

Intent, Harm, and Provocation: Factors Affecting Public Support for Restorative Justice  
Processes

By

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## **Abstract**

This study tested whether observers' support for restorative justice is contingent on the perception that an offender deserves respectful treatment. In a 2 (Intent: High, Low) x 2 (Harm: High, Low) x 2 (Provocation: High, Low) between-subjects experimental vignette study, we manipulated circumstances surrounding an assault. Results showed that participants judged the restorative justice procedure to be more respectful than court and whether the offender intended to harm the victim, the amount of harm the victim suffered, and the level of provocation from the victim before the assault impacted participants' views of how deserving the offender was of respectful treatment. Although there were interactions among the predictors on perceived deservingness of respectful treatment of the offender, perceived deservingness did not predict participants' choice of restorative justice versus court for deciding the offence. The implications of public support for restorative justice procedures are discussed.

*Keywords:* Restorative justice, procedural justice, deservingness, retributive factors

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# **CHAPTER ONE**

## **Introduction**

### **General Overview of Thesis**

In presenting a general overview of restorative justice, I will provide the context for understanding this thesis research. Through this overview, this chapter will present the most comprehensive definitions of restorative justice, along with some of the key principles and goals established in the restorative justice literature, such as reparation, accountability, active participation, community involvement, and reintegration. Then the three most common restorative justice programs will be discussed: victim-offender mediation (VOM), circles, and family group conferencing (FGC)—the restorative justice procedure investigated in this thesis. This chapter will end with a review of respect, fairness, and satisfaction as they pertain to restorative justice, as these concepts will appear again in the thesis study.

Chapter Two will review the specific literatures within restorative justice that are directly relevant to the thesis study and research questions of interest, starting with the theories of reintegrative shaming and deterrence. Then the retributive justice approach and the traditional court procedure will be examined, along with the factors of intent, harm, and provocation that have been shown to influence punishment decisions, followed by a presentation of procedural justice research, including the group value model, the deservingness principle and how offender deservingness may influence procedural decisions.

In Chapter Three, a quantitative methodology is employed. Specifically, the vignette and questionnaire from the thesis study will be discussed. The methodology will

be followed by the results in Chapter Four. Finally, in Chapter Five, the results will be presented and discussed in terms of the meaning for practice and policy of restorative justice procedures, including limitations and suggestions for future research borne from this study.

### **Research Question**

Restorative justice procedures are being used more frequently in Canada as an alternative to traditional (retributive) court procedures (Cormier, 2002; Deukmedjian, 2008). As restorative justice procedures become more widely available, researchers have stressed the importance of understanding the extent, and the conditions under which, the public supports the use of these procedures in determining sanctions for criminal offending (e.g. Gromet & Darley, 2006; Roberts & Stalans, 2004; Umbreit, 1999). This thesis research was designed to test some of the conditions that influence people's choices regarding legal decision making procedures and, in particular, when people favour restorative justice procedures over retributive court procedures for handling an offender. This chapter presents a general overview of restorative justice procedures in order to establish a context for this thesis research before moving into the literature review in Chapter Two. Chapter One examines restorative justice in four parts: 1) defining restorative justice, 2) different types of restorative justice programs, 3) respect in restorative justice procedures, and 4) judgments of fairness and satisfaction in restorative justice processes.

### **What is Restorative Justice?**

To describe restorative justice, researchers have acknowledged Marshall's (1996) definition as the most comprehensive (e.g. Bolitho, 2012; Gerkin, 2009; Hillian, Reitsma-

Street, & Hackler, 2004; Latimer, Dowden, & Muise, 2005; Menkel-Meadow, 2007).

Marshall (1996) emphasized collectiveness when explaining restorative justice, such that, those who have been most impacted by the occurrence of a crime, are the ones who work together to repair what has been damaged and address the crime. Similarly, Zehr (2002) stated that restorative justice is

*“...a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.” (2002, p. 37).*

Scholars have expressed that restorative justice is hard to define as there is no one central definition of the practice (e.g. Bolitho, 2012; Cormier, 2002; Daly, 2002; Lemley, 2001; Newell, 2007; Zehr, 2002). For example, some researchers have defined it as a “...restoration of a sense of justice through renewed value consensus” (Wenzel, Okimoto, Feather, & Platow, 2008, p. 379). Renewed value consensus involves the offender’s recognition of how their actions affected the victim, their willingness to express sorrow, and their ability to arrive at an agreement as to how the harm can be addressed through dialogue with the victim (Okimoto, Wenzel, & Feather, 2009).

Other researchers have defined restorative justice as:

*“...meetings between victim, offender, and potentially others, with a facilitator or mediator—which we shall term direct mediation (if just victim and offender are involved) or conferencing (if offender and/or victim supporters are present as well).” (Shapland, Atkinson, A., Atkinson, H., Colledge, Dignan, Howes, Johnstone, Robinson, & Sorsby, 2006, p. 506-507).*

In the United Nations (Office of Drugs and Crime) Handbook of Restorative Justice Programmes (2006), a restorative process is defined as “...any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.” (p. 6). Further, Zehr (2002) has suggested that if the definition of restorative justice could be summed up in one value, it would be the value of respect. In the absence of definitional clarity, there are principles or goals of restorative justice processes, such as reparation, accountability, active participation, community involvement, and reintegration that are consistent across many definitions (see Bazemore & Green, 2007; Dhami & Joy, 2007; Shapland et al., 2006; Sharpe, 1998; Verrecchia, 2009; Zehr, 2002; Zehr & Mika, 1998).

Reintegration of the offender into the community is a central purpose of restorative justice conferences (Harris, 2003; Van Ness & Strong, 2006; Zehr & Mika, 1998). Braithwaite (2000) proposed that restorative justice procedures allow the offender the opportunity to have a voice in a process that encourages respectful dialogue and a chance to make things right with the victim. Restorative justice procedures also present the opportunity for offenders and victims to have their respective supporters present, as the supporters can help the victim and the offender to heal (Braithwaite, 2000, 1989; Roche, 2003; Weitekamp & Kerner, 2002). Restorative justice procedures encourage reintegration, whereby, supporters (such as family and friends), convey to the offender that what they did was wrong, but this message is conveyed in a “...supportive and respectful...” manner (Morrison, 2002, p. 3). It is the collectivist aspect of this process and the emphasis on ties to the community that are central to the restorative justice

process (Tyler, 2006; Zehr, 2002). Research suggests that rather than criminal justice stakeholders controlling the process for dealing with crime, the onus of control should be left with those impacted by the crime, such as the victim, offender, and community members who may also be affected, with the aim to return those impacted to how they were before the incident or crime occurred (e.g. Bergseth & Bouffard, 2007; Sharpe, 1998, Zehr, 2002, 1990).

### **Different Types of Restorative Justice Programs**

There are many programs in countries such as Canada, New Zealand, Australia, Europe, United States, Rwanda, and South Africa that purport to utilize the principles of restorative justice (Bolitho, 2012; Gumz, 2004; Menkel-Meadow, 2007; Muncie, 2005; Sivasubramaniam, 2012; Umbreit, 1999). The use of restorative justice principles to address crime and instances of wrongdoing takes place in three common forms: victim-offender mediation (VOM), circles, and family group conferencing (FGC) (Braithwaite, 2000; Gerkin, 2009; Hillian et al., 2004; Sharpe, 1998).

**Victim-offender mediation (VOM).** The first victim offender mediation program occurred in 1974 in Kitchener, Ontario (Peachey, 2003). Charged with a property crime, a probation officer thought it would be best if the offenders were to meet their victims in an effort to repair the harm (Bonta, Wallace-Capretta, Rooney, & Mcanoy, 2002). As a result of this meeting, all involved reported satisfaction with how the incident was resolved (Bonta et al., 2002; Peachey, 2003). A key element of the victim-offender mediation program involves the victim and the offender coming together in the presence of an impartial mediator to discuss the offence and resulting harm (Pranis, 2004; Souza & Dhimi, 2008; Umbreit, Coates, & Vos, 2007). The mediation program

seeks to address the transgressions committed by the offender and to hold the offender responsible for their actions (UN Handbook of Restorative Justice Programmes, 2006). Through dialogue (Umbreit, 1999), the offender and the victim discuss how, and in what actions, the offender can take to address the needs of the victim (Pranis, 2004; Souza & Dhimi, 2008). Respective supporters of the victim and the offender may be present at the mediation; however their participation is not primary as that of the offender and victim (Zehr, 2002). Restitution is often agreed upon in a mediation program to address the needs of the victim and the offence (Souza & Dhimi, 2008; Zehr, 2002). Victim-offender mediation programs can receive cases for referral from a variety of criminal justice stakeholders, such as the police, probation officers, and attorneys (Hillian et al., 2004; Umbreit, 1999). Cases may come from many stages of the criminal justice system, such as diversion (a measure considered an alternative to court), as part of probation conditions, sentencing, and where the offender is incarcerated (UN Handbook of Restorative Justice Programmes, 2006).

**Circles.** Circles or “peacemaking or healing or sentencing circles” were derived from the First Nations traditions in Canada (Braithwaite, 2000; Menkel-Meadow, 2007; Zehr, 2002). At the core of circle processes is the active involvement of the community and others, such as criminal justice stakeholders who were also impacted by the offence (Hillian et al., 2004; Pranis, 2004; Verrecchia, 2009; Zehr, 2002). In circle procedures, a “talking stick” would be passed around to each person in attendance (Zehr, 2002). Those in attendance are the victim and the offender, along with their respective supporters, members of the community, and at times criminal justice authorities (e.g. Hillian et al., 2004). All those in attendance would be seated to form a circle and when each person



has the “talking stick”, that is when that person gets to express their story while others in the circle listen with respect (Menkel-Meadow, 2007; Zehr, 2002). The process emphasizes that each person has the opportunity to tell their story of what happened, what can be done to address the harm, and how the offender can address this harm (UN Handbook of Restorative Justice Programmes, 2006; Verrecchia, 2009).

**Family group conferencing (FGC).** Conferencing, or Family Group Conferencing (FGC), was inspired by the Maori in New Zealand and later adopted in Australia as conferencing processes (McGarrell & Kroovand Hipple, 2007; Menkel-Meadow, 2007; Trimboli, 2000). This thesis research focuses on restorative justice conferencing, where there is an opportunity for the victim and the offender to meet in the presence of a trained conference administrator (Umbreit, 1999). Restorative justice conferences bring together the offender, victim, and community members in an effort to promote healing for those involved, while seeking to repair the broken relationship between the victim and the offender (Sharpe, 1998; Zehr, 2002). In a restorative justice conference, the purpose of the meeting is to address the offence that was committed and how the offender can make things right by the victim; both the victim and the offender discuss ways in which the offender can make restitution to the victim and the community for the harm that was caused (Zehr, 2002, 1990). In this discussion, the victim and the offender might agree that the offender will complete community service hours, attend anger management classes, or apologize to the victim (Bazemore, 1998; Braithwaite, 2000). Therefore, in a restorative justice conference, the offender’s sanction or punishment for the offence is determined by both the victim and the offender in a conference setting, rather than by a judge in court (Braithwaite, 2000).

## **The Importance of Respect**

What can be described as an ethic of restorative justice is the notion of respect (Walgrave, 2002). In restorative justice procedures, those affected by the offence are treated with respect, in that all have the opportunity to participate in the decision making of what can be done to address the crime, and how the offender can make amends to the victim and others impacted by the offence (Walgrave, 2002). Respect, in restorative justice procedures, can also be defined as acknowledging the inherent value of an individual (Walgrave, 2002). Respect is not only defined in terms of being respectful of all affected parties, but also accounting for and acknowledging individual differences and the particular circumstances in which people are involved (Zehr, 2002).

As one of the components of restorative justice processes, reintegration into the community applies to both victims and offenders, as both may experience shame and stigmatization as a result of the offence (Roche, 2003; Sharpe, 1998; Van Ness, 2002). Respect or respectful treatment as an aspect of reintegration can occur when people feel valued and respected as part of the larger community (Van Ness, 2002). Restorative justice processes should be able to facilitate the reparation for victims and restoration so they are not defined by the offence (Sharpe, 1998; Sullivan & Tifft, 2001). Having the offender treat everyone with respect allows for the offender to be treated respectfully in holding the offender accountable for their actions (Sharpe, 1998). Offenders are treated with respect in that there is the recognition that they can participate and have a say in the process and the ways they can make amends to the victim (Roche, 2003).

Restorative justice operates on meaningful dialogue where each participant has a chance to have their voices and stories heard by listening with respect to one another

(Braithwaite, 2002, 2000; Pranis, 2000; Strang, 2002; Umbreit, Coates, & Vos, 2007; Wenzel, Okimoto, & Cameron, 2012). Braithwaite (2002) stressed that a main component for restorative processes is listening with respect. Pranis (2000) indicated that engaging in storytelling and mutual respect by listening can be very empowering. Thus, respect is an important component of restorative justice (Bolitho, 2012).

In fact, research has investigated victims and offenders perceived judgments of respectful treatment in restorative justice procedures (e.g. McGarrell, 2001; McGarrell, Olivares, Crawford, & Kroovand, 2000; Trimboli, 2000). For instance, the Indianapolis Restorative Justice Experiment was born out of increasing dissatisfaction with how youth offenders were being handled in other programs (McGarrell, 2001). A variety of criminal justice stakeholders in Indianapolis joined with the research group, the Hudson Institute, to utilize restorative justice conferencing to handle youth cases (McGarrell, 2001). Fashioned after Australia's restorative justice conferencing model, the purpose of this experiment investigated whether participants felt their needs were expressed in the restorative justice process (McGarrell, 2001; McGarrell et al., 2000). Results suggested that generally, youth offenders were treated with respect in restorative justice conferences and displayed respect in communicating with the victims (McGarrell et al., 2000; McGarrell & Kroovand Hipple, 2007). Further, victims reported more satisfaction and felt they had had the opportunity to express themselves in restorative justice conferences (McGarrell, 2001). A similar study found that overall, victims and offenders perceived they were treated with respect in restorative justice conferences (Trimboli, 2000).

## **Fairness and Satisfaction**

Studies have shown that restorative justice procedures are judged by participants to be more fair and satisfactory than court (Latimer et al., 2005; McCold & Wachtel, 1998; Poulson, 2003; Sherman, Strang, Angel, Rossner, Woods, Barnes, Bennett, & Inkpen, 2005; Strang, 2002; Strang, Sherman, Woods, & Barnes, 2011). Across four countries, Poulson (2003) noted that restorative justice, (in comparison to court), was perceived as more fair and satisfactory on a number of measures, including: how the case was handled, the opportunity to have participants stories heard, accountability of the offender, and the occurrence of an apology or forgiveness. Although there was variability in procedures both within and across countries, it was found that, generally, offenders and victims were more satisfied after completing restorative justice procedures than court (Poulson, 2003). In a meta-analysis of 22 studies, Latimer et al., (2005) found that victims and offenders were more satisfied with the restorative justice process overall. In addition, offenders were more likely to comply with restitution and refrain from future rule breaking when they went through restorative justice procedures rather than court (Latimer et al., 2005).

The Reintegrative Shaming Experiments (RISE) conducted in Canberra, Australia, investigated conferences compared to the traditional court procedure (Strang et al., 2011). The experiments included offences ranging from: property, shoplifting, drinking and driving, and violent youth cases (Strang et al., 2011). Results suggested that offenders and victims felt they were treated fairly in the restorative justice conferencing procedures compared to those who went through court (Strang et al., 2011). Similarly, an investigation was conducted on the Bethlehem Pennsylvania Police Family Group

Conferencing program compared to traditional court proceedings (McCold & Wachtel, 1998). McCold and Wachtel (1998) found that victims and offenders expressed judgments of fair treatment in the restorative justice conferencing program. It would appear that generally, restorative justice conferences are perceived as fair (e.g. McCold & Wachtel, 1998; Strang et al., 2011; Trimboli, 2000).

Victims have been neglected in traditional court procedures where their voices are not heard in court evaluations (Gromet, 2012). However, scholars are increasingly investigating victims in court and restorative justice processes (Dhami, 2012; Gilbert & Settles, 2007; Roberts, 2009; Strang, Sherman, Angel, Woods, Bennett, Newbury-Birch, Inkpen, 2006; Wemmers, 2009; Wemmers & Cyr, 2005). Wemmers (2009) stressed that the victim needs to be considered part of the criminal justice process, and while restorative justice includes victims in the process, inclusion from the criminal justice system is still needed. Evaluating victim responses across sites in Australia and the United Kingdom (UK), it was found that victims reported less fear and anger towards the offender after having completed a restorative justice procedure (Strang et al., 2006). Wemmers and Cyr (2005) interviewed victims who had experienced victim-offender mediation and found that many victims indicated that they were able to move past their victimization as a result of their participation in the restorative justice procedure. Additionally, Dhami (2012) found that victims who received an apology from the offender, and accepted the apology, reported greater satisfaction with the outcome of the mediation than victims who were not offered an apology.

## **CHAPTER TWO**

### **Literature Review**

In order to situate the thesis research, a review of the relevant research is necessary. Chapter Two describes theories of restorative justice, specifically reintegrative shaming and deterrence theory. Next, as the thesis research examines choice of legal decision making procedure (restorative justice vs. court), this chapter explains the underpinnings of retributive justice and how particular factors (offender intent, harm to the victim, and provocation by the victim) have been shown to influence punishment decisions. To better understand the hypotheses and contributions of this research, this chapter discusses procedural justice research, the group value model, the deservingness principle, and how perceptions of deservingness may influence procedural decisions.

#### **Theories of Restorative Justice**

As mentioned before, restorative justice conferences allow the opportunity for the offender to be reintegrated back into society (e.g. Braithwaite, 1989, 2000; Zehr & Mika, 1998; Zehr, 2002). In both deterrence theory and reintegrative shaming, there is a focus on reintegrating the offender into the community as a way to promote healing from the broken relationship (between the community and the offender) caused by the crime (Brunk, 2001). There is also the objective of correcting the harm that was caused to the victim and the community and the offender's willingness to come up with an agreement that can accomplish this (Brunk, 2001). The commonality between both theories is that they are components that can be present in restorative justice procedures.

## **Reintegrative Shaming Theory**

Developed by Braithwaite (1989), reintegrative shaming theory focuses on the notion of shame to prevent future re-offending. Shame presents itself when a person has committed a wrong that has affected the supportive relationship of the individual and their community (Ahmed, Harris, Braithwaite, & Braithwaite, 2001; Morrison, 2002, 2006). Shame can cause discomfort in how an individual views themselves (Ahmed et al., 2001; Braithwaite, 2000). This discomfort arises when a person experiences an incongruity with how they view themselves, their actions that led to the wrongdoing, and/or what their community values (Ahmed & Braithwaite, 2012; Braithwaite, 2000; Sullivan & Tifft, 2001).

There are two ways in which a person can manage shame: 1) adaptive or acknowledgment and 2) maladaptive or displacement (Ahmed et al., 2001; Ahmed & Braithwaite, 2012; Morrison, 2002). As the terms themselves suggest, acknowledging one's shame is the more healthy approach. Adaptive shame occurs when a person takes responsibility for their actions and wants to correct the wrong (Ahmed & Braithwaite, 2012). Adaptive shame is more likely to be supported by the community (Ahmed & Braithwaite, 2012). When a person does not acknowledge shame, which is indicative of maladaptive shame, they may try to displace their responsibility by blaming the victim or other extraneous circumstances (Ahmed & Braithwaite, 2012). In these ways, maladaptive shame can intensify stigmatization from the community and, thereby, potentially increase future criminal activity (Ahmed et al., 2001; Ahmed, 2006; Ahmed & Braithwaite, 2012; Braithwaite, 2000).

There is an important distinction between stigmatizing shaming and reintegrative shaming (Braithwaite, 1989). Stigmatizing shaming refers to treating a person who has committed a wrong as someone to be avoided and shunned from society (Braithwaite, 2000). When stigmatization shaming occurs, this may force the person to feel disrespected and to seek respect elsewhere, such as from other lawbreakers, and could lead to a life of crime (Braithwaite, 2000). Reintegrative shaming, however, does not elicit the negative consequences that we often think of as associated with shame. Reintegrative shaming addresses the crime that was committed, but in a manner that also acknowledges the offender as capable of becoming a valuable member of society through reintegration (Braithwaite, 1989).

As mentioned before, reintegrating the offender into the community is a central purpose of restorative justice conferences (Harris, 2003; Van Ness & Strong, 2006; Zehr & Mika, 1998). However, as restorative justice procedures also present the opportunity for offenders and victims to have their respective supporters' present, restorative justice conferences also provide an opportunity for stigmatizing (not recommended) or reintegrative (recommended) shaming (Braithwaite, 1989, 2000; Roche, 2003; Weitekamp & Kerner, 2002). Furthermore, restorative justice scholars have argued that restorative justice procedures may reduce the likelihood of future crimes through the use of reintegrative shaming mechanisms (Akers & Sellers, 2009; Braithwaite, 2000; Harris, Walgrave, & Braithwaite, 2004; Rodriguez, 2007; Tyler, 2006).

Research has looked at the role of reintegrative shaming in encouraging future compliance with the law and engaging in adaptive shame (Ahmed & Braithwaite, 2012; Grasmick & Bursik, 1990; Murphy & Harris, 2007; Tyler, Sherman, Strang, Barnes, &



Woods, 2007; Wong, Cheng, Ngan, & Ma, 2011). Kim and Gerber (2010) analyzed youth offenders who were charged with shoplifting, property offenses, and violent offenses. They found that offender support, repentance, and emotional responsiveness during the restorative justice process were associated with reintegrative shaming. Investigating white collar crime, Murphy and Harris (2007) surveyed taxpayers who had been caught by the Australian Taxation Office (ATO) to ask about their enforcement experiences. They found that taxpayers who expressed their experience in reintegrative terms were more likely to comply with taxation laws two years later. Restorative justice procedures emphasize accountability and respect towards the offender, making it much more likely for the offender to recognize the harm that was caused while still feeling supported and welcomed back into the community (Braithwaite, 1989; McGarrell & Kroovand Hipple, 2007). Therefore, restorative justice conferences seem compatible with the ideas surrounding reintegrative shaming.

### **Deterrence Theory**

In the criminal justice literature, deterrence is often described as a punishment with the purpose of preventing future offences (Akers & Sellers, 2009; Nagin, 1998; Tyler, 2006; Tyler et al., 2007; Vidmar & Miller, 1980). Derived from a rational choice perspective, deterrence theory can be conceptualized as a person calculating the likelihood of being caught for a crime—and experiencing the consequences for that particular crime—when deciding whether or not to engage in the criminal activity (Tyler, 1990). Weiner, Graham, & Reyna (1997) highlighted four components to deterrence: 1) isolation of the offender (e.g., incarceration), 2) rehabilitation (the offender is capable of changing their ways), 3) fear (to make the consequences of a crime so undesirable as to

correct future behaviour), and 4) general deterrence (e.g., legislators can increase awareness of laws through public education). Adding to the four components (Weiner et al., 1997), it is not just the severe consequences of crime that acts as a deterrent to future law breaking, but with how quickly the punishment follows the crime or the “celerity of punishment” (Akers & Sellers, 2009, p. 19). Thus, punishments for crimes serve two purposes: 1) to reduce the likelihood of future crimes being committed and 2) to relay to the public the consequences associated with rule breaking (Carlsmith et al., 2002).

Deterrence theory makes an important distinction between “general” and “specific” forms of deterrence (Akers & Sellers, 2009; Brunk, 2001). General deterrence is the effectiveness with which the criminal justice system is able to establish punishments that would decrease the likelihood that members of the general public would engage in criminal acts (Brunk, 2001). Specific deterrence is using punishment as a means to dissuade an individual offender from committing similar offences in the future (Akers & Sellers, 2009; Brunk, 2001).

Despite the numerous studies on deterrence, scholars have acknowledged that “...there is some deterrent effect from the perceived certainty of criminal penalties, but the empirical validity of deterrence theory is limited” (Akers & Sellers, 2009, p. 23). For instance, scholars such as Vidmar and Ellsworth (1974) have shown some support for deterrence, although their results have been mixed and suggest that deterrence may not be the only motive when people consider punishment decisions. This is reminiscent of others who have claimed mixed support for the deterrent effect of crime (Carlsmith, 2006; Goldberg, Lerner, & Tetlock, 1999; Rucker, Polifroni, & Tetlock, 2004; Weiner, Graham, & Reyna, 1997).

Goldberg, Lerner, and Tetlock (1999) investigated whether the emotion of anger influenced people's decisions concerning justice. Participants were given a video to watch that could elicit anger toward the viewing of an assault. Before the video could commence, participants were told either one of three things: 1) the outcome of the incident resulted in the offender being punished, 2) the offender was not punished for the offence, or 3) the outcome for the offender was unknown (Goldberg et al., 1999). Afterwards, participants completed a questionnaire and were then asked to read four cases / vignettes (varying on offender intent, type of harm and characteristics of the victim and the offender) and to decide on a punishment for each. One of the main findings of this study was that when participants were told the video scenario resulted in no punishment for the offender, people punished the offenders more harshly in the subsequent vignettes they read (Goldberg et al., 1999). It was as if they were outraged that the offender in the video was not punished and they displaced their anger onto the offenders in the vignettes.

While there appears to be mixed support for the deterrence motive in determining people's punishment decisions, Brunk (2001) identified that there is a deterrence purpose to restorative justice principles. Through general deterrence perspective, restorative justice procedures require an offender to meet with the victim and their respective supporters in order to make things right and to be held accountable for their actions (Brunk, 2001). For specific deterrence, restorative justice processes encourage the movement towards reintegrating the offender back into the community through acknowledgment that the offender committed a wrong and is willing to make things right for the victim and community members impacted by the offence (Brunk, 2001).

## **Retributive Justice**

The focus in the traditional criminal justice system is on retributive justice (Bazemore, 1998; Vidmar, 2000; Wenzel, Okimoto, Feather, & Platow, 2008). In retributive justice crime is viewed as a violation against the state (Zehr, 1990, 2002). The retributive justice notion is described as “...restoration of a sense of justice through the imposition of punishment, in the form of adjudication or revenge...” (Wenzel et al., 2008, p. 379). Thus, in responding to crime, retributive justice centers on punishment of the offender (Darley & Pittman, 2003; Gollwitzer & Denzler, 2009). By punishing the offender for the wrongdoing, society views the offender as getting what he or she deserves (Carlsmith, Darley, & Robinson, 2002; Zehr, 1990). Some researchers have called this the ‘just desserts’ approach, such that punishment should be in proportion to the harm caused, as a means of making things right (Carlsmith et al., 2002). Through punishment, the offender effectively rectifies the moral imbalance that had resulted from the offence (Wenzel et al., 2008).

How the traditional court procedure differs from restorative justice procedures lies in how the court system handles crime. For instance, criminal justice stakeholders are called upon to refer to the law in order to exact the appropriate punishment (Sharpe, 1998; Zehr, 2002). As aforementioned, crime is perceived as the offender against the state and not against the victim (Morris & Young, 2000). Most particularly, sentencing decisions are not made by the victim or the offender, but by various criminal justice stakeholders (Roche, 2003). Sentencing does not always result in prison terms but may include restitution to the victim, assignment to probation and even community service hours (Sharpe, 1998). The facts of the offence are considered in determining punishment

and this does not always pertain to the needs the victim and the offender may have in moving forward (Sharpe, 1998). However, it has been suggested that a benefit of the criminal justice system is that through the fact finding process, holding the offender accountable according to the laws can be seen as treating each offender to a uniform set of laws (Morris & Young, 2000; Sharpe, 1998).

Research supports the notion that retributive justice plays an important role in the determination of punishment for offences (McFatter, 1978). It has been suggested that seeking punishment for the offender stems from restoring identity through the status / power imbalance (Okimoto, Wenzel, & Feather, 2009; Wenzel, Okimoto, Feather, & Platow, 2010; Wenzel, Okimoto, & Cameron, 2012). Miller (2001) implied that when a crime has been committed, it appears that the offender gains power over the victim. Therefore, the victim feels that retaliatory actions are necessary to regain that power and to feel respected again (Wenzel et al., 2008). Many people do seek punishment for the offender in order to correct the moral imbalance of crime (Gromet & Darley, 2009). For instance, Carlsmith (2006) investigated the role that retribution, incapacitation and deterrence motives play in peoples' rationale for punishment and found that retributive information and motives played the strongest role in people's punishment decisions.

Central to sanction decisions is the notion of "moral proportionality," where punishment for a crime is meant to match the offence (Carlsmith, 2006, p. 437; Walster, Walster, & Berscheid, 1978). When trying to match the punishment to the offence, research has shown that offender intent, level of harm to the victim, and provocation of the offender by the victim have a profound impact on perceptions of crime (Carlsmith, 2006; Darley et al., 2000; Darley & Pittman, 2003; Kauffman & Ryckman, 1979; Pavlou

& Knowles, 2001). Considerable research has investigated how these three factors (intent, harm, and provocation) affect decisions about how punishments should be assigned in response to offences.

### **Intent**

Several studies have demonstrated the importance of the role of offender intent in punishment decisions (Darley & Pittman, 2003; Okimoto, Wenzel, & Feather, 2009; Vidmar & Miller, 1980). When an offender was aware of the consequences of his or her actions and intended to act despite knowing these consequences, observers judge that offender to be deserving of punishment and punished the offender more harshly (Carlsmith et al., 2002; Darley & Pittman, 2003). Horai and Bartek (1978) asked participants to read two scenarios that varied the level of intent (high, moderate, low) of the offender. They found that the greater the level of offender intent, the harsher the punishment assigned to the offender. Darley, Carlsmith, and Robinson (2000) manipulated the intent of the offender in two scenario studies to examine the role of intent in ordinary citizens' assignment of punishment for a crime. Results showed that the "just deserts" perspective determined punishments assigned. In cases where the offender intentionally committed an offence, people assigned punishment with a more retributive focus (Darley et al., 2000).

In one of these studies (Darley et al., 2000), the scenario described an offence committed under three different conditions: 1) the offender had committed the offense out of jealousy, 2) doctors discovered (after the offence was committed) that the offender had an inoperable brain tumour that had caused his offending behaviour, and 3) doctors discovered (after the offence was committed) that the offender had a brain tumour that

had caused his behaviour, but the tumour could be surgically removed, which would make the offender less likely to behave violently in future. Results showed that when people were faced with a low intent scenario (in which the offender had a brain tumour that was operable), people attributed responsibility for the crime to the tumour and were more likely to consider alternatives to punishment. Participants who were given the case of the offender with the inoperable tumour perceived that the tumour and not the offender influenced their actions; however, participants still felt that the offender would be more likely, as a result of the tumour, to commit future crimes and considered lesser sentencing. Those who were given the case of the offender with the operable tumour and were specifically told that, once removed, the offender returned to a temperate state, were more likely to perceive the offender incapable of committing future crimes and considered a mental hospital (Darley et al., 2000). Overall, this research suggests that when people believe that a crime was not intentional, they are less motivated by retributive concerns in assigning punishment to the offender (Darley et al., 2000).

### **Harm**

Another factor that can impact the punishment for a crime is the degree of harm experienced by the victim as the level of harm experienced by the victim was found to be influential in peoples' decisions on how to assign sanctions in response to offences (Carlsmith, 2006). Kahneman, Schkade, and Sunstein (1998) manipulated the level of harm experienced by a victim (high, low) to test whether this would impact awards of compensation for personal injury offenses. In addition to compensation for victims, results suggested that the level of harm influenced decisions to assign punishment. So, participants who were told that the victim experienced high harm and the company

responsible was a large company were more likely to assign higher dollar amounts (exact dollar amounts differed according to the scenario) for the company to compensate the victim (Kahneman et al., 1998). Results indicated that in determining punishment, level of harm influenced decisions to assign punishment and that people assigned sanctions that punished the offender as well as compensating the victim (Kahneman et al., 1998).

To assess the influence of victim harm on punishment decisions, Nadler and Rose (2003) had participants read a scenario that described a burglary or a robbery where participants were either given no information about the victim, were told that the victim was doing better after the incident (mild emotional injury), or were told that the victim has trouble coping ever since the incident occurred (severe emotional injury).

Participants who read the severe emotional injury version of the scenario felt that this scenario expressed greater harm than those who read the mild version and they assigned harsher punishments than those who read the mild version of these offences. A similar study also reported assignment of harsher punishments when the level of criminal damage to property was greater (Horan & Kaplan, 1983). It has also been found that participants attribute greater responsibility to offenders for their actions when there was more harm caused to a victim (e.g., Kauffman & Ryckman, 1979; Shaw & Sulzer, 1964). Thus, it would appear that the level of harm experienced by the victim may be proportionate to the severity of punishment.

### **Provocation**

Another factor that influences punishment decisions is provocation (Darley et al., 2000). Research has examined whether varying levels of provocation by the victim impacts peoples' judgments of blame, sympathy for the victim, and punishment of the



offender (Pavlou & Knowles, 2001). In one study, researchers presented participants with a scenario in which a wife comes home late because she was visiting with a friend she had not seen for some time and does not have time to cook dinner, so she reheats leftovers. When her husband arrives home he is not pleased with leftovers for dinner. When the wife excuses herself to the kitchen to try to make dinner, the husband follows her, punches her, and is subsequently charged with assault (Pavlou & Knowles, 2001). Within this scenario, researchers manipulated two kinds of potentially provocative behaviour prior to the assault: verbal aggression (present or absent) and jealousy (present or absent).

In the condition in which verbal aggression was present, the victim shouted obscenities at her husband and called him names, whereas these elements were not included in the condition where verbal aggression was absent. Jealousy was manipulated according to the sex of the friend with whom the wife had been catching up, such that the friend was male in the jealousy present condition and female in the jealousy absent condition. The study found that people were more likely to blame the victim and reported less sympathy toward her when verbal aggression and jealousy were present as potentially provocative behaviours (Pavlou & Knowles, 2001). In addition, those who blamed the victim tended to suggest a more lenient outcome for the offender, whereas those who ascribed more blame to the offender suggested harsher punishments (Pavlou & Knowles, 2001). Pavlou and Knowles (2001) stressed that while provocation by the victim was found to affect the offender's punishment, the actions of the offender were not justified nor should violence be condoned—regardless of the victim's behaviour.

Participants in the Pavlou and Knowles (2001) study seemed to feel it was more justifiable when the victim provoked the offender and this seems reminiscent of earlier research on belief in a just world. Lerner and Simmons (1966) described the notion of a just world (the belief that people will be treated as they deserve to be treated) and how this notion leads to victim blame or victim derogation. Participants in all conditions of this study witnessed a “victim” supposedly undergoing shocks in a learning task. In one condition, participants were told that the victim had decided to suffer through the shocks in order to help them receive credit for participation in the experiment. In this condition, where participants saw the victim as having control over their decision to participate and therefore bringing the harm upon themselves, it was found that people did not view this victim as innocent, but as someone deserving to be punished (Lerner & Simmons, 1966). Participants derogated the shock victim more in this condition than in the other conditions; as if they needed to blame the victim in order to convince themselves that the world was still a just and good place (as shocks befalling an innocent person would violate that world view).

Several studies have supported the idea that just world beliefs leads to victim derogation and victim blame, even across situations involving accidents (e.g. Callan, Sutton & Dovale, 2010) and cases of negligence (Alicke, Buckingham, Zell, & Davis, 2008). Therefore, the research seems to suggest that when assigning blame for an offence, people take into account whether the person appeared to have control over the circumstances leading up to the offence. In instances where the offender is seen to have been provoked by the victim, observers appear to take this into account (by reducing the

control they allocate to the offender and increasing the control they allocate to the victim for the offense) when engaging in punishment decisions and ascribing blame.

Overall, research indicates that intent, harm, and provocation affect observers' judgments about the sanctions or outcomes that are fair and appropriate in response to crimes (Alicke et al., 2008; Callan et al., 2010; Darley & Pittman, 2003; Horan & Kaplan, 1983; Kahneman et al., 1998; Kauffman & Ryckman, 1979, Pavlou & Knowles, 2001; Vidmar & Miller, 1980). Brunk (2001) argued that restorative justice and retributive justice are often pitted against one another, but that they should not be viewed as distinct and wholly opposite to each other. Zehr (2002) suggested that both restorative and retributive justice view crime as creating a moral imbalance and addressing the offence is proportionate to the wrongdoing. The difference lies in the "...currency that will fulfill the obligations and right the balance." (Zehr, 2002, p. 59). In support of this, there have been studies where elements of retributive and restorative justice are present in observations of conferences, as well as community support for punishment with both elements (e.g. Daly, 2002; Gromet & Darley, 2006, 2009). While there is a general acknowledgment that there are multiple motives to restorative justice, the thesis research examines the procedural choice of restorative justice or retributive justice (court) to address an offence as it pertains to the existing criminal justice system. Additionally, research has found that justice judgments are impacted by perceptions of fairness regarding the procedure itself and we will be discussing procedural justice judgments in the next section (e.g. Lind & Tyler, 1988; Thibaut & Walker, 1975; Tyler & Lind, 1992).

## **Procedural Justice**

Earlier research have studied people's perceived outcome fairness in whether they felt they deserved the outcome arrived at in a decision making procedure (e.g. Adams & Jacobsen, 1964; Walster et al., 1978). More specifically, people expressed satisfaction with the outcomes arrived at in decision making procedures if they perceived that the allocation of their resources were handled in a fair manner (Tyler & Blader, 2003; Walster et al., 1978). The focus of perceived fairness on outcomes derived from legal decision making procedures are classified under the distributive justice literature (Tyler, 2000). Procedural justice, on the other hand, refers to the perception that decision making procedures are fair and just (Thibaut & Walker, 1975).

In Thibaut and Walker's (1975) work, they posited the concept of decision control and process control. Decision control can be described as influencing or having control in decision making procedures, whereas process control can be described as having the ability to showcase one's view in the procedure (Heuer, Blumenthal, Douglas, & Weinblatt, 1999; Tyler & Blader, 2003). These concepts stemmed from Thibaut and Walker's (1975) work in looking at third party disputes and mediations in legal settings. It is how decisions are made in these procedures that distinguish procedural justice from distributive justice (Tyler, 2000). The perceived fairness of procedures is not based on the outcome; rather it is based on whether people feel they are treated fairly and with respect during the process (MacCoun, 2005; Tyler, 2000; Tyler & Blader, 2003).

Several studies have demonstrated that particular elements of decision making procedures (e.g. voice or participation in procedures, respectful treatment, neutral procedures, trustworthy authorities) enhance procedural justice judgments (e.g. Kitzman

& Emery, 1993; Lind, Kanfer, & Earley, 1990; Tyler & Lind, 1992; Tyler, 2000; Tyler et al., 2007; Wissler, 1995). For example, Pruitt, Peirce, McGillicuddy, Welton, and Castrianno (1993) observed adult mediation cases, where participants were rated on three measures of procedural justice: 1) whether participants felt their voice was heard in the process, 2) participants perceived fairness of the process, and 3) whether they felt the mediator in their case understood what they expressed in the process. Results suggested that those who perceived the mediation process as fair and felt their voices were heard, were indicators of those cases deemed successful in the long term. Long term success was assessed where it was shown that the parties continued to comply with the terms of the mediated agreement for up to six months after the mediation (Pruitt et al., 1993).

Lind, Kanfer, and Earley (1990) investigated whether people would perceive a procedure to be fair even if they were allowed to voice their opinion only after a decision had been reached (and, thus, their opinion would not influence the original decision). Participants were told that the registrar's office of their university was interested in the way students would compile their schedules and this would inform the office as to how best they could structure the scheduling process. For the procedure manipulation, participants were given one of three conditions: 1) predecision voice (participants were told that their views would be valuable in decision making and their views would result in the final decision), 2) postdecision voice (participants were told that their views would only be considered after a decision had been reached about scheduling and that no matter their views, the original decision would remain), and 3) no-voice (participants were not told that their views would be taken into account in the final decision; they were just told what the decision would be) (Lind et al., 1990). For the information manipulation,

participants were given one of three conditions: 1) relevant-information (where participants were given specific techniques that would be useful for scheduling classes), 2) irrelevant-information (where participants were given information of university events rather than any information on scheduling), and 3) no information (where participants were not given any information at all but were instructed to remain in the room). Results suggested that those who received relevant information perceived the procedure and the outcome to be fair. It was also found that those in the postdecision condition, even though they were aware that they could not deter the original decision, perceived they had greater control, than those whose opinions were not taken into consideration. Likewise, those who expressed their opinions and knew that it could help determine the decision, perceived the procedure to be more fair than those whose opinions were expressed but were told would not influence the final decision (Lind et al., 1990). Thus, voice seems to be an important component in whether people find a procedure or an outcome to be fair.

Sunshine and Tyler (2003) found similar results in their study investigating the public's perception of policing. They found that people were generally willing to aid the police with their operations and comply with the law if they perceived that the police were conducting procedures fairly (Sunshine & Tyler, 2003). Therefore, procedural fairness appears to be an underlying factor in the public's judgments. It seems to be that people are more willing to obey the law when they perceive they are being treated respectfully (Sunshine & Tyler, 2003; Tyler & Huo, 2002; Tyler, 2003, 2006; Tyler et al., 2007).

Different models have grown from this research, such as the group value model, the relational model, and the group engagement model (Lind & Tyler, 1988; Tyler & Blader, 2003; Tyler & Lind, 1992), which extends procedural justice judgments to identity and values. For the purpose of this thesis research, I will be discussing the group value model and the deservingness principle that has been suggested for the model by Heuer, Blumenthal, Douglas, and Weinblatt (1999), where people's perceptions that the offender deserves fair and respectful treatment may influence their procedural choice of restorative justice or the retributive court procedure.

### **The Group Value Model**

One of the approaches to describing the mechanisms behind procedural justice reasoning is the group value model (Lind & Tyler, 1988; Tyler & Lind, 1992). The group value model highlights the importance of group identity in determining how people evaluate procedural justice. Proponents of the group value model argue that when procedures make people feel valued and full-status members of the social group, people judge those procedures to be more fair, regardless of the outcomes of those decision making procedures. In essence, voice and respect in decision making procedures lead people to feel valued and respected by the authorities conducting these procedures and, in turn, the belief that they are valued and respected by the social group leads those people to judge procedures as fair (Sunshine & Tyler, 2003; Tyler & Blader, 2000; Tyler & Huo, 2002). Ultimately, people feel they are treated more fairly if they are treated with respect and dignity, regardless of the outcome (Pruitt et al., 1993; Tyler, 2000). Research supports the central claims of the group value model that respectful treatment and voice

increase procedural fairness judgments, at least in part because of their implications for perceptions of group standing and social status (e.g. Tyler, 2000, 2006).

In an earlier test of the group value model, Tyler (1989) conducted interviews with participants who had had experiences with the legal system and legal stakeholders, such as the police. Participants were asked specifically to recount the experience that held the most importance for them (Tyler, 1989). Participants provided answers to the five measures of: 1) outcome favourability which was extended to questions of past experiences, expectations, public expectation, and experiences of others, 2) control (how much control they perceived they had in the decision), 3) neutrality (whether the legal stakeholders behaved appropriately and in decision making), 4) trust (whether participants felt the legal stakeholders were trustworthy in how they conducted themselves, and 5) standing (whether participants felt they were treated politely and respectfully). Tyler (1989) found that people's perceptions of trust, neutrality, and standing were influential in how people assessed their experience with legal stakeholders. Therefore, it appears that people care about their relations with others in decision making procedures. Similarly, the group value model was tested in an organizational context (Robbins, Summers, Miller, & Hendrix, 2000). Results suggested that the group value model was strongest on participants' measures of employee performance, group performance, and commitment to the company, echoing Tyler's (1989) earlier findings that people care about their interactions with one another in a group situation. This connection or interaction with others is reminiscent of the reintegrative shaming elements in restorative justice procedures (Tyler, 2006). Restorative justice procedures allow for the offender to be treated respectfully and those who recognize their wrongdoing and are



willing to make things right may be supported by the community and reintegrated back into society (Tyler, 2006).

### **Deservingness**

Some scholars have pointed out that the concept of deservingness is not considered at all in the group value model (Heuer, Blumenthal, Douglas & Weinblatt, 1999). According to Feather (1996, 2006), deservingness refers to a person's actions and outcomes in alignment with each other; for example, a positive outcome results from a positive action and a negative outcome results from a negative action. In the group value model, Lind and Tyler (1988) argue that people value respectful treatment, but they do not consider that this desire for respectful treatment is qualified by any action.

The deservingness model proposed by Heuer et al., (1999) considers how deservingness may factor in to procedural fairness judgments and posits that respectful treatment only enhances procedural justice judgments when it is seen to be deserved (rather than in all circumstances, as originally proposed by the group value model). To test this model, the researchers manipulated the respect with which a target was treated in a scenario (respect: high vs. low) and the target's deservingness of respectful treatment (deservingness: high vs. low). Participants were then asked to judge procedural fairness and several other variables (Heuer et al., 1999). Results across two scenario studies indicated that deservingness moderated the effect of respectful treatment on procedural fairness judgments; participants only judged respectful procedures to be fair when the target was seen to *deserve* the respectful treatment (Heuer et al., 1999).

## **Bringing It Back To Restorative Justice**

Research suggests that heightened perceptions of fairness and satisfaction are associated with voice or participation in restorative justice processes, as restorative justice processes encourage dialogue and respectful listening (e.g. Saulnier et al., 2012; Strang, 2002; Tyler, 2006; Wenzel et al., 2012). Previous research has found that when people perceived they had the opportunity to express themselves and felt that they were heard, they judged those procedures as fair (e.g. Lind et al., 1990; Lind et al., 1997). Further, studies have suggested that through the reintegrative shaming element of restorative justice procedures (Braithwaite, 2000; Roche, 2003; Zehr, 2002), there is an association with procedural justice elements (Sunshine & Tyler, 2003; Tyler, 2006; Tyler et al., 2007). When an offender experiences shame, has acknowledged this shame by taking responsibility for their actions, and has offered amends to the victim, it is considered restoration for the offender (Ahmed et al., 2001; Braithwaite, 2000; Tyler, 2006). An essential part of this restoration for the offender centers on social ties to those present at the restorative justice process. Those in attendance can include the offender's family and friends, along with the victim and their support people, including affected members of the community (Braithwaite, 2000; Zehr, 2002). These social ties, it is suggested, encourage the offender to comply with laws in the future, due in part to their reintegration into the community (Braithwaite, 1989, 2000; Sunshine & Tyler, 2003; Tyler et al., 2007; Zehr, 2002). Treating the offender with respect as a member of society, but conveying non-acceptance of the wrongdoing, can contribute to reintegrative shaming in restorative justice procedures (Braithwaite, 1989, 2000; Morrison, 2002, 2006).

## Current Study

As restorative justice procedures become more widely available as mechanisms for responding to crime, it becomes more important to understand which of two possible justice notions (restorative or retributive) people will prefer to use in response to various crimes (e.g. Gromet & Darley, 2006; Okimoto, Wenzel, & Feather, 2009; Wenzel & Thielmann, 2006). Researchers have argued that it is important to study the mechanisms driving people's beliefs about when it is appropriate to use these different processes for addressing crime (Okimoto, Wenzel, & Feather, 2009; Wenzel, Okimoto, & Cameron, 2012). While the decision to direct an offender to a court procedure (retributive justice) or a restorative justice process may lay with a judge or police officer, legislators will be less likely to utilize procedures that are incongruent with public support (Gromet, 2012; Roberts & Stalans, 2004; Saulnier, Lutchman, & Sivasubramaniam, 2012). Therefore, it is important to study the perceptions of the public about the propriety of these two mechanisms as responses to crimes. Research has shown that there are many factors that determine punishment or sanction decisions in response to crime. There is evidence indicating that the same factors might determine which *processes* are appropriate for determining those sanctions.

Heuer et al. (1999) demonstrated that the deservingness principles that were previously thought to apply only to outcome decisions (that people should receive the *outcomes* they deserve) also apply to procedural decisions (that people should receive the *treatment* they deserve). Therefore, in this thesis, we investigate whether the factors driving people's judgments about the *outcomes* offenders deserve (i.e., intent, harm, and provocation) also drive their judgments about the *treatment* that offenders deserve. If the

effects of intent, harm and provocation are analogous in procedural evaluations to their effects in outcome evaluations, then people would judge offenders to be more deserving of respectful treatment when intent is low, harm to the victim is low, and provocation is high. We would predict that observers would only judge respectful treatment of offenders to be fair (and would only direct offenders to procedures where they will be treated respectfully) if they believe that offenders *deserve* to be treated respectfully (i.e. when intent is low, harm to the victim is low, and provocation is high).

This lets us consider whether observers believe that offenders will receive more respectful treatment in court or in restorative justice procedures. Restorative justice procedures allow the offender and the victim the opportunity to tell each other their story, and to have their story heard by the other party (Braithwaite, 2000, 2002; Pranis, 2000; Roberts & Stalans, 2004; Strang, 2002). Also, according to Braithwaite's theory, communities that express reintegrative shaming do so through abhorrence of the crime that was committed, not through derogation of the offender. In fact, restorative justice procedures allow the offender to make amends and a willingness to support the offender's respectful reintegration into the social group is part of the public appeal of restorative justice procedures (Braithwaite, 1989, 2000; MacCoun, 2005; Tyler, 1989; 2000; Zehr, 2002). In theory, therefore, restorative justice procedures should be seen as more respectful than court procedures, which do not explicitly aim to encompass these elements.

Based on the literature reviewed above, it was hypothesized that:

- H1: Participants will judge the restorative justice procedure to be more respectful than the court procedure.

- H2: a) Participants will judge the offender to be more deserving of respectful treatment when (i) the offender did not mean to commit the offence (low vs. high intent), (ii) harm to the victim is low (low vs. high harm), and (iii) the offender was provoked by the victim (low vs. high provocation)
- b) Therefore, participants will be more likely to direct the offender to the more respectful procedure (restorative justice according to H1) under these conditions.
- H3: The choice of restorative justice over court will be mediated by participants' perceptions that the offender deserves respectful treatment.

To reiterate, this chapter looked at the theories of reintegrative shaming and deterrence that are common to restorative justice procedures. Next, retributive justice was examined in the aspects (moral outrage and a sense of the offender getting what they deserve) of what distinguishes it from restorative justice. The three factors of intent, harm, and provocation were shown through a wide berth of research to influence people's punishment decisions, which appears to be largely derived from retributive justice motives. Then the research of procedural justice was discussed, with respect and social standing in groups (highlighted as components of restorative justice procedures in the earlier research presented) suggested in heightening procedural justice judgments. The fairness of procedures are explained through the group value model, with the principle of deservingness (originally applied to outcomes) shown to apply to the treatment people deserve. This research suggests that as the literature has demonstrated the applicability of deservingness to the treatment people deserve, that this may also influence people's procedural choices of either restorative justice or court (retributive justice) procedure.

In turn, the question becomes, under which conditions people will find restorative justice procedures appropriate to respond to crime? Chapter Three will review the methods used to research this question. Demographics of the participants who engaged in this research will be described. The vignette (with the manipulations of intent, harm, and provocation) used in this research and the dependent variables (procedural fairness, procedural satisfaction, distributive or outcome fairness, distributive or outcome satisfaction, effectiveness at protecting the community, and effectiveness of the procedure in conveying respect) will be explained. Finally, the research procedure will be laid out in detail.

## **CHAPTER THREE**

### **Method**

Chapter Three will review the design of this experimental thesis research, along with a demographic makeup of the students who participated in the study for course credit. The experimental vignette with the manipulations of intent, harm, and provocation for each condition will be discussed. Next, this thesis examines the manipulation checks inserted as part of the questionnaire to account for those who correctly and incorrectly isolated the applicable information in their respective scenarios. Bringing the focus back to the questions of interest in this thesis, such as whether procedural choice will or will not mediate deservingness of respectful treatment and ratings of the restorative justice and court procedure, the questionnaire items will be operationalized and thoroughly discussed.

### **Design**

In this experimental vignette study, participants read a scenario of an assault that manipulated three factors: provocation, harm, and intent. As the offender and victim in the scenario were women, participant gender was also a variable of interest. This resulted in a 2 (Provocation: High, Low) x 2 (Harm: High, Low) x 2 (Intent: High, Low) x 2 (Gender: Male, Female) randomized between-subjects design.

### **Participants**

In the early experimental design phase, a total of 258 undergraduate students participated in pilot testing the thesis study. Once pilot testing was completed, official data collection commenced. As a result, the official data consists of 126 undergraduate

students (84 women, 42 men) who participated for partial course credit at the University of Ontario Institute of Technology (UOIT). Ages ranged from 17 to 55 years of age ( $M = 21.15$ ,  $SD = 5.17$ ). The majority of participants (46.0%) self-identified as White/Caucasian, (22.2%) self-identified as Asian, (11.1%) self-identified as Black/African-American, and (0.8%) self-identified as Hispanic/Chicano/Latino. The remaining participants (19.8%) belonged to a variety of different ethnicities.

## **Materials**

**Experimental vignette.** The vignette was a short story about two female university students, Cheryl and Vanessa, who were trying out for the school volleyball team (see Appendix A). Within the vignette, Vanessa physically assaulted Cheryl by hitting her in the face with a volleyball. In the vignette, both women were described by their classmates as competitive and aggressive in tryouts. The levels of provocation, harm, and intent were manipulated across participants by changing a few sentences to create high and low versions of each factor within the story. After the manipulations, the vignette always stated that the police were called following the incident and that harm to the victim was assessed at the campus medical clinic. In the vignette, police charge the offender with assault. Following mention of the charge, a brief synopsis is given of what would transpire in a court procedure and restorative justice procedure, along with the option to choose whether this offence should be dealt with in court or through restorative justice.

Copies of each vignette can be found in Appendix A.

**Provocation.** In the high provocation condition, the victim is identified as having repeatedly insulted the offender. For example, the vignette stated that another student “...



said that, while they played, Cheryl insulted Vanessa about her form repeatedly for some time. Other players had intervened, stopping play and telling Cheryl to focus on the game, at which point Cheryl went around the net to stand directly in front of Vanessa to utter yet another insult.” In contrast, in the low provocation condition, the victim is identified as having said and done nothing to the offender. For example, the vignette says that a student “...did not witness either of the girls saying anything to the other.”

**Harm.** In the high harm condition, the victim is indicated as having suffered a broken nose. For example, the vignette stated that “... a doctor examined Cheryl, whose nose was bruised, swollen and bleeding...” In the low harm condition, the victim is indicated as suffering only a slight bruising on the cheek which would dissipate within a few hours. For example, the vignette says that “... The doctor conducted x-rays and found no broken bones or fractures...that Cheryl was lucky that the ball only glanced off her cheek...”

**Intent.** In the high intent condition, the offender indicated to another player that they meant to hit the victim in the face with the volleyball. For example, the vignette stated that: “Faculty member, Gordon Li ... heard Vanessa say... “I am so glad I did that - I’ve wanted to do that for a long time now, it was the only thing that would have gotten her out of my face.” In the low intent condition, it was indicated that the offender was overheard saying that she did not mean to hit the victim in the face with the volleyball. For example, the vignette says that: “... Professor Li... heard Vanessa say “Oh my god, I can’t believe the ball actually hit her-I didn’t mean for this to happen. I was so angry and threw the ball harder than I thought-I didn’t mean for it to hit her.”

**Manipulation checks.** Dichotomous manipulation checks were included for all independent variables, to ensure that participants correctly registered the relevant information in the scenario. All of the four dichotomous manipulation checks were yes/no questions: (i) “*The offender stated that she intended to hit the victim with the volleyball.*”, (ii) “*Before the offender threw the ball at the victim, the victim swore at and insulted the offender.*”, (iii) “*The victim’s nose was broken in the assault.*”, and (iv) “*I read in the case description that the offender apologized to the victim for hitting her with the volleyball.*”

**Non-repeated dependent variables.** For the dependent variable of procedural choice, synopses of a restorative justice and a court procedure were provided in order to assess the perceived appropriate response for addressing the offence. To assess whether choice mediated deservingness of respectful treatment, participants were asked to provide ratings on three non-repeated measures to assess (i) victim deservingness of respectful treatment, (ii) offender deservingness of respectful treatment, and (iii) offender deservingness of respectful outcome (see Appendix B for all items). Ratings were made on a scale from 1-9, where 1= *Strongly Disagree* and 9= *Strongly Agree*.

**Victim deservingness.** Victim deservingness assessed to what extent participants felt the victim deserved polite and respectful treatment. This variable was created by averaging the responses to two separate items ( $\alpha = .88$ ). An example of this measure is: “*The victim deserves to be treated respectfully.*”

**Offender deservingness (treatment).** To what extent participants felt the offender was deserving of respectful treatment was assessed with two items. Responses to these two items were averaged together to create the offender deservingness (treatment)

variable ( $\alpha = .80$ ). A sample item is: “*The offender deserves to be treated with politeness.*”

**Offender deservingness (outcome).** Offender deservingness assessed to what extent participants felt the offender deserved a lenient and favourable outcome. Two items were averaged together to create an offender deservingness (outcome) variable ( $\alpha = .68$ ). An example of this measure is: “*The offender deserves a lenient outcome.*”

**Repeated dependent variables.** To assess whether participants consider restorative justice a more respectful procedure than court, participants were asked to rate both the court procedure and the restorative justice procedure on several measures: procedural fairness, procedural satisfaction, distributive fairness, outcome satisfaction, effectiveness of the procedure at protecting the community, and effectiveness of the procedure at conveying respect. Each of these repeated measures will be rated on a scale of 1-9, where 1= *Strongly Disagree* and 9= *Strongly Agree*. See Appendix B for a list of all items.

**Procedural fairness.** Procedural fairness assessed how fair participants felt the restorative justice and court procedure to be. It was measured with three subscales, with each subscale consisting of three items. The three items on each subscale were averaged together to create one variable for that subscale. The offender treatment subscale measured how fair (or unfair) participants felt an offender would be treated in a restorative justice ( $\alpha = .84$ ) and court procedure ( $\alpha = .78$ ). An example of this subscale is: “*The offender would be treated unfairly during a (restorative justice / a court procedure).*” The victim treatment subscale measured how fair (or unfair) participants felt a victim would be treated in a restorative justice ( $\alpha = .64$ ) and court procedure ( $\alpha =$

.72). A sample item of the subscale is: *“In a (restorative justice / court procedure), the victim would be treated as she deserves to be treated.”* The structural issues subscale measured participants perceptions of the use and fairness (or unfairness) of the restorative justice ( $\alpha = .81$ ) and court procedure ( $\alpha = .85$ ) regarding outcome and offender sanction. An example of this subscale is: *“Under the circumstances, the use of a (restorative justice/court procedure) is justified.”*

***Procedural satisfaction.*** Procedural satisfaction assessed how satisfied participants felt the restorative justice and court procedure to be. It was measured with three subscales, with each subscale consisting of two items. The two items on each subscale were averaged together to create one variable for that subscale. The offender treatment subscale measured how satisfied participants felt an offender would be treated in a restorative justice ( $\alpha = .84$ ) and court procedure ( $\alpha = .78$ ). An example of this subscale is: *“I am satisfied with the treatment this offender would receive in a (restorative justice / court procedure).”* The victim treatment subscale measured how satisfied participants perceived a victim would be treated in a restorative justice ( $\alpha = .63$ ) and court procedure ( $\alpha = .70$ ). A sample item of the subscale is: *“I am pleased with the way the victim would be treated during a (restorative justice / court procedure).”* The structural issues subscale measured participants perceptions of satisfaction and displeasure with the restorative justice ( $\alpha = .77$ ) and court procedure ( $\alpha = .70$ ) regarding outcome and offender sanction. An example of this subscale is: *“I would not be pleased with the use of the (restorative justice / court procedure) to determine an outcome in this case.”*

***Distributive fairness.*** Distributive fairness assessed how fair participants felt the outcome of the procedure to be. It was measured with two subscales, with each subscale consisting of three items. The three items on each subscale were averaged together to create one variable for that subscale. The offender outcome subscale measured participants perceptions of fairness (or unfairness) of the restorative justice ( $\alpha = .82$ ) and court procedure ( $\alpha = .82$ ) to produce an outcome for the offender. An example of this subscale is: “*(restorative justice / court procedure) would produce an unfair outcome for this offender.*” The victim outcome subscale measured participants perceptions of fairness (or unfairness) of the restorative justice ( $\alpha = .69$ ) and court procedure ( $\alpha = .64$ ) to produce an outcome for the victim. A sample item of the subscale is: “*The outcome of the (restorative justice / court procedure) would be fair to the victim in this case.*”

***Outcome satisfaction.*** Outcome satisfaction assessed how satisfied participants felt the outcome was for both the victim and offender in the restorative justice and court procedure. It was measured with two subscales, with each subscale consisting of three items. The three items on each subscale were averaged together to create one variable for that subscale. The offender outcome subscale measured participants satisfaction (or non-satisfactory) ratings of the restorative justice ( $\alpha = .69$ ) and court procedure ( $\alpha = .63$ ) to produce an outcome and sanction for the offender. An example of this subscale is: “*The (restorative justice / court procedure) would produce a satisfactory outcome for the offender.*” The victim outcome subscale measured participants satisfaction (or non-satisfactory) ratings of the restorative justice ( $\alpha = .66$ ) and court procedure ( $\alpha = .61$ ) to produce an outcome for the victim. A sample item of the subscale is: “*I would not be*

*satisfied with the outcome the victim receives from a (restorative justice / court procedure)."*

***Procedure effective at protecting community.*** Procedure effective at protecting the community consisted of four items. This scale measured participants' perceptions of the likelihood and effectiveness with which the restorative justice ( $\alpha = .88$ ) and court procedure ( $\alpha = .94$ ) would protect the university and general public. An example of this scale is: "*A (restorative justice / court procedure) will most likely protect the public.*"

***Procedure effective at conveying respect.*** Procedure effective at conveying respect assessed participants' ratings of whether they felt the victim and the offender would be treated politely and respectfully (or disrespectfully) in the restorative justice and court procedure. It was measured with two subscales, with each subscale consisting of three items. The three items on each subscale were averaged together to create one variable for that subscale. The offender subscale measured how respectful (or disrespectful) participants felt the restorative justice ( $\alpha = .72$ ) and court procedure ( $\alpha = .73$ ) would be for the offender. An example of this subscale is: "*The (restorative justice / court procedure) would be disrespectful to the offender.*" The victim subscale measured how respectful (or disrespectful) participants perceived the restorative justice ( $\alpha = .63$ ) and court procedure ( $\alpha = .74$ ) would be for the victim. A sample item of the subscale is: "*The victim would be treated politely by (the other participants / judge) in the (restorative justice / court procedure).*"

## **Procedure**

When participants arrived at the lab they were given the consent form (see Appendix C). The consent form explained that participants would read a description of

an assault case and would be asked questions based on the case. If participants consented to participate (which all participants did), each participant was led to an individual cubicle with its own computer. On the computer, participants read the vignette and completed the questionnaire. For the questionnaire, participants completed the non-repeated measures first and then the repeated measures questions. For the repeated measures questions, order effects were controlled by having half the participants randomly assigned the court questions first and half assigned the restorative justice questions first. Finally, participants answered demographic questions. Upon completion, participants were led back to the main room and fully debriefed.

This chapter reviewed the design and materials that were utilized in this experimental thesis research. Along with the high and low versions of intent, harm, and provocation, a synopsis of how the offence ended and the subsequent charge and arrest given to all participants (regardless of the scenario) were discussed. The offender deservingness (treatment and outcome) and victim deservingness variables were reviewed in order to highlight the measures used to assess whether deservingness mediates the choice of restorative justice or court procedure. Finally, a review was conducted of the ratings of the court and restorative justice procedure on each of the six repeated measures: 1) procedural fairness, 2) procedural satisfaction, 3) distributive fairness, 4) outcome satisfaction, 5) procedure effective at protecting the community, and 6) procedure effective at conveying respect. These repeated measures were used to analyze participants perceptions of court and restorative justice in assessing whether each are capable (or not capable) of fair and respectful treatment, along with satisfying (or not

satisfying) the victim, offender, and the general public in responding to an incident of assault. Next, Chapter Four will review the results of this experimental thesis research.



## CHAPTER FOUR

### Results

Chapter Four looks at the results of this experimental thesis research. Organized by the hypotheses posited in this study, we will first look at participants' perceptions of respect in restorative justice compared to court. Next, hypothesis two will look at the impact of intent, harm, and provocation on victim and offender deservingness of respectful treatment. Within the second hypothesis, we highlighted the impact of the three predictors on procedural choice. Finally, we will discuss the findings for whether participants' perceptions of respectful treatment will mediate the choice of procedure.

There were 205 participants who initially took part in this experiment. Of those 205, 79 participants were removed from the analyses. Removal from the analyses were due to failed manipulation checks (59 participants), misunderstandings concerning how to answer the questions (7 participants), completing the task in significantly less time than the projected completion time allotted for the study (10 participants), having to re-start a participant after they completed a significant amount of the study because the participant skipped or missed part of the study (2 participants), and experimenter error of accidental data deletion (1 participant). Due to these removals, 126 participants were utilized in the results of this study. As a result, an analysis of whether gender differences could account for participants' perceived judgments of respect, deservingness and choice could not be conducted due to low numbers (in cells) of people who participated and passed the manipulation checks (i.e., there were not enough male participants per condition to conduct the analyses).

### **Hypothesis 1: Perceptions of Respect in Restorative Justice versus Court**

We predicted that participants would judge the restorative justice procedure to be more respectful than the court procedure. Therefore, paired samples t-tests were conducted to compare perceptions of restorative justice to the traditional court procedure on the six respect variables.

**Procedural fairness.** The restorative justice procedure was perceived by participants to be fairer in its treatment of the offender ( $M = 6.96, SD = 1.81$ ) than court ( $M = 5.83, SD = 1.91$ ),  $t(125) = 4.77, p < .001$ . In determining whether the restorative justice procedure or court would be fair or unfair in deciding the offender's sanction and the outcome of the case, participants felt that the restorative justice procedure was fairer ( $M = 7.26, SD = 1.77$ ) than court ( $M = 5.09, SD = 2.29$ ),  $t(125) = 7.19, p < .001$ .

**Procedural satisfaction.** Participants ratings of satisfaction were greater for the restorative justice procedure ( $M = 6.94, SD = 1.85$ ) compared to court ( $M = 5.47, SD = 1.99$ ),  $t(125) = 5.49, p < .001$ , in its treatment of the offender. The restorative justice procedure was perceived by participants to be more satisfactory in its treatment of the victim ( $M = 6.96, SD = 1.63$ ) than court ( $M = 5.81, SD = 1.97$ ),  $t(125) = 4.80, p < .001$ . Satisfaction with the restorative justice procedure compared to court on deciding the offender's sanction and outcome of the case was greater for restorative justice ( $M = 7.02, SD = 2.04$ ) than court ( $M = 4.91, SD = 2.40$ ),  $t(125) = 6.42, p < .001$ , according to participant ratings.

**Distributive fairness.** The restorative justice procedure was perceived by participants to be more fair in deciding the outcome for the offender ( $M = 7.10, SD =$

1.77) than court ( $M = 5.66, SD = 1.99$ ),  $t(125) = 5.37, p < .001$ . Participants felt the restorative justice procedure was fairer in the outcome for the victim ( $M = 7.10, SD = 1.56$ ) than court ( $M = 6.31, SD = 1.51$ ),  $t(125) = 4.09, p < .001$ .

**Outcome satisfaction.** The restorative justice procedure was perceived by participants to be more satisfactory in deciding an outcome for the offender ( $M = 6.65, SD = 1.75$ ) than court ( $M = 5.38, SD = 1.75$ ),  $t(125) = 5.10, p < .001$ . Participants felt the restorative justice procedure was more satisfactory in deciding an outcome for the victim ( $M = 6.87, SD = 1.61$ ) than court ( $M = 5.82, SD = 1.67$ ),  $t(125) = 4.80, p < .001$ .

**Procedure effective at protecting the community.** The restorative justice procedure was rated by participants to be more effective at protecting the community ( $M = 6.74, SD = 1.85$ ) than court ( $M = 5.85, SD = 2.38$ ),  $t(125) = 3.46, p < .001$ .

**Procedure effective at conveying respect.** Participants rated the restorative justice procedure to be more respectful towards the offender ( $M = 7.03, SD = 1.56$ ) than court ( $M = 6.02, SD = 1.72$ ),  $t(125) = 5.02, p < .001$ . The restorative justice procedure was rated by participants to be more respectful towards the victim ( $M = 7.36, SD = 1.33$ ) than court ( $M = 7.01, SD = 1.43$ ),  $t(125) = 2.21, p = .03$ .

However, participants did not significantly differ in their ratings of restorative justice ( $M = 7.01, SD = 1.55$ ) and the court procedure in how fairly they treated the victim ( $M = 6.73, SD = 1.59$ ),  $t(125) = 1.50, p = .14$ . Thus, overall there was great support for this hypothesis, in that peoples' perceived ratings of respect were greater for the restorative justice procedure than court.

## **Hypotheses 2a: Intent, Harm, and Provocation on Respectful Treatment**

To test this hypothesis, we first predicted that intent, harm, and provocation would each impact participants' perceptions of the offender's deservingness of respectful treatment. Specifically, when the offender did not intend to commit the offence (low intent), or when harm to the victim was low (low harm), or when the offender was provoked by the victim before committing the offence (high provocation), we predicted that participants would judge the offender to be more deserving of respectful treatment. These predictions would be supported by significant main effects of intent, harm, and provocation, where low intent, low harm, or high provocation were related to greater ratings of deservingness of respect for the offender than were high intent, high harm, or low provocation. In contrast, when looking at perceptions of the victim's deservingness of respect, we predicted that when intent was high, harm was high, and provocation was low, there would be greater ratings of deservingness of respect for the victim. A series of 2 (intent: high vs. low) x 2 (harm: high vs. low) x 2 (provocation: high vs. low) ANOVAs were conducted on the four non-repeated dependent variables.

**Victim deservingness.** There was a significant main effect of provocation on perceptions that the victim deserved respectful treatment,  $F(1, 118) = 38.44, p < .001$ . As predicted, participants judged the victim to be more deserving of respectful treatment when provocation by the victim was low ( $M = 7.82, SD = 1.25$ ) than when provocation by the victim was high ( $M = 5.72, SD = 2.26$ ). The main effects of intent,  $F(1, 118) = .01, p = .95$ , and harm,  $F(1, 118) = .74, p = .39$  were not significant. None of the interactions were significant. Thus, there was partial support for the hypothesis as provocation, at least, was related to perceptions of deserving respect.

**Offender deservingness (treatment).** There was a significant main effect of provocation,  $F(1, 118) = 8.83, p = .001$ , and intent,  $F(1, 118) = 7.85, p = .01$  on perceptions that the offender deserved respectful treatment. As predicted, participants perceived the offender to be more deserving of respectful treatment when provocation by the victim was high ( $M = 6.65, SD = 1.99$ ) than when provocation by the victim was low ( $M = 5.55, SD = 2.20$ ). When the offender's intent to hit the victim was low, participants perceived the offender to be more deserving of respectful treatment ( $M = 6.61, SD = 1.89$ ) than when the offender's intent was high ( $M = 5.58, SD = 2.30$ ), and this supports our prediction. The main effect of harm,  $F(1, 118) = .05, p = .83$ , was not significant. The significant main effects of provocation and intent were qualified by a marginally significant two-way interaction between provocation and intent,  $F(1, 118) = 3.63, p = .06$ , on perceptions of the offender being deserving of respectful treatment (see Figure 1).

Bonferroni post-hoc tests revealed that under instances of high intent—where the offender intended to hit the victim—when the offender was provoked by the victim, participants ( $M = 6.48, SD = 2.04$ ) judged the offender to be more deserving of respectful treatment, than when provocation by the victim was low ( $M = 4.68, SD = 2.20$ ),  $t = 3.65, p < .05$ . Under instances of low provocation—where the victim did not provoke the offender prior to the assault—when offender intent to hit the victim was low, participants ( $M = 6.42, SD = 1.83$ ) judged the offender to be more deserving of respectful treatment, than when offender intent was high ( $M = 4.68, SD = 2.20$ ),  $t = 3.30, p < .05$ . It would appear that under particular conditions, provocation and intent lead to perceptions that the offender is more deserving of respectful treatment.

**Offender deservingness (outcome).** As predicted, there was a significant main effect for provocation  $F(1, 118) = 49.14, p < .001$ , and intent  $F(1, 118) = 4.29, p = .04$ . When provocation by the victim was high participants judged the offender more deserving of a respectful outcome ( $M = 5.84, SD = 1.51$ ) than when provocation by the victim was low ( $M = 3.93, SD = 1.70$ ). For intent—where the offender did not mean to hit the victim, participants judged the offender more deserving of a respectful outcome ( $M = 5.17, SD = 1.66$ ) than when offender intent was high ( $M = 4.60, SD = 2.10$ ). The main effect for harm was not significant,  $F(1, 118) = .01, p = .94$ . The significant main effects for provocation and intent were qualified by a significant two-way interaction effect between provocation and intent,  $F(1, 118) = 4.14, p = .04$ . This two-way interaction was further qualified by a significant three-way interaction effect between provocation, harm, and intent,  $F(1, 118) = 11.52, p = .001$  (see Figure 2).

Bonferroni post-hoc tests revealed that under instances of high intent and high harm—when provocation by the victim of the offender was high participants judged the offender more deserving of a respectful outcome ( $M = 6.06, SD = 1.99$ ) than when provocation by the victim was low ( $M = 3.14, SD = 1.54$ ),  $t = 5.63, p < .05$ . In addition, under instances of high intent and low harm—when provocation by the victim was high participants judged the offender more deserving of a respectful outcome ( $M = 5.61, SD = 1.22$ ) than when provocation by the victim was low ( $M = 3.59, SD = 1.85$ ),  $t = 3.88, p < .05$ .

When both offender intent and harm to the victim were low, provocation mattered. Participants judged the offender to be more deserving of a respectful outcome when provocation by the victim was high ( $M = 6.53, SD = 1.23$ ) than when provocation

was low ( $M = 3.77, SD = 1.27, t = 5.28, p < .05$ ). Additionally, when provocation by the victim was low and harm to the victim was high, participants perceived the offender more deserving of a respectful outcome when offender intent was low ( $M = 5.21, SD = 1.54$ ) than when offender intent was high ( $M = 3.14, SD = 1.54, t = 3.67, p < .05$ ). Also, under instances of high harm, participants judged the offender more deserving of a respectful outcome when the offender experienced high provocation by the victim and did not intend to hit the victim ( $M = 5.17, SD = 1.27$ ) than when there was low provocation by the victim and high offender intent ( $M = 3.14, SD = 1.54, t = 3.60, p < .05$ ). It would seem that high harm did not matter but provocation and intent appeared to influence participants' perceptions.

Furthermore, when provocation by the victim was high, harm to the victim was low, and offender intent was low ( $M = 6.53, SD = 1.23$ ), participants judged the offender to be more deserving of a respectful outcome than when all the conditions were the opposite—when provocation by the victim was low, harm to the victim was high, and high offender intent ( $M = 3.14, SD = 1.54, t = 6.81, p < .05$ ). It would appear that our hypothesis was supported on whether the offender deserved a respectful outcome. Thus, intent, harm, and provocation appear to be important to perceptions of the offender being deserving of a respectful outcome, both in ways that we did predict and in additional ways as well.

### **Hypothesis 2b: Impact of Intent, Harm, and Provocation on Choice of Procedure**

To examine the second part of this hypothesis—that participants would be more likely to choose restorative justice over court when the scenario demonstrated low intent, low harm, and high provocation—a logistic regression analysis was conducted. The three independent variables (intent, harm, and provocation) were entered as predictor variables

in step one and the choice of procedure (restorative justice or court) was the dependent variable. Step two contained the two-way interactions between the predictor variables (intent x harm, intent x provocation, harm x provocation) as predictors of choice of procedure. Step three contained the three-way interaction (intent x harm x provocation) as a predictor of choice of procedure. Overall, the logistic regression model was not significant,  $\chi^2(7, N = 126) = 9.50, p = .22$ . Furthermore, none of the individual variable significantly predicted choice of procedure. Thus, there was no support for our hypothesis that intent, harm, and provocation were related to participants' choices regarding legal decision making procedures.

### **Hypothesis 3: Perceptions of Respect Mediating Choice of Procedure**

To explore whether the variables of victim deservingness, offender deservingness of respectful treatment, and offender deservingness of a respectful outcome mediated the relationship of intent, harm, and provocation on choice, we first tested whether intent, harm, and provocation did in fact predict choice. As explained in hypothesis 2b, this analysis was not significant. Without a relationship between intent, harm, and provocation on procedural choice, there was no point in conducting a mediational analysis (as you cannot mediate a non-existent relationship).

### **In Sum**

To summarize, participants ratings of restorative justice for respectful treatment was greater than court, except for victim treatment of the procedural fairness respect variable. Provocation impacted participants' perceptions of deservingness of respectful treatment for the victim. The interaction of provocation and intent impacted participant ratings of whether the offender deserved respectful treatment. For the perceptions of



whether the offender deserved a respectful outcome, there was a three way interaction of the three predictor variables (provocation, harm, and intent) that impacted participants' judgments. Surprisingly, intent, harm, and provocation were not related to procedural choice decisions and without a relationship between intent, harm, and provocation and procedural choice, it was not possible to look for mediators for the non-existent relationship (thus hypothesis 2b and 3 were not supported). We now turn to Chapter Five to discuss more thoroughly the results in the context of the academic literature, along with limitations of the study, future research suggestions, and implications for public support of restorative justice procedures.

## **CHAPTER FIVE**

### **Discussion**

Having examined in great detail the three hypotheses presented in this thesis research, we will now turn to a more thorough discussion of what the results mean in the context of the literature. Participants' favourable ratings of the restorative justice procedure will be examined within the context of respect. Next, we will look at the impact of intent, harm, and provocation on participants' perceptions of offender and victim deservingness of respectful treatment. The impact of intent, harm, and provocation on procedural choice was predicted; however this prediction was not supported. We will examine what this finding suggests for the retributive and restorative justice literature. Also, we predicted the deservingness principle presented by Heuer and colleagues (1999) would mediate the relation between intent, harm, and provocation on procedural choice—but as there was no relation between intent, harm, and provocation and procedural choice, we could not pursue this line of questioning. However, we will examine what this finding means for the procedural justice literature and how it may apply to future studies of restorative justice as a choice to address crime. Limitations of the thesis study, future research propositions, and the implications of public support for restorative justice procedures will be examined.

#### **Perceptions of Respect**

Restorative justice procedures are seen as more respectful than court as these procedures contain the following elements that suggest it is more capable of respectful treatment:

1) Restorative justice procedures give greater voice to the victim and the offender and allow each to hear the others' side of the story (e.g. Pranis, 2001; Strang, 2002; Umbreit et al., 2007).

2) The offender has the opportunity to make things right by the victim and (e.g. Zehr, 1990, 2002)

3) Restorative justice facilitates offender reintegration into the community after having addressed and dealt with the repercussions of the offence (e.g. Braithwaite, 1989, 2000, 2002).

Thus, in our research we directly tested whether participants judged the restorative justice procedure to be more respectful than the court procedure and found that they did (except in terms of victim treatment, where participants perceived that the victim would be treated fairly, about equally, in both the restorative justice procedure and court). In particular, participants found that the restorative justice procedure was 1) structurally fairer, 2) more satisfying in its treatment of the offender and the victim, 3) more structurally satisfying, 4) capable of generating a more satisfactory outcome for the offender and the victim, 5) more effective at protecting the community, 6) more effective at conveying respect for the offender and the victim, 7) fairer in its treatment of the offender, and 8) generating a fairer outcome for the offender and the victim compared to the traditional court procedure. Most of our research supports previous findings that the outcome satisfaction and fairness of restorative justice procedures elicit positive reactions for those involved in the process (e.g. Latimer et al., 2005; McCold & Wachtel, 1998; Poulson, 2003; Umbreit, 1999). It would appear that if members of the public perceive restorative justice procedures as more respectful than court, this could affect how the

criminal justice system will want to incorporate restorative justice procedures to handle cases and which cases would be appropriate for the procedure.

### **Deservingness of Respectful Treatment**

In the retributive justice literature, the three factors of intent, harm, and provocation are shown to influence peoples' punishment decisions (Carlsmith, 2006; Darley et al., 2000; Darley & Pittman, 2003; Horai & Bartek, 1978; Kahneman et al., 1998; Pavlou & Knowles, 2001). Intent of the offender is shown to impact punishment and judgments of deservingness (Darley & Pittman, 2003; Horai & Bartek, 1978). Harm to the victim, including emotional harm, has been shown to influence the assignment of harsh punishments (Nadler & Rose, 2003). Provocation by the victim influences perceptions of the victim and ascribing victim blame influences their punishment decisions (Pavlou & Knowles, 2001).

In our research, we tested whether participants' judgments of deservingness would be influenced by situational factors. We found that low provocation by the victim impacted participants' perceptions of whether the victim deserved respectful treatment. Specifically, provocation and intent impacted participants' perceptions of whether the offender deserved respectful treatment. When participants were asked whether they felt the offender deserved a respectful outcome, there was a three way interaction effect of the three predictors on judgments of deservingness. Provocation was influential in peoples' judgments, such that when the offender was provoked, participants perceived the offender more deserving of a respectful outcome. It was not so much other circumstances that mattered, but whether the offender was provoked by the victim.

Intent, harm, and provocation are important, but our findings suggest their relationship is not as straightforward as predicted. It is not simply each variable in isolation with difference between high and low conditions that influences perceptions of deservingness. These variables interact to determine perceptions of how deserving offenders are of respectful treatment and a respectful outcome. It would appear that offender intent mattered in whether participants judged the offender deserving of respectful treatment and provocation by the victim influenced participants' perceptions of the offender deserving a respectful outcome. Additionally, our hypothesis was supported (high provocation, low harm, low intent vs. low provocation, high harm, and high intent) on whether participants perceived the offender deserving a respectful outcome. In terms of victims, only provocation seemed to alter whether participants felt victims deserved respectful treatment (participants were less sympathetic to provoking victims).

### **Factors on Choice**

Intent, harm, and provocation have been shown to influence peoples' punishment decisions (Darley, Carlsmith, & Robinson, 2000; Kahneman, Schkade, & Sunstein, 1998; Pavlou & Knowles, 2001). We tested whether these same factors would influence the procedural decision of restorative justice versus court. We found that this was not the case. Possibly, this was due to our particular manipulations and offense in the scenario. Future research may wish to investigate multiple situational factors in order to gain a greater understanding of how the public perceives crime and restorative justice in terms of intent, harm, and provocation. Additionally there is literature that still maintains that we do not yet know the underlying rationale behind why, for some cases and people,

restorative justice might be an appropriate response to crime (Strang et al., 2006; Wenzel, Okimoto, & Cameron, 2012).

### **Respect as a Mediator of Choice**

Deservingness plays a role in procedural justice, where respectful treatment that is believed to be deserved increases procedural justice judgments (Heuer et al., 1999).

Results showed that when people felt a person deserved respectful treatment they judged respectful procedures as fair. Deservingness not only applies to outcomes but procedures as well. Heuer showed deservingness applied to how people are treated in decision making procedures. Thus, we predicted that deservingness would mediate the relationship between intent, harm, and provocation on choice of procedural justice procedure. Unfortunately, as we did not find a relationship between intent, harm, and provocation on choice of procedure, it was not possible to investigate how deservingness influenced this non-existent relationship. To note, Heuer and colleagues manipulated respect and deservingness, then asked participants to consider, for one study, themselves, in a situation. Research should consider having participants imagine themselves in a particular role or scenario in the context of restorative justice and deservingness of respectful treatment, as there could be other factors not accounted for in the procedural choice of restorative justice versus court.

### **Limitations & Future Research**

This study was not without limitations. For example, there are limitations around the generalizability of the population that was studied. This study used undergraduate participants. Saulnier, Lutchman, & Sivasubramaniam (2012) have suggested that while criticism of a sample comparison between the public and actual victims and offenders of

restorative justice processes is warranted, a sample comparison between the public and university students is not unreasonable as both are contained in the sample of interest and are not involved as victims, offenders, and affected community members in the restorative justice processes under study. Furthermore, research in this area has been conducted on community samples (e.g., Gromet & Darley, 2006, 2009; Wenzel, Okimoto, & Cameron, 2012) and many of the hypotheses drawn from that literature held true in their undergraduate samples. However, future research may wish to explore these issues in community samples as well.

The total number of participants (or cases) in this study was a limitation. However, as Tabachnick and Fidell (1996) have pointed, in logistic regression analyses, there could be a low ratio of cases to variables. Due to the makeup of the study with its three deservingness variables, three predictors of intent, harm, and provocation, and procedural choice, the total number of variables to cases could have overwhelmed the regression model. Another point to consider is that due to the number of participants who were dropped out of the analyses due to failed manipulation checks, there were not enough participants per cell (for example, some cells only had 2 men) to conduct an adequate comparison of male and female participant perceptions.

In participants' open ended responses, there were some participants who felt that the case was not very serious and should not have gone to court (dependent on conditions, especially conditions of low intent, low harm, and low provocation). Future research that examines participants' perceptions of what constitutes a lesser offence and whether their perceptions match those in authority would be helpful in the context of procedural choice. Another point of interest that could warrant further investigation is

that of examining participants' perceptions concerning a more serious offence or a repeat offence rather than a first time offence.

Future studies may wish to explore additional manipulations of situational factors to test whether stronger effects may be found with different manipulations. Examples of possible manipulations to study within the context of restorative justice may include: negligence, reckless causation, and aggression (Darley & Pittman, 2003; Pavlou & Knowles, 2001). Additionally, future studies may wish to investigate differing offence types and charges to test whether these circumstances affect public support of restorative justice procedures. Examining more situations and crimes could reveal different results, especially with respect to deservingness in procedural decisions.

It is suggested that multiple vignettes may impact peoples' perceptions of punishment (Carlsmith, 2006). However, as Carlsmith (2006) suggested, while a study could comprise of factors and offence types not found in other studies, there is a question of whether an experimenter can account for all of the information that a participant might consider in making a decision regarding a particular crime. Also, through extensive pilot testing of this study, participants who were taken out of early analyses indicated that they could not or were unable to comment on whether they would choose restorative justice or court and what types of sanctions were appropriate for each, when provided with an explanation of what happens in a restorative justice procedure and what happens in a court procedure that immediately followed the vignette describing the assault.

A limitation of this study could be that in the description of the court procedure given to participants as to what may happen in addressing the assault, there was no mention of the option that the victim may be given to write a victim impact statement.



Out of growing concern and advocating for increased victim rights in the traditional court system, it has been suggested that the introduction of the victim impact statement was the most impactful (Achilles & Stutzman-Amstutz, 2006). In a traditional court procedure, the impact of the offence on the victim is relegated to what is written or recited in a victim impact statement where the victim may or may not be present in court (Morris & Young, 2000). However, while the court system has come a long way in recognizing the needs of victims, there are concerns of only providing a victim impact statement (Achilles & Stutzman-Amstutz, 2006). Some of these concerns are limiting the victim's voice to the effect of the crime on their life, and not having a say in how the offender should be punished and what restoration would look like to the victim (Achilles & Stutzman-Amstutz, 2006). Part of the expansion of victims' rights and victims' services in the criminal justice system gave rise to a growing number of restorative justice programs (Achilles & Stutzman-Amstutz, 2006). However, it has been noted that victims are not viewed as having a stake in the proceedings of a case (Achilles & Zehr, 2001), to the extent that the state is identified as the wronged party in the case against the offender (Roche, 2003). In restorative justice processes, there is the opportunity for victims to be involved in the decision making process, where they can have a say in how they have been impacted and how the harm should be addressed (Achilles & Zehr, 2001).

It is uncertain as to whether (or how) not having a victim impact statement could have affected participants' choice of restorative justice over court to address the offence. Not having victim impact statements may have suggested that there was absolutely no voice for victims in the court procedure, whereas a victim impact statement would have allowed some limited voice to victims.

Another area for future research may be the attitudes of restorative justice practitioners themselves. Canvassing restorative justice practitioners would be interesting as they are currently utilizing the principles of restorative justice to handle select cases in the criminal justice system. Research in this area has yielded findings that recommend training, support, and evaluation of restorative justice programs and practitioners (e.g. Abrams et al., 2006; Choi & Severson, 2009; Braithwaite, 2002; Choi, Green, & Kapp, 2010; Gerkin, 2009; Bradt & Bouverne-DeBie, 2009; Karp, Sweet, Kirshenbaum, & Bazemore, 2004). Future research could examine the real life experiences of restorative justice practitioners and whether these people respond differently than those in a university laboratory setting to factors that may affect support for restorative justice. Additionally, quantitative studies conducted in a laboratory setting can be complemented with qualitative methodology to provide a richer investigation into factors that affect support for restorative justice processes.

The need to investigate female offenders was not factored in the initial design of the thesis research; however given that the vignette involved a female offender and a female victim, it is suggested that future research should investigate the implications for female offenders in restorative justice procedures compared to court. Daly (2008) noted that among differing offence types, female on female assaults or “punch-ups” accounted for reduced instances of remorse or apologies compared to male on male assaults. There is the indication that for female youth offenders, upon being insulted by another female, the offender felt they were obligated to resort to a physical altercation (Burman, 2004). For girls and women, it would appear that reputation or status can be a source of conflict when it is threatened (Daly, 2008; Miller & Mullins, 2006). Although certainly not a

comprehensive look at the literature on female offenders and restorative justice procedures, the literature suggests that, in considering public support for restorative justice conferences, members of the public and criminal justice stakeholders may want to factor in the gender makeup of offenders and victims and that this may impact how offenders and victims participate and are treated in restorative justice processes.

## **Conclusion**

In garnering public support for restorative justice procedures, how these programs work with and/or within the criminal justice system is important to understand. As the public are not fully aware of how restorative justice procedures work or the goals of these programs, research needs to address this in order to glean helpful information on public support for these procedures. For instance, as mentioned earlier in this thesis study and indicative of participants' open-ended responses, a question to ask may be: are public perceptions of a low risk offence consistent with that of criminal justice stakeholders? And what could this mean for who gets directed to restorative justice procedures and who does not when a crime has been committed?

Restorative justice procedures are considered respectful (Zehr, 2002). However, would all people perceive it to be more respectful than court and under what circumstances? Our findings showed that people generally found restorative justice procedures to be more respectful than court on a multitude of variables in our study. Situational factors such as intent, harm, and provocation in a court case influence peoples' perceptions of whether the offender deserves respectful treatment and a respectful outcome. The interactions in this thesis study were notable, in that the variables did not act in isolation of each other.

It would appear that in asking whether the offender deserves respectful treatment and a respectful outcome, the perception of treatment and outcome may be different. As the data suggests, it would seem that intent influenced perceptions of whether the offender deserved respectful treatment, whereas provocation influenced perceptions of whether the offender was worthy of a respectful outcome. In addition, harm did not appear to be a major factor when intent and provocation were taken into account. We did not find significant main effects of harm and harm was only related to one significant interaction (regarding the offender being deserving of a respectful outcome). Thus, investigations of variables in isolation may not tell us the full story. This may inform research on retributive factors and suggests that these factors among others could factor into peoples' decision making perceptions.

Future research should investigate whether these interactions are applicable to other situations or circumstances and why. Studies by Carlsmith (2006) and Darley, Carlsmith, and Robinson (2002) have offered a tremendous start, on the other hand, rather than differing motives such as retributive and deterrence, a question to pose would be, how do the factors within one motive (such as retributive justice) impact public perceptions? The impact of the situational factors on procedural choice was not supported, and deservingness of respectful treatment does not mediate procedural choice, which suggests that there could be other variables not yet considered and even multiple goals that people consider in addition to situational factors in their decision making about justice (see Gromet & Darley, 2009, 2012). As restorative justice procedures are increasingly being used to address crime, an understanding of how the public will perceive this procedure as appropriate in handling cases with various situational factors

and their perceptions of what they feel the offender and victim deserve will impact the criminal justice system.

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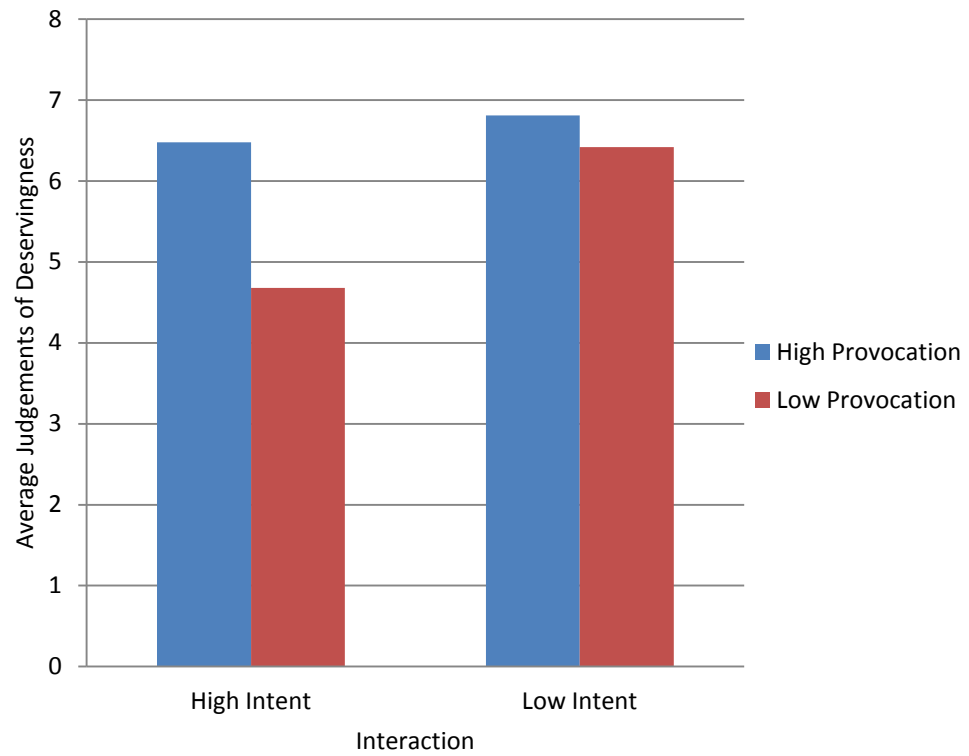
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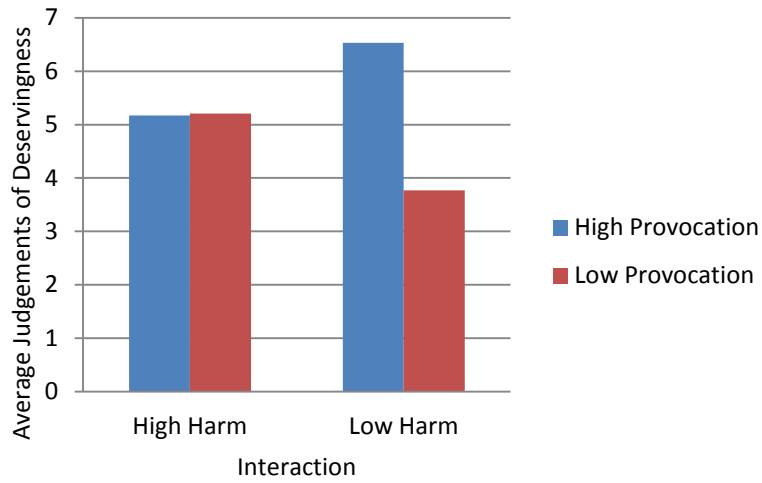
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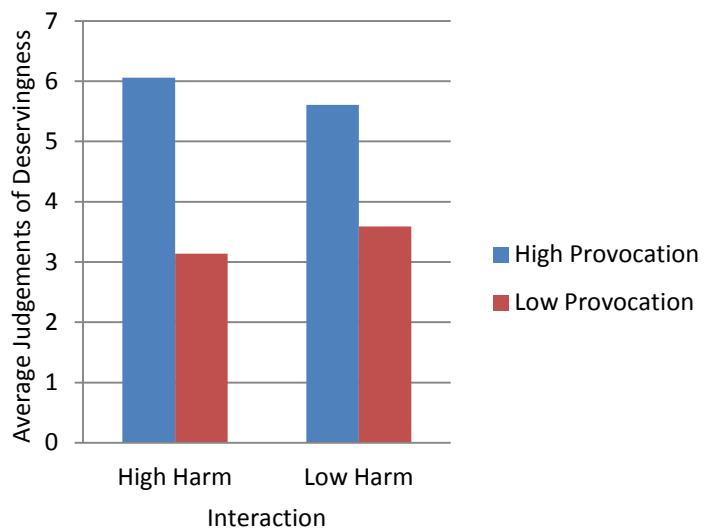


*Figure 1.* Interaction of Provocation\*Intent for Judgments of Deservingness (Treatment)

## Low Intent



## High Intent



*Figure 2.* Interaction of High and Low Intent for Judgments of Deservingness (Outcome)



## **Appendix A: Scenario read by participants (including manipulations)**

*Recently, an assault was committed on a nearby university campus. The case is described below:*

At a nearby university campus, two girls, who knew each other through mutual classes, were attending tryouts for the Varsity Girls Volleyball team. Both are described by their classmates to be athletic and competitive.

The incident in question happened at the beginning of the fall semester. Many students were outside, within earshot of the volleyball courts, some having lunch and others resting and chatting between classes. According to one witness, Sara Matthews, the play on the volleyball courts seemed to get more aggressive as tryouts continued, particularly between two girls, Vanessa Charleston and Cheryl Bruck. Sara Matthews reports that, at one point, other girls trying out for the volleyball team seemed to be looking on nervously.

### **[HIGH PROVOCATION]**

Mike Sutton, a member of the Boys Varsity Volleyball team, who was watching the girls' tryouts with a fellow team member, witnessed the event. He reported on the conversation between the two girls, saying that he heard Cheryl swear at Vanessa when she served the ball. He said that, while they played, Cheryl insulted Vanessa about her form repeatedly for some time. Other players had intervened, stopping play and telling Cheryl to focus on the game, at which point Cheryl went around the net to stand directly in front of Vanessa to utter yet another insult. Once play continued, Cheryl continued to utter insults against Vanessa. Mike Sutton reports that, at this point, Vanessa backed up and served the ball forcefully, and it hit Cheryl in the face.

### **[LOW PROVOCATION]**

Mike Sutton, a member of the Boys Varsity Volleyball team, who was watching the girls' tryouts with a fellow team member, witnessed the event. He reported that play on the volleyball court was intensely competitive, but he did not witness either of the girls saying anything to the other. Suddenly, Vanessa shouted at Cheryl, "What are you looking at?" but Cheryl appeared not to hear her. Mike Sutton reports that, at this point, Vanessa backed up and served the ball forcefully, and it hit Cheryl in the face.

### **[EVERYONE]**

Coach Janine Larter was assisting other candidates for the team on techniques when she witnessed Vanessa serving the ball, and saw the ball hit Cheryl in the face. The coach was not sure what had led up to the incident. She saw other players surrounding Vanessa and Cheryl, who were both visibly upset. Coach Larter immediately called for Campus

Security, and took Cheryl to the Student Health Clinic. She instructed Vanessa to remain on the field, where campus security would meet her.

**[HIGH HARM]**

At the Student Health Clinic, a doctor examined Cheryl, whose nose was bruised, swollen and bleeding. The doctor conducted x-rays and found that Cheryl's nose was broken.

**[LOW HARM]**

At the Student Health Clinic, a doctor examined Cheryl, who had minor bruising on her left cheek. The doctor conducted x-rays and found no broken bones or fractures. The doctor remarked that Cheryl was lucky that the ball only glanced off her cheek, and told her that the bruise would dissipate in a few hours.

**[HIGH INTENT]**

Faculty member, Gordon Li, waited with Vanessa at the volleyball field for campus security to arrive. When campus security had approached Vanessa, Professor Li noticed that her hands were shaking. He heard Vanessa say to another volleyball player, Ali Samson: "I am so glad I did that - I've wanted to do that for a long time now, it was the only thing that would have gotten her out of my face."

**[LOW INTENT]**

Faculty member, Gordon Li, waited with Vanessa at the volleyball field for campus security to arrive. When campus security had approached Vanessa, Professor Li noticed that her hands were shaking. He heard Vanessa say to another volleyball player, Ali Samson: "Oh my god, I can't believe the ball actually hit her-I didn't mean for this to happen. I was so angry and threw the ball harder than I thought-I didn't mean for it to hit her."

**[EVERYONE]**

When campus security arrived, they questioned Vanessa about the incident and took a statement from her. They then proceeded to the Student Health Clinic, where they interviewed Cheryl, and then called police to report the incident.

A fellow student who witnessed the event, Simran Anderson, exclaimed that Vanessa appeared to be visibly shaken and upset while she waited on the volleyball field for campus security, and then police, to arrive. Several witnesses reported that Vanessa seemed to have become so upset that she started shouting at the campus security officers and only started to calm down once police were escorting her off the field.

The police arrested Vanessa and charged her with assault. While on the scene, the police also took photographs of Cheryl's injuries, and obtained copies of the x-rays from the Student Health Clinic. They also asked Cheryl to provide a statement. After being fingerprinted and giving a statement at the police station, Vanessa was released with the condition that she could not approach the victim (Cheryl) and would have to attend court for her first appearance in six weeks. In the interim, police have presented to the local Crown Attorney a package of evidence that contains statements from Cheryl, Vanessa, campus security, witnesses, and the doctor, photographs of Cheryl's injuries, a record stating that Vanessa has no previous history of offending, and a statement outlining why the court should have jurisdiction on the matter. Vanessa has already indicated that she did in fact commit the offence and does not contest the evidence against her, and is entering a guilty plea.

Because Vanessa admits to the offence with which she is charged, there are two options that the Crown Attorney's Office may consider for proceeding with the case: They may either send the case to a restorative justice conference, or to the traditional court procedure.

You may read a little about each option below:

#### Restorative Justice:

In restorative justice, a meeting takes place between the offender (Vanessa) and the victim (Cheryl). The meeting is run by a conference administrator. In the restorative justice conference, the offender takes responsibility for the offence, and the purpose of the meeting is to address the offence that was committed, and how the offender could make things right. The victim and the offender will discuss the ways in which the offender might make restitution to the victim and the community for the harm that was caused. The victim and offender might agree that, to make restitution, the offender will undergo some hours of community service, anger management classes, or offer an apology to the victim. The offender is bound to abide by the final decision that the victim and offender agree upon in the conference. If this matter goes to a restorative justice conference, then the offender's sanction for the offence would be decided by the victim and offender in this conference, rather than by a judge in court.

#### Traditional Court Procedure:

In the traditional court procedure, the offender (Vanessa) would go before a judge. The purpose of the offender's appearance before the judge would be for offender to enter a guilty plea, admitting to the offence, and the judge would then determine the offender's sanction in this case. The victim (Cheryl) may or may not be present in court, but the judge would consider all of the evidence regarding the offence in order to make a determination about the offender's sanction. The sanction in this case could be in the

form of community service, anger management classes, and may include a written apology to the victim. The offender would be bound by the judge's decision. If this matter went to court, then the offender's sanction for the offence would be decided in court by a judge, rather than by the victim and offender in a conference.

In court, the judge has the power to impose some sanctions that cannot be imposed in a restorative justice conference (e.g. imprisonment, probation), but it is highly unlikely that a judge would impose these sentencing options in a case such as this.

## **Appendix B: Questionnaire**

### **(Questions organized by construct)**

How do you think this case should be directed by the Crown Attorney's office?

[RESPONSE: RESTORATIVE JUSTICE OR COURT]

What do you believe would be an appropriate sanction for the offender in this case?

[RESPONSE: OPEN ENDED]

What sanction do you believe the offender would receive from a court procedure?

[RESPONSE: OPEN ENDED]

What sanction do you believe the offender would receive from a restorative justice procedure?

[RESPONSE: OPEN ENDED]

### **Manipulation Checks**

#### **Dichotomous:**

The offender stated that she intended to hit the victim with the volleyball.

Yes/No

Before the offender threw the ball at the victim, the victim swore at and insulted the offender.

Yes/No

The victim's nose was broken in the assault.

Yes/No

I read in the case description that the offender apologized to the victim for hitting her with the volleyball.

Yes/No

**Dependent variables**

*(Scale of 1-9 Strongly Disagree—Strongly Agree)*

**In the procedure that is used to decide the offender's sanction in this case:**

**Victim Deservingness**

The victim deserves to be treated respectfully

The victim deserves to be treated with politeness

**Offender Deservingness (Treatment)**

The offender deserves to be treated respectfully

The offender deserves to be treated with politeness

**Offender Deservingness (Outcome)**

The offender deserves a lenient outcome

The outcome of the procedure should be favourable to the offender.

**Procedural Fairness: RJ**

***Offender treatment***

In a restorative justice procedure, the offender would be treated fairly.

The offender would be treated unfairly during a restorative justice conference.

In a restorative justice procedure, the offender would be treated as she deserves to be treated.

***Victim treatment***

In a restorative justice procedure, the victim would be treated fairly.

The victim would be treated unfairly during a restorative justice conference.

In a restorative justice procedure, the victim would be treated as she deserves to be treated.

***Structural issues***

The restorative justice procedure would be a fair way to determine the offender's sanction in this case.

Under the circumstances, the use of restorative justice is justified.

The restorative justice procedure would be an unfair way to determine an outcome in this case.

***Procedural Fairness: Court***

***Offender treatment***

In court, this offender would be treated fairly.

The offender would be treated unfairly during a court procedure.

In court, the offender would be treated as she deserves to be treated.

***Victim treatment***

In court, this victim would be treated fairly.

The victim would be treated unfairly during a court procedure.

In court, the victim would be treated as she deserves to be treated.

***Structural issues***

The court procedure would be a fair way to determine the offender's sanction in this case.

Under the circumstances, the use of a court procedure is justified.

The court procedure would be an unfair way to determine an outcome in this case.

***Procedural Satisfaction: RJ***

***Offender treatment***

I am satisfied with the treatment this offender would receive in a restorative justice procedure.

I am pleased with the way the offender would be treated during a restorative justice conference.

***Victim treatment***

I am satisfied with the treatment this victim would receive in a restorative justice procedure.

I am pleased with the way the victim would be treated during a restorative justice conference.

***Structural issues***

I am satisfied with the use of the restorative justice procedure to determine the offender's sanction in this case.

I would not be pleased with the use of the restorative justice procedure to determine an outcome in this case.

***Procedural Satisfaction: Court***

***Offender treatment***

I am satisfied with the treatment this offender would receive in court.

I am pleased with the way the offender would be treated during a court procedure.

***Victim treatment***

I am satisfied with the treatment this victim would receive in court.

I am pleased with the way the victim would be treated during a court procedure.

***Structural issues***

I am satisfied with the use of the court procedure to determine the offender's sanction in this case.

I would not be pleased with the use of the court procedure to determine an outcome in this case.

***Distributive Fairness (Outcome Fairness): RJ***

***Offender outcome***

The restorative justice procedure would produce a fair outcome for the offender.

The outcome of the restorative justice procedure would be fair to the offender in this case.

Restorative justice would produce an unfair outcome for this offender.



***Victim outcome***

The restorative justice procedure would produce a fair outcome for the victim.

The outcome of the restorative justice procedure would be fair to the victim in this case.

Restorative justice would produce an unfair outcome for this victim.

***Distributive Fairness (Outcome Fairness): Court***

***Offender outcome***

The court procedure would produce a fair outcome for the offender.

The outcome of the court procedure would be fair to the offender in this case.

Court would produce an unfair outcome for this offender.

***Victim outcome***

The court procedure would produce a fair outcome for the victim.

The outcome of the court procedure would be fair to the victim in this case.

Court would produce an unfair outcome for this victim.

***Outcome Satisfaction: RJ***

***Offender outcome***

The restorative justice procedure would produce a satisfactory outcome for the offender.

I would be satisfied with the sanction that a restorative justice procedure would deliver to the offender.

I would not be satisfied with the sanction the offender receives from a restorative justice procedure.

***Victim outcome***

The restorative justice procedure would produce a satisfactory outcome for the victim.

I would be satisfied with the outcome that a restorative justice procedure would deliver for the victim.

I would not be satisfied with the outcome the victim receives from a restorative justice procedure.

**Outcome Satisfaction: Court**

***Offender outcome***

The court procedure would produce a satisfactory outcome for the offender.

I would be satisfied with the sanction that a court procedure would deliver to the offender.

I would not be satisfied with the sanction the offender receives from a court procedure.

***Victim outcome***

The court procedure would produce a satisfactory outcome for the victim.

I would be satisfied with the outcome that a court procedure would deliver for the victim.

I would not be satisfied with the outcome the victim receives from a court procedure.

**Procedure Effective at Protecting Community: RJ**

A restorative justice procedure will most likely protect the public.

A restorative justice procedure seems like it will be effective at protecting the university community.

A restorative justice procedure will be effective at protecting the welfare of the community.

A restorative justice procedure is effective in protecting the university community.

**Procedure Effective at Protecting Community: Court**

A court procedure will most likely protect the public.

A court procedure seems like it will be effective at protecting the university community.

A court procedure will be effective at protecting the welfare of the community.

A court procedure is effective in protecting the university community.

**Procedure Effective at Conveying Respect: RJ**

***Offender***

The restorative justice procedure would be disrespectful to the offender.

The offender will be treated with respect in a restorative justice procedure.

The offender would be treated politely by the other participants in the restorative justice conference.

***Victim***

The restorative justice procedure would be disrespectful to the victim.

The victim will be treated with respect in a restorative justice procedure.

The victim would be treated politely by the other participants in the restorative justice conference.

**Procedure Effective at Conveying Respect: Court**

***Offender***

The court procedure would be disrespectful to the offender.

The offender will be treated with respect in a Court procedure.

The offender would be treated politely by the judge in a court procedure.

***Victim***

The court procedure is disrespectful to the victim.

The victim is treated with respect in a Court procedure.

The victim would be treated politely by the judge in a court procedure.

**Demographic Variables**

**Gender:** (circle one)

*Male*                      *Female*

**Age:** \_\_\_\_\_

**Ethnic origin:** My Ethnic Background is (circle one):

- |                          |                                     |
|--------------------------|-------------------------------------|
| White/Caucasian          | Hispanic / Chicano (a) / Latino (a) |
| Black / African-American | Pacific Islander                    |
| Native American          | Asian                               |
| Other (Please specify):  |                                     |

## Appendix C: Consent Form

You are invited to voluntarily participate in the following research project: **Volleyball Incident**. In this study, you will be asked to read a description of an assault case, and then answer some questions about your reaction to the case description. We expect that it will take 40-45 minutes for you to complete this study.

The document that we will ask you to read describes an incident of assault. Please note that your participation in this study is completely voluntary and you may withdraw from this study at any time for any reason (e.g., if you feel any discomfort, or if you find any questions in the study objectionable) without any consequences or penalties. You will not be required to provide a rationale for withdrawing from the study. You are not obliged to answer any questions that you find objectionable or which make you uncomfortable.

You will be given one credit for your participation in this study. Full credit will be awarded whether you complete the study or not.

All information will be stored in a secure area. Individual responses will remain anonymous and will not be released to professors or in publications. Only group results will be reported (e.g., conferences presentations, journal articles). Dr. Diane Sivasubramaniam and her research assistants will be responsible for keeping and analyzing the anonymous data files based on your responses. Also, other researchers could request to analyze these anonymous files for other valid research purposes (e.g., for meta-analyses).

This study has been reviewed and cleared by the Research Ethics Board at UOIT (REB # 10-042). The principal investigator is Kiri Lutchman, under the supervision of Dr. Diane Sivasubramaniam of the Faculty of Social Science and Humanities, UOIT. In the event that you have any questions, concerns, or complaints, you may contact Dr. Diane Sivasubramaniam (diane.sivasubramaniam@uoit.ca; 905-721-8668 ext. 3806), or the REB Administration (compliance@uoit.ca; 905-721-8668, ext. 3693).

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I have read and understood the statements above. My signature, below, indicates my free and informed consent to participate in this research.

Name (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D: Debriefing Sheet

Thank you for participating in this study!

The study you just participated in is designed to test a theory suggesting that the certain factors about an offender's or a victim's behaviour will affect the extent to which people will support the use of restorative justice (versus a traditional court procedure) in an assault case. Although all of you read a case with the same basic outline, the details varied across 8 different versions of this story. These variations are the key factors that we manipulated in our study, and I will summarize them briefly for you now.

The first variable that we manipulated was Provocation. Some of you read that the victim was seen and heard insulting the offender just before the offender threw the ball, hitting the victim in the face. Others read that the victim did not provoke the offender before the ball was thrown.

The second variable that we manipulated was the level of Harm caused to the victim. Some of you were informed that the victim's nose was broken as a result of the assault. Others were told that the victim only had minor bruising on her cheek and that the bruise would dissipate in a few hours.

Finally, we manipulated the Intent of the offender in assaulting the victim. In the Intentional condition, the offender was heard saying to a team member that she had wanted to hit the victim for a long time and deliberately threw the ball at her as a way to get the victim "out of my face." In the Non-Intentional condition, the offender was heard relaying to a team member that she did not mean to hit the victim, but had served the ball harder than she thought and simply lost control of its direction.

Our three manipulations led to a design which consists of 8 cells (or combinations of the variables). You were randomly assigned to one of these 8 conditions.

The study tests hypotheses about the ways in which provocation by the victim, intent of the offender, and harm to the victim might affect public support for the use of restorative justice procedures. In line with previous research, we expect to find that people will be more likely to see restorative justice as the appropriate procedure to use in this case (and will judge the procedure and its outcomes to be more fair) when they see the offender as deserving respectful treatment and a more lenient outcome. The questionnaire you completed after reading this case provides us with the data we need in order to test our predictions.

Note that the incident that you read about in the case is not real: The case is completely fictitious.

If you have any additional questions, please feel free to stay and discuss them with us now or to contact Dr. Diane Sivasubramaniam at [diane.sivasubramaniam@uoit.ca](mailto:diane.sivasubramaniam@uoit.ca).

Thank you again for your participation and assistance with our research!

Kiri Lutchman and Dr. Diane Sivasubramaniam

Faculty of Social Science and Humanities

University of Ontario Institute of Technology

**Date: November 16th, 2010**  
**To: Kiri Lutchman (Pi), Diane Sivasubramaniam (Faculty Supervisor)**  
**From: Raymond Cox, REB Chair**  
**REB File #: 10-042**  
**Project Title: Volleyball Incident**

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**DECISION: APPROVED**

**START DATE: November 16th, 2010 EXPIRY: November 16th, 2011**

The University Of Ontario Institute Of Technology Research Ethics Board has reviewed and approved the above research proposal. The application in support of the above research project has been reviewed by the Research Ethics Board to ensure compliance with the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS) and the UOIT Research Ethics Policy and Procedures.

Please note that the Research Ethics Board (REB) requires that you adhere to the protocol as last reviewed and approved by the REB.

**Always quote your REB file number on all future correspondence.**

**Please familiarize yourself with the following forms as they may become of use to you.**

- **Change Request Form:** any changes or modifications (i.e. adding a Co-PI or a change in methodology) must be approved by the REB through the completion of a change request form before implemented.
  
- **Adverse or unexpected Events Form:** events must be reported to the REB within 72 hours after the event occurred with an indication of how these events affect (in the view of the Principal Investigator) the safety of the participants and the continuation of the protocol. (I.e. un-anticipated or un-mitigated physical, social or psychological harm to a participant).
  
- **Research Project Completion Form:** must be completed when the research study has completed.
  
- **Renewal Request Form:** any project that exceeds the original approval period must receive approval by the REB through the completion of a Renewal Request Form before the expiry date has passed.

All Forms can be found at [http://research.uoit.ca/EN/main/231307/Research\\_Forms.html](http://research.uoit.ca/EN/main/231307/Research_Forms.html).

REB Chair  
Dr. Raymond Cox, FBIT  
[raymond.cox@uoit.ca](mailto:raymond.cox@uoit.ca)

Ethics and Compliance Officer  
Sascha Tuuha, (905) 721-8668 ext. 3693  
[compliance@uoit.ca](mailto:compliance@uoit.ca)

**Date: November 2<sup>nd</sup>, 2011**

**To: Kiri Lutchman (Pi), Kimberley Clow (Faculty Supervisor)**

**From: Shawn Bullock, REB Vice-Chair**

**REB File #: 10-042**

**Project Title: Volleyball Incident**

**DECISION: CHANGE REQUEST & RENEWAL**

**APPROVED RENEWAL DATE: November 16<sup>th</sup>, 2011**

**RENEWED EXPIRY: November 16<sup>th</sup>, 2012**

The University Of Ontario Institute Of Technology Research Ethics Board has reviewed and approved the change request and renewal. The application in support of the above research project has been reviewed by the Research Ethics Board to ensure compliance with the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS2) and the UOIT Research Ethics Policy and Procedures.

Please note that the Research Ethics Board (REB) requires that you adhere to the protocol as last reviewed and approved by the REB.

**Always quote your REB file number on all future correspondence.**

**Please familiarize yourself with the following forms as they may become of use to you.**

- **Change Request Form:** any changes or modifications (i.e. adding a Co-PI or a change in methodology) must be approved by the REB through the completion of a change request form before implemented.
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anticipated or un-mitigated physical, social or psychological harm to a participant).

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**All Forms can be found at [http://research.uoit.ca/EN/main/231307/Research\\_Forms.html](http://research.uoit.ca/EN/main/231307/Research_Forms.html).**