

Can Criminal Justice Systems Harness Restorative Power?

**The Impact of Legislative Mandate and Policy Design
on the Implementation of Restorative Justice Practices**

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ABSTRACT

Restorative justice is regarded in modern criminal justice systems as one approach to address some of the shortcomings of conventional justice models. Many governments have begun to legislate for restorative policy and practice, and to take a more direct role in the development of restorative justice programs. Given this reality, this thesis asks how the introduction of restorative justice legislation affects the operation of restorative justice programs. The answer to that question is guided both by academic considerations of restorative justice practice and by policy design scholarship. I apply the resulting theoretical framework to three jurisdictions—New Zealand, New South Wales, and Vermont—in which restorative justice is comprehensively integrated via legislative acts into the criminal justice system.

I use a textual analysis of the mandating statute and an evaluation of the restorative justice mechanism to build an understanding of how legislative decisions can shape the restorative landscape within a criminal justice system. The textual analysis is driven by the work of restorative justice researchers who consider how legislative provisions for restorative practices may be incorporated into existing justice institutions and what restorative justice components should be included in legislative mandates. The analysis also relies on an understanding, fueled by policy design scholars, of how various policy tools can affect policy implementation. In this thesis, one notable area of policy design is the level of discretion that is granted to local implementors; I apply the statute typology created by Ingram and Schneider (1990) that categorizes legislative acts according to that discretion.

The evaluation of each jurisdiction's restorative justice program is based on metrics for restorative success from Bazemore and Schiff (2005) and Marsh and McConnell's (2012) designation of programmatic, process, and political policy success. I employ a combination of qualitative and quantitative data, collecting longitudinal statistics from each jurisdiction's criminal justice system and conducting interviews with restorative justice practitioners in each location.

Overall, this analysis reveals that the design of restorative justice policy requires extensive negotiation. It is difficult to balance all the dimensions of a restorative justice process and meet the needs of all involved parties. When integrating restorative programs into modern criminal justice, the challenge becomes amplified, and jurisdictions must navigate occasionally conflicting priorities and account for procedural tradeoffs.

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INTRODUCTION

Restorative justice is a method of conflict resolution by which parties work together to address the source of contention and attend to harm caused by the dispute, therein *restoring* the relationships and well-being of the people involved. This approach has manifested in criminal justice systems as a potential response to criminal offences. Because modern criminal justice operates as an interconnected series of state institutions, the intersection between restorative justice and criminal justice has become an area of state regulation. This thesis explores aspects of the state's interest in restorative justice by examining the way three different jurisdictions have implemented restorative justice programs into their criminal justice systems. Investigating restorative justice practices in New Zealand, New South Wales (Australia), and Vermont (USA), the thesis will explore varying approaches, identify areas where state policies differ, and evaluate the comparative effectiveness of the different approaches.

My central research question asks how a mandating statute—one that compels the justice sector to employ restorative processes—affects the practice of restorative justice. I answer that question through an analysis of six pieces of restorative justice legislation that have been passed in New Zealand, New South Wales, and Vermont, as well as an evaluation of the restorative justice practices used in those jurisdictions. I select these jurisdictions because, in each location, the enacted statutes established a “comprehensive legislative framework” for the practice of restorative justice. As discussed more extensively in Chapter 1, a comprehensive legislative framework is a categorization used to describe the level of statutory support allocated to the restorative justice mechanism; it refers to the highest level of support that a statute can provide. I focus on instances of the most extensive support because it creates a direct relationship between the legislation and corresponding restorative practice, offering more opportunities to probe the nature of that relationship.

The legislative analysis and evaluation in this thesis employ two criteria: 1) to what extent the legislation meets the requirements of restorative justice, and 2) how effectively it designs and implements the desired justice policy. In evaluating a statutory mechanism's restorative capacity, the thesis will draw on leading scholarly treatments of the regulation and operationalization of restorative justice. In discussing a statute's potential efficacy, the thesis borrows the language and theories of policy design research. After completing an assessment of the statutory provisions, the thesis evaluates the restorative justice mechanisms, using both restorative expectations and

policy design expectations as metrics for success. In measuring the success of the programs, I rely on three sources of data: existing reviews of the restorative justice mechanisms, a longitudinal appraisal of the jurisdictions' specific restorative justice statistics and general criminal justice indicators, and qualitative findings from interviews with local restorative justice practitioners. This evaluation provides insights into how well restorative justice programs achieve their goals as part of modern criminal justice systems, and how legislation can shape restorative justice mechanisms.

The research methodology adopted here builds on an understanding of restorative justice put forward by Kathleen Daly (2016). She contends that restorative justice should be perceived as one potential justice mechanism—a “response, process, activity, measure, or practice”—under the umbrella of “innovative justice” (Daly 2016:14, 18). Therefore, all justice mechanisms can be placed somewhere on a spectrum from “conventional to innovative,” (Daly 2016:18). Daly (2016:21) concludes by describing restorative justice as “a *contemporary justice mechanism* to address crime, disputes, and bounded community conflict.” The mechanism is designed to engage the individuals who were affected by the crime and “can take place at all phases of the criminal process...as well as for offending or conflicts not reported to the police” (Daly 2016:21) She also adds some procedural parameters, offering that “specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict” (Daly 2016:21). This characterization is rather limited in scope, but Daly (2016) maintains that this limitation is the only way to introduce accuracy and empirical vigour to the field of restorative justice; further, it aligns with how restorative justice is being implemented at present.

In Chapter 1, I provide an overview of the relevant literature and introduce the theoretical frameworks that will guide my own research methodology. This discussion informs how I develop the above-mentioned metrics of both restorative and policy success. For restorative metrics, I look to researchers who explore how restorative justice can be integrated into existing justice systems, what features of restorative justice processes need to be regulated, and how restorative values interact with procedural standardization. Additionally, I borrow extensively from Bazemore and Schiff's (2005) descriptions of expected restorative outcomes and how those translate into measurable restorative results. For policy metrics, I turn to an area of political science that focuses on how states design their policy mandates through legislative activity, including the way policy tools and rules can affect implementation. I also introduce

Ingram and Schneider's (1990) categorization of statutes, which characterizes policy-informing statutes according to the level of discretion they allocate to local implementers. Further, I rely on Marsh and McConnell's (2012) consideration of policy success, which attempts to tackle the subjectivity of success by breaking it into multiple types.

In Chapter 2, I give context for how restorative justice operates in New Zealand, New South Wales, and Vermont. I do this by providing information about the demographic information, the socio-political realities, and the operation of the criminal justice institutions in each jurisdiction. I also introduce the legislative acts that established restorative justice practices, and the basic function of the restorative justice mechanisms. Finally, I discuss hypothetical criminal cases and examine how those cases might progress through the justice mechanisms in each jurisdiction. In Chapter 3, I perform a textual analysis of the six statutes in my case study. Drawing on the scholarly literature previewed earlier, Chapter 3 offers preliminary thoughts on the quality of the restorative design reflected in the chosen statutes. This includes an overture to the implications of the following statutory features: the precision with which the restorative procedure is designed; the role that the restorative justice mechanism plays in the wider system; and the amount of authority granted to local implementers. In Chapter 4, I survey the existing reviews of the restorative justice mechanisms in each jurisdiction. This survey paints an initial picture of each mechanism's relative success and introduces the ways in which restorative goals and policy goals can sometimes reinforce each other and sometimes conflict with each other. The findings presented in this chapter also help to fill some of the gaps in my own data. And finally, in Chapter 5, I conduct my own evaluation of the efficacy of the three statutory schemes and reflect critically about the relationship between restorative justice and legislation. This reflection reveals that the institutionalization of restorative justice is a site of ongoing compromise, and that jurisdictions have significant decisions to make about which elements of restorative justice to prioritize and how to integrate those priorities into existing criminal justice procedures.

I. THE CURRENT STATE OF THE RESTORATIVE JUSTICE DISCUSSION

In this chapter, I review the literature that influenced the direction of my research. After a brief overview of the history of restorative justice, I will discuss the practical ways in which restorative justice programs have been thought by scholars to achieve their goals. Then, because my research question demands a way to measure the success of restorative justice, I propose a set of tools to test, both quantitatively and qualitatively, whether the programs accomplish their goals. Given my focus on legislative regulation and implementation of restorative justice, I next explore the potential advantages and disadvantages associated with top-down restorative justice directives and identify some of the likely features to be included in restorative justice legislation.

Finally, the chapter will broaden the scholarly discussion by examining the relationship between law and social change, and current policy design research. This broadened account is meant to bridge the gap between what is known about restorative justice legislation and what is known about restorative justice practices. In understanding what some other areas of political science have to say about the connection between a policy mandate and actual policy implementation, I attempt to provide some additional tools for the evaluation of statutorily designed restorative justice practices.

History of Restorative Justice

The goals of restorative justice did not figure in the growth and development of modern criminal justice systems. Instead, criminal justice systems—comprised of institutions aimed at law enforcement, criminal adjudication, and the management of criminal offenders—have relied on a conventional justice approach that perceives crime as a violation against the state, deserving of punishment, and therefore gives the state substantial control of the system's institutions (Zehr 2005, Daly 2016). In the book *Restoring Justice*, Daniel Van Ness and Karen Heertderks Strong (2011) chart the rise of this state-centric model in Europe, as efforts to consolidate power led rulers to seize control of the legal process. This tool allowed the state to dictate social norms, establish supremacy over individuals, and supplant previous institutions of dispute resolution such as the church (Van Ness and Strong 2011:7). As the state further institutionalized its role in the justice system, criminal behaviour was framed as a defiance of state authority. And in search of a method to both regain authority and deter future defiance, the state turned to retribution as the primary consequence for guilty offenders (Van Ness and Strong 2011:8). This model of

criminal justice and its capacity for far-reaching social control will appear familiar to many Westernized countries, and remains, in many ways, the modern response to crime: a series of state-controlled instruments (arrest, prosecution, adjudication and trial, and sentencing) which are meant to determine culpability and deliver appropriate punishment typically through fines and imprisonment (Bazemore and Umbreit 1995:302, Daly 2016:15).

Restorative justice is often framed as an alternative to this conventional approach (Zehr 2005, Bazemore and Umbreit 1995:302, Lemley 2001:45, Bazemore and Schiff 2005:28, Daly 2016:15). Restorative justice centres the focus of the legal process on the violations against the individual victims and the community involved, rather than the state. Through a restorative lens, criminal behaviour is viewed as doing harm, and restorative justice seeks to repair the harm. Therefore, in a justice system informed by restorative practices, the response to crime becomes an effort to understand the relationship between all relevant stakeholders (victims, offenders, and the community), to define the harm inflicted, and to determine how best to repair this harm (Zehr 2004:306, Van Ness and Strong 2015:44, Umbreit and Armour 2011:3).

Many restorative justice advocates trace a repair-focused, community-based crime response back to traditional, indigenous populations, from Māori iwi in New Zealand to First Nations in Canada (Van Ness and Strong 2015:7). From there, it's difficult to track the movement and development of restorative values and the use of restorative justice in criminal justice settings. Restorative justice, for the bulk of its history, has been a micro-level practice, dependent on local communities and bottom-up social movements calling for more healing responses to crime. However, in more recent years, criminal justice systems have attempted to harness restorative mechanisms for their potentially reformatory power. This is in response to growing discontent with conventional justice, which is blamed for high incarceration rates, skyrocketing prison costs, and the disenfranchisement of both victims and offenders who encounter the system. Restorative justice practices have, as a result, proliferated throughout the world. Many of these restorative programs are coordinated by the state's criminal justice system, or at the very least, cooperate with state-controlled justice institutions (Zehr 2004). By some estimates, around 100 countries use restorative elements in their criminal justice systems, and while those efforts may be experimental and localized, they speak to the growing role that restorative justice is playing internationally in the way countries address crime (Van Ness 2005).

During this period of growth, four procedures have risen to the top as the most common, modern practices of restorative justice. First, victim-offender mediation (VOM)

features a meeting between an offender who has already accepted responsibility for the crime, and a victim who has agreed to a facilitated discussion (Bazemore and Umbreit 2001:2). In some instances, victims and offenders pass messages through a third-party in what is known as a “shuttle” mediation. Alternatively, a face-to-face meeting is designed to take place in a “safe, structured setting” and often includes the presence of additional support persons for both the victim and the offender, such as friends and family (Umbreit and Armour 2011:19, Bazemore and Umbreit 2001:2).

Second, group conferences are similar to VOMs, but are explicitly designed to include support persons, as well as other representatives from the effected community (Umbreit and Armour 2011:19). In both models, proceedings are intended to give the victim an opportunity to describe the physical, emotional, and financial impact of the crime, to allow offenders to explain their own circumstances, and to answer any lingering questions that might exist about the incident (Bazemore and Umbreit 2001:2). Both mediation and conferencing attempt to create a plan for reparation that all involved parties find amenable and that directly addresses the concerns of the victim while protecting the rights of the offender (Bazemore and Umbreit 2001:5).

Third, circle sentencing is a “holistic reintegrative strategy” that takes place post-conviction and gathers the victims, offenders, their families and friends, community members, and the involved criminal justice actors like police officers, lawyers, social workers, and judges (Bazemore and Umbreit 2001:6). The participants work together to reach agreement on a sentencing plan, often with a great deal of specificity in outlining how all circle members—not just the offender—will commit to the successful completion of the plan. The explicit goal is to engage the *entire* community in conflict resolution and build accountable networks of support for both victims and offenders.

Fourth, community reparative boards feature well-trained community members who meet with convicted offenders in a public proceeding during which they develop a sentencing proposal; once the offender agrees to certain sanctions, they will document their progress with the board. Though not required, victims are encouraged to attend these public meetings and lend their voice to a constructive confrontation of the offender (Bazemore and Umbreit 2001:4-6).

Given this knowledge of what constitutes modern restorative justice mechanisms, there remain theoretical questions about *how* scholars expect restorative justice to respond effectively

to crime. Accordingly, the following section details the academic discussion of what social and criminological processes take place during a restorative justice procedure, and what outcomes those procedures should produce. Based on this vision of restorative outcomes, it becomes possible to formulate evaluative measures for gauging the success of various restorative programs. Having probative success measures will be of use in later chapters as I appraise the restorative efforts of the jurisdictions that I am investigating.

Measuring and Evaluating Restorative Justice

Many experts have explained why we might anticipate restorative processes to produce certain outcomes and, based on those expectations, have suggested metrics with which we might evaluate restorative justice. Perhaps the most comprehensive effort at connecting restorative values, practices and outcomes comes from Bazemore and Schiff (2005). They start by borrowing Van Ness and Strong's (2015) three guiding principles of restorative justice: repairing harm, stakeholder involvement, and community/government role transformation (Bazemore and Schiff 2005:89; citing an earlier edition of *Restoring Justice*). From there, they identify the common goals or process outcomes that are associated with each principle, and then specify restorative practices that facilitate those outcomes (Bazemore and Schiff 2005:45-46).

The first principle of repairing harm manifests in practices that focus on amends-making, which include outcomes like the creation of reparative agreements, the acceptance of responsibility by an offender, and the opportunity for victims to describe their experiences and voice their needs (Bazemore and Schiff 2005:53). Harm can also be repaired through outcomes that build relationships, such as the provision of support opportunities for both the victim and the offender, and specifications that give participants the responsibility of following up and assisting with the completion of the reparative agreement (Bazemore and Schiff 2005:56).

The second principle of stakeholder involvement concerns the restorative opportunities for victim-offender exchange and reintegrative shaming (Bazemore and Schiff 2005:89). Victim-offender exchange engages the two parties closest to a criminal offence in a dialogue and produces outcomes such as reducing the fear experienced by a victim, fostering a sense of relief, vindicating a victim's experience, encouraging an offender's sense of remorse, and inducing empathy in both parties (Bazemore and Schiff 2005:60). Reintegrative shaming is a practice strategy advanced by John Braithwaite that further explains and contributes to the transformative power of restoration (Bazemore and Schiff 2005:61). The strategy is meant to

promote feelings of shame as potentially powerful motivators for behavioural change among offenders. When shame is harnessed in a restorative practice setting and used to foster constructive disapproval from the other participants, it can effectively convince offenders to denounce criminal behaviour and to fear the disgrace and disappointment that reoffending would engender (Bazemore and Schiff 2005:61). Reintegrative shaming also challenges participants to use empathetic response and positive reinforcement as methods for reintegrating the offender into the community (Bazemore and Schiff 2005:64). The presumed outcome is long-term impact on crime risk factors, and therefore reduced recidivism.

Community role transformation, the third restorative principle, is embodied in the processes of professional role change, norm affirmation, and skill building (Bazemore and Schiff 2005:89). Professional role change requires that justice system professionals and restorative justice facilitators shift their focus from the provision of “expert” justice services to the maximization of community involvement, resulting in a restorative outcome of increased community participation (Bazemore and Schiff 2005:73). Norm affirmation is an opportunity for community members to educate offenders regarding community values and to reclaim community order from the disturbance often caused by crime, which allows for the outcome of increased sense of safety and relief among participants (Bazemore and Schiff 2005:80). Finally, skill building occurs when restorative mechanisms provide participants with lessons in restoration and conflict resolution. As community members gain more experience with restorative justice and the associated skillset, the assumed outcome is the increased use of restorative justice (Bazemore and Schiff 2005:88).

Armed with a better understanding of possible restorative justice outcomes, it becomes easier to contextualize the choices that scholars make when selecting measurable process outputs. Several meta-analyses of restorative justice program evaluations offer assemblies of both qualitative and quantitative variables that have been used to measure restorative success, all of which can be grouped by the three guiding principles above. Variables that have been used as indicators for repairing harms include: rates of restitution and outcome plan compliance (Presser and Van Voorhis 2002, Latimer, Dowden, and Muse 2005); the rates at which apologies are included in outcome plans (Poulson 2003); and the perceived fairness and adequacy of outcome plans (Presser and Van Voorhis 2002, Poulson 2003). Indicators for stakeholder involvement are also based on perceptions of the program participants and include opinions related to satisfaction levels with various aspects of the process and whether participants felt as though

their stories were heard (Presser and Van Voorhis 2002, Poulson 2003, Latimer, et al. 2005). The aspirational outcome of long-term changes in an offender's behaviour also lead most evaluations to measure the recidivism levels of participating offenders (Presser and Van Voorhis 2002, Latimer, et al. 2005, Strang, Sherman, Mayo-Wilson, Woods, and Ariel 2013). Finally, indicators for community role transformation include: measures of community well-being such as amount of volunteerism and crime levels (Presser and Van Voorhis 2002); feelings of safety and concern levels regarding revictimization among participants (Presser and Van Voorhis 2002, Poulson 2003); and robustness of the restorative justice mechanism, measured by the number of participants and the frequency with which people use the restorative service (Bazemore and Schiff 2005).

Many of these measures rely on the collection of participant perceptions, which is typically done through a survey administered after the restorative process (Poulson 2003, Latimer, et al. 2005). This type of qualitative data requires that a researcher analyse a program's own recording of follow-up with participants, or commission their own survey to collect the opinions of past and present participants (Presser and Van Voorhis 2002, Poulson 2003, Latimer, et al. 2005). Researchers also commonly evaluate programs by conducting interviews with participants and practitioners, which have the capacity to provide further information on the restorative quality of a program (Presser and Van Voorhis 2002, Poulson 2003, Latimer, et al. 2005). Finally, scholars frequently measure the impact of restorative justice interventions on reoffending behaviour (Latimer, et al. 2005, Strang, et al. 2013).

Most of these efforts to measure restorative justice's success have been applied to individual restorative service providers, rather than taking the broader view of how well restorative justice is practiced across a particular jurisdiction. This thesis seeks to fill this gap in the literature. This broader approach seems important given the increasing integration of restorative justice into modern criminal justice systems, and the associated need to measure the effectiveness of restorative justice at the level of government that exercises the relevant criminal justice authority. As jurisdictions grapple with the best way to standardize their restorative practices and implement their restorative justice mechanisms, there is opportunity for restorative justice scholars to produce some helpful answers. Indeed, as the next section reveals, some scholars have begun to evaluate the potential pros and cons of these jurisdiction-wide standardization efforts.

Legislating for Restorative Justice

The possible standardization of restorative justice mechanisms highlights important questions about how those mechanisms are introduced into and regulated by a jurisdiction's criminal justice system. Statutory mandate is not the only way to develop restorative justice practices, but several jurisdictions have relied on their legislatures to craft restorative procedures. This has led researchers to consider, in three primary ways, how legislation may affect restorative justice. First, there is a debate about whether restorative justice practices are best-served by legislative regulation or whether overly restrictive mandates may harm the grassroots, innovative, and community-oriented culture of past restorative developments. Second, scholars have explored what, exactly, in restorative justice processes requires statutory consideration and what the "ideal" statutes might contain. Third, there have been some attempts at surveying the current legislative landscape and analysing the content of existing restorative justice statutes.

Scholars disagree as to whether restorative justice benefits from legislative mandate. Although they cannot easily be identified as "for" and "against" restorative justice legislation, many experts have expressed anxieties about what could be lost if restorative justice is formalized inappropriately (Braithwaite 2002:565, Aertsen, Daems, and Robert 2006, Hudson 2007:62). For example, Barbara Hudson (2007:62) draws a distinction between two types of institutionalization: "universalization" in which restorative justice becomes the primary frame through which policies and processes are designed, and "incorporation" where restorative justice is merely co-opted by the existing penal system and moulded to fit the needs of conventional justice. While universalization is a laudable goal, Hudson (2007) argues that it's more likely that the institutionalization of restorative efforts will happen somewhere on a spectrum between universality and total co-optation. Hudson's (2007) argument concurs with my understanding that restorative justice is one justice mechanism rather than a coherent system, meaning that restoration is positioned to become one component of criminal justice rather than a dominant policy frame.

So, what are the threats associated with restorative justice being integrated into conventional criminal justice practices? Put in the broadest terms, most apprehensions stem from the fear that restorative justice processes will be implemented without restorative justice values, and that attempts at legislating and standardizing restorative practices will not properly account for the true intention and reformative impulses behind the restorative justice movement

(Braithwaite 2002, Roche 2003, Reimund 2005:691, Hudson 2007, Leverton 2008:527, Van Ness and Strong 2015:48). This concern grows out of the perception that restorative justice arose from an organic, bottom-up social movement, and gains both legitimacy and efficacy from some of the informal, *ad hoc* approaches that have arisen in the absence of mandated top-down processes (Roche 2003). Restorative processes are intentionally decentralized to provide space for all voices to participate in the conversation, and it is often considered best practice to avoid scripted interactions or preordained outcomes because restoration is meant to be responsive in real-time to the exchanges between victims and offenders (Braithwaite 2002:565-566, Hudson 2007:60-61). These aspirations produce a method of justice that is indirect and potentially unpredictable, and with the pressures on legal systems to be efficient and cost-effective, some advocates are concerned that those systems will demand more “wieldy” restorative instruments (Reimund 2005:691, Hudson 2007, Leverton 2008:526). Standardizing all restorative justice mechanisms into a “meeting,” an “apology,” a “compensatory measure,” and some degree of “sanction” hinders the mechanism’s ability to comply with restorative justice’s expectation of discursiveness (Hudson 2007:63). Furthermore, it curbs the possibility of future innovation and disincentivizes creativity in the search for reparative outcomes (Braithwaite 2002:565, Leverton 2008:525). Recognizing the legitimacy of the concern that restorative justice may become over-routinized, my own research will examine how various legislative approaches may impose or alleviate such a problem. This will be more fully discussed in my own evaluations.

Institutionalization of the practice may also lead to demands for accredited restorative justice training. If a jurisdiction develops extensive training schemes meant to teach mediators and facilitators how to run restorative justice programs, licensure or certification practices may inadvertently disqualify some of the local innovators who have spearheaded restorative initiatives but may not have access to, or interest in, these Westernized accreditation requirements (Braithwaite 2002:565). This problem looms large in the thinking of those restorative justice experts who view indigenous practitioners as the original sources of restorative thought (Braithwaite 2002:565). My own research further considers the potential manifestation of this concern in Chapter 5.

However, the same authors who caution against the dangers of institutionalization have also acknowledged the need for some level of oversight; standardization may provide guidance and resources for the successful implementation of restorative justice (Van Ness and Nolan 1998, Groenhuijsen 2000, Braithwaite 2002, Leverton 2008, Lee 2011). In a well-publicized

incident in Canberra, the participants in a group conference agreed that the offender—a young man who had admitted to shoplifting—should be required to stand outside the store wearing a t-shirt that said, “I am a thief.” Many commentators have decried the humiliating, stigmatizing outcome and declared it antithetical to restorative goals (Braithwaite 2002:567, Leverton 2008:505). This “rogue” restorative outcome, among other examples of bad practice, highlights the need for oversight and regulation (Braithwaite 2002:565, Leverton 2008:507).

Not all scholars who join the call for formalized standards believe that those standards should be set forth in a legislative directive. Instead, some scholars have argued for the promulgation of best-practice guidelines. Others urge the dissemination of universal and fundamental values designed to demarcate the sphere of acceptable restorative practices. These guidelines and values, per scholarly suggestions, could be enforced by non-mandatory state and international declarations such as a United Nations Resolution or by the rules of private associations (Braithwaite 2002:571, Leverton 2008:507-508).

Despite the support for these alternative regulatory mechanisms, plenty of experts are willing to reflect on the opportunities offered by regulation that is sourced in legislation. Building on the assumption that legislation serves as the primary governing tool for conventional criminal justice systems, these scholars believe that the institutionalization of restorative justice will likely come through the adoption of statutes (Van Ness and Nolan 1998:55, Lee 2011:537). Christopher Lee (2011:537) attempts to use a handful of existing statutes to bolster the implication that legislation can be central to the effective implementation of restorative justice. He points to the Children, Young Persons and Their Families Act 1989 in New Zealand, which specified the practice of family group conferences, as an indication that legislation can effectively help to initiate and prioritize restorative justice. Lee also cites the *United Nations Handbook on Restorative Justice Programmes*, which asserts that statutory requirements allow restorative justice to be more authoritatively introduced into existing systems and to be more frequently used, as evidence that legal authority avoids the “marginalization” and “underutilization” of restorative justice (Lee 2011:537). Further, Lee (2011:537) indicates that legislation can empower those attempting to implement restorative programs. He uses the Minnesota Community Correctional Services Act as an example that facilitates restorative practices. The Act requires that all county prosecutors establish a pretrial diversion program for offenders and includes restorative justice as an approved procedure for fulfilling this requirement. Finally, Lee claims, relying on the United Nations Handbook, that legislation is

essential for the creation of the appropriate safeguards that protect both victims' and offenders' rights (Lee 2011:537).

Marc Groenhuijsen (2000:5-6) urges the importance of legislation from a different perspective, arguing that legislation prevents restorative practices from lying "dormant"; legislation can obligate legal decisionmakers to "give a reasoned opinion" on why they've bypassed restorative justice options in certain cases, lending even more viability to restorative justice. Groenhuijsen (2000:7) also argues that well-written legislation creates certainty and uniformity in restorative practices, explaining that we need to be able to guarantee equal protection and equal treatment under the law. He promotes statutory authority that is designed to reduce "territorial differentiations and discrepancies" and provide clarity through the restorative process (Groenhuijsen 2000:7).

Granting the potential power of legislation, scholars have wrestled with the question of what elements to include in the proposed statute, or what I will sometimes call, the "ideal statute." Most scholars agree that statutes need to address facilitator selection, training, and certification, the rules surrounding participation, participant safety and confidentiality, and legal safeguards such as right to counsel and a defined scope for what role restorative justice processes and outcomes can play in further criminal proceedings (Groenhuijsen 2000, Leverton 2008, Lee 2011). On top of that, it is generally accepted that statutes should set out the basic parameters for the restorative justice mechanism that will be in use: selecting the preferred practice; defining the entities that will make referrals and those that will execute referrals; specifying at what stage in the criminal justice process restorative justice can be implemented; defining the role that restorative agreements will play in the legal process; and identifying the party responsible for oversight of successful completion of any agreements (Van Ness and Nolan 1998, Groenhuijsen 2000, Lee 2011).

The path taken at each of these decision points will produce an assortment of restorative justice mechanisms, operating with the conventional justice system in distinct ways. Many scholars offer various analytic models meant to distinguish between the types of restorative justice that develop based on these implementation decisions. For the most part, these models embody three options for how restorative justice can be integrated into conventional justice systems (Groenhuijsen 2000:3-4, Lee 2011:558). In the first option, restorative justice operates "as part of" or as a "supplementary modification to" conventional justice (Groenhuijsen 2000:3, Lee 2011:558). This model sees restorative justice becoming one component of the conventional

justice process; for example, a remorseful offender who's case is eligible will still go through the typical stages of arrest, charging, conviction, sentencing, and sanctioning, but at some point, they will also engage in a restorative program designed to accrue the cited benefits of reparative interactions and, depending on the outcome, to potentially influence the ultimate court-ordered consequence (Groenhuijsen 2000:3, Lee 2011:558). In the second option, restorative justice replaces the conventional justice system or operates as a fully autonomous alternative (Groenhuijsen 2000:4, Lee 2011:558). Here, restorative justice would function as a coherent response to crime, either displacing conventional criminal procedures or leaving such procedures intact and diverting some cases for full adjudication by restorative justice processes (Groenhuijsen 2000:3, Lee 2011:558). In the third option, restorative justice runs parallel to the conventional justice system (Groenhuijsen 2000:4, Lee 2011:558). This approach would allow the conventional justice system to run its existing course and would introduce restorative justice as a "complementary device" used to repair harms that arise during the conventional adjudication of the case; complementary designers assume that many restorative initiatives would occur after the conclusion of all criminal proceedings (Groenhuijsen 2000:3, Lee 2011:558). This method of sorting and analysing restorative justice implementation will be useful as I go on to assess the legislative context of my case study jurisdictions.

Another useful consideration of the legislative design of restorative justice comes from the handful of authors who have begun reviewing the contents of statutes and evaluating how legislatures are currently contending with restorative values. Umbreit, et al. (2005:291-294) divide levels of statutory support into five, distinct types: a comprehensive legislative framework, which addresses specific requirements for programs, including their oversight, facilitator training, funding, costs, confidentiality, eligibility, and liability; a specific statutory provision, which provides clear authority for restorative justice programs but offers fewer detailed requirements; a basic statutory provision, which presents restorative justice as an option without specifying any portion of the programmatic details; a statute that includes elements of restorative justice, which reflects restorative justice principles such as balance and reparation but does not offer any known restorative justice practice; and no existing restorative justice statute. For reasons that I explain in the next chapter, I have limited my case studies to focus on statutes that provide a comprehensive legislative framework, although there is certainly a need for further exploration at all levels of statutory support.

These efforts at categorizing and understanding statutory provisions for restorative justice are undoubtedly important. However, it is unclear how much of this research on restorative justice legislation is grounded in an understanding of actual legislative processes and the relationship between laws, policy design, and program implementation. Moving forward, I will examine some of these broader, theoretical domains and then conclude the chapter by explaining how I will incorporate the restorative justice conversation into these frameworks.

Contemplating Law, Social Change, and Policy Design

Restorative justice will continue to receive statutory consideration. The sphere of modern criminal justice system is highly regulated, and the institutions that manage criminal justice functions are largely defined by legislation; the incorporation of restorative justice naturally undergoes a similar treatment. However, despite the arguments in favour of restorative legislation that were introduced in the previous section, a full accounting of restorative justice componentry in the criminal justice process does not intrinsically produce more effective and consistent restorative outcomes. That conclusion relies on an overly strong association between enacted law and resultant justice practices. There are several reasons to question the efficacy of a legislative mandate as a vehicle for introducing widespread changes into existing criminal justice systems.

For starters, the passage of laws can be a messy process characterized by compromise and occasional inefficiency. This constrains legislatures and limits their ability to draft fully specific statutory programs, despite what scholars might have recommended for inclusion in well-crafted restorative justice legislation. Furthermore, very few authors have explained why they believe that legislation might have an effective impact on the implementation of restorative justice. There is limited evidence to justify the assumption that, once a legislature ratifies a statute, all elements of that statute are swiftly, successfully put into practice according to the precise letter of the law. Thus, we must filter our expectations about the legislation of restorative justice through a working knowledge of how policy design and policy implementation work.

The literature regarding law and social change is primarily concerned with the question of which comes first: can law change the way a society functions, or can law only supply the enforcement authority to reinforce social changes that have already taken place (Evan 1966, Dror 1968, Vago 2009)? In the first instance, law takes on an active modification role and in the second instance, law serves a passive codification function (Evan 1966). It follows from this

conceptualization that a law's ultimate role is largely dependent on the level of resistance that the law meets (Evan 1966). Accordingly, as I consider how effective a law might be at imposing restorative justice values and practices on a conventional justice system, it will be important to assess whether such directives are met with resistance, and if the legislative mandate is being used to *initiate* restorative justice or to *ratify* existing practices.

The question of resistance is particularly salient when we consider the specific challenges associated with criminal justice reform. "Workgroup theory" describes the patterned behaviour in criminal justice institutions, involving repeat actors like judges, prosecutors, and defence attorneys, as well as recurring procedures like plea bargaining and trial practices (Casper 1984). The engrained culture makes justice workgroups particularly resistant to reformative efforts imposed by third parties (Casper 1984, Miller and Hefner 2015). Attempts at modifying conventional justice with restorative practices via legislative mandate will, I expect, be more effective if those efforts have buy-in from the existing workgroup or find ways to bypass the workgroup's potential reticence. I will examine this hypothesis through interviews with current restorative justice practitioners and their experiences trying to navigate and leverage workgroup support.

There are also many lessons from the policy design literature to apply to this question of legislative efficacy. Policy design scholars investigate the relationship between the selection of policy instruments and the resulting success of implementation efforts. In truth, legislation is just one component or "sub-process" of policy design (Hogwood and Gunn 1984:24). And policy design is only one step in an extensive, multi-staged effort by the government and various adjacent actors to enact portions of their agendas (Hogwood and Gunn 1984). Restorative justice would undoubtedly benefit from an analysis that encompassed more than the single sub-process of legislation and stretched both before and after the policy design phase. In this thesis, however, I will establish a framework that uses policy design theories to connect legislative decisions regarding restorative justice to the actions and practices that characterize a jurisdiction's restorative efforts.

Policy design research is largely concerned with identifying and categorizing the policy instruments available to designers and connecting those possible choices to various dimensions of policy success (Ingram and Schneider 1990, May 1993, Marsh and McConnell 2012, van der Heijden 2013). Looking specifically at scholars who have used statutes as their primary unit of analysis, there are a few proposed ways to classify the elements of statutory design. Jeroen van

der Heijden (2013) suggests a typology of policy programs that distinguishes between their content characteristics (the actual programmatic proposal) and their process characteristics (the constellation of actors and legislative procedures used to create, ratify, and operate the program). Ingram and Schneider (1990) also discuss statutes in terms of the tools, rules, assumptions, and theories that connect policy agents with a target population for the purpose of set policy objectives. Tools are the motivators of implementation and include legislative efforts to create incentives, to build capacity, and to grant authority; rules are the procedural determinations of a piece of legislation and include considerations like timing, evaluation requirements, and conditions for participation (Ingram and Schneider 1990).

Ingram and Schneider (1990) go on to create a catalogue of statute type that is based on the level of discretion afforded to policy designers and implementers. Strong statutes are those where discretion is almost entirely retained by statutory designers, such that resource allocation, tools, rules, and objectives are fully delineated by the statute, decision points are minimized, and implementers have no power to add values. Wilsonian statutes are ones where the discretion over goal specificity remains in the hands of designers, but administrative agencies are granted control of the organizational structures, rules, and tools used to achieve the statutorily-defined objectives. Grass roots statutes yield all discretion regarding policy logic to local implementers and are essentially authority-granting vehicles that give these local agents the power to act. And finally, support building statutes are designed to promote conflict resolution and policy negotiation, meaning that implementers have most of the control over goals and rules while designers use the statute to influence organizational assignments and patterns of participation to maximize coalition-building (Ingram and Schneider 1990).

The policy design literature also offers methods for measuring policy success and connecting that success to design elements. As David Marsh and Allan McConnell (2012) explain, there are three types of policy success: programmatic success, process success, and political success. Programmatic success can be measured against operational baselines (“implemented as per objectives”), outcome baselines (achieved the intended objectives), resource efficiency baselines, and public interest baselines (existence of a public benefit) (Marsh and McConnell 2012:571). Process success is indicated by the legitimacy of the policy design process, by the legislation’s ratification and amendment history, and by the legislation’s sustainability and level of coalition support (Marsh and McConnell 2012:571). Finally, political success is most often measured by the level of policy popularity and ability of the government in

power to wield a legislative victory as a policy success (Marsh and McConnell 2012:571). However, Marsh and McConnell (2012) also caution that success is a contested notion: competing constituencies will experience success differently, changes in cultural and political factors will alter perceptions of success, and it can be difficult to quantify where the threshold for adequate achievement exists on the spectrum from total failure to perfect success. Therefore, discussions of policy success must acknowledge the subjectivity of the findings and place declarations of achievement on an appropriately graduated scale.

One way through the muddy waters of success measurements is to substitute the subjective assessment of “success” for a potentially more objective output indicator, such as the level of implementation effort. Instead of trying to ascertain the efficacy of policy work, experts who use this method attempt to understand the relationship between statutory characteristics and the corresponding *extent* of policy work. Peter May (1993) identifies three areas of statute features that can affect levels of implementation effort. The first are features that are aimed explicitly at endorsing implementation; this include commitment-building provisions such as sanctions that disincentivize non-participation, as well as capacity-building provisions like technical assistance, funding, education, and training (May 1993). Second, there are statutory controls aimed at increasing goal adherence, which can range in levels of coerciveness and use both carrots and sticks to encourage agency behaviour (May 1993). Third, statutes can display varying levels of coherence; increased goal clarity is often seen as making the path to implementation easier (May 1993). Finally, May (1993) explains that pre-existing bureaucratic and political factors will have a bearing on administrative agencies’ organization, commitment levels, and capacity, which creates conditions beyond the control of legislation that can still have an impact on implementation efforts. Concerns about these exogenous factors permeate the policy design literature, and researchers caution against inference errors and the over-attribution of various policy outcomes to certain policy design aspects (May 1993, Marsh and McConnell 2012).

Conclusion

The broadest principles of restorative justice are largely recognized in the literature as the reparation of harm through relational interactions between those closest to the crime, namely the offender, the victim, and the community. In the application of those principles to modern justice practices, I conceive of restorative justice as one innovative mechanism being introduced

into criminal justice systems. I borrow my expectations for possible restorative justice outcomes from Bazemore and Schiff (2005) who create a list of potential process results, including amends making, relationship building, victim-offender exchange, reintegrative shaming, professional role change, norm affirmation, and skill building. In contemplating how the restorative justice mechanisms and their outcomes are affected by legislation, I am primarily concerned with where restorative justice is being incorporated into the criminal justice system and what elements of restorative justice practices need to be accounted for in the relevant legislation. Additionally, I consider some of the mitigating factors that might limit the efficacy of restorative justice legislation, such as the complex componentry of the criminal justice system and the reticence of the criminal justice “workgroup.” And finally, I incorporate into the conversation about restorative justice legislation a more generalized catalogue of policy design tools and statutory types.

Taken together, I will use the methods of policy design analysis that I have presented to investigate and classify restorative justice legislation. This approach weighs restorative statutory features against typical implementation indicators *and* against the above-mentioned expectations regarding restorative outcomes and measures for restorative success. I will supplement these lessons with evaluative methodologies, gathering relevant data for a substantial time period both before and after a restorative justice statute is passed, so as to determine the extent to which that passage is an inflection point for change. The theories about social change and policy design discussed above, along with the attempt at long-term policy evaluation, lend a more robust answer to the question of how legislative consideration may affect restorative justice. In the next chapter, I introduce the three jurisdictions at the centre of my research, and explore the contextual details that may have an impact on the policy design process that I am positing as having influential control over the resulting restorative justice legislation and implemented practices.

2. CONTEXT FOR RESTORATIVE JUSTICE IN NEW ZEALAND, NEW SOUTH WALES, AND VERMONT

In this chapter, I introduce the three case studies that comprise the basis of my research. I start by explaining what, precisely, the cases are and why and how I selected them. Then, I provide an overview of the relevant characteristics governing each case, looking at the political systems, law-making bodies, and criminal justice systems that shape the legislative and restorative context. I also briefly describe the restorative justice mechanism at work, such as what type of interaction the mechanism facilitates. This contextual information provides important cues when, in later chapters, I analyse the passage of restorative justice legislation and the development of restorative justice practices in New Zealand, New South Wales, and Vermont. Finally, I introduce two, hypothetical criminal cases—one of a juvenile offender and one of an adult offender—that will provide real world examples of how such cases might progress through the justice system and through the pertinent restorative justice practice in each jurisdiction.

Methodology

I propose to answer the question of how restorative justice legislation affects restorative justice practice by investigating three case studies of restorative justice implementation. These three cases are New Zealand, the Australian territory of New South Wales, and the American state of Vermont. Within each jurisdiction, I've looked at two statutes pertaining to their restorative practices. In New Zealand, I examined the creation of Family Group Conferences by the Oranga Tamariki Act 1989 and pre-sentencing restorative justice conferences for adult offenders mandated by the Sentencing Act 2002. In New South Wales, I examined the Young Offenders Act 1997 and the development of Youth Justice Conferences, as well as the Forum Sentencing Intervention Program instituted through Regulations to the Criminal Procedure Act 1986. Finally, in Vermont, I examined General Assembly Acts 148 and 115, which codified Community Reparative Boards and Community Justice Centres, respectively.

I selected these jurisdictions because they afforded examples of what Umbreit, et al. (2005) call a comprehensive legislative framework, meaning that statutory support for restorative justice addresses specific programmatic requirements including oversight, funding, costs, confidentiality, eligibility, and liability. These three instances of extensive statutory content provide a rich tapestry for analysis, and because the restorative practices are explicitly accounted for, the legislation provides a restorative vision that can serve as a comparison point for the

ultimate, restorative reality. These jurisdictions also have relatively well-maintained justice sector records, longer established restorative statutes which aided in longitudinal evaluation, and extensive supplementary information from both academic and government sources regarding their restorative justice processes.

Once I had selected New Zealand, New South Wales, and Vermont as the jurisdictions for my case study, I looked to find the statutes that contributed most significantly to the legislative framework for restorative practices. All three jurisdictions have several statutes that could be considered restorative in nature, such as acts that concern victims' rights or offender rehabilitation. However, I wanted to find the supporting mandate for the jurisdiction's primary restorative programs. There is a fair amount of academic agreement that the statutes I've chosen are of central importance to the associated practices.ⁱ

It is worth noting other legislative considerations of restorative justice in both New Zealand and New South Wales. First, New Zealand's restorative commitment in its criminal justice system is further bolstered by elements of the Victims' Rights Act 2002, the Parole Act 2002, and the Corrections Act 2004.ⁱⁱ All of these statutes include specific mentions of restorative justice, and the last two incorporate restorative justice as a guiding principle for the parole and the corrections systems. However, I do not incorporate these Acts into my case study because they do not explicitly contribute to New Zealand's legislative consideration of an offender's entry point into a restorative justice process.

Second, there is another regulation amendment to the Criminal Procedure Act 1986 in New South Wales that establishes a circle sentencing program (Criminal Procedure Amendment (Circle Sentencing Intervention Program) Regulation 2003). However, the circle sentencing intervention is a restorative mechanism designed to specifically target the overrepresentation of the Aboriginal population in the justice system; as such, only Aboriginal offenders are eligible for this program. While this certainly makes circle sentencing an interesting program, evaluation of the program would call for the consideration of unique social and political factors. The requisite detailed understanding—both theoretical and factual—of Australian race relations and Aboriginal communities would have considerably broadened the scope of this research, thereby making the circle sentencing statute a poor choice for inclusion.

Having made my selections, I next offer a more complete picture of the cultural and political conditions that govern each jurisdiction. First, I provide an overview of the jurisdiction's political system and population demographics. Then, I explain the sources of

legislative authority and the process of law-making, distinguishing between parliamentary and presidential systems, and between bicameral and unicameral legislatures, among other jurisdictional details. These clarifications regarding aspects of the legislative milieu speak to the systemic components that may facilitate or obstruct the passage of legislation. For example, it is a truism that parliamentary systems have an easier time making laws than their presidential system counterparts, and that within parliamentarism, dominant or single party governments will also walk a simpler legislative road than multiparty coalitions. Political science correlates this difference to the number of “veto players”; more veto players create more decision points and require the assembly of more sources of policy support, thereby impeding the legislative process (Tsebelis 1995). This information regarding the relative ease of legislative action provides important context for later considerations of policy design decisions and statutory instruments. As explained above, I will be using Ingram and Schneider’s (1990) typology of statutes and policy componentry to categorize the scrutinized legislation, such as whether the statute is strong, Wilsonian, grass roots, or support building. Accordingly, the limitations surrounding the kind of statute that each jurisdiction can enact is relevant to any conclusions regarding ultimate statutory content.

I also summarize the institutions and processes that define each jurisdiction’s criminal justice system and youth justice system. But, because Vermont limits its restorative justice mechanism to adult offenders, and because Vermont’s youth justice system is dictated in substantive ways by nationwide policy rather than the state’s restorative justice legislation, I do not explore the youth justice processes in that jurisdiction. In all three cases, the criminal justice system divides the three, central tasks of criminal justice—law enforcement, criminal adjudication, and the management of criminal offenders—between distinct organizations. This division of responsibilities and the expectation of interagency cooperation are common features of modern criminal justice systems. All three jurisdictions also have a separate justice stream for juvenile offenders but allow for more serious juvenile cases to be transferred from the juvenile justice system to the criminal justice system. Because of this multiorganizational approach and the frequent overlap in criminal justice duties, one cannot always precisely define the roles of the relevant agencies. For example, police are typically tasked with the investigation of crimes, but imagine a case in which they require equipment that is maintained and operated by other organizations like the Coast Guard, or request situational assistance from experts such as providers of youth and family services; further, prosecutors and defence lawyers will often

conduct their own investigation once a criminal incident has progressed to the litigation phase. These are just a handful of illustrations of the ways in which criminal justice tasks can be distributed among several agencies. Because various sector agents often share overlapping criminal justice responsibilities, the classification of their duties that follow may be somewhat oversimplified.

Finally, I outline the restorative justice mechanisms that have been employed in each jurisdiction. This, coupled with the description of how two hypothetical cases might interact with the justice system and progress through the restorative justice mechanism, provides a good sense of how restorative justice practices are being incorporated into the existing criminal procedures. Overall, this collection of information allows for a comparison of the cultural factors, the legislative parameters, and the justice institutions that affect the way restorative justice is designed and implemented in each jurisdiction.

New Zealand

New Zealand is a country in Oceania with a population of about 4.8 million, made up of a majority of white Europeans, with an indigenous Māori population representing the largest minority group and comprising just under 15% of the country (World Population Review 2018a). Legislative powers rest with a democratically elected, unicameral Parliament.

Parliamentary general elections must be called at least every three years, and since 1996, have operated under a mixed-member proportional system of voting. Laws in New Zealand come from English common law, some statutes enacted by the United Kingdom Parliament before 1947, and the statutes of the Parliament of New Zealand. New Zealand does not have a codified, entrenched constitution and Parliament is supreme, exercising almost unfettered sovereignty (New Zealand Government 2017a).

New Zealand's restorative justice legislation is sourced by the third avenue of legal authority: Acts of Parliament. The law-making process in New Zealand begins when a bill is introduced, either as part of the residing Government's legislative program, as a policy effort from an individual member of Parliament, or as an issue put forward by local authorities or private groups/individuals and taken to Parliament by an MP (the restorative justice acts were a part of the legislative program) (New Zealand Parliament 2016). Once a bill has been made public, it goes through an initial debate, followed by a vote regarding whether the bill should be read a first time (New Zealand Parliament 2016). If the bill does not receive majority support in

Parliament, then the bill makes no further legislative progress; if Parliament assents to the first reading, then the bill is referred to select committee (New Zealand Parliament 2016). Select committees typically call for public submissions and use this collected information to recommend amendments to the bill and make a report to Parliament (New Zealand Parliament 2016). After the committee's report, the bill proceeds to its second reading, during which members stage their main debate of the bill's principles (New Zealand Parliament 2016). Again, Parliament votes about whether to halt the progress of the bill, and if they assent to a second reading, the bill moves to the committee of the whole House of Parliament where further amending occurs (New Zealand Parliament 2016). The final parliamentary stage is the third reading and one last debate, after which a majority vote in the House means the bill has been passed by Parliament (New Zealand Parliament 2016). The bill is signed into law and becomes an Act of Parliament once it is given royal assent (New Zealand Parliament 2016).

Another notable aspect of New Zealand's parliamentary-made law is born of the country's use of the Westminster model (New Zealand Government 2017a). Because New Zealand's parliamentary system has cultural practices that prevent the regular use of an executive veto and that favour party discipline and the party vote over conscience voting, there are fewer veto players who can halt the legislative progress of a policy that has support from the majority party (Tsebelis 1995). The potential for additional veto players was introduced with the adoption of MMP in 1996, given that, since the institutional change, New Zealand Parliament has largely governed through coalitions and minority governments rather than outright majorities (Atkinson 2015). But prior to that, when New Zealand still relied on first past the post voting, it was essentially a two-party system and the winning party would have an absolute majority in the House, making the Government's legislative programs easier to enact (Atkinson 2015).

New Zealand's criminal code is largely delineated by the Crimes Act 1961 and the Summary Offences Act 1981 (District Court of New Zealand n.d.). These acts describe the behaviours that New Zealand considers criminal or summary offences. For the purposes of monitoring and enforcing these definitions of criminality, New Zealand Police operates as the country's primary law enforcement agency and manages several offices focused on the prevention and investigation of crime. When a crime is committed, police officers are responsible for collecting evidence, compiling a summary of facts, identifying the alleged offender, and then working in consultation with other justice sector agencies to determine whether to proceed with an arrest and what charges should be laid. Both young and adult

offenders are subject to this criminal code, and to investigation by police; however, the age of criminal responsibility in New Zealand is ten, and the country distinguishes between children, aged 10-13, and young people, aged 14-17, in determining appropriate justice sector responses (New Zealand Government 2017b).

New Zealand citizens and residents who progress through the criminal justice process enjoy the rights specified in the Bill of Rights Act 1990. These rights appropriately restrict the behaviours of the police, the Crown Solicitors, and the courts with regards to the investigation, arrest, charging, and prosecution of individuals. In accordance with these rights, alleged offenders—both juvenile and adult—are entitled to their own lawyers for the purposes of mounting a legal defence (Useful Criminal Legislation n.d.). In the criminal justice system, defence lawyers can be privately contracted or be appointed from the Public Defence Service. The Ministry of Justice houses the Public Defence Service and provides additional support services to the country's criminal courts. In the juvenile justice system, young offenders can select their own defence lawyer or can have the Youth Court appoint a Youth Advocate; the list of lawyers who are suitable Youth Advocate appointees is maintained by the court (New Zealand Ministry of Justice 2018).

Once criminal charges are in effect, the process for administering those charges within the criminal justice system is designated by the Criminal Procedure Act 2011, which divides alleged criminal behaviour into four offence categories (New Zealand Ministry of Justice 2017b). These categorizations distinguish between the seriousness of the offence and the appropriate sentencing options, and determine which courts and which trial procedures are suitable (New Zealand Ministry of Justice 2017b). The available courts for initiating trial procedures are the District Court and the High Court, while the available trial options are judge-alone trials and jury trials (New Zealand Ministry of Justice 2017b). Those seeking review of decisions made by the lower courts may appeal first to the Court of Appeal and then to the Supreme Court, the last stop in a hierarchical system for adjudicating the appellate process. The prosecution of all 'category 4' criminal offences and any case that proceeds to jury trial is handled by the Crown Law Office. This office relies both on in-house criminal teams that represent the Crown in the Court of Appeal and the Supreme Court, and on a Crown Solicitor Network that contracts with private legal practitioners who are appointed as Crown Solicitors for individual court districts (New Zealand Ministry of Justice 2018). Meanwhile, for offences that fall in categories 1 through 3, prosecution on behalf of the government is administered by the Police Prosecution Service.

If an alleged offender pleads guilty or is found guilty, they are sentenced in accordance with the Sentencing Act 2002 and the imposed sentence is supervised and managed by the Department of Corrections. The available criminal sentences in New Zealand are hierarchical and judges are instructed to impose the least restrictive outcome, as deemed appropriate by the circumstances of the case. The hierarchy of sentences is as follows: discharging an offender with or without conviction; fine or reparation; community-based sentences of community work and supervision; community-based sentences of intensive supervision and community detention; home detention; and imprisonment (Sentencing Act 2002).

In cases with a guilty offender, and where there is a direct, identified victim, New Zealand's restorative justice mechanism may be an option. The Sentencing Act 2002 is partially responsible for the inclusion of restorative justice within the criminal justice system and although the precise mechanism is not outlined within the Act, New Zealand relies most extensively on pre-sentence restorative justice conferencing. These conferences are targeted at perpetrators of serious crime who do not contest the relevant statement of facts regarding the offence (Bowen and Boyack 2003, New Zealand Ministry of Justice 2017). For a conference to proceed, victims *must* be willing to attend (New Zealand Ministry of Justice 2017). The Sentencing Act 2002 provides guidelines to determine whether a case is eligible for restorative justice; once eligibility is confirmed, the judge *must* adjourn trial proceedings prior to sentencing and make a referral to a restorative justice provider (Sentencing Act 2002). This mandated referral comes not from the Act as passed in 2002, but from an amendment in 2014, a legislative change that will be discussed in more detail in Chapter 3.

Following a referral, the restorative justice coordinator will ensure that both the victim and the offender are willing to participate, and then will assign a facilitator to the case (New Zealand Ministry of Justice 2017). Facilitators arrange pre-conference meetings with both the victim and the offender. At the conference, participants discuss the relevant offence and attempt to produce a restorative outcome plan. After the conference, facilitators report the conference proceedings to the court, along with an update of an offender's progress regarding the agreed outcome plan (New Zealand Ministry of Justice 2017). These restorative justice conferencing results are then considered by judges once the case returns to court for sentencing.

The process for the juvenile justice system, established in the Oranga Tamariki Act 2017 (previously the Children, Youth, and their Families Act 1989), is quite distinct from the one just described for adult offenders. Children are very rarely prosecuted in New Zealand, and all

efforts are made to divert this age group of offenders from formal legal procedures. Diversionary options are largely operated by the police and include written warnings, formal cautions, among other discretionary responses like restitution, curfew, an apology to the victim, and school-related requirements (Youth Court of New Zealand n.d.). Meanwhile, young people see their criminal cases referred to the Youth Court, although the use of diversionary options remains one of the governing principles for this age range as well. Youth Court prosecutions are conducted by the Police Prosecution Service and there are specially trained officials embedded in all relevant justice agencies for managing the particularities of the juvenile justice procedures, such as Youth Aid officers on the police force, Youth Advocates in the Youth Court, and social workers who work for Oranga Tamariki (the Ministry for Children) (Youth Court of New Zealand n.d.). Furthermore, Oranga Tamariki is tasked with several oversight roles and administrative responsibilities, including the management and supervision of Youth Court sentences.

The Oranga Tamariki Act 1989 also requires that youth justice professionals activate the system's restorative justice mechanism as soon as it becomes viable and appropriate. This mechanism is called a Family Group Conference (FGC) and is a meeting between a young offender who has admitted to or does not deny the commission of a crime, their advocate, their family members, relevant justice system professionals such as the investigating police officer, and/or a probation officer, and other prominent community members, as well as the victim and their support persons should the victim elect to participate (Maxwell and Morris 2006). Conferences can occur at any stage of the youth justice process, including prior to arrest, prior to trial, and prior to sentencing. At all stages, it is meant to be an information-gathering process that helps the young offender, their family group, and other conference participants make decisions about how best to proceed. For example, once police make the decision to arrest a young offender, they are instructed to refer any offender who admits guilt to an FGC (Oranga Tamariki Act 1989). Such a referral results in an intention-to-charge conference, which tasks participants with determining whether the young person should be prosecuted (McElrea 1998). Such a determination comes with a presumption in favour of diversion from court and formal justice proceedings, and in cases where it is agreed to, the outcome plan becomes a fully diversionary program (McElrea 1998).

The conversation that takes place during an FGC is focused in part on empowering the young offender to understand and accept responsibility for the harm caused by their actions, and

participants work together to develop an outcome plan that enforces that accountability and allows the young offender to repair the identified harm. Conferences are assigned to Youth Justice Coordinators who facilitate the dialogue and report any final plans, recommendations, and decisions to the Youth Court (Maxwell and Morris 1993, Maxwell, et al. 2004). There are no actions that conference participants are *required* to include in outcome plans, but common options are apologies, restitution, community service, and mandated treatment, counselling, or training (Maxwell and Morris 1993).

New South Wales

New South Wales is a territory in Australia with a population of almost 7.5 million, a majority of whom come from a white European background. Sydney, Australia's most populous city, is located in New South Wales and accounts for almost two-thirds of the territory's inhabitants (Australian Bureau of Statistics 2018). New South Wales operates within Australia's federal system of parliamentary government, but also retains territorial governmental responsibilities wherein legislative powers are vested with two houses of Parliament, the upper house called the Legislative Council and the lower house called the Legislative Assembly (Parliament of New South Wales n.d.). The Government of New South Wales is formed from the Legislative Assembly. Members of the Legislative Assembly serve terms of up to four years and are chosen in general elections from single-member districts using optional preferential voting while Council members are elected for two terms, serving up to eight years in state-wide, at-large elections (Parliament of New South Wales n.d.). Laws are sourced from Australian common law (largely similar to English common law), from the Australian Constitution, and from statute law passed by both the Commonwealth and the New South Wales Parliament (Parliament of New South Wales n.d.).

New South Wales' restorative justice legislation was enacted through Acts of the New South Wales Parliament. The vocabulary of the law-making process in New South Wales will resemble that of New Zealand as it is also a Westminster model, but there are a few substantive differences. First, there are two Houses, which means that bills can originate in both houses and must pass both houses before they can become law (Parliament of New South Wales n.d.). Additionally, bills are introduced at their first reading, debated at their second reading, and, if assented to, moved into the amending phase within the originating House (called being "considered in detail" in the Legislative Assembly while the Committee of the Whole deals with

the bill's details in the Legislative Council) (Parliament of New South Wales n.d.). Bills that are assented to at their third and final reading are passed by that House and move to consideration by the other House where they will go through the same stages of three readings and an amending period. Once approved, bills return to the House of origin, which must agree to amendments before sending the bills to the Governor for assent. If the House of origin fails to agree to the amendments, bills can at times be subjected to a joint sitting of the two Houses, and/or a public referendum (Parliament of New South Wales n.d.).

New South Wales operates in a political system slightly more populated with veto players than New Zealand; its bicameral legislature adds the most obvious procedural cog. Not only does the existence of a second House add steps to the legislative process, but the Legislative Council has also been a locus of minority party rule since it became subjected to direct elections in 1978. Neither the government nor the largest opposition party has tended to hold a majority in the Legislative Council, making it a site of coalition-building and shifting allegiances (Page 1990). Although this may add institutional friction to the process of making Acts of Parliament, New South Wales works around some of these constraints through a reliance on subordinate legislation. These are statutory rules that do not have to be passed by Parliament but can operate as laws made under the authority of an existing Act. All statutory rules are published and then tabled in both Houses where either the Legislative Assembly or the Legislative Council can disallow them but where neither body subjects them to the scrutiny of three readings and an amendment process (Parliament of New South Wales n.d.). The use of subordinate legislation is significant in this case because the forum sentencing intervention program was established through a regulation to an Act of Parliament rather than through an Act itself.

The criminal code in New South Wales is established by the Crimes Act 1900, the Summary Offences Act 1988, and the Drug Misuse and Trafficking Act 1985. The territory is also subject to the federal criminal code, set out by the Crimes Act 1914 and the Criminal Code Act 1995 (Hoyles, et al. 2018). However, except for a few unique offences that feature contested borders such as aviation crime, cybercrime, terrorism, human trafficking, among others, breaches of both the federal code and the territory code are managed by the New South Wales criminal and juvenile justice systems. The New South Wales Police Force is the primary law enforcement agency, and they are, once again, the first point of contact with the justice system, monitoring crime and reported offences, investigating criminal incidents, and initiating justice proceedings through arrests and applications for charges. New South Wales established ten as

the age of criminal responsibility and distinguishes between young offenders aged 10 to 13 years who are presumed incapable of crime unless proven beyond a reasonable doubt to understand the moral implications of their behaviour, and young offenders aged 14 to 17 years who are more freely subjected to proceedings in the juvenile justice system (Australian Institute of Criminology 2005).

Once criminal charges are in effect, the prosecution and adjudication of cases take place in accordance with the Criminal Procedure Act 1986. For summary offences, which are more minor and can only carry a maximum prison sentence of two years, the criminal process is confined to the territory's local courts, overseen by magistrates, prosecuted by police prosecutors, and jury trials are not available (Bureau of Crime Statistics and Research 1987). Meanwhile, for serious, indictable offences, the process begins with a committal hearing in which local court magistrates determine whether there is sufficient evidence to progress a criminal charge to trial. At this point, the case can be dismissed, plead straight to the sentencing phase, or committed for a jury trial in the District or Supreme Courts (Bureau of Crime Statistics and Research 1987). For jury trials, crown prosecutors conduct the proceedings on behalf of the Director of Public Prosecutions (DPP), an independent government agency that has, at present, eighty-four barristers appointed to this prosecutorial role (Bureau of Crime Statistics and Research 1987). On the other side, offenders have the right to be represented by their own defence lawyer; for offenders who cannot afford their own representation, they can get a lawyer from Legal Aid New South Wales for less serious criminal charges or from the Public Defenders Service for offenders appearing before a jury trial (Bureau of Crime Statistics and Research 1987). Legal Aid is an independent network of lawyers with a board and an organizational structure designed by the Attorney General in the Department of Justice (DOJ), while the Public Defenders Services is fully housed within the DOJ.

Offenders found guilty have the option to appeal the verdict or their imposed sentence. Those whose cases were adjudicated by a local court appeal the outcome to the District Court, while offenders who faced jury trials in the higher courts appeal those decisions to the Court of Criminal Appeal, a special division of the Supreme Court (Bureau of Crime Statistics and Research 2017). When it comes to the available sentencing options in New South Wales, the courts distinguish between custodial and non-custodial sentences, both of which are managed by Corrective Services NSW. The custodial options include imprisonment, intensive correction order, and home detention; meanwhile, non-custodial alternatives include a referral to

attend education or rehabilitation, a community service order, a good behaviour bond, a driving disqualification, or a fine or monetary order (Hoyle, et al. 2018).

Restorative justice options come into play when an offender has been found guilty or admitted guilt and is likely going to serve a sentence of imprisonment for the offence. In those instances, an offender might receive a court order for a forum sentencing suitability assessment. The Forum Sentencing Intervention program was introduced through a 2005 regulation to the Criminal Procedures Act 1986. The resulting mechanism is a conferencing process wherein the offender, the offender's support persons, the victim, the victim's support persons, and other relevant parties have a facilitated dialogue regarding the offence and attempt to formulate a plan of action for the offender that addresses the criminal incident at hand. Operations team employees within the Department of Justice review and manage referrals from the court while facilitators are expected to carry out the pre-conference suitability assessments, contact all participants, and mediate the interactions. As in the case of adult pre-sentence conferencing in New Zealand, victims must be willing to participate in order for a forum sentencing conference to proceed. The primary objective of the conference is to produce a draft intervention plan to present to the referring court (Criminal Procedure Amendment (Community Conference Intervention Program) Regulation 2005). Draft intervention plans, once approved by the presiding court, are implemented and monitored, and satisfactory completion of that plan results in an adjournment of proceedings for the offence in question (Criminal Procedure Amendment (Community Conference Intervention Program) Regulation 2005).

The parallel system designed for juvenile offenders features distinct procedures. The Young Offenders Act 1997 delineates the bulk of these, which centre most prominently around a diversionary scheme operated by the NSW Police Force. The primary police official making determinations about the trajectory of youth cases is the Specialist Youth Officer (SYO), a role created by the Young Offenders Act and tasked with advising police, making determinations, and verifying juvenile charges (Young Offenders Act 1997). If police officers opt out of either formal or informal diversion, juvenile cases are referred by SYOs to the DPP for adjudication in the Children's Court. The court process at this stage resembles the hearings taking place in the local courts, with a magistrate presiding, a police prosecutor litigating the proceedings on behalf of the government, and the young offender exercising a right to representation (Children's Court of NSW 2016). If the alleged young offender pleads guilty or is found guilty, their resulting sentence is managed by Juvenile Justice, a sub-division of the Department of Justice. Juvenile

Justice operates six Juvenile Justice centres to accommodate young offenders with custodial sentences, and thirty-five Juvenile Justice community offices which administrate community-based interventions (NSW Justice 2018).

One of the diversionary options in New South Wales is the jurisdiction's restorative justice mechanism, Youth Justice Conferences (YJC). New South Wales arrays its diversion tools into a hierarchy with warnings as the least formal response, cautions as a middle ground, and conferencing as the most serious. One notable aspect of the YJC is that it is dependent on a much more restricted set of eligibility criteria when compared with the New Zealand model. YJCs are designed for offenders who committed summary offences, or indictable offences that can be dealt with summarily, meaning that conferencing referrals are confined to cases of less serious offending and are not widely and mandatorily employed throughout the juvenile justice system as they are in New Zealand (Young Offenders Act 1997). This restricted eligibility creates several, additional decision points prior to the convening of a conference, and requires extensive coordination between various justice system agents.

YJCs are overseen by conference conveners and are built around a facilitated meeting between the young offender, their family, relevant justice sector agents, and affected parties. The primary objective of a conference is to reach agreement on an outcome plan which can include but is not limited to an oral or written apology, reparations to the victim or the community, participation in an appropriate training, counselling, or treatment program, and actions directed towards the offender's reintegration (Young Offenders Act 1997). After the conference, a conference administrator is tasked with monitoring the devised outcome plan (Young Offenders Act 1997). These administrators are expected to provide written notice to the referring agency regarding the satisfactory completion of an outcome plan, as well as to report any failures or shortcomings in the offender's compliance with the plan (Young Offenders Act 1997). Upon successful completion of an outcome plan, no further proceedings can be instituted against the young offender for the offence(s) in question; meanwhile, reported failures result in the case being returned to the referring agency who then assumes responsibility for decisions about further interventions (Young Offenders Act 1997).

Vermont

Vermont, the third case study, is a state in New England, a region in the north-eastern United States of America. The state's population is just over 600,000 and about 95% of the population

is white (World Population Review 2018b). Vermont is a part of the federal government of the United States, and has a bicameral state legislature made up of a lower house called the Vermont House of Representatives and an upper house called the Vermont Senate. Representatives and senators both serve two-year terms; representatives are elected from both single and two-member districts while Senators are elected using thirteen multi-member districts (State of Vermont 2018c). Vermont's use of multi-member districts is unique in the United States and makes it one of the few American states to have more than two-party representation in their General Assembly (State of Vermont 2018c). Vermont is subject to the U.S. Constitution and the federal laws and regulations that govern the entire country, but because of dual sovereignty, Vermont, like all states, maintains the vast control of crime committed within its borders (State of Vermont 2018). The Constitution of Vermont is the supreme law of the state, followed by Vermont Statutes enacted by the state legislature, assuming that there are no contradictions with their federal counterparts (State of Vermont 2018c).

Laws are made in the Vermont General Assembly in much the same way as they are in New South Wales. Due to the bicameral nature of the legislature, bills can originate in either House where they will go through an introduction at the first reading, an in-committee amending process, debate at the second reading, and passage at the third reading (State of Vermont 2018c). Bills are then considered by the other chamber where they undergo the same reading and amending process. The originating house must agree to any changes made and if that happens, the final version of the bill will be signed into law by the Vermont Governor (State of Vermont 2018c). The Governor's role is somewhat dissimilar in that she has actual signing power and can veto bills, rather than in New Zealand and New South Wales where the Governor's power of legislative assent is largely symbolic. The Vermont Statutes—an official codification of the laws enacted by the General Assembly—are another source of differentiation. Rather than an ever-growing body of ratified Acts, the state maintains a list of 33 statutes that comprise the active law (State of Vermont 2018c). Therefore, bills that are intended to amend or add to Vermont law do so through amending one of those statutes.

Among these statutes is Title 13: Crimes and Criminal Procedure which clarifies Vermont's criminal code and process of criminal adjudication (Vermont General Assembly 2018). The criminal code distinguishes between misdemeanours—less serious offences for which the maximum term of imprisonment is two years—and felonies, which include any offence more serious than that and warranting more than two years of imprisonment (Vermont

General Assembly 2018). For the purposes of enforcing adherence to the criminal code, Vermont relies on the overlapping jurisdictions of several police forces, namely the Vermont State Police, fourteen county Sheriff's departments, and over fifty localized, municipal police departments (Reaves 2011). These police agencies work together, but maintain distinct administrative structures and spheres of control, further emphasizing a multiorganizational approach to criminal justice. Ultimately, like those in other jurisdictions, law enforcement officials in Vermont investigate criminal incidents and initiate criminal proceedings against alleged offenders (Town of Essex n.d.).

Once there is an identified offender facing a charge, the case is passed to the prosecuting office of the Vermont State's Attorney who decides whether to dismiss the charges, to divert the offender to a correctional program that is not premised on the adjudication of the prosecutorial process, or to prosecute the charges (Town of Essex n.d.). Police also share this gate-keeping role with the State's Attorneys and can make choices about whether to divert a case before it even lands on the State's Attorneys desks. If the State's Attorney decides to proceed with the prosecution, the next step will be an arraignment hearing at the district court, during which the alleged offender is informed of the charges and enters a plea of guilty or not guilty (Town of Essex n.d.). At this stage, there is not much difference in the progression of felonies and misdemeanours. Misdemeanours must be brought back to court approximately six weeks after the arraignment hearing for a status conference; if the charge is not adjudicated or a plea agreement reached at this point, the case is set for jury selection. Felonies are not required to run on such a tight timeline, particularly given the potential for a much more complicated evidence-gathering process, and as such status conferences and further court dates are scheduled on a case-by-case basis (Town of Essex n.d.).

Alleged offenders can request a judge-alone trial but the default, if a case is proceeding to trial, is a jury trial. Jury trials take place in the district court and are litigated by the State's Attorneys (Town of Essex n.d.). The defendant has a right to an attorney, and Vermont operates the Office of the Defender General for the provision of state-wide legal defence services to defendants who cannot afford their own lawyer (Office of the Defender General 2018). If a jury finds an alleged offender guilty, then the judge will schedule a sentencing hearing (Town of Essex n.d.). All convicted persons have the right to appeal their verdict to the Vermont Supreme Court and, if the verdict is reversed, the case is typically set for a new trial back in the district courts. Vermont deviates from the American norm by not having felony classes or mandatory

sentences when it comes to sentencing convicted offenders, and judges are granted the discretion to make case-by-case decisions (Vermont General Assembly 2018). Criminal sentences are administered by the Vermont Department of Corrections and include: imprisonment; probation; and intermediate sanctions such as supervised community sentences, community-based treatment programs, and other rehabilitation programs (State of Vermont 2018b).

Vermont has sprinkled restorative justice throughout its criminal justice processes and has a Director of Community and Restorative Justice housed within its Department of Corrections to oversee the growth of innovative justice approaches. The primary restorative justice mechanism that I'm investigating is the restorative justice panel, most commonly operated within the state's probation program and added to the Vermont Statutes by Act No. 148. Panels are a different kind of restorative justice mechanism than what has been discussed previously. An offender convicted of a minor offence is sentenced by a judge to reparative probation, which entails meeting with a board of community volunteers (Karp 2001). The board and the offender discuss the offence and negotiate a reparative agreement that will address the harms of the crime (Karp 2001). The tasks delineated by the agreement must be completed during the probationary period, and offenders often meet with the board for a mid-term review and for a final meeting to assess their progress (Karp 2001). An offender who refuses to accept the terms of a reparative agreement or who fails to comply with all portions of the plan will be returned to the court for further proceedings; an offender who successfully completes the program will have their case adjourned (Karp 2001).

The use of restorative justice in Vermont features an added component—the Community Justice Centre (CJC)—which lends a unique supplement to the reparative board mechanism. These CJs originated as locally operating, non-profit organizations focused on providing restorative justice programming and meeting their community's mediation, conflict resolution, and crime prevention needs. CJs were codified in the Vermont Statutes by Act No. 115. Now, the majority of the state's restorative justice panels are housed within these CJs, relying on the centres for administrative support, facilities, and volunteer recruitment and training. The Act specified that any municipality may establish a CJC in its jurisdiction “to resolve civil disputes and address the wrongdoings of individuals who have committed municipal, juvenile, or criminal offences,” using any number of restorative justice tools, including reparative boards, group conferencing, and mediation (Act No. 115 2008). CJs are

granted the latitudinal freedom to address other “quality of life issues in the community” as the centre sees fit and so they often pursue additional funding, beyond the budgets they receive from the Department of Corrections, to experiment with rehabilitative and restorative practices (Act No. 115 2008). This creates locally confined service alternatives such as job training, housing assistance, trainings for managing conflict, workshops to create a “human face” for larger businesses, which helps address and deter retail theft, and treatment diversion, wherein addicts can have certain, drug-related convictions cleared from their records if they complete a drug treatment program and a restorative justice panel, among other, innovative justice solutions.

Criminal Case Examples

For the purposes of better understanding the way an actual case might proceed through each of these jurisdictions, and the way that restorative justice might apply, I now present two hypothetical offences and explain how these would initially be handled in each jurisdiction. These narratives involve both a youth and adult offender and, while invented for this thesis, they resemble in some respects the narratives I encountered during my research. (Recall that I am not examining a restorative justice mechanism related to the juvenile justice system in Vermont, and do not describe the juvenile justice processes there. As a result, I will not explore the implications of a youth offence in that jurisdiction.)

Young Offender

In the first case, a fifteen-year old boy named Lucas is caught “tagging” with spray-painted symbols the back wall of a house that had been converted into a two-flat apartment. The most direct victim of the offence is the property owner who acts as the landlord to the two renters. The landlord estimates that she is going to have to spend about \$7,000 to repair the graffiti damage. However, the two renters also express their concern about the incident to the police. One of them, mistaking the imagery for gang iconography, asks if there is growing gang activity in the neighbourhood and suggests that he might move to a new area. Lucas is caught because a security camera captures a video of him and the police investigating the incident quickly identify him because he’s been involved in another vandalism offence. In New Zealand and New South Wales, the first offence would likely garner an informal warning or a caution from investigating police. A warning would not have any attached conditions or sanctions, but Lucas’ parents

would be notified, and the investigating official would make a record of the intervention. Cautions are a more formal affair and would require the investigating official to bring Lucas to the station and issue the warning in front of his parent, guardian, or other adult that he nominated.

New Zealand

In New Zealand, because the current incident is now Lucas' second offence, the investigating officers and the assigned Youth Aid officer are concerned about the developing pattern of behaviour that may require a more extensive intervention. This concern activates the restorative justice mechanism. They have Lucas come down to the station with his mother where they ask him about the incident and he makes a legal confession to his role in the crime in the presence of his mother and in full awareness of his rights. The case is referred to Oranga Tamariki and the local Youth Justice Coordinators begin the process of scheduling an intention-to-charge FGC. The assigned coordinator contacts Lucas and his family, determines who will attend the conference, educates Lucas about his legal rights, and prepares participants for what to expect about the process. The coordinator also reaches out to the three victims—the landlord and the two tenants—and lets them know about the conference and enquires as to whether they are interested in participating. The landlord is very interested in participating and expresses her desire to confront Lucas with the human cost of vandalism; as a result, the coordinator meets with her and similarly instructs her about the conference procedure and her right to have a support person in attendance. The renter who has growing concerns about gang activity indicates to the coordinator that he finds the concept of a direct confrontation with the offender a bit intimidating, so the coordinator offers him the opportunity to submit an impact statement and to remain abreast of the action taken with regards to Lucas.

The conference is held at the local Oranga Tamariki offices. Participants include Lucas, his mother, his father, and his 20-year old cousin who handles a lot of Lucas' after-school and evening care because Lucas' mother works a night shift at a local factory and his father is a truck driver who is away from home most of the time. The Youth Aid officer who was assigned Lucas' case and is familiar with both of his offences also attends, as well as the landlord of the building who brings her sister as her support person. The conference begins with introductions, and then proceeds as a confidential information-sharing meeting. The order of who speaks is flexible based on the details of the case and the wishes of the participants, and in this instance,

Lucas has been asked to speak first and describe his understanding of what happened and his motivations leading up to the incident. The landlord asks to respond and describes the financial burden that the graffiti placed on her and her renters. The coordinator emphasizes this point by introducing the impact statement from the renter intimidated by the symbols spray-painted onto his home. Other participants are invited to join the conversation, and Lucas' mother discusses her concerns regarding the poor influence of some of Lucas' friends while the Youth Aid officer gives context for what the escalation in offending behaviour might mean for Lucas. The conference continues in this way, providing an opportunity for the parties to discuss the incident, how to address it, and how to discourage Lucas from engaging in similar behaviour down the road.

Lucas and his family then have time alone to discuss the best plan forward and present it to the rest of the group. Ultimately, this includes: apologizing to the landlord; writing letters of apology to the two renters and explaining that the graffiti was in no way related to actual gang activity; paying the landlord \$400 that he's saved from his summer job; helping with the graffiti removal; and joining the local schoolboy's rugby league and an afterschool tutoring program to provide him with access to a different group of friends and a new approach to what he does during his free time. The conference participants agree with the proposal, except the landlord who has already scheduled the graffiti removal. Instead, she asks if Lucas would help with a series of property maintenance tasks such as cleaning and repainting the front porch. Lucas and his family approve of this change and this outcome plan is finalized. Lucas' mother is tasked with signing him up for rugby and for the tutoring program, while Lucas' cousin assents to keeping an eye on Lucas and ensuring he's attending his new activities. Lucas and the landlord agree to a date for the property clean-up, at which point he will bring the \$400 and the letters of apology for the tenants. Lucas then provides an in-person, verbal apology for the landlord, which the landlord accepts. The Youth Aid officer says that she will follow-up with Lucas in thirty days to confirm that he's completed the tasks required of him and has enrolled in the agreed upon programs. The conference participants agree that if, at this point, Lucas has complied with the components of the outcome plan, there will be no need to progress the case to the Youth Court for charging and the incident can be considered fully adjudicated. The coordinator writes a report that records this conference outcome and submits it to the police and the Youth Court.

New South Wales

Meanwhile, New South Wales has determined that graffiti offences are not eligible for police-initiated diversion through the Young Offenders Act, which means that Lucas' case is immediately referred to the DPP and the Children's Court. This is already very different from the trajectory of Lucas' case in New Zealand where he never set foot in the Youth Court. From there, *only* the magistrate can make the recommendation to initiate the restorative justice process, which can happen at any stage in the Children Court's proceedings once guilt has been established; neither the investigating officer, nor the SYO, nor the DPP would even be allowed to consider whether Lucas' case was eligible for adjudication through a YJC. Instead, the DPP files formal charges against Lucas and Lucas is appointed a lawyer who encourages him to plead guilty, which he does at his first court hearing. In this case, because graffiti is a non-violent offence, because Lucas has already admitted to committing the offence, and because he has only had one other interaction with the justice system, the magistrate chooses to halt further proceedings and refer Lucas to the YJC process. A conference administrator then reviews Lucas' case, reconsiders the appropriateness of restorative justice in this instance, and, once in agreement with the magistrate, appoints a conference convener.

The convener goes through the pre-conference steps that should now feel familiar: contacting Lucas and his family; informing them of the conference process and Lucas' legal rights; contacting the victims and inviting them to attend with a support person in tow; preparing participating victims for the conference; inviting any additional parties; selecting a date and time. Once again, Lucas attends with his parents and his cousin. And, since he's already had to retain a lawyer, she opts to attend as well. In New South Wales, victims can send representatives; in this instance, the landlord chooses to send her sister in her stead. Finally, the convener invites the Specialist Youth Officer who's familiar with Lucas' case and his previous offending. The convener decides to hold the conference at the local Juvenile Justice Community Centre.

During the conference, the convener follows a very strict format. The conversation is guided by a script that is issued by the Juvenile Justice office of the Department of Justice. The convener asks Lucas to explain what happened, to think about who has been affected and how they were affected, and then turns to the victim or victim representative (in this case, the landlord's sister) to have them describe the experience and the impact in their own words. The

landlord's sister is then given the opportunity to ask Lucas questions. Finally, Lucas' parents and cousins are invited to speak and to explain their concerns regarding Lucas' behaviour. The SYO may also be consulted, but Lucas' lawyer will be discouraged from participating fully in the conference. The convener then directs the conference participants to start drafting an outcome plan that will "make things right." Because graffiti offences are subject to tighter restrictions, these outcome plans *must* include at least one of the following: the making of reparation; the performance of graffiti removal work; and participation in a personal development or educational program (Young Offenders Amendment (Graffiti Offenders) Regulation 2009). The convener encourages the participants to consider these options in their discussion of what Lucas should be asked to do.

When Lucas and his family come up with their own proposal for an outcome plan, they follow the suggestions of the Graffiti Offender Regulation to a tee; Lucas offers to pay the landlord \$400, to write letters of apology to the tenants and the landlord, to engage in graffiti removal work, and to attend a one-day workshop on building healthy friendships operated by local service providers with a contract from Juvenile Justice. The conference participants agree to these terms, but the landlord has already arranged for Lucas' graffiti to be removed, leading the convener to recommend that Lucas attend a local day of service wherein participants will remove graffiti from a school in the area. With this amendment, the conference participants agree to the plan. The conference administrator checks in thirty days after the end of Lucas' conference to make sure that he's completed all components. Once it's confirmed that he's complied with his outcome plan, his case is considered fully adjudicated and no other criminal proceedings may take place against him for this offence. The convener submits a report of the conference to the local Police Area Command and to the referring magistrate who dismisses Lucas' charges in the Children's Court (Young Offenders Act 1997).

Adult Offender

In the second case, a thirty-two-year old man named Eric is driving through town and falls asleep at the wheel, jumping the curb and crashing his car into the display lot of a used car seller, damaging several of the automobiles for sale. The damage to the car salesman's merchandise adds up to about \$45,000. In all three jurisdictions, police officials respond to this accident and arrest Eric. In New Zealand, Eric is charged with reckless driving, a category 2 offence, and quickly released from jail on bail under the stipulation that he not drive until his trial. In New

South Wales, Eric is charged with the summary offence of reckless driving and allowed out on bail after surrendering his passport. Finally, in Vermont, Eric is charged with the misdemeanour of negligent operation and permitted to leave jail if he can post a monetary bail, which he does. In all three jurisdictions, while awaiting trial, Eric enlists the assistance of privately-contracted defence lawyers, all of whom encourage him to plead guilty.

New Zealand

He makes his first appearance in a New Zealand district court and enters his plea. Before proceeding the case to the sentencing phase, the eligibility requirements in the Sentencing Act 2002 determine whether restorative justice is an option for Eric. Given the identifiable victim and Eric's admission of guilt, the judge is required to delay sentencing to refer the case to the local restorative justice provider. An assigned facilitator contacts the parties and confirms their interest in participating. Once it's confirmed that both the victim and the offender will contribute to a safe, productive conversation, the facilitator commences the pre-conference process. This includes meeting with both the victim and the offender, instructing them about how the conference will work, answering their questions, and preparing them to have appropriate expectations.

At the conference, the dialogue is very flexible and designed primarily to meet the needs of the victim. In this case, Eric is invited to speak first and to explain what happened. He therefore has an opportunity that he has not had before: giving context to the event. He tells the conference participants that he'd had a series of late nights trying to meet a deadline at work and was exhausted. He was driving home after one of these nights, just after two a.m. and nodded off. The car salesman responds and tells Eric about the amount of damage that he caused and the pressure that the accident has put on his business. After encouraging further discussion of the impact of the crime, the facilitator has the group begin designing an outcome plan. The car salesman says that all he wants is a restitution payment that will cover the damage caused. Eric explains that he does not have that kind of money and the facilitator encourages the salesman to think of other ways that Eric might repair the harm. Eventually, the salesman and Eric come up with a unique solution: Eric had been thinking about buying a lightly used pick-up truck from his brother-in-law and decides that instead of buying it for himself, he will buy it and give it to the salesman to help replace some of the lost inventory. In addition, Eric offers to apologize to the salesman, and to write a written apology to the other two employees at the car lot who had

to work overtime to clean up the wreckage from the accident. Finally, Eric agrees to sign up for a safe driving class, and promises to pay for a taxi cab from work on the nights that he works later than ten p.m. The conference participants agree to this proposed outcome plan and conference process concludes.

The facilitator writes up a report detailing the outcomes of the conference and submits it to the district court, and forwards copies to Eric and the salesman as well. When Eric returns to court for sentencing, the magistrate will account for the conference report, as well as how much progress Eric has made on the outcome plan, using the relative success of the restorative process as one mitigating factor when planning Eric's sentence. By the time the sentencing hearing is happening, Eric has completed his assigned tasks by issuing his apologies, delivering the car, and attending the driving course. However, the results of the restorative conference are only one consideration for the court; the magistrate will also look at Eric's previous criminal record, several of the offence's details, the vulnerability of the victim, levels of premeditation, the offender's intellectual capacity, evidence of good character, among several other aggravating and mitigating factors that are listed in the Sentencing Act 2002. In Eric's case, because he did not have a previous criminal record, cooperated with his lawyer, showed remorse, and had a successful conference coupled with satisfactory completion of his outcome plan, the magistrate is inclined to be very lenient. She reinstates Eric's driving privileges, which were suspended while he was on bail, convicts him of reckless driving, and issues an order for him to come up for sentence if he commits further driving-related offences in the next six months.

New South Wales

Eric's experience as he progresses through the New South Wales criminal justice system will, at the outset, resemble his experience in New Zealand. He will have to retain a lawyer, appear in the local court, and plead guilty to be considered for forum sentencing. Again, on the advice of his lawyer, he enters his guilty plea at his committal hearing and the magistrate makes a suitability assessment order, which means that the operations team will begin the process of determining whether Eric's case is appropriate for the forum sentencing program. His eligibility for a conference will be dependent on the willingness of the car salesman to participate. The car salesman is, once again, interested in attending, and so the operations team reports back to the magistrate that Eric's case is indeed suitable. The magistrate then issues a forum participation order and an assigned facilitator begins the pre-conference process. Participants are contacted

and educated about the components of the program and the facilitator sets a time and date for the conference.

Once the conference is under way, it will begin to look more like the YJC that was described above. The facilitator will follow a script that generates dialogue between Eric and the car salesman and is designed to probe at the ways in which the salesman was affected by the incident. Then, the participants will be tasked with drafting an intervention plan. The car salesman is adamant that he wants to be fully compensated for the damage caused but Eric is insistent that he does not have that kind of money available. Eric and the salesman agree to a restitution payment of \$10,000, paid over the course of six months. Eric will also issue a written apology to the salesman and his two employees and will attend a safe driving course. This draft intervention plan is submitted to the local magistrate who approves it and issues an intervention plan order, which will function as Eric's final sentence if successfully completed. A program manager monitors Eric in his completion of the plan and in sixty days, after he's written the apology, attended the course, and made one-third of the reparative payment, it is reported to the court that he's satisfactorily complied with the bulk of the intervention plan. The magistrate therefore terminates proceedings and considers Eric's case fully adjudicated.

Vermont

Lastly, in Vermont, Eric appears at his arraignment hearing and enters his guilty plea. Based on that plea, Eric's lack of a criminal record, and the circumstances of the offence, the judge sentences Eric to reparative probation and refers the case to the local CJC. Various CJCs structure their administrative staff differently, but there will often be a program manager or coordinator to receive case referrals and to assemble a panel to handle the matter. Pre-panel steps are inconsistent throughout the state, but often include a meeting with the offender and initial contact with the victim to let them know about the case and to invite them to participate if they are so inclined. Eric meets with the restorative justice coordinator and is given information about the process, his legal rights, and the ramifications of his failure to comply with the panel procedure and complete the conditions of his reparative probation sentence. The coordinator also gets in touch with the car salesman and informs him of the progression in Eric's case. This time, the salesman indicates that he is uninterested in participating, but this does not impede Eric's restorative case in Vermont.

The next step is to inform the assigned panel members—community volunteers—who serve on the reparative boards. They receive basic facts about the offence, about Eric, and about potential areas for focus during the meeting. A date for a panel is set and Eric appears before the three panel members while the coordinator sits in to take notes, monitor the progress, and act as a form of quality control if the meeting veers from approved procedures. The panel invites Eric to describe the incident in his own words and recount the factors that led to the offence. Without the salesman present and without the need to ascertain his remorse as a prerequisite for the restorative meeting, Eric's initial statements gloss over his own accountability. He blames the salesman for not having a guard rail up around the parking lot in what is a highly trafficked area. This refusal to take responsibility might have disqualified Eric from further participation in New Zealand or New South Wales, but in Vermont, the panel sees it as an opportunity to transform Eric's understanding of the crime and to challenge him to accept his culpability. Panel members therefore ask Eric further questions about the crime and about his own life, pushing him to comprehend the harm that he caused. The way Eric talks about the crime starts to shift, and by the end of the meeting, the panel members are satisfied that he has been held accountable. He even offers to build a guard rail for the car salesman. Taking this idea and running with it, the panel confer separately from Eric and return with a plan for his reparative agreement. If Eric agrees to build the guardrail, attend a safe driving course, and issue a written apology to the salesman and his two employees, the panel will record the plan and Eric will have sixty days to complete it. Eric agrees, and the panel concludes.

Eric checks back in with the panel after thirty days to give them an update on his progress. He reports that he has issued the apology and taken the driving course, and that he will be finishing the guardrail in the next two weeks. When Eric reports back at the end of the sixty-day period, he has completed the components of his reparative agreement and the panel considers his case satisfactorily adjudicated. The CJC reports the outcome to the court and Eric will walk away from the incident with a misdemeanour on his criminal record.

Conclusion

This chapter has described the law-making institutions of New Zealand, New South Wales, and Vermont, which are important to bear in mind for subsequent discussion. Notably, New Zealand is a unicameral, parliamentary system with relatively few veto players—a situation which would appear to grant the country a more expansive capacity for legislative action. New South

Wales features a similar parliamentary system, but its bicameral legislature and unique coalitional organizing in the upper house make for less robust legislative output. This is somewhat tempered by the jurisdictional practice of relying on legislative regulations to amend many statutes, a process which requires fewer of the parliamentary formalities. Finally, Vermont is the smallest and most homogenous state, but it also has a bicameral legislature, an absence of parliamentary coalitions, and an executive with substantive veto power. Accordingly, Vermonters must navigate more veto players when it comes to enacting legislation.

Furthermore, all three jurisdictions administer their criminal justice programs through a standard, though intricate, system of interconnected agencies. Restorative justice mechanisms are inserted into those systems in distinct ways. In New Zealand, Family Group Conferences operate as a mandated youth justice procedure that can be initiated at several stages of the justice process. FGCs can, therefore, serve varying functions for each young offender's case, ranging from a diversionary, intention-to-charge conference or a mitigating, pre-sentencing option for offenders facing more serious punitive measures. In the criminal justice system, adult offenders interact with a more limited restorative justice mechanism wherein, prior to sentencing, offenders have an opportunity to attend a conference with the victim of the crime and attempt to repair the harm before they return to conventional procedures.

In New South Wales, Youth Justice Conferences are designed to resemble FGCs in terms of the conferencing process, but the mechanism can only be used as a diversionary tool meant to fully adjudicate the charges against the young offender. Similarly, forum sentencing conferences are an endpoint in an adult offender's criminal justice journey, given that successful completion of a conference and an outcome plan serve to terminate proceedings against an offender. However, the mechanism is even more constrained than the YJC; referrals can only come from the local court and victims must agree to participate before a forum sentencing conference can be deemed suitable.

In Vermont, restorative justice can take on regionally unique approaches as the state's Community Justice Centres advocate for and experiment with innovative justice procedures. The most common restorative justice mechanism is the restorative justice panel, which is frequently used for adult offenders who have been sentenced to reparative probation. As a discrete sentencing option, reparative probation is activated by state court judges and provides an opportunity for adult offenders facing lower level charges to discuss the criminal incident with

community volunteers. These offenders then use their probationary period to address the harm of the crime and reintegrate with their community.

The hypothetical criminal cases that were illustrated in this chapter lend a more realistic, narrative-driven lens to a description of how individuals experience the various restorative justice mechanisms. In the next chapter, I provide further clarification regarding the legislative acts that created these mechanisms, and how the policy design decisions made during the passage of those acts have influenced the development of restorative practices in each jurisdiction.

End Notes

ⁱ On the relationship between Family Group Conferences and the Oranga Tamariki Act 1989: Levine 2000; Maxwell, Kingi, Roberston, Morris, and Cunningham 2004; Maxwell and Morris 2006.

On the relationship between the Sentencing Act 2002 and adult restorative justice: Bowen and Boyack 2003; Fox 2015

On the relationship between the Young Offenders Act 1997 and Youth Justice Conferences: NSW Law Reform Commission 2005; Moore 2011

On the relationship between the Criminal Procedure Act 1987 and forum sentencing: Jones 2009; Poynton 2013

On the relationship between General Assembly Act 148 and Reparative Boards: Greene and Doble 2000; VADP, et al. 2014

ⁱⁱ The Victims' Rights Act 2002 at Part 2, Section 9 requires, in instances where the victim requests to meet with the offender, that court staff, Police, or probation officers refer the request to facilitators for restorative justice, assuming "necessary resources are available."

The Parole Act 2002 at Part 1, Section 7 requires that "restorative justice outcomes are given due weight" when making decisions about the release of an offender; at section 33(5) allows offenders to leave residence while under house arrest in order to attend a restorative justice process; and at Section 43 instructs Parole Boards to take into account an offender's participation in restorative justice.

The Corrections Act 2004 at Part 1, Section 6 introduces access to restorative justice opportunities as a guiding principle for the corrections system.

3. ANALYZING THE STATUTORY CONTENT OF RESTORATIVE JUSTICE LEGISLATION

This chapter conducts a content analysis of the restorative justice statutes of New Zealand, New South Wales, and Vermont. The analysis affords a more complete understanding of the restorative justice mandates that are at work in each jurisdiction. It asks: how were these programs designed and how does the law envision their operation? This will be a powerful reference point in my subsequent investigation in Chapters 4 and 5 of how these practices have *actually* been implemented. During this content analysis, I will use the theories of restorative justice and policy design set out in Chapter 1 to construct a framework for evaluation. By highlighting restorative justice considerations and policy design tools, I will seek to clarify the relationship between the legislative choices that were made, and the way the restorative justice programs operate on the ground. I begin by more fully describing my analytical framework, and then applying that to New Zealand, New South Wales, and Vermont.

Methodology

In the sections below, I will review the six restorative justice statutes associated with the three, selected jurisdictions. I begin by using Groenhuijsen's (2000) and Lee's (2011) models of restorative justice integration to categorize the role each mechanism plays in the criminal justice system: as a supplement to conventional justice; a fully formed alternative to conventional justice; or a parallel set of justice processes. Then, I synthesize the typologies employed by researchers of policy design to categorize the statutory features and anticipate their importance in ultimate restorative outcomes.

This synthesis of research typologies begins with a rundown of the content characteristics: the tools, rules, and theories that undergird the restorative practices being implemented (Ingram and Schneider 1990). Within these tools and rules, I look for elements of the "ideal" restorative statute as prescribed by Groenhuijsen (2000), Leverton (2008), and Lee (2011). As we saw in Chapter 1, an ideal statute features consideration of facilitator selection, training, and certification and set forth rules governing participation, participant safety and confidentiality, legal safeguards, and other process particulars. Turning away from the particulars, I next consider the overall statute type using the model designed by Ingram and Schneider (1990). Their model relies on cataloguing the levels of discretion distributed to policy designers and policy implementers and accordingly categorizing statutes as strong, Wilsonian,

grassroots, or coalition-building. Finally, I shift to an examination of the process characteristics described by May (1993) and van der Heijden (2013), looking at how the statute made its way through the political system.

By bringing these distinctive theoretical perspectives to bear, this content analysis assesses whether the statutes under review would be expected to produce adequately restorative mechanisms. It also provides insight into what policy design research would say more generally about the policy instruments that were used when crafting this legislation and how those instruments might contribute to restorative justice's implementation. This provides two platforms for comparison that I will use when evaluating the restorative justice mechanisms in Chapter 4 and 5: 1) how successfully restorative are the mechanisms and 2) how effectively designed and implemented was the legislation. Based on the analysis in this chapter, I begin the process of sorting the restorative justice mechanisms in this case study according to these two measures. My assessments are in the conclusion to this chapter.

New Zealand

The Oranga Tamariki Act 1989 and Family Group Conferences

New Zealand is widely considered to be a leading innovator in the implementation of legislated, regulated, and country-wide restorative processes (Maxwell and Morris 1993, Watt 2003, Maxwell and Morris 2006, Carruthers 2012, Fox 2015). This reputation grows out of the passage of the Children, Youth Persons, and their Families Act 1989 (now known as the Oranga Tamariki Act), which overhauled the juvenile justice system and institutionalized the restorative Family Group Conference (FGC) (Watt 2003).

Procedurally, the FGC operates as a supplement to conventional justice. Recall from the previous chapter that conferences can be initiated at several stages of the justice process and can have different outcomes in terms of requirements for further justice proceedings. Of course, diversionary, intention-to-charge conferences can operate as an autonomous alternative that pre-empts an offender having to interact further with conventional justice procedures. However, FGCs are typically couched in the terms of conventional justice. For example, the Youth Court is another source of FGC referrals and the associated procedure is clearly a part of the conventional justice system. Courts are required to consider adjourning proceedings for the sake of a conference referral at any stage (pre-hearing, pre-sentencing, post-sentencing) once the

offender has admitted guilt or is found guilty, assuming that a conference had not already been held. Then, depending on the outcome of the conference and the decisions of the participants, the case can return to the Youth Court for further proceedings (Oranga Tamariki Act 1989).

The FGC procedures are highly delimited within the Oranga Tamariki Act and guidelines exist for almost every stage of the conference process. The bulk of these guidelines satisfy the considerations that Groenhuijsen (2000), Leverton (2008), and Lee (2011) recommend for inclusion in restorative justice legislation. As previously discussed, the Act designs the mechanism, identifies the referral points, and locates the FGC within the justice process. The Act also accounts for a young offender's legal rights with regards to obtaining a procedurally fair admission of guilt, specifies a right to counsel at all stages leading up to a conference, and states that any barrister or solicitor who represents the offender has the right to attend the conference (Oranga Tamariki Act 1989). The proceedings of FGCs are designated as privileged and the list of who can participate, as well as how that participation should be facilitated, is included in the legislation (Oranga Tamariki Act 1989). Finally, agencies are required to comply with any decisions, recommendations, or plans made during a conference, and the Act asks the court to keep proceedings adjourned until after a conference's conclusion and to take conference outcomes into account during sentencing, thereby outlining what role those outcomes can play in further proceedings (Oranga Tamariki Act 1989).

The Act falls short of the ideal restorative statute, however, in failing to address facilitator selection, training, and certification. The Act simply creates the position of Youth Justice Coordinator for the purposes of facilitating the conferences and specifies several rules that the coordinators must follow without mentioning the criteria for appointment or training requirements (Oranga Tamariki Act 1989). Neither does the Act directly address the relationship between FGC outcomes and further criminal proceedings. Although the statute specifies the scope of the decisions, recommendations, and plans that an FGC can make, the explanation of how a case may end up proceeding to the Youth Court and how to respond to failures in outcome plans are left to policy directives issued by Oranga Tamariki, the Ministry charged with administering FGCs (Oranga Tamariki 2018).

These statutory characteristics, in addition to fulfilling the above-mentioned, academic expectations of how a jurisdiction might legislate for restorative justice, also represent an array of policy design tools that may have an impact on restorative implementation. Recall that Ingram and Schneider (1990) defined policy tools as motivators of programmatic action while May

(1993) explained that provisions aimed at building commitment and capacity can serve as drivers of implementation. Within the Oranga Tamariki Act 1989, the requirements that other agencies legitimize the decisions of FGCs and that the court consider the recommendations of FGCs present authoritative commitment-building provisions (May 1993). On top of that, the Act mandates that the chief executive give effect to any decisions, recommendations, and plans of FGCs and that they provide financial assistance to those processes when necessary, which builds both commitment and capacity. At its outset in 1989, the legislation also made the choice to create the new position of Youth Justice Coordinator to take on the responsibilities of organizing and facilitating conferences rather than distributing those FGC-related responsibilities among existing youth justice service providers. This is another commitment-building provision as it develops a uniquely incentivized and motivated implementation agent that is directly connected with the delivery of the service (Ingram and Schneider 1990). Overall, the portion of the Oranga Tamariki Act that deals with FGCs affords a high level of statutory coherence, with a precise delineation of program aspects and objectives (May 1993).

These implementation tools are underpinned by the articulation of theories about juvenile justice approaches and by the codification of restorative values in the vision for juvenile justice. For example, the statute states that in the event a young person commits an offence, “(i) They are held accountable, and encouraged to accept responsibility for their behaviour,” an objective that includes restorative ideals in the legislation’s primary directives (Children, Young Persons, and their Families Act 1989). Other components of this restorative theorizing include emphasis on: informal responses to youth crime; the primacy of the family group as an important stakeholder in the commission of crime by youth; the need for community responses to crime; punishment that is rehabilitative and minimally restrictive; and the needs of victims. The Act rolled out these new theories as “principles” designed to guide the juvenile justice system’s best practices. In sum, these principles create a theoretical context within the Oranga Tamariki Act that is supportive of restorative justice procedures and goals.

The picture that emerges of the Oranga Tamariki Act is one that matches the label of “strong statutes,” as defined by Ingram and Schneider (1990). The design elements exert extensive control over the programmatic operation of FGCs and coordinators have minimal leeway in how they run a conference. Process objectives, as well as the tools used to meet them, are well-delineated and resource allocation is clarified.

I move now to a consideration of the statute's legislative process in an attempt to identify van der Heijden's (2013) process characteristics and to understand the parts of the narrative that might provide indicators for Marsh and McConnell's (2012) measures of political and process success. The Oranga Tamariki Act and its restorative elements developed over the course of several years as legislators laboured to address growing (and often competing) concerns regarding the country's treatment of at-risk youth, an effort which resulted in extensive innovation across many axes of family services and justice practices (Watt 2003; Carruthers 2012). These reformative impulses originally manifested in a departmental working party that was assembled in 1984 by the newly elected Labour Government and tasked with reviewing the existing legislation governing youth justice, the Children and Young Persons Act 1974 (Watt 2003). Although FGCs were not on the drawing board during this early iteration, the working party's report makes it clear that members were already looking for youth justice processes that would provide alternatives to conventional proceedings and engage community members, criteria that are conducive to the introduction of restorative elements (Manchester 1984). For example, their proposal included the creation of "Youth Assessment Panels," a mechanism that was designed to serve as the primary gatekeeper to the courts. Panels were meant to feature representatives from the police, from the Department of Social Welfare, and from the young offender's community, and to divert young offenders away from the stigmatization of formal court proceedings through the use of tools such as warnings and referrals to community-based mediation groups (Manchester 1984).

The working party's recommendations were translated into the Children and Young Person's Bill 1986, but it would take many years, the assembly of a *second* working party to review the proposed legislation, several public forums, and 18 months of work from the Select Committee before the 1986 Bill was finally presented for a second reading in April of 1989 and passed into law as the Children, Young Persons, and their Families Act in November (Watt 2003; Carruthers 2012). The CYPF Act represented a marked departure from the reformative tinkering of the 1986 Bill, opting instead for the development of brand-new policy models aimed at original answers to the problem of youth offending. However, the origins of these innovations provide some insight into the political intentionality that drove this legislation, illuminating how restorative justice goals were not always central to the process. Parliamentary discussion indicates that the creation of the FGC was largely motivated by submissions to the Select Committee that called for more family involvement and a more culturally sensitive

approach to youth justice (New Zealand Hansard Report 20 April 1989). The legislation itself never actually mentions the phrase restorative justice; policy designers managed to create a youth justice practice that is consistent with restorative thinking, but without any prior agreement that restorative justice procedures were the goal (Maxwell and Morris 2006:243). Despite this, the FGC meets the criteria of a restorative justice mechanism.

Another factor in evaluation of the political process as suggested by Marsh and McConnell (2012) is the degree of statutory amendment required. Notably, the central regulations for the conferencing process remain largely unchanged. Incremental amendments over the years have produced some procedural edits, such as the requirement to invite support persons for a participating victim, the requirement to ask a victim whether they'd like to be appraised of a young offender's progress following a conference, and the clarification that a conference must assist and encourage a young person's participation to a degree appropriate for their age and level of maturityⁱⁱⁱ. Although the Act itself received an overhaul in 2017—the New Zealand Parliament created Oranga Tamariki, the Ministry for Children, renamed the statute the Oranga Tamariki Act, transferred administration of the Act to the new Ministry, and made extensive edits to the care and protection portion of the Act—few of these changes had any impact on youth justice FGCs, other than raising the age of offender eligibility from seventeen to eighteen (Children, Young Persons and their Families (Oranga Tamariki) Legislation Act 2017).

The length of time required for the bill's drafting process and the breadth of iterations of juvenile justice reform might have indicated levels of conflict that boded poorly for the statute's success (Marsh and McConnell 2012). However, in examining the parliamentary discussions and the reports of the working parties, a more fitting account of the bill's delay comes from the change in government in 1984 and the fact that the bill was attempting a substantial paradigm shift among the relevant institutions, a process which required ongoing discussion and development. This extensive conversation was fuelled in large part by the fact that the bill included reforms of the care and protection sector for New Zealand children. Accordingly, in the face of the occasionally heated parliamentary debate, the family group conference as it was designed for the youth justice sector was not the primary focus of the MPs' discussions.

But there are still telling components of the conversation that illustrate the ways in which the New Zealand Parliament was grappling with a new vision for the treatment of youth, including young offenders. First was the thoroughness of the bill's amending period. The Social

Services Committee held three rounds of public consultation, well-beyond the scope of public commentary that typically takes place during the amending process, before returning the bill to the House floor to vote on a second reading (New Zealand Hansard Report 20 April 1989).

Second was the principle-based nature of large portions of the debate. The parliamentarians were not sniping at each other about minute, procedural details; rather, they were grappling with the values that would structure the entire system. These compromises included questions such as whether sector experts are the best service providers or are too disconnected from the communities they serve, how to empower families without endangering children that may face a troubling family situation, and how to create sanctioned edicts for care without taking on a paternalistic, “government knows best” attitude that alienates children and their caregivers (New Zealand Hansard Report 20 April 1989). Ultimately, it appears as though the New Zealand Parliament was able to arrive at a stable consensus, reducing the paramountcy of the child to make room for family input while reinforcing the jurisdiction’s buy-in to sector expertise through the creation of the Youth Justice Coordinator (Oranga Tamariki Act 2017). And the fact that there have been so few amendments through the years and through changes in government shows that, for the most part, youth justice in New Zealand is functioning as desired and holds broad-based, inter-party support (Marsh and McConnell 2012). It follows that the conflict associated with the passage of this Act was not a harbinger of legislative discontent. Instead, the attempts to settle philosophic tensions took time and creating a new, consistent foundation for New Zealand’s youth services programs was a substantial task that was completed with perceived success.

Based on the development of conferencing in New Zealand, its legislative origins, and ongoing institutional buttressing, the Oranga Tamariki Act and the FGC are a prominent example of restorative justice operationalization. Embedded in a statute that was designed to thoroughly reform the youth justice sector, FGCs were accounted for by legislative strategies that granted them the implementation tools, legitimate procedures, and theoretical context that would seem to predict policy success. However, it’s also important to note that the FGC, while now recognized as a restorative justice process, was not deliberately designed as a restorative process, and that fact occasionally reflects itself in the mechanism. The FGC is built around the needs of the young offender, rather than an equal consideration of the needs of all stakeholders. Although victims are invited to participate and are considered by the legislation, conferences are mandated regardless of the victim’s views, which means individual conferences vary in terms of

the degree to which they accomplish restorative goals. In this instance, the focus of the statute on youth offenders ensures its effective integration into the youth justice system; however, the omission of explicit attention to the needs of victims lessens its structural capacity to ensure restoration.

The Sentencing Act 2002 and Adult Pre-Sentence Conferences

In comparison, restorative justice for adult offenders in New Zealand's criminal justice system has been designed to operate differently from the FGC. Experiments in conferencing and mediation with adult offenders began in pockets of the country in the early 1990s and were largely envisioned as a tool for victim advocacy (Bowen and Boyack 2003). And it was in the hopes of facilitating victim advocacy that Parliament ultimately introduced restorative justice into its sentencing reform efforts. The model that rose to top, due in part to its capacity for victim centrality, was pre-sentencing restorative justice conferences.

Entering into effect through a broad, reformatory package made up of the Victims' Rights Act 2002, the Parole Act 2002, and the Sentencing Act 2002, this victim-centric model operates as a "supplementary modification to" conventional justice (Groenhuijsen 2000:3). The Sentencing Act 2002 provides the most explicit, procedural guidelines, suggesting that the court adjourn proceedings before the imposition of a sentence to pursue restorative avenues where the legislation deemed it appropriate (Sentencing Act 2002). In 2014, this restorative "option" became mandatory when an amendment to the Act required that a restorative justice referral be made in all eligible cases (Sentencing Amendment Act 2014). The Act also directs the court to take restorative outcomes into account once sentencing procedures recommenced. These outcomes could include any measure to make amends such as financial reimbursement or service work, any other remedying agreement between the victim and the offender, any apology made to the victim, and any remedial action taken by the offender (Sentencing Act 2002). The Act asks the court to consider the genuineness of the offender's restorative behaviours and the victim's ultimate view on how well the crime's harms have been mitigated (Sentencing Act 2002). The process is firmly situated within the conventional adjudication procedures; offenders temporarily exit the adversarial justice stream to engage in restorative opportunities and are returned to the adversarial justice stream afterwards for all final case decisions.

In terms of incorporating the aspects of the ideal restorative statute that I discussed in Chapter 1, the Sentencing Act falls short in several areas. Instead of using a statute as the

primary source of process prescription, adult conferencing is governed by a framework of best practices published by the Ministry of Justice in 2004 and updated in 2017 (New Zealand Ministry of Justice 2017). As a result, the conferencing mechanism that is currently operating in New Zealand's criminal justice system is not a legislative design; it is an administrative policy choice made by the Ministry of Justice. Any procedural consistency thus depends on the best practices guidelines and the way the Ministry contracts and funds the conferences (New Zealand Ministry of Justice 2017). The Act itself does two things: 1) it specifies that restorative justice should happen prior to sentencing in the judicial process, and 2) it mandates that judges consider restorative justice results once the case returns for sentencing.

The Act makes no mention of facilitators and how they should be selected, trained, and certified; nor does it include the criminal justice equivalent of a Youth Justice Coordinator. Instead of creating governmental positions to operate adult restorative justice processes, the Ministry of Justice contracts with local restorative justice providers who employ Ministry-accredited facilitators (New Zealand Ministry of Justice 2017). It is within these contracts that the Ministry finds much of its procedural enforcement power, providing funding to local organizations only for pre-sentence conferencing services (New Zealand Ministry of Justice 2017). Finally, because the restorative justice component is included in a larger statute about general sentencing practices, there are several clauses that address legal safeguards, but none of them refer specifically to the application of those rights to the conferencing process (Sentencing Act 2002).

Due to the sparse inclusion of restorative justice practice details, the Sentencing Act does not feature many programmatic policy tools that would appear to enforce or implement a restorative policy. One important exception to the absence of enforcement mechanisms is the amendment in 2014. Judges are now required to adjourn proceedings in instances where the Act has determined that a case is eligible for restorative justice procedures; this change to the Act institutes compulsoriness to motivate policy use. But as shown by Casper and Brereton (1984), the justice sector workgroup can often avoid mandatory reforms by limiting the number of cases that they believe fall under the purview of a new rule.

The Act does add to its policy tool belt by incorporating theory-based support for restorative justice. This theoretical backing is presented in the Act's eight principles to guide the sentencing process, several of which represent restorative values. The relevant principles include holding the offender accountable for the harm done to the victim and the community,

promoting the offender's sense of responsibility, providing for the interests of victims, providing reparation for the harm done by the offending, and reintegrating the offender (Sentencing Act 2002). The result is a Wilsonian statute that prescribes big picture goals without always specifying the parameters of practice and implementation. The Sentencing Act identifies restorative justice as an element worth incorporating into the country's criminal justice system, but leaves it to the Ministry of Justice to hammer out the particulars; in turn, the Ministry of Justice uses a commitment to the pre-sentencing conference and general best practices guidelines to steer portions of the restorative policy, but leaves on the ground operation to local organizations that are already embedded in communities.

Turning now to an assessment of the process that produced this legislation, I begin with a brief description of the parliamentary context of the Sentencing Act 2002. The Act, as previously mentioned, was passed along with two other statutes aimed at updating New Zealand's sentencing and parole practices. The reformative impulses behind the Sentencing Act 2002, the Victims' Rights Act 2002, and the Parole Act 2002 were partially rooted in a "tough on crime" mindset (New Zealand Hansard Report 14 August 2001). A public referendum in 1999 revealed that 92% of New Zealanders supported mandatory minimum sentencing and harsher responses to serious offending, a fact which put substantial pressure on the Labour government at the time (Fyers 2018). One can see a reflection of this pressure in the way legislators discussed sentencing reforms, citing the paramountcy of society's protection and the need to pursue a "stronger line against recidivist offenders" (New Zealand Hansard Report 14 August 2001). Restorative justice was acknowledged as having a "growing importance," but that importance was sourced in the ability to "empower and restore the position of the victim" (New Zealand Hansard Report 14 August 2001).

Prior to the inclusion of restorative justice in the legislative agenda, the Ministry of Justice had been making efforts to harness community-based restorative resources, with early government funding directed towards community panels that focused on pre-trial diversion for adult offenders such as Project Turnaround in Timaru and Te Whanau Awhina, on the Hoani Waititi Marae in West Auckland (Maxwell and Anderson 1999). The panel approach involved the use of appointed community volunteers to engage in a conversation with the offender about the offence and to use that dialogue to develop an action plan. Action plans were meant to address the needs of the victim, to hold the offender accountable to the community, and to minimize the risk of future offending. However, early evaluations produced concerns that the

panel approach was missing some key restorative features in that very few victims were attending the meetings, and the action plans were unilaterally imposed rather than consensus-based (Maxwell and Anderson 1999).

Concurrently, the government sought partnerships with community organizations that used a conference-based approach in their provision of restorative services, offering grant funding to initiatives like the Whanganui Restorative Justice Trust and the Rotorua Second Change Restorative Justice Programme in 1999 (Paulin, Kingi, and Huirama 2005, Paulin, Kingi, and Lash 2005). In 2001, the Ministry of Justice augmented the process of institutionalization with a four-year restorative justice pilot program, implementing court-referred conferencing at four district courts (Auckland, Dunedin, Hamilton, and Waitakere) (Triggs 2005). The goal of the pilot was to offer standardized training to participating conference facilitators, elicit more involvement from judges who would be the primary gatekeepers for the referral process, and investigate the effectiveness of the selected conferencing model. From the success of this pilot emerged the restorative justice mandate that was introduced into Parliament's sentencing reform bill.

The centrality of victim support—which drove the earliest efforts at restorative conferencing with adult offenders and justified restorative justice's inclusion in New Zealand's new sentencing practices—remains a feature of the adult conferencing process. As opposed to the youth justice sector where FGCs are an offender-activated process, conferencing takes place in the criminal justice sector on behalf of the victim (New Zealand Ministry of Justice 2017). That is not to say that restorative justice providers do not want benefits to accrue for participating offenders but, conceptually, they are neither the motivation for nor the focus of the process.

The Sentencing Act thus provides a compelling opportunity to observe what happens in restorative justice when the mechanism is loosely introduced. As we have seen, the Sentencing Act requires the use of the conferencing mechanism at the victim's behest, but the particularities of the practice are left to ministerial policy and to local service providers operating as independent contractors. This will make its evaluation narrative an interesting point of comparison for the heavily prescribed FGC, particularly with regards to the actual amount of use that each policy gets. It will also make regional variation an important consideration for adult pre-sentencing conferences, with contributing factors being the culture of local district courts and the ability of service providers to navigate the justice workgroup in their region. The

possibility of these policy disparities contrasts with the consistency of the mechanism's restorative capacity, which is enforced by the mandated participation of victims. This illustrates one way in which the fulfilment of restorative expectations can have procedural consequences.

New South Wales

The Young Offenders Act 1997 and Youth Justice Conferences

The introduction of restorative justice processes to the New South Wales's youth justice system follows a path markedly similar to New Zealand, in part because the establishment of Youth Justice Conferences (YJC) in the territory was inspired by the perceived success of FGCs in New Zealand (New South Wales Hansard 21 May 1997). This instance of policy transfer took place when New South Wales passed the Young Offenders Act 1997 as the institutionalizing vehicle for the YJC.

The YJC ostensibly operates alongside the conventional justice system, as an alternative to adjudication. In New Zealand's model, the restorative justice mechanism is one step in a justice timeline with possibilities of adversarial justice interactions both before and after. In contrast, the YJC is a separate intervention stream that, once activated, is intended to arbitrate the full extent of relevant proceedings. In cases of procedural breakdown, perhaps because participants reveal unproductive mindsets (such as an overly defensive offender) or a young offender fails to complete their outcome plan, a case may revert to the conventional justice stream. But the YJC process is intended to remain independent from non-restorative mechanisms.

That being said, the YJC can originate from a court referral, as evidenced by Lucas' case, meaning that the young offender has already made an appearance in Children's Court and can have formal, criminal charges lodged against them. This means that in some instances, the YJC functions as a sentencing option for the conventional justice track, which makes it a component of the juvenile justice system rather than an adjacent process. It also means that it's not a process solely committed to insulating young offenders from formal court proceedings. This illustrates some of the ways in which the YJC is a much more restricted and specialized process, meant for a smaller, specific subgroup of young offenders rather than as a widely-used youth justice intervention.

How well does the Young Offenders Act account for those components that scholars claim should be included in restorative justice legislation? The statute offers clarification on the functioning of the mechanism, including the referral process, other operative procedures, the point of incorporation with juvenile justice system, and the scope of restorative justice's impact on additional proceedings. Further, the rules surrounding participation and eligibility are much stricter than those for the New Zealand FGC; accordingly, there is greater explication regarding the offences that can and cannot be addressed by YJCs and who can and cannot attend. The Young Offenders Act also addresses the legal safeguards in place and how they factor into the YJC process, requiring that conveners inform young offenders of their rights during the pre-conference phase, clarifying that young offenders can revoke their consent to participate at any time and stop the conference, and protecting all participants with confidentiality requirements. Finally, while the Act specifies the new justice sector agents who will be responsible for the administration of YJCs and defines their roles, it does not consider the requirements for facilitator training, selection, and certification.

Now, I review the policy content characteristics and assess the selected policy tools. The Young Offenders Act is largely a policy effort meant to build the capacity of the juvenile justice system to administer the new processes introduced by the Act. The Act does this by creating new actors with highly specified roles such as the SYOs, the conference administrators, and the conveners. It also accounts for the funding requirements of the various legislative components, including the salaries of the conference conveners. May (1990) identifies these kinds of capacity-building efforts as potential drivers of implementation.

The Act also provides for its own oversight and evaluation by creating a Youth Justice Advisory Committee (YJAC). The YJAC was tasked with creating conference guidelines, defining selection criteria for the appointment of conference conveners, and monitoring the administration of the Act, which would at the very least include an evaluative report on the Act's first three years of implementation (Young Offenders Act 1997). The Youth Justice Advisory Committee was abolished in 2006 and replaced by the Young Offenders Advisory Council, which originated from ministerial directive rather than legislative mandate and had a greatly reduced scope for monitoring the Young Offenders Act (Noetic Solutions 2010). Unfortunately, it remains unclear to me what prompted the NSW Parliament to remove this policy tool from the written legislation. However, it does appear that at the outset of the Act, the NSW

Government ostensibly embraced the opportunities for policy learning engendered by evaluation requirements.

In addition to these capacity-building tools, the Young Offenders Act relies heavily on explicit, procedural rules to make the YJC a fully formulated and predictable procedure in the juvenile justice system. As May (1993) explains, these kinds of rules increase the statutory coherence and legislative goal clarity, which should ease the implementation path. The Young Offenders Act therefore stands as a clear example of a strong statute (Ingram and Schneider 1990). The legislative designers specified the full operation of the Act and provided a standardized restorative justice model to be uniformly and consistently implemented throughout the territory.

The final analytical step is a briefing on the design process for the Young Offenders Act. Demands for a youth justice overhaul began in the late 1980s. Accompanying those demands, there arose several locally sourced models of alternative dispute resolution for young offenders, including a conferencing pilot scheme operated by the Wagga Wagga Police and the introduction of a Community Aid Panel at the Wyong Local Court (NSW Law Reform Commission 2005). The Wagga Wagga scheme was designed in large part by zealous advocates on the local Community Consultative Committee who worked with police officials to trial an “effective cautioning” program modelled on the Children, Young Persons, and their Families Act 1989 (Moore and Forsythe 1995). The Wagga Wagga model used police as the exclusive gate-keepers to the cautioning program which established warnings, cautions, and family group conferences as a set of diversionary options for offenders who had admitted guilt and were eligible to avoid court proceedings; review of the trial, which ran from 1991-1994, indicated that the program produced a significant reduction in the number of formal police interventions, resulted in a 95% victim participation rate in conferences, and increased victim satisfaction with the justice process (Moore and Forsythe 1995; O’Connell 1993).

In an alternative approach, Community Aid Panels spread beyond Wyong and by 1996, 75 panels were operating throughout New South Wales (NSW Law Reform Commission 2005). These were configured to run in conjunction with the typical court process rather than as a diversionary tactic. Young offenders who plead guilty could have their court case adjourned for three months in order to be referred to a panel of appointed community volunteers; the panel would meet with the offender and develop a restorative, educational, and rehabilitative plan; the offender would return to court for sentencing and based on reports from the panel and the

offender's successful completion of the plan, the court could offer a mitigated sentence (NSW Law Reform Commission 2005).

Both panels and conferencing gained pockets of support as the New South Wales government turned to the project of reforming its youth justice sector. A government-sponsored review of the system published a Green Paper in 1993, which advocated for the continued use of Community Aid Panels (NSW Law Reform Commission 2005). Meanwhile, the Attorney General's Department, encouraged by the success of the Wagga Wagga trial and by recommendations from a 1994 White Paper that argued for "a formal, integrated, consistent, accountable, and coordinated [conferencing] framework," spearheaded a Community Youth Conferencing pilot that replaced the Wagga Wagga scheme and built on its approach (NSW Law Reform Commission 2005). This pilot program operated in six locations and a final review found it to be an effective form of intervention (NSW Law Reform Commission 2005). When the time came for Parliament to draft the youth justice reform bill that had long been necessary, legislators opted for the conferencing approach over the Community Aid Panels.

During the passage of the Young Offenders Act, legislators almost unanimously supported the statute, although YJCs were the focus of extensive parliamentary conversation. Some of the pockets of debate centred around whether victims needed more support, whether the Act needed to more directly address Aboriginal culture and communities, and whether the police would be successful gate-keepers to the diversionary process (New South Wales Hansard 18, 19 July 1997). Overall, Parliamentarians seem to have been pleased with the operationalization of restorative justice through YJCs, and have been willing to reinforce and improve the conference process with subsequent legislative instruments.

This policy tinkering appears in the number of legislative regulations and amendment acts that have been used in the intervening years to amend the Young Offender's Act as it pertains to YJCs. In 1999, Parliament inserted firmer language meant to require further and more frequent consideration of whether a young offender's case was eligible for diversion (Young Offenders Amendment (Offences) Regulation 1999). In 2002, a regulation amendment introduced even stricter conferencing protocol in cases of admitted arson or bushfires, requiring that outcome plans feature specific elements, such as having young offenders volunteer at a burns unit in a hospital, watch an education video about the harmful effects of fire, meet any willing victims, and pay reparations or assist with clean-up efforts, in addition to any other restorative agreements that conference participants deem necessary (Young Offenders

Amendment Regulation 2002). A similarly specific list of considerations was provided for admitted cases of graffiti in 2009, which were illustrated in the conferencing process that took place for Lucas. To reiterate, outcome plans must account for reparation that would include the removal of the graffiti work, community service work comparable to removal, or compensation payment to assist with removal, as well as mandated participation in a personal development or education program (Young Offenders Amendment (Graffiti Offenders) Regulation 2009). Other changes to the Act involved further specifications regarding the keeping and disclosure of conference records, raising the upper age of eligibility to 21 (for offences committed before the young offender turned 18), and requiring that conference participants consider the appropriateness of programs designed to provide counselling, rehabilitation, education, treatment, and/or training for an offender.^{iv}

One would expect a thorough implementation process to result from this legislative design. The Young Offenders Act is a strong statute with clear and coherent goals. It devises all the instruments—principles, personnel, and procedures—that are needed for the operation of a restorative justice conferencing mechanism. It further reinforces these tools by mandating a programmatic evaluation, thereby generating the opportunity for policy learning and the improvement of these precisely developed instruments. Indeed, the Young Offenders Act has featured successive amendments and regulations meant to fine tune the YJC process.

However, the YJC also features three policy design shortcomings that severely limit its applicability. First, the mechanism's eligibility restrictions create substantial constraints on the frequency of its use. Second, it relies on a complicated referral process that makes conference activation cumbersome for the involved youth justice professionals. And third, it coexists with other diversionary tools such as warnings and cautions that are more familiar to the justice workgroup and that require less institutional effort. Therefore, in the absence of additional motivators, it would be understandable if the New South Wales youth justice system never developed a preference for the YJC model. Accordingly, along the axis of implementation, YJCs are a mixed bag, with policy design aspects that both facilitate and impede the mechanism's integration with youth justice. Meanwhile, much like FGCs in New Zealand, the YJC is centred on the needs of the young offender and can proceed without input from the victim, meaning that the mechanism is also uneven in its restorative ability.

Criminal Procedure Amendment Regulations and Forum Sentencing Conferences

Efforts to extend legislation to a restorative justice scheme for adult offenders have followed a similarly circumscribed trajectory. The forum sentencing intervention program was intended to extend the model that was established by YJCs and explore whether a similar conferencing approach would be applicable and effective in responding to offending by older individuals who were progressing through the criminal justice system. Forum sentencing has since been discontinued, as of a departmental decision handed down in early 2018 but remains an interesting case for further exploration.

In this instance, New South Wales opted for a restorative justice mechanism that operates as one component of the conventional justice system. Whereas the YJC can be a diversionary option that exists in adjacency, forum sentencing is constrained to be exclusively a sentencing option for the courts. Compounding this interdependence with conventional justice is the fact that all forum sentencing intervention plans *must* be approved by the referring court, which means that this restorative justice program is receiving continuous oversight from the New South Wales court system.

Much like the case of the Young Offenders Act 1997, parliamentarians managed to address the bulk of considerations that Groenhuijsen (2000), Leverton (2008), and Lee (2011) recommend for restorative justice legislation. The statute fails to offer details regarding facilitator selection, training, and certification. But, it clearly defines the mechanism, offers clarification on the referral process, provides timelines for the process, and orients the conferences within the existing justice system. The Act also specifies the rules of participation, the legal safeguards for both the victim and the offender, the responsibilities of oversight for a reparative agreement, and the role that the process outcomes can play in further proceedings.

In another similarity to YJCs, forum sentencing is reliant on its legislative rules and the explicitness of the procedures that the regulation creates. This creates statutory coherence and goal clarity that could ease the establishment of the legislative program through the provision of a clear road map and the reduction of policy confusion (Ingram and Schneider 1990; May 1993). The regulation was particularly explicit when it came to establishing operational objectives for forum sentencing. The stated goals for the program were to encourage greater participation in the justice process, to increase an offender's awareness of the consequences of their behaviour, to promote the reintegration of offenders, to increase victim satisfaction, to strengthen

community confidence in the justice sector, and to provide additional sentencing options (Criminal Procedure Amendment (Community Conference Intervention Program) Regulation 2005). In addition, when the regulation was first introduced, it came with several capacity-building components, such as the creation of program administrators who were responsible for overseeing the case referral and management process. However, the administration of forum sentencing was subsequently transferred to the Department of Justice and the role of program administrator was subsumed by existing department employees. Ultimately, the implementation tool of assigning committed personnel was undermined. Nevertheless, because of the clear procedural requirements and the limited amount of process innovation allowed to implementers and practitioners, the forum sentencing regulation is easily categorized as a strong statute (Ingram and Schneider 1990).

Finally, I consider the process characteristics that shaped the legislative journey of the forum sentencing policy. The enactment of this policy was based on attempts to recreate the success of the Young Offenders Act in the criminal justice system, but the drafting of this piece of legislation was undertaken in fundamentally different ways. Rather than introduce restorative justice practices through amendments to an existing Act, or crafting an entirely new Act to reform some of the existing criminal justice procedures, forum sentencing was ratified as a regulation. Regulations in New South Wales require less iterative work from the houses of Parliament; they're drafted by MPs, tabled for discussion only by special request, and otherwise, enacted by a one-time, majority-wins vote. This demands less consensus-building and eliminates the finetuning that happens to bills during the amendment process. It also creates legislative componentry that has less mandating power, and regulations can be easily overturned or disregarded. Overall, they represent legislative addendums that are both easily ratified and easily revoked.

The regulation was originally passed to create a government-funded, restorative justice pilot program in 2005 aimed at offenders aged 18-25 years and operating in two local courts (People and Trimboli 2007). Based on these results, the New South Wales Parliament elected in 2008 to formalize the Community Conference Intervention Program into a jurisdiction-wide adult conferencing scheme called forum sentencing (Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2008). The scheme made very few procedural changes to the piloted process, but it did make certain motor vehicle offences ineligible for conferencing, remove the 18-25 age restrictions, and direct that previously imprisoned offenders would not be

eligible (although this ineligibility limitation was removed by amendment in 2010) (Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2008).

At its outset, the forum sentencing scheme featured a few substantive differences. First, victim participation was not initially mandatory. Second, the program originally created the role of program administrators, housed within Corrective Services to manage referrals, monitor intervention plans, and generally oversee the program. Amendments in 2010 and 2014 changed these two features. In 2010, legislators added the requirement for victim participation, and included a timeline extension that gave the facilitators 56 days rather than 28 to hold a conference (Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2010). In 2014, an administrative restructuring shifted program management to an operations team housed in the Department of Attorney General and Justice, somewhat undermining the resource commitment of having full-time program administrators who were legislatively mandated and focused on overseeing forum sentencing (Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2014). In addition, Parliament introduced a substantial change to the program's legislated objectives, adding that the reduction of reoffending would be an official conferencing goal (Criminal Procedure Amendment (Forum Sentencing Program) Regulation 2008).

Making recidivism an official goal for the forum sentencing program would not necessarily strike an observer as a fundamental programmatic shift. Restorative justice's potential capacity to reduce reoffending has been both an implicit and an explicit focus of all the previously discussed conferencing schemes, and the effect that conference participation has on reoffending rates has been a frequent measure of success. But in the case of New South Wales, this legislative directive had a significant impact on the program's trajectory. Evaluations produced evidence that forum sentencing had no significant effect on the rate of reoffending, the time elapsed before reoffending behaviour occurred, or on the seriousness of the reoffence (Jones 2009; Poynton 2013). As a result, in March 2018, forum sentencing ceased operation, with justice sector officials citing the failure of the program either to reduce recidivism or to divert offenders away from custody (Internal Communication 2018). While the forum sentencing process produces a regularly restorative conferencing outcome because of required victim participation, along the dimension of policy design, the mechanism would appear to have been ineffectively crafted. As it stands, this is the only example of practice shrinkage in the

current case studies and both the goal content of the statute and its less rigorous legislative journey may have explanatory power in accounting for this implementation failure.

Vermont

Acts No. 148 and 115, Reparative Probation, and Community Justice Centres

Restorative justice legislation in Vermont differs markedly from the cases of New Zealand and New South Wales, largely because the statutory style follows a Wilsonian model. Vermont's laws are less prescriptive and local practitioners are granted much greater discretion in the interpretation and implementation of restorative justice directives. Also, the primary restorative practice in Vermont is not conferencing, as it is in the other two jurisdictions, but rather restorative justice panels, housed within Community Justice Centres, of which reparative probation is one manifestation.

The Vermont reparative boards and CJsCs remain largely autonomous from the conventional justice system. While reparative boards are a component of the state's probation program and perhaps characterized as being in lockstep with conventional justice, the operation of restorative justice in Vermont is envisioned as an independent and alternative approach to justice. The CJC is housed within the community and operated by community members rather than by justice sector experts. Also, these centres direct funding towards restorative operations at several justice system entry points, implementing everything from conflict mediation, to diversionary restorative justice panels, to post-release accountability circles that assist recent parolees with their reintegration into the community. These practices certainly require cooperation with the conventional justice sphere, and the particularities of reparative boards may result in a justice panel model that is primarily a supplementary modification to existing justice sector procedures. But CJsCs are in use as a separate justice "shop," a place for community members to explore new approaches to conflict resolution and crime management, and cases that are referred to a CJC are often fully adjudicated within the centre rather than being returned to court.

Both Acts are a bit sparse when it comes to addressing the aspects of what I've been calling the ideal restorative justice statute. Act No. 148, which introduces reparative boards, traffics in more details than Act No. 115, which codifies CJsCs. The mechanism of the reparative board is never fully elaborated upon, but the statute situates the process within the conventional

justice system because it defines the reparative board as a condition of probationary sentencing (Act No. 148 2000). The statute also defines some of the principles of this restorative practice and delineates the process of appointing board members, of creating board bylaws, and of guaranteeing participant safety and confidentiality (Act No. 148 2000). However, it does not afford additional procedural details and therefore fails to cover the rules surrounding participation, the referral process, and the role that restorative agreements will play in the legal process. Meanwhile, the CJs receive even broader swathes of legislative consideration. Act No. 115 provides a brief overview of the board structure and summary of the centres' duties. The most specific portion is the list of cases that are not eligible for referral to a CJC. It also cites the state and federal confidentiality policies to which the CJs are bound but does not account for tailored confidentiality requirements. Furthermore, the Act makes no mention of facilitator selection, training, or certification, it does not give parameters for the CJs' incorporation into conventional justice, and it does not outline any kind of referral process.

Despite the sparseness of restorative specifications, these Acts feature interesting policy content characteristics that reflect Vermont's ultimate implementation approach. The combination of the two statutes serves to create several implementation motivators, but not necessarily through the provision of statute coherence or policy rules as has been a frequent policy design approach in the other cases. Instead, the statutes focus on creating a framework of programmatic goals and a diffuse network of individuals with different sources of authority and therefore different incentives for goal adherence. Act No. 148 creates oversight positions housed within the Department of Corrections that are endeavouring to meet governmental measures of success such as numerical data points, financial efficiency, and constituent reach. Meanwhile, Act No. 115 codifies locally autonomous CJs that are spread throughout the state and designed to respond at the micro-level to community needs. By creating this overlapping authority, the Act has diversified its policy centres, and thus incentivized more active policy participation (May 1993).

Other than a handful of procedural requirements regarding the composition of the reparative boards and the CJC boards, the statutes' remaining text focuses on establishing broad, program-wide goals. These goals include obtaining probationer accountability, compensating victims and the community, increasing a probationer's awareness of the consequences of their actions, identifying ways to help a probationer remain law abiding, educating the public about restorative justice, and promoting community support for the program (Act No. 148 2000). In a

notable restriction, however, Act No. 115 forbids the CJs from handling cases that involve domestic violence, sexual violence, sexual assault, or stalking, except in the instance of DOC-authorized offender re-entry programs (Act No. 115 2008). This limitation is likely due to the controversy within restorative justice literature regarding the appropriateness of a restorative dialogue in these instances. There are several experts who oppose the use of restorative justice in cases of domestic and sexual violence, and who believe that a meeting with the perpetrator creates too many opportunities for revictimization, manipulation, and a reproduction of imbalanced power relations, all of which undermine the effects of restoration (Stubbs 2009).

This Wilsonian model of setting high-level goals without imposing overbearing local-level rules finds further reflection in a portion of Act No. 148 that introduced restorative justice as a codified state policy. The relevant policy reads as follows:

It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offences. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to: (1) Resolve conflicts and disputes by means of a nonadversarial community process. (2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims. (3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration...It is the intent of the general assembly that law enforcement officials develop and employ restorative justice approaches whenever feasible and responsive to specific criminal acts...It is the further intent of the general assembly that such restorative justice programs be designed to encourage participation by local community members, including victims, when they so choose, as well as public officials, in holding offenders accountable for damage caused to communities and victims, and in restoring offenders to the law-abiding community" (Act No. 148 2000).

This quote highlights the unique extent to which Vermont State Law has been infused with explicitly restorative rhetoric, providing for a policy directive that is the most expansive in its vision for restorative justice implementation and the most conceptually, academically accurate in its application of restorative values.

As an example of how such a statutory inclusion might influence future mindsets and criminal justice reforms, one can turn to a progress report for the Joint Committee on Corrections Oversight. Submitted by several restorative justice stakeholders, including representatives from the Department of Corrections and the Attorney General's Office (Vermont Association of Court Diversion Programs, et al. 2014), the report stated that compliance with Vermont's statutory policy would require "restorative justice options at all

intercept points.” It further suggested structural and procedural reforms that would make room for all these restorative options (VADP, et al. 2014). The envisioned model had proposals for local law enforcement, the pre-arraignment stage, pre-trial services, the sentencing and disposition stage, and the offender re-entry stage (VADP, et al. 2014). The report treated the proposed restorative overhaul as a logical outgrowth of the state’s explicit commitment to restorative justice values.

Finally, I address the ways in which policy process characteristics may have factored into this case. The legislation did not serve the purpose of establishing new processes and creating new justice sector agents; rather, Vermont’s Acts served to codify community-based programs that were already operating throughout the state and to integrate restorative justice with the Vermont Statutes. Vermont’s restorative journey began in 1994, when growing prison populations throughout the 80s that did not correlate to rising crime rates drove Vermont policymakers to seek alternative solutions to crime and punishment (Greene and Doble 2000). The Commissioner of Corrections spearheaded several system reviews and market analyses, but perhaps the most influential report came from a public opinion survey that demonstrated rampant discontent with Vermont’s criminal justice system, and that revealed overwhelming support for reparative boards—a community-based offender management process imbued with restorative values (Greene and Doble 2000). One of the identified concerns was that the state’s sentencing options were not varied enough; imprisonment was seen as too harsh in many cases, but the other option of probation was viewed as a “do nothing” approach and often deemed not harsh enough (Greene and Doble 2000). The public opinion survey set out to identify which additional, intermediate sentencing tools Vermonters favoured and reparative boards were the decisive winner (Greene and Doble 2000).

After the public’s explicit approval for such a process, Vermont began operating its first boards in 1995 using a grant from the federal government (Greene and Doble 2000). By May 1999, there were 44 boards located throughout the state, relying on volunteer hours from over 300 board members (Greene and Doble 2000). At this point, the Vermont legislature felt ready to commit to a program that had proven to be resilient and widely implementable. This commitment came in the form of funding and additional institutional support; a Capital Appropriates and State Bonding bill amended the state code to account for the reparative board model in the Department of Corrections institutional map and include reparative boards in the state budget (Act No. 148 2000).

Vermont's restorative vision was further reinforced in 2008 when the legislature passed an Act that codified the state's existing Community Justice Centres. The Vermont legislature decided that having the disparate centres operate under the authority of a single statute would enhance the provision of services, and aid in collaborative efforts with "law enforcement, state's attorneys, state agencies, social service providers, victim advocacy organizations, and other community resources" (Act No. 115 2008).

From this review, a picture emerges of a state with a community-driven restorative justice approach. Vermont traded in the professionalized practitioners and explicit legislative guidelines for a general, statutory investment in a municipality's use of restorative justice processes. Based only on the codified principles that uphold the restorative justice mechanism, Vermont might be said to be the most successfully restorative jurisdiction, with a stated commitment and accompanying justice sector buy-in to the notion that restorative justice can influence the criminal justice system at all stages and across all institutions. However, restorative justice panels do not require victim participation, and CJsCs are not focused solely on restorative interventions, committing resources to general rehabilitation and reintegration. This means that Vermont is reliant on mechanisms that do not guarantee fully restorative processes. In terms of the state's policy success, their restorative justice legislation features a seemingly effective Wilsonian model, with clear goals and dispersed programmatic authority. This indicates that Vermont has the potential for robust restorative justice implementation, but that implementation will vary from region to region.

Conclusion

This analysis of the restorative justice statutes that have been enacted in these three jurisdictions reveals compelling distinctions both within and between the jurisdictions. New Zealand has taken different approaches in its juvenile and criminal justice systems. In the former, the country opts for a strong statute that sets out strict, procedural guidelines for a restorative practice that is meant to be automatically and mandatorily employed in any juvenile case that progresses beyond police cautioning. In the latter, New Zealand's legislature provides a generalized sentencing guideline through a Wilsonian statute, establishing guidelines for determining the suitability of restorative justice in cases with a guilty plea or finding of guilt, and then leaving the process specifics to the Ministry of Justice and local service providers. This duality makes the country a compelling point of observation.

New South Wales has, in contrast, passed legislative acts and regulations that create tightly controlled restorative justice mechanisms at both the juvenile justice and the criminal justice level. The territory's strong statutes designed a highly standardized procedure for use in a narrow subgroup of criminal cases, wherein limited eligibility criteria and scripted conferencing interactions make for a smaller (in application and in scope), more predictable justice process.

The third case of Vermont provides yet another collection of policy design decisions and unique legislative oversight. Vermont let federal funding and grassroots organizing jumpstart its restorative experiment, and established the reparative board mechanism and the Community Justice Centres well before the legislature chose to support and codify the programs. Once state legislators did take account of restorative justice, they used Wilsonian-style statutes to establish broad goals and to loosely sketch the programmatic structure, relying on local actors to continue fleshing out the available restorative practices.

One can evaluate these statutory schemes from the perspective of how well they align with restorative precepts and how effectively they might be implemented. Along the axis of "levels of restoration," Family Group Conferences, adult pre-sentence conferences, Youth Justice Conferences, forum sentencing conferences, and restorative justice panels can all be characterized as restorative. However, FGCs, YJCs, and restorative justice panels can proceed without victim participation, meaning that in practice, these procedures do not always produce a fully restorative intervention.

In terms of "checking the most boxes" when it comes to a comprehensive restorative justice statute, the cases of the Oranga Tamariki Act 1989 in New Zealand, and the Young Offender's Act 1997 and the Criminal Procedure Amendment Regulation 2005 in New South Wales offer the most circumscribed restorative processes. Because of their fully defined nature, these legislative mandates feature heavy-handed policy tools, such as provisions aimed at implementation and goal coherence that May (1993) positively associates with greater implementation effort. This type of policy design could offer greater guarantees that the restorative justice mechanism will receive well-regulated use.

On the other hand, New Zealand's Sentencing Act 2002 and Vermont's General Assembly Acts 114 and 128, in using lower levels of precision, create opportunities for flexibility in restorative practices, therefore making the associated implementation efforts more responsive to local needs even as it generates the possibility of inconsistent or uneven implementation.

In the next chapter, I begin an overview of the existing evaluations of these mechanisms and compile the current results regarding the efficacy and relative success of each restorative justice program.

End Notes

ⁱⁱⁱ Children, Young Persons, and their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010; Children, Young Persons, and their Families Amendment Act 2014; Children, Young Persons, and their Families (Vulnerable Children) Amendment Act 2014

^{iv} Young Offenders Amendment Regulation 2004; Young Offenders Amendment Regulation 2008; Courts and Other Legislation Amendment Act 2007; Young Offenders Amendment Regulation 2002

4. IMPLEMENTING RESTORATIVE JUSTICE: A SURVEY OF EXISTING EVALUATIONS

As an initial appraisal of the three jurisdictions' restorative practices, I begin by providing an overview of past evaluative studies conducted in New Zealand, New South Wales, and Vermont, respectively. I use these existing evaluations to survey the measures that have already been used to assess these various programs, and to review other conclusions about how well the programs have been performing. This collection of findings also expands the data available to me for the purposes of my own evaluation. In several instances, information remained unavailable to me, either because the data was not public or well-recorded, or because I was limited in the people I could interview and the types of questions I could ask. I therefore use the results discussed in this chapter to supplement my own conclusions. After addressing the findings produced by these evaluations, I also filter this survey of evaluative data through the measures of success that I've described above for assessing restorative justice in particular and for assessing policy design more generally. I discuss this method of review more fully below, and then dive into the respective evaluations of each jurisdiction.

Methodology

My first step was to collect evaluative studies of the restorative justice mechanisms in question, including both peer-reviewed, academic reviews of the restorative justice programs and evaluations that were sponsored and published by the government. I did not intend to compile an exhaustive collection but instead to offer a brief survey of the most recent and the most frequently cited papers that spoke to the efficacy of these restorative practices. I hasten to add, however, that no single measure of “efficacy” has been applied across the evaluations I survey; researchers used an array of metrics and varying expectations to define programmatic success for these restorative justice mechanisms. In summarizing the spread of results, I am focused particularly on the moments where the employed metrics align with restorative goals and principles. Accordingly, I devote a portion of the discussion to differentiating between the evaluative objectives of the studies and identifying the ones most relevant to measuring restorative success as I've defined it in the context of my own research.

I focus on interpreting the results through Bazemore and Schiff's (2005) expectations for restorative outcomes. These outcomes are divided into three general restorative principles—repairing harm, stakeholder involvement, and community role transformation—and are

embodied in practices that focus on amends-making, relationship-building, victim-offender exchange, reintegrative shaming, professional role change, norm affiliation, and skill building (Bazemore and Schiff 2005). Recall from the previous chapter that one of my primary inquiries about these restorative justice mechanisms is how restorative they are; Bazemore and Schiff's framework provides a well-elaborated set of measures for ascertaining the levels of restorative success.

Despite my agreement with the way Bazemore and Schiff (2005) envision and categorize restorative outcomes, I reject one element of their framework for evaluating restorative program success or outputs. My concern stems from their decision to measure the successful delivery of reintegrative shaming by the reoffending rates of participating offenders. For many reasons, I do not believe that the impact on recidivism should be a primary indicator for the success of a restorative justice program. It has not been conclusively shown that maximizing the restorative nature of a justice intervention maximizes the effect on recidivism. Some studies have identified a significant relationship and others have not, and very few have convincingly isolated the effect of restoration on an offender's post-intervention decisions.

Efforts to further illuminate this effect are stymied by the compounding and tangled causes of reoffending behaviour. To illustrate, criminogenic needs—characters, traits, problems, and other personal factors that influence the likelihood that an individual will commit further crimes—are various and often unchanging (Latessa and Lowenkamp 2005). There are some “dynamic” needs—such as who an offender associates with, their attitude and values, and their employment status—that can be altered through the process of restorative justice (Latessa and Lowenkamp 2005). But there are also “static” factors that remain constant such as family background and an existing criminal record. Restorative justice programs cannot readily change static factors and cannot easily influence their impact on future offending behaviour. Furthermore, most criminogenic needs would only be fully addressed with an intervention that was more than simply restorative. For example, a restorative justice conference could reveal that a primary contributor to the offender's criminal motivations was their unemployment, and the outcome plan could ask the offender to seek job training. But, the process of educating, certifying, and employing a convicted criminal offender is often a matter of connecting that offender to social services that provide offender-focused, rehabilitative programming. In short, the phenomenon of criminal reoffending is a little too “messy” to be fully accounted for by a single justice intervention, even if it is a restorative one. And the reduction of future offending

requires offender-centric care that is better characterized as rehabilitative rather than restorative and is, therefore, out of place in the limited context of a restorative justice mechanism. All of this makes participant reoffending rates an ill-conceived marker for restorative success.

I am also interested in the general policy success of each restorative justice mechanism. Therefore, where applicable, I employ Marsh and McConnell's (2012) framework for success to further categorize the collection of evaluative results. Recall that this framework distinguishes between programmatic success (measured by operational baselines, outcome baselines, resource efficiency, and the amount of public benefit), process success (measured by the legitimacy and sustainability of the policy), and political success (measured by the government's ability to frame the policy as a legislative victory or failure) (Marsh and McConnell 2012). By accounting for success in more general policy terms, I enable a comparison of both the restorative goals and the policy goals of each restorative justice mechanism. In the next chapter, I explore the alignment of those two sets of goals and analyse where the implementation successes and failures take place, whether that be at the intersections or the diversions of these goals. As in the chapter above, I begin with New Zealand, then discuss New South Wales, and conclude with Vermont.

New Zealand

Because of the originality and influence of New Zealand's youth justice FGCs, there have been several evaluations of the mechanism. Again, this summary by no means covers the extent of existing evaluations, but it presents some of the more significant FGC research that's been conducted. Indeed, as will be evident from the following discussion, most evaluations of youth justice FGCs have found that the program is meeting its intended goals. However, it is notable that the measures of success only address a handful of Bazemore and Schiff's (2005) itemized restorative outcomes and apply inconsistent levels of methodological rigor.

One of the first, major, and oft cited research studies was a report commissioned by the Department of Social Welfare and compiled by the Institute of Criminology at Victoria University that was meant to review the entirety of the youth justice system and its operation in the wake of the Children, Young Persons, and their Families Act 1989 (Maxwell and Morris 1993). The specific review of Family Group Conferences relied on an analysis of 187 youth offending cases that were referred to conferencing by Youth Aid Officers in a three-month period from September to November 1990, as well as 211 distinct cases that were assigned to coordinators from a mix of Youth Aid and Youth Court referrals (Maxwell and Morris 1993).

This evaluation was explicitly concerned with investigating whether the CYPF Act was meeting the objectives established within the legislation, listed as diversion, accountability, enhancing wellbeing and strengthening families, due process, family participation, victim involvement, consensus decision-making, and cultural appropriateness (Maxwell and Morris 1993:xvi).

The same, primary researchers extended their investigation to perform a longitudinal study that was published in 2004 as part of the “Achieving Effective Outcomes in Youth Justice” research project funded by the Ministry of Social Development (Maxwell, et al.) The study used post-conference interviews with a “prospective sample” of about 100 individuals (i.e. youth, facilitators, family members, and victims who had recently participated in an FGC), and a “retrospective sample” of around 500 interviewees (previous youth offenders who had an offence dealt with by an FGC five years prior) (Maxwell, et al. 2004). In this instance, reviewers set out with slightly different goals than in the 1993 study. They remained interested in whether FGCs were meeting the objectives of the CYPF Act, but they had additional questions about the extent to which the conferences featured critical restorative characteristics given the growing international buzz about restorative justice (Maxwell, et al. 2004:5).

These two studies, in combination, provide the most complete view of how well FGCs are producing Bazemore and Schiff’s (2005) restorative outcomes. The first group of those outcomes relates to the extent to which FGCs can repair harm, quantified by how frequently young offenders were asked to make amends and given the opportunity to build relationships. In the terms that Maxwell and Morris (1993) use, these outcomes are most closely related with the goals of accountability and high participation levels. Along those lines, Maxwell and Morris (1993) found that almost every single conference from the examined period featured an agreed upon outcome plan that imposed some sort of penalty on the young offender; 70 per cent of these outcome plans included an apology, about 60 per cent included community work, and about 30 per cent included reparation (Maxwell and Morris 1993). It follows that the conferences were managing on a regular basis to hold the young offender accountable and demand that they make amends. Considering participation rates in this sample of conferences, the young person attended in 96 per cent of cases, parents or caregivers attended in 98 per cent of cases, and extended family attended in almost 40 per cent of cases (Maxwell and Morris 1993:75). Clearly, young offenders and their familial network are regularly involved in the process. When performing this analysis again in 2004 with an eye to a more specifically restorative vision, Maxwell, et al. once again found that the bulk of conferencing experiences

were demanding that offenders acknowledge responsibility and repair harms, and that coordinators were organizing and facilitating appropriate participation from young offenders and their families. However, looking more closely at the quality of participation, the 1993 study found that family members felt involved about 60 per cent of the time and young offenders felt involved only 30 per cent of the time (Maxwell and Morris 1993). This finding creates concerns that some opportunities for engagement are being missed within FGCs.

These studies found additional trends in conference outcomes that undermine the processes of amends-making and relationship-building. One was the prevalence of restrictive sanctioning in the FGC outcome plans, which was found in three-fifths of cases (Maxwell, et al. 2004:22). While curfews and supervised residence are perhaps helpful tools for monitoring young offenders, they are not rooted in a restorative understanding of justice. Having a young offender report home at a certain time every night does not address the harms caused by the criminal incident, nor does it engage additional stakeholders, nor does it transform communities; instead, it is a conventional justice mechanism wielded by the state to control offenders. A second shortcoming is that only about half of conferences in the sample were able to build relationships in a way that addressed effective offender reintegration and enhanced a young offender's wellbeing. Young people were connected to education and training programs, and employment opportunities in 30 per cent of cases, and outcome plans featured rehabilitative elements in even fewer instances (Maxwell, et al. 2004:22-23).

The second group of restorative outcomes relates to the extent to which FGCs feature substantive stakeholder involvement, which can be measured by the levels of victim-offender exchange and reintegrative shaming. Maxwell and Morris (1993) reported that 46 per cent of cases featured victim involvement. There were many reasons for a victim's absence, including being too busy, being disinterested in the process, being afraid, and failing to see the value (Maxwell and Morris 1993). However, a compelling finding with ramifications for the implementation of FGCs was that in one-third of cases, victims had not even been contacted or invited to the conference (Maxwell and Morris 1993). It is perhaps unrealistic to envision FGCs having 100 per cent victim participation given that the mandatory and widespread use. The more cases that proceed to an FGC, the more likely that coordinators will encounter wary victims, or cases with no direct victims at all. However, the inconsistency with which coordinators were issuing an invitation to victims in 1993 indicates that victim-offender exchange was, at that point, an under-prioritized restorative outcome.

The 2004 study did not speak directly to the rates of victim participation, but the longitudinal nature of the study did allow the researchers to more precisely investigate the relationship between FGC participation and reoffending. Recall that reduced recidivism rates are cited as a potential outcome of effective reintegrative shaming (Bazemore and Schiff 2005). Accordingly, Maxwell, et al.'s (2004) methodology included a multivariate analysis of the life outcomes of the retrospective sample to determine that conferences were playing a small but statistically significant role in reducing recidivism, and isolated certain conference outcomes (such as a young person feeling genuine remorse, feeling supported and understood by participants, and feeling prepared for and included in the process) as having the power to reduce the likelihood of future offending.

The third group of outcomes relates to the extent to which FGCs promote community role transformation, which is captured by professional role change, norm affirmation, and skill building. As may be apparent from the goals that Maxwell and Morris (1993) identified as the primary objectives of the CYPF Act (diversion, accountability, enhancing wellbeing and strengthening families, due process, family participation, victim involvement, consensus decision-making, and cultural appropriateness), community-based outcomes were not a central concern of the research. This reflects, in part, the reduced amount of attention that community-based issues receive from the actual Oranga Tamariki Act 1989; the Act is generally much more concerned with offenders and their families. Where community-related findings were available, however, they mostly illustrated shortcomings in the capacity of the FGC to produce professional role change. These shortcomings included the persistent and influencing participation of justice sector professionals and the lack of innovation in conference timing and location. For the first issue, Maxwell and Morris (1993) found that families and young offenders reported that social workers, coordinators, or Youth Advocates were primary decision makers in almost 20 per cent of cases, which directly undercuts the restorative dimension of professional role transformation. For the latter issue, Maxwell and Morris (1993) found that 76 per cent of cases were held before 4 pm and 66 per cent of cases were held at DSW offices. While having a conference at 10 am in the morning at departmental facilities is not inherently anti-restorative, the story that these numbers tell is of a process that is being scheduled for the convenience of the justice professionals rather than for the convenience of the community stakeholders. Potential participants may be unable to get off work to attend a conference during the day or may not feel comfortable in seemingly "official" government offices.

This same set of studies is the best source of information for the transition from a discussion of restorative-specific goals to an assessment of what can be said about the general policy success of the FGC. Using Marsh and McConnell's (2012) distinctions, I examine what these reports illuminate about the programmatic success, the process success, and the political success of FGCs. First, at the programmatic level, Maxwell and Morris (1993) provide a nuanced discussion of the ways in which the present implementation of the FGC meets the goals that they identified for the CYPF Act. In the end, they found that FGCs were meeting their intended objectives. Even areas discussed above as not meeting their restorative potential are tallied by researchers as fulfilling legislative expectations. For example, Maxwell and Morris (1993:184) explain that the overall level of victim participation in the juvenile justice system is higher now that FGCs are an option. Therefore, FGCs are meeting their baseline with regard to increasing victim involvement. This is why it is important, as Marsh and McConnell (2012) point out, to know where success is declared along the spectrum of policy results.

Second, at the process level, Maxwell and Morris (1993:188) find some inherent contradictions in the CYPF Act and the justice mechanism it creates, which potentially undermines the legislative sustainability of the policy. Most notable is the issue of attempting to create a culturally appropriate, community-inclusive, restorative process while still having state-sanctioned, justice sector professionals wield the mechanism on behalf of the state. Nessa Lynch (2007) also investigated the procedural legitimacy of the FGC by focusing on one of the typical concerns that justice sector experts have about restorative justice—its capacity to provide ample legal protections for participants—and examined the robustness of legal rights for young FGC participants. She found that while the process was designed to protect a young offender's right to due process and their right to an attorney, and that those aspects were engrained in the legislation, there remained three areas of concern. Young offenders may not have equal and consistent access to legal advice and representation in advance of their conference; FGCs did not always establish the facts of the offence which is necessary for a procedurally legal admission of guilt; and conference outcomes produced irregular and under-monitored penalties for young people (Lynch 2007).

Another, more recent review of FGC practice provides compelling insight into the mechanism because of the perspective from which it produced its findings. Researchers commissioned by the Department of Child, Youth and Family used interviews with Youth Justice Coordinators as the primary methodological tool, exploring FGCs through the lens of

expert voices (Slater, Lambie, and McDowell 2015). The study aimed to explore the development of conference practice and the differences in coordinator approaches throughout the country. Discussions with active coordinators revealed a handful of consistent themes. First, coordinators stated that they supported the concepts introduced by the CYPF Act such as family empowerment, and unanimously believed that FGCs were an effective youth justice tool (Slater, et al. 2015). Second, coordinators reported that there were six process variables that contributed to optimal conference performance: “functional relationships with Police, quality preparation, tailoring the process to the young person, linking the young person with their local community, victim input into the process, and the qualities of individual coordinators” (Slater, et al. 2015:628). Third, coordinators provided insight on programmatic shortcomings such as: lack of police buy-in; high conference volumes; lack of quality pre-conference information about the offence, the offender, and the victim; poor monitoring of plans; and institutional inability to prioritize victim engagement as the primary issues (Slater, et al. 2015).

With regards to whether FGCs experience political success as defined by Marsh and McConnell’s (2012) framework, none of these evaluations made many contributions to understanding the policy’s popularity. However, along the metrics where information was available, there are clearly moments of success from a restorative viewpoint and from a general policy stance, and there remain opportunities for growth at both levels as well.

Adult pre-sentence conferencing has not experienced nearly as much academic investigation as has the FGC. The comparative absence of research means that the evaluations that do exist are expectedly less diverse and less thorough in their consideration of potential outcome measures. However, even with lowered expectations, the existing reviews are astonishingly limited in scope and only evaluate this mechanism along two restorative dimensions: the reduction of reoffending, which can be a measure of effective reintegrative shaming, and victim satisfaction, which can be a measure of effective victim-offender exchange (Bazemore and Schiff 2005).

The Ministry of Justice has conducted three, multi-year studies that investigate whether participation in a restorative justice conference can have a statistically significant effect on the reduction of reoffending (New Zealand Ministry of Justice 2011a, 2014, 2016a). All three studies found evidence that conferences could lead to some reduction in reoffending, particularly within the first 12 months after proceedings adjourned (New Zealand Ministry of Justice 2011a, 2014, 2016a). The most recent study concluded that conferenced offenders had a 15 per cent lower

reoffending rate in the first year of observation (New Zealand Ministry of Justice 2016a). However, this effect became less substantial over longer follow-up periods, and five years after an offence both conference participants and offenders from the control group had similar reoffending rates (New Zealand Ministry of Justice 2016a).

The other evaluative offerings come from two surveys of victim satisfaction, one published in 2011 and one in 2016 (New Zealand Ministry of Justice 2011b, 2016b). The latter of these surveys found that 84 per cent of victims were satisfied with their conferencing experience, 93 per cent felt well-prepared for the meeting, 60 per cent had more positive views of the criminal justice system following their participation, and 80 per cent would recommend the process to others (New Zealand Ministry of Justice 2016b). These statistically significant successes, coupled with generally positive perceptions of restorative justice's philosophy and potential, have encouraged further investment in conferencing and requests for expanded practice in the criminal justice sector (Hughes 2016; Fox 2015).

Taken together, these results offer a limited picture of pre-sentence restorative justice conferencing. The possible impact on reoffending rates indicates that pre-sentence restorative justice conferencing may be producing an intervention moment of effective reintegrative shaming wherein there is a lasting impression left with the offender. And, the reports of generally positive victim experiences provide a sense that these conferences are regularly facilitating mutual, productive, and respectful victim-offender exchanges. Recall that victim participation is mandatory in order for this type of adult pre-sentencing conference to take place, and the increased victim engagement is therefore inherent in the structure of this justice mechanism.

In trying to piece together an image of general policy success, it is important to note that at the programmatic level, adult restorative justice conferencing had few objectives embedded directly into its legislative mandate. There are, therefore, fewer baselines available for determining whether these results spell programmatic success for the conferencing process; however, the reduction in reoffending and the levels of victim satisfaction can certainly be clocked as public benefits. At the process and political levels of policy success, these evaluations once again paint a vague picture. But the call for further investment and the support for the positive program results indicate some legislative sustainability that reinforces a narrative of process-based success.

New South Wales

In similar fashion to the FGC in New Zealand, the impulse to assess the youth justice system has kept a spotlight on the Youth Justice Conference in New South Wales. As such, there are several reports that have examined various aspects and efficacies of YJCs. While certainly offering some information about the restorative success of the mechanism and recommendations for how to improve the conferencing process, most of these evaluations are focused on supporting the youth justice concepts that were institutionalized with the passage of the Young Offenders Act and measuring the conferences against those legislatively sourced objectives. This means that the available statistical evidence speaks mostly to whether the New South Wales conferencing process is achieving its policy baselines, rather than how effectively restorative the mechanism is.

Examining these evaluations more closely, they are in large part helmed by the Bureau of Crime Statistics and Research (BOCSAR), an agency in the New South Wales Department of Justice. The BOCSAR studies have covered a range of procedural components using several outcome measures, including the effect of conferencing on reoffending, the type of outcome plans and their rates of success, the experiences of conference participants, the cost efficiency of conferencing, and the levels of public support for conferencing. Again, I will sort some of these findings according to their related, restorative outcome.

First, I consider the amount of amends-making and relationship-building taking place. A BOCSAR study surveyed the conference characteristics and resulting outcome plans of 1,894 YJCs that took place in 2010 (Taussig 2012:3). In this instance, researchers found that apologies were a component of outcome tasks in almost 80 per cent of cases, meaning that conferences were seeking resolutions with an eye towards the offender making amends. However, community work was only included in 28 per cent of plans (compared with 60 per cent of FGC plans) and financial reparation was only included in 8 per cent of plans (compared with 30 per cent of FGC plans) (Taussig 2012:4, Maxwell and Morris 1993). This means that while amends-making may be a focus of the YJC, it is not being actioned in multiple ways, relying instead on an apology as the primary tool for this restorative component. The more limited application of amends-making contrasts with the YJC's more robust use of relationship-building opportunities. Personal development was a component of almost 70 per cent of outcome plans (compared with under 50 per cent of FGCs), and YJCs were able to connect young offenders to

behavioural programs, educational programs, and work options in most cases (Taussig 2012, Maxwell, et al. 2004).

Second, I consider the amount of victim-offender exchange and reintegrative shaming that features in the YJC. In New South Wales, victims attend conferences in just over 40 per cent of cases, making it comparable to the level of victim involvement in FGCs in New Zealand (Taussig 2012). The victims that do participate were satisfied with the handling of the case in 86 per cent of cases (Wagland, Blanch, and Moore 2013). However, BOCSAR performed the most longitudinal investigation of victim experiences, interviewing participating victims immediately after the conference and again four months later. This second, follow-up conversation revealed a drop-off in victim satisfaction, with participants reporting that they remained pleased with the outcome in only 73 per cent of cases (Wagland, et al. 2013). The reasons they gave for their adjusted answers were: feeling as though the process ultimately had no impact on the offender; learning that the offender had not complied with the outcome plan; and being frustrated with the lack of communication from facilitators in the aftermath of the conference (Wagland, et al. 2013).

Using reoffending rates as an indicator of the mechanism's efficacy and the level of reintegrative shaming that occurs, BOCSAR produced moderately promising results in a 2002 study where researchers found a slight reduction in reoffending (Luke and Lind 2002). However, attempts to replicate these findings with a more rigorous methodology revealed that researchers could not locate any significant relationship between participation in an FGC and a reduced proclivity towards recidivism (Smith and Weatherburn 2012).

Third, I consider the amount of skill building, norm affirmation, and professional role change that is happening in YJCs. Again, outcomes that relate to community transformation are infrequently employed in the existing evaluations. BOCSAR did investigate the level of police buy-in into the YJC process by tallying the number of conference referrals as compared to other police actions against young offenders (Moore 2011). The results indicated that police were rather less likely to pass the case onto a YJC; if the offence was not serious enough for the Children's Court, officers would simply opt for a caution and if the offence seemed too severe for cautioning to be appropriate, police would send the case onto the court (Moore 2011). This lends a sense that some juvenile justice actors, in this case the police, have not experienced levels of professional role change that allow them to freely embrace and engage with the existing conferencing mechanism.

Shifting gears to a discussion of general policy outcomes, YJCs certainly experience programmatic success. The principles undergirding the Young Offenders Act are a young offender's acceptance of responsibility, the strengthening of the family, the provision of development and support services to prevent future reoffending, to enhance the rights of victims, and to be culturally appropriate. As can be seen from the discussion above, most of these principles are facilitated by the YJC's restorative outcomes, meaning that the conferences largely meet their legislative objectives. BOCSAR also completed a cost-benefit analysis of the YJC, comparing the process to cases that are handled by the Children's Court (Webber 2012). This review found that the average cost of a YJC is 18 per cent less than the average cost of a comparable Children's Court matter, leading researchers to conclude that the YJC scheme is more cost-effective than court (Webber 2012). This resource efficiency reinforces the programmatic success of the YJCs.

Finally, process success and political success are less explicitly evaluated, but BOCSAR did find evidence of widespread public support for the YJC process, via 2,530 telephone interviews with New South Wales residents (Moore 2012). Over 85 per cent of respondents agreed that community work should be a feature of criminal sentences and over 87 per cent of respondents believed that victims should have an opportunity to confront the offender with the harms caused by their behaviour (Moore 2012). While respondents suggested that restorative justice outcomes such as "making amends" and "working in the community" were less effective as crime prevention measures when compared to other options like "better mental health care" and "better supervision of young people," respondents did agree that "receiving a prison sentence" was less effective than restorative approaches in addressing future offending (Moore 2012:1). Public support for the scheme is a good indicator that legislators will continue to support the policy as well.

This diversity of evaluative measures is once again abandoned when it comes to reviews of the forum sentencing intervention program. Despite still being managed by BOCSAR, the studies in this case are reduced to unidimensional explorations of the potential impact on recidivism, apart from an initial evaluation of the efficacy and applicability of the pilot program that was published in 2007. This early evaluation aimed to investigate four outcome-related concerns: whether conference participants were satisfied with the process, whether participating offenders were accepting responsibility for their behaviour, whether key stakeholders supported the program, and whether the program was having any impact on the rate of reoffending

(People and Trimboli 2007). Aligning these outcomes with their restorative counterpart according to Bazemore and Schiff's (2005) categorizations, responsibility acceptance is related to amends-making, participant satisfaction is related to victim-offender exchange, and reoffending rates are once again used to measure the effectiveness of reintegrative shaming. The multi-dimensional review found that the "vast majority" of participants "were satisfied with the various stages of their conference," that offenders felt held accountable by the conferencing process (although victims did not always agree with that assessment), and that not enough time had passed for accurate observation of reoffending but that initial rates were low and promising (People and Trimboli 2007).

Considering general policy success measures, the central outcomes that were used in this study do not offer a complete picture of all three components. At the programmatic level, having offenders accept responsibility for their behaviour and reducing reoffending are both legislative objectives, meaning that there is some early evidence that forum sentencing conferences were meeting those baselines. At the process level, investigating the amount of support of key stakeholders speaks to the legitimacy of the policy and its level of coalition support. Given that key stakeholders were largely in favour of the program and believed the conferences met their objectives, this evaluation would indicate that forum sentencing enjoys some process success as well (People and Trimboli 2007). At the political level, this evaluation does not provide insight into the level of policy popularity. On top of these findings, the review produced a few recommendations, largely concerned with how to best expand the program, broaden eligibility criteria, improve guidelines for victim participation, and direct magistrates in the use of program referrals (People and Trimboli 2007).

Since then, BOCSAR has looked exclusively at the relationship between forum sentencing and the reduction of reoffending. Despite the existence of six other objectives within the legislation against which to measure conferencing success, BOCSAR conducted two reviews of forum sentencing's impact on reoffending rates (Jones 2009; Poynton 2013). In both instances, researchers found no correlation between participation in the forum sentencing program and reduced future recidivism. However, both reports also acknowledged that there is nothing to suggest that the program was not meeting its other objectives.

This singular dimension of evaluation limits attempts to understand forum sentencing's restorative and policy success. First, as discussed above, the reduction of reoffending, despite its centrality to governmental justice aspirations, is a flawed tool for measuring restorative success.

Therefore, other than the data from the pilot program that suggested that forum sentencing facilitated amends-making and effective victim-offender exchange, there is limited evaluative information about how well forum sentencing was producing restorative outcomes. Second, there are other legislative objectives established in the regulation that have been left out of the narrative. The 2007 findings uphold the following regulation goals: greater participation in the justice process, increased offender awareness of their actions, increased victim satisfaction, and the provision of additional sentencing options. It follows that forum sentencing might have been a source for both restorative and programmatic-level success, but recent BOCSAR evaluations failed to effectively test for that. And despite the possibility that forum sentencing was experiencing some pockets of success, the closure of the program remains an obvious area of process-level failure.

Vermont

Although CJs are a cornerstone of Vermont's restorative justice model, as well as a relevant piece of the state's legislative context, they are difficult to monitor at the state-wide level due to their localized services and because they do not always systematically record their offender management. Perhaps this is why rigorous, academic reviews of the CJC network were not available. However, there has been substantive evaluation of the reparative probation program, and reports have produced largely positive findings that speak to the capacity for restorative outcomes and general policy-based success.

Considering the first group of restorative outcomes—repairing harm, encapsulated by amends-making and relationship-building—there are several studies that provide relevant insight. One initial study was based on a content analysis of 52 reparative board meetings that were captured on film. The goal was to determine the restorative extent of this sample of meetings, using an evaluative method derived from “thick” and “thin” definitions of restorative justice (Karp 2001). In thin restoration, an offender engages in “*any* positive act” that benefits a crime victim or an affected community; in thick restoration, that “positive act” must directly link to the identified harm caused by the specific offence under discussion (Karp 2001). For example, thin restoration would be achieved if an offender performed community service in the same town where they committed the offence, while thick restoration would require a more direct community service order such as a proven graffitist having to remove their work (Karp 2001). Based on these characterizations, and coding for common restorative elements in a reparative

agreement (apologies, restitution, community service), the authors found that 44 out of the 52 meetings demonstrated substantive restoration but only 10 of those met the standards for thick restoration (Karp 2001). Although Karp (2001) is using different language, “thick” and “thin” restoration are related to the prevalence of amends-making in the restorative outcomes and, as stated above, Karp found that amends were present in a clear majority of panels. Although this outcome pointed to the potential of reparative boards to be amply restorative, there were a few “red flags” in which typical restorative tools became more akin to retributive sanctions. The concerns arose due to the arbitrary application of consequences in some reparative agreements, leading researchers to call for a more thorough training process that would emphasize the importance of linking the imposed agreement to the crime’s harms (Karp 2001).

A second study by Karp, Sprayregen, and Drakulich (2002) employed an extensive, outcome-based evaluation by identifying four dimensions of desired program goals and assessing, along each dimension, several related program outputs (Karp, et al. 2002). The four dimensions and their assigned measures were: community involvement, measured by the level of decision-making authority the boards had, the number of total board members, and contributed board hours; victims’ needs, measured by length of time to case termination, victim satisfaction, amount of restitution ordered, number of restitution orders that were fully paid, and victims’ desires to have the program continue; community restoration, measured by community service requirements, community service site satisfaction with participating offenders, board member satisfaction, and board members’ sense of membership in their community; and finally, responsible offenders, measured by the prevalence of impact learning tasks (i.e. requiring a probationer to write an essay about the harm caused by their crime, or attend a victim impact panel), the prevalence of competency tasks (i.e. treatment, counselling, drug or alcohol screening, and other education programs), the proportion of cases with successful reparative agreement completion, the amount of probation violations, and the number of offenders rearrested within one year of a board meeting (Karp, et al. 2002).

The final two dimensions of community restoration and offender responsibility also relate to amends-making and relationship-building. Karp, et al. (2002) found that 65 per cent of offenders were assigned community service and of those service assignments, 92 per cent of them took place in the town where the crime took place. This result indicates that the reparative boards ask the offender to engage meaningfully with the affected community when working to make amends. A further finding that spoke to the process of relationship-building was that 78

per cent of offenders felt that their participation in reparative probation increased their sense of membership in the community (Karp, et al. 2002).

Considering the second and third groups of restorative outcomes—stakeholder involvement and community role transformation—I examine the first two dimensions discussed in Karp, et al.’s 2002 study. Addressing victim needs is one way to strengthen victim-offender exchange, and while the Vermont Department of Corrections is committed to soliciting more victim participation and increasing training around issues of victim engagement, the fact remains that only 9 per cent of panels featured victim participation (Karp, et al. 2002). Despite being a small population, participating victims were satisfied in 82 per cent of cases and felt supported by the board in 99 per cent of cases, suggesting that reparative panels effectively support victims once the victims are involved in the process (Karp, et al. 2002). Community involvement is a component of professional role change. Reparative probation boards are operated by community volunteers rather than justice sector professionals, and Karp, et al. (2002) found that these boards have a high level of decision-making authority and increasing numbers of volunteers. This has positive implications for the transference of control of the restorative justice mechanism from the criminal justice system to community members.

Finally, researchers conducted interviews with active board members to determine the role and attitudes of the program’s practitioners (Karp, Bazemore, and Drakulich 2004). Responses from these individuals were used to provide insight into the level of engagement with victims, offenders, and communities. Interviewees reported that the meeting can be a significant turning point in the life of a participating offender, and that there is great value in shoring up justice processes with volunteer involvement because offenders may respond better to intervenors who perform their job without a monetary incentive (Karp, et al. 2004). The board members revealed that they value victim participation, feel confident in their ability to provide successful and safe restorative services to victims, and would like to see more victim involvement (Karp, et al. 2004). And finally, board members feel more connected to their community because of their involvement in the process, find that citizen involvement produces a more democratic approach to criminal justice, and experience the reparative boards as significant opportunities for offenders to rebuild a community’s trust (Karp, et al. 2004). These results reiterate the themes discussed above: that Vermont’s reparative boards provide compelling opportunities for amends-making, relationship-building, victim-offender exchange (despite the infrequency of victim participation), and professional role change.

Shifting the conversation to address the policy success of Vermont’s reparative probation program does not require a substantial reformulation of the mandating goal content and evaluative measures. Recall from Chapter 3 that Vermont’s legislature implemented a complete restorative vision as the guiding impetus for its criminal justice system. This means that if Vermont’s justice mechanisms are producing restorative outcomes, then they’re experiencing programmatic success because the legislative objectives are effectively restorative objectives. Accordingly, Vermont’s reparative boards appear to be, from the existing results, satisfactorily restorative and therefore satisfactorily successful at the program-level. Once again, the evaluations address process and political success in much less explicit terms, but a 2014 report from justice sector stakeholders emphasizing the need for strengthened restorative justice processes indicates a baseline of coalition support for the policy.

Conclusion

Based on the above evaluation results, the performance of each restorative justice mechanism is becoming clearer. In New Zealand, FGCs certainly experience levels of both restorative success and policy success. However, those two axes of performance are not always in sync. FGCs do not require victim participation, and so while some evaluations consider it a policy victory that conferencing has managed to *increase* victim inclusion in youth justice, Daly’s (2016) description of restorative justice states that a mechanism must feature a meeting between a victim and an offender to be restorative. Meanwhile, the outcome plans that are being produced by FGCs, with the prevalence of apologies, community service, and reparation, indicate that amends-making is a consistent area of restorative success. But the professionalization of Youth Justice Coordinators and the standardization of the FGC process—two goals of the Oranga Tamariki Act 1989—come at the cost of how well the FGC can create community role transformation. This constrained capacity is illustrated by the frequency with which young offenders and their families reported that they had little say in the process, or that they simply adopted an outcome plan because it was suggested by the facilitator.

Adult pre-sentence conferencing was subjected to fewer reviews, making it harder to pinpoint where it stands along the spectrums of restorative success and policy success. On the one hand, the very design of the process means that when a conference does happen, the victim-centric approach makes it one of the mechanisms that is more intrinsically restorative and consistently producing stakeholder involvement. The high rates of victim satisfaction reinforce

this finding. However, the only other program measure that was tested was the ability of pre-sentence conferencing to reduce recidivism among participating offenders. As discussed, I am sceptical that this is an effective measure for restorative success. However, the limited finding that conferencing may contribute to less reoffending can speak to how well the mechanism is assisting with general, criminal justice policy aspirations. Outside of the areas of victim-offender exchange and potential reductions in reoffending, the available evaluations do not have much to say about the capacity of pre-sentence conferencing to meet its restorative and legislative goals.

In New South Wales, Youth Justice Conferences face points of contention between restorative goals and legislative goals that are similar to those faced by FGCs. The mechanism is intended to be restorative, and has restorative expectations written into the Young Offenders Act 1997 such as respecting the desires of victims and holding young offenders accountable. But the mechanism also focuses, by legislative design, on a standardized (and in this case scripted) process that centres the needs of the young offender, shifting some of the program outputs away from being restorative and towards being rehabilitative. As in the case of FGCs, victims participate less than half of the time, meaning the mechanism only qualifies as restorative in less than half of its iterations. However, YJCs move even further in the direction of rehabilitation than FGCs. The results above showed that YJC outcome plans featured lower rates of mandated community service and restitution payments, two options that contribute to amends-making, while including more personal development opportunities for the young offender such as job training and education programs. Interestingly, evaluations of the YJC did produce more insight into other elements of the mechanism's policy success, given the assessments of public opinion and cost efficiency. Again, the generally favourable views of the policy and the fact that YJCs are less expensive than Children's Court demonstrate that the mechanism is a relatively successful policy endeavour, even as it falls short according to some restorative metrics.

Forum sentencing conferences are hard to classify as anything other than a policy failure. The program's closure demonstrates that, regardless of whether its perceived programmatic failings were accurate, it was unable to boast enough policy success to withstand the lack of support from the criminal justice sector. On the restorative side, there are not many evaluative results with which to assess levels of restorative success. Early reviews of the pilot program indicated some restorative potential, but recent studies only addressed the effect of forum sentencing on participant recidivism. The intervention program's inability to have an impact on reoffending rates does not, in my opinion, have any bearing on its restorative success.

In Vermont, reparative probation represents the best example of restorative success along the dimension of community role transformation. The restorative justice panels that handle reparative probation cases are staffed by community volunteers with relatively high levels of authority and both offenders and panel members have self-reported feeling more involved in the community following a panel experience. However, reparative probation clearly falls short in its capacity to produce successful victim-offender exchange and restorative justice panels have the lowest rate of victim participation. Nevertheless, these mechanisms are situated to produce outcomes that still repair harms, even without victim input. The rate at which reparative plans order that community service work take place in the town where the crime was convicted indicate that these panels are asking offenders to work with the community that was affected by the crime. Finally, the fact that restorative success and policy success are so closely interwoven in Vermont bodes well for the state's future investment in restorative justice.

5. INDEPENDENT EVALUATION OF RESTORATIVE JUSTICE PROGRAMS

In this chapter, I discuss my own evaluation of restorative justice practices in New Zealand, New South Wales, and Vermont. This evaluation relies on two sources of data. The first is a quantitative set of statistical indicators from the various restorative justice programs, gathered from the bevy of data collected and collated on behalf of the relevant criminal justice systems. The second is the qualitative reporting of restorative justice practitioners from New Zealand and Vermont, collected through interviews that I conducted. The mix of top-down, statistical information and bottom-up, individualized accounts of restorative justice practices offers multiple angles for analysing and assessing the realities and successes of the restorative justice programs in these three jurisdictions. First, I describe how and why I assembled certain numeric variables; then, I explain my interview methodology; finally, I present the results from both datasets and discuss what those results say about the use of restorative justice in various legislative contexts.

Methodology

The goal of the quantitative assessment was to enable a longitudinal evaluation of the criminal justice systems in all three jurisdictions. The practitioners that I spoke with, depending on how long they had worked in their position, had some long-term insights regarding the development of restorative justice. But those qualitative accounts were largely designed to create a present-day snapshot of these restorative justice practices. Accordingly, I wanted to determine whether multi-year, numerical data could uncover additional narratives along a lengthier timeline. For example, I wanted to know if I could chart the robustness of restorative justice practices since their introduction or correlate the inflection points of systemic indicators with changes in restorative practices. For this purpose, I collected jurisdiction-wide information for several outcome measures, as informed by policy design expectations and by restorative justice expectations. Below, I reiterate the theoretical frameworks for outcome expectations; then, I discuss the measures that were identified and created, and the justification for using them during this evaluation.

As discussed in Chapter 1, Marsh and McConnell (2012) suggest three categories of success that can be used to measure a policy's ultimate outcome. Those categories are programmatic success (measured against operational outcomes and objective achievement),

process success (measured by the legitimacy of ratification and the sustainability of the legislation), and political success (measured the popularity accrued for a government and the legislative act). Based on these three categories, I was able to develop several variables to provide insight into restorative justice policy success. However, as Marsh and McConnell (2012) caution, success can be a highly subjective measure. Therefore, I also employ May's (1993) research design and explore levels of implementation effort as a potentially indicative outcome. Not all the variables that I drafted were ones for which I was able to collect complete data, so I will now list my aspirations for a complete set of statistical information and describe the limitations and ultimate usability of the variables.

Starting with indicators of implementation efforts, I sought information about usage frequency. I wanted to know both the total number of cases that were referred to restorative justice and the total number of cases that progressed through the restorative mechanism. While some of this data was available in each jurisdiction, I wanted to know these numbers for every year from the passage of the legislation to the present. In New Zealand, I was able to compile the total number of referrals and the total number of Family Group Conferences for the years 2006-2017 (Response to Official Information Act Request), and the number of adult restorative justice conferences for the years 2011-2017 (Response to OIA Request). In New South Wales, I was able to compile the total number of referrals and the total number of Youth Justice Conferences for the years 1999-2016 (Juvenile Justice NSW Annual Reports) and the total number of forum sentencing conferences for the years 2009-2016 (Corrective Services NSW Annual Reports). In Vermont, I was able to compile the total number of referrals and the total number of reparative probation panels for the years 1995-2015 (Vermont Department of Corrections Annual Reports).

To a similar end, I wanted to know the number of administrators and facilitators employed for the administration of the restorative justice mechanism. Again, this information was partially available. In New Zealand, I collected the number of Youth Justice Coordinators and Youth Justice Managers for the years 2007-2018 and was unable to find information about the total number of conference facilitators for adult restorative justice (Response to OIA Request). In New South Wales, I collected the number of program administrators and conference conveners for the years 1999-2007 but was unable to find information about the total number of conference facilitators for forum sentencing (Juvenile Justice NSW Annual Reports). In Vermont, the data took a slightly different shape and I was able to collect the total

number of restorative justice boards in the state and the total number of community volunteers staffing those boards for the years 2000-2017 (Vermont Department of Corrections Annual Reports).

Another identified indicator of both implementation efforts and programmatic success is resource allocation to the restorative justice program. Accordingly, I tried to collect budgetary information regarding all three jurisdictions' investments in restorative justice, as well as complementary budgetary spending on other justice system efforts to provide points of comparison. Unfortunately, accurate budgetary data was difficult to obtain, and I was only able to gather multi-year spending reports for FGCs in New Zealand and YJCs in New South Wales. And even in those cases, it was difficult to put the dollar amounts into context and to understand the relative scale of the restorative justice budget. In the end, I was forced to drop spending considerations from my final analysis.

There are additional gauges of programmatic success, measured by the capacity of restorative justice processes to achieve their operational objectives. However, as discussed previously, these restorative justice programs can be evaluated against both restorative objectives and legislative objectives. Academics have already developed several measures of restorative procedural success. Recall from Chapter 1 that rates of restitution, rates of outcome plan compliance, rates of offered apologies, perceived fairness and adequacy of outcome plans, satisfaction levels of participants, and recidivism rates were all suggested variables for determining the effectiveness of restorative justice (Presser and Van Voorhis 2002, Poulson 2003, Latimer, et al. 2005). However, usable data is not readily available for all these restorative indicators; as was also discussed in Chapter 1, evaluating researchers often must perform their own surveys or peruse local level records to collate this type of information. This was certainly the reality in New Zealand, New South Wales, and Vermont, where restorative outputs were inconsistently recorded and unevenly obtainable.

Furthermore, there remains room to innovate regarding how one might quantify restorative success. For example, none of the current measures do a good job of probing levels of what Bazemore and Schiff (2005) call community role transformation, even though community members represent central stakeholders in restorative practices. The frequency and robustness measures that I mentioned above, such as how many cases proceed through the restorative justice mechanism and how many restorative justice facilitators there are, might speak to the amount of restorative skill building that is taking place, as they indicate how many

individuals are gaining experience with restorative justice. But, jurisdictions might consider tracking the total number of restorative participants in a fiscal year to truly understand how many people are actively engaging with restorative justice. Presser and Van Voorhis (2002) also suggested using measures of community well-being—amount of volunteerism, crime levels, and feelings of safety—as potential indicators of community role transformation and how well communities are incorporating restorative values.

Ultimately, I was not able to seek new datapoints regarding restorative success, nor collect new information on a longitudinal and jurisdiction-wide basis. Therefore, the variables regarding restorative success that I was able to compile were related to the number of reparative plans that were agreed to and the rate of successful completion of those plans. In New Zealand, the number of reparative agreements produced by Family Group Conferences were available for the years 2008-2017 (Response to OIA Request), while the number produced by adult pre-sentence conferencing was available for the years 2016-2017 (Response to OIA Request). There were no data available on successful completion of those reparative plans. In New South Wales, the number of reparative agreements produced by Youth Justice Conferences and the number of successfully completed agreements were available for the years 2002-2016 (Juvenile Justice NSW Annual Reports). There was no comparable information available for forum sentencing conferences. Similarly, Vermont did not have readily accessible statistics reflecting the number of reparative probation plans and their rate of successful completion. I had also hoped to collect information regarding participants satisfaction levels, but none of the jurisdictions were tracking or publishing this data on a regular basis. Therefore, I used the existing survey results discussed in the previous chapter. These results are certainly a suitable stand-in, and participant perceptions are examined intermittently enough that one can almost piece together a longitudinal evaluation. But, best practice would be for these jurisdictions to request and record feedback from every restorative justice program participant, such that participant perceptions can be continually aggregated and used to interrogate the performance of the program.

Another empirical touchstone for restorative justice, favoured by several evaluating researchers and mentioned in the list of existing measures above, is based on the reoffending behaviour of participants. Academics have identified the most rigorous and statistically accurate method for tracking the recidivism rates of participating offenders and measuring the relative impact of restorative justice on those rates. This method entails the long-term tracking of participating offenders in comparison with a control group of non-participating offenders, with

efforts made to match offence type and other criminological factors (Latimer, et al. 2005, Strang, et al. 2013). I could not perform this type of analysis myself, and the three jurisdictions were not tracking or publishing the reoffending rates of restorative justice participants, and so I am reliant on an aggregation of existing accounts of the statistical impact on recidivism. However, as introduced in the last chapter, I am hesitant to embrace fluctuations in reoffending behaviour as a decisive statistical indicator of restorative justice efficacy. Recidivist behaviour finds its cause in overlapping criminogenic needs; to address all those needs is beyond the scope of a single restorative justice intervention, especially considering that the restorative interaction is meant to be as equally focused on victims and the community as it is on offenders.

For similar reasons, it is unlikely that restorative justice will have a macro-level impact on the criminal and youth justice system where it has been implemented. As William Wood (2015) explains, crime rates and incarceration rates are a complex, social reality that fluctuate in response to several factors. Only a handful of those factors are dependent on the specific justice intervention strategy; meanwhile, socio-political and economic trends such as unemployment rates and average incomes have powerful, correlative relationships with offending while being unaffected by justice system responses (Wood 2015). It follows that the impact of restorative justice on the criminal justice system would be negligent at the macro-level, despite being a potential influencer at the individual, micro-level.

However, the relevant statutes in these three jurisdictions introduce legislative goals that are related to wider criminal justice and youth justice practices, indicating that the policy was designed to have broad, reformative impact. These more expansive legislative objectives include minimizing the severity and invasiveness of justice interventions, rehabilitating and reintegrating criminal offenders, protecting the rights of offenders, and reducing the risk of future reoffending and the need for incarceration. While I did not necessarily anticipate that these bigger picture changes could have a measurable impact on the overall incarceration rate, I did want to know whether these reformative legislative packages, with their restorative justice componentry, could produce any cultural changes in the justice system. There are ways in which a justice system can become more restorative, even when using mechanisms that do not fall squarely under the definition of restorative justice. Examples of these “restorative adjacent” options would be increased restitution payments to victims of crime, or increased use of community service orders. These options do not necessarily constitute a restorative justice mechanism in full, nor do they undermine or divert from conventional justice. An offender can be subjected to a

punitive and lengthy prison sentence in the same breath that they are ordered to pay restitution to a victim of their crime. However, I wanted to investigate whether these indicators could be used to measure a shift to a more restorative culture within the justice system. Therefore, I also sought information about the number of community service sentences issued in each jurisdiction, as well as the number of offenders ordered to pay restitution and the number of victims receiving restitution payments.

It is possible that these efforts at a numerical assessment would produce more robust results if applied in the context of a large-*n* study. This type of expansive review is an important direction for future research. Maximizing the number of restorative statutes under investigation would strengthen the capacity for quantitatively based conclusions and allow for reiterative assessment (looking at similar statutes across several jurisdictional contexts). Furthermore, a larger sample size would enable the use of a control group—comparative examples of restorative justice efforts that are unlegislated—to isolate and determine the effect of legislation on restorative justice practices. However, as shown by the amount of missing data in my evaluation, the current data landscape of restorative justice precludes these methodological options. Until restorative justice programs do a better job of consistently recording and publishing a more nuanced account of their procedural output, studies will be confined to smaller sample sizes.

Despite the narrowed nature of my numerical assessment, I also performed a qualitative analysis, giving me another source of information with which to address restorative and policy success. I made the decision to use the voices of restorative justice practitioners as my primary source of qualitative data because of their unique position as the restorative justice actors most directly responsible for interpreting jurisdictional directives and implementing practices. I used a partially open interviewing style wherein I had a general template of questions and had certain closed inquiries and topics that I had to address, but also allowed interviewees to direct the conversation according to their interests and their perspective. The set of questions that I used are listed in Appendix 1. Unfortunately, New South Wales had tighter restrictions when it came to conducting independent research within its youth justice and criminal justice sectors and denied my requests to contact and interview conference facilitators and conveners who managed Youth Justice Conferences and forum sentencing conferences. Ultimately, in New Zealand I was able to speak with two Youth Justice Coordinators, one Youth Justice Manager, five adult conferencing facilitators, one adult conferencing coordinator, and one police prosecutor. In

Vermont, I interviewed five employees of Community Justice Centres throughout the state and the current Department of Corrections Director of Community and Restorative Justice.

What follows is a series of results taken from both the quantitative and qualitative analyses, with a discussion of their relation to my primary research questions. In determining how the relevant statutes affect the practice of restorative justice in each jurisdiction, and the ultimate success of those practices, I focus on four themes. First, I address the robustness of the restorative practice, or how frequently the restorative justice mechanism is used. Second, I test whether the introduction of restorative justice can cause cultural changes in the justice system. Third, I investigate the extent to which the criminal justice system supports and promotes the use of restorative justice. Fourth, and finally, I use conclusions about the relative success of each mechanism to discuss some of my general findings regarding the relationship between those successes and the mandating legislation.

Results

Robustness of Practice

As explained above, I measured the robustness of the various restorative justice practices by tracking the number of referrals, the number of completed restorative procedures, and the number of administrators and facilitators employed to manage the mechanism. Then, to give further context to what proportion of criminal cases are being handled by restorative justice, I compare the number of referrals to the total number of cases passing through the system in general.

In the case of Family Group Conferences in New Zealand, the number of referrals to conferencing has declined steadily between the years of 2008 and 2017, dropping from 9,253 to 5,648. Logically, this has led to a similar drop in actual conferences held, with 9,196 conferences taking place in 2008 and 4,957 taking place in 2017. However, this change in conferencing frequency is likely due to New Zealand's concerted efforts to divert young offenders and reduce their contact with the justice system. As proof, the 9,253 conferencing referrals in 2008 accounted for just over 25 per cent of the 35,311 young offenders identified by law enforcement that year; in 2017, the 5,648 conferencing referrals accounted for almost 42 per cent of the 13,459 young offenders identified by law enforcement.

In a correlated development, the number of Youth Justice Coordinators and Youth Justice Managers has shrunk given the lower demand for conferences. However, amendments to the Oranga Tamariki Act in 2017 now mean that 18-year old young offenders are eligible for conferencing. The expectation is that this will create a surge of conferences and a renewed demand for administrators, and the Youth Justice Coordinators that I interviewed described their efforts to prepare accordingly with new hires and newly designed and standardized training programs. These expected increases will likely be captured in future fiscal year reports.

In the case of adult pre-sentence conferencing in New Zealand, the number of referrals has grown drastically, with 2,252 cases being referred in 2011 and 12,867 cases being referred in 2017. The cases that have progressed to a conference have also followed an upward trend, but with a steadier growth rate, increasing from 1,360 conferences in 2011 to 2,401 in 2017. The spike in referrals dates to the Sentencing Act amendments in 2014 that *required* judges to refer all eligible cases to restorative justice options prior to sentencing. New Zealand practitioners indicated that this change has frontloaded the administrative work, rather than creating more conferencing opportunities. Coordinators receive more referrals from the courts, but after initial reviews and conversations with both the victim and the offender, they find that there is a plateau in how many cases are appropriate for conferencing. Remember that adult pre-sentencing conferencing in New Zealand is reliant on the victim's willingness to participate, and coordinators find that victim interest is the limiting factor in converting more referrals to conferences. Interestingly, this means that any further increase in the robustness of this restorative justice mechanism would rely on cultural changes and shifts in the attitudes of crime victims rather than legislative or programmatic adjustments.

In New South Wales, the number of referrals to Youth Justice Conferences has fluctuated over the years rather than following one, singular trendline, but is currently at a relative low point.

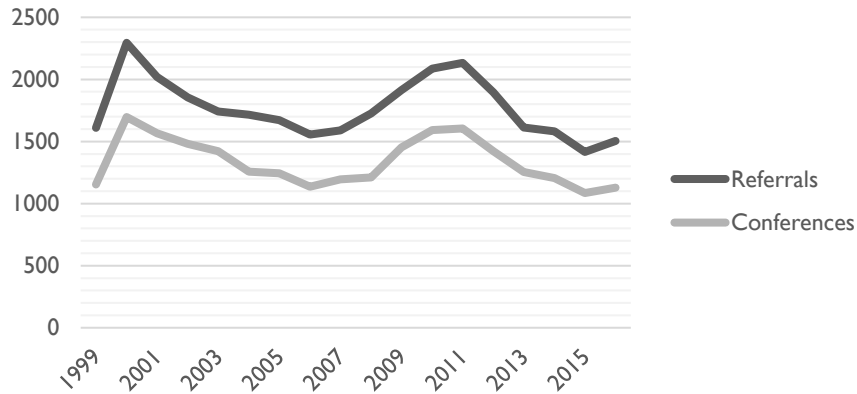


Figure 1. Youth Justice Conferences in New South Wales. The number of referrals to Youth Justice Conferences and the number of conferences held, 1999-2016.

This could be considered a successful aspect of New South Wales’ attempts to deescalate the actions taken against young offenders, or it could be considered an inability to fully integrate restorative justice into the jurisdiction’s diversionary toolbelt. Looking at Figure 2 below, the youth justice system has successfully transitioned to a greater reliance on non-court procedures in the way it deals with young offenders.

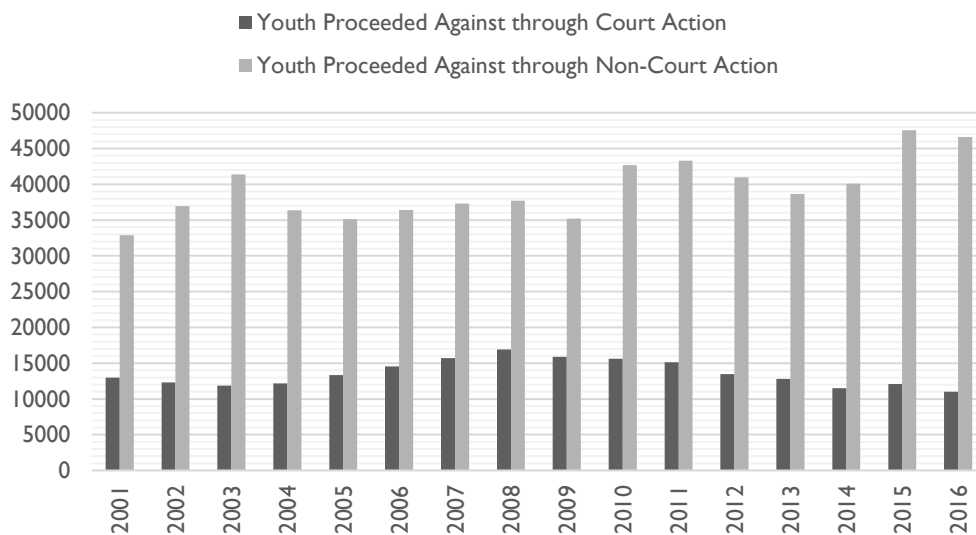


Figure 2. Young Offenders proceeded against by court action versus non-court action in New South Wales, 2001-2016.

Because Youth Justice Conferences in this jurisdiction are a diversionary option, they should be captured in the growth of non-court actions. However, the number of YJCs has been decreasing in recent years, indicating that even as non-court interventions proliferate, YJCs have not become a vital and preferred diversionary tool in New South Wales. This aligns with the findings

from the previous chapter, which indicated that police officers preferred to refer an offence to the Children's Court once it was too serious for cautioning. Therefore, New South Wales may be making inroads in operating a less punitive youth justice system, but seems to be falling short when it comes to creating a robust restorative justice mechanism.

Meanwhile, the number of forum sentencing conferences encountered similar fluctuations, but the highest number held in a year was 535 conferences in 2012. For a criminal justice sector that processed 745,590 criminal offenders that same year, it's evident how sparsely forum sentencing was applied while it was still in operation.

Finally, in the case of Vermont, the number of referrals to reparative probation have remained relatively stable, fluctuating between 1,300 and 1,800 referrals per year, for the last fifteen years. These numbers indicate that the restorative manifestation of reparative probation is maxing out at less than twenty percent of the total probation population in Vermont, which typically averages at over 5,000 offenders in a fiscal year. But it is important to remember that reparative probation is only one portion of the restorative work that is happening at Community Justice Centres. The CJs are of varying sizes, and manage very differently proportioned caseloads, but there are currently twenty spread throughout the state and, at the higher capacity centres, administrators reported that they process about fifty new cases every month. That means that one CJC may be handling as many as 600 cases per year and that restorative practices are likely being applied to more than the 1,800 individuals who qualify for reparative probation.

Interestingly, the services that exist beyond reparative probation lend both a robustness in numbers and a robustness in local restorative energy. The CJC administrators that I spoke with were much more interested in the community initiatives that they had a hand in organizing. These included projects such as treatment programs for drug-related crimes and other, homegrown court-diversion programs. Administrators considered reparative probation a service option that they had to provide to get the necessary funding from the Department of Corrections, but the other restorative justice projects clearly inspired much more passion. This illustrates one of the upsides to granting greater discretion to local-level implementers; even though legislating bodies have less control over the final product, the capacity for innovation and localized program input can generate stronger enthusiasm and commitment among implementing individuals.

The Creation of a Restorative Culture

Another element of macro-level impact that I wanted to investigate was whether the introduction of restorative justice into a jurisdiction might be accompanied by a more restorative culture within the justice system. Wood (2015) explained why several system-wide indicators may not respond to criminal justice reforms because complex and interwoven social factors are drivers of these statistics as much as jurisdictional practices. Yet, I wanted to know whether the practice of restorative justice might produce different procedural preferences and greater interest in mechanisms that I call “restorative adjacent,” such as community service orders and restitution payments to victims.

In New Zealand, the results are split. There are fewer community service orders (CSO), with youth sentences dropping from 423 CSOs in 2000 to 114 CSOs in 2017. Similarly, there were 24,291 CSOs for adults in 2003 and 20,229 in 2017. For youth justice, the decrease is likely due, once again, to the overall decrease in young offenders receiving official sentences. However, for adult offenders, there are some sentencing options that are on the rise, including community-based sentences like supervision and home detention, as well as incarcerating sentences. This means that the reduction in community service orders is not simply explained by across-the-board reductions in court-ordered sentences; rather, the justice system is experiencing shifts in sentencing preferences and CSOs do not appear to be an increasingly valued option. On the other hand, New Zealand has demonstrated increasing interest in restitution payments for victims of crime. The amount of money distributed for victim restitution increased from \$21 million in 2008 to \$26 million in 2017.

New South Wales has experienced very similar trends. The number of young offenders sentenced to community service has decreased from 625 in 2000 to 177 in 2016. Although, I would, again, attribute this change to the shrinking number of youths who proceed to court. However, there is also a reduction in the number of CSOs issued to adult offenders, with 5,673 in 2000 and 3,532 in 2016. This decline cannot be attributed to generally shrinking court sentences and may indicate reduced judicial interest in community service as a punitive measure. That being said, New South Wales sentenced 112,125 criminal offenders in 2000, meaning that CSOs, even then, only constituted 5 per cent of criminal sentences and were never an excessively used sentencing option (in 2016, CSOs were 2 per cent of criminal sentences).

Looking instead at victim reparation, much like in New Zealand, the annual distribution of restitution payments increased from \$56 million in 2000 to \$77 million in 2014.

The use of restorative adjacent practices in Vermont also does not piece together into a straightforward narrative. The total numbers of hours that offenders worked under a community service order increased steadily from the mid-90s until 2010 but has tapered off in more recent years. Similarly, restitution payments increased from \$2.3 million in 1990 to \$8.7 million in 2004. But in 2004, the Vermont legislature established the Restitution Special Fund which generates revenue through a fifteen percent surcharge on criminal and traffic fines and created the Restitution Unit to enforce and collect court-ordered restitution, removing the responsibility from the Department of Corrections. While the institutionalization of a separate governmental agency devoted to victim restitution highlights a jurisdictional commitment to victim reparation, I was unable to find the Restitution Unit's payment records, meaning that I do not have evidence to show whether this institutionalization has also resulted in better monetary support for victims.

Taken together, it's difficult to draw a firm conclusion about whether restorative justice mechanisms can create a generally restorative culture. Certainly, all three of these jurisdictions have demonstrated a strengthening commitment to appropriate compensation and support for victims of crime. This is a step in the right direction for creating a justice sector culture that acknowledges the needs of victims as important stakeholders in the resolution of crime and conflict. However, there is limited evidence that these jurisdictions are similarly interested in sentencing options that are less punitive and more restorative. It could be argued that community service orders are not actually a restorative adjacent sentencing tool. There is concern within movements for criminal justice reform that community service can be used to publicly shame offenders who must perform tasks like highway clean-up, and that it continues the legacy of using criminal offenders for unpaid labour (Bazemore and Maloney 1994). The alternative argument is that community service orders can engage an offender with their community, creating more opportunities for reintegration, and that service work is a more productive and reparative use of the offender's time (Bazemore and Maloney 1994). Regardless, the trends in these three jurisdictions do not indicate that community service orders have become a preferred sentencing practice, meaning that there is no evidence at present that restorative justice mechanisms produce a sentencing culture that values community service, even though community service is often a common feature of restorative outcome plans.

While my tests were not particularly conclusive, this is a line of questioning that should be further pursued in the study of restorative justice. Does the introduction of restorative justice into a jurisdiction via legislative mandate change the overall culture of the justice system? This question could be answered with more extensive data and a larger sample size, and answers could be further supplemented through interviews with more of the justice sector gatekeepers, including judges, police officers, and prosecutors.

Systemic Support for Restorative Justice

As Chapter 1 explained, justice sector workgroup theory identifies a set of challenges for effective criminal justice reform. Recall that workgroup theory holds that justice professionals behave as repeat actors in a system with recurring procedures. These workgroups reward patterned behaviour and create an engrained culture that can be resistant to change. As a result, it is interesting to investigate the ways in which restorative justice practice is influenced by the existing workgroups. I wanted to interrogate the possibility that the legislative mandates that were enacted in these jurisdictions helped to overcome some of the workgroup reticence to restorative justice. This set of results is based on my interviews with practitioners.

In all three jurisdictions, and across all the relevant restorative justice mechanisms, the level of systemic support was regionally various, and the interviewed practitioners did not have one, coherent narrative to report. The Youth Justice Coordinators in Dunedin, New Zealand acknowledged that they had a good rapport with local police and that they had built strong relationships with local service providers. These local service providers helped when crafting effective outcome plans because they enabled coordinators to connect young offenders and their families to rehabilitative and educational programs. However, these practitioners also admitted that they were lucky to be working in the Otago region and that other areas of New Zealand did not have as many social services at their disposal.

The possibility that these relationships are not as well-formed elsewhere in the country is reinforced by the findings of Slater, et al. (2015), which were introduced in the previous chapter. Based on interviews with Youth Justice Coordinators, Slater, et al. (2015) identified several problem areas that impeded effective FGC practice. Many of these issues were related to shortcomings in systemic support, including lack of police buy-in and a flawed flow of information from the police and the courts. Coordinators identified instances where police had deterred victims from attending FGCs, illustrating how reticence from law enforcement can

impede the restorative capacity of the conferencing mechanism. Coordinators also discussed the occasions during which police officers and Youth Court judges were unable to provide necessary information in a timely and accurate fashion, showing that the youth justice system still struggles to consistently enable best conferencing practices.

Similarly, facilitators for adult pre-sentence conferences, almost across the board, felt that they did not have much buy-in from local police. Because referrals for this mechanism come from the court, and because investigating officers are not encouraged to attend the conference the way they are for FGCs, this lack of police commitment does not necessarily constrain the operation of these pre-sentence conferences. But it does reinforce the notion that restorative justice may be regarded with scepticism by other justice system professionals. Interestingly, the police prosecutor that I interviewed contradicted the story about unsupportive police officers, insisting that the police force viewed restorative interventions favourably. He did admit that there was a widely held view that many offenders, especially recidivist offenders who were familiar with the system, would agree to restorative justice conferencing just to get sentencing reductions. But he maintained that this occurrence did not undermine the value of restorative justice or its capacity to be an effective justice intervention.

What produces this disconnect in the beliefs of practitioners and police and why do practitioners assume that police officers are unconvinced about the usefulness of restorative justice? One possible explanation is that the police prosecutor was inaccurately reporting the opinions of the police force because current social and political directives dictate that police be more open-minded to system reforms, including restorative justice initiatives. He may have also edited his answers in front of me because he believed that I was sympathetic to the restorative justice movement. Alternatively, it seems possible that facilitators have unfairly attributed a reticent mindset to police because they have their own biases about the roles and attitudes of law enforcement.

As a further contribution to this discussion of the police-practitioner relationship, CJC administrators in Vermont described their efforts to engender productive interactions with local police agencies. In each of these interviews, administrators described a unique and personal process in which they had to craft a special working relationship with a police chief, or hone appropriate police cooperation over the course of repeated exchanges. As such, it becomes apparent that police buy-in to restorative justice is not manufactured by a legislative mandate. Rather, the law enforcement workgroup is brought on board through ongoing interactions with

the restorative justice mechanism. This might explain the miscommunication between facilitators and police in New Zealand; because adult pre-sentence conferences do not require practitioners and investigating officers to work together closely, there is no opportunity to develop the relationships that produce shared visions and symbiotic restorative justice efforts.

However, a facilitator and coordinator for adult pre-sentence conferences who worked in the Auckland area remained doubtful that the criminal justice system in New Zealand could ever generate appropriate support for restorative justice. She operates in an area of New Zealand that creates unique challenges, namely that she had a self-reported caseload wherein over 80 per cent of the offenders she was working with were non-white. The majority were Māori or Pacific Islander, and she also dealt with many non-white immigrants. Already, she's working in a justice context that is vastly different from those that exist elsewhere in the country, navigating communities that do not match the country's general demographic breakdown and taking referrals from a court system that is over-policing, over-arresting, and over-prosecuting individuals from those communities. Even with higher Māori representation in the Auckland area, there is no scenario in which non-white offenders should constitute over 80 percent of the caseload. Understandably, this facilitator was much more sceptical of New Zealand's commitment to criminal justice reform. She felt that restorative justice conferencing was a Western extension of a Western justice system, designed to control Māori communities and impede the creation of Māori-centric justice processes. This speaks to the concern introduced in Chapter 1, that the standardization of restorative justice disqualifies indigenous innovators from the process. This practitioner verified this fear, critiquing the facilitator training process and the way it excluded esteemed community members from their natural roles as mediators of conflict resolution. She experienced all justice sector professionals—judges, police officers, and attorneys—as antithetical to her goals for community empowerment and victim-offender restoration.

One final, compelling aspect of systemic support comes not from justice sector professionals, but from governing political parties. This issue was raised by a conferencing facilitator from Dunedin, New Zealand who felt that any improvements to restorative justice and any further establishment of a restorative culture would require back-to-back terms of a Labour government. Specifically, she believed that restorative progress required the nurturing of communities and care for others over self, which would manifest in public support for and the enactment of progressive, socialist policies. The particularities of this belief may be personal, but

the truism that they represent—that policy inculcation requires continued, governmental investment—is valid, and supported by Marsh and McConnell’s (2012) representation of the political aspects of policy success.

General Discussion

Finally, I deduce four primary discussion points from my assessment of each restorative justice mechanism. These findings are based on the results of the evaluation discussed above, including the results from the survey of existing assessments, from the collection of longitudinal justice statistics, and from the interviews with practitioners. Ultimately, this is a discussion of trade-offs: how the design of any restorative justice mechanism requires a choice about which of the three restorative dimensions—harm repair, stakeholder involvement, and community role transformation—a jurisdiction is going to prioritize. There are no examples in this case study where a mechanism is successful along all three dimensions, and it is unclear how well a jurisdiction can fulfil all these disparate expectations while still producing a restorative justice mechanism that the justice system is both capable of and interested in wielding. As such, I believe that these mechanisms and their establishing legislation represent jurisdictional compromise in the design and practice of restorative justice.

The Family Group Conference is a well-integrated justice mechanism and as a policy component of the youth justice system has been quite successful; however, the mechanism fluctuates in its restorative capacity and often falls short along the dimensions of stakeholder involvement and community role transformation. Adult pre-sentence conferences offer the best example of effective delivery of stakeholder involvement, given the focus on victim participation, but that focus also limits the scope of the mechanism and make it a less central policy for the New Zealand criminal justice system. The Youth Justice Conferences, despite its procedural similarities to FGCs, is falling short as both a restorative mechanism and a youth justice policy. Its restorative success is constrained by the increasing focus on the personal development of young offenders, at the cost of the conference’s ability to repair harms, involve stakeholders, or transform communities; its policy success is constrained by the complicated referral system, restricted eligibility, and the lack of committed use by the police force, leading to the conference’s ebbing vitality as a diversionary tool. The closure of the forum sentencing intervention program makes that mechanism the clearest example of policy failure, while the lack of data about forum sentencing conferences makes it difficult to characterize the mechanism’s

restorative success. Community Justice Centres and the restorative services they provide, including restorative justice panels, stand as the most compelling examples of success along the dimension of community role transformation. However, this success comes at the cost of victim involvement and effective victim-offender exchange. Meanwhile, CJs are also a unique example of policy success because Vermont chose to align its legislative goals with restorative goals, making it an official policy of the jurisdiction's criminal justice system to have accessible, effective, and robust restorative services. Using these final assessments, I now consider how the compromises in each jurisdiction have produced these restorative justice landscapes.

The first site of compromise is the level of control that the jurisdiction cedes to its local communities. This is exemplified in the difference between the strong statutory directives favoured by New Zealand and New South Wales, and the Wilsonian model that was implemented in Vermont with high level goals and local discretion in how to meet those goals. In New Zealand, for both youth and adult offenders, control of the restorative justice mechanism remains firmly in the hands of the conventional criminal justice institutions and the professionalized justice sector. For the FGC, this control is exerted by the procedural specificity of the Oranga Tamariki Act 1989, which tightly demarcates the conference process and enables careful administration. Youth Justice Coordinators were the most likely of the various practitioners to cite the authoritative legislation when discussing their facilitation efforts, and the Oranga Tamariki Act 1989 was described as existing at the centre of their restorative practice. For adult pre-sentence conferencing, this control is exerted by allowing judges to retain discretion over final sentences, and by using Ministerial practice guides to direct facilitator behaviour. The conference offers a brief respite from the conventional justice system, and conference facilitators are granted a bit more leeway than their counterparts in youth justice, but offenders are still having their cases fully adjudicated by conventional justice. The offender's interactions with the restorative justice mechanism can be used as a mitigating factor in sentencing, but the mechanism has no independent control over the trajectory of the offender's case. In both cases, this level of jurisdictional control guarantees a procedural uniformity and makes the criminal justice system very willing to use the mechanisms, but it also impedes the extent to which a nuanced and restorative dialogue between all stakeholders can influence the justice outcome.

New South Wales attempts to find a middle ground in which the jurisdiction wields even more intense control over the activation process of the restorative justice mechanism but then

lets the mechanism take over and fully adjudicate the case. This is true for both YJCs and forum sentencing. Strict eligibility requirements and complicated referral processes create a bottleneck that allows New South Wales to closely vet the cases that proceed to restorative justice.

However, that bottleneck ends up being too tight; forum sentencing never experienced a large case load and YJCs are being overlooked in favour of other justice mechanisms like cautioning.

On the other end of the spectrum, Vermont relinquishes substantial control to its local Community Justice Centres which are empowered to innovate in their provision of restorative services, who are granted real autonomy in the management of cases, and who rely on volunteers from the community rather than justice professionals. The state expects CJC's to provide certain services in accordance with DOC initiatives, such as reparative probation, and reparative probations is overseen by the sentencing court. But implementers are encouraged to pursue other, localized programs, simply with the expectation that those efforts align with the broader, restorative vision issued by the state. As discussed above, this discretion spurs passion among CJC administrators for their personal restorative projects and innovation in the centre's available justice responses. It also accounts for why CJC's and restorative justice panels provide the best example of effective community role transformation because Vermont allows restorative justice to move out of the formal, professionalized context of conventional criminal justice and into a space where community members wield the mechanism. Of course, this has consequences for how well the state can track each CJC, making it hard to know the full scope of restorative justice in the jurisdiction.

The second site of compromise is how much the jurisdiction is willing to constrain the mechanism for the purposes of prioritizing victim participation. On one end of the spectrum is adult pre-sentence conferencing, which guarantees victim involvement and arguably does the best job of balancing the needs of victims and offenders. On the other end are FGCs, YJCs, and restorative justice panels, all of which allow the restorative justice mechanism to proceed without victim input. Adult pre-sentence conferencing achieves effective victim-offender exchange because the procedure was designed to be victim-centric. This raises the question: does a restorative justice mechanism need to be built *for* victims to produce practices that adequately manage this balance between victim and offender? Offenders are the catalyst for the entire process, and they are always going to be on the receiving end of systemic support as the justice sector works to address crime and its causes. Therefore, it is possible that the only way to

counter this naturally-occurring focus on offenders is to manufacture an extensive, procedural focus on victims if the resulting exchange is to be equal.

However, prioritizing victim participation comes at the cost of the applicability of the restorative justice mechanism. Adult pre-sentence conferences and forum sentencing conferences (before they were discontinued) are both limited components of their respective justice systems. As evidenced by the incremental growth of pre-sentence conferences even in the face of added referrals, it is very possible that the number of cases that are appropriate for victim participation *and* have victims willing to participate has a natural plateau. Perhaps the mechanism cannot grow into a primary justice response without substantial cultural changes in how victims view their role in the justice process. Meanwhile, on the other side of the spectrum, FGCs, YJCs, and restorative justice panels experience much more extensive use.

On top of that, these mechanisms allow for the participation of offenders who are not entirely repentant; this was illustrated by the events that took place at the hypothetical restorative justice panel that Eric attended in Chapter 2. Eric began the panel meeting by blaming the car salesman for not having a guardrail around the parking lot, which would have been inappropriate if the car salesman was in the room. Eric's attitude might have disqualified him from participation in New Zealand and New South Wales. But, Vermont's more flexible mechanism, despite not being fully restorative, meant that Eric still got to benefit from a restorative-minded intervention, and the panel successfully shifted his perception of the incident. It follows that criminal justice systems may want graduated, restorative options—a mechanism that can invite victim input in its maximally restorative moments but still enjoy the upsides to broader offender participation in its less restorative iterations.

The third site of compromise is the extent to which the jurisdiction wants the restorative procedure and its outcomes to be predictable. This compromise is related to the first question of how much discretion is granted to local practitioners, as the creation of localized practices is one way a jurisdiction can lose control of a mechanism's predictability. In general, any capacity for innovation and procedural responsiveness is going to result in less consistent outcomes. This represents a substantial point of conflict for restorative justice and harkens back to the fears of academics that were discussed in Chapter 1, namely how much of a mechanism's restorative nature is sacrificed during the regulation and standardization process. This question is best embodied in the design of the FGC. The FGC represents an extensively managed process, born from a statute that powerfully institutionalizes the conferencing procedure and professionalizes

the facilitator role. This management is part of what enables the mechanism's easy integration with the youth justice system, allowing for the level of quality control and procedural legitimacy required of modern criminal justice tools.

However, the routinization of the FGC raises questions about whether the mechanism is producing its outcomes in a restorative manner. Chapter 4 also showed that despite the prevalence of amends-making efforts in FGC outcome plans, young offenders and their families often felt uninvolved in the decision-making process and adopted plans because they had been suggested by the Youth Justice Coordinator rather than produced by participant dialogue. This means that FGCs are making young offenders say the right thing (70 per cent have to apologize) and do the right thing (60 per cent have to perform community service), but this might occasionally be the result of apologies, restitution, and community service being inserted into outcome plans without true dialogue and without genuinely addressing the harms in need of repair.

As other examples of how jurisdictions ensure predictability, New South Wales relies on its scripted conferencing interactions for both YJCs and forum sentencing conferences. New Zealand manages adult pre-sentence conferences by ultimately disposing of cases with the familiarity of conventional justice. However, Vermont does not rely as strongly on a need for predictable outcomes. Instead, it prioritizes local autonomy and innovation, and makes its peace with regional variation in restorative practice. But, the dispersed training and reliance on non-professionals mean that Vermont's criminal justice system may not be able to guarantee the same level of quality control and consistency within its restorative justice mechanisms.

The fourth and final site of compromise is whether the jurisdiction is willing to invest appropriately in the restorative justice mechanism. The jurisdiction that has struggled with this compromise the most is New South Wales, and the decision to close the forum sentencing program reflects the jurisdiction's reticence to invest in this mechanism. However, all three jurisdictions face decisions in this area. CJC administrators in Vermont reported that the DOC faced budget cuts and was forced to reduce the size of the grants they issued to the centres. The administrators said the ability to pursue additional funding was a potential stopgap measure, but that they did not have the resources to engage in regular grant writing or aggressive fundraising. On the other hand, New Zealand has shown a willingness to expand its investment in FGCs, given the new training modules, the added hires, and the growth of the program to include eighteen-year old offenders. This discussion of investment also comes with a jurisdictional

expectation that restorative justice may be cheaper in the long term than other conventional justice mechanism, as evidenced by the finding in New South Wales regarding YJC's cost efficiency.

The picture that emerges from this analysis is that the legislative design of these restorative justice mechanisms features several decision points, and most of those important decisions are characterized by procedural compromise. Jurisdictions are still learning how to navigate the unique expectations of a restorative process and effectively incorporate the process into the existing criminal justice institutions. In the end, it remains an ongoing negotiation regarding how best to control a restorative justice mechanism, how best to include victims and communities in productive ways, how to balance predictability and innovation, and how to maintain appropriate levels of investment.

Final Thoughts

This thesis set out to explore the growth and effectiveness of restorative justice practices, particularly as a potential supplement to or replacement of conventional crime responses. More specifically, the thesis asks whether the creation of a legislative mandate for restorative justice affected the implementation and operation of a restorative justice mechanism. To that end, I investigated restorative justice mechanisms in three locations—New Zealand, New South Wales, and Vermont—where local legislatures had passed a comprehensive statutory framework that directed and regulated the use of restorative justice. These mechanisms were: New Zealand’s Family Group Conferences, enacted by the Oranga Tamariki Act and adult pre-sentence conferencing, enabled by the Sentencing Act 2002; New South Wales’ Youth Justice Conferences, introduced by the Young Offender Act 1997 and forum sentencing conferences, established by a 2005 regulation to the Criminal Procedure Act 1986; and Vermont’s reparative probation and Community Justice Centres, codified by House Acts No. 115 2000 and No. 128 2008 respectively.

I aimed to answer this primary research question by determining how well these mechanisms were working, acknowledging that any such determinations were subjective and dependent on which measures of success were employed. Ultimately, I chose to evaluate the relevant restorative justice mechanisms against the axis of how restorative they were (relying primarily on Bazemore and Schiff’s (2005) understanding of restorative outcomes) and against the axis of how effectively the policy was enacted (relying primarily on Marsh and McConnell’s (2012) framework for policy success). I added to my expectations for restorative success with a discussion of how academics perceive attempts to regulate restorative justice, the available options for how restorative justice can be integrated with criminal justice systems, and what components should be included in restorative justice legislation. I outlined my expectations for policy success with a discussion of policy design, including how particular policy tools and rules can contribute to implementation, and how mandating statutes can be categorized according to the discretion that is granted to policy implementers.

Overall, it is evident that the decisions of the legislature can have a major bearing on the restorative nature and the policy success of the justice mechanism in use. First, the statutes represent a choice regarding the type of restorative justice mechanism. As shown by New Zealand’s Oranga Tamariki Act 1989, a fully delineated conferencing procedure, accompanied by

the creation of a professionalized group of Youth Justice Coordinators, make for a justice mechanism that is well-administrated with predictable conferencing outcomes, enabling the young offender to repair harms in consistent ways. However, the offender-centric design, the fact that the conference does not rely on victim participation, and the standardization of the process impede the ability of the FGC to produce stakeholder involvement and community role transformation.

New South Wales' Young Offenders Act 1997 and the 2005 regulation for the forum sentencing intervention program illustrate how this routinization, if taken further, can lead to trade-offs with the mechanisms' overall restorative capacity. Responsible parties rely on scripted conferencing interactions and predetermined outcome plan options to ensure that both Youth Justice Conferences and forum sentencing conferences comply with legislative standards. For any restorative justice mechanism, standardization may improve the procedural legitimacy, simplify implementation, and create programmatic consistency. Yet such routinization also impedes the capacity for innovation, flexibility, and restorative dialogue. Furthermore, the way in which the Young Offenders Act conceives of the YJC routines pushes the conferencing outcomes into a rehabilitative justice space rather than a restorative one. This means that in addition to creating a mechanism that shares the shortcomings of the FGC along the dimensions of stakeholder involvement and community role transformation, the focus of the YJC on personal development opportunities for young offenders also adds questions about how well the conferences are repairing harms. Prior to the program's cessation, forum sentencing conferences required that victims be willing to attend, which might have created more victim-offender exchange but also restrained the mechanism's applicability.

Meanwhile, adult pre-sentence conferences in New Zealand and restorative justice panels in Vermont were designed with different restorative focuses. In New Zealand, victim needs were the driving consideration of the mechanism, and so these conferences excel along the dimension of stakeholder involvement. In Vermont, ceding control of justice responses to local communities was a primary goal. Vermont's panel approach thus provides the best example of effective community role transformation. However, both examples illustrate how certain decisions in one area can have substantive ramifications for the mechanism's success in other areas. Vermont may offer a compelling illustration of community role transformation, but its mechanisms produce the lowest corresponding levels of victim involvement. On the other

hand, in New Zealand, the requirement of victim participation limits the scope of restorative possibilities and results in adult conferencing playing a modest role in the criminal justice system.

Second, legislative design decisions played a critical role in the way restorative justice mechanisms were ultimately integrated into the criminal justice system. The flexible application of the Family Group Conference at any stage of the justice process has made for a well-integrated and robust justice intervention. It also allows for restoration to take place in several different iterations, from diverting a young offender to informing their Youth Court sentence. This stands in contrast to the case of Youth Justice Conferences, which are located within the youth justice process as a highly constrained diversionary tool for the proportion of young offenders who have committed a summary offence that is too serious for cautioning but still moderate enough to qualify for diversion from the Children's Court. This design aspect means that YJCs are limited in their applicability and their vitality, perhaps explaining their failure to emerge as a preference of local law enforcement and their inability to contribute to the policy success of the Young Offenders Act 1997. Yet the legislative design also means that when a YJC takes place, it can be fully adjudicated by the restorative process.

Forum sentencing was also designed to be an endpoint in the justice process as a distinct sentencing mechanism for adult offenders. This meant that successful completion of a conference and an outcome plan would constitute an offender's full criminal sentence. But, once again, the start-to-finish restorative process did not save forum sentencing from the same integration problems that YJCs have. A complicated referral system and rigid eligibility restrictions made it difficult to determine the level of case-seriousness needed to trigger the mechanism's applicability. As a result, the forum-sentencing mechanism proved in practice to be too difficult to activate and was abandoned by policymakers.

The Sentencing Act 2002 creates a justice system role that eases the activation of adult pre-sentence conferencing by forcing judges to use the mechanism but limits the impact of the conferences by maintaining a reliance on conventional adjudication. The Act mandates that the courts pause proceedings for a restorative justice referral, then allows courts to impose further criminal sentences while using the completion of a restorative justice conference as a mitigating factor. The fact that the mechanism forces offenders to step back into the conventional justice stream and lets judges retain control of the final sentence has competing policy implications. While judicial control of final outcomes retains predictability and consistency in justice sector

outcomes, such control also restricts the extent to which the crime response mechanism can be characterized as fully restorative.

The last example is CJs, which are encouraged to develop restorative justice services to be used at all stages of the justice process. Once the CJC gains control over a referred case, the centre wields substantial authority over the trajectory and the final disposition of the case. However, it is difficult to track just how many cases are being managed by CJs and how successful their efforts are. Accordingly, while the latitude for innovation in and integration of restorative services makes it easy to imagine an expansive restorative justice mechanism, it is difficult to know the precise shape of restorative justice's role in Vermont.

Third, there is the extent to which the jurisdiction allows legislative goals to align with or conflict with restorative goals. Vermont made the unique decision in this area to enact a statute that dictated restorative justice as the official policy of the state, meaning that jurisdiction's legislative goals overlap closely with restorative goals. However, there are points of tension in the other jurisdictions that can impair the restorative capacity of the relevant mechanism. Both YJCs and forum sentencing conferences are monitored in accordance with the legislative goal that they reduce recidivism among participants. As was discussed in both Chapters 4 and 5, this is a potentially unrealistic expectation for restorative justice. Nevertheless, the forum sentencing intervention program was discontinued, in part because it was unable to produce results in this area, illustrating how legislative goals can affect the operation of a restorative justice mechanism.

Similarly, New Zealand claims that it wants to create culturally appropriate and community-inclusive restorative processes, in both their youth justice and criminal justice systems. However, the legislation, in both instances, has designed a state-sanctioned mechanism that remains reliant on justice sector professionals, uses conventional justice institutions, and is prescriptively designed and closely monitored. As evidenced by the experience of the facilitator in the Auckland area, this greatly impairs the capacity of the New Zealand justice systems to truly meet the needs of its communities and engage in innovative ways of doing justice.

Fourth, there is the level of discretion that the statute grants to local implementers, which categorizes the law in accordance with Ingram and Schneider's (1990) typology. One can best illustrate the discretion issue by contrasting the strong statutory directives in New Zealand and New South Wales with the Wilsonian approach in Vermont. There, as we have seen, the Vermont legislature issued broad legislative goals and then allowed local implementors discretion to meet those goals in their own way. The explicit natures of the statutory directives that

governed FGCs, YJCs, and forum sentencing allow for mechanisms that can be predictably implemented, closely monitored, and consistently applied. On the other hand, Vermont's willingness to cede control to its local CJC administrators and community volunteers creates a mechanism that can be responsive to the needs of communities and innovate within the context of the state's comprehensive restorative visions.

Questions remain for further research. The study of restorative justice around the world would benefit from more complete data about the various practices that are occurring and from better jurisdictional reporting about restorative justice mechanisms. Better data would enable a large-*n* study and allow for more statistically driven assessments of how legislation can affect various measures of restorative and policy success.

Further, the three jurisdictions that I investigated feature demographic elements and socio-political characteristics that limit the applicability of these conclusions. For example, I present evidence for why Vermont's community-driven approach and willingness to be more hands-off with its restorative justice mechanism produces some positive, restorative developments. But Vermont is also an incredibly small and homogenous jurisdiction that is wealthier than other states in the USA. Decisions that Vermont has made about restorative justice may not be easily implemented in more populous or more diverse locations. Additionally, as was discussed in Chapter 2, the type of legislation that gets passed in a jurisdiction is constrained by the number of veto players that play a role in the law-making process. It makes sense that the New Zealand Parliament, a relatively efficient law-making body with few veto players, was able to enact such an elaborate overhaul of its youth justice system. Regardless of what one ultimately concludes about the success of that overhaul, it is likely true that the Oranga Tamariki Act 1989 is not a universally transferrable statute, making the lessons learned from its procedural specificity similarly non-transferrable.

While much work remains, we can draw tentative conclusions from the research reported in this thesis. Legislative frameworks seem capable of establishing effective and moderately well-resourced programs of restorative justice. So long as restorative justice offers a relatively cost-effective method of closing criminal cases, policymakers will continue to harness restorative impulses to aid in justice reform. If advocates of restorative justice want those state-sanctioned inclusions to be maximally restorative and genuinely successful along restorative dimensions, then there is continued effort required to understand how jurisdictions should best operationalize, enact, and implement restorative justice mechanisms. The offender-centric focus

of much criminal law can make it difficult for legislatures to structure models that ensure full victim participation as part of the restorative process. Effective programs will require substantial buy-in from adjacent workgroups. And even where workgroups all share a common purpose, restorative justice initiatives may have difficulty bridging the gaps between the elites who fashion and administer the programs and the indigenous peoples who inevitably find themselves on the receiving end of justice, restorative or otherwise.

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APPENDIX I: TEMPLATE FOR INTERVIEW QUESTIONS

Introduction

Briefly describe your role within the restorative justice process. What drew you to the position? Alternatively, what trajectory did your career follow and how did you arrive at this role?

Personal Goals

What do you think of as your primary goals when you consider your provision of restorative justice services? How do you measure your success? Where do you feel you are most successful and where do you feel you can improve?

Systemic Support

What challenges currently obstruct your restorative justice services? Who are the other individuals who have a direct effect on your ability to do your job? Please describe how they affect your practice. Do these other actors have the same goals and measures of success that you do? In what ways are they similar and in what ways do they differ? What would improve your ability to deliver restorative justice services?

Role of Restorative Justice

Thinking about the entirety of the criminal justice system and the role that restorative justice is currently playing, how do you feel about the extent to which RJ has become part of the system? Would you like to see that role expand? How so? What systemic reforms do you think are needed? What would the perfect system look like?

Practice Details

What types of restorative justice services do you offer? How are cases referred to you? What is the evaluation process for accepting cases? What's the typical caseload in a month-long period? What do you do before the process? What do you do during the process? What do you do after the process? What are your responsibilities for reporting those events to either your organization or the justice system? What kind of follow-up do you do with participants? What were the

training requirements for this role? How do you provide quality control for the restorative process? How are you funded?

Comparing Actions to Legislative Goals

How do your efforts play a role in the reduction of reoffending? How do your efforts play a role in offender rehabilitation? How do your efforts play a role in victim reparation? How do your efforts play a role in community engagement?

Comparing Actions to Restorative Goals

How do your efforts encourage offenders to repair the harms caused by their crime? How do your efforts empower victims to confront their offenders and describe those harms? How do your efforts create an opportunity for productive dialogue between offenders and victims? How do your efforts restore control of crime and conflict resolution into the hands of the affected community?