) over a ten year period. In addition to verbal abuse, Miss Y repeatedly barricaded Miss J into her home using her own furniture, stole her mail and made false allegations to the Inland Revenue about her tax status, resulting in a temporary suspension of Miss J’s social benefits. Miss J contacted the police to complain about her neighbour’s racist abuse, but when the police arrived at the building, Miss Y came out of her flat and told the officer that she was in fact Miss J before providing him with a false statement. Miss J re-contacted the police a week later to find out why they had not arrived only to be told that she had already given them a statement. When she asked the police officer what skin colour the lady was who had made the statement he responded that she was white. Miss J was dumbfounded that having made a report of racist abuse, clearly stating that she was Black and her neighbour white, that the police would mistakenly take a statement from the wrong person.

In response, Miss J wrote a letter of complaint to the police about what had happened to her. Another police officer then visited Miss J telling her that Miss Y had made a counter complaint of harassment against her and served her with a harassment order. He told her that she had to stop making complaints to the police about Miss Y. Not surprisingly, Miss J was confused and upset about the police’s response to her complaints of hate crime, perceiving their actions to be racist. After sending several other letters to the police and the council, but with little response, Miss J became clinically depressed, began to suffer from alopecia and lost half her body weight. She told me:

I think it was more the lack of support from agencies that really just made me think, “what is going on here?” The confidence is completely, utterly gone and so it’s like that is what it has done to me [referring to her depression, weight loss

and alopecia].

The police's treatment of Miss J clearly compounded her experience of hate victimisation, leading her to believe that no-one would help. The council's response to her persistent complaints was also to brush them aside. A housing officer asked her to keep a log of all the incidents but then did nothing with them. Miss J noted "she [the housing officer] said... it's a really complicated case and we don't have much funds to deal with it", adding to Miss J's frustration and emotional turmoil. It later transpired that the police officer who had served Miss J with a harassment order was in fact in a personal relationship with her neighbour, Miss Y, and had falsely imposed the order (see further, Case Study 1: Part 2 below).¹⁴⁶

Despite the majority of interviewees stating that housing and police officers caused secondary victimisation, it should also be noted that some victims, especially in Devon and Cornwall, regarded the police as being very helpful. For example, more than half of those interviewed in Devon and Cornwall agreed that the police had "attempted to resolve the problems that the incident had caused to them". While various others spoke of the helpful nature of "English" police, especially those who may have been used to a more aggressive style of policing in their native countries. For instance, one Polish interviewee commented:

...they said to me we are going to help you and they took it very seriously... I am from different country and I find very high standards here... I admire the police here.

¹⁴⁶ A similar version of this case study appears in Walters & Hoyle (2011).

Similar comments were made by immigrants from parts of Eastern Europe and Turkey. These interviewees suggested that police involvement did not always result in secondary victimisation but could in fact be helpful to their emotional wellbeing.¹⁴⁷

Sample bias?

It may seem unsurprising that participants of community mediation were generally unhappy with the treatment they received by local authorities, especially given the fact that conflicts typically involved incidents that were referred by the police or housing *because* they themselves had failed to resolve the case. In other words, cases that are dealt with swiftly and effectively by the police and other state agencies would not come to the attention of the mediation service and therefore would not be included in the Southwark study. Nonetheless, the fact that such high numbers of cases had been referred to mediation involving hate incidents in this local area of London demonstrated that a clear problem still existed between state agencies involved in the resolution of hate crimes and minority individuals. The interviewees' responses provide insight into these problems and the failures of police and housing associations to pursue effective hate crime policies. While these responses may not be representative of *all* hate crime cases, they provide useful qualitative information about how and why such agencies failed to support the needs of many hate victims.

Other data gained from participants of the RD in Devon and Cornwall were less skewed when compared to those who had participated in community mediation, due mainly to the fact that interviewees' made up half of all victims who were dealt with via the RD during a 12 month period. Although victims participating in the RD reported a lower rate of secondary victimisation (when compared to Southwark Mediation), a minority of

¹⁴⁷ It is outside the scope of this thesis to develop further analysis of how victims from different racial or ethnic backgrounds experience local policing. This is perhaps an area ripe for criminological investigation.

interviewees still illustrated the failure of the police to provide adequate support to all hate victims. This added weight to the suggestion that local authorities frequently cause secondary victimisation to victims who report hate crime.

PART II: Reducing harm through multi-agency partnerships

In Chapter Five we saw how a significant proportion of victims relied on Southwark's mediation service as a means of "support". The help offered by mediators was of great relief to those who had felt "let down" and ignored by the state. When providing this support, the HCP mediator often administered a multi-agency approach to mediation. This entailed both the complainant victim and accused perpetrator participating in restorative dialogue *as well as* local agency employees engaging at some point during the mediation process.¹⁴⁸

The multi-agency approach applied in many of the community mediation cases researched had a clear benefit over and above police led RJ. This was primarily due to the fact that community mediation was independent of state authority. The entire remit of community mediation is to facilitate the resolution of interpersonal conflict. It is not restricted by government-imposed targets and it is largely devoid of the institutional cultures that have shaped the way in which statutory organisations respond to hate incidents (see Macpherson 1999). Accordingly, community mediators could capitalise on both a dialogic process between complainant victim and accused perpetrator and also inclusive communication involving the various local organisations that had responded to the victims' complaints of hate abuse. A multi-agency approach to RJ, therefore, consists of both lay members of the community (i.e. the victim, perpetrator and their supporters) and professional employees of

¹⁴⁸Such an approach was less available in Devon and Cornwall as the police acted as both restorative facilitator and at times secondary victimiser (see further "State agencies as community stakeholders?")

state authorities (i.e. housing and police officers) who each share a platform based on mutuality and respect.

There are, however, implications to the principles of RJ where state authorities are included in restorative dialogue. In Chapter Three we briefly explored the purpose of RJ, noting that restorative practices should aim to empower those directly involved in an offence in order that they resolve their own interpersonal conflicts (Christie 1977; Zehr 1990). In the previous chapter I also highlighted the potential pitfalls of police led RJ noting that officers used to conventional criminal interventions may exert control over the process taking autonomy away from the stakeholders of an offence. Thus for many restorativists, RJ is about the exclusion of the state and the inclusion of “community”. How then does the inclusion of local state authorities in the restorative process fit within RJ theory? We can find part of the answer to this question through further analysis of the notion of “community”. However, before then we need to explore some of the ramifications of engaging “state” organisations within the restorative framework.

State agencies as community stakeholders

Scholars sceptical of state involvement in RJ start by pointing out that there is a distinct incompatibility between the functions of conventional state-led criminal justice and that of restorative practice (Boyes-Watson 2004). This is primarily because conventional criminal justice processes have focused on enforcing the law by punishing and censuring those who breach its rules, while RJ aims to empower community stakeholders of a crime to resolve and repair their own interpersonal conflicts (Zehr 1990). The principles upon which restorative practice is built are those of equality and non-domination, rather than punishment and segregation (Braithwaite 2002).

Restorativists are right to be cautious about the state's involvement in restorative practice. Past attempts by the state to support victims have often amounted to lip service, or to the re-victimisation of some victims through the practices and policies of state institutions (central to this chapter) (see Bowling & Phillips 2002; Chapter Two). Yet despite the potential, and perhaps inevitable, pitfalls of state involvement in RJ, many have argued that it is necessary for its future development and sustainability (Boyes-Watson 2004; Jantzi 2004). Jantzi (2004: 190) points out that the role of the state has been multifaceted, acting as “enabler, resource provider, implementer, guarantor of quality practice – and even offender”.

The state has enabled RJ by legislating for its inclusion into main stream criminal justice, most prominently within the youth justice system (discussed in Chapter Three). Having enabled the criminal justice system to implement RJ practices, it has then resourced them. Even community mediation services that are run within the third sector are often funded by government grants and through council funding. The provision of funding by the state is fundamental to the development of RJ; for it is the state that has the means and resources to provide the capital required for restorative practices to become accessible by the masses rather than the few (Jantzi 2004).¹⁴⁹

As well as enabling and resourcing RJ, the state can also administer restorative practices – as is the case with the Devon and Cornwall scheme and RJ conferencing at the Oxfordshire Youth Offending Service (YOS) (see Chapter Four). It is this third aspect of state involvement that is of greatest cause for concern. Detractors argue that state-led restorative practices may simply become another means of administrating and taking control of crime, ultimately leading to the marginalisation of non-state citizens (Ashworth 2002; Jantzi 2004; see also, Hoyle 2007: 294-297). We have seen some evidence of this, if only tentative, in Chapter Five when exploring the inclusivity, voluntariness and reparative

¹⁴⁹ However, one advantage of state involvement is that it brings guarantees of quality and adherence together with human rights (Ashworth 2002).

capabilities of community mediation compared with police led RJ. Of the 14 victims who participated in the police led RD in Devon and Cornwall, only one had been provided with an opportunity to directly meet with his offender. Furthermore, a number of victims felt pressurised into participating in the disposal, while only eight out of 14 interviewees agreed that the facilitating police officer had provided them with an opportunity to discuss the harms caused by the offence. Of greatest concern was that two victims stated that their emotional trauma increased having been through the RD, with one stating that he believed the police had been racist towards him.

The ineffectiveness of many of the disposals could be directly linked to officers' failure to adequately prepare participants for the restorative process (see qualitative analysis of cases in Chapter Five). Inadequate preparation was likely to be a consequence of officers' conflicting criminal justice roles, frequently meaning that they lacked the time, or perhaps inclination, to arrange direct dialogue between the parties. Furthermore, the limited training that officers received on the principles of RJ and the purposes of restorative practice also appeared to limit officers' proficiency as restorative facilitators.

If the police struggle to apply restorative principles due to their contradictory roles as law enforcer and restorative facilitator, it seems improbable that they can also facilitate restorative dialogue in cases where they themselves have caused harm to the victim (see Hoyle 2007: 294-295). How then can state-led RJ help to repair the harms caused by state-led agencies? Although difficult, such a dichotomy has already been played out at a macro level in various jurisdictions across the globe. For instance, some states have initiated restorative programmes as a way of helping to repair the mass atrocities committed by state institutions in the past (see Llewellyn 2007 on Truth Commissions). Janzti (2004), for example, refers to the Maori Land Courts in New Zealand, used as a means of redistributing land to Maori communities, as a macro-level RJ initiative. Another more recent example is Australia's

national apology in 2010 for the “stolen generations” and persecution of indigenous peoples throughout Australia’s history. Such examples show that despite the state’s role as wrongdoer, and providing it has the political will, it can initiate restorative measures that aim to repair the harms it has previously caused.¹⁵⁰

Yet, what of the more micro level cases where state agencies have harmed, not vast sections of society, but individual victims?¹⁵¹ RJ practitioners will not be facilitating reparations provided by the monolithic state but by smaller local agencies who represent, in some form, the various roles of the state. In such cases, the state is not enabling, resourcing or providing the political foundation upon which its institutions are encouraged to provide victims with reparation. There is little institutional pressure for them to put right the wrongs they have caused. Given that such agencies represent the autonomy of the state, it might seem that little can really be done by community mediators to engage them in restorative dialogue or to ensure that they comply with voluntary mediation agreements.

Of particular concern is that such organisations consist of professionals bound by bureaucratic systems and rigidly set policies. They lack personal connections with victims and offenders and are therefore less likely to develop a sense of “reciprocity, trust and mutuality” with the main stakeholders of a crime (Boyes-Watson 2004: 220). Boyes-Watson states, “Client’s are viewed as bearers of deficits and problems rather than valuable sources of knowledge, skill and support” (2004: 220). The impersonal connections that local authorities have with victims and offenders of hate crime limit their ability to provide emotional support, healing and accountability (Boyes-Watson 2004).

Consequently, a communicative disconnection exists between victims and state authorities. Such a disconnection was clearly evident when interviewing complainant victims at the HCP, many of whom had become embroiled in strained dialogue with agency

¹⁵⁰ Though the effectiveness of these measures is far from equivocal (Llewellyn 2007).

¹⁵¹ Though it should be noted that individual cases of secondary victimisation are likely to be representative of broader socio-structural discrimination (see Chapter Two).

employees. A lack of constructive dialogue between victims and authorities is likely to be partly the result of the bureaucracy found within state organisations. Part of this bureaucracy is the carefully defined roles of agency employees. Their positions are institutionally constructed and set within the parameters of the organisation's social function. As such, the foundation upon which communications with victims is built is not one of equality and mutuality but instead service provision. The service provided is executed through a prism of organisational constraint that is bound by structured policies. Communication between victims, offenders and local agencies is therefore stilted towards the institutional objectives of the organisation. And although many stakeholders of crime will find the services administered by such agencies helpful, many others become frustrated and angry at what they perceive as a failure to provide them with adequate care and support.

Restorative dialogue, however, is unlike other forms of interpersonal communication. The dynamic of the pre-existing relationship between victim and local agency is shifted from one of power and control to that of non-domination and mutuality (Boyes-Watson 2004). Agencies that participate in restorative dialogue will do so as both professional service provider *and* "community stakeholder". Restorative dialogue encourages the parties to participate in an exploration of harm and harm reparation. The emphasis placed on conflict resolution helps to reduce agencies' bureaucratised response to hate victimisation. Together, the stakeholders (including agency employees) engage in dialogue and "story-telling" that helps to humanise each of the participants, meaning that agency employees become less inclined to follow the "agency's line" on the matter in hand and alternatively are more inclined to offer emotional support and reparation where required (Boyes-Watson 2004; see Case Study 2 & Case Study 1: Part 2 below).

Intrinsic to this more inclusive process is that restorative facilitators remain impartial. Conflicts of interest inevitably arise in cases where a restorative facilitator is employed by the

same institution that is required to repair harm. Impartiality is therefore best ensured where the facilitator remains detached from the state altogether (such as community mediation).¹⁵² Facilitators independent of state control are also less likely to be curtailed by an agency's institutional bureaucracy or subject to government targets. For these reasons, restorative practitioners are more able to facilitate a process that holds those who have harmed to account. As Roche expresses, "if state accountability is to be nurtured, the convenor must be independent as much as possible" (2003: 137, cited in Hoyle 2007: 297).

However, this does not mean that RJ practitioners employed by the state cannot successfully facilitate practices that include *other* state agencies. Rather, what is of central importance is that restorative facilitators are not *directly* employed by the agency that they wish to include within reparative dialogue. This is to avoid a conflict between their impartiality as a facilitator and the institutional responsibilities they have as a service provider (Hoyle 2007: 297). For instance, a restorative practitioner employed by a YOS is not directly constrained by the bureaucracy and administration of the police service or the local housing association. As such, YOS restorative facilitators who invite police officers or housing officers into family group conferences do so with a greater level of objectivity than that which would exist within a police or housing led restorative practice.¹⁵³

Practitioners who engage local agencies as "community stakeholders" must also ensure that their involvement does not provide a mechanism through which the victim feels dominated. Facilitators must limit the power inequality between the parties by preparing agency employees before meetings as to what their role will be during restorative dialogue. The setting of ground rules at the beginning of the process on what is expected of participants – be it as a supporter or repairer of harm – equally helps to reduce the likelihood of state

¹⁵² The fact that community mediation is often funded by the Government and local councils can complicate this independence.

¹⁵³ Since this research was carried out Southwark Mediation has seen huge cuts to its services. The local council has expressed that mediation services should be taken "in house" and facilitated by housing officers. This is of serious concern considering the secondary harms caused by housing officers reported by most interviewees.

employees bringing their own agenda to the table. Sufficient preparation, as we will see in Chapter Seven, is fundamental to the prevention of domination during dialogue. Only when adequate preparation of the parties has been carried out should practitioners invite local agencies into direct mediation meetings.

The involvement of state agencies directly within restorative processes may appear contentious given RJ's focus on empowering community members to take control of their own conflicts. However, the state's role as social services provider within most local communities means that "the state" will continue to dominate local responses to crime and victimisation. This means that the state and other community agencies will continue to be implicated in the vast amounts of hate crime that occur throughout society. And as such, state authorities will continue to be involved in hate crime cases be it as victim supporter, victim protector, or as secondary victimiser. It is in this sense that local agencies, as stakeholders of hate offences, should be brought within the scope of RJ to support victims and to help repair the secondary harms they themselves have caused. The next section explores further the role that local agencies should play in restorative dialogue, arguing that despite their attachments to the state they can also constitute part of the notion of "community", central to RJ theory.

State agencies as "community"?

What is community?

"Community" is a central concept within the theory and practice of RJ (McCold 2004). It has long been heralded as the platform through which the stakeholders of a crime should resolve interpersonal conflicts (Christie 1977; Braithwaite 1989; Zehr 1990). Restorativists argue that the positive role of community is that it is a definable social entity (Weisberg 2003) upholding a strong moral authority through which particular groupings of people are bound

(Braithwaite 1989). The notion of community has therefore been envisaged as an entity for good (Pavlich 2004). And as such, it has been promulgated as the antidote to the self-serving individual and to the remoteness of the monolithic state (Weisberg 2003).

Restorative justice scholars have conceptualised “community” in both broad and narrow terms. For example, Braithwaite (1989: 85) states that community is a set of “dense networks of individual interdependencies with strong cultural commitments to mutuality and obligations”, while Walgrave (2002: 74) states that a community is “an ‘area’, delimited mentally, structurally or territorially.” Essentially, community can be defined both in terms of location and space but also through “subjective feelings” (Walgrave 2002). At its most basic level community is simply a “perception of togetherness” (McCold and Wachtel 1997 cited in Walgrave 2002: 74).

Such analyses draw heavily from sociological conceptualisations of community. The sociologist Scott Lash (1994), for example, argues that communities do not necessarily share common interests or assets, but instead share an essence through which members form a bond with each other. Kennedy and Roudometof (2004: 6) similarly define community as “units of belonging whose members perceive that they share moral, aesthetic/expressive or cognitive meanings, thereby gaining a sense of personal as well as group identity.” Accordingly, while “communities” frequently share spatial locations, they are not necessarily bound by territorial space (Spalek 2008). Indeed, communities are often transitory in nature, constantly transgressing previously prescribed moral, essential and mental boundaries (Spalek 2008). While individuals similarly transcend communities’ prescribed borders, forming new identity groups, and/or subscribing to a multitude of different communities (Spalek 2008).

The application of community in restorative justice practices

The concept of “community” is clearly subject to metamorphosis and its definition is largely context specific. How then does such a fluid notion apply to restorative practice? McCold (2004) argues that there are two distinct forms of “community” that apply to the practice of RJ. The first is the “micro-community”, and refers to those who have been directly affected by an offence. Micro-communities also comprise of what has been labelled as the “community of care” (McCold 1996) i.e. family members, friends and other individuals who have meaningful relationships with the victim and/or the offender. Micro-communities play an important role in providing emotional and social support to those directly involved in an offence (Schiff 2007). They can also participate in dialogue helping the stakeholders, collectively, to understand the harms that have been caused to the victim and to his or her broader “community of care”. RJ processes that involve micro-communities include family group conferences and community mediation.

McCold’s second type of community is the “macro-community” and is defined by geographical space or through identity membership (for example, the “gay community” or the “Muslim community”; see also, Weisberg 2003). Macro-communities have little emotional or personal connection with the victim or offender. Instead they are more concerned with the harms that are aggregated to neighbourhoods, a particular identity group, or society more generally. An example of a restorative practice that involves a macro-community is the youth offending panel (see Chapter Three).

Other RJ theorists have argued that “community” simply provides a forum within which harms are discussed (Christie 1977). Community members are encouraged to explore how they have been impacted by the crime and how the offender/s might go about repairing the harms caused. One important role of the community, therefore, is to provide a space for

stakeholders to take control of their own conflicts (Christie 1977). However, the platform that “community” provides also serves a normative function helping to develop, communicate and uphold “the standards to which its members are expected to adhere as well as the values that undergird those norms” (Schiff 2007: 236; to what extent these standards and norms are homogenous is explored further below and in Chapter Seven).

Walgrave (2002) also notes that community is sometimes envisaged as a “goal” of RJ. For example, restorative meetings help to rebuild the “community” by healing damaged relationships and enhancing feelings of personal security (Walgrave 2002). In this sense, the betterment of community is an aim to be achieved via dialogic processes that engender the reparation of broken communities. Finally, linked to “community” as a goal of RJ is that it also becomes a “tool” through which restorative goals can be achieved (see Walgrave 2002: 75). For instance, a community can provide the context needed for restorative practice, such as reintegrative shaming (Braithwaite 1989). Accordingly, the purpose of community can move beyond that of supporter or stakeholder of harm to that of a mechanism of reform and rehabilitation (Braithwaite 1989).

State agencies as “community supporters”?

Notwithstanding the relatively broad definitions given to the concept of community by restorativists, the role of local state (and third sector) organisations has largely remained outside RJ scholarship. Neighbourhood policing teams, schools, colleges, housing associations, anti-social behaviour teams, victim support groups, social care units, citizens advice bureaus and many more have the duty and responsibility of responding to and supporting the needs of both victims and offenders of hate crime. Their role in tackling the causation and harms of hate victimisation can therefore be pivotal. Despite this, such

organisations appear to remain absent from many discussions on what “community” is within RJ literature. This is largely due to the fact that local agencies are primarily state-led, leading, as I suggested above, to their rejection by restorativists as potentially taking control away from the community and hence from the stakeholders of a crime (Christie 1977).

Those who have written about the role of community groups and/or local agencies in the restorative context have done so in terms of their working in addition to or in parallel with restorative practices. For instance, Herman (2004: 77) argues that the complex socio-economic problems underlying victimisation and its long term effects may require redress by state, local and charitable organisations that are better placed (compared to RJ practices) to deal with such problems (Herman 2004). A number of social services may be required to assist in supporting victims. Such organisations are better resourced with the means to address the victim’s long term needs (Herman 2004). Yet instead of arguing that these organisations should be collectively brought within the RJ framework, Herman suggests that a parallel system is required where the victim is treated separately from the offender, thus creating two systems of justice.

Amstutz (2004) similarly emphasises the importance of victim support groups in helping victims to recover from crime. However, unlike Herman (2004) she highlights several action steps taken from a “listening project” that can help with the forming of partnerships between restorative practitioners and victim groups, including: establishing ongoing dialogue between restorative practitioners and victim support practitioners; and working in partnership with other agencies to advocate the requisite justice resources required to support the needs of the victim. However, like Herman, Amstutz still falls short of arguing that victim support groups should be included within restorative meetings. Instead, she argues that practitioners can learn about the needs of victims by engaging more with victim groups and referring victims to their services in appropriate cases.

While both Herman (2004) and Amstutz (2004) argue for greater support for victims, neither a parallel system of justice for victims nor the forming of better partnerships with victim support groups *fully* utilise the inclusivity and flexibility of RJ. The failure to include local organisations within RJ theory is to a certain extent short-sighted. I have already alluded to this above, suggesting that local authorities become stakeholders of hate conflicts as and when they respond to complaints of hate incidents. As such it can be asserted that local organisations fall within the notion of community in several ways.

First, community agencies constitute part of the local geographical territory. They exist within certain spatial boundaries to serve the citizens who reside in particular neighbourhoods (making up part of McCold's (2004) macro-community). Both neighbourhood policing teams and housing associations, for example, exist within neighbourhoods. The purpose of both organisations is to protect, support and respond to the needs of those who live in the local area. Such organisations can therefore be viewed as part of the social fabric of *most* geographically defined communities.

Second, local agencies frequently become part of the victim's and offender's "community of care" (making up part of McCold's (2004) micro-community). They become directly connected to the main stakeholders of a crime when an offence is initially reported to them and/or when they are contacted in order to offer the victim support. For example, the housing officers involved in most community mediation cases became directly associated with the direct stakeholders upon providing them with advice on their rights and responsibilities as council tenants. Their intimate involvement in many hate cases (see also, Bowling 1994) meant that housing officers became a central part of the immediate stakeholders' "community of care", frequently becoming pivotal in helping victims to recover from experiences of hate abuse, while also ensuring that offenders did not repeat their prejudiced-motivated behaviours (see Case study 2 & Case Study 1: Part 2 below).

Third, and in a similar sense, local agencies can also be viewed as a restorative “tool” (Walgrave 2002), helping victims to move on from their experiences of crime (for example, Victim Support or social workers assisting victims during the restorative process) and/or additionally providing resources to help offenders reintegrate back into the community (for example, drug and alcohol rehabilitation, anger management, support with housing etc).

Both lay members of a community and the local organisations that constitute part of its territorial space and group identity, collectively represent and uphold the moral obligations by which it is bound. Hence, neighbourhood policing teams and housing associations are not aberrations of the community but fundamental constituents of it. They are local organisations consisting of employees who often reside in the neighbourhood that they serve, and should therefore be included by facilitators of RJ within meetings in order to provide additional emotional support to victims while simultaneously encouraging offender reformation.

State agencies as “community harmers”

Broadening the scope of “community” to encompass local third sector and state organisations will potentially enhance the healing process for victims, central to RJ theory. However, such an assertion presupposes that “community”, including its constituent parts, is a benevolent entity. The assumption is that community will provide expedient support and assistance to stakeholders where needed. On face value, such a preposition seems fair given that a central aim within the mission statements of state agencies will be to support, protect and assist community residents. The police, housing and other such organisations have moral obligations towards those they are tasked with serving, and in this sense they exist for the sake and betterment of the community.

However, as we have seen in Chapters One & Two and within this chapter, members of many communities (including employees of community organisations, see Macpherson 1999) frequently act to victimise, re-victimise and cause secondary victimisation to those who display certain identity traits. One of the main findings presented during this chapter has been that housing associations and police officers often demonstrate a lack of care towards stakeholders of hate crime and/or fail to convey adequate social condemnation for the harms caused by certain prejudices.

A paradox therefore exists between the *assumed* benevolence of community (including that of individual members and community agencies) and the *actual* effects it has on victims of hate crime. A notion of community that remains confined to a romanticised vision of homogeneity, in which its members are bound by a unified voice, may potentially expose some victims to further harm in cases where the community's sense of "togetherness" does not include certain "Others" (Crawford 2002; a more detailed critique of community as a homogenous entity is provided in Chapter Seven).

A more nuanced understanding of community must therefore be conceptualised. One which acknowledges that while some communities will represent "togetherness", others will ultimately be more fragmented, both in terms of their *supporting* and *harming* roles (Crawford 2002; Cunneen 2003). In other words, some communities will embody a homogenous representation of mutuality, obligation and of righteous social condemnation. Yet in others, the community may simply act to uphold prejudiced views, and if given a large role in repairing the harms of hate crime may potentially leave an insidious residuum (see further, Chapter Seven).

Practitioners of RJ must be cautious not to expose victims to re-victimisation through a dialogue involving communities that attempt to impose upon victims, norms and values that are an affront to their minority identity. A more realistic interpretation of community must

consider the roles played by other stakeholders in both repairing and exacerbating harm. Put another way, if “community” is viewed *only* as a repairer of harm it will ultimately frustrate RJ’s potential to effectively resolve the complex conflicts which manifest in multicultural communities.

Restorative practitioners who appreciate the different but intersecting roles of community will enhance RJ’s capacity to help repair the harms caused by hate victimisation (and secondary victimisation). I have already suggested that in cases where a local agency has not caused secondary victimisation, its representatives can participate as part of the victim’s “community of care”. In such cases, representatives are invited into the restorative process, either as participants in group conferences or direct mediation meetings with the victim, during which they are encouraged by the facilitator to provide the support their organisation is equipped to offer (see examples below). However, in cases where an agency has caused secondary victimisation, they can engage in restorative meetings in several ways. First, they can be included as a *renewed* “community supporter” (similar to above), in which they are encouraged to offer the support they previously failed to administer. Second, agency representatives are provided with an opportunity to take responsibility for the secondary victimisation their organisation may have caused. This is best achieved by encouraging agency employees to offer direct reparation to the victim, most commonly by apologising for their mismanagement of the victim’s case, but also by promising them to provide the support they are entitled to in the future (see Case Study 1: Part 2 below).

The multifaceted role that community agencies will frequently play in repairing the harms of hate crime is clearly complicated by their dual roles as *state* and *community* and *supporter* and *harmer*. The next section therefore provides qualitative data as to how the inclusion of community agencies during restorative dialogue can help to support victims of hate crime and repair the harms of secondary victimisation in practice.

Multi-agency approaches

Supporting the needs of victims and preventing repeat victimisation

The involvement of local organisations, including: housing associations, neighbourhood policing teams, schools and social services was key to resolving six of the 19 cases researched at Southwark Mediation (though in most cases, local agencies were included in restorative dialogue at some point during the process). Such organisations provided essential support to victims who had felt neglected and vulnerable to repeat victimisation (see also, Garland & Chakraborti 2006: 17-18).

The need for multi-agency partnerships first arose during the 1980s after the publication of the 1981 Home Office Report, *Racial Attacks*, explicitly expressed the need for greater co-operation between state agencies in tackling racial violence (see Bowling 1998). However, it was not until the publication of the Macpherson Report (1999) that multi-agency working was established as a key method of tackling and attending to the problem of hate crime (Iganski 2008: 100-101). In supporting the multi-agency ethos, the London based Race-Hate Crimes Forum was launched in 2003. The Forum was made up of key agencies that have within their remit the task of dealing with racist hate crime. Forum meetings provided an arena through which state agencies could present on the progresses they had made in relation to tackling hate crime and for the Forum to then scrutinise their policies and practices (Iganski 2008: 101). Iganski, reporting on these presentations, found that while state authorities were prominently vocal during meetings, victims and victim support groups felt that they were denied a voice (2008: 106). Multi-agency partnerships have also been accused of lacking coherent communication and commitment by some individuals and agencies (Garland & Chakraborti 2006: 19). One of the problems faced by multi-agency working is

that there is rarely a single organisation or person galvanising the collective work between the agencies.

Within the area of Southwark, community mediators frequently became the driving force behind multi-agency working, ensuring that local organisations came together to discuss how they should best move forward with individual cases. The manager of the HCP explained how the multi-agency approach to community mediation works in practice:

The multi-agency approach is very much a restorative approach... it's about people being included in a process which can enable change, it's about giving people the opportunity to say why they're doing what they do...it's about understanding what informs what they do... But it's also about getting support, so if I feel that people need additional support or counselling support – it might be something to do with their home, with their education, something that will help them in their own environment... I contact schools, I work with community groups, social services – it can be a whole range of people.

In some cases, employees from these agencies took part in group conferences where both complainant victims and accused perpetrators were present. In other cases, mediation meetings included the complainant victim, his or her supporters, together with agency employees. The HCP manager further explained:

...it may need a case conference... And by that I mean bringing all the agencies together to talk about this issue and come up with some outcomes. And that may be because the person concerned isn't able to take charge of the situation themselves... it may be to support... but it is also [about] risk assessment.

An interviewee who had been subjected to persistent racial abuse explained how such an approach was important to resolving his case:

...she brought my wife and I and the other gentleman in question and the authorities, the council and the police [together], which I thought was the most important thing. Without the council and ourselves or without [the mediator] I don't think we would have been able to solve this.

In this case the inclusion of a housing manager and two other housing officers in a group conference provided both husband and wife the opportunity to directly explain to the perpetrator and the council how their racial abuse had affected their emotional wellbeing. During this meeting the complainant victims were visibly upset at what they felt was a tirade of racial harassment against them by their neighbour. The mediator explored the issue of racism in detail with the group and the impact that racial slurs had had on the complainant victims. At the end of the meeting the mediator formed a mediation agreement – also signed by the housing manager, the complainant victims and the accused perpetrator – which stated that in no circumstances should racial slurs be used. If these terms were breached it was stated that the accused perpetrator would be in breach of his tenancy agreement. Although not directly stated, this could have led to the accused perpetrator's removal from the council's property. Such a process therefore included both restorative dialogue and a potentially punitive penalty for breach of the agreement. Six months after this meeting took place the complainant victims told me that they were very relieved that their neighbour no longer abused them.

Case referrals

In several other cases, restorative practitioners, having explored the emotional traumas that had been caused by the incident, and having asked the victim what he or she wanted in order to recover from these harms, went on to refer victims to charitable organisations that were better equipped to provide emotional support (see also, Amstutz 2004). For example, during an indirect family group conference at Oxford YOS involving a young victim of racially aggravated harassment, the victim explained how fearful she had become of leaving her home and that her self-esteem was so low she had become very depressed. The practitioner asked the victim if she would like to attend a victim support course aimed at improving self-esteem and individual security. The victim agreed and the course (according to feedback) made a great difference in helping her to feel safe again. Although not directly involved in restorative dialogue, the referral of the victim by the restorative practitioner to this charitable organisation aided her recovery from hate crime.

The next case study illustrates further how multi-agency partnerships act to strengthen the restorative process.

Case Study 2: Persistent disablist abuse – the support of school teachers

Mr L is a young “Black British” man living in South London who suffers from a “speech impediment” and minor “learning difficulties”. His ordeal began in 2007 when a group of local school children noticed that he had a disability. Soon after, the group began to taunt Mr L, shouting obscenities at him in the street including calling him a “paedophile” and a “devil”, while also verbally abusing his girlfriend, a young White woman who suffers from autism, in particular, calling her a “white bitch”. This went on for over a year until Mr L finally contacted the police about the abuse. This resulted in the arrest of one of the perpetrators who was warned about his behaviour. However, the harassment continued and the boys began to throw stones at the couple when they saw them in the street. Mr L and his girlfriend’s ordeal worsened when the group started a rumour among the local community that Mr L was a paedophile.

Mr L’s case was eventually referred to Southwark Mediation Centre by a neighbourhood police officer. The mediator arranged to meet with Mr L and the other parties involved in the case. After several indirect meetings the mediator decided that the best way forward would be to arrange a direct meeting between Mr L, the young perpetrators and the head teacher at the perpetrators’ school. During this meeting Mr L was able to explain how the incidents had affected him, while the head teacher played a central role in demonstrating appropriate social condemnation towards his students’ disablist actions. Mr L commented, “At first I was worried that the school teachers would take the school kids word, but when it turned out well I was really relieved.” A mediation agreement was drawn up in which the young perpetrators apologised and promised to desist from any further abuse.

Unlike the previous police intervention, the mediation process provided Mr L with immense emotional relief; he commented, “I had anxiety, it sent me paranoid and I would have flash backs and when I see them they would laugh at me.... but after [mediation] I was more relaxed and they left me and my girlfriend alone.” He went on to state that, “I’m more happy, me and my girlfriend can walk in the street. If it wasn’t for [the mediator] helping out I might not be here”.¹⁵⁴

The inclusion of the offenders’ head teacher in this case not only provided

¹⁵⁴ Case study also used in Walters (2012).

appropriate social condemnation of the students' actions but it also provided the victim with emotional and social support, allowing him to feel more confident that he would no longer be targeted by his abusers.

Repairing the harms of secondary victimisation

Case Study 2 highlights the benefits of including community organisations (such as school teachers) within the restorative process. By participating in restorative dialogue, agency employees are more likely to offer emotional and social support to victim's, thus aiding their recovery from hate incidents. Moreover, their inclusion within the process reduces the likelihood of repeat victimisation. The prevention of repeat victimisation is primarily achieved by local organisations demonstrating social condemnation of the offender's prejudiced behaviours. It is also achieved where agencies present the offender with potential repercussions if they break mediation/reparation agreements.¹⁵⁵

Notwithstanding the potential benefits that can be gained by implementing a multi-agency approach to mediation, we have yet to consider the need for harm reparation by state authorities themselves. After all, as we have seen at the beginning of this chapter local agencies frequently cause secondary victimisation when responding to reports of hate incidents. The reparation of secondary harm can be a complex undertaking. Persuading agencies to admit that they have caused harm and/or that they should actively repair this is no easy task. Practitioners may find in such cases that they begin to become victim advocates as well as restorative facilitators.

Whether restorative practitioners should seek to provide additional support for victims is questionable, given the emphasis that is placed on practitioner impartiality (Strang 2002). However, in some cases facilitators may well need to stretch beyond their role as facilitator of

¹⁵⁵ Such as the threat of expulsion from school, or the threat of eviction by housing officers.

dialogue between victim and offender and actively seek to enhance the victim's wellbeing by encouraging state and community agencies to participate in RJ (see generally, Amstutz 2004).

The HCP manager asserted:

...some people have said, "Is it your business to inform people about other agencies? Is it your business to be telling people about legislative or police services?" and I say, "Yes, it is" because mediation isn't just about mediating people in a room or writing agreements. It's a very essential process and a very holistic one, and that for me, is a function of mediation. It isn't just one-dimensional. It can do all of those things!

In order to illustrate how restorative practitioners can facilitate a multi-agency approach to mediation that helps to repair the harms of secondary victimisation I provide further examination of Case Study 1.

Case Study 1: Part 2 – repairing the harms of ineffective state intervention

In part one of this case study we saw how Miss J had been subjected to years of racial harassment, abuse, identity theft, investigations by the Inland Revenue (which temporarily resulted in the stoppage of child support payments), the failure of the housing association to take any action against Miss X (the perpetrator), and several botched dealings with Southwark police. Finally, after 12 years, Miss J was referred to the HCP at Southwark Mediation who initially set about arranging a direct meeting between Miss J and Miss X to explore what had been happening over the past decade. During this meeting it became clear to all parties present that Miss X would not desist from her hate-motivated behaviour. Miss J remarked, “It had gone beyond – you know – shake hands make up; it’s way past that to an issue of us being moved.”

Although the direct mediation meeting did not directly resolve this case, it did allow all parties involved (in particular the housing association) to appreciate that something needed to be done in order to prevent the further victimisation of Miss J. After this initial mediation meeting, the role of the mediator shifted from mediating between victim and accused perpetrator to working with Miss J and the various organisations that had exposed her to secondary victimisation. These meetings allowed Miss J to explain not only how her ongoing victimisation had impacted her but also how the council’s and police’s apathetic responses to her complaints had damaging repercussions. Three separate mediation meetings between Miss J and her housing officer were arranged during which the housing association was held to account for its own hate crime policy. Eventually, Miss J was relocated into a new apartment. The mediator told me:

I held the meetings because I wanted to check if [the housing association] was aware racism was an issue. [Miss J’s] housing officer was black. The support worker was mixed race. They were acutely aware of it. To not affect measures is to by default effectively re-victimise [Miss J]. [Miss J] was constantly told by [the housing association] that there was nothing they could do about her neighbour as there was no impartial evidence, what she told was

utter nonsense! (the names of parties involved have been replaced)

Miss J also commented:

... the police couldn't really get her [Miss X]... but with the mediation she realised that "hold on for a second my housing people are now aware of this"... so now when I complained about it instead of them saying oh [Miss J] this is a trivial matter they had to write a letter to her saying it has been brought to our attention... and to please stop it. So she now found herself being accountable... I suffered for 12 years and no one did anything about it and then we got all of these agencies involved through mediation I got moved away...

Following these meetings the mediator then facilitated a meeting between Miss J and the local Community Safety Unit (the police department tasked with investigating hate crime). After this meeting the Unit investigated Miss J's complaints and discovered that the officer who had previously served her with a harassment order was in fact in an intimate relationship with Miss X. The officer was subsequently suspended, Miss J's harassment order was removed, and a letter of apology was sent to her. Finally, the mediator then worked with Miss J's family support officer who went on to obtain medical and counselling support for Miss J.

This case was socially, emotionally and logistically complex and during my interview with Miss J it was clear that she was far from fully recovered from her experience of racial victimisation. She is, however, much happier in her new life and has regained her lost weight. The case is demonstrative of the extent to which hate victimisation can damage a person/family's life if the incompetence and neglect of state run agencies goes unchallenged (see also the Pilkington case, Chapter Two). The dedication and hard work carried out by the mediator in facilitating the various restorative meetings in this case is commendable. It illustrates how mediators using multi-agency partnerships in complex hate crime cases can

help victims to move on with their life free from hate abuse. In this case, both housing and police officers were held to account for their failures to support Miss J. Both organisations became aware of the harms they had caused by participating in direct mediation meetings. And it was through this dialogical process that the agencies went on to offer the support they had previously failed to administer as well as reparation for the secondary harms they themselves had caused.

The cases left unresolved

The inclusion of multiple agencies within community mediation (and to a lesser extent within other restorative practices such as family group conferencing – see examples above) definitely strengthened its capacity to aid recovery and prevent future incidents of hate crime. Out of the 19 ongoing cases of hate conflict in South London where complainant victims were interviewed¹⁵⁶, 17 were judged to have been resolved through community mediation – 11 primarily through victim-offender mediation and six only after a multi-agency approach had been implemented. In total, this meant that the complainant victims of 17 separate cases were no longer subject to hate victimisation after the mediation process.

Despite mediation's general capacity to resolve hate crime cases, two out of the 19 separate cases (involving complainant victims who were interviewed) remained unresolved. At the beginning of this chapter I also highlighted a mediation meeting involving the racially motivated assault of an elderly African-Caribbean gentleman (see under "Police responses to hate incidents"). In that case the accused perpetrator refused to participate and the attending police officer was unable to pursue the case due to a lack of independent witnesses. Although mediation meetings between the victim, the mediator and his housing officer had taken place, the victim remained vulnerable to racial abuse from his neighbours.

¹⁵⁶ A total of 23 interviewees referring to 19 separate cases.

In another case involving racial abuse, that included the disposing of dog faeces through the victim's letter box, the mediation process was judged to have failed for two reasons. First, the mediator could not engage the accused perpetrator and therefore could not facilitate direct dialogue between the parties. Second, the police officer referring the case to mediation had communicated to the mediator that the complainant victim had been socialising with a known drug dealer. The mediator mentioned this during an indirect meeting with the complainant. This upset the complainant who felt that the mediator was judging her credibility based on her association with someone else. The victim also made it clear that she would no longer engage with the mediator unless she could persuade the housing association to relocate her. This was, of course, not the primary role of the mediation service and as such this case was aborted.¹⁵⁷

In the third case, a combination of racial, homophobic and disablist incidents had been committed by the victim's downstairs neighbour. During mediation the perpetrator apologised for his behaviour and subsequently stopped harassing the victim. However, three weeks after mediation took place the offender began to abuse the victim again. Mediators were called in several times and on each occasion the offender apologised and temporarily desisted harassment, only to start again some weeks later. This continued despite letters from the housing association stating that he would be in breach of his tenancy agreement if he did not refrain from such behaviours. Finally, the tenant moved of his own accord leaving the victim in peace.

These three cases demonstrated that even with the involvement of complainant victims and community agencies within restorative meetings, the process cannot always help to repair the harms caused by hate crime or prevent abuse from recurring. In some cases the failure to find resolution could be directly correlated to the perpetrators' refusal to participate.

¹⁵⁷ Although in other cases the mediator had engaged housing officers in mediation who then went on to relocate victims.

Thus despite a vast majority of perpetrators agreeing to participate in mediation, some will simply refuse to engage. In such situations mediators will struggle to facilitate reparation for the victim. Even in cases where perpetrators do participate there will inevitably be some occasions where community mediation is unable to help resolve conflict. Perhaps in these few cases there will be no other alternative but for the state to administer a punitive response to hate offending.

Conclusion

This chapter has illuminated the problem of secondary victimisation faced by many of the individuals who contacted local authorities to report incidents of hate. In the case of housing associations, housing officers tended to exacerbate victims' experiences of hate crime/incidents by failing to take adequate measures against accused perpetrators, or simply by portraying to the victim a sense of indifference about their complaint/s. Similarly, police officers called to victims' addresses infrequently investigated reports of hate abuse beyond that of their initial response, instead often telling victims that their complaint related to a "domestic" matter. A lack of concrete evidence also led to officers dropping cases, commonly without telling victims, much to their frustration. The failure of local authorities to take any concrete action against those accused of hate abuse inevitably led to the continuation of "low-level" but persistent victimisation against victims.

The apathetic and neglectful responses by local authorities, as relayed by interviewees, resulted in what was often phrased as them feeling "let down" by the state. However, it would be wrong to conclude that all interviewees experienced secondary victimisation. It must be noted that in some cases, victims found local agencies to be very helpful and supportive – particularly those who had recently moved to Devon and Cornwall

from Eastern Europe. While in other cases, agency employees were not deemed to have been neglectful but instead, despite their statutory powers, were simply unable to resolve the often intractable conflicts that community members become involved. Either way, this often meant that victims continued to suffer at the hands of their abusers.

Resolving such complex long term cases of hate victimisation frequently required mediators to implement a multi-agency approach to restorative dialogue. This involved the participation of both complainant victims and accused perpetrators, as well as various other community and state organisations seen as pivotal to the resolution of conflict and to the reparation of harm. The inclusion of local agencies in restorative dialogue, despite some of them representing state authority, could be intrinsically linked to the notion of “community” (see for example, McCold 2004). Further analysis of “community” within this chapter not only suggested that local agencies constitute part of what is understood as “community” within RJ theory and practice, but the notion was also seen to be an entity with both benevolent *and* harmful qualities.

Within this chapter I have therefore argued that “community” is better understood in terms of its harm *repairing* and harm *causing* capabilities. For example, agencies frequently became an important component of the victim’s “community of care” (McCold 2004), providing them with the necessary emotional and social support that was required for victims to feel safer in their local neighbourhood (see Case Study 2). Their involvement could also act as a conveyer of appropriate social condemnation of prejudice, thus helping to prevent the recurrence of hate incidents (Braithwaite 1989). In other situations, authorities also needed to be included within the process as a “secondary harmer”. This latter role required agencies taking responsibility for the secondary victimisation they had caused and then repairing the harms they had subjected victims to. Agencies were actively encouraged to repair harm by

administering a level of support that they had previously failed to deliver and/or by offering direct reparation to the victim, such as an apology (see Case Study 1: Parts 1 & 2).

In either case, the role of local agencies within RJ was transposed from one of state authority to that of community stakeholder. The dialogical emphasis placed on restoring harm and supporting the victim helped to break down the agencies' bureaucratic and professional responses to hate incidents and instead encouraged emotional connections amongst the participants. Providing that mediators remain outside the agencies' autonomy, such processes could be facilitated based on the values of mutuality and non-domination.

To this end, we might begin to consider how community mediation counters some of the structural disadvantages that were highlighted in Chapter Two. In particular, agencies that were held to account for their own hate crime policies and who were encouraged to offer the support they had previously failed to provide were, in effect, repairing some of the harm caused by institutional and structural prejudice. This went some way to restoring the institutional inequities that are frequently experienced by victims of hate crime. This means that community mediation was able to reach further along the continuum of hate by helping to repair both social as well as individual harms caused by the process of hate victimisation.

Perhaps in time, the benefits of multi-agency partnerships will encourage restorative practitioners within other parts of the justice system to engage local agencies during the dialogic process. As community mediation has shown, the engagement of "community" in all its guises can provide additional emotional support for victims, help repair the harms of secondary victimisation, while simultaneously improving the safety of minority victims in local neighbourhoods.

Chapter Seven: Cross-cultural boundaries – the challenge of humanising “difference” and avoiding re-victimisation

Introduction

Chapters Five and Six presented data which suggested that restorative practices can help to heal the harms of hate crime. In essence, we have seen that: victims’ stories; the support provided by facilitators; and, *pivotaly*, assurances of desistance provided by offenders, aided the emotional recovery of hate victims. Further enhancing the reparative capabilities of some practices was a multi-agency approach to RJ that involved active participation of local agencies within the restorative framework. This chapter now moves beyond an analysis of harm reparation to an examination of whether restorative dialogue can bridge the cultural and identity divides that polarize stakeholders of hate crime.

The promise of RJ in relation to bridging the cultural disconnect between victims and offenders of hate crime relates to the very same dialogical processes that have been identified in the preceding chapters as supporting victims’ emotional wellbeing. Principally, it is argued that the exploratory methods used in restorative practice not only help to *repair* the harms of hate but provide a pivotal mechanism through which individuals’ “difference” is *humanised* (Walters & Hoyle 2010). Victims who are provided with an opportunity to tell their stories expose offenders, perhaps for the first time, to *structured* communication about the impacts of prejudice. It is hoped that by being confronted with the consequences of their bigotry, offenders are more likely to feel remorseful for their actions (Walters & Hoyle 2010). In turn, offenders become more inclined to offer gestures of contrition to their victims (Harris et al 2004). And it is through such discourse that offenders are able to reflect on the humanity of

their victims. This empathic process aids the rebuilding of relationships, allowing the parties to better understand the “differences” that have previously divided them.

The restorative process, when conceived in such terms, appears to be ideally suited to reforming hate offenders. Yet, we must not be too quick to overstate the potential of RJ for hate crime offenders. There exists a multitude of risks that identity and cultural difference pose to the successful application of RJ. Critics have pointed out that communities are often fragmented, hierarchical entities which, like state institutions, perpetuate hegemonic norms and values that can oppress the identities of certain minority groups (Crawford 2002; see Chapters Two & Six). Practices that blindly apply the notion of “community” to restorative dialogue therefore risk perpetuating the elitist norms which give rise to minority group marginalisation; such that, the involvement of communities permeated by cultures of prejudice (Chapter Two) may fail to express adequate social condemnation for hatred and instead potentially subject victims to re-victimisation (Kelly 2002).

The paucity of empirical research into RJ and hate crime means that a disjuncture exists between the normative assumptions made about RJ and the possible risks that dialogic processes expose victims to. Using the three datasets collated for the thesis, this chapter aims to reduce the gap between theory and practice by analysing both the reforming potential and re-victimising risks of RJ, as applied to hate crime.

Part I begins this examination by re-analysing the notion of “community”. Several concerns are illuminated, including the “empathic divide” which may exist between participants from different communities, while the potential for offenders – along with their “communities of care” – to dominate proceedings, use power inequalities to manipulate dialogue, and re-victimise victims, are also highlighted.

Part II moves away from theoretical analyses about risk to an empirical exploration of the effects that cultural and identity difference has on direct dialogue. The datasets (in

particular data gained from observations) are assessed to see whether participants were able to effectively communicate during the restorative process. This section also highlights the aspects of RJ which aided the bridging of empathic divides. Other measures used to better facilitate dialogue are also discussed.

Part III of the chapter moves on to an exploration of RJ's capacity to effectively challenge prejudice. Here I illuminate the importance of "story-telling", demonstrating how active participation *helps* to humanise victims. Using the only case taken from Oxford Youth Offending Service (YOS), I illustrate how reparative work can be used to specifically focus on moral learning about the harms of prejudice. The limitations of challenging deeply imbedded prejudices through restorative meetings are also conceded.

Part IV finally explores whether the risks of re-victimisation and domination during meetings occurred in practice. Using data from victim interviews, I document the very low levels of disadvantage reported by victims. Then, using data obtained from restorative practitioners, I analyse the methods that were used to avoid domination and repeat victimisation. In general, two consistent themes were articulated by practitioners as minimising the risk of domination and re-victimisation during meetings; these were: ensuring adequate preparation of participants and the setting of ground rules at the beginning of meetings. At this final stage of the chapter I explore the importance of including appropriate community supporters within restorative meetings, noting that restorative facilitators may need to challenge prejudice themselves if RJ is to limit the moral impunity that *some* "communities of care" will provide.

PART I: The risks of “community”

In Chapter Six we explored in detail the notion of “community”, arguing that local state authorities constitute part of the social fabric of our local neighbourhoods. We also saw how state agencies frequently become part of stakeholders’ “community of care” as and when they responded to incidents of hate crime. However, during such responses, local authorities were also consistently accused of causing various forms of secondary victimisation. It was at this stage of the thesis that I highlighted the harm *repairing* and harm *causing* qualities of “community”.

It is worth analysing here how the notion of “community”, central to restorative practice, becomes further complicated by the socio-cultural factors pertinent to cases of hate crime. A simple recap of the purposes of “community” will help for these purposes. Originally envisaged as a benevolent entity, restorative scholars have advanced the notion and role of “community” as one through which individuals can resolve and repair their interpersonal conflicts (Chapter Six; Braithwaite 1989; Zehr 1990). It is argued that offenders, as transgressors of society’s rules, have fallen outside the moral boundaries of their community by becoming an aberration of its collective good. Restorativists have accordingly argued that the “community” acts to provide both social condemnation (shame) of criminal behaviour as well as reintegration of the offenders back into its sphere, minus any negative stigmatisation (Braithwaite 1989; 2002).

Critics, however, have argued that such a conceptualisation is overly simplistic and fails to grasp the complex socio-cultural structures of modern communities. Indeed, as we have seen, a community not only helps to uphold the moral obligations of its members but may also wield a persecutory axe over those who fall outside its subjective feeling of “togetherness” (see Chapters One & Two; see also, Cunneen 2003; Pavlich 2004). Academics have criticised restorativists for having romanticised the notion of community and

idealistically applying it to restorative practice (Crawford 2002; Cunneen 2003; Pavlich 2004). Crawford opines that the portrayal of “community” has been almost mythological, containing a rhetorical force that “collapses diversity and irons out important contradictory evidence... for the sake of a coherent ‘story’” (2002: 109).

In Chapters One and Two I suggested that communities (and society more broadly) are hierarchical entities that have historically been structured through gender, race, sexual orientation and other identities (see Perry 2001 in relation to hate crime; Crawford 2002 in relation to RJ). Minority identity groups are frequently pushed to the outer edges of society for having disobeyed the hegemonic norms that are prescribed by dominant elites (Chapter One; Walters 2011). These Others ultimately become subjugated by those who fear that their “difference” will encroach upon the dominant values that have traditionally helped to form Britain’s (and other nations’) local communities (see generally, Perry 2001). A consequence of displaying identity difference is that certain community members will attempt to oppress the social mobility of Others; some by violent means (Perry 2001; Walters 2011).

In particular, verbal denunciation of Others and the proliferation of negative stereotypes become myopic resources that attempt to justify the apparently unjustifiable. Within the context of restorative dialogue, one fear is that offenders who are reassured by a sense of grievance against certain identity groups will remain hostile towards them, if and when they are given an opportunity to participate in direct communication (Smith 2006; see also, Byers et al 1999). Offenders may also attempt to rationalise their prejudiced actions by seeking refuge in “techniques of neutralisation” (Sykes and Matza 1957). Such techniques can involve offenders denying or underplaying the seriousness of their offence or their own culpability. They might refuse to accept full responsibility by blaming others for their behaviour; or admit that they have broken the law but not that they have caused any real harm; or – and of particular relevance here – assert that the victim is undeserving or

illegitimate, or even less human (Byers et al 1999; Perry 2001). For example, Byers et al's (1999) research into hate crimes against the Amish in Fulham County, USA found that hate offenders often attempted to play down their prejudice in an attempt to neutralise their behaviour. They often viewed their victims as deserving of victimisation, a view held by other community members who supported attacks against the Amish as "fair game" (Byers et al 1999; see also, Sibbitt 1997).

There is a genuine concern that offenders may manipulate the more informal restorative process to diminish their guilt, trivialise their prejudice and potentially shift the blame onto the Other. In such circumstances ineffective facilitation by a practitioner who does not fully understand the cultural tensions that exist between the parties may fail to prevent repeat victimisation (Smith 2006). In such situations, victims might feel compelled to accept disingenuous apologies in an attempt to appease the offender and reduce the likelihood of reprisals. This, of course, is not the pathway to genuine reparation.

Restorative scholars who have presented "community" as a harmonious view of social and political relations may therefore actually be masking conflict, power divisions, difference and inequalities (Crawford 2002; Cunneen 2003: 186). Cunneen (2003) asserts that the application of a notion which silences those who are marginalised, means that RJ may become complicit in the oppression and victimisation of Others (see also, Stubbs 1997; 2002; 2007, in relation to domestic violence and the risk of male hegemony within RJ). Structural inequalities mean that, "a perilous totalitarian threat haunts every attempt to ground restorative justice in community" (Pavlich 2004: 177). Communities and perpetrators who favour a white, heterosexual, able bodied hegemony may fail to adequately recognise the individual and social needs of ethnic minorities, gay, lesbian and disabled victims (Pavlich 2004). The assertion of dominant values within RJ will act only to compound the social harms that victims of hate crime have already endured (Cunneen 2003; see also, Chapter

Two). Consequently, practices that give implicit support to the structured boundaries of “community” will become implicated in “its totalitarian effects” *if* facilitators fail to counter the power imbalance between offenders and those deemed as “different” (Pavlich 2004; see also, Daly 1999).

Conceptualising community as a despotic entity that marginalises, oppresses and victimises the Other provides an internal antithesis to the restorative ideal. Taken on face value, it suggests that RJ, rather than healing and empowering victims of hate crime, potentially leads to the domination and re-victimisation of minority individuals. However, to a large extent such analysis is based on theoretical assertions about the structural dynamics of “community” and normative assumptions about the processes involved in restorative practice. Although I have argued in this thesis that socio-cultural structures are causal to minority group marginalisation and ultimately to the commission by some individuals of hate crimes (Chapters One & Two), I do not contend that “community” in its entirety is a myopic entity. Rather, community has both benevolent and malevolent qualities within its sphere. In other words, there are aspects of “community” that can be harmful to certain individuals, but equally there are parts which strive for equality, equity and justice.

In fact, in many respects the criticisms about “community” are prone to the same accusations that critics have themselves made about the over simplification of the notion. By this I mean that while it is true that advocates of RJ have painted a notion of community in overly benevolent terms, its critics may have equally over-stated its divisive and harmful qualities within the restorative context. Perhaps then, restorative scholarship is better served by appreciating a more nuanced understanding of “community” that understands and appreciates both its healing *and* harming qualities (see Chapter Six). These dichotomous qualities are not mutually exclusive. Restorative practice must therefore be able to recognise

when “community” is of benefit to the justice process, while simultaneously building in protections against those aspects of the notion that are likely to have a more insidious effect.

For example, both the offender’s and the victim’s “community of care” make up an important part of “community” within restorative practice (Chapter Six). However, while the victim’s “community of care” provide him or her with important emotional support, the offender’s “community of care” might uphold his or her bigoted views towards the victim (see further, Part III). In such cases, some community stakeholders will provide a positive influence over the restorative process, while others act only to infuse a negative impact over its reparative and reforming potential. Balancing out these and various other aspects of “community” will be necessary if practitioners are to facilitate effective RJ. This is not easily achieved but can be accomplished through adequate preparation, ensuring appropriate supporters are included in meetings and through a more active role in challenging prejudice taken by facilitators (see Parts III & IV).

There remains a paucity of empirical research on whether effective restorative dialogue can be maintained within multicultural settings (see Daly 1999); less still on how effective restorative practices are when cultural and identity difference is at the heart of conflict (see Umbreit et al 2002; Walters & Hoyle 2010; Walters and Hoyle 2011). Evidence already outlined in Chapters Five and Six suggests that restorative practices, if implemented in accordance with restorative values, can *help* to repair the harms caused by hate crime. The data showed, for example, that dialogue with the offender (directly or indirectly) often reduced (although only partially) victims’ feelings of fear, anger and anxiety. Moreover, facilitators with proficient knowledge of hate crime and who administered a multi-agency approach to restorative practice were able to ensure victims received the emotional and social support they required, while secondary harms caused by the institutional practices of state organisations could be repaired where mediators engaged agency employees within the

restorative process. A corollary of these findings, therefore, is that the restorative practices researched avoided the risks posed to victims of hate crime. Indeed, it is unlikely that victims would have stated that the process helped to repair their emotional harms, as well as preventing repeat victimisation, if in reality their participation acted only to sustain their marginalisation and led to re-victimisation.

Still, in many respects we are left unsure as to what aspects of restorative practice helped to avoid the risks posed by “community” and the invidious forms of discrimination that frequently pervade it. This chapter aims to partly fill this lacuna by exploring further the potential benefits and pitfalls to restorative dialogue in cases of hate crime. Firstly, though, it is helpful to remind ourselves of the criticisms that have been made above about the potential use of RJ for hate crime:

- 1) Cultural and identity differences between community stakeholders will inhibit restorative dialogue, making empathic connections and the rebuilding of relationships between victim and offender difficult to form.
- 2) The potent force of the hegemonic “community”, as supported by the offender’s “community of care”, will make effective challenge of hate-motivated behaviours via social condemnation highly improbable.
- 3) Inherent power imbalances within the community will bias restorative dialogue, leading to domination and to the potential re-victimisation of victims.

Each of the above risks and limitations to RJ are now explored in detail by examining further the empirical data collated from South London, Devon and Cornwall and Oxford.

PART II: Negotiating cultural and identity difference during restorative dialogue: the importance of empathy

Interpersonal communication between participants is crucial if victims are to receive emotional reparation and all participants are to gain greater insight into each others' cultural and identity backgrounds (Zehr 1990). In order for emotional connections to be formed between the stakeholders of a crime, the parties must be able to empathise with each other (Braithwaite 1989). This means that they are capable of understanding and sharing each others' feelings. There is a vast literature on the process of empathy and the potential rehabilitative nature of RJ for offenders (see for example, Pepinsky 2008). Proponents argue that in a successful RJ meeting the offender should understand the hurt and suffering experienced by the victim and realise that what he or she has done is morally wrong (Harris et al 2004: 201). Offenders are like any other human being in that they "feel a deeply rooted sense of empathy for other humans", especially when that other person is suffering (Harris et al 2004: 200). Maxwell and Morris (2002: 280-81) explain that "empathy or understanding the effects on victims" can result in feelings of remorse. This emotion then gives rise to genuine offerings of contrition by offenders who actively wish to repair the harms they have caused (Braithwaite 1989; Harris et al 2004). Empathy, therefore, acts as a catalyst for attitudinal change, benefiting both parties, but also the wider communities to which they return (Dzur & Olson 2004; see Chapter Three, "The aims of restorative justice").

To some extent, restorative theory simply presupposes that individuals are capable and ready to empathise with each other (Crawford 2002). This has led some critics to argue that theories of empathy, shame and reintegration (Braithwaite 1989) have neglected to adequately analyse how the social diversity of most communities will impact upon participants' ability to empathise with each other (Cunneen 2003). Dialogical variances

across (and sometimes within) different communities inevitably give rise to what has been labelled as an “empathic divide” (Haney 2005: 189-210). Diverging social norms between community members can create “social distance”, meaning that the stakeholders of a hate crime may not immediately identify with each other’s identity backgrounds (Smith 2006). Participants may live in different neighbourhoods, hold different beliefs and will typically socialise in different groups (Smith 2006). For example, within Albrecht’s (2010) study into cross-cultural mediation in Finland and Norway, practitioner interviewees stated that “Asians were... seemingly uncomfortable with mediation since they feel ashamed about having a conflict in the first place”. Conflicts in Asian countries such as China have conventionally been solved by secret negotiation in order to avoid public embarrassment. Conflict resolution in front of strangers in a public forum can be confronting for such participants and they may wish to find a speedy conclusion that avoids speaking at length about the harms they have suffered (Albrecht 2010: 18; see Umbreit & Coates 2000 for other examples of cross-cultural variation regarding views about justice). Such examples show that disparate conceptions of guilt, shame and justice may mean that a universal approach to RJ in multicultural communities may simply be unattainable. Instead, restorative practices will need to remain flexible in order to cater, not only for the different types of crime, but for the cross-cultural stakeholders it will encounter (Umbreit & Coates 2000).

Within my own empirical research, five observations were made of face-to-face mediation meetings between the stakeholders of a hate conflict. An additional 13 meetings were observed between victims and restorative practitioners with the bulk of these involving participants whose identity differed to that of the facilitator. Within each of these observations detailed notes were made about what was said during meetings, the body language of the participants (especially in direct meetings) – including the physical gestures that were made – and whether either party signalled that they understood and appreciated the

other party's feelings. Before I explore whether cultural differences can be overcome through restorative dialogue we need first to explore further the contrasting modes of communication between identity groups, including: language, paralanguage¹⁵⁸ and physical gesticulations (Umbreit & Coates 2000; Albrecht 2010).

Language

Language barriers inevitably inhibit direct forms of dialogue. In cases where the participants speak different languages, facilitators may need to use interpreters in order to include all participants in the dialogue. In two of the direct mediation cases observed, difficulties with language prevented participants from directly addressing each other. In one case, two children acted as interpreters for their father, a participant originally from Iraq. This was not ideal but their confidence when doing so allowed the parties to engage with each other without too much interruption. In one other case the husband of the victim spoke on her behalf, translating her words when she was asked to explain how the incident had affected her (see Case Study 1, below).

Where family members are not present to translate, professional interpreters may be required. Either way, the need for translation will restrict the fluidity of dialogue (Albrecht 2010). The emotion behind what is being said is often lost and reactions to participants' stories can become stilted compared with the immediacy of typical response. As one practitioner noted:

You can run conferences with interpreters, and I've done several of those, but it doubles the length of conference... and... you lose a lot of the emotion in the talking.

¹⁵⁸ Paralanguage includes vocal features that accompany speech and contribute to communication but are not generally considered to be part of the language system.

Whether interpreters help or hinder the flow of dialogue is debatable. More problematic is that minority individuals often refuse their services (Albrecht 2010). In such cases, dialogue can become frustrated altogether, ultimately preventing mutual understanding. Thus interpreters may need to be insisted upon if participants are to be included in dialogue about their experiences of hate crime. A practitioner interviewee explained:

I said we'd need an interpreter, but they said no... The grandfather spoke to me in quite haughty English, the grandmother just smiled and served cakes. I thought, is this just the cultural assumptions that people make – that the women just smile and serve and take a backseat, or is it that she doesn't understand a word we're saying. So I said we needed an interpreter... and the grandmother had plenty to say. Sometimes you can make assumptions that aren't true.

Minority individuals who refuse interpreters may do so for several reasons. Albrecht (2010) suggests that some refuse because of personal pride or because they do not want other “in-group” members knowing about their conflict. Research conducted for this thesis also suggested that refusals may be due to participants not wanting to be seen as “trouble makers” who were causing additional costs to the state. Such sentiments were noted by several victims who had immigrated to the UK. These interviewees stated that, as immigrants, they did not want to be seen as a burden to the justice process or as taking resources away from the state. Several also noted that they felt they had to work harder in order to be accepted by society (see generally, Levin & McDevitt 1993; 2002). A Polish victim and his wife stated:

We don't have any family in England and we never told our children, it is *our* problem. No one knows apart from police and people from charity. We don't want our English friends to think that we think that here is so bad and terrible...

Such sentiments provided some evidence, albeit limited, that some victims of anti-immigrant hate crimes had become aware of society's perceptions of immigrants and "foreigners" as "unfairly" taking British jobs, social welfare and state resources away from those who are "genuinely" in need. In response, they were keen to resist contributing to that perception (see also, Levin & McDevitt 2002; Ray & Smith 2002).

Paralanguage

Paralanguage and/or a person's density of language are also likely to differ between identity groups (Umbreit & Coates 2000). The use of inflections, pauses in speech, silences, timbre, volume and speed of articulation provide opportunities for misinterpretation (Umbreit & Coates 2000). The way in which a person speaks can be idiosyncratic to the community to which they belong. To outsiders, subtle differences in language can cause confusion, even offending those who are not used to certain tones and inflections in speech. A practitioner interviewee remarked:

You often don't have time to educate some people about certain elements... for example, a number of Indian dialects, the emphasis is in such a different place when they speak in English that it can make the language sound abrupt. And it's nothing actually to do with the fact that they're being abrupt or dismissive, it's just the emphasis of using shortened words or a slight raise of volume is in a different place to where we put it in English.

Where differences in paralanguage are most stark, points of common understanding will be more difficult to form, leading to potential dissonance (Albrecht 2010).

Physical gesticulation

Linguistic limitations and differences in speech pattern potentially hinder the dialogic process. There are, however, various other means of communicating information from one person to another which may also lead to confusion. Physical posture, facial expressions, eye contact, and laughing can all be used as a means of communicating, or signalling to another, certain information (Umbreit & Coates 2000; Albrecht 2010). The use of facial expressions, hand and arm gestures and other body movements help to display certain emphases when conversing. As with verbal communication, physical gestures can differ markedly depending on culture. For example, in some cultures, individuals are discouraged from showing physical emotions publicly or from maintaining eye contact with those deemed to be in a position of authority (see Umbreit & Coates 2000: 8, for examples). These individuals may be perplexed when confronted by a person showing high levels of physical emotion, especially towards their elders. On the other hand, a person who is used to physical displays of emotion may find a person who maintains minimum facial expression and/or who lacks eye contact to be reticent or even cold.

Overcoming communication dissonance

Variations in communication style observed during cross-cultural encounters clearly restricted the free flow of dialogue. In many cases, social distance between participants also appeared to limit the emotional connections that are perhaps more readily developed between

stakeholders of convergent cultural and identity backgrounds. Yet while restrictive, the observed differences in communication style rarely frustrated dialogical processes altogether. In fact, the inclusiveness of restorative dialogue, when combined with its malleable approach to conflict resolution, frequently enabled practitioners to find ways of providing participants with the space to vocalise their experiences of hate crime and for others to understand these harms. Most victims interviewed stated that they were able to convey their feelings to other stakeholders (directly or indirectly) through restorative meetings.

Practitioners who spent adequate time preparing participants for direct dialogue helped the parties to engage in discussions that ultimately gave rise to genuine emotional connections between participants (see Part IV, “Avoiding re-victimisation: preparation, preparation, preparation”). In each of the five cases where direct dialogue was observed, the mediator continuously highlighted the common goals that the parties had previously expressed to her during indirect meetings. On the occasions where communication became strained, the mediator defused tensions by drawing attention to common social factors and shared emotions. This process frequently helped the parties to find common ground and form emotional connections despite their diverging cultural backgrounds. In turn, this helped the participants to build new relationships based on a common understanding, which not only helped to improve victims’ emotional wellbeing (Chapter Five) but also prevented future incidents from recurring (see below “Desistance”).

Practitioner interviewees were also confident that the restorative process could overcome cross-cultural differences. The following practitioner interviewee provided a typical example of an empathic connection:

I had a meeting with two lads where one was from a kind of gypsy background and he had assaulted a boy who was very overtly gay... It started off as different as you could

imagine but actually during the meeting... I think the offender realised he had also been experiencing bullying himself on account of his background and there was a little bit of chink of light in him recognising that his experience of being bullied was also the one that he had kind of created on to this young man.

The ability of restorative practices to break down the empathic divide *despite* cultural differences is predicated on its flexible and inclusive approach to a dialogue that focuses on experiences of emotional harm and inequality (Daly 1999; Albrecht 2010). Most practitioners are trained to be responsive and reactive to the needs of participants. This will sometimes require the inclusion of interpreters to aid communication. Most important though, is that practitioners provide a safe space for all stakeholders to vocalise their experiences of hate conflict and for participants to listen to each others' stories.

While restorative dialogue helps to bridge communicative dissonance it is unlikely that a total bridging of cultural /identity divides will be furnished. The next case study illuminates the types of cultural differences and empathic divides that are frequently faced during direct cross-cultural restorative dialogue, and illustrates how that despite these barriers inclusive communication can still promote resolution, emotional healing and offender desistance.

Case Study 1: Mr and Mrs V-D, "It's a cultural thing"

The complainant victims (Mr and Mrs V-D, a young black couple originally from South America) had accused their neighbour (Mr H, a white British male of middle age) of persistent racial abuse. Together with two housing officers and their housing manager, the parties were invited to take part in a group conference. Mr and Mrs V-D began the meeting by explaining what had been happening over the previous six months. As Mr V-D spoke, Mr H sat with his arms behind his head while tilting his chair back on its hind legs. He frequently tutted at what Mr V-D was saying and continued to audibly chew gum. Mr H's physical displays of communication could be judged as defensive and at times aggressive. His communicative displays were clearly intended to send a message of incredulity about Mr and Mrs V-D's allegations, while simultaneously demonstrating that he lacked any respect for what they had to say.

As Mr V-D continued, Mr H made only fleeting eye contact with him and kept his arms crossed. Mr and Mrs V-D on the other hand maintained eye contact with those who they spoke to during the meeting and sat forward with their hands cupped in front of them. Although their body language appeared relaxed, their spoken communication was more strained. In particular, Mrs V-D struggled with English and frequently spoke in a foreign dialect. This was then translated by her husband who spoke fluent English. Both Mr and Mrs V-D spoke with heavy accents which at times made it difficult to follow what was being said. This slowed proceedings but did not prevent Mrs V-D from explaining how the incident had affected her.

It was clear, however, that Mrs V-D's inability to speak English riled Mr H. He frequently repeated during the meeting that "they don't speak English, it's always another language". It was also mentioned by Mr H that Mrs V-D spoke "too loudly". This latter point was clearly evident during the observation where it was clear that the volume and speed at which Mrs V-D spoke was significantly louder than other participants at the meeting.

The mediator probed the issue of foreign language further. Mr H

remarked “It’s a cultural thing. Some African’s speak blah blah blah [he makes up a pretend foreign language]. The majority of African people are always on the phone”. The mediator responded, “I need to address that remark. Africa is a continent, lots of people may speak loudly and people with hearing difficulties may also have to speak loudly.” Mr H replied “Sorry maybe I said it wrong.” The mediator then remarked, “if your neighbour had been white would the allegation [referring to his allegation of noise] have been made?” Mr H responded, “They don’t speak English, it’s always another language... It could be. Who knows?” Still looking for a resolution, the housing manager then asked, “what is triggering [Mr H’s] behaviour? How can we move on?” After an hour of dialogue during which Mr and Mrs V-D were able to explore in detail how they had been impacted by Mr H’s behaviour, Mr H without prompting from the mediator stated that he would stop shouting and banging on the walls. He then proposed – referring to his relationship with his neighbours – “Let’s try and start again”. At this point the body language of both participants softened, if only slightly, and Mr H maintained eye contact with Mr and Mrs V-D. An agreement was drawn up that Mr H would not hammer on Mr and Mrs V-D’s wall or use racist language towards them. Mr and Mrs V-D agreed that they would not make any unreasonable noises.

After leaving this meeting I could not help but feel that the empathic divide between the parties, while at times drawing closer, was never really bridged. The social distance between the participants clearly created a substantive barrier to effective dialogue. Difficulties with language, accents, timbre and the speed at which Mr and Mrs V-D spoke, combined with the defensive physical gestures made by Mr H collectively stifled the free flow of dialogue, inevitably limiting mutual empathy.

Somewhat surprisingly, however, was that at interview Mr V-D stated that he was very happy with the outcome of the meeting and that the process had aided his and his wife’s emotional wellbeing. In fact, six months after the mediation agreement was signed Mr and Mrs V-D have had no further problems from Mr H, leading Mr V-D to believe that the mediation process was highly effective at preventing further victimisation.

This case suggested that even where dialogue is strained and empathic responses restricted, inclusive dialogue could still bring the parties to a *common understanding*, providing the basis for a mediation agreement and in turn enabling the parties to move beyond conflict. Pivotaly, Mr V-D and his wife were still able to engage in a process that provided them with a voice. Ultimately, it was through this inclusive process that the victims found emotional healing and the accused perpetrator desisted from his abusive behaviour.

It is not just communicational style and linguistic difference that limits empathic connections. Practitioners must also contend with perpetrators' bigotry and the destructive stereotypes that give rise to beliefs about the worthiness of minority participants. Thus if the empathic divide is to be truly bridged, restorative practitioners must find ways of challenging prejudice *and* humanising "difference". The next sections therefore explore further whether restorative practices are equipped to effectively challenge the prejudiced beliefs that give rise to hate-motivated behaviours.

PART III: Humanising "difference": the importance of "story-telling"

Stereotyping and the pernicious labels that it can give rise to (see Chapters One and Two), means that participants will inevitably attend meetings with preconceived ideas about the social worthiness of the other party. Accordingly, the success of restorative dialogue lies not just with breaking down communicational barriers in order to explore the physical or psychological impacts of a hate incident, but with attempts to humanise them and their communities (Albrecht 2010). One practitioner explained:

The [restorative process]... is a powerful engine for empathy and wherever people get empathy you humanise each other and you may not change that person's world view on

things but it might change the view of the person they're in conflict with. That's where you may get a shift. How people capitalise on that afterwards is a different story.

The exploration of both harm and prejudice can become an essential means of engendering greater tolerance of “difference”. Inclusive dialogue that involves gay, disabled, or minority ethnic participants, helps to normalise their “otherness” to other stakeholders. In this sense, victims’ stories cannot only aid offenders’ understanding of the harms they have caused, but help them to appreciate the cultural and identity difference of the victim. In turn, this should reduce the likelihood of repeat victimisation.¹⁵⁹

The effects of humanising difference are bolstered further where group dialogue conveys a message of social condemnation (shame) for prejudice-motivated behaviours. Condemnation can itself be demonstrated through active participation in RJ (Harris & Maruna 2008), but more importantly it can be portrayed by other stakeholders who express denunciation for the offender’s actions (see further, “Including appropriate supporters” below). This expressive process works to encourage a change in the offender’s behaviour towards Others (Braithwaite 2002). One practitioner remarked:

The only way to deal with it is to air it. Like the case from Ashfield young offenders unit, someone setting fire to a mosque – he [the offender] would never have understood if the people from the mosque hadn’t come and talked to him. It strikes me that this is the only way... And you have to worry whether they’ll be re-victimised again. [However] once people understand a bit more they’re much less likely to be racist or homophobic.

The empathic process is most potent where individuals have opportunities to directly address each other and for dialogue to form organically between the participants. Such a process can

¹⁵⁹ For further analysis of moral education in victim-offender conferencing see Schweigert (1999).

be limited where stakeholders communicate indirectly, as emotions are lost through translation (Hoyle 2002). Indirect communication will mean that the parties do not hear or see each other's account of the incident/s. In fact, emotional disconnection was most evident in cases in Devon and Cornwall where 13 out of the 14 victims interviewed stated that they were not offered a direct mediation meeting. Many victims (six out of 14) stated that they did not have an opportunity to convey the harms they had suffered. A majority of interviewees also stated that they did not feel the offender had a better understanding of their identity background having been through the RD.

While dialogue is likely to be of greater potency, indirect mediation can also aid the closing of empathic divides. Information about the harms caused by hate and knowledge about the victims' identity can still be conveyed to the offender via restorative facilitators. Facilitators must interpret the harms caused and the reasons for offending and then articulately relay these factors to each of the parties. This was observed many times at Southwark Mediation. We will also see below how facilitators can build moral learning into reparation agreements, successfully enhancing offenders' understanding of cultural and identity difference (see Case Study 2 below).

Challenging prejudice

"Superficial" prejudice and victim-offender relationships

The types of animosity and levels of hatred that gave rise to perpetrators' behaviours differed markedly between offenders (see Chapter Five & thesis Conclusion). From the cases researched and those that were relayed to me by practitioners, it appeared that very few offenders could be classified as holding an ideological hatred for the victim's identity group

(see similarly, Sibbitt 1997; Ray & Smith 2002; Iganski 2008).¹⁶⁰ More likely was that offenders' had unwittingly learned to be prejudiced over their life course, a result of pervasive stereotypes about those who fall outside the prescribed boundaries of dominant culture (Perry 2001; Levin & McDevitt 1993; 2002). For many offenders, their bigoted views will have been based on little other than these fallacious stereotypes, which had then given rise to a heedless fear of "difference" (Perry 2001; see Chapters One & Two). In other words, the research indicated that many offenders were simply ignorant of the humanity of certain identity groups rather than deeply hateful of them (Iganski 2008).

There are various intersecting macro and micro level causal mechanisms of hate crime (Chapter One; Perry 2009; see also, Walters 2011). Taking a situational perspective, Iganski (2008) argues that most hate offences occur during peoples' routine activities. For instance, the gay neighbour who plays his music too loudly, or the Indian family who speak too loudly in a "foreign" voice at the bus stop can induce a sense of grievance that triggers a (partly) hate-motivated response by an offender (Chapter Five; see also, Iganski 2008; Walters & Hoyle 2011). The empirical research carried out for this thesis appears to support the assertion that vast majority of incidents occur during victims' day-to-day activities (Iganski 2008). As we have seen in Chapter Five many incidents were sparked when issues such as noise pollution¹⁶¹, inconsiderate disposal of refuse, or smelly "foreign foods" near to an offender's home incensed offenders, later triggering a demonstration of hostility towards the victim, based on the victim's race, religion, sexual orientation and/or disability.¹⁶²

Further supporting the routine activity thesis was that hate incidents were often committed by people known to the victim, and who lived within their local neighbourhood (Chapter Two; see for example, Bowling 1998; Mason 2005; Garland & Chakraborti 2006).

¹⁶⁰ The analysis of hate offenders is made from the perspective of victims and practitioner interviews as well as from observations of restorative meetings. Offenders were not interviewed as part of the thesis and therefore assertions made about their beliefs and levels of prejudice should be viewed cautiously.

¹⁶¹ The majority of HCP cases involved complaints and counter complaints about noise.

¹⁶² Though as we have also seen, other cases were clearly caused by a hatred against the victims' identity.

Most victims had pre-existing relationships with their offenders, many as neighbours, some as work colleagues, while others even stated they had previously been close friends. In those cases where the victim did not know the offender, a relationship still existed that was based on customer/service and goods provider. These relationships often become strained after a perceived grievance sparked what in most cases became a volatile conflict between the parties.

Challenging offenders who deny prejudice

The fact that most conflicts involved an array of different motivating factors and social contexts (Chapter Five) provided ample opportunities for offenders to deny that they were prejudiced (see Gadd et al 2005; Gadd 2009, who discuss the propensity for offenders to deny the racist element of an offence). Instead, many offenders focused their explanations as to why they acted as they had on other issues, such as being angry about the noise their neighbour had been causing. One practitioner remarked:

I find with many of these cases is the young person admits to an offence but won't admit to a racist element of it. So they say they made remarks or something or they were violent but kind of guard against the racist bit.

Other offenders who admitted to having made racist or homophobic remarks were often at pains to explain that they did not mean them as an expression of hatred towards an entire identity group. The hate component of many incidents could therefore be characterised, less as symbolic expressions against the victims' group identity, and more as a means of personally hurting the victim – though in hurting the victim they inevitably sent a symbolic message, whether intended or not (see Chapter One). Many of the practitioners interviewed

concurred with this finding, stating that they tended to uncover incidents where offenders would deny that they were racist or homophobic by explaining their actions (or remarks) had been motivated by them wanting to cause as much upset to the victim as possible (see similarly, case study in Gadd 2009). A practitioner interviewee typically explained:

I've heard racist language used, the kids would say: "I wasn't thinking." And you look at them and you try and arrange perhaps a little meeting and they bring along black friends, and quite often it's actually that they don't like the individual and it's nothing to do with the fact that they're black or not... it's just another way of bullying. So it's less about racism, it's more about just, if you like, individual hate which leads to bullying.

When attempting to effectuate conventional justice measures the constant denial of racism (prejudice) can become problematic, not least to proving hate-motivation, but also for organisations, such as probation services, to effectively address the offenders' criminal behaviour. For example, David Gadd notes that:

Because [offenders] know that racism will not be tolerated by the probation service, and because they know that being regarded as "a racist" is morally stigmatizing ... many of those on probation are reluctant to talk about issues to do with race with the workers assigned to them. This has meant that racism often goes unaddressed in intervention work: some probation officers avoid the subject altogether; others perceive only the very small minority of offenders who are overtly interested in the far-right as "real" racists; much everyday prejudice goes unremarked because practitioners are quite understandably afraid of compromising a viable working relationship with a typically unwilling client group troubled by complex social and psychological difficulties (2009: 759).

The denial of prejudice certainly limits meaningful discussion on the causes and consequences of hate crime. However, unlike probation officers, restorative practitioners are better equipped to facilitate lengthy discussions on the effects of prejudice. This is primarily because facilitators include victims and other stakeholders who are encouraged to convey, not only the harms of prejudice, but what it is like for them to be “different” in the community. Effective challenging of prejudice therefore comes, not from criminal practitioners themselves, but from those who experience its deleterious effects.

With what seemed like a majority of offenders demonstrating prejudice in a perfunctory manner – as against evincing deeply held hatred – many practitioners felt that the restorative process could ameliorate offenders’ negative views. A practitioner involved in facilitating a racist assault against a taxi driver explained:

... the offender [had] always taken some responsibility and was ashamed for what he had done because he didn’t see himself as a racist or as prejudiced to that degree... You often see it. In fact, all through the cases that I have done down here, which are all different, the offenders did not see themselves as racists... but they felt ashamed and they wanted to take responsibility for that and put that straight.

My observations of restorative meetings also highlighted the ability of practitioners to facilitate discussion of prejudice despite offenders denying they were prejudiced. In Case Study 2, Chapter Five, the complainant victim provided a lengthy account of his past experiences of homophobia and spoke in detail about how the behaviour of his neighbours had made him feel that they were targeting him because of his sexual orientation. Although denying that they were homophobic, the accused perpetrators engaged in discussion about homophobia and spoke about one of their own family members who had come out as gay. Similarly, in Case Study 1 above, although Mr H denied that he was racist, the exploratory

nature of mediation allowed the mediators to explore with him his negative feelings about African people, including his difficulties accepting people who spoke in a foreign language.

Thus, unlike other justice interventions, the victim focused approach taken in RJ allowed the parties to examine together the issues of racism, homophobia, anti-religion and/or disabilism by exploring the harms they have caused to the victim and other stakeholders. Facilitators are therefore able to engage hate offenders in dialogue about the cause and effect of prejudice, despite most denying this element of the conflict/offence. As Chapter Five highlighted, such a process frequently elicits a promise from offenders that they will not engage in any future racist/homophobic/anti-religious and/or disablist behaviours.

Both observations and practitioner interviews suggested that most hate offences were based on heedless beliefs that could be effectively challenged through inclusive dialogue that focused on an exploration of harm. This exploratory process also helped to humanise victims' "difference" and break down the fallacious stereotypes that the offender had learned, leading most practitioners to believe that the dialogic process could help modify offenders' understanding of "difference" and in turn transform their future behaviours towards minority community members (see further, Case Study 2 below).

The constant denials of racism (and other prejudices) did, however, mean that offender's failed to take *full* responsibility for the hate element of their actions. As such, restorative dialogue could not always comprehensively address the social-psychological mechanisms that had given rise to the offender's behaviour. This is ultimately a limitation that all justice processes will incur. It is illustrative of the very sensitive and complex nature of prejudice, including how many of those who demonstrate hostility based on the victim's identity do not see themselves as "hate offenders" (Gadd 2009).

Deep-seated prejudice

There appears to be some scope within RJ to effectively challenge the *superficial* prejudices that many (especially young) offenders hold towards their victims. Inevitably though, there will be other offenders who hold more deeply rooted hostilities against certain minority groups. Some of these offenders may make it their mission in life to eradicate identity difference (Levin & McDevitt 2002). More common will be those who have developed a severe dislike of minority groups. Their dislike typically stems from a growing fear that minority groups are beginning to encroach upon dominant social norms and values, potentially destabilising the offender's ontological security (Perry 2001; Gadd et al 2005). For others, the presence of such groups acts to threaten the offender's geographical space (Green et al 1998; Levin & McDevitt 2002), or their socio-economic stability (Ray & Smith 2002). Together, these fears give rise to the belief that minority groups are trying to take over geographical space, and unfairly taking away "British" jobs and social welfare (Levin & McDevitt 2002; Walters 2011; see further, Chapter One).

In seven out of the 19 cases researched at Southwark it became clear that the perpetrator had persistently demonstrated severe forms of hostility towards the victim, based on the victim's identity, over a protracted period of time (see Case Study 1, Chapter Five). In such cases, effectively challenging what is likely to be many years of growing animus becomes a complex task. It is unlikely that a short-lived restorative intervention can make any meaningful impact on an offender's world views (Gavrielides 2007). One victim commented:

...the lady [accused perpetrator] never really knew where I came from. She knew I was black but she didn't know whether I was West Indian or whether I was African... I don't think it would have made any difference... it was the mere fact that I was the colour I was, that was it for her.

Distinguishing between those who hold superficial prejudices and those who feel greater levels of hatred is a task that facilitators will be required to perform during their preparation (see further discussion on this in Part IV). This can be a delicate undertaking, especially where the offender denies the racial or homophobic element of the incident.

Practitioners will need to spend additional time preparing cases and exploring with the offender his feelings towards the victim (Maxwell 2008). Only then can the facilitator gauge the offender's level of animosity and whether he or she is likely to repeat his or her hostilities during direct meetings (see further, Part IV, where I examine the importance of preparation in order to avoid re-victimisation).

In cases where offenders remain vociferous about their disdain of certain identity groups, RJ is unlikely to change their prejudiced attitudes (Gavrielides 2007). One practitioner interviewee, speaking about a violent hate crime, stated:

If you look at the deeply ingrained beliefs and values of someone who is motivated by [racism], I think it's too deep inside of them to be settled by a 40 minute meeting...

In cases where offenders remained indomitable about their views of victims, practitioners stated that they had to make a judgement call as to whether the offender would be antagonistic within meetings (see further below "Preparation, preparation, preparation"). Most interviewees stated that in such cases they would focus on "indirect" restorative meetings in order to prevent the risk of repeat victimisation. Others, however, said that they left the decision to take part in direct communication up to the victim, but prepared them for the possibility that hostile comments might be made within the meeting.

In one case explained to me, a young offender, who had burnt down the victims' shed, had communicated to the facilitator that he believed immigrants should not come to the United Kingdom. The facilitator relayed this to the victims, an older couple of Indian decent, who decided that they still wanted to meet with the young offender directly. During the direct meeting the offender went on to regurgitate statistics about immigrants and "foreigners" taking British jobs. Having been prepared for this, and as older participants, the victims were able to reply to the young offender calmly and empathically. During the meeting the offender also used the word "Paki", the practitioner remarked:

Some victims will challenge it [racism] and in that particular meeting... he [the offender] mentioned the word "Pakis"... and she [the other victim] challenged him and said: "We're not 'Pakis'! We were born in this country." And she said, "My mother, my father and my husband's mother and father were born in India, so they weren't 'Pakis' either." And there was the get-your-facts-straight challenge... and I thought that was far better coming from them than it is from me.

The young offender, while clearly hostile towards non-British people, went on to apologise to the victims, stating that he was sorry for the harms he had caused. The practitioner believed the apology to be genuine. The victims later commented to the facilitator that they found the process to be of immense emotional relief. Such cases suggest that even where learnt hostilities run deep into the offender's world views, restorative justice may still have a place – if only peripherally – in challenging prejudice.

Other practitioners reiterated such a sentiment, especially in relation to young offenders. One commented:

... you're not going to change the young person overnight but that you start to get them thinking about their attitudes, and to make them aware that... as they go on in life, through college, work, whatever, they're going to be working with lots of different people so... their attitudes are really going to be sort of looked at and they're going to have to think about it.

Victims' perceptions of offenders' understanding

The study explored the reforming effects of RJ for hate crime further by asking victims whether they felt that the offender gained a better understanding of their cultural and/or identity background post RJ. In only eight out of the 38 interviews (21 percent) did the victim agree that it had.¹⁶³ Such a small proportion could, however, be correlated to the fact that a majority of victims within the study participated in indirect dialogue with the offender (especially in Devon and Cornwall). In many of these indirect cases the victim stated that they were simply “unsure” whether the process had helped to improve the offender’s understanding. Still, there was also evidence that some victims who had participated indirectly felt that the process had had a beneficial impact on the offender. For example, one victim explained:

I had a perfectly good relationship with the family upstairs until the day they realised I was gay. If that is all that created such a problem there has to be a way for me... two adults can overcome that and okay we may not get on as well as prior to him getting that

¹⁶³ 14 out of the 38 (37 percent) stated that they disagreed or strongly disagreed that it had. Eight interviewees (21 percent) neither agreed nor disagreed. Several of these eight interviewees stated that they felt that the process had helped the offender’s understanding “to some extent”; while for others it was an indication that they were simply uncertain as to its reforming effects. The remaining seven interviewees (18 percent) stated that the question was not applicable.

knowledge, but we may be able to live here in this community together. And mediation was for me the only way that was going to happen.

It was important to the victim that the mediation process caused his neighbour to consider his prejudices:

[Mr X] automatically presumed that all gay men are also paedophiles... I think that was one of the issues and once all those issues were put to him in sensible conversation, while he's not going to change his opinion totally, I think it led to him realising that everything was not as black or white (see further, Case Study One, Chapter Five).

While Mr X did not apologise for his behaviour, he did promise to cease any further harassment, which was a great relief to the victim who explained that taking part in the mediation helped Mr X to understand how the abuse had affected him.

Moral learning

One way of improving the likelihood that offenders will gain a greater appreciation of the effects of prejudice, other than through direct dialogue, is to build moral learning into the reparation that the offender is required to carry out. Although not necessarily a central goal of RJ, reparation may help to rehabilitate offenders by offering them a form of education. Schweigert (1999: 35) argues that RJ can provide “an excellent challenge to participants to rise to a higher level of moral thinking” (see also, Gavrielides et al 2008: 38-39). With this in mind, the next case study illustrates how restorative practitioners can facilitate moral learning, enhancing the potential for offender edification.

Case Study 2: Anti-Semitic harassment – exploring the harms of the Holocaust

Mr K, a 17 year old Jewish male, lives in a small town in Oxfordshire. Mr Y, a 17 year old white British Male, began to harass Mr K because of his Jewish heritage. The first incident involved Mr Y coming from behind Mr K and pushing him to the ground. During this episode of violence Mr Y repeatedly yelled, “you fucking Jew”. Mr K ran from the scene as Mr Y and a group of his friends threw rocks at him, one closely missing his head. Mr K reported the incident to the police. However, the offender continued his victimisation of Mr K, including one incident where he racially/religiously abused him and his mother when walking in town. Mr K’s mother, shocked by the abuse, reported the incident to the police, after which Mr Y was arrested and later convicted of racially and religiously aggravated harassment. Mr Y was sentenced to a referral order and later referred to Oxford YOS where a restorative justice practitioner was assigned to his case.

During an indirect meeting with the RJ practitioner, Mr K and his father spoke at length about how the incident had affected them and how important their Jewish roots were. The facilitator asked Mr K how the offender might help to repair some of the harms he had caused. Mr K told me:

I personally said I don’t want him to be punished by clearing the side of the roads because that will get you nothing, it was my suggestion for him to see on the internet about what happens when you hate Jews.

This suggestion led to the offender being asked to undertake a research project into the rise of the Nazi party and the effects that anti-Semitism had on the Jewish race during WWII. The offender manager, herself Jewish, supervised the project which was completed over a two week period. The report was then presented back to the victim and his family by the RJ facilitator. At the end of the six page report¹⁶⁴ the offender reflected:

Since I have had my reparation [the completion of the research project] I feel that I understand why incidents involving racial abuse against Jewish citizens and all

¹⁶⁴ The report is copied verbatim and therefore I have not corrected any spelling or grammatical mistakes.

over races are taken so seriously. As I have been doing this timeline and reading about what actually happened around the time of the Holocaust before it wasn't clear to me but now it is and I realise the seriousness of the offence I committed. I also understand the hurt and pain the victim and his family must of felt when I said what I said to him as it was obviously a terrible time for there race from the earlier 1930's and I shouldn't of used that against him to hurt his feelings as it is not just him that it relates to but a whole race of people and that's not what I intended to do.

On reflection of my actions I now feel that I will be able to use language more appropriately towards over people and not to talk about peoples religions and believes in such a way that I did before as it is not nice and I would not want people to talk about my family and there racial believes the way I commented about the Jewish religion as it is unacceptable because of the pain it causes to the people it happens to and because language like that is not acceptable in public areas because it could offend more than one person even if it is not directly aimed at the public they still would've had to hear it. [Copied verbatim from the offender's report].

To begin with, both father and son appeared sceptical as to the genuineness of the report. In particular, the victim's father was concerned that the offender had missed out important information about concentration camps during WWII. However, after several minutes of digesting what the offender had written, the father of Mr K commented:

What he has written... he shows what a personal hate can do when you gain power.
What would happen... it's a start, this is better than painting a fence or something!

Mr K then responded:

Let's hope this shocks him into changing his ways. This is really a cross roads for him. Maybe he will benefit from it...

At interview, Mr K went on to say that, "It's definitely helped me a lot more than if I wouldn't have had it." Whether or not the offender in Mr K's case genuinely had a new found respect for the victim and other people of Jewish decent remained uncertain. The fact that the victim opted for an indirect approach to RJ

meant that he could not witness first-hand how sincere the offender was. Still, when asked whether he believed the offender now had a better understanding of his identity background, Mr K replied:

Somewhat I think, well the fact that he had to do this [referring to the report]... he's looked into some things that hatred can do... the bad times of Holocaust...

Suffice to say, the victim has not experienced any further forms of harassment from Mr Y. One can only hope that the words written by the offender were a sincere offering of sorrow, such that in the future he desists from hate-motivated behaviours.¹⁶⁵ Mr K's case is just one example of how reparative work may help offenders to learn more about cultural and identity difference. There will be a multitude of ways in which reparation agreements can be focused towards repairing the harms of different types of hate crime. For example, Gavrielides (2007) refers to a case where an offender had made several death threats to an Islamic Cultural Centre shortly after 9/11. The offender and representatives from the Centre were involved in two mediation meetings during which the offender apologised for his behaviour. As part of the reparation agreement the offender also agreed to attend lectures on Islam while continuing counselling for his anger issues (Gavrielides 2007: 206-207).

Desistance

It is difficult to show with any certainty whether the offender in each of the cases researched at Southwark, Devon and Cornwall or Oxford had a better understanding of the victim's identity post RJ, especially considering that offenders were not interviewed. It is certainly unlikely that offenders who hold deeply ingrained hatred will be reformed through short-lived restorative interventions. However, the study was able to identify whether the victim was

¹⁶⁵ Case study also reported in Walters (2012).

subjected to any further abuse post RJ.¹⁶⁶ The results showed that the vast majority of victims had not attempted to re-victimise after the restorative process was completed. In 17 out of the 19 cases researched at Southwark Mediation the accused perpetrator ceased abusing the complainant victim having completed the mediation process. It has already been noted in Chapter Six that 11 of these 17 cases were resolved primarily through direct or indirect dialogue between the main parties. The remaining six cases were resolved and incidents ceased only after a multi-agency approach was implemented. These latter cases often involved housing officers threatening accused perpetrators with eviction if their hate-motivated behaviours continued, bringing the threat of a punitive penalty within the restorative framework.¹⁶⁷ Of particular significance was that the vast majority of offenders who had persistently victimised the victim over a prolonged period of time desisted post mediation. Such a finding suggests that RJ can help to reform the behaviours, if not the beliefs, of many hate offenders.

In 11 out of the 14 cases in Devon and Cornwall, victims stated that they did not receive any further victimisation from the offender post RD.¹⁶⁸ Only some of these cases can be directly linked to the effectiveness of the disposal. In eight cases the victim did not have a prior personal relationship with the offender.¹⁶⁹ In most of these cases victims were abused at work by customers/service users. In cases involving offenders unknown to the victim, it would be less likely that they would see the perpetrator again; in fact many noted that they had not seen the offender/s since the original incident. Hence, it could not always be ascertained whether the offender desisted because of the RD or simply because he or she had no further contact with the victim.

¹⁶⁶ Victims were interviewed up to 12 months post RJ in Devon and Cornwall and 18 months in Southwark, London.

¹⁶⁷ It is outside the scope of this thesis to examine the effects of coercion on offenders' participation in RJ and its effect on their adherence to mediation/reparation agreements, see generally, Walgrave (2007).

¹⁶⁸ Four cases involved "one off" incidents.

¹⁶⁹ This still amounted to a minority of cases across the datasets.

The prevention of repeat hate abuse must not be underestimated considering the emotional damage that is caused, particularly by persistent forms of hate abuse (Iganski 2008; see Chapters Two & Five). The data from Southwark showed that the prevention of repeat victimisation was clearly of greater importance to victims than their believing that the offender had changed his or her prejudiced attitudes – though of course it may be more likely that an offender desists when he or she is more understanding of victims’ “difference”. We saw in Chapter Five that crucial to victims’ emotional wellbeing – including their levels of personal security – was that offenders had promised and then adhered to their assurances of desistance. Thus, even though a majority of victims across the datasets stated that they did not believe that the offender had a better understanding of their cultural or identity background, most did believe that the restorative process had prevented abuse from recurring. A practitioner interviewee reflected on what at first may seem like a contradictory finding:

Everyone’s entitled to their own views, whether it’s somebody’s sexuality or cultural beliefs or religion, it’s about letting the perpetrator know or understand the effects that when it’s said out loud.... you can’t necessarily change someone’s views about a certain subject, but it’s about what they do with it and how they keep it to themselves.

As we have seen, the likelihood of preventing future hate abuse can be increased in cases where facilitators provide adequate space for victims to explore the harms of hatred and for reparation to then be tailored to the victim’s experiences of prejudice (see Case Study 3). However in cases where RJ is done “on the quick” and where disingenuous apologies are cajoled from offenders, the potential for repeat victimisation will be substantially increased (see Case Study 3, Chapter Five).

PART IV: Avoiding domination and re-victimisation

The final part to this chapter analyses the risk of re-victimisation posed by bringing victims together with their offenders. In Part I, I analysed how the infusion of “community” into RJ theory creates a potentially invidious influence over the process that may subject victims to further harm. For instance, critics of the use of “community” in RJ have suggested that restorative practices may simply recreate mechanisms of hegemonic control; those which perpetuate dominant norms, values and the socio-cultural structures that are causal to hate crime (Crawford 2002; Cunneen 2003; see more generally, Perry 2001).

An appreciation of the theoretical concerns articulated above is fundamental to the successful application of restorative practices for hate crime. When carrying out the empirical study, I therefore assessed whether the meetings observed resulted in any form of re-victimisation and/or whether the offender attempted to dominate proceedings. In addition, I asked each victim interviewee whether they ever felt “disadvantaged” at any point during the restorative process. Practitioner interviewees were also asked to describe whether the offender/s involved in their case examples had made any direct or indirect attempts to re-victimise victims during the process. Practitioners were then asked whether the risk of domination and re-victimisation could be avoided during the restorative process, and if so how.

During the five observations of face-to-face meetings between the victim and offender, at no time did the offender (or his or her supporters) verbally abuse the victim (or his or her supporters). This meant that victims were not directly subjected to further racial, religious, homophobic or disablist vilification; one of the main concerns of bringing hate offenders face-to-face with their victims (Kelly 2002). This finding concurred with other research, including Daly’s (1999) study into gendered violence at the South Australia Juvenile Justice project. She found that “instances of explicit expressions of prejudice and

power, or felt disadvantage, were rare” (1999: 179; see also, Albrecht 2010). Such findings hint at the improbability of serious forms of hostility being evinced towards victims during restorative meetings.

Nonetheless, it cannot be said that perpetrators’ dialogue will not, at times, contain suggestions that are derogatory towards or biased against certain identity groups. For instance, in Case Study 1 (see above) the accused perpetrator spoke of African people in largely derogatory terms, his constant asking of why his neighbours had to always talk in a “foreign” language and his remark, “some African’s speak blah blah blah [he makes up a pretend foreign language]. The majority of African people are always on the phone”, indicated that he felt negatively towards non-white and non-English speaking people. During this direct meeting the mediator challenged the offender’s comments suggesting that not all African people speak loudly, to which the offender apologised saying that he might not have worded the sentence appropriately.¹⁷⁰ Yet his comments had clearly been either a conscious effort or unwitting attempt to subjugate people of African descent, while simultaneously, his denials of racism communicated to the group his incredulity of the victims’ story.

The offender’s body language, as described above, had also been defensive. His failure to maintain eye contact combined with his constant tutting and loudly chewing gum could be seen as a physical dismissal of the complainant victims’ emotional trauma. Together, the various facets of communication that I had observed within this meeting could be perceived as harmful to the victims, who I had anticipated would have felt disadvantaged – at least during some stage of the meeting – because of their ethnic identity and/or language skills.

Already mentioned above was that in actual fact the complainant victim found the process to be very positive. At interview Mr V-D stated that he and his wife never felt

¹⁷⁰ See further below, “Facilitators as social condemners”.

disadvantaged during the meeting. Acknowledging that translating for his wife had at times been difficult, he stated that the mediator had acted fairly and impartially throughout and that without the conference they would never have been able to resolve their problems. Though informal, the meeting was structured, with firmly set ground rules at the beginning and several meetings and phone calls with the participants beforehand to prepare them. The parties were told at the beginning of the meeting that they would have an opportunity to talk but that when doing so they should be respectful (see further below “Ground rules”). The parties were then asked to talk in turn without interruption. On the two occasions where the accused perpetrator did attempt to interrupt the victims’ dialogue, the mediator firmly asked him to wait until they had finished. This firm but fair approach to discussion ensured that both parties had the same amount of time to talk about the conflict, while also helping to ensure that the meeting did not descend into another altercation between the parties. Mr V-D went on to tell me he believed that Mr H was now better able to understand how his actions had affected him and his wife. In turn, the mediation process was directly responsible for improving the emotional wellbeing of the victims who are no longer fearful of Mr H abusing them.¹⁷¹

Victims’ perceptions of disadvantage

All victim interviewees were asked whether they ever felt at a disadvantage during the restorative process because of their identity. Thirty-three out of the 38 interviewees stated that they did not feel disadvantaged at any stage of the restorative process (37 out of the 38 interviewees stated that they did not feel disadvantaged because of their race, religious beliefs, sexual orientation or disability, i.e. those identity traits causal to the hate incidents

¹⁷¹ In no other direct mediation meetings did I witness direct attempts to vilify victims based on their identity characteristics.

researched). This inferred that that the vast majority of victims did not experience domination or re-victimisation during either community mediation or the restorative disposal. A victim of ongoing racial harassment at Southwark commented: “No definitely not. No I felt comfortable. I felt comfortable because I had a space where I could say how I was feeling.” Similar comments were made by many interviewees in Southwark who stated that the mediator had provided both parties with an opportunity to talk about the incident, while her impartiality had ensured that the dynamics of meetings remained fair.

This left five victims who stated that they had felt at a disadvantage or had felt “partly” disadvantaged at some point during the process. In one case in Devon and Cornwall the victim stated that she felt disadvantaged because of her age, primarily because she did not have any parental support during her meetings with police officers.¹⁷² Similarly, a victim at Southwark stated that he felt disadvantaged as he was by himself at the meeting compared with the two accused perpetrators; though he had previously stated that he did not want to bring a supporter.¹⁷³ These comments were illustrative of how important it is for victims to be supported by their “community of care” during restorative meetings. Though only a tentative finding it concurred with Daly’s research into Aboriginal participants in Australia which found that conference dynamics worked more smoothly when – in addition to offenders (or victims) – there were other Aboriginal participants, such as support workers, included in meetings (1999: 177).

Just one interviewee stated that his race, causal to the hate incident, put him at a disadvantage when participating in a restorative disposal. In this case the victim’s feeling of disadvantage was not directly related to the actions of the offender (as already highlighted, most victims and offenders were involved in indirect meetings at Devon and Cornwall), but

¹⁷² The victim was over the age of 18.

¹⁷³ One other victim stated that a lack of support during meetings made her feel at a disadvantage. While another victim felt disadvantaged at the beginning of the meeting because he was not sure whether the other parties would believe him. This feeling soon dissipated when the offenders admitted to having victimised him.

rather was the result of how the facilitating officer had treated him. The interviewee stated that he had not been provided with any emotional support, that the officer had failed to provide adequate information as to what RJ aimed to achieve, and had then gone on to pressurise him into accepting an apology from the offender. He told me at interview, “it would have been... different if I was not of a foreign origin... they have not given me all the help and support that they should have or that they have given to other people.” The interviewee went on to say that had he been white and British he felt he would have received a different level of support (see Case Study 3, Chapter Five).

This single case appeared to be the exception to restorative practice, rather than the rule. Still, it demonstrated that practices which fail to properly incorporate key values of RJ risk subjecting participants to additional emotional harm (see Chapter Five). At no point during the RD did the victim feel empowered by his involvement, or in control of his part in the justice process. He was never asked to verbally explore the suffering he had experienced or to explain how the offender might repair the harm that his racial abuse had caused him. Instead, the police involvement in this case was a clear example of a state authority maintaining control over an offence through which they exerted their own values as to how it should be resolved (Cunneen 1997). Such recourse was to this victim’s emotional detriment and the case re-emphasised the dangers that exist in poorly administered RJ for hate crime (see further, Case Study 3, Chapter Five and Chapter Six under “Police restorative facilitators”).

Avoiding re-victimisation: preparation, preparation, preparation

Almost all practitioner interviewees stated that the offender involved in their cases had not made an attempt to re-victimise his or her victim during direct meetings.¹⁷⁴ In two cases the interviewee explained that the meeting had broken down but that no specific use of prejudiced language or intimidation had been used within the meeting. A clear and recurring explanation as to why re-victimisation was rare was that all parties were thoroughly *prepared* before participating in direct meetings. This entailed practitioners talking to each of the parties about the incident and asking them to explain how and why it occurred. It was here that many interviewees stated they held “mini conferences” whereby they would ascertain how the offender was feeling about his or her actions and to further explore the prejudices which gave rise to his or her offending behaviour (see also above “Challenging prejudice”). One practitioner explained:

...in the preparation you go through the whole process of the conference with the offender, you say “well what are you going to do if the victim gets really angry with you? What are you going to do if you feel angry at something the victim says?” You talk that through with them so you try to pre-empt, get them ready and also suss out whether they’re going to be able to manage these very difficult emotions. Because if you have any sense that they could cause harm... that can re-victimise people.

Preparation is also about ensuring that offenders are *willing* to take responsibility for their actions:

¹⁷⁴ Concurring with findings from victim interviews.

...you need to do really good preparation... I think you need to make sure that both parties are willing to participate and willing with the right motives. In terms of that... you need to make sure very clearly that the offender is not going to come out with similar comments or whatever the offence was... By the time you get to a face-to-face meeting, every participant is so aware of what's going to happen. It's a voluntary process, they're happy to be there, they're reflecting anyway on what's happened. In my experience the chances of re-victimisation are very, very small by the time you get to a face-to-face meeting.

During my interviews it became clear that comprehensive preparation was the key to avoiding and/or challenging power domination and re-victimisation within meetings. Every practitioner spoke of its fundamental importance to the process. Many pointing out that participants who were thoroughly “prepped” before direct dialogue had time to digest the purpose of the meeting and what their role would be in helping to resolve the situation. While those who remained vociferous about their dislike of certain minority groups and who showed little accountability for their actions were more likely to be asked to participate in indirect dialogue. Practitioners hinted that offenders who refused to take any responsibility for their actions were very rare (see also, Shapland et al 2006).

In community mediation, where perpetrators have been accused rather than convicted of a hate crime/incidents, mediators will need to focus less on individual responsibility before direct meetings and more on how the parties might be able to help resolve the conflict they have become embroiled within. The parties will need to know that each will have an opportunity to express their feelings about the conflict and that the issue and effects of prejudice will be explored (see Chapter Five).

Ground rules

The setting of ground rules at the beginning of meetings was also frequently highlighted by practitioners as reducing the risk of re-victimisation. For example, during one observation a community mediator told the parties:

This isn't Jerry Springer... do not tell people what to do...Any points made can be noted down and used to help form the mediation agreement... You will hear different views today, be respectful of those different views... please ask questions in a polite and respectful manner. It is not always easy to talk... My role as mediator is not to point the finger or to judge or blame... This is a place of respect for communication.

If at any time a party diverges from these rules the facilitator politely reminds them what they have agreed to at the start of the meeting. Ground rules therefore provide a secondary form of risk management that helps to ensure victims are protected from abuse during direct dialogue (see Case Study 2 above).

Including appropriate supporters and condemning prejudice

I have discussed above and in Chapter Six how “community” can be both a benevolent *and* malevolent force. In relation to the offender’s supporters, the concern is that his or her “community of care” will fail to offer adequate social condemnation and instead provide moral impunity for his or her hate-motivated actions (Maxwell 2008). If this is the case, facilitators will struggle to create a platform from which to effectively challenge prejudice, instead leaving face-to-face dialogue open to opportunities for victimisation. Facilitators must

therefore endeavour to include individuals who provide appropriate social condemnation for the wrongs committed (Braithwaite 2002). This is clearly problematic in cases involving young offender's, whose parents or friends themselves are a source of animus. In such cases, the facilitator must determine whether inclusion of the offender's parents will antagonise the victim and/or help to neutralise the offender's wrongdoing (Byers et al 1999).

Preventing community supporters from harming victims requires facilitators to "vet" potential supporters prior to a meeting. It may also require them to exclude any co-offenders, holding separate meetings for each (McConnell & Swain 2000). Of course, while safe options, these measures challenge one of the key aims of RJ – to engage communities. In some cases facilitators may manage to locate appropriate pro-social supporters for offenders; whether grandparents, teachers, social workers, or local football coaches. However, while these people can effectively challenge the offender's prejudices and then provide avenues for reformation, they may not so easily be able to provide reintegration into the most crucial communities for offenders, most typically kinship or friendship groups. Thus if offenders are to be truly reintegrated back into a community that does not support their prejudiced attitudes, practitioners may need to include offenders' parents and friends in the hope that dialogue on harm, prejudice and identity difference helps to challenge the negative views of both offender and his "community of care". As Maxwell remarks, "It is those who are connected to the offender and the victim who need to be involved in the restorative process if it is to find solutions that truly make amends and achieve the reintegration of offenders and victims [into] the social group" (2008: 93).

One practitioner explained the importance of parental involvement in hate crime cases at a practical level:

...very often we'll have two parents who will look at each other and talk, and the young people listen to this and that can often go a long way to being restorative, parents saying "I'm truly sorry for what my young person's done, I can totally see from a parent's point of view" that makes the victim's parent feel better and in turn I think then has a knock-on effect on the victim.

Inevitably, however, there will be circumstances where the offender's "community of care" remain a source of prejudice. In such cases it may become appropriate for facilitators themselves to challenge some of the norms and values of the wider community in order to avoid repeat victimisation and so that offenders are encouraged to reflect on and account for their behaviour (Maxwell 2008; see also, Case Study 1 above and further above "Challenging prejudice"). Such an approach is contentious, especially if we consider that purists have argued that the facilitator's role is to facilitate dialogue and not to add to it (Christie 1977; see in relation to cross-cultural mediation Albrecht 2010). Indeed, it is often more potent for the victim and his or her supporters, rather than a criminal justice practitioner, to challenge prejudice (see examples above "Challenging prejudice").

Nonetheless, there will remain many cases where victims (or their supporters) do not feel confident enough to challenge prejudiced remarks, perhaps a result of participant's experiences of community marginalisation (Chapter Two). Facilitators who fail to broach issues of identity prejudice within these cases may mean that the offender's hate-motivated behaviours go unchallenged. It will mean that discussion relating to an essential causal factor of the offence/conflict remains absent from a process that aims to repair harm and reform offenders. Consequently, facilitators must feel confident enough to ask the participants to discuss/explain the harmful consequences of prejudice if they are to collectively resolve hate conflicts.

In doing this, practitioners must be careful not to berate or stigmatise offenders as this will only serve to antagonise them further, providing additional internalised proof that they are under attack from the Other. Rather practitioners must encourage dialogue on the harms of prejudice, and where necessary diplomatically question certain assertions made by offenders about the victim's identity difference (see Case Study 1). Facilitators should not approach the issue of prejudice in direct meetings without preparing the participants beforehand (as we have seen).¹⁷⁵ Clearly, practitioners will need extensive training on all aspects of cross-cultural dialogue and the socio-cultural factors relevant to hate crime. This is not an easy undertaking. Attempts at training national agencies, such as the police, on issues of diversity have been fraught with difficulties (see Rowe & Garland 2007). Deeply embedded institutional cultures and the bureaucratic organisation of some agencies will make effective learning about "difference" challenging (Reiner 2000).

Whether such organisational constraints persist in relation to RJ practitioners is less clear. Perhaps the emphases on "community" and "repairing harm" that initial RJ training programmes encompass, as well as a general ethos of "transformation" and "healing" embraced by those interested in practicing RJ, will mean that restorative practitioners are more receptive to learning about the socio-cultural dynamics of hate victimisation. What is essential is that practitioners receive training on cultural diversity issues. Only those who have a genuine understanding of prejudice will be able to effectively negotiate through the complex social factors that are pertinent to the resolution of hate-motivated conflicts (see further the importance/difficulties of training in thesis Conclusion).

¹⁷⁵ I observed the mediator do this in cases at Southwark.

Conclusion

The exploration of the aetiological determinants of hate crime in Chapters One and Two and further analysis of the potentially harmful effects of “community” at the beginning of this chapter provided the theoretical grounding upon which the empirical analysis of offender reformation has been based. The potentially invidious nature of fragmented communities posed the greatest risk to the successful application of RJ (Crawford 2002), posing a genuine threat of domination and re-victimisation within restorative meetings. Such risks threatened to cause greater levels of harm to hate victims, while enabling offenders to retreat back to their own communities further emboldened by their disdain of the Other. This theoretical analysis led to the assertion that restorative practice *could* become just another means through which minority groups are marginalised by the hegemonic norms presented by white middle class justice (Cunneen 2003).

Yet, in many respects, the preliminary analysis of socio-structural domination presented at the beginning of this chapter had already been partially thwarted by the preceding chapters. Namely, the findings in Chapters Five and Six that restorative practices *helped* to repair the harms of hate crime already hinted that RJ, at least in the most part, avoided re-victimisation and domination. Despite this, it remained unclear how effective restorative practices were at breaking down the “empathic divide”. Therefore, Part II of the chapter began by exploring the dialogical hurdles faced by those involved in cross-cultural mediation. We saw that while certain variations in communicative methods proved inhibitive to the free flow of restorative dialogue, they rarely frustrated the aims of RJ. Even in cases where the participants remained socially distanced from one another, the restorative process was still able to elicit a common understanding between the stakeholders that helped to improve emotional wellbeing and prevented hate incidents from recurring (see Case Study 1).

Nevertheless, the issue of prejudice and its potential implications for restorative dialogue remained unclear. Therefore in Part III I expounded upon the opportunities of restorative dialogue to not only increase the offender's understanding of harm but to help humanise victims of hate crime. At this stage of the chapter I referred to both practitioner and victim interviewees who had described how the restorative process had provided a platform upon which insidious stereotypes, those which gave rise to fallacious beliefs about the worthiness of various minority groups, could be broken down. A large proportion of practitioners stated that challenging prejudice was most effectively achieved in cases where victims had demonstrated "superficial" prejudices towards their victim. In cases where hate incidents were of a perfunctory nature it appeared that restorative dialogue provided a cogent means through which social condemnation of the offending behaviour could be expressed.

Notwithstanding the fact that a majority of facilitators uncovered what they felt were superficial animosities, one could not deny that in various other cases offenders' held more deeply rooted prejudices. In such cases it was less likely that RJ could effectuate a change in the offender's hostile views. This was unsurprising considering that the restorative process is often a short-lived justice intervention. Even so, some practitioners and victims still believed that restorative dialogue could play an important role in challenging the offender's attitudes towards "difference". And although unlikely to change their world views, it was hoped that the process might induce a "chink of light" in some offenders. These more difficult cases could be additionally supported by implementing a programme of "moral learning" about minority groups into reparation agreements enhancing the potential for offender edification. Offenders who spend greater amounts of time reflecting on the deleteriousness of their actions and the harms caused by prejudice are surely more likely to modify their behaviours in the future.

Supporting the less than equivocal evidence about offender edification were the more conclusive results on offender desistance post RJ. The findings from Southwark Mediation were particularly encouraging here, showing that community mediation was able to prevent further hate victimisation in the vast majority of cases. This was an important finding considering the damaging impacts that ongoing forms of hate abuse can have on victims (Chapter Two), and it hinted that restorative practices may have an important role to play in reducing levels of hate crime.¹⁷⁶

In the final part of the chapter I explored whether victims experienced re-victimisation *during* the mediation process. Almost all victims stated that they did not experience any form of disadvantage during the process which related to their identity. Practitioners concurred that victims were highly unlikely to face victimisation during meetings. This was consistent for both victims who had participated in direct meetings and those who had participated in indirect dialogue. In fact, only one victim in Devon and Cornwall spoke of feeling at a disadvantage because of his ethnicity. Although clearly an exceptional case it provided further concern as to the implementation of RJ by police officers (see Chapter Five & Six; Hoyle 2007).

The finding that most victims do not experience domination or re-victimisation during restorative meetings begged the question, why not? Especially when we consider the fact that most victims of hate crime face subjugation in many aspects of their lives (see Chapter Two). Practitioner interviews uncovered what appeared to be the central most important factor in the process – *preparation*. It became clear that each and every participant must be comprehensively prepared for the process, while additional time must be spent exploring the harms and emotions behind hate offences for those who were participating in direct dialogue. With adequate preparation in place, willingness from the participants to take part, and firmly

¹⁷⁶ Though it remains unclear whether the accused perpetrators went on to victimise other individuals who displayed certain identity characteristics.

stated ground rules at the beginning of meetings, incidents of domination and/or to re-victimisation became rare.

Aggregated, the findings suggest that in more cases than not, restorative dialogue can effectively break down cultural barriers to communication, exposing offenders to the true humanity of victims. It is through this dialogical process that there is scope, albeit limited, for the edification of hate offenders. In facilitating this process, restorative practices must remain alive to issues posed by cultural and identity difference. Indeed, if progress is to be made towards the adaption of RJ frameworks, practices must become more sensitised to the cross-cultural issues which they will encounter (Daly 1999; Umbreit & Coates 2000).

Such sensitivity was clear to see at the Hate Crimes Project in Southwark and at Oxford YOS, where facilitators spent considerable time preparing participants and encouraging discussion on the harmful effects of prejudice. However, if other practices – such as those administered by the police in Devon and Cornwall – are to effectively respond to hate crime they *must* strictly apply two key processes articulated throughout this chapter – *adequate preparation* and *inclusive dialogue*. Moreover, facilitators must understand and appreciate the issues pertinent to cross-cultural dialogue in cases involving hatred (see further, thesis Conclusion). Only then will restorative practitioners be equipped to consistently avoid the risks posed by culturally divided communities while administering restorative processes that effectively challenge the harmful effects of prejudice.

Chapter Nine: Hate crime and restorative justice: uncovering hidden truths for each other

The need for a restorative approach to hate crime

The impetus for this thesis arose from an assessment that conventional justice measures currently used to tackle hate-motivated offences fail to effectively address both the causes and consequences of this invidious type of crime. The most prominent concern is that the Government's emphasis on enhancing the penalties of hate offenders does little to aid the emotional or physical recovery of victims. Furthermore, the retributive principles upon which such penalties are based do little to engender greater tolerance of "difference" (Moran et al 2004a). The state's focus on retribution, as against reparation or rehabilitation, means that offenders are generally separated from their victims further polarising the stakeholders of hate crime. This prevents offenders from gaining greater insight into the cultural backgrounds of those they fear, while enhancing punishments does little to placate offenders' erroneous perceptions that minority identity groups are given preferential treatment by the state (Jacobs & Potter 1998; Dixon & Gadd 2006).

However, it would be unfair to suggest that the retributive approach to tackling hate crime is entirely counterproductive. Hate crime laws are based intuitively on the principle of proportionality; if hate crimes hurt more (as empirical evidence suggests they do, see Herek et al 1997; 1999; 2002) offenders should be met with a harsher punishment (Iganski 1999; Lawrence 1999; Levin 1999). The criminal law certainly provides for important censuring of hate crime and I am persuaded by the argument that symbolic denunciation of hate-motivated offences may have an incremental macro-level influence on societal views as to the (un)acceptability of racism, homophobia, anti-religion and disablism (Walters 2006). Furthermore, if the police and CPS are properly to identify which offenders are "hate

offenders”, the law must proscribe hate-motivation in relation to certain types of offence, thereby aiding all parts of the criminal justice system to target this type of crime.

Despite the advantages that proscribing hate-motivated crimes has brought to tackling the phenomena, it remains of particular concern that *most* perpetrators continue to evade criminal punishment (Burney & Rose 2002; Gadd 2009). This is partly because many victims do not report incidents to the police (Garland & Chakraborti 2009: 68-69). However, there are also many cases that are reported to state agencies but that do not result in criminal prosecution (Gadd 2009). This is largely because the police and CPS fail to adduce the evidence required to successfully prosecute and convict hate offenders (see Burney & Rose 2002). There are also many cases that are reported but not pursued by the police because incidents are viewed as “low-level” or “domestic disputes”, i.e. conflicts which fall outside the purview of traditional policing. These multifarious cases must not be forgotten, brushed aside or deemed to be too complex or too trivial for the state to resolve. Left unchallenged, “low-level” incidents can become daily occurrences that gradually break the soul of those targeted (see for example, the Pilkington case, Chapter Two). Other “domestic” conflicts frequently escalate over protracted periods of time, resulting in violent outbursts that cause immense emotional and physical damage. The manager of the Hate Crimes Project (HCP) at Southwark Mediation summed up the problem of relying on conventional justice processes to respond to hate incidents:

You can prosecute someone but often... they fall at the last hurdle, the CPS don't make the charge and people are left disappointed and they're not given answers and things might reoccur, and that all spirals... [leaving victims asking] “What the hell are these agencies here to do, they're not protecting me?”

If we are to take seriously the causes and consequences of hate crime, we must think beyond criminal prosecution to other measures that aim to repair the harms caused by hate crime/incidents. This thesis has done this by exploring the harm repairing and prejudice challenging potential of restorative dialogue. The findings from the empirical study suggest that practices which rigorously administer restorative values are ideally suited to tackling the high levels of hate crime/incidents that occur within our local communities. In a large number of cases, restorative measures can be used as an alternative to conventional processes, particularly for “low-level” incidents which the police perceive as being outside their remit. However, in those cases where a prosecution is viable, and appropriate in recognition of the seriousness of the offence, a restorative approach can also be taken as an additional measure.

We have seen, for example, how community mediation can be used in an array of different types of hate crime/incident cases, from messy neighbouring disputes to serious forms of hate violence. Common to all the cases at Southwark Mediation was that the police or other local agencies had failed effectively to resolve the case. In Devon and Cornwall and in some other parts of the country the police have set about introducing restorative disposals as a way of tackling “low-level” incidents.¹⁷⁷ The aim is to prevent cases from escalating into more serious criminal offences.

Both community mediation and police restorative disposals may go some way to delivering justice for the vast numbers of individuals involved in “low-level” hate crimes/incidents. Towards the deeper end of criminal justice, young offenders who have already been sentenced to referral orders can also be encouraged to participate in restorative meetings. These meetings offer offenders a way of repairing the harms they have caused and provide an additional component to the undertakings already prescribed by Youth Offending Panels (see Case Study 2, Chapter Seven).

¹⁷⁷ Though for the reasons set out in Chapter Five and below we should remain cautious about how RJ is used by the police.

Whether in the “shallow” or “deep end” of criminal justice (Cunneen & Hoyle 2010), it is essential that the stakeholders of a hate crime are engaged in a dialogic process that focuses on the repairing of harms; be they emotional, physical and/or to relationships. If this can be achieved, RJ will aid the recovery of hate crime victims by empowering and improving their feelings of personal safety. The emotional connections formed during RJ meetings also help to humanise victims, while moral learning can be achieved where facilitators engage the participants in an exploration of hate, harm and identity difference. Finally, practices that cultivate mutual understanding between the participants ultimately help to reduce the likelihood that offenders will repeat their hate-motivated behaviours (see Chapters Five, Six & Seven).

Thesis findings: *helping to repair the harms*

The theoretical framework outlined in Chapters One, Two and Three provided the basis upon which the empirical examination of RJ for crime was carried out. In Chapter Five I set about analysing two main restorative practices – community mediation and a police restorative disposal.¹⁷⁸ The research suggested that community mediation was by far the most successful intervention at both reducing emotional harm and preventing further hate incidents from recurring. The majority of victims in Southwark stated that the process had improved their emotional wellbeing as well as reducing feelings of fear, anxiety and anger.

Three key process variables were identified by interviewees as pivotal to their emotional recovery. The first aspect of mediation mentioned by the vast majority of victims was that it provided them with an opportunity to “take part” in their *own* conflict resolution. Having been ignored and neglected by various local agencies (see Chapter Six), it came as

¹⁷⁸ The victims researched at Oxford were too few to allow me to make credible comparisons with those who had participated in the other practices. However data from interviewing restorative practitioners at Oxford were used at the end of this chapter and later in Chapter Seven.

great relief to victims that the mediation service was prepared to *listen* to them and *support* their case. Central to this part of the process was that victims found a voice; having previously been silenced by the police, housing officers and by the community members who sought to victimise them (Chapter Six). This dialogical process provided victims with emotional release. The additional support offered by mediators, by way of service referral and later telephone calls to check that the victim was still O.K, further enhanced victims' ability to convalesce.

The third and perhaps most important factor relevant to victims' emotional recovery was the promise of desistance that offenders (accused perpetrators) frequently provided within mediation agreements. It was clear throughout the study that such promises became significant contributions to the victims' emotional reparation. Some perpetrators also verbally apologised to their victim, others more commonly displayed physical gestures which hinted at contrition. As was highlighted in Chapter Two and at the beginning of Chapter Five, the ongoing nature of hate victimisation and the regularity of incidents meant that many victims were desperate to be free from the fear of victimisation. Promises made by offenders and ensuing desistance therefore allowed victims to move beyond their experiences of victimisation without the constant fear of abuse.

The generally positive findings from Southwark Mediation were not replicated in Devon and Cornwall. Despite certain methodological limitations – in particular the use of telephone interviews (instead of face-to-face) and the lack of any direct observations of police disposals – it soon became apparent that interviewees were less satisfied with this type of restorative process and consequently were less likely to report emotional reparation. In fact, only four out of the 14 victims interviewed stated that the process had helped to reduce their levels of fear, anxiety and/or anger; while in two cases the victim reported that they felt worse having participated in the disposal.

The main shortcomings of the disposal were identified as the following: a failure by officers to adequately explain the purpose of RJ to victims; a failure to adequately prepare victims for the process; a failure to offer victims a direct meeting with the offender (with only one participating in face-to-face dialogue); and a failure to offer some victims an opportunity to explain how the incident had affected them.

Compounding all of these deficiencies was that victims also felt that officers had cajoled apologies from offenders, many of whom had written single sentences on a piece of paper by way of reparation. Consequently, most victims felt that their reparation had been disingenuous, leading to further feelings of frustration and anger. These findings resulted in a tentative conclusion that despite the disposal being labelled as “restorative” the intervention appeared to simply be another means through which the police exerted almost full control over how the offence was dealt with. Consequently, the intervention failed to incorporate key restorative principles, leaving many victims feeling that the justice process had let them down. If police services are to take the implementation of restorative interventions seriously, they must fully comprehend the principles that govern RJ theory. This will entail the use of restorative practitioners who are sufficiently trained and fully committed to the practice of RJ.

The comparative component of the study showed that restorative processes could clearly help to repair the harms of hate crime/incidents but *only* if practitioners strictly administered the process in accordance with restorative values. Restorative practices are likely to aid the recovery of hate victims where facilitators:

- 1) Thoroughly prepare victims by providing them with information about the aims and objectives of RJ.

- 2) Provide several opportunities for victims to express their experiences of hate victimisation and identity difference, and encourage discussion on the effects that prejudice has on other community members.
- 3) Listen to the victim's "story".
- 4) Include victims in the decision making process on how offenders (the other party) might best repair the harms caused.
- 5) Encourage offenders (accused perpetrators) to offer genuine reparation. This means that facilitators must not cajole offenders into providing insincere apologies.
- 6) Provide additional support, including making referrals to other agencies who can provide social/emotional support, and by making periodical telephone calls to check on the victim's progress.
- 7) By including "promises of desistance" in reparation/mediation agreements signed by both parties.

The limitations of restorative justice for hate crime

Despite RJ's healing potential, the restorative practices examined could not *fully* repair all the harms caused by hate crime. The findings showed that, in most cases, the levels of fear, anxiety and anger experienced by victims were only *partially* reduced post RJ. There were several reasons why RJ could not provide full reparation for hate victims. One reason was that the regularity and prolonged nature of much hate abuse had caused deeply imbedded emotional and physical traumas that had accumulated over protracted periods of time. Although mediation had provided victims with a voice, support, and had finally put a stop to the abuse, much of the emotional damage could not be totally reversed by a restorative encounter. Furthermore, the prevention of repeat victimisation by one neighbour could not

diminish the fear victims' had that other community members might target them (see Chapter Two).

The fact that some victims found it difficult to move beyond their experiences of hate crime could be linked back to the broader socio-structural analyses of hate crime and to the social harms perspective that was outlined in Chapter Two. Essentially, it was argued that hate crimes make up just one part of a "process" of victimisation. Societies that are demarcated by socio-structural hierarchies produce processes which subjugate those deemed as "different". These marginalising processes inevitably heighten the vulnerability of minority identity groups (Perry 2001). Most of the socio-structural inequities experienced by victims remain unchanged post RJ. Hence, despite aiding victims' emotional recoveries, restorative processes could not alleviate the broader socio-cultural and socio-economic disadvantages which are manifest in contemporary society.

Repairing structural harm?

Linked to the structural inequality faced by victims of hate crime were findings in Chapter Six which highlighted the secondary harms caused by local state agencies when responding to reports of hate crime/incidents. This was an unanticipated finding in the study. Although Chapter Two had presented a social harm perspective of hate crime, I had anticipated the responses by state agencies to be perceived by victims as relatively supportive, particularly considering the large scale policy changes that had been effected since Macpherson (1999). However, most victims stated that housing officers' responses had been characterised by apathy or indifference and in some cases marked by complete neglect. Others who had contacted the police were often told that nothing could be done due to the "domestic" nature of the incidents, replicating past criticisms about the police's response to domestic abuse. In some cases, victims were simply not contacted again after the police dropped the case due to

a lack of independent evidence. In other cases, the actions of agency employees suggested that they had ostensibly discriminated against the victim (see Case Study 1, Chapter Six). Collectively, the failure of either the police or housing associations to take victims' complaints of ongoing victimisation seriously, led to the exacerbation of their emotional trauma.

In Chapter Six, we saw how the inclusion of local agencies – through what was labelled a “multi-agency approach” to RJ – ensured that victims gained access to local services that they had previously been denied. Important to the multi-agency approach was that restorative practitioners appreciated how local agencies became important “community supporters”, providing essential social services to victims and offenders alike. However, facilitators also had to consider the fact that agencies sometimes cause secondary victimisation, leading in some cases to heightened emotional trauma. An understanding of the dichotomous roles that local authorities play in hate crime cases will aid the effective facilitation of RJ in hate conflicts. Only then can restorative practice begin to effectively facilitate a process that should help to repair the harms of individual incidents of hate crime *and* elements of the socio-structural processes that have compounded victims' experiences of it.

Challenging prejudice?

Chapter Seven explored the capabilities of restorative practice to effectively challenge the prejudices which give rise to hate incidents. It was at this final stage of the thesis that I illuminated the various hurdles that are faced when bringing participants from divergent cultural background together to discuss the complex hate conflicts that they became embroiled in. Differences in language, paralanguage and physical gesticulation clearly

inhibited the free flow of direct dialogue. However, the flexibility and inclusiveness found within restorative practices – in particular community mediation – allowed facilitators to overcome these variations, thus helping the parties to form emotional connections and eventually common understandings.

Still, cultural differences and the prejudices that were intrinsic to hate crime cases proved inhibitive to the forming of empathic connections. In order to really challenge the prejudiced behaviours of hate offenders, practices needed to actively seek to humanise the “differences” that divided stakeholders. Most restorative practitioners felt that the animosities held by offenders could be challenged using inclusive dialogue that focused on the harms caused by hatred. And although in many cases offenders denied that they were racist or homophobic, for example, the exploratory nature of the process allowed the parties to talk at length about the impact that prejudice had on the victim as well as discussing what it was like for him or her to be “different” in the community.

It was hoped that such discussions would positively impact upon offenders’ understanding of certain identity groups. Furthermore, practitioners who facilitated reparation work that contained an element of “moral learning” could additionally bolster the potential for offender edification. While there appeared to be some scope to challenge the superficial prejudices held by most hate offenders, restorative dialogue could not necessarily alter the views or behaviours of offenders whose animosities had become deeply ingrained animosities, especially in cases where prejudices had been learned over many years. In these more serious cases, practitioners could only hope that restorative dialogue might have *some* edifying influence.

Finally, the thesis examined whether restorative processes exposed victims to re-victimisation. Both practitioners and victims stated that repeat victimisation during the restorative process was rare. This was mainly down to the preparation that was undertaken by

practitioners. The greater the preparation, the less likely victims will be exposed to domination during meetings. This aspect of restorative practice was reiterated time and again by every practitioner I interviewed. Practitioners noted that offenders who willingly participated and who understood the nature of the restorative process were highly unlikely to repeat their previous demonstrations of hostility. The setting of firm ground rules and including appropriate supporters during meetings also helped to ensure that the focus remained on repairing and not causing harm (see below “What did hate crime tell us about the practice of restorative justice?”).

What did restorative justice tell us about the nature of hate crime?

During the empirical study I was given access to the case details of 55 separate hate crimes/incidents from which I went on to interview 38 victims. In addition to this I interviewed 23 practitioners who relayed 28 hate crime case examples to me¹⁷⁹ and observed 18 separate restorative meetings. In total, I came close to analysing information on 90 hate crime/incident cases that had come to the attention of restorative practitioners across the country. Analysis of the data collated provided a renewed insight into the types of hate crimes/incidents that occur across the country, including information on the relationships that exist between offenders and victims.

Although the study’s sample was not randomly selected from the entire pool of hate crimes that occur in England, the large number of cases that were reviewed allowed me to identify key characteristics that were common to several distinct types of hate crimes/incidents. Though by no means exhaustive, the most common types of incidents that I came across were as follows:

¹⁷⁹ Several of the practitioner interviews were in relation to cases I had observed and victims I then went on to interview.

1) Incidents that occur within broader interpersonal conflicts

The most common type of hate incident identified in this study was those which occurred within acrimonious interpersonal conflicts, commonly involving neighbours and/or individuals known to each other. Cases involving warring neighbours were most representative of those that came to the attention of Southwark Mediation Centre. However, such incidents were also evident in Devon and Cornwall and from the case examples given by various other restorative practitioners. Thus although the sample of mediation cases may have skewed the overall number of “interpersonal conflict” cases researched in this study, it was clear this type of hate crime/incidents frequently came to the attention of other criminal justice practitioners.

Hate incidents that occur during interpersonal conflicts typically involve a variety of other social factors and aggravating circumstances. For example, in most of the cases researched in Southwark, complaints (and counter complaints) about noise pollution had led to a volatile altercation between the parties. These initial fracasess sparked feuds between neighbours which then escalated over the course of weeks, months and sometimes years. As frustrations and feelings of anger built, the (perceived) behaviour of one party finally led to the commission of an incident/s marked by the use of racist or homophobic (for example) language (i.e. the hate crime/incident).

Other causal spatial factors and social conditions identified were: screaming children and the playing of music too loudly (both of which are exacerbated by poor insulation between apartments), inconsiderate disposal of refuse, alcohol and drug misuse, smoking in communal hallways, and mental health issues (for both victims and offenders). These precipitating variables antagonise individuals who feel aggrieved by their neighbours’

behaviours. As the conflict worsens, feelings of frustration and anger increase, at which point the parties become prone to lashing out against each other. In cross-cultural conflicts this gives rise to opportunities for one party to use the other's "difference" as means of most directly hurting them (see Chapter Seven). Accordingly, the vocalisation of prejudice during some interpersonal conflicts is less an attempt to send a symbolic message of hatred to the victim and other like community members and more a means of hurting the other party's feelings. In other words, it is a heat of the moment outburst used as a way of "getting back" at someone.¹⁸⁰

While some hate incidents committed during neighbour disputes are done so largely out of spite, there were many other cases where incidents were more intricately infused with the perpetrator's perceptions as to the way certain Others live. Within the Southwark study, for instance, complaints about "foreign smelly" foods, "foreign music" and "foreign voices" often suggested that the perpetrator's actions were motivated, at least in part, by the complainant victims' "difference" (see also, Sibbitt 1997). Offenders' beliefs are likely to be the result of superficially held prejudices that are directly linked to the negative stereotyping of minority identity groups (Levin & McDevitt 1993; Chapter One). We might conceptualise such incidents therefore as the projection of internalised frustration antagonised by social context and co-dependent with general attitudes about identity difference.

Fundamental to the conceptualisation of intractable neighbouring disputes is that, in some cases, both complainant victims and accused perpetrators will share at least *some* culpability for the broader conflict within which they have become embroiled. In fact, rarely is it the case that only one party is guilty of anti-social behaviour aimed at the other party. Hence, the labelling of one party as an "offender" and the other as "victim" does not always truly represent both parties' culpability and/or responsibility for the conflict (see further,

¹⁸⁰ See *DPP v Woods* [2002] EWHC Admin 85.

“What did hate crime tell us about the practice of restorative justice?”). To some extent the complexity of interpersonal conflicts creates an epistemological barrier to understanding hate abuse. Such cases do not fit within the traditional conceptions of hate crime or the stereotypical vision of what a domestic dispute entails. The myriad of social factors and their nexus with varying degrees of prejudice makes the conceptualisation of hate incidents within interpersonal conflict difficult to outline. What is clearer, however, is that in such cases the exploration of both parties’ actions will provide for a more holistic appreciation of the causes and consequences of these multifaceted types of hate incident.

Persistent targeted abuse

The second most common type of hate crime/incident identified within the study were those characterised by ongoing and persistent forms of “low-level” victimisation, aimed at victims seen only for their Other identity status. Such cases were reflective of “the process” of hate that was analysed in Chapter Two and that which has been conceptualised by various other hate crime scholars (see for example, Bowling 1998; Garland & Chakraborti 2006; Iganski 2008). It is common for “low-level” incidents to gradually increase in severity, frequently resulting in the physical abuse of the victim (see similarly, Bowling 1998). Cases are also often marked by verbal outbursts by the offender and/or the commission of property damage, including racist/homophobic graffiti. As with messy neighbouring disputes, targeted incidents are typically committed by people known to the victim, such as a neighbour.

Offenders are likely to be vociferous in their disdain of the victim and others who display similar identity traits. Such cases are clearly motivated by hatred for the victim’s identity. These more deeply ingrained animosities can be connected to one or more of several criminological explanations as to the causation of hate crime (outlined in Chapter One). For example, offenders are likely to *fear* that minority groups will encroach upon

society's dominant norms and cultural values (Perry 2001). Other perpetrators will be concerned about their own socio-economic stability and use hate victimisation as a way of projecting their own ontological insecurities onto those seen as causing society's economic woes (Ray & Smith 2002). While for some offenders, their prejudiced actions will be a demonstration of geographical ownership, sending a clear message to certain Others that they are not welcome in the community (Green et al 1998; see also, Levin & McDevitt's 1993; 2002 typology of offenders). Is it important to note that for many offenders these fears will overlap and interconnect.

Whether the offender's concern is one or more of cultural, socio-economic or geographical protection, it will be likely that in almost all cases of persistent hate abuse that his or her prejudices will have been learnt over many years, therefore becoming deeply ingrained into the offender's consciousness (Levin & McDevitt 1993). As such, the level of prejudice held by this type of offender is clearly high (or at least of medium level), as too is its causal connection to the commission of the offence/s (see Jacobs & Potter 1998; Table 1.1, Chapter One).

2) "One off" attacks

The least common type of incident identified across the datasets was "one off" attacks committed by those previously unknown to the victim. However, in such cases a temporary relationship may well have been established by a preceding commercial transaction (see also, Ray & Smith 2002). For example, incidents are commonly committed against takeaway restaurant employees, convenience shop staff and taxi drivers. Most "one off" cases involve public order offences whereby the offender has racially abused the victim, commonly using

anti-immigrant language. In some cases offenders will go on to physically assault their victim.

This type of hate crime/incident is usually triggered when an offender becomes incensed by the actions of the victim (the service/goods supplier). Grievances arise, for example, where the offender has been asked to extinguish a cigarette, or because the offender feels that the service provider has over charged him or her. What would typically be an everyday interaction between customer and shop employee is viewed by the offender as an act of provocation which in turn elicits a partly hate-motivated response from the offender (see also, Ray & Smith 2002; Gadd et al 2005).

Other “one off” attacks include offences committed against gay and lesbian people, seen as easy targets while “out on the town”. Such cases do not occur during commercial transactions but are likely to occur outside or near commercial premises, such as bars and/or shops that are frequently patronised by gay and lesbian people.

Both anti-immigrant and homophobic “one off” attacks can be linked to Levin and McDevitt’s (1993; 2002) most commonly found type of hate offender classified as “thrill seekers”. These are young offenders who are in search of instant gratification, often while intoxicated, at the expense of those seen only for their “difference” (see also, Byers et al 1999). Although this study did not concur with Levin and McDevitt’s finding that *most* hate offenders are of this type,¹⁸¹ it did support the suggestion that many hate incidents occurred late at night by young offenders who had consumed large amounts of alcohol.

The level of prejudice held by offenders who commit “one off” attacks is neither deeply seated nor superficial. By this I mean that is not the offender’s purpose to specifically seek out certain minority individuals to abuse, nor is it his or her intention to simply hurt the

¹⁸¹ Levin and McDevitt’s typology used police reports, meaning that only those offenders who had been arrested by the police came to the attention of the researchers. The empirical study carried out for this thesis used both cases involving the arrest of the offender and many other cases where the accused perpetrator had not been arrested.

victim's feelings. Instead, the offender's animosity towards certain identity groups, while genuinely held, generally lays latent and only comes to the surface when the offender is confronted with a perceived grievance (see Iganski 2008). The offender's medium level prejudice is the result of the same socio-cultural and socio-economic factors explained above for persistent offenders, i.e. those relating to the encroachment of cultural and socio-economic norms (see Perry 2001; Ray & Smith 2002). However, unlike persistent offenders, in the majority of "one off" attacks, offenders' hate-motivated actions are triggered *only* once the offender is intoxicated; it acting to lower the offender's level of self-control and their tolerance of Others (see Walters 2011). For this reason it is suggested that the "one off" attacks are the result of medium level prejudices which are of medium to high level causation.

Demarcating the various types of hate crime/incidents which occur within our multicultural cities and towns helps us to understand the varying levels of prejudice and their causal connection with the offence/incident committed. As we can see, most of these "types" of hate crime are interlinked with each other. The same macro level causal factors are present for each type. Common to each type of hate crime/incident is that offenders' prejudices are unwittingly learnt over long periods of time. Biased beliefs are likely to be the result of pernicious stereotypes that have been propagated through society's communication networks, including the media. The negative messages projected about certain identity groups promote cultures of prejudice through which general beliefs about the worthiness of group members are cultivated. The varying degrees of prejudice which these sociological processes promulgate must, however, be connected with various other causal social factors and conditions. Only when we view the situational contexts in which hate crimes occur can we begin to differentiate between types of hate offenders and the types of incidents committed.

It has been through the empirical examination of RJ within this thesis that a more nuanced picture of hate crime has emerged. Important to the restorative process in hate crime cases was that offenders were not labelled and punished as “haters”. Instead, perpetrators were asked to explain their motivations before witnessing firsthand the consequences of their prejudices. Unlike conventional criminal justice measures, RJ provided for an exploration of these disparate causes and consequences, therefore allowing for a more intelligently tailored response. The complex array of social factors which are causal to many disputes were not set aside by adversarial processes of justice that focus on the dichotomous roles of “victims” and “offenders” (see further below). Rather, inclusive dialogue provided opportunities to explore the roles that each party had played within conflicts, and for the parties to collectively find suitable ways of resolving the dispute; including tailoring the process of reparation to effectively challenging the varying levels of hatred and their causal connection to the incidents committed (see Chapter Seven).

Table 9.1: Key types of hate crime/incidents

Type of hate crime/incident	Characterisation	Common social factors	Victim/offender relationship	Level of prejudice/causal connection
Incident/ as part of interpersonal conflict	Conflicts escalate over protracted periods of time culminating in the commission of an incident marked by the use of racist, homophobic, anti-religious or disablist language.	Local authority housing, noise pollution, alcohol and drug abuse; mental health issues; multiple disputants.	Known, typically neighbours.	Low-medium/Low-medium.
Targeted abuse	Persistent and ongoing targeted abuse of victims that occurs over prolonged periods of time (“process” led).	Local authority housing, alcohol/drug abuse.	Known, neighbour or local community member.	Medium-high/High
“One off” attack	“One off” incidents committed in public areas.	Offences frequently occur late at night during commercial transactions, such as takeaway food establishments, alcohol intoxication common.	Previously unknown, commercial relationship based on goods/service provider and customer.	Low-medium/Medium

What did hate crime tell us about the practice of restorative justice?

Complex conflicts and the dangers of labelling participants “victims” and “offenders”

The empirical study not only provided greater understanding of the nature of hate crime/incidents but also created further insight into the capabilities and limitations of restorative practices. Reiterated throughout this thesis has been the finding that restorative practices must be administered by dedicated practitioners who stick rigorously to core restorative values when facilitating dialogue (see specifically, Chapter Five).

At this final stage of the thesis it is perhaps worth reflecting further upon the processes used at the HCP at Southwark Mediation and the implications that my findings here may have on the future use of restorative practice for hate crime. As has been highlighted above and in Chapter Five, many hate incidents occur within messy intractable interpersonal conflicts. Such disputes could not always be expediently resolved by the police or other state agencies due to their convoluted domestic nature. Furthermore, the labelling of one party as the “victim” and the other “offender” did not always truly represent the culpability and responsibility of both parties, despite the fact that a crime may have been committed within the broader conflict. These complex cases clearly have repercussions for both conventional justice processes and the successful application of restorative practice.

Labelling those involved in a hate incident as “victims” and “offenders” assumes diametrically opposing roles for each party, both within conventional criminal justice processes and restorative justice practices (Christie 1986). These roles rarely allow for the sharing of culpability between the parties, nor do such labels help to tackle the multitude of anti-social behaviours that have been committed by *both* parties. This is because adversarial justice processes assume that there is an “ideal” victim who has been harmed (Christi 1986) and an ideal offender who must be punished.

Restorative justice applies a similar approach, starting from the premise that the commission of a crime has caused harm to a victim who will clearly require support as well as reparation in order to put him or her back into the position that he or she was before the offence was committed. The “ideal” offender, on the other hand, is a wrongdoer who has caused harm and accordingly must go about repairing what he has done. Yet, in many of the messy neighbour disputes researched, these roles were somewhat blurred. Although in most cases one party had complained of having been the victim of a hate incident, the overall conflicts within which the parties were embroiled were far from one-sided.

Community mediation’s flexible approach to conflict resolution meant that it was receptive to the exploration of broader social contexts, including consideration of the various anti-social behaviours acted out by each of the parties. “Party one” and “party two”, as they were referred to by the mediator, were both provided with an opportunity to discuss what had happened, how it had happened, and how it had affected them. Had community mediation labelled the parties as “victims” and “offenders”, the process would have become stilted and the predefined roles of the parties, as outlined above, would not have always truly represented the actions committed and the harms caused. Instead, the responsibility and culpability of the parties would become skewed, inevitably generating a feeling of injustice by one of the parties.

The commonality of messy interpersonal conflicts which result in a hate incident may have repercussions for the successful application of other restorative practices, such as police led restorative disposals. Practices which focus solely on the predefined roles of “victims” (as he who has been harmed) and “offenders” (as he who must provide reparation), may inadvertently perpetuate the oversimplification of some crimes as being totally one-sided events, therefore circumventing the complex array of social factors that lay behind many interpersonal conflicts.

This finding does not refute the fact that in many cases the labels “victim” and “offender” will provide a fair reflection of the relationship that exists between the parties involved in a hate crime/incident. In fact, in a large proportion of the cases researched for this thesis, it was clear that one party had been harmed and that it was necessary for the other to help repair that harm. Rather, it has been by illuminating the dynamics of messy interpersonal disputes that I endeavour to suggest that the complex nature of some hate conflicts cannot be resolved by imposing dichotomous labels.

In some cases, therefore, restorative practices may be better served by implementing only *some* of the restorative principles that have been articulated within the literature. In particular, the focus given by some scholars on offenders taking responsibility *before* participating in restorative processes (Braithwaite 1989) and the intrinsic importance given to apologies and material reparation as being central to repairing the harms, articulated by others (Strang 2002), may actually work to inhibit conflict resolution. Without doubt, individuals who feel aggrieved by the actions of the other party are unlikely to respond positively to a one way process that asks them to repay harm only.

Of course, the failure to carve out carefully defined roles for the stakeholders of crime risks confusing the dialogic process and frustrating the ultimate goal of reparation for those who have been harmed. Yet, as we have seen in Chapter Five, the emotional recovery of complainant victims was not necessarily predicated on the attainment of direct reparation, such as an apology, but was instead the result of their inclusion in a process that provided them with a voice. “Story-telling” empowered participants who found that they were finally being listened to. The most important form of reparation indicated by complainant victims were the promises provided by accused perpetrators not to repeat their actions.¹⁸² Hence, the effectiveness of community mediation was based, not on the predefined roles of the parties or

¹⁸² In fact, apologies that were perceived as disingenuous acted only to antagonise victims.

on the attainment of an apology, but on inclusive dialogue that focused on resolving conflicts and preventing re-victimisation.¹⁸³

It is by illuminating the commonality of these highly complex interpersonal cases that I highlight the need for police and other state agencies to refer cases to practices which incorporate a restorative approach that explores the harm causing and harm repairing role of *all* parties involved in conflict.

Re-conceptualising “community” and the importance of preparation

The analysis of RJ for hate crime also gave rise to greater consideration of the role of “community” in restorative practice. In Chapters Six and Seven, I noted that the notion of community has generally been applied homogenously to restorative theory and practice (Braithwaite 1989). Advocates of RJ have often conceptualised “community” in overly simplistic and inordinately benevolent terms (Crawford 2002). However, as we have seen in Chapters Six and Seven, “community” can act as both a harming and healing entity. This thesis has therefore attempted to view its collective spirit as being both capable of supporting and reintegrating stakeholders, while at the same time potentially promoting structural hierarchies and cultures of prejudice that can actively re-victimise some participants. Accordingly, I argued that if RJ is to truly get to grips with repairing the harms caused to minority victims, it must recognise that one of the central notions within its philosophy can be both a benevolent and malevolent force.

In the vast majority of cases it will be relatively easy to ascertain which elements of the “community” are supportive. For example, a victim’s family (part of their “community of care”) will usually provide essential emotional support during restorative meetings. It is also

¹⁸³ This conclusion does not deny the benefits that can be gained from obtaining genuine apologies (Strang 2002). It simply suggests that apologies are not prerequisites for emotional recovery.

through this supporting aspect of “community” that I argued for the inclusion of local state agencies within the restorative framework. As we saw in Chapter Six, practitioners who implement a multi-agency approach to RJ can secure additional emotional and social support for victims.

In other cases the notion of “community” may be viewed as causal to hate incidents. This aspect of community is far more complex. For example, communities fearful of certain Others develop mechanisms of control that are used to marginalise them (Perry 2001). A culture of prejudice may be perpetuated amongst dominant community members, effectively preventing certain identity groups from gaining social mobility. Restorative practitioners must therefore be alive to the risks posed by certain aspects of communities that work to dominate and oppress certain minority group victims. Of gravest concern is that restorativists who continue to blindly apply the benevolent ideal of community may end up masking the social inequalities and structural hierarchies that give rise to minority group oppression. The risk, therefore, is that RJ could potentially perpetuate the “process” of hate, rather than repairing its harms.

Such theoretical concerns must not, however, prevent the utilisation of RJ for hate crime. Restorative theorists and practitioners who understand both the harming and healing qualities of “community” will be able to utilise the notion by focusing on those parts of community that are helpful, while guarding against those which may become victimising. This proposition may sound like it is fraught with uncertainties and potential problems. However, as we have seen, avoiding domination and repeat victimisation can be successfully and consistently achieved through the careful preparation of participants.

Although I had understood the need for preparation at the beginning of this thesis I had thought little about its importance before undertaking the empirical study. This was partly due to the fact that “preparation” and what it entails is largely absent from RJ

literature. For example, in neither of the two main handbooks on RJ (Johnstone & Van Ness 2007b and Sullivan & Tifft 2008b) do any of the authors discuss in detail the intrinsic value of preparation and/or how this precursory process affects the success of restorative practice. For instance, in one chapter by Raye and Roberts (2007) entitled “Restorative processes”, the authors describe and examine the most common models of restorative practice comparing and contrasting VOM, conferencing and circles. At no point do the authors detail the logistics involved in preparing participants or how important this task is to the successful application of each model.

Through researching the use of RJ for hate crime it became patently clear that preparation was the key to successfully aiding the reparation of hate harms. It allows facilitators to judge whether the parties are ready for direct dialogue, whether indirect dialogue is more appropriate, or whether any party is likely to re-victimise the other. It is also during preparation that practitioners can work with other stakeholders to determine who might best support each of the main parties during direct dialogue. Furthermore, preparation enables practitioners to ascertain the level of prejudice that an offender holds and how causal this was to the commission of the offence.

Such is the importance of preparation that it later helps practitioners to not only effectively facilitate discussion on the causes and consequences of prejudice but also for them to facilitate appropriate reparation work that will help to repair the harms committed (see for example, Case Study 2, Chapter Seven). The preparation stage of RJ must not be understated. Further exploration of its intrinsic importance to the application of RJ, including determinations about the various roles played by “community”, must be developed within the broader literature.

The future of RJ for hate crime: effective training

If RJ is to offer hope to hate crime victims and the communities they come from, practitioners will clearly need to undertake extensive training on all areas of prejudice and “difference” in order to effectively negotiate the minefield of socio-cultural issues pertinent in such cases (McConnell & Swain 2000; see also, Maxwell 2008). The HCP manager, having spent ten years mediating hate crime cases in one of London’s most diverse boroughs, was discernibly well qualified and experienced in dealing with prejudice-motivated conflict. I spoke with two other practitioners who had undertaken training on the use of RJ specifically for hate crime. The vast experiences that other practitioners had gained in dealing with conflicts in multicultural communities also meant that many facilitators had a broad knowledge base of the issues relevant to hate crime cases.

Nonetheless, in some cases, practitioners clearly failed to appreciate the complexities of hate crime. I have already noted some of the insensitivities expressed by police facilitators in Chapter Six, which can result in secondary victimisation. Providers of RJ must therefore ensure that facilitators have a suitable comprehension of the issues relevant to hate crime in order that they carry out adequate preparation and effective facilitation of meetings. This will, perhaps, be RJ’s greatest hurdle in effectively facilitating hate crime cases. Other attempts to train criminal justice practitioners in community diversity have not always been a resounding success (see Rowe & Garland 2007). Resistance from within some institutions will inevitably prevent practitioners from fully benefiting from diversity training (Chan 1997; Reiner 2000); the old adage, you can take a horse to water but you cannot make it drink, springs to mind.

There is, however, perhaps greater hope for the training of restorative practitioners in this respect. The current piecemeal approach to establishing RJ within the criminal justice system may mean that practitioners are less likely to be influenced by institutional cultures

that resist change (Reiner 2000). Newly trained restorative facilitators might also avoid the institutional prejudices that have permeated some of our other great institutions of state (Macpherson 1999; Bowling & Phillips 2002). The fact that RJ practitioners sign up to an ethos of non-domination, inclusivity and reparation – as against “crime fighting” and punishment – suggests that facilitators will be more receptive to training courses that further promote RJ’s capacity to be inclusive and reparative.

Providers of RJ must also actively seek out facilitators from culturally diverse backgrounds. The practitioners I interviewed in London represented a broad range of cultural and ethnic identities. This was less evident outside of the metropolis, where practitioners tended to come from white middle-class backgrounds. Though I would not go so far as to suggest that minority ethnic practitioners are better equipped to mediate cases involving minority ethnic participants, it is certainly the case that those who have themselves experienced socio-cultural marginalisation will have a greater appreciation of the harms that discrimination and prejudice can cause. As Raye points out, “Personal experience of class, gender bias, culture, and race might inform us and cut short the barriers to understanding” (2004: 331). First-hand knowledge of “difference”, cultural diversity and the socio-structural dynamics of hate crime will mean that facilitators are better able to understand pre-existing divisions and help encourage the emotional connections central to restorative dialogue (Raye 2004). Only once restorative practitioners represent the multicultural communities that they serve can restorative practices be truly inclusive of the differing cultures, ethnicities and orientations of the people. If this can be achieved, restorative practices should become an integrated part of criminal justice and community responses to hate victimisation, helping not only to repair emotional and social harms but also preventing the recurrence of hate-motivated incidents.

Appendix A:

Information page & consent form

Consent Form



Full title of Project: HC: An exploration of the use of restorative justice

Researcher: Mr Mark Walters, DPhil candidate, Centre for Criminology, Oxford University, Manor road, Oxford.

Please initial box

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.
3. I agree to take part in the above study.

Please tick box

- | | Yes | No |
|--|--------------------------|--------------------------|
| 4. I agree to the interview being audio recorded | ☐ | ☐ |
| 5. I agree to the use of anonymised quotes in publications | ☐ | ☐ |
| 6. I agree that my data gathered in this study may be stored (after it has been anonymised) in a specialist data centre and may be used for future research. | ☐ | ☐ |

☐☐☐☐☐☐

Name of Participant

Date

Signature

Name of Researcher

Date

Signature



Full title of Project: HC: An exploration of the use of restorative approaches

Researcher: Mr Mark Walters, DPhil candidate, Centre for Criminology, Oxford University, Manor road, Oxford.

This interview makes up part of a research project being carried out by myself as part of my doctorate, at the Centre for Criminology, University of Oxford. The aim of the study is to explore how the restorative/mediation process affects people who have been involved in an incident or crime where an issue of race, religion, and/or sexual orientation has been raised. By taking part in this study you will be supporting research into the effectiveness of community and criminal justice initiatives aimed at helping to repair the harms caused by conflict. The information you provide in this interview may be used in future publications, however this will not include any information which would identify your name or address. Please take time answering the questions and be as open and honest as you can.

Complaints procedure:

If you have a concern about any aspect of this project, please speak to the researcher concerned (tel. no. 01865 274444) who will do his/her best to answer your query. If you remain unhappy and wish to make a formal complaint, please contact Dr Chris. Ballinger, Research Facilitator, Social Sciences Division, University of Oxford, Hayes House, 75 George Street, Oxford, OX1 2BQ, Tel: 01865 614871 who will then direct your complaint to the appropriate body.

Appendix B:

Interview schedule: victims and complainant victims

Interview Schedule: Victims/Complainant victims

This interview makes up part of a research project being carried out by myself as part of my doctorate, at the Centre for Criminology, University of Oxford. The aim of the study is to explore how the restorative/mediation process affects people who have been involved in an incident or crime where an issue of race, religion, and/or sexual orientation has been raised. By taking part in this study you will be supporting research into the effectiveness of criminal justice initiatives aimed at helping to repair the harms caused by crime. The information you provide in this interview may be used in future publications, however this will not include any information which would identify your name or address. Please take time answering the questions and be as open and honest as you can.

Section 1: About You

1) What is your date of birth?

.....

2) How would you describe your gender?

.....

3) How would you describe your ethnicity?

.....

4) What is your religion?

.....

5) How would you describe your sexual orientation?

.....

6) Do you consider yourself to be disabled?

Yes ☐ No ☐ I do not wish to disclose whether or not I have a disability ☐

If yes, would you mind telling me what disability you have?

Section 2: About the Incident

7) When did the incident/s (first) occur?

Within the past month	☐	1–2 years ago	☐
2-6 months ago	☐	2 – 5 years ago	☐
7-11 months ago	☐	More than 5 years ago	☐

8) Can you explain to me what happened?

Were the police involved? If so what action did they take?

Was the housing association involved? If so what action did they take?

9) Was there more than one perpetrator/other parties involved? If so how many people were involved?

One perpetrator	☐	More than three perpetrators	☐
Two perpetrators	☐	Not sure how many	☐
Three perpetrators	☐		

10) How long did the incident/s last for?

Just happened once	☐	1-3 months	☐	More than one year	☐
About one week	☐	4-6 months	☐	Still ongoing	☐
1 – 3 weeks	☐	7-12 months	☐		

11) Do you believe the incident was motivated (or partly motivated) by any of the following? (You can tick more than one box if applicable).

Your race, ethnicity or nationality	☐
Your sexual orientation	☐
Your religious beliefs	☐
Your disability	☐
Don't know	☐
None of the above	☐
Other, please describe	☐

12) Did you know of the other party(ies) involved in the incident before it happened?

Yes ☐ No ☐

13) If you did know the other party(ies) are they (tick as many boxes as apply):

A neighbour	☐	A family member	☐	Other	☐
A friend	☐	A partner/spouse	☐	Did not know them	☐
An acquaintance	☐	Someone from work	☐		

14) Did you sustain any physical injury resulting from the incident/dispute?

Yes ☐ No ☐

If yes what was your injury (and please state if you required medical treatment)?

15) Did you incur any financial costs associated with the incident/dispute?

Yes ☐ No ☐

If yes what for?

16) Did the incident/dispute affect your emotional wellbeing?

Yes	☐	(If yes, go to question 17)
No	☐	(If no, go straight to question 18)
Rather not say	☐	(Go to question 17)

17) If so did you experience any of the following emotional or psychological impact/s because of the incident/dispute? (Tick as many boxes as you feel are applicable).

Feelings of anxiety	☐
Sleeplessness	☐
Nightmares	☐
Depression/feeling depressed	☐
Fear of being attacked/victimised again	☐
Feelings of self blame	☐
Loss of confidence	☐
Loss of self esteem	☐
Anger	☐
None	☐
Rather not say	☐
Other, please explain:	☐

18) Have you experienced any of the following since the incident/dispute occurred?
(Tick as many boxes as you feel are applicable).

Avoid certain locations	☐	Housing difficulties	☐
More careful about what you say and do	☐	Employment difficulties	☐
Try to change your appearance / way you act	☐	Rather not say	☐

19) In your own words can you explain to me more generally how the incident has affected you and those around you?

Section 3: About the Restorative/Mediation Process

20) Do you feel that the mediator/facilitator provided you with adequate information about what would happen during the restorative justice (mediation) meeting?

Yes ☐ No ☐ Can't remember ☐

21) Were you told what the restorative (mediation) process aimed to achieve?

Yes ☐ No ☐ Can't remember ☐

22) Why did you agree to attend the restorative justice (mediation) meeting?

23) Did you take part in a face to face meeting with the other party or were your meetings with the facilitator only?

Face to face ☐ Indirect mediation ☐

24) Did you feel the mediator/facilitator acted fairly during the RJ (mediation) meeting/s?

Yes ☐ No ☐

Can you elaborate?

25) Did the facilitator provide you with an opportunity to explain how the incident had affected you?

Yes ☐ No ☐

Can you elaborate?

26) Did you feel that the facilitator tried to help you resolve the problems that the incident had caused?

Yes ☐ No ☐ To some extent ☐

Can you elaborate? Were any other agencies, organisations involved during your mediation meetings?

27) Did you ever feel at a disadvantage during the restorative (mediation) process due to any of the following? (Tick as many boxes as you feel are applicable).

Your age	☐
Your race, ethnicity or nationality	☐
Your religious beliefs	☐
Your sexual orientation	☐
Your gender	☐
Your disability	☐
Your language skills	☐
Other	☐
I did not feel at a disadvantage	☐

28) If you felt that you had been disadvantaged in any way can you explain how you were disadvantaged?

29) Did the offender/other party apologise to you during or after the meeting (or via a letter or message sent to you by the facilitator)?

Yes

☐

No

☐

How did it feel to hear the offender/other party apologise? / did you feel the apology was genuine? / do you feel the offender/other party should have apologised?

30) Overall do you feel that the restorative (mediation) process has improved your emotional wellbeing?

Yes

☐

No

☐

Not sure

☐

Can you explain how it has improved your emotional wellbeing/ why it did not help?

31) Did you find any of the following parts of the restorative (mediation) process helpful to your emotional wellbeing?

- | | |
|---|--------------------------|
| Just having the opportunity to take part | ☐ |
| Explaining to the other party how you felt | |
| (sending a message to the other party about how you felt) | ☐ |
| Being able to explain how the incident had affected your life | ☐ |
| Meeting the other party involved in the incident | ☐ |
| Seeing the other party understand how the incident/dispute has made me feel | ☐ |
| Receiving an apology from the other party | ☐ |
| Obtaining assurances that the incident(s) /dispute would stop | ☐ |
| Don't know | ☐ |
| None of the above | ☐ |
| Other, please explain: | ☐ |

32) From the following list which other factors have helped with your emotional wellbeing since the incident/dispute?

- | | |
|--|--------------------------|
| The passing of time | ☐ |
| Support from partner, friends and/or family | ☐ |
| Support from a housing officer | ☐ |
| Support from a non government/charity organisation | ☐ |
| None | ☐ |
| N/A | ☐ |
| Other, please explain: | ☐ |

Please indicate how much you agree or disagree with the following statements.

33) You were fearful of the other party/ies (offender/s) *before* the restorative (mediation) process

Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	N/A
☐	☐	☐	☐	☐	☐

34) You were fearful of the other party/ies (offender/s) *after* the (mediation) restorative process

Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	N/A
☐	☐	☐	☐	☐	☐

35) After the restorative (mediation) process you felt that the other party/ies (offender/s) had a better understanding of how the incident had affected you?

Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	N/A
☐	☐	☐	☐	☐	☐

36) Can you describe to me a little bit more about your feelings of fear towards the offender and how this has changed, if at all, since the restorative (mediation) process?

On a scale from 1 to 10, with 1 being 'very mild' and 10 being 'very severe':

37) On a scale of 1-10, 1 being very low and 10 being very high, please indicate the level of ANGER you were feeling towards the other party/ies (offender/s) before the restorative (mediation) process. (N/A if did not experience anger).

1	2	3	4	5	6	7	8	9	10	N/A
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Low level of anger

Medium level of anger

high level of anger

38) On a scale of 1-10, 1 being very low and 10 being very high, please indicate the level of ANGER you were feeling towards the other party/ies (offender/s) after the restorative (mediation) process. (N/A if did not experience anger).

1	2	3	4	5	6	7	8	9	10	N/A
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Low level of anger

Medium level of anger

high level of anger

39) On a scale of 1-10, 1 being very low and 10 being very high, please indicate the level of ANXIETY you were feeling about the incident/dispute before the restorative (mediation) process. (N/A if did not experience anxiety).

1	2	3	4	5	6	7	8	9	10	N/A
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Low level of anxiety

Medium level of anxiety

high level of anxiety

40) On a scale of 1-10, 1 being very low and 10 being very high, please indicate the level of ANXIETY you were feeling about the incident/dispute after the restorative (mediation) process. (N/A if did not experience anxiety).

1	2	3	4	5	6	7	8	9	10	N/A
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Low level of anxiety

Medium level of anxiety

high level of anxiety

Low level of impact

Medium level of impact

high level of impact

41) Can you explain how your feelings of anxiety and anger have changed, if at all, since going through the restorative (mediation) process?

Section 4: Your Feelings Towards the Other Participants

42) Do you think the restorative (mediation) process had a positive or negative effect on your feelings towards the other party/ies (offender/s) involved in the incident?

Positive ☐ Negative ☐ Neither positive nor negative ☐

43) Can you explain how the restorative (mediation) process affected your feelings, if at all, towards the offender/ other party/ies?

44) If your feelings towards the other party/ies (offender) changed, were any of the following factors relevant to that change (tick as many as apply)?

- | | |
|--|--------------------------|
| Just meeting the other party | ☐ |
| Hearing them tell me about why they acted as they did | ☐ |
| Obtaining assurances that they would not repeat their actions | ☐ |
| Listening to the facilitator | ☐ |
| Finding common goals | ☐ |
| Understanding where the other participant/s was/were coming from | ☐ |
| Knowing that they listened to me | ☐ |
| Knowing that they had taken on board what I had to say | ☐ |
| Understanding more about their cultural/identity background | ☐ |
| Other, please explain: | ☐ |

45) Please indicate how much you agree or disagree with the following statement. (Tick just ONE box).

Going through the restorative (mediation) process enabled the other party to better understand my cultural and/or individual identity background.

Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	N/A
☐	☐	☐	☐	☐	☐

Can you explain why you think this was/wasn't the case?

Section 5: The Overall Impact of the Restorative Process

46) Overall, did you find the restorative (mediation) process a positive or negative experience?

Very positive ☐ Positive ☐ Negative ☐ Very negative ☐ Not sure ☐

47) Please indicate how much you agree or disagree with the following statement. (Tick the relevant level of agreement)

Since the restorative (mediation) process you feel you can put the whole incident behind you?

Strongly Agree ☐ Agree ☐ Neither Agree
Nor Disagree ☐ Disagree ☐ Strongly
Disagree ☐ N/A ☐

48) Overall how satisfied were you with the restorative (mediation) process?

Very Satisfied ☐ Satisfied ☐ Dissatisfied ☐ Very Dissatisfied ☐

49) Would you recommend restorative justice (mediation) to others involved in a similar incident?

Yes ☐ No ☐ Not sure ☐

50) Do you have any further comments you would like to add about your experience of restorative justice (mediation)?

Thank you for taking part!

Appendix C

Interview schedule: restorative justice practitioners

Interview schedule: Restorative Justice Practitioners

Introduction

This interview will make up part of a one year empirical study into the use of restorative justice practices in hate crime/incident cases. In particular, I am researching cases where an issue of racism, homophobia and/or anti-religion has been raised. The aims of the research are to explore firstly whether RJ practices can help victims to recover from their experiences of hate crime and secondly whether the process has any positive impacts upon perpetrators' attitudes towards victims.

Anything that you say within this interview will be recorded and kept securely on my work PC. Any future publication based on the information that you provide will not include your name or any other details which would identify you or the organisation that you work for.

Can you confirm that agree to taking part in the study and that the interview will be recorded?

Before we begin then could you tell me a little bit about what your experience as an RJ practitioner has been?

What training did you receive?

Can you explain to me what you think the main components of the Restorative Disposal/conference are?

- 1) Can you describe to me an RJ/mediation meeting/conference that you have facilitated which involved a crime/incident which had been motivated (or partially motivated) by the victim's race, sexual orientation and/or religion?
- 2) Do you know why it was decided that this incident was appropriate for mediation/conference?
- 3) Did you explain to the parties involved what the RD was and what it aimed to achieve?

- 4) Can you describe to me what happened in the meeting/during the process? – was the victim & offender (both parties) and their supporters there?
- 5) Was the victim/complainant able to explain how the crime/incident had affected him/her?
- 6) Was the perpetrator/accused party able to explain why he/she committed the crime/incident?
- 7) Were issues around prejudice or hatred based on race, religion, sexual orientation or disability raised in the meeting? If so how did the victim/offender respond to these issues?
- 8) Did you feel that the different backgrounds of the participants inhibit the dialogue in any way? For example were there any language difficulties or differences in styles of communication that made it difficult for the participants to understand each other?
- 9) Do you think the meeting made any difference to the offender's understanding of the victim and the victim's cultural/identity background?
- 10) Was a reparation/mediation agreement made? If so what did it include?
- 11) Did the offender apologise?
- 12) Do you think that all the parties present were happy with the reparation agreement? Did the victim accept the apology and in your opinion did they perceive it as being genuine?
- 13) Do you feel that the meeting helped reduce any emotional harms that the victim/parties had experienced? If so how?
- 14) I want to ask you a few more general questions about RJ in hate crime cases but before I do, was there anything else about this case that you think would be helpful for me to know?

About RJ Conferencing in General

- 15)** What issues specific to hate crime cases do you think need to be addressed during a RJ/mediation meeting?
- 16)** Are there any types of hate crime that you feel would not be suitable for a face-to-face restorative mediation?
- Why?
- 17)** How can RJ/mediation practitioners manage the risk of victims (participants) being re-victimised during meetings?
- How likely do you think it is that a victim would be re-victimised in hate crime cases?
- 18)** Hypothetically, how would you react if one of the parties began to make any racist/homophobic/anti-religious comments during the conference/mediation?
- 19)** Generally speaking, would you recommend RJ/mediation as an effective way of responding to hate crime?
- 20)** Do you have any other comments you would like to make about RJ/mediation in hate crime cases?

Bibliography

- Abbas, T. (2007), "Introduction: Islamic Political Radicalism in Western Europe", in T. Abbas (ed.) *Islamic Political Radicalism: A European Perspective*, Edinburgh: Edinburgh University Press.
- Ackers, H. (1993), "Racism, Sexuality, and the Process of Ethnographic Research", in D. Hobbs, and T. May (eds), *Interpreting the Field: Accounts of Ethnography*, Oxford: OUP.
- Ahn Lim, H. (2009), "Beyond the Immediate Victim: Understanding Hate Crimes as Message Crimes", in P. Iganski (ed.), *Hate Crimes*, Volume Two. London: Praeger.
- Albrecht, B. (2010), "Multicultural Challenges for Restorative Justice: Mediators' Experiences from Norway and Finland", *Journal of Scandinavian Studies in Criminology and Crime*, 11: 3-24.
- Allport, G. (1954), *The Nature of Prejudice*, Cambridge, Mass: Addison-Wesley.
- Amstutz, L. (2004), "What Is The Relationship Between Victim Service Organizations And Restorative Justice?", in H. Zehr, and B. Toews (eds), *Critical Issues in Restorative Justice*. Cullompton, Devon: Willan Publishing.
- Ashworth, A. (2002), "Responsibilities, Rights and Restorative Justice", *British Journal of Criminology*, 42: 578-595.
- Ashworth, A. (2003), "Is Restorative Justice the Way Forward for Criminal Justice?", in E. McLaughlin, R. Fergusson, G. Hughes, and L. Westmarland (eds), *Restorative Justice: Critical Issues*, London: Sage.
- Association of Police Chief Officers (2005), *HATE CRIME: DELIVERING A QUALITY SERVICE: Good Practice and Tactical Guidance*, London: Home Office.
- Attorneys General's Department (2003), *You Shouldn't Have to Hide to be Safe*, Sydney: Attorney's General's Department of New South Wales.

- Bachman, R. and Schutt, R. (2007), *The Practice of Research in Criminology and Criminal Justice*, London: Sage.
- Bard, M. and Sangrey, D. (1976), *The crime victim's book*, Brunner: Mazel Publisher, cited in Garnets, L., Herek, G., and Levy, B. (1992), "Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences", in L. Garnets, and D. Kimmel (eds), *Psychological perspectives on lesbian, gay, and bisexual experiences*, Chichester: Columbia University Press.
- Barnes, A., and Ephross, P. (1994), "The impact of hate violence on victims: Emotional and behavioural responses to attacks", *Social Work*, 39(3): May.
- Barnett, R. (1977), "Restitution: A new paradigm of criminal justice", *Ethics*, 87: 279–301.
- Becker, H. (1963), *Outsiders: Studies in the Sociology of Deviance*, London: Free Press.
- Bell, J. (1997), "Policing Hatred: Bias Units and the Construction of Hate Crime", *Michigan Journal of Race and Law*, 2: 421-460.
- Bibbings, L. (2004), "Heterosexuality as harm: fitting in", in P. Hillyard, C. Pantazis, S. Tombs and D. Gordon (eds), *Beyond Criminology: Taking Harm Seriously*. London: Pluto.
- Bottoms, A. (1995), "The Philosophy and Politics of Punishment and Sentencing", in C. Clarkson, and R. Morgan (eds), *The Politics of Sentencing Reform*, Oxford: Clarendon Press.
- Bowling, B. (1993), "Racial Harassment and the Process of Victimization: Conceptual and Methodological Implications for the Local Crime Survey", *British Journal of Criminology*, 33(2): 231-250.
- Bowling, B. (1994), "Racial Harassment in East London" in M. Hamm (ed), *Hate Crime: International Perspectives on Causes and Control*, Cincinnati: Anderson Publishing.
- Bowling, B., and Phillips, C. (2002), *Racism, Crime and Justice*, Harlow: Longman.

- Bowling, B. (1998), *Violent Racism: Victimization, Policing, and Social Context*, Oxford: Oxford University Press.
- Bowling, B., and Phillips, C. (2003), “Racist Victimization in England and Wales”, in D. Hawkins (ed.), *Violent Crime, Assessing Race & Ethnic Differences*, Cambridge: Cambridge University Press.
- Boyes-Watson, C. (2004), “What Are The Implications Of The Growing State Involvement In Restorative Justice?” in H. Zehr, and B. Toews (eds), *Critical Issues in Restorative Justice*. Cullompton, Devon: Willan Publishing.
- Braithwaite, J. (1989), *Crime, Shame, and Reintegration*, Cambridge: Cambridge University Press.
- Braithwaite, J. (1999), “Restorative Justice: Assessing Optimistic and Pessimistic Accounts”, *Crime & Justice*, 25: 1-127.
- Braithwaite, J. (2002), *Restorative Justice and Responsive Regulation*, New York: Oxford University Press.
- Braithwaite, J. (2003), “Restorative Justice and Social Justice”, in E. McLaughlin, R. Fergusson, G. Hughes, and L. Westmarland (eds), *Restorative Justice: Critical Issues*, London: Sage.
- Bridges, L. (1999), “The Lawrence Enquiry – Incompetence, Corruption and Institutional Racism”, *Journal of Law and Society*, 26 (3): 298-322.
- Bruce, M., Roscigno, V., and McCall, P. (1998), “Structure, Context and Agency in the Reproduction of Black-on-Black Violence”, *Theoretical Criminology*, 2(1): 29-55.
- Burke, M. (1993), *Coming out of the Blue*, London: Cassell.
- Burney, E. and Rose, G. (2002), *Racist Offences: How Is the Law Working?*, London: Home Office.

- Busch, R. (2002), "Domestic Violence and Restorative Justice Initiatives: Who Pays if We get it Wrong?", in H. Strang, and J. Braithwaite (eds), *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.
- Byers, B., Crider, B., and Biggers, G. (1999), "Bias Crime Motivation: A Study of Hate Crime and Offender Neutralization Techniques Used Against the Amish", *Journal of Contemporary Criminal Justice*, 15(1): 78-96.
- Chahal, K., and Julianne, L. (1999), *We Can't All Be White!': Racist Victimisation in the UK*, York: Joseph Rowntree Foundation.
- Chakraborti, N., and Garland, J. (2009), *Hate Crime: Impact, Causes and Responses*, London: Sage.
- Chan, J. (1997), *Changing Police Culture: Policing in a Multicultural Society*, Cambridge: Cambridge University Press.
- Christie, N. (1977), "Conflicts as Property", *British Journal of Criminology*, 17(1): 1-15.
- Christie, N. (1986), "The ideal victim", in E. Fattah (ed.), *From Crime Policy to Victim Policy*, Basingstoke: Macmillan.
- Cohen, S. (1985), *Visions of Social Control: Crime, Punishment and Classification*, Cambridge: Polity Press.
- Coker, D. (2002), "Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence", in H. Strang, and J. Braithwaite (eds), *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.
- Considine, J. (1995), *Restorative Justice: Healing the Effects of Crime*, New Zealand: Ploughshares Books.
- Corcoran, M. (2005), "Researching women political prisoners in Northern Ireland: ethnographic problems and negotiations", in T. Skinner, M. Hester, and E. Malos (eds),

- Researching Gender Violence: Feminist Methodology in Action*, Cullompton, Devon: Willan Publishing.
- Craig, K. (2002), "Examining hate-motivated aggression: A review of the social psychological literature on hate crimes as a distinct form of aggression", *Aggression and Violent Behaviour*, 7(1): 85-101.
- Crawford, A. (2002), "The State, Community and Restorative Justice: Heresy, Nostalgia and Butterfly Collecting", in L. Walgrave (ed), *Restorative Justice and the Law*, Cullompton, Devon: Willan Publishing.
- Crawford, A. and Newburn, T. (2003), *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*, Cullompton, Devon: Willan Publishing.
- Crown Prosecution Service (2010), *Disability Hate Crime - Guidance on the distinction between vulnerability and hostility in the context of crimes committed against disabled people*, London: CPS.
- Cunneen, C. (1997), "Community Conferencing and the Fiction of Indigenous Control", *Australian and New Zealand Journal of Criminology*, 30: 1-20.
- Cunneen, C. (2003), "Thinking Critically about Restorative Justice", in E. McLaughlin, R. Fergusson, G. Hughes, and L. Westmarland (eds), *Restorative Justice: Critical Issues*, London: Sage.
- Cunneen, C., and Hoyle, C. (2010), *Debating Restorative Justice*, Oxford: Hart Publishing.
- Daly, K. (1999), "Restorative Justice in Diverse and Unequal Societies", *Law in Context*, 17(1): 167-190.
- Daly, K. (2001), *South Australia Juvenile Justice Research on Conferencing Technical Report No. 2. Research Instruments in Year 2 (1999) and Background Notes*, Brisbane, Queensland; School of Criminology and Criminal Justice, Griffith University, [accessed at Sept 2011:

http://www.aic.gov.au/criminal_justice_system/rjustice/sajj/~media/aic/rjustice/sajj/tech-report-2.pdf].

Daly, K. (2002a), "Mind the Gap: Restorative Justice in Theory and Practice", in A. von Hirsh, J. Roberts, A. Bottoms, K. Roach, and M. Schiff (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing.

Daly, K. (2002b), "Restorative Justice: The real story", *Punishment & Society*, 4(1): 55-79.

Daly, K. (2002c), "Sexual Assault and Restorative Justice", in H. Strang, and J. Braithwaite, (eds), *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.

Daly, K. (2008), "The limits of restorative justice", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.

Daly, K., and Immarigeon, R. (1998), "The Past, Present and Future of Restorative Justice: Some Critical Reflections", *Contemporary Justice Review*, 1: 21-45.

Dick, S. (2008), *Homophobic Hate Crime: The Gay British Crime Survey 2008*, London: Stonewall.

Dignan, J. (2005), *Understanding Victims & Restorative Justice*, Cullompton, Devon: Willan Publishing.

Dixon, B. and Gadd, D. (2006), "Getting the message? 'New' Labour and the criminalization of 'hate'", *Criminology and Criminal Justice*, 6(3): 309-328.

Dreher, T. (2006), *'Targeted' Experiences of Racism in NSW after September 11, 2001*, Sydney: UTS Shopfront.

Dunn, P. (2009), "Crime and Prejudice: Needs and Support of Hate Crime Victims", in P. Iganski (ed.), *Hate Crimes*, Volume Two. London: Praeger.

Dzur, A (2003), "Civic implications of restorative justice theory: Citizen participation and criminal justice policy", *Policy Sciences*, 36: 279-306.

- Dzur, A., and Olson, S. (2004), "The Value of Community Participation in Restorative Justice", *Journal of Social Philosophy*, 35(1): 91-107.
- Eglish, A. (1977), "Beyond restitution: Creative restitution", in J. Hudson, and B. Galaway, (eds), *Restitution in Criminal Justice*, Lexington, Mass.: D.C. Heath.
- Ehrlich, H., Larcom, B., and Purvis, D. (1994), *The Traumatic Effect of Ethnoviolence*, Towson, MD: Prejudice Institute, Center for the Applied Study of Ethnoviolence.
- Eisner, M., and Parmar, A. (2007), "Doing Criminological Research in Ethnically and Culturally Diverse Contexts", in R. King and E. Wincup (eds), *Doing Research in Crime and Justice*, Oxford: Oxford University Press.
- Enright, R., and North, J. (eds) (1998), *Exploring Forgiveness*, Wisconsin: University of Wisconsin Press.
- Fekete, L. (2009), *A Suitable Enemy: Racism, Migration and Islamophobia in Europe*, London: Pluto Press.
- Fischer, C. and Wertz, F. (2002), "Empirical Phenomenological Analyses of Being Criminally Victimized", in A. Huberman, and M. Miles (eds), *The Qualitative Researcher's Companion*, Thousand Oaks: Sage.
- Gadd, D. (2009), "Aggravating Racism and Elusive Motivation", *British Journal of Criminology*, 49(6): 755-771.
- Gadd, D., Dixon, B., and Jefferson, T. (2005), *Why Do They Do It? Racial Harassment in North Staffordshire*, Keele: Centre for Criminological Research, Keele University.
- Garland, J., and Chakraborti, N. (2006), "Recognising and Responding to Victims of Rural Racism", *International Review of Victimology*, 13(1): 49-69.
- Garland, J., and Chakraborti, N. (2007), "'Protean times?' Exploring the relationships between policing, community and 'race' in rural England", *Criminology and Criminal Justice: An International Journal*, 7 (4): 347-366.

- Garland, J., Spalek, B., and Chakraborti, N. (2006), "Hearing Lost Voices: Issues in Researching 'Hidden' Minority Ethnic Communities, *British Journal of Criminology*, 46(3): 423-437.
- Garnets, L., Herek, G., and Levey, B. (1992), "Violence and victimization of lesbians and gay men: Mental health consequences", in G. Herek and K. Berrill (eds), *Hate Crimes: Confronting Violence Against Lesbians and Gay Men*, Newbury Park: Sage.
- Garofalo, J. (1997), "Hate crime victimization in the United States", in R. Davies, A. Lurigio, and W. Skogan (eds), *Victims of crime*, Thousand Oaks, CA: Sage.
- Gavrielides, T. (2007), *Restorative justice theory and practice: addressing the discrepancy*, New York: Criminal Justice Press.
- Gerstenfeld, P. (2004), *Hate Crimes Causes, Controls, and Controversies*, London: Sage.
- Gordon, P. (1994), "Racist Harassment and violence", in E. Stanko (ed.), *Perspectives on Violence*, Howard League: London.
- Green, D., and Seher, R. (2003), "What Role Does Prejudice Play in Ethnic Conflict?", *Annual Review of Political Science*, 6: 509-31.
- Green, D., McFalls, L., and Smith J. (2001), "HATE CRIME: An Emergent Research Agenda, *Annual Review of Sociology*, 27: 479-504.
- Green, D., Strolovitch, D., and Wong, S. (1998), "Defended neighbourhoods, integration, and racially motivated crime", *American Journal of Sociology*, 104(2): 372-403.
- Green, S. (2007), "The Victims' movement and restorative justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Hagan, F. (2010), *Research Methods in Criminal Justice and Criminology*, New Jersey: Prentice Hall.
- Hall, N. (2005), *Hate Crime*, Cullompton, Devon: Willan Publishing.

- Hare, I. (1997), "Legislating Against Hate: The Legal Response to Bias Crime", *Oxford Journal of Legal Studies*, 17(3): 415-439.
- Harris, N., and Maruna, S. (2008), "Shame, sharing and restorative justice: a critical appraisal", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Harris, N., Walgrave, L., and Braithwaite, B. (2004), "Emotional Dynamics of Restorative Conferences", *Theoretical Criminology*, 8(2): 191-210.
- Herman, S. (2004), "Is Restorative Justice Possible Without A Parallel System for Victims?", in H. Zehr and B. Toews (eds), *Critical Issues in Restorative Justice*. Cullompton, Devon: Willan Publishing.
- Herek, G., and Berrill, K. (eds) (1992), *Hate crimes: Confronting violence against lesbians and gay men*, Thousand Oaks, CA: Sage.
- Herek, G., Cogan, J., and Gillis, J. (1999), "Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults", *Journal of Consulting and Clinical Psychology*, 67(6): 945-951.
- Herek, G., Cogan, J., and Gillis, J. (2002), "Victim Experiences in Hate Crimes Based on Sexual Orientation", *Journal of Social Issues*, 58 (2): 319-339.
- Herek, G., Cogan, J., Gillis, J. and Glunt, E. (1997), "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, 12(2): 195-215.
- Hillyard, P., Pantazis, C., Tombs, S., and Gordon, D. (eds) (2004), *Beyond Criminology: Taking Harm Seriously*, London: Pluto.
- Her Majesty's Government (2009), *Hate Crime – The Cross-Government Action Plan*, London: HM Government.

- Holland, B. (2011, June), *Making restorative approaches inclusive for people with special needs*. Paper presented at Oxfordshire Restorative Justice Network, Worcester College, University of Oxford.
- Holter, A., Martin, J., and Enright, D. (2007), “Restoring justice through forgiveness: the case of children in Northern Ireland”, in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Home Office (1981), *Racial Attacks*, London: HMSO.
- Home Office (2004), *Strength in Diversity - Towards a Community Cohesion and Race Equality Strategy*, London: Home Office.
- Home Office (2005a), *Improving Opportunity, Strengthening Society: The Government’s strategy to increase race equality and community cohesion*, London: Home Office.
- Home Office (2005b), *Race Equality in Public Services*, London: Home Office.
- Home Office (2011), *Advancing transgender equality: a plan for action*, London: Home Office.
- Hood, R. (1992), *Race and Sentencing*, Oxford: Oxford University Press.
- House of Commons Home Affairs Committee (2009), *The Macpherson Report—Ten Years On*, Twelfth Report of Session 2008–09, London: House of Commons.
- Hoyle, C. (2002), “Securing Restorative Justice for the Non-Participating Victims”, in C. Hoyle, and R. Young (eds), *New Visions of Crime Victims*, Oxford: Hart.
- Hoyle, C. (2007), “Policing and restorative justice”, in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Hoyle, C., and Zedner, L. (2007), “Victims, Victimization, and Criminal Justice”, in M. Maguire, R. Morgan, and R. Reiner (eds), *Oxford Handbook of Criminology*, Oxford: Oxford University Press.

- Hoyle, C., Young, R. and Hill, R. (2002), *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*, York: Joseph Rowntree Foundation.
- Hudson, B. (1998), "Restorative Justice: The Challenge of Sexual and Racial violence", *Journal of Law and Society*, 25: 237-256.
- Hudson, B. (2003), *Justice in the risk society*, London: Sage.
- Hunter, C., Hodge, N., Nixon, J., Parr, S., and Willis, B. (2007), *Disabled people's experiences of anti-social behaviour and harassment in social housing: a critical review*, London: Disability Rights Commission.
- Idriss Mazher, M. (2002), "Religion and the Anti-Terrorism, Crime and Security Act 2001", *Criminal Law Review*, 890-911.
- Iganski, P. (1999), "Why make hate a crime?", *Critical Social Policy*, 19(3): 386-95.
- Iganski, P. (2001), "Hate crimes hurt more", *American Behavioural Scientist*, 45(4): 626-38.
- Iganski, P. (2002), "Hate crime hurts more but should they be punished more harshly?", in P. Iganski (ed), *The Hate Debate*, London: Profile Books.
- Iganski, P. (2008), *Hate Crime and the City*, Bristol: The Policy Press.
- Jacobs, J., and Potter, K. (1998), *Hate Crimes*, New York: Oxford University Press.
- James, Z. (2007), "Policing marginal spaces: Controlling Gypsies and Travellers", 7(4): 367-389.
- Jansson, K. (2006), *Black and Minority Ethnic groups' experiences and perceptions of crime, racially motivated crime and the police: findings from the 2004/05 British Crime Survey*, London: Home Office.
- Jantzi, V. (2004), "What Is The Role Of The State In Restorative Justice?", in H. Zehr and B. Toews (eds), *Critical Issues in Restorative Justice*. Cullompton, Devon: Willan Publishing.

- Jenness, V., and Grattet, R. (2001), *Making Hate a Crime: From Social Movement to Law Enforcement*, New York: Russell Sage.
- Jiwani, Y. (2005), "Walking a Tightrope: The Many Faces of Violence in the Lives of Racialized Immigrant Girls and Young Women", *Violence Against Women, An International and Interdisciplinary Journal*, 11 (7): 846-887.
- Johnson, K., Faulkner, P., Jones, H., and Welsh, E. (2007), *Understanding Suicide and Promoting Survival in LGBT Communities*, Brighton: University of Brighton.
- Johnstone, G., and Van Ness, D. (2007a), "The meaning of restorative justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Johnstone, G., and Van Ness, D. (eds) (2007b), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Kalunta-Krumpton, A. (1998), "The Prosecution and Defence of Black Defendants in Drug Trials", *British Journal of Criminology*, 38(4): 561-591.
- Kauffman, J. (2008), "Restoration of the assumptive world as an act of justice", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Kay, J. W. (2008), "Murder victims' families for reconciliation: story-telling for healing, as witness and in public policy", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Kelly, T. L. (2002), "Is Restorative Justice Appropriate in Cases of Hate Crime" (published in the Western Pacific Association of Criminal Justice Educators Conference Papers, Lake Tahoe: Nevada).

- Kennedy, P. And Roudometof, V. (2004), "Transformation in a global age", in P. Kennedy and V. Roudometof (eds), *Communities across borders: New immigrants and transnational cultures*, London: Routledge.
- Kurki, L. (2000), "Restorative and Community Justice in the United States", *Crime and Justice: A Review of Research*, 27: 235-303.
- Lash, S. (1994), "Reflexivity and its doubles: Structure, aesthetics, community", in U. Beck, A. Giddens and S. Lash (eds), *Reflexive modernization: Politics, tradition and aesthetics in modern social order*, Cambridge: Polity Press.
- Lawrence, F. (1999), *Punishing hate: bias crimes under American law*, London: Harvard University Press.
- Levin, B. (1999), "Hate Crime: Worse by Definition", *Journal of Contemporary Justice*, 15(1): 6-21.
- Levin, J. (2002), "Hatemongers, dabblers, sympathizers and spectators: a typology of offenders", in P. Iganski (ed), *The Hate Debate*, London: Profile Books.
- Levin, J., and McDevitt, J. (1993), *Hate Crimes: The rising tide of bigotry & bloodshed*, New York: Plenum.
- Levin, J., and McDevitt, J. (2002), *Hate Crimes Revisited: America's War on Those Who Are Different*, New York: Basic Books.
- Llewellyn, J. (2007), "Truth commissions and restorative justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Lord Williams of Mostyn (1997), *Second Reading Speech*, 16.12.97, HL Deb. c. 534.
- Macpherson, W. (1999), *The Stephen Lawrence Inquiry*, Cm 4262-I, London: The Stationery Office.

- Malik, M. (1999), ““Racist Crime”: Racially Aggravated Offences in the Crime and Disorder Act 1998 Part II”, *Modern Law Review*, 62: 409-424.
- Mason, G. (2005), “Hate Crime and the Image of the Stranger”, *British Journal of Criminology*, 45(6): 837-859.
- Mason-Bish, H. (2010), “Future challenges for hate crime policy: lessons from the past”, in N. Chakraborti (ed.), *Hate Crime: Concepts, Policy, Future Directions*, Devon: Willan Publishing.
- Maxwell, G. (2008), “Crossing cultural boundaries: Implementing restorative justice in international and indigenous contexts”, *Sociology of Crime Law and Deviance*, 11: 81-95.
- Maxwell, G., and Morris, A. (1993), *Families Victims and Culture: Youth Justice in New Zealand*, Wellington: Institute of Criminology, Victoria University of Wellington and Social Policy Agency.
- Maxwell, G. and Morris, A. (2002), “The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People”, in E. Weitekamp and H. Kerner (eds), *Restorative Justice: Theoretical Foundations*, Cullompton, Devon: Willan Publishing.
- Maxwell, G., Robertson, J., Kingi, V., Morris, A. and Cunningham, C., with Lash, B. (2004), *Achieving effective outcomes in youth justice: the full report*, Wellington: Ministry of Social Development.
- McCold, P. (1996), “Restorative Justice and the role of community”, in B. Galoway and J. Hudson (eds), *Restorative Justice: International Perspectives*, Monsey, NY: Criminal Justice Press.
- McCold, P. (2000), “Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model”, *Contemporary Justice Review*, 3: 357-414.

- McCold, P. (2004), "What Is The Role of Community In Restorative Justice Theory And Practice?", in H. Zehr and B. Toews (eds), *Critical Issues in Restorative Justice*, Cullompton, Devon: Willan Publishing.
- McCold, P., and Wachtel, B. (1998), *The Bethlehem Pennsylvania Police Family Group Conferencing Project*, Pipersville: Community Service Foundation.
- McConnell, S., and Swain, J. (2000), "Victim-Offender Mediation with Adolescents Who Commit Hate Crimes" (paper presented at the Annual Conference of the American Psychological Association, Washington DC August 4-8).
- McDevitt, J., Balboni, J., Garcia, L., and Gu, J. (2001), "Consequences for Victims: A Comparison of Bias- and Non-bias-Motivated Assaults", *American Behavioural Scientist*, 45(4): 697-713.
- McGarrell, E., Olivares, K., Crawford, K., and Kroovand, N. (2000), *Returning Justice to the Community: The Indianapolis Restorative Justice Experiment*, Indianapolis: Hudson Institute.
- McGhee, D. (2005), *Intolerant Britain?: hate, citizenship and difference*, New York: Open University Press.
- McGhee, D. (2008), *The End of Multiculturalism? Terrorism, Integration and Human Rights*, Berkshire: Open University Press.
- Merry, P. (2009), "Youth Restorative Disposals in Norfolk" (paper given at the Association of Panel Members Annual Conference, April 7th, 2009).
- Merton, R. (1968), *Social Theory and Social Structure*, New York: Free Press.
- Miers, D., Maguire, M., Goldie, S., Sharpe, K., Hale, C., Netten, A., Uglow, S., Doolin, K., Hallam, A., Enterkin J., and Newburn, T. (2001), *Crime Reduction Research Series paper 9: An Explanatory Evaluation of Restorative Justice Schemes*, London: Home Office.
- MIND (2007), *Another Assault*, London: MIND.

- Ministry of Justice (2010), *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, London: MOJ.
- Moran, L., Skeggs, B., with Tyrer, P., and Corteen, K. (2004a), *Sexuality and the Politics of Violence and Safety*, London: Routledge Taylor & Francis Group.
- Moran, L., Paterson, S., Tor Docherty, T. (2004b), *"Count me in!": A Report on the Bexley and Greenwich Homophobic Crime Survey*, London: Bexley and Greenwich Council.
- Morgan, R., and Newburn, T. (2007), "Youth Justice", in M. Maguire, R. Morgan, and R. Reiner (eds), *Oxford Handbook of Criminology*, Oxford: Oxford University Press.
- Morrison, B. (2007), "Schools and Restorative Justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Morsch, J. (1991), "Problem of Motive in Hate Crimes: The Argument against Presumptions of Racial Motivation", *Journal of Criminal Law & Criminology*, 82(3): 659-689.
- Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Hallam, A., Masters, G., Netten, A., Saunders, R., Sharpe, K., and Uglow, S. (2002), *The Introduction of Referral Orders into the Youth Justice System: Final Report*, London: Home Office.
- Newburn, T., Shiner, M., and Hayman, S. (2004), "Race, Crime and Injustice?: Strip Search and the Treatment of Suspects in Custody", *British Journal of Criminology*, 44(5): 677-694.
- Noakes, L. and Wincup, E. (2004), *Criminological Research: Understanding Qualitative Methods*, London: Sage.
- Noelle, M. (2009), "The Psychological and Social Effects of Antisexual, Antigay, and Antilesbian Violence and Harassment", in P. Iganski (ed.), *Hate Crimes*, Volume Two. London: Praeger.

- O'Brien, M. (2000), "The Macpherson Report and Institutional Racism", in D. Green (ed.), *Institutional Racism and the Police: Fact or Fiction?*, London: Institute for the Study of Civil Society.
- Office for Democratic Institutions and Human Rights (2009), *HATE CRIMES IN THE OSCE REGION – INCIDENTS AND RESPONSES - ANNUAL REPORT FOR 2009*, Warsaw: ODIHR.
- Olsen, W. (2004), "Triangulation in Social Research: Qualitative and Quantitative Can Really be Mixed", in M. Ormskirk (ed.), *Developments in Sociology*, Causeway Press.
- Pavlich, G. (2004), "What Are the Dangers As Well As The Promises Of Community Involvement?", in H. Zehr and B. Toews (eds), *Critical Issues in Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Pepinsky, H. (2008), "Empathy and restoration", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Perry, B. (2001), *In the Name of Hate: Understanding Hate Crimes*, New York: Routledge.
- Perry, B. (2009), "The Sociology of Hate: Theoretical Approaches", in B. Perry (ed.), *Hate Crimes*, Volume One. London: Praeger.
- Phillips, C., and Bowling, B. (2003), "Racism, Ethnicity and Criminology. Developing Minority Perspectives", *British Journal Criminology*, 43: 269-290.
- Phillips, C., and Bowling, B. (2007), "Racism, Ethnicity, Crime and Criminal Justice", in M. Maguire, R. Morgan, and R. Reiner (eds), *Oxford Handbook of Criminology*, Oxford: Oxford University Press.
- Poynting, S., and Noble, G. (2004), *Living with Racism: The experience and reporting by Arab and Arab Muslim Australians of discrimination, abuse and violence since 11 September 2001*, Report to the Human Rights and Equal Opportunity Commission, Australia.

- Quarmby, K. (2008), *Getting away with murder: disabled people's experiences of hate crime in the UK*, London: SCOPE.
- Ray, L., and Smith, D. (2002), "Hate crime, violence and cultures of racism", in P. Iganski (ed.), *The Hate Debate*, London: Profile Books.
- Ray, L., Smith, D., and Wastell, L. (2004), "Shame, Rage and Racist Violence", *British Journal of Criminology*, 44(3): 350-368.
- Raye, B., and Roberts, A. (2008), "Restorative processes", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Reiner, R. (2000), *The Politics of the Police*, Oxford: Oxford: Oxford University Press.
- Restorative Justice Council (2011), *RJC Code of Practice for Trainers and Training Organisations of Restorative Practice*, London: RJC. [accessed at Sept 2011: http://www.restorativejustice.org.uk/resource/rjc_code_of_practice_for_trainers_and_training_organisations_of_restorative_practice_january_2011/]
- Robinson, G., and Shapland, J. (2008), "Reducing Recidivism: A Task for Restorative Justice?", *British Journal of Criminology*, 48(3): 337-358.
- Rowe, M., and Garland, J. (2007), "Police Diversity Training: A Silver Bullet Tarnished?", in M. Rowe (ed.), *Policing Beyond Macpherson*, Cullompton, Devon: Willan Publishing.
- Sawin, J., and Zehr, H. (2007), "The ideas of engagement and empowerment", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Schiff, M. (2007), "Satisfying the needs and interests of stakeholders", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Colledge, E., Dignan, J., Howes, M., Johnstone, J., Robinson, G., and Sorsby, A. (2006), *Restorative justice in practice: the*

- second report from the evaluation of three schemes*, Sheffield: The University of Sheffield Centre for Criminological Research.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson G., and Sorsby, A. (2007), *Restorative justice: the views of victims and offenders: The third report from the evaluation of three schemes*, London: Ministry of Justice Research.
- Sharpe, S. (2007), "The idea of reparation", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Sheffield, C. (1995), "Hate Violence", in P. Rothenberg (ed.), *Race, Class and Gender in the United States*. New York: St. Martin's Press.
- Shenk, A. (2001), "Victim-Offender Mediation: The Road to Repairing Hate Crime Injustice", *Ohio State Journal on Dispute Resolution*, 17: 185-217.
- Sherman, L., and Strang, H. (2007), *Restorative Justice: The Evidence*, London: The Smith Institute.
- Sherman, L., Strang, H., Barnes, G., and Newbury-Birch, D. (2006), *Preliminary Analysis of Northumbria Restorative Justice Experiments*, Lee Center of Criminology, Philadelphia Pennsylvania, unpublished cited in Sherman, L., and Strang, H. (2007) *Restorative Justice: The Evidence*, London: The Smith Institute.
- Sherman, L., Strang, H., and Woods, J. (2000), *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra: Centre for Restorative Justice.
- Sherman, L., Strang, H., Angel, C., Woods, D., Barnes, G., Bennet, S., and Inkpen, N. (2005), "Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized Controlled Trials", *Journal of Experimental Criminology*, 1(3): 367-395.
- Sibbitt, R. (1997), *The perpetrators of racial harassment and racial violence*, Home Office Research Study 176, London: Home Office.

- Smith, K. (2006), "Dissolving the Divide: Cross-Racial Communication in the Restorative Justice Process", *Dalhousie Journal of Legal Studies*, 15: 168-203.
- Spalek, B. (2006), *Crime Victims: Theory, Policy and Practice*, Hampshire: Palgrave Macmillan.
- Spalek, B. (2008), *Communities, Identities and Crime*, Bristol: The Policy Press.
- Stanko, E. (2001), "Re-conceptualising the Policing of Hatred: Confessions and Worrying Dilemmas of a Consultant", *Law and Critique*, 12: 309-329.
- Strang, H. (2002), *Repair or Revenge: Victims and Restorative Justice*, Oxford: Oxford University Press.
- Strang, H., Barnes, G., Braithwaite, J., and Sherman, L. (1999), *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra: Australian National University.
- Strang, H., and Braithwaite, B. (2002), *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.
- Strang, H., and Sherman, L., with Angel, C., Woods, D., Bennett, S., Newbury-Birch, D., and Inkpen, N. (2006), "Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis", *Journal of Social Issues*, 62: 281-306.
- Strang, H., and Sherman, L. (2003), "Repairing the Harm: Victims and Restorative Justice", *Utah Law Review*, 15(1): 15-42.
- Stubbs, J. (1997), "Shame, defiance and violence against women: A critical analysis of 'communitarian' conferencing", in S. Cook, and J. Bessant (eds), *Women's encounters with violence: Australian experiences*, Thousand Oaks: Sage.
- Stubbs, J. (2002), "Domestic violence and women's safety: Feminist challenges to restorative justice", in H. Strang, and J. Braithwaite (eds), *Restorative justice and family violence*, Cambridge: Cambridge University Press.

- Stubbs, J. (2007), "Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice", *Criminology and Criminal Justice*, 7(2): 169-187.
- Sullivan, A. (1999), "What's So Bad About Hate: An unsentimental reflection on schoolyard shootings, Matthew Shepard, genocide and the easy consensus on hate crimes", *New York Times*, September 26, [accessed at Sept 11 <http://www.nytimes.com/1999/09/26/magazine/what-s-so-bad-about-hate.html?pagewanted=8>]
- Sullivan, D., and Tifft, L. (2001), *Restorative Justice: Healing the Foundations of Our Everyday Lives*, Monsey: Willow Tree Press.
- Sullivan, D., and Tifft, L. (eds) (2008a), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Sullivan, D., and Tifft, L. (2008b), "Section III: The Needs of Victims and the Healing Process", in D. Sullivan, and L. Tifft (eds), *Handbook of Restorative Justice: A Global Perspective*, Abington: Routledge.
- Sykes, G., and Matza, D. (1957), "Techniques of Neutralization: A Theory of Delinquency", *American Sociological Review*, 22: 664-670.
- Talbot, J. (2010), *Seen and Heard: Supporting vulnerable children in the youth justice system*, London: Prison Reform Trust.
- Tjaden, P., and Thoennes, N. (1998), "Stalking in America: Findings from the National Violence Against Women Survey", *Research in Brief*, National Institute of Justice and Centers for Disease Control Prevention.
- Tomsen, S. (2009), *Violence, Prejudice and Sexuality*, London & New York: Routledge Press.

- Triggs, S. (2005), *New Zealand Court-Referred Restorative Justice Pilot: Evaluation*, Wellington: New Zealand Ministry of Justice
- Umbreit, M., and Coates, R. (1992), "The Impact of Mediating Victim Offender Conflict: An Analysis of Programs in Three States", *Juvenile & Family Court Journal*, 43(1): 21-28.
- Umbreit, M., and Coates, R. (1993), "Cross-Site Analysis of Victim-Offender Mediation in Four States", *Crime & Delinquency*, 39(4): 565-585.
- Umbreit, M., and Coates, R. (2000), *Multicultural Implications of Restorative Justice: Potential Pitfalls and Dangers*, Center for Restorative Justice & Peacemaking, University of Minnesota.
- Umbreit, M., Coates, R., and Roberts, A. (2000), "The Impact of Victim-Offender Mediation: A Cross-National Perspective", *Mediation Quarterly*, 17(3): 215-229.
- Umbreit, M., Coates, R., and Vos, B. (2001), *Juvenile Victim Offender Mediation in Six Oregon Counties: Final Report*, Oregon: Dispute Resolutions Commission.
- Umbreit, M., Coates, R., and Vos, B. (2002), *Community Peacemaking Project: Responding to Hate Crimes, Hate Incidents, Intolerance, and Violence Through Restorative Justice Dialogue*, Minnesota: Center for Restorative Justice.
- Van Ness, D. (2007), "Prisons and restorative justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Victim Support (2006), *Crime & prejudice: The support needs of victims of hate crime: a research report*, London: Victim Support.
- Walgrave, L. (2002), "From community to dominion: in search of social values for restorative justice", in E. Weitekamp and H. Kerner (eds), *Restorative Justice: Theoretical Foundations*, Cullompton, Devon: Willan Publishing.

- Walgrave, L. (2007), "Integrating criminal justice and restorative justice", in G. Johnstone, and D. Van Ness (eds), *Handbook of Restorative Justice*, Cullompton, Devon: Willan Publishing.
- Walker, A., Flatley, J., Kershaw., C and Moon, D. (eds) (2009), *Crime in England and Wales 2008/09, Volume 1, Findings from the British Crime Survey and Police Recorded Crime*, London: Home Office.
- Walters, M. (2005), "Hate crimes in Australia: Introducing punishment enhancers", *Criminal Law Journal*, 29(4): 201-216.
- Walters, M. (2006), "Changing the Criminal Law to Combat Racially Motivated Violence", *University Technology Sydney Law Review*, 8: 66-86.
- Walters, M. (2011), "A General Theories of Hate Crime? Strain, Doing Difference and Self Control", *Critical Criminology*, 19 (4): 331-350.
- Walters, M., and Hoyle, C. (2010), "Healing harms and engendering tolerance: the promise of restorative justice for hate crime", in N. Chakraborti (ed.), *Hate Crime: Concepts, Policy, Future Directions*, Devon: Willan Publishing.
- Walters, M., and Hoyle, C. (2011), "Exploring the Everyday World of Hate Victimization through Community Mediation", *International Review of Victimology* (special issue, in press).
- Weinstein, J. (1992), "First Amendment Challenges to Hate Crime Legislation: Where's the Speech?", *Criminal Justice Ethics*, 11(2): 6-20.
- Weisburg, R. (2003), "Restorative Justice and the Danger of 'Community'", *Utah Law Review*, 1: 343-374.
- Whitlock, K. (2001), *In a time of broken bones: A call to dialogue on hate violence and the limitations of hate crimes legislation*, Philadelphia: The American Friends Service Committee, Community Relations Unit.

- Wilcox, A., Hoyle, C., and Young, R. (2005), "Are Randomised Controlled Trials Really the 'Gold Standard' in Restorative Justice Research?", *British Journal of Community Justice*, 3(2): 39-49.
- Witte, R. (1996), *Racist violence and the state: a comparative analysis of Britain, France and the Netherlands*, London: Longman.
- Wolfe, L., and Copeland, L. (1994), "Violence against women as bias-motivated hate crime: defining the issues in the USA", in M. Davies (ed.), *Women and Violence*, London: Zed Books.
- Wundersitz, J. and Hetzel, S. (1996), "Family Conferencing for Young Offenders: The South Australian Experience", in J. Hudson, A. Morris, G. Maxwell, and B. Galaway (eds), *Family Group Conferences: Perspectives on Policy and Practice*, Sydney: Federation Press and Criminal Justice Press.
- Young, J. (1999), *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*, London: Sage.
- Zehr, H. (1990), *Changing Lenses: A New Focus for Crime and Justice*, Scottdale: Herald Press.
- Zehr, H., and Mika, H. (1998), "Fundamental Concepts of Restorative Justice", *Contemporary Justice Review*, 1: 47-55.