The Power of Resistance: Women's Organizations and Institutionalized Restorative

Justice in Nova Scotia

By

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Abstract

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This thesis interrogates a case of feminist engagement with the state in order to grapple with the research question: where do women's organizations fit in contemporary conditions of governance? The case under study involved a consultation between the Nova Scotia government and a coalition of provincial women's organizations around the provincial restorative justice program. This thesis situates the "success" of the women's groups in this process in the contexts of neoliberalism and the marginalization of the women's movement in Canada. Thusly situated, it was a fertile source of data for examining concepts around women's organizations' role in the governance of gendered violence. The analysis was done using governmentality theory. I argue that the two groups possessed certain mentalities around engagement that influenced the policy outcomes. This research suggests a more nuanced conceptualization of power and resistance is necessary when thinking about women's organizations' role in governing gendered violence.

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Introduction

The contemporary women's movement has faced widespread marginalization. In assessing the role of the Canadian women's movement over the last thirty years the consensus among feminist scholars seems to be that "both women's groups and the organizations that represent them within the state find themselves on the margins" (Gabriel & Macdonald, 2005: 73). The movement is characterized as "on the defensive" (Bashevkin, 1998) as "intolerance of feminist positions and policy reversals are widespread" (Snider, 2006: 335).

The decline of the women's movement is often attributed to the rise neoliberalism (Dobrowolsky, 2004). Neoliberalism is a political frame that denies the relevance of gender and of the social. Instead the focus is on responsible individuals. States working from this perspective do not assume responsibility to alleviate inequality; they leave that up to the individual and the market (Brodie, 2007). As a social movement dedicated to ridding society of gender inequality feminism has suffered under neoliberalism. But does that mean that women's organizations are powerless in the face of a monolithic neoliberal state? While I do not deny the truth in many scholars' thoughtful accounts of how women and women's groups have lost ground under neoliberalism, this thesis begins from the assumption that the relationship between the state and women's organizations may be more complex than is generally thought. The case I studied in this thesis is an example of how women's organizations can successfully challenge the state in neoliberal times.

This thesis explores the nature of a consultation between the Nova Scotia government and several women's organizations over the development of a restorative justice (RJ) program. In 1998 the Nova Scotia provincial government outlined its plans

for a comprehensive, institutionalized RJ program for youth. Upon the release of these plans women's equality seeking organizations in the province raised concerns about the potential expansion of this program to adults and the use of restorative justice in cases of sexual and partner violence. The women's organizations were able to initiate a consultation process with the provincial government which included a listening day during which the organizations presented a piece of research they had constructed on women's thoughts on RJ and a joint working group. They were also able to influence the government's decision to place a moratorium on the use of RJ in cases of sexual and partner violence.

This case seems to trouble the "common sense" assumption that women's organizations may not exert power against a neoliberal state. This thesis grapples with a number of research questions that were developed out of the seeming disconnect between this case and the broader literature around feminism and neoliberalism. At first blush the case appears to be one in which the women's organizations exercised power and control and in a sense "won" a moratorium on the use of RJ in cases of gendered violence. The main conceptual research question for this thesis is "where do women's organizations "fit" in contemporary conditions of governance?"

I have adopted Creswell's model to outline smaller empirical research questions. The model includes a central question, issue subquestions and procedural subquestions (Creswell, 2007). The central question is the overarching empirical research question for the project. Issue questions address "the major concerns and perplexities of the project" and continue to focus the inquiry. My research questions are presented below using this strategy.

The Central Question

- o How were women's organizations able to effect change?

Issue Subquestions

- o What about the relationship and context enabled/constrained the exercise of power/resistance by women's organizations?

- o What about the relationship and context enabled/constrained the success of the women's organization's power/resistance?

- o What are the implications of this case for both women's organizations and restorative justice advocates?

I have used governmentality theory to explore these questions. Governmentality theory views power as diffuse, relational and productive. Governmentality theorists argue that resistance operates alongside and is constitutive of power. This theory examines governance as something that is done to the individual and that the individual does to him/herself. The goal of governmentality analysis is to examine particular instances of governance, looking for the technologies and mentalities of governance involved.

The theory has been critiqued by many feminist theorists. One particularly poignant critique is encapsulated in Balfour's (2006) comment that "governmentality's analytic tools enable us to (partially) describe how neoliberalism governs and to ask questions of 'how' – but without balanced attention to 'why?' and 'what now?'" (742). While this critique is valid, Foucault, and others working in the governmentality field, reject the type of grand causality that Balfour seems to imply in the "why?" question (Hunt & Wickham, 1994). Theorists such as O'Malley (2008); Rose, O'Malley & Valverde (2006) and Barry, Osborne & Rose (1996) are candid in saying that they do not

wish to offer the "what next?" prescriptions that Balfour calls for. The focus of governmentality studies is specifically on the "how" of government.

The scholars mentioned above argue that though they offer no alternatives, their work is critical scholarship. Governmentality analyses attempt to trouble our present in order to open critical space for the articulation of alternatives (Burchell, 1996). By showing the breaks and contingencies of governance this theory allows for the possibility of "what now?" questions but it does not strive to answer those questions itself (Larner, 2000). In response to those who critique governmentality theory as being paralyzing Rose, O'Malley and Valverde (2006) argue that "the aim of such studies is critical but not critique – to identify and describe differences and hence to help make criticism possible" (101). Governmentality theory is particularly useful in this case as a tool for examining the possibilities for women's organizations' action in neoliberal times because it focuses on power and resistance and seeks to problematize "common sense" assumptions of governance.

Thesis Structure

This thesis is organized into six chapters. The next chapter charts the shifting relationship between the women's movement and the Canadian state over the past fifty years. I argue that the relationship between these two entities was strong from the late 1960s to the early 1980s because the groups were working from complementary perspectives, radical liberalism and welfare liberalism. The relationship deteriorated as the state moved to embrace neoliberalism. The advent of neoliberalism also had specific effects on the response to gendered violence, these effects are discussed in this chapter.

Chapter Three discusses restorative justice, ostensibly the subject of debate between the government and the women's organizations in this case. This chapter argues that the RJ literature is rife with disagreement, through the presentation of some of that disagreement around the concepts of community, punishment and the relationship between RJ and the criminal justice system. This variability in the RJ literature has affected the response of feminists. Academic feminists have used RJ to ask bigger questions around justice while those working in women's organizations have emphasized the need for consultation and resources. Chapter Three also situates the case studied in this thesis within a context of other feminist engagement with the theory and practice of restorative justice and argue that the lack of a coherent definition of RJ and the focus on consultation were factors in this case.

Chapter Four outlines the research methods and methodological considerations applied in this thesis. I have engaged in a qualitative case study based on interviews and document analysis. The chapter provides a clear description of the types of data collection and data that were used in this research. This chapter fleshes out the methodological decisions that I made and offers justification for those decisions.

Chapter Five presents the key concepts of governmentality theory. I discuss the conception of power that this theory works from along with other key concepts. Throughout this chapter I reflect on what these concepts allow me to see or question in my data.

Chapter Six presents my descriptive results. It is here that I tell the story of the case under study. I outline a number of key events that took place and the key players. I argue that this case was about the relationship between the state and the women's

organizations rather than about RJ and gendered violence. I was able to tease out various strategies of interaction and various outcomes from the data. A key finding was the level of mistrust and polarization that permeated the story. My analysis of the data shows the feelings of polarization led to control struggles which in turn influenced the way that the issues of RJ and wife abuse were ultimately framed and dealt with.

The final chapter presents my analysis of the case. It is here that I pull together the empirical data, governmentality theory, restorative justice literature and the political literature to speak to my research questions. A large portion of this chapter is devoted to my struggle with the concepts of power and resistance and their fit with the data. I end this chapter with implications for the groups involved in this case and suggestions for future research.

Shifting Governance

This case took place in a period that saw women's organizations marginalized from political power. In this section I trace the relationship between the Canadian women's movement and the government from the late 1960s to the early 1980s. This relationship has not been static. It has gone from a close and productive relationship to one which is tense and strained. I argue that the shift in governing strategies from a welfare state orientation to a neoliberal one caused this disintegration.

Welfare Liberalism

Welfare liberalism was the dominant governing strategy following the Second World War and up until the 1980s. A defining characteristic of this style of governance is the recognition of both individual and collective rights (Jenson & Phillips, 1996). A government working from this perspective acknowledges that citizens have rights both as individuals and as members of social groups (Gabriel & Macdonald, 2005). Women, for example, are seen as having rights as individuals and as members of the social group "women". Welfare liberalist ideals recognize that sometimes individual rights must be compromised to protect the rights of disadvantaged social groups (Trimble, 2003) and that the government is responsible to ensure that the rights of citizens are not dismissed by the marketplace. Governments therefore become interventionist by putting restrictions on the market (Brodie, 1994). The hope of welfare liberalism is that "all citizens could make claim to a measure of equality, social security, and collective provision as a right of citizenship" (Brodie, 2007: 98).

The rights of citizens under welfare liberalism include not only the right to be free from harm but also the positive right to a decent standard of living (Brodie, 1998). The

strategy recognizes that poverty is a social problem and that the government is responsible to ensure that its citizens are not living in abject poverty (Brodie, 1998). Examples of policies based on this ideal include universal education and healthcare and unemployment insurance plans. The state is responsible to ensure a just distribution of resources, based on citizens' inherent rights as citizens, and to mediate the market, ensuring that all people are cared for (Brodie, 2007).

Welfare liberalism worked to facilitate the productive relationship between the government and the women's movement as the "promise of citizen equality, its promotion of state intervention to mediate structural inequalities, and its commitments to social planning and social justice laid the foundation for new forms of politics, identity formation and political mobilization" (Brodie, 2008: 151). I discuss throughout this chapter how the Canadian women's movement built their political power on this foundation.

Neoliberalism

During the Regan, Thatcher, and Mulroney eras, a new form of governance, generally recognized as neoliberalism, emerged (Bashevkin, 1998). Idealization of the market is one of the key characteristics of this shift. Neoliberalism elevates the market above all other spheres of life and concurrently encourages the other spheres to utilize market logic (Brodie, 2007). Governments come to reject the activist role they took on under welfare liberalism (Trimble, 2003), seeking instead to shrink the role of the state. At the same time, neoliberal approaches expand the role of the private sphere (Dobrowolsky, 2004) making the family, for example, responsible for the production of good citizens (Brodie, 1998). Individuals are seen as good citizens through their proper

engagement with the market and their self-reliance separate from the state (Trimble, 2003).

Neoliberalism frames and interacts with citizens only as individuals. In this perspective "social rights are rejected because they violate market sovereignty; the economic sphere must distribute social and economic goods, not the state" (Trimble, 2003: 144). Just distribution of goods occurs when those individuals working the hardest and making the "best" choices end up with the most resources (Brodie, 2007). Neoliberalism identifies individual causes and solutions to what welfare liberalism would have seen as social problems (Brodie, 2007), seeking not "to govern through 'society', but through the regulated choices of individual citizens" (Rose, 1996: 41). Rather than putting any responsibility on the state, neoliberalism places all responsibility, for both success and failure, on the individual (Jenson & Phillips, 1996).

Alongside the valorization of the individual in neoliberal thought comes the fragmenting of society into micro communities. In welfare liberalism the social citizen was seen as interacting with and being a part of society whereas in neoliberalism "the very notion of society collapses into particularized communities and differentially competitive regions and sectors" (Dean, 1996: 213). Micro communities consist of families, schools, neighbourhoods or professional associations (Rose, 1996).

Not only does the level of membership change from the broader society to the specific community, so to does the form of membership as "individuals are to fulfill their national obligations not through their relations of dependency and obligation to one another, but through seeking to *fulfill themselves* within a variety of micro-moral domains or 'communities'" (Rose, 1996: 57). This turning away from social obligations shifted

activity away from the state to families, schools, voluntary associations and other communities (Rose & Miller, 1992). As a result, neoliberalism has shrunk the public sphere and seeks to "govern without governing society, that is to say, to govern through the regulated and accountable choices of autonomous agents" (Rose, 1996: 61).

Many proponents of neoliberal government argue that a key tenet is smaller or less government. Scholars have argued, however, that the official story of neoliberalism may be a belief in less government, but that in actuality neoliberalism is simply a different form of government (Barry, Osborne and Rose, 1996). Though there is a strong focus on market prominence "the market exists, and can only exist, under certain political, legal and institutional conditions that must be actively constructed by government" (Burchell, 1996: 23). Similarly, the individual is the dominant social actor but "in order to act freely, the subject must first be shaped, guided and moulded into one capable of responsibility" (Dean, 1999: 165). The shift of activity from the state to the private communities discussed above does not result in less governance, rather, it allows those working from within neoliberalism to "govern at a distance" (Rose & Miller, 1992: 181).

Thus the study of feminist engagement with the state throughout this shift in governing strategies is, in part, concerned with the deterioration of the relationship between the government and women's organizations and the different ways in which the government has responded to feminist issues. The following is a discussion of how the Canadian women's movement and government have interacted during this shift in governance.

The Canadian Women's Movement Under Welfare Liberalism

This section maps the shift in the Canadian women's movement relationship with the state. In contrast to the anti-statist movements in the United States and Britain the second wave feminists in Canada had a close productive relationship with the state. This relationship can be attributed to the transmission of a "radical liberalism" operating code from the first wave through to the second. This operating code provided feminists with a rationale for engaging the government. The welfare liberal governing strategy of the government ensured that they responded to women's organizations. In the mid 1980s, the relationship between the government and the movement crumbled as the government embraced neoliberalism.

Radical Liberalism.

The radical liberalism embraced by Canadian second wave feminists[1] worked well in the context of welfare liberalism (Vickers, 1992; Vickers et al., 1993). Vickers describes the key ideas that make up radical liberalism (Vickers, 1992): a commitment to dialogue, service and to the ordinary political process; the idea that change is possible, and that the state is an acceptable vehicle in achieving that change. These ideas were grounded in the success of the first wave of the women's movement in Canada (distinguished primarily by mobilization around suffrage) but also in the fact that "Canadians in general are more likely to view our state as a benign utility engaged in worthy redistributive efforts and necessary regulatory tasks" (Vickers, 1992: 42). This orientation allows for the possibility of a strong, productive relationship with the state.

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[1] I speak, in this chapter about the Canadian women's movement as a relatively homogenous movement. This is not the case. The women's movement in Canada is a varied, diverse movement with difference and sometimes divisions based on nation, region, language, ethnicity, ability and sexuality (Dobrowolsky, 2008). Though I dislike the term what I present here is the story of the "mainstream" women's movement in Canada, this reflects the organizations that were involved in the case under study.

This is especially true when the state is working from a welfare liberal position. The state acknowledges its responsibility for societal change and the well being of its citizens under welfare liberalism. The cooperative relationship between government and women's organizations in the 1960s to 1980s was a product of government's welfare liberal ideals and the women's movement's radical liberal ideals. The Royal Commission on the Status of Women (RCSW) and the gains that followed from it provide a clear example of this cooperation.

The Royal Commission on the Status of Women.

The RCSW is often identified as marking the beginning of the second wave of feminism in Canada (Cohen, 1993; Newman & White, 2006). It set the stage for strong ties to the government. The commission was both a result of, and inspiration for, women's mobilization. In the 1960s 32 women's organizations came together to form the Committee for the Equality of Women in Canada (CEW). The group, along with their French counter-part the Federation des femmes du Quebec (FFQ) pressured the government to set up the Royal Commission (Dobrowolsky, 2000). This lobbying from the outside was accompanied by women working within government. Two female MPs, Judy LaMarsh and Grace MacInnis, pushed for the government to establish the committee (Black, 1993). When the efforts of these women stalled, the head of the CEW told the press "If we don't get a royal commission by the end of this month, we'll use every tactic we can. And if we have to use violence, damn it, we will" (Rebick, 2005: 6). In 1967, Prime Minister Pearson established the Royal Commission on the Status of Women (Newman & White, 2006), establishing the Canadian women's movement's reliance on the state throughout the second wave. The strategies used to convince the government to

institute the Royal Commission are indicative of the movement's tendency, even early on, to use different approaches to engage the state as "straightforward lobbying was not enough: there had to be substantial collective coordination, strategic political allies and a realizable potential for mass mobilization" (Dobrowolsky, 2000: 19).

The RCSW was mandated to study and report on the status of women in Canada and to make recommendations for achieving women's equality (Newman & White, 2006). To fulfill this mandate the commission held public meetings and received briefs from both individuals and organizations (Cohen, 1993). Testimony about the effects of inequalities in women's lives led the Commissioners to adopt a feminist analysis (Cohen, 1993) and had an educative impact on the public and the media (Black, 1993).

The Report on the Status of Women (RSW) contained 167 recommendations; it was "a lengthy analysis of the structural nature of women's inequality in Canada and a blue print for its alleviation" (Newman & White, 2006). As a result of the Commission the federal government created space within the apparatus of government with the creation of the Status of Women Canada and the Canadian Advisory Council of the Status of Women (Newman & White, 2006). Money was also directed to women through the creation of the Women's Program in the Secretary of State. This program provided core and project funding for women's organizations (Newman & White, 2006; Adamson et al., 1988).

The RCSW served as a lightning rod for the Canadian women's movement, highlighting the issues that needed to be addressed. In the Report we see both radical and welfare liberalism writ large as it "outlined a relationship of Canadian women to the state framed in the logic that state action could remedy injustices though public policy choices

based on a belief in social and political rights" (Newman & White, 2006: 81). Both the government and the women's movement came together with the understanding that women's equality was an important goal and that state action could achieve it.

Grass Roots Feminism.

The second wave of the Canadian women's movement is often characterized as having two distinct strands, "institutionalized feminism" and "grass roots feminism" (Adamson et al., 1988). While institutionalized feminism is characterized as being comprised of reformist government collaborators, grass roots feminism is described as being "activist, optimistic, and externally focused" (Adamson et al., 1988: 42). This approach to government can be seen in the Abortion Caravan in 1970. The caravan made a journey from Vancouver to Ottawa and was organized by the Vancouver Women's Caucus. It stopped in towns along the way to hold rallies and bring attention to the cause. Upon arriving in Ottawa a group of women chained themselves to their chairs in the gallery of the House of Commons. The women also left a coffin, representing women who had been killed by illegal abortions, on the doorstep of the Prime Minister's house (Rebick, 2005). Grass roots feminists criticized institutionalized feminism's heavy reliance on the government. They argued that bureaucracy and formal organizations were antithetical to the democracy and consensus building that feminism promoted (Newman & White, 2006). Grass roots feminists felt that government involvement would lead to the co-option and deradicalization of feminism (ibid).

Grass roots feminist came from other social movements, including the left, the peace movement and student activism. Women in these organizations became aware of their marginalization within these other movements so they broke off and formed their

own more women-centred spaces (Newman & White, 2006). These new groups established rape crisis centres, art galleries, health centres, magazines, and women's centres (Newman & White, 2006). They also created/used a new strategy of organizing: consciousness raising. Consciousness raising involves a small group of women gathering to discuss their lives and link their personal struggles to a larger political analysis (Cohen, 1993). In contrast with institutionalized feminist groups, and the radical liberalism they worked from, these groups shunned the state and the ordinary political process in favour of community mobilization.

These new women's groups saw the RCSW as a vehicle for the government to pay lip service to women's equality rather than take action (Cohen, 1993; Black, 1993). As opposed to those in traditional women's groups "many women active in left organizations were critical of RCSW, dismissing it as just one more government pretence of reform" (Adamson et al., 1988: 52). In this view, these groups established their difference from the more mainstream women's groups associated with radical liberalism.

Though it must be recognized that the Canadian women's movement is and always has been diverse, some scholars argue that the polar presentation of grass roots versus institutionalized feminism may not be the most useful portrayal. These perspectives were not rigid identities as "self identified radical, autonomous groups at times were compelled to engage with the state, and the more established organizations jeopardized their insider alliances by resorting to militant tactics" (Dobrowolsky, 2000: 29). Canadian women's groups have included women who identified with both "types" of feminism (Vickers et al., 1993). A split between grass roots and institutionalized may be more characteristic of the American movement (Dobrowolsky, 2000).

While there has been diversity in philosophy and strategy "in general a high degree of overlap and relatively amiable co-existence are major characteristics of the Canadian women's movement" (Black, 1993: 166). Not only was there overlap, there was also a high degree of "strategic manoeuvrability" (Dobrowolsky, 2000: 27) with groups doing what they had to in order to make change. One strategy was to form coalitions containing many groups (Vickers et al., 1993). This overlap and amiability of groups "produce[d] (and in part [were] produced by) the overall umbrella at the National Action Committee on the Status of Women and the overlapping coalitions within it, as well as the relationship all groups share[d] with the federal government" (Black, 1993: 166). Even in its diversity the women's movement retained a strong relationship with the government.

Productive Relationship.

The Canadian women's movement in the 1960s and 1980s succeeded "in bringing the politics of women's existences into the open and making oppression transparent" (Newman & White, 2006: 93). The creation of government infrastructure aimed at addressing that oppression resulted from feminist engagement with the state (Vickers et al., 1993). Departments such as Status of Women Canada provided space for women's perspectives to be included in policy making decisions. The women's movement also succeeded in having the government fund services that feminist groups had created. By 1985 the Secretary of State had allocated $12.5 million to women's groups. These funds allowed groups to put less effort into fundraising and "provide[d] a welcome and some would argue a necessary basis for political action" (Newman & White, 2006: 141). From

the late 1960s to the early 1980s the relationship between the women's movement and the government was at its most productive (Newman & White, 2006).

Although some would define what I have presented as "success" I have hesitated to use the word in this section because of ideological tension around what success means for feminism. Some of the gains I present here may be seen by some feminists as losses. My purpose in this section is to illustrate that the second wave was able to make change through a strong relationship to the state, it is not to argue for the positive or negative value of these gains.

This relationship was enabled by the principles of welfare liberalism. Welfare liberalism opened space for disadvantaged groups to make claims on the government to alleviate their disadvantage (Jenson & Phillips, 1996). In this space, women were able to organize and make demands on the government. We see this first in the call for the Royal Commission and then in the pressure to implement its recommendations. In this context the women's movement was constructed as a "legitimate actor" in politics (Gabriel & MacDonald, 2005: 73). Women's groups were part of the political mainstream because under welfare liberalism "achieving social justice and equity were legitimate goals" (Jenson & Phillips, 1996: 119). This explains the support and power women's groups had in their relationship with the government. Welfare liberalism "provided language for the systematically disadvantaged to talk back to the state, to make claims as citizens who had been actively denied its promise of social justice and to mandate the state to regulate and ameliorate structural assaults on individual and collective well-being" (Brodie, 2007: 99). Using this language the women's movement was able to put pressure on the government to enact policies such as equal pay for equal work and maternity/parental leave benefits.

The success of the movement at this time was due, in large part, to the convergence of the state's adoption of a welfare liberalist mode of governance and the women's movement's reliance on a radical liberal social philosophy.

My characterization of the relationship between the women's movement and the state in Canada is broad and as such very positive. I have presented a very general story here because of space limitations. I do not mean to deny the tensions, frustrations and losses that also made up the relationship between feminists and the government. One example of the nuance that can be lost when using such large brush strokes to paint a picture is the space provided by government bodies such as the Status of Women. I have presented Status of Woman here as enabling the inclusion of women's perspectives in policy. Sue Findlay (1998) argues that the government has consistently chosen to fill this space with female bureaucrats rather than feminist activists. Thus Status of Women can be seen as a space for women's perspectives, but can also be seen as a small, constraining space. While I do think that the women's movement had power in this period and was able to make change I do not wish to suggest that it was an equal partnership with the state.

The Canadian Women's Movement Under Neoliberalism

The 1984 election of Brian Mulroney's Conservative government is generally seen as the beginning of the end of the productive relationship between the Canadian women's movement and the government. Cohen (1993) argues that "since 1984 women's groups have been on the defensive…the sense of possibility that characterized the 1970s was replaced by pessimism" (Cohen, 1993: 267). This continued and intensified through Jean Chrétien's Liberal government and further magnified under Stephen Harper's

Conservatives. In the period leading up to my case study, gains were fewer and harder to come by and those made previously were whittled away. This is most evident when looking at the two areas which I highlighted in the previous section as containing productive gains: funding and political infrastructure.

Funding from the federal government to the Canadian women's movement was cut from the mid 1980s on (Brodie, 2008). In the 1990 budget $1.6 million were cut from the Secretary of State's Women's Program (ibid). The 1995 budget cut funding specifically targeted to advocacy groups (Dobrowolsky, 2004). In the 1998 budget a further 15 percent of the Women's Program budget was cut (Burt, 1993). Budgets for both the National Action Committee on the Status of Women and the Canadian Research Institute for the Advancement for Women were cut annually from the late 1980s onwards (Dobrowolsky, 2000). By 2006 the amount of federal funding provided to women's organization was half what had been provided 20 years earlier (Newman & White, 2006).

In addition to the diminishing financial relationship between the government and the women's movement there was an institutional withdrawal. Much of the government infrastructure created in the 1970s was downsized or eliminated in the late 1980s and 1990s. In 1989 the Conservatives became the first government in fifteen years to refuse to meet with NAC representatives (Bashevkin, 1998). Programs for women were transferred to Human Resources Development Canada, a space that some worried would prioritize employment issues over women's issues (Newman & White, 2006). The position of Minister for the Status of Women was downgraded to Secretary of State for the Status of Women and Multiculturalism (ibid). In 1995 the Canadian Advisory Council on the Status of Women was eliminated (Dobrowolsky, 2004). The deterioration of the

relationship between women's groups and the government became very clear in the 1993 election with the demise of the conventional leaders' debate on women's issues (Brodie, 1998). Status of Women Canada was continually downsized until it was put under the Department of Canadian Heritage (Brodie, 2008). The downsizing and loss of this infrastructure meant that "a designated space for the articulation of women's interests around the federal cabinet table was lost" (Brodie, 2008: 156).

The political marginalization of women's groups "fits" with the logic of neoliberalism. The focus on individuals creates a context in which "not just social justice and equity goals are vociferously debated, but the very notion of collective group disadvantage is rejected" (Gabriel & MacDonald, 2005: 73). The loss of collective rights is highly detrimental to the idea of a women's movement. If women only exist as individual citizens who happen to be female, but not as an identifiable social group then there can be no women's movement.

Governments working from a neoliberal perspective have made this argument in their labelling of women's organizations as "special interest groups." The government has consistently marginalized the women's movement, and other social movements, by framing them as special interests (Dobrowolsky, 2000; Brodie, 1998). The focus on individual responsibility conflicts with the structural analysis of social movements (Dobrowolsky, 2004). The result of framing the women's movement as a special interest is "to cast them outside of the political community of ordinary Canadians and to suggest that their demands for inclusion and equality are somehow outside and antagonistic to the community interest" (Brodie, 1998: 32). Claims of inequality are framed as demands of special treatment that will perpetuate the dependency of certain groups upon the

government (Sawer, 2006). Support and funding of these "special interest groups" is seen as a waste of unearned resources (Brodie, 2008).

Dobrowolsky (2004) argues that "there is no doubt, then, that the neoliberal state diminished political space for women, metaphorically and literally" (188). The women's movement is framed as an unrepresentative "special interest group" and thus loses the discursive space it occupied in welfare liberalism as a legitimate political actor. Successive governments have also taken seriously the idea that funding and supporting these "special interest groups" is not the state's business. Neoliberalism has resulted in the political infrastructure dedicated to a women's perspective being downgraded and dismantled, and funding to women's groups being slashed.

The Response to Wife Abuse

For women's organizations neoliberalism has, in many important ways, meant less government. Violence against women is one issue wherein neoliberalism has meant different government. Neoliberal governments have responded to wife abuse and other forms of violence against women. The tenants of neoliberalism, however, have greatly influenced that response. Here I outline how feminists first responded to wife abuse and their "success" in getting the government to respond and two effects of the neoliberal response to violence against women.

The response to wife abuse began with grass roots feminism. Grass root organizations reacted to their "discovery" of the problem by creating woman only spaces for victims of violence. In 1972 the first transition house in Canada was opened (Levan, 1996). In the 1970s transition houses, shelters and refuges were opening to assist victims of wife abuse world wide. Shelters serve a variety of functions. The first is to provide

safety and assistance to victims of domestic violence. Shelters are places for women to escape the violence they are suffering in their home (Dobash & Dobash, 2001). Staff at transition houses provide women with practical information, resources and support (Goodman & Epstein, 2008). These are places where women meet other women with similar experiences. This sharing and connection helps in overcoming the isolation that many victims of wife abuse experience. It provides women with validation and helps to engender a sense of self determination (Dobash & Dobash, 2001; Goodman & Epstein, 2008).

Transition houses also serve as a center of the grass roots women's movement. They are places in which to transmit feminist views. Victims are exposed to a political analysis of their victimization as being rooted in social structure (Goodman & Epstein, 2008). While they provide material support and safety, transition houses also "provide[] a fundamental means by which feminist politics [is] developed, sustained and rekindled within the context of the problem itself and in close contact with the daily lives of its sufferers" (Dobash & Dobash, 2001: 199). Shelters provide space for consciousness raising and political mobilization.

Grass roots feminists brought wife abuse to the fore. Once there, institutionalized groups applied their own philosophies and methods to responding to the issue (Walker, 2003). Institutionalized women's organizations pressured the government to act as their radical liberal tenets framed wife abuse as an issue to which the state could and should respond. The Canadian Advisory Council on the Status of Women commissioned the first attempt to collect national data on wife abuse, Linda MacLeod's 1980 report *Wife Battering in Canada: The Vicious Circle* (Pierson, 1993). Women's groups demanded

that the government take a role in reacting to wife abuse through funding public education and shelters as well as through legislative changes (Ibid.). Through out the 1980s the government did respond and by the mid-1980s the response to wife abuse was almost fully institutionalized (Levan, 1996).

Feminist demands on the government included the call for the criminal justice system to take violence against women seriously (Sheehy, 2002). They argued for women's formal equality under law. Feminists argued that police, prosecutors and judges ought to treat domestic assaults the same way that they treated other assaults (Sheehy, 2002). This criminal justice component was an integral part of MacLeod's report and it "set the tone for the development of policy, putting a strong emphasis on criminal justice solutions" (Levan, 1996: 328). In addition to ensuring formal equality, the use of the criminal law was seen as a way to send a strong message that wife abuse was wrong (Gotell, 1998). The call for criminal justice intervention was, however, only one aspect of a proposed response which also included broader structural solutions. The women's movement recognized that "women's ability to leave violent partners or to keep themselves safe from physical or sexual assault are affected by a variety of factors including safe housing, economic support, transportation and childcare" (Morrow, Hankivsky, Varcoe, 2004). Feminists emphasize criminal justice reform as a piece of a much broader solution.

The government did respond to the women's movement call to action but "in the process of responding to feminist demands governmental actors simultaneously recast feminist claims" (Gotell, 1998: 42). As calls for a government response to wife abuse were made in the context of neoliberalism the actual response was recast to correspond

with neoliberal values. The results of neoliberal shaping of the response to wife abuse have been two fold: an exclusive focus on criminal justice remedies and the degendering of the wife abuse.

The neoliberal response to wife abuse has primarily revolved around the criminal justice system. This emphasis can be attributed to tenets of neoliberal thought. The government ignored feminist calls for structural change as neoliberalism leaves resource distribution solely to the market. The government instead enacted new laws and justice procedures as this was in keeping with its focus on the responsible individual, and its preoccupation with criminal responsibility. Gotell (2007) also argues that criminal justice strategies are particularly attractive to governments that are responding to the "socio-economic transformation and declining social supports" (129) that come with neoliberalism. Harsher criminal penalties were a good "fit" with neoliberal principles so "while the former federal government [the Mulroney Conservative government] came to loggerheads with the organized feminist movement because of its steady assault on social policy, it simultaneously began a series of initiatives to combat the problems associated with 'violence against women'" (Gotell, 1998: 49). These initiatives included new laws around a variety of different types of violence against women. In the context of wife abuse mandatory arrest and mandatory prosecution procedures were implemented across Canada. This emphasis on change to the criminal justice system to the exclusion of structural change has done little to protect women or advance their equality (Snider, 1991).

The second effect of neoliberal governance has been the degendering of wife abuse. Snider (2006) describes the "new common sense" of gender neutrality that

characterizes the neoliberal framing of wife abuse as domestic violence (335).

"Domestic violence" is portrayed as something that happens to and is committed by men and women equally. A key way that this has been argued is through the use of the Conflict Tactics Scale. The Conflict Tactics Scale typically finds that men and women commit the same amount of violence in relationships or that women commit more acts of violence than men (Straus, 2006). Multiple problems have been found with this tool, including the exclusion of sexual violence and the disappearance of motive and context (DeKeseredy & Maclean, 1998). It nonetheless continues to be cited as "proof" that domestic violence is a gender neutral phenomenon (Straus, 2006).

As a consequence, violence against women has been renamed and reframed as family violence (Brodie, 2008: 156). Funding to women specific groups has been cut (Brodie, 2008). This degendering of wife abuse, along with the declining influence of women's groups, "threaten(s) gender sensitive regimes, and feminist claims about gender and female equality have been muted" (Snider, 2006: 335). Feminist knowledge and responses have been constrained as feminists

> are forced into defensive postures to prevent the gains already won (or so we thought) and away from gender analyses that help to understand and respond constructively to the realities of intimate violence...And the struggle to build safer societies becomes a battle over which sex should be punished more (Minaker & Snider, 2006: 771).

The neoliberal response to feminist demands around wife abuse has resulted in an almost exclusively criminal justice oriented, degendered response.

The literature reviewed in this chapter problematizes the case under study. Women's organizations in Nova Scotia were able to engage the government in the midst of a neoliberal period that was typically marked by the marginalization of the women's

movement. This case stands in contradiction to national trends. Thus it is a fruitful place to explore the role of women's organizations in the governance of wife abuse. In order to understand the case fully it is necessary to understand that the response to wife abuse has been shaped by both feminists and neoliberal governments. This chapter has provided the backdrop against which the case took place and it undoubtedly shaped the way government and women's organization interacted.

Just as the backdrop influenced the case, so too did the topic. The last thirty years has seen the growth of a new response to crime, restorative justice. It was restorative justice that was the subject of the consultation that took place in this case. In the next chapter I outline some of the restorative justice literature and place this case in the context of a national conversation that was occurring among feminists about restorative justice.

Restorative Justice

The case study on which this thesis is based involved the two groups coming together to discuss restorative justice (RJ). It is necessary to understand RJ in order to understand the case. The purpose of this chapter is to provide the background information about RJ and feminist engagement with RJ required.

In the first section of this chapter I highlight the variance that exists within restorative justice literature. Feminists have no common position on the use of RJ in cases of gendered violence and this can, at least in part, be attributed to the lack of coherence in RJ theory itself. In the second section, therefore, I highlight the main points of disagreement among feminists and show how the ambiguity of RJ has contributed to this disagreement. Responding to this lack of clarity, academic feminists have begun to use RJ to ask bigger questions about justice. Feminists working as violence against women advocates in Canada have focused on practitioner priorities, highlighting the need for consultation and resources. This chapter ends with an examination of how women's organizations across Canada have grappled with restorative justice.

Defining Restorative Justice

Writers in the field tend to agree that no one clear definition of RJ exists. They disagree, however, on whether the diversity of approaches is a good thing. Sharpe (2004) points to the diversity of restorative justice theory and definitions as a positive sign implying that the field is energetic. However, Sharpe (2004) also goes on to list some of the problems with the lack of consensus. RJ must be clearly defined if programs are to be easily distinguished as restorative and comparisons are to be made with the traditional criminal justice system (Shapland, 2003). McCold (2000) warns that without conceptual

clarity "restorative justice has come to mean all things to all people" (358). Sharpe (2004) warns of one effect that, as I will argue later, has been particularly problematic for feminist engagement with RJ: "advocacy groups, for example, sometimes block restorative justice initiatives because of concerns that might be well founded in some programs but unfounded in others" (17-18). My thesis research will reveal the very real consequences of not defining restorative justice.

Though most of the literature on restorative justice begins with some sort of definition, theorists have been unable to formulate one definition on which all restorative justice advocates agree (Dignan, 2002). This is not simply an academic word play problem. The definition of RJ directly affects how it is implemented and evaluated. The definition used can also have a bearing on whether or not it is used for certain crimes or certain populations. The remainder of this section explores the diversity in the restorative justice literature.

Two definitions figure widely in the RJ literature. The first is offered by Howard Zehr (2002) who defines restorative justice as "a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible" (37). Tony Marshall (1996) provides another starting point for restorative justice thinkers with his pronouncement that "restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (37). The common element between these two definitions, and much restorative justice literature, is the focus on RJ as a process for achieving justice.

Two RJ process are most often discussed. The first is victim offender mediation (VOM). This involves a victim and an offender coming together with a trained mediator. In this meeting the three discuss the crime, its motivations and consequences. Most of these programs conduct the mediation so as to reach a final agreement in which the offender commits to some form of restitution (Sullivan & Tifft, 2005). Conferencing is a second common RJ process. Typically, a conference involves the offender and victim, their families and other support people, a facilitator, and possibly criminal justice and community representatives. The group discusses the crime, what exactly happened, why and how it affected the people gathered together. These sessions are conducted so as to lead to a final, restitution agreement (Sullivan & Tifft, 2005). There are many variations but these are two main RJ processes.

Restorative justice is also a philosophy or theory of justice (Zehr, 2002). RJ is based on the idea that "crime is a violation of people and relationships" (Zehr, 2005: 181). Restorative justice theory usually includes the victim of a crime, the offender and the community (Llewellyn & Howse, 1998). RJ looks at repairing the harm that been caused to all of these participants as well as restoring relationships among them. Three types of justice are sometimes labelled and contrasted: "(1) retributive justice, based on punishment; (2) distributive justice, based on therapeutic treatment of offenders; and (3) restorative justice, based on restitution" (Van Ness & Strong, 2002: 27). The work on the conceptual basis of restorative justice theory is underdeveloped compared to the work that focuses on RJ processes.

Community

Returning conflicts to the community is a key tenet of restorative justice. Unlike retributive justice where the state monopolizes the response to wrong doing, restorative justice recognizes the role of victim, offender, and the community (Zehr, 2005). Van Ness and Strong (2002) identify the different levels of community; "the local community of the victim, offender, or crime; the community of care; and the society as a whole" (39). They argue that all levels should be involved in a restorative response. Depending on the specific RJ process used, the community may be represented by the facilitator alone, or may be present in the form of family members, victim or offender advocates or general members of society (Zehr, 2002).

Restorative justice theory contains several reasons for involving the community. The first is that the community is harmed by crimes that take place within it (Walgrave, 2002). McCold (2000) outlines a variety of injuries that the community sustains as a result of crime including increased fear, decreased trust and economic loss. He also identifies the needs of community in the aftermath of crime including condemnation of the harm, the reintegration of the victim and offender and the reinforcement of acceptable behaviour (McCold, 2000). Another reason to include community in a restorative justice process is so that the community can respond to the other participants' harms and needs. The community can identify and mobilize resources and networks that can assist the victim and offender (Shapland, 2003). A final reason often given for including community in justice processes is that their inclusion can help strengthen community. Sullivan and Tifft (2005) argue that "the community is harmed by both structural inequalities and interpersonal crimes, and our response must be drawn from the

community and ought to build and strengthen community" (93). For many RJ theorists involving communities in restorative processes assists other participants in their healing, enriches the process, and can strengthen communities.

Advocates agree that community involvement is central to the ideals and practices of RJ, but many question what is meant by "community." Schiff (2003) challenges a general definition of community, arguing that "there are few, if any, 'essential characteristics' which define and characterize all communities" (329). Although we may intuitively sense that community is a place, Walgrave (2002) argues that "it is impossible to delineate it mentally, socially or territorially" (205). Groups that we may assume are coherent communities may contain enough schisms that it does not make sense to discuss them as a single community.

In order to grapple with the ambiguity of what is meant by "community" many theorists put limits or bounds on how they use the concept. Some, such as Van Ness and Strong (2002), talk about the community of interest as being "characterized by a fundamental sense of duty, reciprocity, and belonging... A particular community, then is made up of people with sufficient interest to join" (Van Ness & Strong, 2002: 39-40). McCold (2000) offers a typology of communities: micro communities of care of the victim and offender, the wider community of the town or neighbourhood, and general society. He argues that these communities must be distinguished as each has distinct needs and obligations. Micro communities may have direct injuries and real monetary or care obligations to the victims or offender. The wider community may have indirect injuries, such as increased fear of crime, and may be responsible for services for the victim or offender. General society has the need for safety and security.

Though we may be able to set parameters around what we mean when we say community, this does not mean that we can speak of communities as being holistic, consensus based entities. We can not assume that societies or neighbourhoods or microcommunities consist of members who all agree about what is right and wrong or how to respond to crime. Full consensus almost never exists in communities (Shapland, 2003). Much RJ literature assumes that the community will agree on how to react to offender and victims but Crawford (2002) warns that "the quest for community instead (and in opposition to) the state over-idealizes as unproblematic the nature of communities' moral orders" (109). Communities often cannot bring moral consensus to a restorative session. For example a community may contain a variety of perspectives on wife abuse from those who think it is acceptable to those who view it as heinous, and a variety of positions in between. Even within smaller communities, such as the "women's community" difference of opinion exists. This lack of consensus is problematic for a theory of justice that "prefers inclusive, collaborative processes and consensual outcomes" (Zehr, 2002: 26).

Power differentials also exist within communities. Communities of all levels, micro, neighbourhood, society, are structured along different lines of power. These see some members receiving more or less power based on gender, race/ethnicity, class and other factors. Communities are, therefore, not inherently positive things (Walgrave, 2002). They can be oppressive spaces. This oppression can occur within communities and it can also occur between communities. A danger of including community in RJ is the potential for that oppression to be reproduced.

Communities can be distinguished by looking at those members who have power and those that do not. They can also be distinguished by examining who are members of communities and who are not. Pavlich (2001) reminds us that in order to define a community it is necessary to define those who are not in it. The quest for community often involves exclusion, defining and rejecting "the Other" (Pavlich, 2001).

While many argue the necessity and benefits of including the community in RJ, others claim that "given the dubious nature and identity of the community, it follows that such questions of resources, cohesion, power relationships, and equality within such environments limit the extent to which restorative processes can, on their own, be effective in involving, engaging and empowering communities" (Schiff, 2003: 29).

Punishment

A number of prominent RJ theorists have argued that restorative justice "interventions do constitute a form of punishment" (Dignan, 2003). The goal of restorative justice is to repair the harm caused by an incident. Duff (2002) argues that in order to truly restore harms the reparation given by the offender must be burdensome "undertaking a task that is in no way burdensome to me...cannot constitute the kind of moral reparation that gives force to an apology" (Duff, 2002: 90). This burden is a necessary component of justice, according to Duff, because we are not simply dealing with harms but with wrongs (Duff, 2002). He argues that when we are talking about RJ in the criminal sphere "we are dealing here with public, not private, wrongs, and so with public, not private reparation: we must therefore ask what could count as an adequately forceful expression of apology between citizens" (Duff, 2002: 95). Daly (2000) argues "anything that is unpleasant, a burden, or an imposition of some sort on an offender"

constitutes punishment (Daly, 2000: 10) therefore, the burden necessary to repair harm in RJ is punishment. RJ is an alternative punishment, according to these authors, because it requires an imposition on the offender for the purpose of restoring harm.

There are also those RJ scholars that argue against the conceptualization of RJ as punishment. McCold (2000) holds that "restorative justice is an alternative to punishment, not an alternative punishment" (372). McCold argues, in opposition to Duff, that as soon as we include the notion of abstract "public harms" we invite the state to be the dominant responder to harm and we are back where we started with the traditional system. He therefore rejects the necessity of a burden on the offender and in doing so removes the punishment element from RJ. Walgrave (2002) also rejects the argument that RJ is punishment, but does so on different grounds. He disagrees with Daly's definition, arguing instead that the motivation behind the imposition of the burden is what distinguishes punishment from obligations (Walgrave, 2002). Walgrave (2002) argues that "painful obligations which are not imposed with the intention to cause suffering are not punishments" (63). The role of punishment within restorative justice theory is a key example of the kind of variability that exists within the literature.

Relationship with the Criminal Justice System

Many models exist of what the relationship between RJ and the criminal justice system should look like. Van Ness and Strong (2002) outline four possible models. The first is a unified model, in which the justice system is fully restorative. The second is a dual-tack model. In this model "the criminal justice and restorative justice systems operate side-by-side with occasional co-operation" (Van Ness & Strong, 2002: 224). The third model outlines a justice system in which restorative justice is the dominant approach

but the traditional system acts as a backup. The final approach, the hybrid model, uses restorative justice only at the sanctioning or sentencing stage. Most discussions of the relationship between restorative justice and criminal justice engage with one or more of these four basic models.

McCold (2000) suggests that different models emerge as the implementation of restorative justice programs evolves. He outlines the first stage of implementation as using RJ as diversion, an approach that resembles the hybrid model discussed above. The second stage involves "the transfer of responsibility for organizing and facilitating the restorative process to the justice system itself" (McCold, 2000: 387). This stage exemplifies a unified model of justice. McCold describes a third stage in which the formal justice system becomes so adept at dealing with harms restoratively that it can teach and transfer those processes to the community. In this backup model the formal system only responds "to those few cases requiring formal authority structure" (McCold, 2000: 388). Unfortunately McCold offers no criteria as to which cases would require that formal response. His model leaves unclear whether that formal authority structure response would be a restorative response or a more traditional one. McCold's back up model of a restorative system is therefore somewhat vague.

Braithwaite (1999) outlines a justice system based on a unified model, best pictured as a triangle. Most cases would fall at the wide base of the triangle and be dealt with in a restorative justice process. If that process is unsuccessful participants move up the triangle to face a deterrence strategy. If the offender is not deterred they are then moved up to the diminishing peak of the triangle that involves incapacitation. Braithwaite (1999) explains the model thus "when trust is tried and found to be misplaced, there is a

need to escalate to deterrence as a regulatory strategy. When deterrence fails...then there is a need to move higher up an enforcement pyramid to an incapacitative strategy" (58). Braithwaite (1999) argues that "the possibility of escalation channels regulatory activity down to the base of the pyramid" (62). Without the threat of escalating sanctions many may abuse the restorative justice process (Braithwaite, 1999). Unlike McCold, who sees the formal system acting as back up to the informal RJ system, Braithwaite envisions a unified RJ model that acts as the formal justice system.

The final model of the relationship between restorative justice and the traditional justice system that I will address is the one offered by Dignan (2003). Dignan (2003) begins by critiquing Braithwaite's model. He suggests that it is not a unified model but a dual track one "in which restorative justice processes operate alongside deterrent and incapacitative measures rather than one systematically reorganized according to restorative justice principles" (146). Dignan (2003) argues that Braithwaite's model is dangerous in that it could lead to increasing punitiveness for repeat or unrepentant offenders. For Dignan (2003) a truly unified model must provide restorative outcomes even for participants that are not amenable to restorative processes.

Dignan's (2003) model can also be visualized as a triangle. Like Braithwaite's model, the wide base of the triangle would include the majority of offences and these would be dealt with by way of informal restorative justice processes. The next level up the triangle would be reserved for cases in which "the accused denied guilt, the victim was unwilling to participate, the parties were unable to reach agreement on the subject of reparation or the offender refused to make reparation as agreed." (Dignan, 2003: 147). This level would see the courts involved but only for the purpose of imposing a

restoration order. The goal would still be restoration, but the process would change from a participant driven restorative agreement to a court imposed restoration order. The next level of response would involve cases where the offender has refused to make amends, or where there is a history of offending combined with a refusal to make amends. At this stage "greater weight would need to be placed on the 'public' aspect of the offence. Such cases could be said to represent a potential threat to the rights of other law-abiding citizens" (Dignan, 2003: 148). At this stage punishment must be involved, but that punishment should still be aimed at restorative outcomes. Dignan (2003) argues for a model "in which restorative justice is intended to provide a 'replacement discourse' as part of a systemic and fully integrated reform of the regular criminal justice system" (146).

With this section I have not attempted to fully map out all of the variability and disagreement that exists within restorative justice theory. My ambition has been much more modest; I have tried to highlight the disagreement that exists around the involvement of community, the role of punishment, and the relationship to the justice system. I have done this in order to show that restorative justice is a contested field. In the case under study this definitional variability played a role in shaping the women's organizations' position and influenced the interaction between them and the government. In the next section I will show how this variability has, in part, led to multiple feminist disagreements on the use of RJ in cases of gendered violence.

Feminist Engagement with Restorative Justice

Academics and practitioners alike often preface their discussion of restorative with the acknowledgement that the criminal justice system does not serve women well

(Cameron, 2006; Curtis-Fawley & Daly, 2005; Hopkins & Koss, 2005, PATHS, 2000; Boland & Wychreschuk, 1999). They cite low prosecution rates and low conviction rates as indications that the system does not work for victims of wife abuse (Hudson, 2002). It is also recognized that victims do not experience the system as working, that in fact "contact between female victims of violence and the criminal justice system is a source of revictimization, frustration and disappointment rather than a supportive experience. Victims often feel they are the ones on trial. They find the system confusing, demeaning and overwhelming." (PATHS, 2000: 13). Examining alternative justice processes, such as restorative justice, has put problems with the existing system in sharp relief.

Feminist Definitions of Restorative Justice

The difficulty restorative justice theorists have in defining RJ is reflected in the feminist literature. Many feminists preface their discussion with the observation that "there is no agreed definition of restorative justice" (Stubbs, 2004: 2). Similarly a conference of practitioners acknowledged that "agreement on what does and does not constitute restorative justice and its practice [has] remained somewhat elusive" (PATHS, 2000: 11). Cheon and Regehr (2006) quite correctly point out that "a review of the literature related to restorative justice reveals divisions over the fundamental question of what 'restorative justice' *is*" (372 italics in original). This variability has pushed both academic and practitioner feminists to set aside the question of "should we or shouldn't we use RJ in cases of gendered violence?" and instead begin to demand a role in defining restorative justice.

The definitions emerging from feminists writers differ from those offered by Zehr (2002) and Marshall (1996) and described earlier in this chapter. Feminist writers tend to

conflate RJ and mediation. For example, Goel (2000) states that "sentencing circles can be likened to mediation given the consensus requirement and the face to face participation of victim and offender" (322). Hooper and Busch (1996) argue that the mediation literature is important to look at when thinking about RJ "because of the similarities in philosophical perspectives and process techniques"(1) between the two. Hopkins, Koss and Bachar (2004) do not limit RJ to mediation, but do include mediation in their definition of restorative justice describing RJ models as including "(a) civil proceedings, (b) victim-offender reparation through mediation, and (c) community conference approaches" (295). This equation of RJ with mediation may be a result of RJ theorists' focus on process based definitions. RJ processes and mediation processes often look similar so without a strong conceptual distinction feminists have linked RJ and mediation. The focus in the RJ literature has also led feminist writers, even those who do not equate RJ and mediation, to focus primarily on process based values and critiques.

Safety

Safety is of universal concern for feminists studying and working with violence against women, and feminists are divided on the safety of RJ processes. Those who argue against the use of restorative justice in cases of gendered violence often raise safety as their primary objection. Many worry that RJ allows for physical and emotional re-victimization (Cameron, 2006; Daly & Stubbs, 2006; Curtis-Fawley & Daly, 2005; Stubbs, 2002). Restorative processes that involve a face to face meeting may allow a man to physically abuse his partner. RJ may also expose women to psychological abuse from their partners' comments, which may be impossible for a facilitator to detect (Koss, 2000).

Some argue that RJ could be a safe process. Pennel and Burford's (2002) study in Newfoundland found no incidents of violence during the conferences and a decrease in the level of violence in the relationships. Morris and Gelsthorpe (2000) argue that a woman's friends and family are in a much better position to help keep a woman safe and thus RJ, as a process that engages those participants will help keep women safer. The issue of safety clearly illustrates the focus on process. These arguments both for and against the safety of RJ are discussing specific RJ processes. Feminist writers are not addressing the "safety" of restorative justice theory. The validity of these arguments then become dependent on the specific RJ practice used and as such they are not direct arguments for or against restorative justice philosophy.

Community

For some feminists the potential for RJ to bring the community into the fight against violence is a welcome one. Presser and Gaarder (2004) highlight the strengths of including community as "communities provide support *and* enforcement; both are deemed necessary to stop the violence and to repair the harms caused by it" (410). Pranis (2002) argues that the community is better equipped than the criminal justice system to deal specifically with women who have been in relationships of repeated and entrenched violence. While the courts consider each incident of violence as a discrete event "community members do not typically see behavior in isolation. They look for underlying cases and examine the complexity of connections to other issues" (Pranis, 2002: 27). For these feminists the inclusion of community is a strength of a restorative approach.

Other feminists engaging with restorative justice have serious concerns about the idea of community. They point out that communities are often not the healthy, positive

ideal that some restorative justice theorists portray. Communities often support traditional, patriarchal power structures (Lewis et al., 2001). Coker (2002) argues "family and community are often the *primary* supports for male control over women" (129, italics in original). Frederick & Lizdas (2003) warn that the use of restorative justice in cases of gendered violence may be dangerous if there is no normative censure of the violence. Stubbs (1995) argues that "we need to acknowledge that the use of violence by men against their wives or partners is not a universally reviled practice" (278). The issues raised here mirror the debates about community in the restorative justice literature more generally.

Symbolic Effects of RJ

Feminists have highlighted problems with the symbolic effects of utilizing restorative justice rather than criminal justice in cases of wife abuse. Feminists have two related concerns. The first is that using restorative justice may decriminalize wife abuse (Cameron, 2006; Curtis-Fawley & Daly, 2005; Stubbs, 2002). The fear is that the use of restorative justice in response to wife abuse will send the message that wife abuse is not serious enough to warrant the full application of the criminal justice system (Hudson, 1998). As a result, victims may feel that they are receiving second class justice and send the broader message that wife abuse is not a "real" crime. Some feminist writers and advocates feel that "deterrence requires a conviction and a sentence that sends the message to others that such behaviour will not be tolerated" (PATHS, 2000: 28).

The second concern is that using restorative justice as a response to wife abuse reprivatizes it (Cameron, 2006; Curtis-Fawley & Daly, 2005; Hopkins, Koss & Bachar, 2004). Stubbs (2002) challenges the claim of restorative justice theorists that it is

important to return conflicts to the community to be dealt with. She reminds us that the problem surrounding the state and wife abuse has historically been the opposite one: the criminal justice system has not "stolen" the conflict, it has denied the existence of wife abuse (Stubbs, 2002). Restorative justice is seen as having the potential to reverse decades of feminist activism aimed at pulling wife abuse into the public sphere and having it seen as a crime (Cameron, 2006).

Using RJ to get at Bigger Questions

The preceding discussion remains at the level of whether or not RJ process would be useful responses to wife abuse. Some academics have moved on to a bigger discussion of justice theory; they examine how we achieve justice for women and whether restorative justice theory is capable of doing so. Daly (2002) and Hudson (1998) have identified what Daly calls an "unsolvable justice problem." The dilemma centers around the questions "how do we treat harms as 'serious' without engaging in harsh forms of punishment or hyper criminalization? [And, h]ow do we do justice in an unequal society?" (Daly, 2002: 62). It is vitally important for victims that society vindicates their harms "yet we know that the law's vindication, especially its more harsh manifestations such as prison, is visited on the more marginal member of society and especially on its male marginal members" (Daly, 2002: 63). Neither Daly nor Hudson offer a solution to this dilemma, but both seem to indicate that restorative justice may provide a better solution than the current system.

Hudson (2006) proposes three principles that any "justice" would have to encapsulate in order to deliver a better form of justice. These are discursiveness, relationalism and reflectiveness (Hudson, 2006). Hudson argues that restorative justice

could incorporate these principles better than the criminal justice system but she developed them independently from RJ theory. In providing these principles Hudson notes that they still do not quite find a way out of Daly's unsolvable justice problem nor does she think that they respond to all of restorative justice's critiques. With these principles she extends feminist engagement with RJ by laying out a feminist, critical race foundation of justice for restorative justice to work from. Leaders in this field have called on feminist scholars to broaden their work on restorative justice in just such a fashion (Daly & Stubbs, 2006: 22).

This is an important issue for feminists thinking about and working towards justice. Part of the reason why feminist analyses of RJ have primarily remained at the process level is that there is no "feminist theory of justice" to measure a restorative theory of justice against. In the case under study, this lack of a feminist justice theory or process led the women's organizations to "choose" between RJ and the criminal justice system even if both were inadequate.

Practitioner Engagement with Restorative Justice

Beginning in the late 1990s members of shelters, victim's services agencies and other members of Canada's women's movement held conferences, conducted interviews and issued reports on their views of restorative justice. The bulk of activity around this issue seems to have occurred from 1998 through to 2002. I looked at seven documents produced by practitioners. In Newfoundland two reports were written, both by Bobbie Boland and Elaine Wychreschuk entitled "Keeping an Open Mind: A look at Gender Inclusive Analysis, Restorative Justice and Alternative Dispute Resolution" and "Making it Safe: Women, Restorative Justice and Alternative Dispute". The British Columbia

Association of Specialized Victim Assistance & Counselling Programs (BCASVA) also produced two reports; "Restorative Justice and Criminal Justice Reform in British Columbia: Identifying some Preliminary Questions and Concerns" by Sandra Goundry and "Restorative Justice, Domestic Violence and Sexual Assault in Canada: A Summary of Critical Perspectives from British Columbia." In PEI a project entitled Justice Options for Women who are Victims of Violence looked extensively at restorative justice, I examined a discussion paper and their final report. The last document I looked at was the conference proceedings of a conference hosted by the Provincial Association of Transition Houses in Saskatchewan (PATHS) entitled "Restorative Justice: Is it Justice for Battered Women?" A number of common themes were present in these documents.

One element present in a number of documents was the conflation of RJ and mediation. In "Keeping an Open Mind" we see a prime example of RJ being defined in a certain way, lumped together with other alternative dispute resolution processes. This project "involved dialogue and exploration of the concerns, issues and interests regarding alternative dispute resolution (ADR) with various groups" (Boland & Wychreschuk, 1999). The most obvious culprit of this was the paper entitled "Restorative Justice, Domestic Violence and Sexual Assault in Canada: A Summary of Critical Perspectives from British Columbia". The author states "Despite the fact that mediation in family law matters and restorative justice are not identical processes, in cases of domestic violence the dynamics are remarkably similar" (BCASVA, 2002: 22). This quote prefaces a five page review of the mediation literature. Not only was RJ equated with mediation but other alternative justice processes were sometimes included with no clear statement made that they were not restorative justice process. An example in the same paper is a section

on accountability that includes circle sentencing, negotiated protocols, alternative measures and conditional sentencing.

It is apparent that there is hesitation within this community to discuss the benefits of restorative justice. Despite this hesitation, a few benefits are consistently acknowledged. Practitioners, like academics, begin by recognizing that the criminal justice system fails victims of wife abuse (Wychreschuk & Boland, 2000; PATHS, 2000; Dodd & Lund 2002a). However, PATHS (2000) and Goundry (1998) also note that the flaws of the criminal justice system could be replicated in restorative justice and perhaps become worse because of considerably less oversight. There is a recognition that some women are going to prefer a restorative approach and giving women that choice is seen as important (PATHS, 2000; Wychreschuk & Boland, 2000). This benefit was also qualified, with advocates questioning whether full, free, informed choice even exists for survivors of wife abuse.

These documents tended to be generally ambivalent about the use of restorative justice. They identified critiques of RJ but provided no strong support or rejection of restorative justice; instead they focused on the need for more consultation and research. Boland and Wychreschuk (1999) are clear that they are not offering recommendations about whether RJ should or should not be used rather they "present[] facts, reflection, analysis and cautions" (5). The PATHS conference participants concluded that neither the criminal justice system or a restorative approach see to core components necessary to end violence against women. Rather than offer a strong position on the use of RJ many of the reports echoed Goundry's (1998) sentiments that "the questions and issues raised in this Paper provide a starting point for discussion and consultation among stakeholders" (42).

Consultation or lack thereof, was a key issue. It was the number one concern in the PATHS document, it was the inspiration for the BASV document and it is mentioned in all of the other documents. Advocates felt that the only way restorative justice is going to be useful for women is to involve the women's movement, they clearly felt that this was not happening (PATHS, 2000). The first recommendation of the BASV states: "full representation of and meaningful consultation with victims assistance and women's equality groups is required on an ongoing basis in relation to both restorative justice and the expansion of diversion/alternative measures" (Goundry, 1998). Many of the documents mention that it was because of the government's failure to consult women's groups that advocates were coming together and having these discussions on their own.

Another concern briefly mentioned by academics, but underscored by practitioners, is resources. Many advocates worried that the responsibility for delivery of RJ programs would be downloaded to communities with no corresponding funding (Goundry, 1998; Wychreschuk & Boland, 1999; Wychreschuk & Boland, 2000). Drawing on past experiences with program implementation some were pessimistic that any money would be given to communities, let alone enough money to effectively deliver restorative justice services (PATHS, 2000; BASV, 2002). In British Columbia practitioners noted "the enthusiasm showed (sic) by both the provincial and federal governments for restorative justice is not matched by funding" (BASV, 2002: 14). Advocates worried not only about the transfer of resources; some were suspicious that restorative justice was being implemented as a cost saving measure (Goundry, 1998; PATHS, 2000). The motivation of government was important because it was felt that if RJ was being introduced by governments to save money rather than better serve victims and offenders

"the rudimentary appeal of restorative approaches is completely stripped away"

(Goundry, 1998).

These concerns around consultation and resources should not be dismissed by those advocating for restorative justice. In many cases they are important reasons why women's groups are rejecting its use in cases of wife abuse. The Canadian Association of Sexual Assault Centre's policy reflects this rejection:

> There are no Restorative or Alternative Justice programs in Canada at present that the Canadian Association of Sexual Assault Centres will support for use in cases of male violence against women. The Canadian Association of Sexual Assault Centres will not consider supporting any Restorative or Alternative Justice Programs for use in cases of male violence against women unless the following criteria are met:
> · Women have control over whether their case of male violence is addressed through Restorative or Alternative Justice measures.
> · The program has a structure and philosophy that reflects a demonstrated commitment to women's equality. Specifically, the program is developed in collaboration with women's equality seeking groups, and is based in narrative research conducted in collaboration with women's equality seeking groups. The program treats all forms of male violence against women with equal seriousness. The program does not assume that any category of offense or perpetrator is more amenable to resolution by restorative justice means.
> · The program is adequately resourced to address the extensive support necessary for women to go through a Restorative or Alternative Justice process. (CASAC, 2005).

Although the intention of this thesis is to speak broadly to interactions between women's organizations and the government it is also relevant to those working specifically on restorative justice in so far as it illuminates issues such as these as effecting the implementation of RJ.

Although feminists have not been successful in determining whether restorative justice should or should not be used in cases of gendered violence their engagement with RJ has been productive. In considering issues around restorative justice feminists have

moved to thinking more generally about achieving justice for women. Both academics and practitioners agree that women are not experiencing justice in the criminal justice system. Academics have begun to ask questions about what justice would look like and how it is achieved outside of a restorative/criminal justice dichotomy. Practitioners have focused on what they believe is necessary to ensure women are getting as close to justice as they can; that is, the inclusion of advocacy groups and a gendered analysis whenever the government deals with justice policy. The goal of the women's groups in the case under study was inclusion in the justice policy process. The next chapter details how I researched the case.

Methods

This chapter describes my project methodology. I begin with an examination of my epistemology. This project revolves around a qualitative case study and here, I will outline what case study is and why I used it. The chapter then contains an outline of my data collection strategies, sampling procedure and the nature of my data. This chapter ends with an examination of my project's methodological limitations.

Epistemology

It is imperative to outline my epistemological position before outlining the methodology and methods that I used to answer my research questions. An epistemology is a theory of knowledge (Carter & Little, 2007). It examines "the knower, the known and the process of knowing" and the relationships between these (Sprague, 2005). Two extreme epistemologies often described by scholars are positivism and radical social constructionism. Positivism is the theory of knowledge that understands the knower to be an objective scientist who uncovers the facts and who allows those facts to prove scientific truths (Palys & Atchison, 2008). Radical social constructionists argue that all knowledge is socially constructed; that "the very idea that we have a distinct self that can observe and interpret anything is a creation" (Sprague, 2005). So while positivists champion the discovery of scientific truths, radical constructionists argue that there is neither truth nor any more or less truthful accounts.

My own position lies between these poles. I situate myself generally within what is often called critical theory (Guba & Lincoln, 1994). I do not believe that there is one reality out there waiting to be discovered. I believe that knowledge is socially constructed and that science is influenced by the values and world views of both researchers and the

researched. I also draw from feminist epistemology. I do not think that academia is made up of many individual researchers who all, with their individual values and perspectives, influence science in innumerable ways. Rather, there are systemic biases based on gender, race, class and sexual orientation that have led certain researchers and their values and knowledge to be privileged over others (Sprague, 2005). I am also of the opinion that there can be better and worse research. Accounting for the researcher in the research is a key strategy for ensuring high quality work.

I approached this research from a feminist perspective and constructed it as a feminist piece of research. The term "feminist research" is debated in the methodological literature. I do not equate it with any one epistemology or methodological tradition. Instead I define feminist research as "distinguished by its dedication to the value of gender justice in knowledge and in the world, a dedication that carries with it a commitment to oppose all those other injustices that are inseparable from gender divisions" (Jagger, 2008: ix). It is in this spirit of creating emancipatory knowledge that I examine the women's movement, the state and restorative justice in this project.

This epistemology is, I believe, compatible with both quantitative and qualitative methodology. My choice of a qualitative strategy is not a direct reflection of my epistemological stance. There are many specific decisions that I have made wherein my epistemology is evident. Two examples are my understanding of the people in my study to be active participants rather than passive subjects and my decision to maintain a reflexive research journal throughout the process. Throughout, the research process has been influenced by my epistemology.

Qualitative Research

For this project I engaged in qualitative research. Authors seem hesitant to offer a precise definition of qualitative research, instead they list a variety of characteristics. Qualitative methods are often naturalistic, they study people in their ordinary settings (Rubin & Rubin, 2005). Qualitative research focuses on interrelationships (Stake, 1995). Researchers working in this tradition perform inductive and interpretative analysis (Creswell, 2007). Qualitative research focuses on deep, nuanced understanding (Mason, 2002). Qualitative data are "complex and contexted, and they are not easily reduced immediately (or, sometimes, ever) to numbers" (Richards, 2005).

Another characteristic of qualitative research is flexibility. Though a research plan is constructed at the beginning of the research process it is not done in a concretely prescribed way (Creswell, 2007). The plan and instruments are open to change and constant development. Changes that come out of emerging data and themes often reflect greater understanding of the topic and can enhance the credibility of the research (Huberman & Miles, 1998). In order to gain the complex understanding that is the goal of qualitative inquiry "research design and questioning must remain flexible to accommodate new information, to adapt to the actual experiences that people have had, and to adjust to unexpected situations" (Rubin & Rubin, 2005). This flexibility does not mean that the research process can be a black box between the research question and the results. For this project every change and modification in research design was carefully documented in a research log alongside the reasons for the change (Richards, 2005). This log acts as an accountability trail for the project and may also act as a data source or analytic tool (Carter & Little, 2007). The research log was vital for recording the

methodological details and shifts of this project. Throughout this chapter I note instances where my initial research plan was modified.

I chose to utilize qualitative methods because I felt this was the best way in which to answer my research question. Numerical data alone could not answer how women's organizations fit into current conditions of governing. The question necessitated contextual in-depth information and analysis. I came to this project with very little knowledge about what the case exactly consisted of and so a flexible approach was necessary.

Case Study

I conducted a case study in order to answer my research questions. Case study is a research strategy involving "intensive analyses and descriptions of a single unit or system bounded by space and time" (Hancock & Algozzine, 2006). The unit or system can be a variety of things from individuals to communities to events to processes. Case study examines the case in a holistic and complex way (Sjoberg, Williams, Vaughan & Sjoberg, 1991). It includes the examination of the historical background of a case, the physical setting, context of the case and groups within the case (Stake, 1995). Case study is well suited to projects that ask "How?" questions (Yin, 2003). "How were women's organizations able to effect change?" is just such a question because in this case it refers to group interaction that was influenced by various political and historical contexts.

The Bounded Case.

My case was the process of consultation and policy development that occurred between the Nova Scotia government and women's organizations. A key aspect of the case in any case study is that it is a bounded system (Stake, 1995). I have placed both

time and space boundaries on the case. The case begins when initial contact was made between the women's organizations and the government about restorative justice. However, I have brought in material, legislation and interview data, which happens or refers to happenings prior to this initial contact. This material was brought in not as a part of the case but in order to contextualize it. The case ends with the women's organizations' response to a program review of NSRJ in 2008. In an effort to involve as many participants as possible I did not limit my recruitment to those in the HRM, as I had originally planned, but in the final sample the participants did all reside in the HRM. The boundaries that I had anticipated in my research proposal shifted as I became more familiar with the case and as I responded to the practicalities of doing research.

In my original planning I placed artificial boundaries on the case with the assumption that more natural ones would become apparent as the research commenced. There were never any "natural" boundaries that "appeared" as I explored the case. Instead I revised the boundaries as I became more knowledgeable. My original end point had been the release of "Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development and Implementation: Report and Recommendations" by Pamela Rubin in March 2003. As I began gathering data I realized that the Joint Working Group did not form until after the release of this research, and that they worked together for two years on this issue. Therefore it no longer made sense to retain that boundary. In the final structuring of the case the boundaries are mine. Other researchers may have carried them further or restricted them. The shape of the case, and thus the resulting analysis of the case, were influenced by my methodological decisions.

Data Collection Methods

   Case study is a research strategy not a method. Yin (2003) identifies six data collection methods and emphasizes that the case study researcher should strive to use as many as possible. Yin (2003) discusses: the use of documents, the use of archival records, interview, direct observation, participant observation and the use of physical artefacts. I did not use either sort of observation as the process I am studying is an historic one. My two methods of data collection were interviews and document analysis.

Interview Sample

   In order to gain a complete understanding of my case I planned to interview participants from both the government and women's organizations. The most credible interviewees are those with first hand knowledge of the case (Rubin & Rubin, 2005). I limited my recruitment to those that were directly involved in the consultation process. Sampling was not an issue in choosing the case. It was an issue for choosing participants. The main goal for sampling within case study is to maximize the opportunity to learn (Stake, 1998). Those who have the best, richest information were the people I wanted to include in my study (Hancock & Algozzine, 2006).

   In order to access this group of people I began with the Joint Working Group membership list. I contacted, either by email or telephone or both, nine of the fourteen participants. When a month had passed and only five of nine replied and only four of nine agreed to participate I broadened my criteria to those who were knowledgeable about the case, but did not participate directly. The final sample included five participants.

   The small number of participants was not a problem in and of itself. I felt that the quality of the data that they provided me with was high. The composition of the sample,

however, did constitute a problem. Four out of five of my participants were members
(or former members) of government. The key strength of case study is its ability to create
a holistic and complex examination of the case. This ability is compromised when one
"side" of the case is dominant. The government is represented by four voices, the
women's groups by only one. This was a serious methodological limitation.

In an attempt to grapple with this limitation I took a lesson from archival research.
Palys and Atchison (2008) warn that when conducting archival research a weakness is
"the sometimes unknown representativeness of the information that survives" (225). One
reason that archival data may be not be wholly representative is selective deposit. This is
the idea that some people and groups throughout history, typically those with economic
and social power, have been more likely to have their beliefs and lives placed on the
historical record. This means that those conducting archival research will rarely end up
with balanced, representative data. Palys and Atchison (2008) counsel the researcher
dealing with this type of data not to despair, but to be cognizant of whose data is on the
record and how that affects the analysis and conclusions of the project. Having to deal
with my data coming predominantly from one "side" of the case reinforced what I should
have been aware of even if I had a more balanced sample; data cannot be severed from its
source, the source always constrains or influences the data in some way.

Reminded that the source of data is always a crucial part of data, I tried to balance
the case in other ways. One way was through the use of documents, which I will discuss
below. Even with the inclusion of documents, however, the data was skewed. Another
way I have attempted to grapple with this issue is to shift my analysis process. In my
initial planning I had assumed that I would conduct interviews with member of

government and members of the women's community and then in my analysis construct a "government perspective" and a "women's organization perspective." I was unable to do this as I did not want to present the one women's organization member as "the" women's organization perspective. Instead I grouped the data in two different ways. The first was a "group perspective" wherein I assessed similarities in the data as a whole. The second was "each member's perspective" in which I examined the data for differences among all the participants. My analysis focused on themes coming from the data as a whole rather than themes as arising from the separation of government data and women's group data. My attempt to move away from this binary for methodological reasons also alerted me to the deconstruction of the binary for analytic reasons as governmentality theory strives to break down distinctions such as government vs. community. Though frustrating at the time, on reflection this methodological challenge forced me to think more critically about the sources of my data and how I organize and analyze it. Crucial to my working through this issue has been Palys and Atchison's (2008) reminder that "researchers must be sensitive to the ways in which data availability constrains their conclusions and the range of theory that can be developed, while also recognizing the value in the treasure they have found" (227).

Interviews

All of the interviews in this project were conducted under similar conditions. They were conducted in person, at a location of the participant's choosing. The locations varied from offices to libraries to coffee shops. Each interview was tape recorded and transcribed in full, or as in full as possible. This project was not free from technical errors. In one interview the last ten minutes were not recorded as the tape had run out. In

another, the recording skipped and broke on play back which allowed only fragments of the interview to be transcribed. For this interview I transcribed as much as possible, keeping anything that was directly said by the participant in quotation marks. The transcription was then filled in with detailed notes of my recollection of the interview which were not in quotation marks so as to distinguish the participant's words from my paraphrasing. Each interview lasted between approximately an hour to an hour and a half.

I conducted semi-structured interviews. These are interviews in which the main questions are prepared beforehand, but are meant to "have a fluid and flexible structure, and to allow researcher and interviewee(s) to develop unexpected themes" (Mason, 2002). I went into each interview with my pre planned interview schedule (see appendix) but the interviews were allowed to wander as the participant discussed what was important to them. Though I occasionally used the set questions to guide the interview if the participant went too far off track, I found that my participants were knowledgeable and open enough that very little input or probing from me was necessary. I was open with my participants about my objectives for the project and told them that I was looking both to map this process and examine how it spoke to larger issues around government and community interactions. With this prompt most of the participants told the story of the consultation process interjected with their own thoughts of how it related to larger issues with no further direction from me.

There was one interview in which this did not take place. The participant left it to me to guide the interview, offering only brief answers. This interview was a challenge and the transcript gives a visual representation of this as the others are solid blocks of text for pages on end while this one is short, back and forth entries from myself and the

participant. Despite the more halting and difficult nature of this interview it too yielded insightful, useful data.

Qualitative interviews are a method that generates both detail and depth so that specific evidence is provided along with deep meanings. They allow for the construction of vivid examples, nuanced understanding and rich data full of multiple themes and concepts (Rubin & Rubin, 2005). The interviews provided me with vivid, in depth data as the participants shared their expertise with me. These types of interviews are especially useful for case study research (Hancock & Algozzine, 2006). They are the main method for getting at the multiple perspectives and experiences that make up the case (Stake, 1995). In qualitative interviews participants are able to speak from their own perspective and address issues and themes that matter to them (Hancock & Algozzine, 2006). For this reason I particularly regret the inclusion of only one participant from the women's organizations.

Ethics

Whenever research involves human participants the issue of harm must be considered. Certain groups of people have been identified as having a greater chance of being harmed by the research process. These include young people and marginalized populations as well as groups which rely on the researcher for some other benefits, such as students with a teacher researcher or prisoners with a prison official researcher (Palys and Atchison, 2008). My research did not include people from any of these groups. That does not mean that power and harm are issues I ignored for my project. Every researcher is in a position of power in terms of being in ultimate control of the research project and

the dissemination of the results. My main strategy in minimizing any potential harm to the participants was to obtain informed consent.

Informed Consent.

"Free and informed consent lies at the heart of ethical research involving human subjects. It encompasses a process that begins with the initial contact and carries through to the end of the involvement of research subjects in the project" (Canadian Institutes of Health Research, Natural Sciences and Engineering Research Council of Canada, Social Sciences and Humanities Research Council of Canada, 1998). Palys and Atchison (2008) outline several cases in which free and informed consent may harm the research and deception may be justifiable. These include where the explanation of the research objectives may influence the results, where the research objectives may be too technical for the average person to understand or where it may be impractical to obtain as in some forms of ethnographic research. I did not encounter any of these issues and so obtained informed consent from all of my participants. Each interview began with my presenting the participant with the informed consent form. A few minutes were spent going over the form and I answered any questions the participants had. All of the participants in this project signed the consent form.

Confidentiality.

As a further protection for my participants I promised to keep their identities confidential. In large scale quantitative projects it may be possible for the researcher to never know the identity of the participants and thus ensure complete anonymity. This is not possible in qualitative projects and because they "are often based on holistic analyses and presentation of what may be personal, identifiable and idiosyncratic information...

questions of confidentiality and anonymity are raised in particularly sharp form" (Mason, 2002: 201).

Adding a further layer of complexity to my promise of confidentiality is the nature of case study research. In case study projects anonymity must be addressed at two levels: that of the case and that of the individuals (Yin, 1994). I have anonymized the individuals, but I have identified the case as a whole. I have done this in order to present the case clearly and allow readers to incorporate any previous knowledge they may have about the case. Yin (1994) argues that "this ability to integrate a new case study with prior research is invaluable, similar to the ability to recollect previous experimental results when reading about a new set of experiments" (143). Anonymizing the participants but identifying the case has allowed me to protect my participants whilst retaining important background and contextual information (Yin, 1994).

I have taken several steps to ensure the anonymity of my participants because simply removing the names of my participants and giving them pseudonyms would not be enough having identified the case. If the case is known any identifying characteristics provided in relation to certain individuals, for example: describing one participant from the government to be a 38 year old female with 10 years of experience in the government, could well be enough for people to instantly identify that individual (Morse, 1998). In order to reduce the risk of this, I originally planned to present the participants as two groups, the government and the women's organizations, and present the personal characteristics in ranges (Morse, 1998). I have not done so, however, first because there was only one participant from the women's community no range was possible. Second, I felt that with such a small overall sample any description of the participant's personal

characteristics could be enough to indentify them. This is why my sample section only describes the participants as members of government and the women's community who had some involvement with this case at some point.

Another problem with protecting my participants' identities could have arisen in the analysis section of my report. Qualitative analysis often involved thick description of results. One way this is commonly done is by presenting much direct quotation from participants and labelling each quote with a pseudonym. Again a reader who is somewhat familiar with the case may be able to string together all the quotes from each person and in doing so identify them. To reduce this risk I have not used pseudonyms. I, as mentioned, originally planned to identify the speaker as either a member of the government or a member of the women's community. Due to the inclusion of only one women's group participant, however, this strategy would have had the same effect as the pseudonym strategy for that participant. I have identified the speaker as either women's community or government only when it is necessary to clarify the meaning of the quotes. Employing these two strategies allowed the details of the case to be given and maintains the anonymity of the participants.

These reporting strategies maintain anonymity, but because of the small sample involved and the fact that the case is identified, I took two further steps to ensure that no harm came to my participants. In the consent form I included an in-depth explanation of potential for identification and explained the steps I would take to prevent identification (Snyder, 2002). I asked participants if they would like to review their transcripts with the option of removing anything they feel could identify them or be harmful to them. Three of the five participants took advantage of this and returned their transcripts to me with

minor or no changes. I also offered to show my participants the final quotations that I intended to publish in my thesis in order to ensure that they provided no identifiable information (Snyder, 2002). All of the participants wished to do so. In doing this I hoped to provide my participants with an opportunity to be a part of a research project that brought no harm to them and allowed them to reflect on a process in which they were a part.

Documents

I collected documents in addition to conducting interviews. This allowed for the building of a more complex understanding of the case (Creswell, 2007). Documents provide another window into events we cannot view directly (Mason, 2002). They are also useful "to verify or contextualize or clarify personal recollections and other forms of data" (Mason, 2002). Using documents as data has several strengths in that they are stable, unobtrusive and may offer exact detail. One primary caution in using documentary evidence is that "every document was written for some specific purpose and some audience other than those of the case study" (Yin, 2003). The context of production and authorship must always be recognized. When this is done documents can provide contextual, detailed data for a case study.

Berg (2001) describes three different types of documents that are utilized in research; commercial media accounts, official government documents and official documentary records. I collected and analyzed two of these types of documents. I collected newspaper articles. I searched for theses articles in three separate sessions. They were located through online news search engines Newscan, Google, the Globe and Mail database and CPI:Q. I found the articles using the key words "restorative justice" and

"restorative justice and Nova Scotia." I selected all of the articles that contained

mention of the moratorium or restorative justice and gendered violence in the context of

the Nova Scotia program. This search yielded five news articles.

The second type of documents that I used was official documentary records. This

type of record is from organizations and originally produced for limited consumption.

Examples would be organizational memos, minutes of meetings or newsletters. In order

to access these types of documents I was assisted by the Nova Scotia Restorative Justice-

Community University Research Alliance. As a part of their multi project research study

they accessed the agenda and meeting minutes of the NSRJ program through the Freedom

of Information and Protection of Privacy process. I was given access to some of these

documents by the lead researcher of that project. My search was limited to a collection of

documents under the Program Management Committee label. I selected any document

that contained mention of sexual offences, the moratorium, WIJI or the Joint Working

Group. This resulted in a collection of documents that included Program Management

Committee (PMC) meeting notes, Steering Committee meeting notes, Joint Working

Group (JWG) meeting notes, excerpts from "Developing Restorative Justice Practice

Standards: A Guide for Discussion and Collaboration Part 2", work plans for NSRJ, and

the Joint Working Group Report to the Restorative Justice Program Management

Committee. Two additional documents used as data were "Restorative Justice in Nova

Scotia: Women's Experience and Recommendations for Positive Policy Development and

Implementation: Report and Recommendations" by Pamela Rubin (2003) and "Response

of the Women's Innovative Justice Initiative to a request for input regarding 'A review of

the Nova Scotia Restorative Justice Program'." A final document that was located

through the Google news search but is not a media document is the Formal Response of the Avalon Sexual Assault Centre to the N.S Department of Justice, submitted to the Department September 1999,

This documentary material contained very rich data. It assisted in a more robust construction of the case as the additional three documents, the meeting notes and final report from the Joint Working Group contained strong voices from the women's organization representatives. The meeting notes of the Joint Working Group and the sections of the Program Management Committee notes in which that committee discusses what is happening with the JWG gave me a unique glimpse into the process as it was unfolding. These documents were not only useful in getting a sense of what the process looked like, but also provided an interesting perspective in terms of who they were produced for. The interview data was produced for me, the media reports for the public, the JWG notes for that group and the PMC notes for the restorative justice program. As such the data allowed me to examine the case from a number of vantage points.

Valid Research

Using multiple data sources, interviews and documents, allowed a well rounded, in-depth understanding of the case to be constructed. The use of multiple data sources also contributed to the "validity" of my study. The concept of validity is greatly debated by qualitative researchers (Creswell, 2007). Many define the word to mean accuracy of results (Creswell, 2007; Stake, 1995). The use of multiple data sources, methods, investigators or theories with the purpose of "corroborating evidence from different sources" (Creswell, 2007: 208) is advocated as a key strategy to ensure accuracy of evidence and interpretations. Setting aside the issues surrounding the concept of validity

in qualitative research there is a major problem, identified by Mason (2002), with the idea of obtaining corroborating evidence in this manner. Mason argues that rather than providing the same and thus corroborating evidence "different methods and data sources are likely to throw light onto different social or ontological phenomena or research questions (or provide different versions or 'levels' of answers)" (190). With this caveat in mind I used multiple data sources primarily to get the most complete picture of my case and only secondarily as a validation strategy.

Generalizability

A common critique of case study is that the results are not generalizable. With the typical social science definition this is true. Statistical generalization is not possible because the case and its participants have not been randomly sampled from a complete sampling frame. However, for qualitative case study this type of generalization is not a goal. What is a goal, and what is possible, is theoretical generalization (Yin, 2003). Here the aim is to "expand and generalize theories" (Yin, 2003). Similarly Stake (1995) discusses both petite and grand generalizations. Petite generalizations can be made within the case itself. Grand generalizations expand theory. This takes place in two ways. First a positive example confirms or expands theory. Second a counter-example rebuts or modifies theory. In this project I aimed to use both petite generalizations in order to better understand the case and grand generalizations so as to make a theoretical contribution.

Limitations

The central limitations of this project are the small sample size and uneven sample composition. Because of these limitations I have been very cautious in my generalizations. This, along with my epistemological values, means that in the results

section I present my construction of this case only as one possible construction. I have

been careful to ground my analysis in my data but those data are incomplete and the

case's shape reflects my role as the researcher.

Governmentality Theory

The purpose of this chapter is to present the main concepts that I used to analyze my data. I used governmentality theory in this project to assist in understanding and analyzing the case. Originally articulated by Foucault this theory has been developed further by a variety of scholars. Before outlining governmentality theory I differentiate this theory's conception of power from more common uses of the concept. I proceed to outline the component parts of this theory. Though I have already detailed what neoliberalism is in my literature review, it is useful to re-articulate it here using the specific vocabulary of governmentality theory. Throughout this chapter I reflect on the usefulness of governmentality theory for understanding my case.

It is worth noting prior to outlining the basic features of governmentality theory that it is not, strictly speaking, a theory. It is more productively viewed as a perspective that highlights specific objects and lines of inquiry (Garland, 1999). While it does not allow me to create and test hypotheses about my case it does orient my analysis to specific ways of viewing the data. A further caveat that must preface this discussion is that there is some disagreement about terms in the literature. It is not so much that there is active debate over the terminology and definitions involved, but authors vary in their usage of the terms. Part of the reason for this variability lays in the fact that this theory contains the ideas of government, governmentality, and governmental power. Even this presentation is my own rather than a unified list from the literature. In what follows I have chosen to use these three different phrases to deliver the clearest presentation of governmentality while recognizing that different terminology is used throughout the literature.

Power

Governmentality theory stems from a Foucaudian understanding of power. Here, power is productive, it is a process and it is dispersed. Power is seen not only as repressive, but also as productive (Moore, 2007). In *Discipline and Punish* Foucault (1977) argues that:

> we must cease for once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth (194).

Rather than examining what power forbids or how it excludes, governmentality scholars shift the focus to how power brings about certain ideas and ways of acting. Focusing on the productive nature of power shifts my gaze to how power was exercised to produce the particular shape of the consultation process involved in the case under study and to what ideas were presumed in that exercise of power.

Power is not a thing that is possessed but a strategy that is employed (Hunt & Wickham, 1994). Foucault (1977) explains that:

> power exercised on the body is conceived not as property, but as a strategy, that its effects of domination are attributed not 'appropriation' but to dispositions, manoeuvres, tactics, techniques, functionings; that one should decipher it in a network of relations, in activity, rather than a privilege one might possess (26).

Given that power is a process, governmentality scholars argue that it does not make sense to say that one group has power and another group does not. Power is a relationship "and as such it is fluid, flexible and dynamic" (McLaren, 2004: 217). Governmentality scholars examine how groups mobilize and utilize power. This is not to say that governmentality writers deny the inequality of power mobilization by different groups. They distinguish between relations of power and relations of domination by noting that "power is fluid and

always subject to reversal, states of domination are static, ossified relations of power"

(McLaren, 2004: 220). Governmentality scholars focus, however, on local power

relations, rather than states of domination. The idea of specific, fluid power relations

allows me to examine how both the government and women's organizations utilized

power in this case. An analysis using a more traditional conception of power would

approach this case assuming that the government has power and that women's

organizations do not. A governmentality analysis keeps the government's exercise of

power in focus, but broadens the view to include the exercise of power by women's

organizations as well.

Power is also dispersed; this conception of power does not view it as an activity or

strategy centralized in the government or the law. Instead power is dispersed throughout

all relationships (Garland, 1997). We saw hints of this above wherein Foucault speaks of

"networks of relations". Viewing power in all relations throughout society is in

opposition to traditional political analyses that depict top-down or centre-periphery power

structures (Marston & McDonald, 2006). This more diffuse notion of power is useful for

examining case because it frees feminist groups from simply being acted on, by and at the

mercy of powerful groups like the government. A view that sees power as a productive,

diffuse strategy recognizes the importance of examining not only government's exercise

of power, but also that of community groups such as women's organizations.

As well as providing new characteristics of power, governmentality theory

describes three different modalities of power: sovereign, disciplinary and governmental.

Sovereign power involves "authority over the subjects of the state within a definite

territory" (Dean, 1999: 20). This is a negative power, one which prohibits and restrains

(Stenson, 1999). Foucault uses the exemplary of Machiavelli's *The Prince* to explain

the objective of sovereign power:

> the objective of the exercise of power is to reinforce, strengthen, and protect the principality, but with this last understood to mean not the objective ensemble of its subjects and the territory, but rather the prince's relation with what he owns, with the territory he has inherited or acquired, and with his subjects (Foucault, 1991: 90).

Disciplinary power involves the "the regulation and ordering of the number of people

within the territory" (Dean, 1999: 20). This modality of power does not rely on force or

coercion, as sovereign power does, instead it manifests in regulation. Three primary

characteristics of this mode of power are the use of hierarchal observation and

normalizing judgements along with the use of micro rewards and penalties rather than

punishment to ensure compliance (Hunt & Wickham, 1994). Where sovereign power is

negative power exercised on subjects, "discipline produces subjected and practised

bodies, 'docile' bodies" (Foucault, 1977).

The final mode of power identified in this perspective is governmental power.

Governmental power "regards the subjects, and the forces and capacities of living

individuals as member of populations, as resources to be fostered, to be used and

optimized" (Dean, 1999: 20). The population is something to be known and maximized.

Under governmental power the population becomes "the ultimate end of government"

(Foucault, 1991: 100). Governmental power is not the violent power of sovereignty nor

does it produce the passive subjects of disciplinary power, rather it constructs active

subjects who make their own choices within the bounds that governmental power draws

(Garland, 1997). Simply stated, the differences between these modalities are that

sovereign power controls subjects, disciplinary power creates docile individuals and

governmental power maximizes the population through the creation of active individuals.

These modes of power are sometimes treated as descriptions of discrete historical

periods. The types of power are sometimes presented in a way that shows a movement

from societies of sovereign rule, to a disciplinary society to a present governmental

society. Foucault (1991) does trace the emergence of the different powers in a

chronological fashion. However, in the same piece, Foucault (1991) warned and other

authors subsequently have reminded (Rose, O'Malley, Valverde, 2006; Dean, 1999;

Dean, 2006; O'Malley, 1996), that we should not view these as successive, distinct

periods of power. These powers simultaneously operate but in varying degrees:

> accordingly, we need to see things not in terms of the replacement of a society of
> sovereignty by a disciplinary society and the subsequent replacement of a
> disciplinary society by a society of government: in reality one has a triangle,
> sovereignty-discipline-government (Foucault, 1991: 102).

As with other features of this theory it is not as a binary of sovereignty vs. discipline vs.

government that this understood. The image of a triangle suggests rather that there is

overlap and that distinctions between these types of power are blurred (Dean, 2006).

It is therefore a challenge for governmentality scholars to identify and understand

the relationship between the modalities, and to see how they shape and influence each

other along with the specific technologies and mentalities that are deployed in their

exercise (O'Malley, 1996). This orients me to examining the types of power evident in

the consultation process and how they reflect on and influence the contemporary

relationship between the state and the women's movement. Along with the forms of

power in the process I will examine the forms of power embedded in the resulting policy

towards wife abuse.

Governmentality

The focus of governmentality is government. "Government", like power, has a specialized meaning. Government here is not a parliament or other configuration of elected representatives. It is an activity. Government is any strategy or action that involves the conduct of conduct (Dean, 1999). Theorists "have developed and utilized governmentality in the wider sense to draw attention to the 'how of governing' by considering how we think about the nature and practice of government" (McKee, 2009: 466) with this definition of government in the fore. This "how of governing" refers to how we govern others, how we govern ourselves and how these strategies interact (Garland, 1997). This definition of government alerts me to various objects of analysis for my case including how the women's organizations and government govern each other and their relationship and how each group governs wife abuse.

Governmentality work aims to identify "the strategies, techniques and procedures through which different authorities seek to enact programmes of government in relation to the materials and forces at hand and the resistances and oppositions anticipated or encountered" (Rose, 1996: 42). This definition is one variation of many (Barry, Osborne & Rose, 1996; Stenson, 1999; Dean, 1999; Nadesan, 2008; Rose & Valverde, 1998) similar definitions. These definitions share a number of key elements: government is an activity that works with problems; problems are dealt with through the use of certain ways of thinking; within these ways of thinking specific courses of action come into being and are utilized; this is done by a diverse set of authorities; and it is not free of resistance. In the next sections I expand on each of these elements.

In this theory "government is a problematizing activity" (Rose & Miller, 1992: 181). An analysis of governance involves the analysis of problems (Rose & Valverde, 1998). In examining problems and problematizations, governmentality theorists look at how and why certain things, issues and people become problems. Problematizations are identified in order to understand why certain government strategies are used in response to these problems. In my case, there are two main problematizations to be analyzed: wife abuse and the relationship between the government and the women's organizations. Two concepts that are used to discuss this "how", "why" and "what" of government are political rationalities and technologies.

Political rationalities are the justifications, knowledges and ideals that give birth to the particular shape of a particular problematization (Rose & Miller, 1992). Political rationalities make the world knowable and thinkable in specific ways. Rationalities are ideal knowledges, they are "not usually complex and detailed descriptions so much as schematic ways of rendering phenomena problematic or governable" (O'Malley, 2008: 454). As such, multiple rationalities can frame and problematize something in differing and perhaps conflicting ways. Garland (1999) gives the example of a new rationality for thinking about crime. An economic rationality makes crime thinkable only in terms of the economic language of supply and demand, choice, probability and risk. When crime is thought of in terms of supply and demand specific, corresponding ways of responding are the only ones that make sense. This pushes my analysis beyond the identification of problemtizations to the ideas that were embedded in them. Examining the founding ideas of problematizations may show differences and congruence between the positions of the government and the women's groups.

Ways of acting, responding, or governing are technologies. Governmental technologies are not the electronic or digital products that the word "technology" typically denotes. Instead technologies are "the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions" (Rose & Miller, 1992). The equal focus, in this theory, on ideas (mentalities) and actions (technologies) puts it in contrast with other political theories which view government only as a set of principles or as ideology (Dean, 1999). Governmentality theorists argue that the technologies of government are as important as the mentalities because the practices can limit and even change the mentalities. Government, then, involves political rationalities and technologies that act in concert and follow from one another to guide the conduct of others and selves. My analysis looks for the technologies present in the consultation process aimed at governing the relationship between the state and the women's movement. Restorative justice and the criminal justice system are the technologies under discussion in this case for governing wife abuse.

These individual mentalities and technologies can be grouped into governmentalities. I use this word as a label for "apparatuses of understanding, meaning horizons, [which] enable particular methods of ruling" (Pavlich, 2005: 10). Political rationalities and techniques are contained within and shaped by governmentalities. Governmentalities are "the different ways governing is thought about in the contemporary world" (Dean, 1999: 210). To discuss governmentalities is to turn the gaze of problematization onto the activity of governing itself. Different governmentalities provide different answers to the questions of what government should act upon, how this thing

should be governed, and what the end of government should be (Dean, 1999). Political rationalities and technologies can be loosely grouped together into governmentalities because their answers to these questions give them a "strategic coherence" (Rose, 2000).

Following from the conception of power as dispersed and the avoidance of centralized analysis is the extended conception of "governing authorities". The governmentality perspective visualizes authorities as not simply "the government" but also as "families, churches, experts, professionals, and all the various powers that engage in the 'conduct of conduct'" (Garland, 1997: 175). This wider group of authorities operate in different sites, with different technologies and mentalities (Rose, O'Malley & Valverde, 2006). These governing authorities may operate in sites far removed from what we traditionally think of as "the government" (Rose, 2000). This dispersed notion of power and governing authorities leads governmentality scholars to break down the binary of state vs. civil society (Garland, 1997). One of the key objectives of a governmentality analysis is to identify the authorities that are involved in the act of governance or problematization under study (Rose & Valverde, 1998). The extended notion of governing authorities brings women's organizations in from the margins and allows me to examine the way they exercise resistance and power as primary authorities.

Resistance

Resistance is another concept central to this theory. This theory defines power as ubiquitous; even freedom takes its shape from power, alongside power is the constant possibility of resistance (Hunt & Wickham, 1994). Resistance does not simply exist along side power rather they are "together the governance machine of society…in the sense that together they contribute to the truism that things never quite work" (Hunt & Wickham,

1994: 83). Technologies, mentalities and exercises of power are never complete or perfect and resistance in those incomplete, imperfect spaces is an integral component of governance (Hunt & Wickham, 1994). The implication of this idea is the deconstruction of the binary power vs. resistance and the realization that "resistance is constitutive of power" (Golder & Fitzpatrick, 2009: 75). Any instance of the use of power must be critically examined for the forms and use of resistance that enabled and shaped the use of power (Golder & Fitzpatrick, 2009). Governmentality theory opens new spaces for resistance and provides the tools for finding the breaks in dominant mentalities and technologies where there is and could be resistance. It differs from traditional theories in that "whilst this opens up critical space for exploring resistance it is not conceived in terms of liberation from an oppressor; rather as an invention of alternatives to current governing practices" (McKee, 2009: 471). This allows me to examine feminist resistance not simply as incidental, but integral to governance. Highlighting the importance of resistance and the use of power by women's organizations may trouble assumptions about the powerlessness of the women's movement and create space to conceive of feminist alternatives to current governing practices.

Neoliberalism

Neoliberalism was, as outline in a previous chapter, the political context of my case. Using the language of governmentality theory it was the dominant governmentality in play at the time of my case. Neoliberalism is a governmentality that acts upon individuals. It governs through the shaping of individual's freedom, enabling individuals to make productive choices (Rose, 1996). It governs in order to "enable an artificial competitive game of entrepreneurial conduct to be played to best effect" (Burchell, 1996:

27). Authors working in this field are quick, however, to deny that theirs is a totalizing analysis that envisions a top-down neo liberal agenda (Garland, 1999). Instead the aim, to reiterate the original definition presented, is "to anatomize contemporary practices, revealing the ways in which their modes of power depend on specific ways of thinking (rationalities) and specific ways of acting (technologies), as well as on specific ways of 'subjectifying' individuals and governing populations" (Garland, 1999: 16). The key usefulness of this type of analysis is to problematize current practices and thus allow for new ways of thinking about the present and future. My analysis will use this case and this theory to problematize the relationship of the women's movement and the state in neoliberal times in order to allow for creative thinking about feminist mobilization around gendered violence.

The Case

The case explored in this thesis is a story of mistrust, power, and engagement between women's organizations and the state. It is not, primarily, a story about whether restorative justice is an appropriate response to wife abuse. I focus on the interaction between the women's groups and the state in Nova Scotia through a consultation process ostensibly to deal with RJ and wife abuse. In this chapter, I lay out the key people and events that make up the case[2]. I then examine the various strategies of power and control used by the participants. Power strategies become central in an analysis based on governmentality theory. The chapter concludes with an analysis of how the two issues, domestic violence and restorative justice, were discussed by the participants in this case and how the process constrained those discussions.

The Players

Throughout this chapter I speak generally about "the government" and "the women's organizations" but it is important to recognize with some more specificity exactly who was interacting. The main group at the table for the "government" side consisted of representatives of the Program Management Committee (PMC) for NSRJ. The PMC is an unofficial advisory group for the co-coordinator of NSRJ. It includes police, prosecution, judges, and academics. It has no official capacity but provides advice to the RJ coordinator. Rather than say this consultation involved "the government" it is

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[2] This chapter draws from the data sources described in the Methodology chapter. In this chapter, when a direct quotation is used from a published source the standard academic citation is given and when the data source is meeting notes the name of the committee and date (when available) is presented. For unpublished documentary sources, the author and date is given, and any quote taken from interview transcripts is demarcated "participant".

accurate to say that it more narrowly involved criminal justice stakeholders and some

non government members, all involved in NSRJ.

The "women's organizations" were also a more limited group than that label

suggests. The consultation process began between the government and the Women's

Restorative Justice Research Management Committee. This committee consisted of

representatives from Avalon Sexual Assault Centre, the Elizabeth Fry Society's of both

Cape Breton and Mainland Nova Scotia, the Nova Scotia Association of Women and the

Law, the Transition House Association of Nova Scotia and Women's Centres

CONNECT. At some point in the consultation this group morphed into one called the

Women's Innovative Justice Initiative (WIJI) though the data is not clear on when or why

this occurred. WIJI was a coalition of these same organizations that had worked on issues

around women and the justice system previous to this particular case. This coalition may

have been a fair representation of "mainstream" women's organizations but Aboriginal,

African Nova Scotia, immigrant, disabled and lesbian women's groups were notably

absent.

Key Events

This case begins with the announcement of the Nova Scotia Restorative Justice

Program (NSRJ) in 1999. The program proposed to use restorative justice to respond to

all types of crime committed by youth aged 12-17. While the program remains applicable

only to youth the goal was, and remains, to move to adults eventually:

> if you've read any of the organizing documents of the program you would see that
> the intention was quite ambitious back in 98, when the documents were prepared
> or 99. And saw that we would start with youth. We would do pilots in four
> communities and then strengthen those further to all youth agencies. And then
> once the youth network was established we would then move to adults.
> (Participant).

Youth in Nova Scotia can be referred to NSRJ by police, the Crown, the judiciary or

correctional officials. As one participant explained: "you have the potential for a

restorative justice intervention at the arrest stage, the prosecution etc right through to

post-incarceration. And our model is one that incorporates all components" (Participant).

The level at which a case is placed in the restorative process corresponds to the

seriousness of the offence, with minor cases diverted from the justice system at the police

level, and the most serious cases only being eligible for RJ at the post-incarceration level.

This hierarchy of offences and corresponding entry points allowed the model to be

applicable to all criminal offences, including sexual assault and partner abuse cases.

Women's organizations across the province became extremely concerned upon

the public release of this program. They understood NSRJ to be in conflict with the

existing domestic violence legislation, the Framework for Action Against Family

Violence. They had been involved in crafting the legislation and it reflected their

preferred response to domestic violence cases. They saw the Framework, with its pro-

charge, pro-prosecution directive to police and Crown as necessary to push the criminal

justice system to take wife abuse cases seriously. RJ struck them not only as inconsistent

with the principles underlying the Framework, but also, the former would serve to take

two steps backward from the latter:

> Caseloads for legal aid and prosecutors were and continue to be unmanageable –
> violence against women cases, often seen as low priority, illegitimate, or
> unwinnable – could be removed at a stroke [by implementing RJ], reducing the
> burdens on these professionals by 20-30% (Rubin, 2010: 80).

For these reasons the announcement of NSRJ led women's organizations to

question the government's commitment to the Framework. At the same time that

women's groups felt RJ was undermining the spirit of the Framework they felt that the

government was undermining its effectiveness by cutting funding. The legislation

seemingly indicated that the government was taking violence against women seriously,

but funding levels and cuts indicated to the women's organizations that this was not the

case:

> So I think that there was a lingering, the genesis of some mistrust there and that
> went on. I think they said "Well…does the province really have the women's best
> interests in mind?" And I think their sense was "If they did, then such and such a
> thing would happen (Participant).

The budget that made these funding cuts was the same one that laid out the funding for

restorative justice:

> They were utterly unrelated but the timing was optically bad and it was part of the
> ongoing lack of support from the government to women's organizations and lack
> of consultation (Participant).

The mistrust arising from the funding cuts was exacerbated by the fact that women's

organizations felt that RJ was not an appropriate response to domestic violence. As one

participant noted "[women's groups were] stung by funding being given to a program that

looked like it was going to be soft on gendered violence." The women's groups'

understanding of the Framework and its interaction with NSRJ was a major source of

mistrust.

Women's organizations around the province acted quickly on their concerns and

convinced the government in early 2000 to issue a moratorium on the use of RJ for cases

of gendered violence:

> In April of 2000, the Program imposed a moratorium on the referral of cases
> related to sexual assault or spousal/partner violence which a judge could
> potentially refer after a finding of guilt. The moratorium is in place to allow
> further research and consultation with representatives from women's equality

seeking organizations. It continues to be in effect (Nova Scotia Restorative Justice Program, 2010).

This moratorium remains in effect in Nova Scotia to the date of this writing.

The moratorium created an opportunity for the women's organizations in question to trust government. It showed them that the government had taken their concerns seriously, recognized that they had been left out of the planning process and facilitated consultation on the issue. Unfortunately, much of that goodwill was undermined when Crown and police continued to refer cases covered by the moratorium:

> There was a lot of confusion on the part of police and Crown and occasionally some of those referrals were made and the agencies had to return them back to the police because there was a little bit of misunderstanding about which cases they could refer. It was new so. So that I think added fuel to the fire because, you know word travelled "Oh well they're sending them anyway." So, you know, it became a very contentious issue (Participant)

To alleviate the problem the Program Management Committee clarified the meaning of the moratorium in 2002:

> Pat reported that the April 2000 moratorium provided a restriction on referrals of sexual assault and spousal/partner violence offences but that the wording of the correspondence to Justice stakeholders in regard to this restriction was fairly narrow in that it said, "No sexual assault or spousal/partner violence will be accepted into the Restorative Justice Program." Agencies have requested clarification as to whether they are to follow the letter or the spirit of the moratorium as they have received inquiries in regards to other sexual offences other than sexual assault as well as cases where the referral references assault but the case detail points to sexual content.
> After some discussion, the members determined that the Program must be clear on the moratorium and that the spirit of the moratorium requires clarification. Pat was instructed to prepare correspondence to all Justice stakeholders providing this clarification and that a commitment needed to be made by the Program Management Committee to begin to work through these issues this year (PMC Meeting Notes, June 5 2002).

These notes indicate a disjuncture between the NSRJ program and other justice stakeholders. Crown attorneys would look at a case that involved sexual elements,

determine that these elements were not legally relevant and thus would lay a charge of assault. As an assault, the case would technically be eligible for RJ and it would be referred to an RJ agency. As restorative justice strives to deal with cases in a more holistic way, paying attention to what is relevant to the participants, as well as the law, these cases would be sexual assault cases and be in contravention of the moratorium. Agreeing to the moratorium was one of many trust building strategies employed by the government. Ironically, the uneven implementation of the moratorium meant that it became a source of mistrust.

The Research.

The moratorium presented an opportunity for more research into RJ and gendered violence. A research project, led by Pamela Rubin, was managed by a committee that included representatives from Avalon Sexual Assault Centre, the Elizabeth Fry Society's of both Cape Breton and Mainland Nova Scotia, the Nova Scotia Association of Women and the Law, the Transition House Association of Nova Scotia, and Women's Centres CONNECT. The research was funded by Status of Women Canada and the final report, "Restorative Justice in Nova Scotia: Women's Experience and Recommendations for Positive Policy Development and Implementation: Report and Recommendations" was produced in 2003 (Rubin, 2003).

The data used in this report came from focus groups and individual interviews with women in Nova Scotia. The two research questions that were explored were

- What was women's response to NSRJI goal, objectives and protocols
- What was women's vision for restorative justice; what did women see as restorative of the harms they had experienced (Rubin, 2003).

Women were recruited to participate if they had survived male violence, come into conflict with the law themselves, were service providers to these two groups, or were non-offending mothers of children who had been victims of sexual assault. The report primarily listed women's concerns and fears around restorative justice. It raised questions about the potential for trivializing abuse, the safety of women in RJ processes and the role of community. The research also outlined what women felt were positive aspects of the criminal justice system, including the symbolic power of the court system, the ability of the system to keep them safe and the fact that they had little role in the court process (Rubin, 2003).

The research report was a key source of power for the women's groups in this case. It enabled them to be the sole representatives for women's voices on the issue. The government was not able to consult with victims directly, nor did they do any of their own research with women. Perhaps more importantly, the Rubin (2003) research was used to put pressure on the government to respond to the women's organizations' concerns. One women's organization member explains:

> I think one of the reasons, also, that we were able to have a positive process has to do with a sense of embarrassment around this issue. We had captured the voices of women and documented a lot of problems for women, I'm sure you've read the research, the stories that women tell…are embarrassing. So I think there was some pressure to have a process that wouldn't result in more political embarrassment (Participant).

Given that no other research was brought in to shed light on the debate it gave the women's organizations involved a large amount of power. As I will describe later, the report also proved to be an effective tool of control for the women's groups over the process.

The Listening Day.

The women's organizations presented their research findings to the government at an event that became known as the "Listening Day". The event marked the beginning of real engagement between the groups and the state, but it also foreshadowed the erosion of trust and development of power struggles that would characterize the entire consultation process.

During the Listening Day, the women's research management committee presented their research findings to justice stakeholders. The Ministers of Justice and Status of Women, twenty five representatives from the Restorative Justice program as well as other justice stakeholders were present at this day. The willingness of the government to participate in such a day inspired trust in the participating women's organizations as Rubin (2010) describes:

> A morning of government and justice professionals listening to women's organizations helped dispel the feeling of "stuckness" over previous exclusion of women's voices; a collaborative exercise following in the afternoon was the first occasion for justice professionals and feminist activists to work together on RJ in mutual openness (95).

The women's organizations saw this day of presenting to, and interacting with government members as a real opportunity to move forward in the process.

The government players in this case were not as encouraged by the Listening Day as the women's organizations. The structure and process of the event produced a negative, hostile environment. This day was characterized negatively by three out of four of my research participants who had been present at the event. A participant explains some of the difficulties:

> The listening day that we had, where that was some senior bureaucrats of government, I'm not sure that was as collegial. In some ways that appeared as if it

was somewhat, an opportunity to lecture government. And so I think that there were some difficulty in that particular day. Especially for government people, I think there was some difficulty in that particular day in the facilitation and in the structure and process for that day (Participant).

The government entered further consultation very warily as a result of the Listening Day.

The Listening Day reveals another theme that would come to characterize the entire consultation exercise; the priority given to process. The question of whether or how to use RJ for gendered violence was put on the backburner. Both groups framed the Listening Day as a first step in engagement rather than as a first step towards solving the question of whether RJ should be used in cases of gendered violence. By participating in the Listening Day, the government hoped to show the women's groups that they were willing to sit down and listen and set the stage for further dialogue. They were less interested in learning about the research results. The women's organizations presented three recommendations at the event, but the main one revolved around process – the establishment of an inclusive policy development process. Rubin (2010) has suggested this was "the major recommendation of women's organizations" (95). As a result of the Listening Day, the Minister of Justice committed to engage in a collaborative policy process with the women's organizations.

The Joint Working Group

In order to fulfill the commitment to inclusive policy development the government and the women's organizations came together and formed the Women's Restorative Justice Research Committee/Nova Scotia Restorative Justice Program Management Committee Joint Working Group (JWG). This was the main vehicle through which the collaborative policy development process was accomplished. The committee was designed to operate as a subcommittee of the Program Management Committee. This

group met for the first time in March 20 2003 and issued their final report on April 29

2005. Along with the Final Report the group designed a mechanism to more closely

monitor the moratorium and held a series of regional workshops during which the

women's organizations presented their research findings to justice stakeholders around

the province.

The members of the Joint Working Group focused their energies first and

foremost on process rather than restorative justice. The JWG Terms of Reference clearly

shows this focus:

> the joint working group...has as its objective the development of a meaningful
> inclusion of equality-seeking women's advocacy groups in the work of the
> Program Management Committee (JWG Meeting Notes, April 11 2003).

A protocol developed by the group also highlights the priority given to engagement rather

than actual policy development:

> Decision making should not be rushed on complex issues affecting women; it
> must be recognized that this is an education process that requires the building of
> working relationships for the long haul. (Rubin, 2010: 96).

The entire first year of the Joint Working Group meetings appears to have been dedicated

to discussion about process. Discussions of RJ were not on the agenda. The focus on

process is also evident in the conclusions that the group reached. The Final Report of the

JWG concluded with "three important outcomes". Two of which were about process. The

first was the "creation of a mechanism for dialogue" and the third was "key learnings for

an optimal process for future work" (JWG Final Report, 2005: 4 & 9). This focus on

process dominates the Report's recommendations for any future work on the issue of

restorative justice and gendered violence. The Report contains the following

recommendations:

- Maintain the current moratorium on the referral of any sexual offences or intimate partner violence offences; the moratorium creates a "safe place" both for women and the restorative justice program until specialized programming may be developed.
- Establish a mechanism for continued community-collaborative work on a detailed draft working model for specialized programming and protocols addressing the priority areas and possible directions captured in this report.
- This mechanism should adopt the key learnings listed in this report for an optimal process described in this report. (JWG Final Report, 2005: 11).

The key focus of the JWG was the process of engagement between the government and the women's organizations.

The strong emphasis on dialogue partly reflects the mistrust and suspicion that existed on both sides at the beginning of the JWG process. The people who I interviewed emphasized that this was not an easy process: it was hard, protracted, hostile, and filled with conflict. Therefore the two groups had to focus on process before content. One government participant felt that the women's community was assertive about what they needed to feel comfortable, while a women's community representative observed that some government members felt they could simply bully their agenda through the process. Both sides came to the JWG with low levels of trust in each other and therefore had to concentrate on the practical "how to" of engagement.

Participants also expressed mistrust about the format that had been chosen, in the structure of the JWG itself. Both groups had misgivings about the usefulness of this arrangement. The women's group seems to have trust in the process because it was not couched as a "consultation". Consultation was a concept that had zero trust value for these groups because they had seen, locally and at both the federal and global levels, governments go through the motions of consultation simply for appearance sake. The difference between consultation and joint working group engendered trust:

> We wanted to avoid the idea of consultation for those reasons. So we kind of did our own thing and then we had a Listening Day where the government was supposed to listen to us. And then we had a Working Group, so we liked the phrase "Working Group" much more than consultation. I don't think of the process at all as a consultation, I think of it as a path of discovery and struggle and trying to forge a new way of working together without the manipulation of so called consultation. (Participant).

However, because it was a new process there was also a degree of suspicion around how

it would function and just how different it would be from conventional consultation:

> The feedback that I got from the representatives of the women's advocacy community was that it [the JWG] was a new way that government was working. And that's why their trust level was low, they weren't sure what value this really would hold for them. You know, were they wasting their time? Were we going to spin around in circles? (Participant).

> The representatives from the women's community were, I guess in hindsight the way I look at it, they were very anxious about partnering with government in this way and they were on guard I would say about potentially being manipulated. And so they were very assertive about the things they needed to feel comfortable (Participant).

The government representatives shared the women's groups' ambivalence around the

process. The former hoped that it would be an effective way to communicate with the

women's groups, but some of them became suspicious of the JWG after the first meeting,

as they identified an ulterior agenda on the part of the women's organizations:

> Report on the first Joint Working Group Meeting: Discussion focused on the importance of the terms of reference and the importance of the program maintaining a focus on what needs to be discussed and accomplished. Members present were unsure how well things would, in fact, progress, given that the agenda of the Women's representatives is clearly to influence discussion toward their key issues of better resourcing of women's support groups, which is an issue that the RJPMC cannot respond to (PMC Meeting Notes).

Some government members worried that the women's organizations were only involved

in the consultation in order to obtain more funding. This questioning of the motivations

behind the consultations is indicative of the degree to which this case was not simply about restorative justice.

I have framed the consultation process as involving two separate groups in both the presentation and analysis of the data. I had planned to avoid the polarization of "the" government and "the" women's groups, but I found that they were depicted that way in the data. One example is the name of the JWG itself. Rather than titling the group in regards to its function, perhaps the Gendered Violence Working Group, the name highlights the existence of two separate groups the WRJRC and the NSRJ PMC. The protocols of the group also paint a strongly dichotomized picture of the group:

- Working groups and other initiatives should be co-chaired, with one chair from the justice system and one chair from a women's organization.
- A critical number of women's advocates should participate in the group that is at least equal to the number of justice system professionals participating.
- Women's community organizations should choose their own representatives to the Joint Working Group.
- A consensus model should be followed for decision making and the creation of reports.
- Meetings should be planned well in advance and should only proceed if critical numbers from both the justice system and women's organizations can attend.
- In recognition of the limited resources of women's community organizations, honoraria and travel costs should be provided for participation.
- Meeting locations should alternate between justice system facilities and women's organizations' facilities (Rubin, 2010).

The members of this consultation process clearly felt that they represented one of two, separate sides engaging with each other. The two groups were wary of each other and had to spend significant time building a process of engagement, as evidenced by the main events of this case.

The Final Report by the JWG marks the end of the bulk of the activity in this case. The Joint Working Group presented their report to the PMC on May 25 2005. This was

the final act of the JWG. I have included in my data a response that WIJI wrote to a

2008 program review of NSRJ, but the substantial work in this case was completed with

the end of the JWG.

Control Strategies

The polarization of the government and the women's groups into two distinct

camps led to a number of clear control strategies being adopted by each side throughout

the process. The work of the JWG reveals the almost constant power struggle between the

two groups. The official representation portrayed the JWG as co-managed:

> Key to all of this work is that it is being approached as a joint effort, and
> representatives from both groups are exploring how collaboration can work
> (Steering Committee Meeting Notes).

> Collaborative management by the Nova Scotia Department of Justice and
> women's equality seeking organizations produces benefits (JWG Final report).

> The collaborative management of the process by the Department and women's
> community (through Restorative Justice Coordinator and WIJI coordination Pam
> Rubin) was an important building block of mutual trust and respect among
> different participants, facilitating consensus base progress (JWG Final Report).

> The Listening Day and the JWG were the first feminist community/government
> co-managed events ever to take place in Nova Scotia to determine justice policy
> (Rubin, 2010).

Though the co managed nature of the JWG was stressed in the documents, my research

participants did not describe it as such. Meeting notes also betray a struggle over control

rather than a straightforward power sharing arrangement. JWG meeting notes contained

statements such as "**Pam agreed to secure one person from the Women's research**

committee and Pat would recruit one person from the Project Management

Committee" (JWG Meeting Notes, bold in original). This sentence was typed in bold in

the meeting notes, and so stands out among the other notes. That it was necessary to

specify, emphasize even, that each of the co-managers would choose participants from their "side" indicates to me that it was a formal, highly controlled and patrolled co-management. Statements such as this one, alongside the power sharing components of the protocol, point to everyone involved being keenly aware that co-management was not an easy or trust inspiring arrangement.

Along with this uneasiness about co-management was recognition by both sides of the power differentials that exist between government and community. Participants described funding as being a source of the power differentials between the government and the women's groups. One participant explains:

> That's a fundamental issue in the structure. Because there's the power imbalance. Government holds the money. So that, automatically creates a power imbalance (Participant).

The JWG protocol acknowledges this imbalance:

> In recognition of the limited resources of women's community organizations honoraria and travel costs should be provided for participation (Rubin, 2010: 96).

Power, in the form of funding, was seen by one government member as a serious constraint on the women's organizations ability to be involved in policy development. Receiving funding was seen then as facilitating power:

> the other reason I think we were able to do something is because we received funding from Status of Women to talk directly to women…so we had some resourcing to do research and advocacy (Participant).

Funds were also seen as symbolic of the power differential between the groups. One participant speaks to the allotment of funding as a way to ameliorate some of the power imbalance:

> I think it was attempt to assert some control over the event. Which they had. They designed the agenda, we turned the funding over to them, they looked after the travel of all the representatives (Participant).

The women's organizations understood resources as a tool of silence in reference to the government refusing to fund the research project:

> that is why in Nova Scotia, government refused to fund any more women's organization research with women, because they could not control the results, and they were afraid that it would be negative of their existing programs (Participant).

Both sides saw money as a tangible source of power and control; one that the government possessed and women's organizations could access only rarely.

In a process marked by control struggles and power imbalances, the women's organizations effectively used a number of control strategies. One was the design of the process. In the beginning the women's organizations controlled the process by initiating it. It was only on the women's groups' demand that the government entered a process of consultation. The women's groups made these demands because they felt that the government should have consulted them initially. The women's organization exerted the initial control by demanding the government address their concerns, conducting their own research, and bringing the research results back to the government.

They continued to control the process by designing the format of the Listening Day. The women's organizations exercised significant control over the day and this may have contributed to their positive impression of the Listening Day. An example of this control is the way in which the Listening Day became known as such. Government documents originally refer to the "Women's Restorative Justice Research Committee Consultation Day", but in an obvious move to assert control, the women's organizations involved changed the name to Listening Day. The women's organizations also set the format of the day, a format that saw their members dominate the activity. Government notes refer to the "static nature of the participation being permitted". Here we see the

perception of control exerted by women's organizations in the phrase "being permitted". The women's organizations planned the event as an opportunity "to catch up and balance the process" (Rubin, 2010: 94) from which they had so far been excluded. This translated into government members being asked to simply listen to presentations made by the women's groups:

> the intent was that they wanted those key government actors who had worked together to design the program...as well as those delivering the services...to come and to listen and to not have any responsibility for presenting. (Participant).

The women's organizations were able to exert control over the design of much of the consultation process.

The government did not completely cede control to the women's organizations. They worked to ensure that the regional workshops would not involve the same hostility and negativity they felt had characterized the Listening Day. The NSRJ PMC designed these workshops and the women's organizations approved them. The government also used the JWG to exert control over the consultation process. The JWG was modeled after another working group that had existed within the PMC. The government was able to choose the format for the policy development process and chose one which had worked for them in the past. Design of events and of the process was a control strategy that was used by both sides in this case.

Expertise

Who could legitimately control the process was another theme in the data. Both the government and the women's organizations framed domestic violence as an issue requiring expertise and one that differs from other crimes. The Final Report of the Joint Working Group made this clear:

Current processes used under the Restorative Justice Program were not created in specific contemplation of crimes of violence against women. These crimes are different from others in various ways. Some differences affecting safety of participants in processes under the Restorative Justice Program include:

- that understanding of risks associated with sexual offending is expert knowledge and often counterintuitive to lay community members (JWG Final Report, 2005: 5).

The sizeable body of knowledge required in order to consider these issues properly became apparent through the Joint Working Group process. Any further development of policy and programming requires that current research (including on restorative justice, sex offending, and other forms of violence against women, and systematic challenges for women's access to justice) be integrated into the discussion. This means that participation in further development work would represent a more complex process and an increased demand on participant time and other resources. Bringing in expert knowledge is also crucial in developing specialized programming, and further development work would need to be resourced to do so (JWG Final Report, 2005: 10).

The two sides seem to have agreed about the need for expertise in the Joint Working Group documents. They differed in how they defined "expertise" and who they felt qualified as experts.

The members of government discussed domestic violence in a highly technical way, framing it as something that required expertise that was informed by research. In discussing the history of response to domestic violence in the province several members of government highlighted the many studies and reports that have been produced:

There had been a homicide study done by Peggy Mahone... and it talked about the problems with the system and the system's lack of support for women...At the same time there was a Family Violence Tracking Project done by Carolyn Marshall, it looked at how cases got dealt with in the criminal justice system...the dean of the law school Dawn Russell was asked to do an evaluation of the Framework for Action Against Family Violence, and her view was very positive (Participant).

In the context of this case, the government consistently and openly labelled women's equality seeking organizations as experts:

They were the province's expert partners on these issues (Participant).

> Because the community experts had a lot of knowledge, they had a lot of expertise to bring to the discussion (Participant).

The Department of Justice's commitment to consult and seek information from the groups, after the Listening Day, further demonstrates the government's view that the women's groups were experts. The government constructed the women's organizations as having legitimate controlling interests when it granted them expert status.

This understanding of the women's groups was not without nuance. While government members outwardly labelled the women's groups as experts many of their comments seemed to weaken that designation. Women's organizations were also referred to by the government as "interest groups" and "advocates". While these labels do not contradict the notion of expertise, they temper it somewhat, and imply a biased form of expertise. As an example the government challenged the women's organizations' interpretation of domestic violence:

> they had a particular vision of the world which was not one that I shared which had a very vehement position on the danger perpetrators faced, uh posed to those they hurt and I still feel this way, I don't think their vision of the perpetrator married up particularly well with the reality (Participant).

While members of the government would say outright that they thought the women's organization members were experts, comments like the above and charges that their interpretations do not "marry up with reality" seem to undercut the degree to which the women's groups were considered experts by the government. Government members were highly critical of the Rubin (2003) research. Their dismissal of this research puts into question the extent to which they believed that these women's organizations were experts on this issue. This nuance helps explain why the government did not hand complete control over to the women's groups.

The women's organizations also framed and discussed domestic violence as requiring specialized knowledge. The women's groups were clear that they considered two groups of people experts on the issues of domestic violence: themselves and the women who were victimized by intimate partners.

> Shelters, women's centers, and sexual assault centers responded to the Department of Justice with great concern that input from survivors of sexual assault or woman abuse was not solicited or considered in the design of the program to determine appropriate practices or goals (Rubin, 2010:80).

> Community-based organizations serving women must be an equal art of a coordinated collaborative team addressing violence against women (WIJI Response, 2009: 18).

> The inclusion of women most directly affected and the organizations who serve them in policy development processes is a starting point for the incorporation of social justice knowledge into restorative justice initiatives (Rubin, 2003: 23).

The women's organizations involved in this process were also very clear in identifying who they believed were not experts on this issue. For example, they criticized the agencies that deliver restorative justice as having "no expertise in partner or sexual violence" (Rubin, 2010: 80) and argued that the justice system planners had no knowledge of feminist understandings of the law. Expert knowledge was seen as vital by women's organizations and that knowledge was defined as coming only from victims and women's organizations. This assists in understanding the women's groups' desire to control the process that discusses RJ and gendered violence as well as their insistence that they be significantly involved in any eventual service delivery.

Another way that the women's organizations controlled the consultation process was through setting the agenda to only allow for a discussion of their own research. For example the Listening Day centred on the report:

On the morning of Listening Day, women's organizations presented various aspects of their research to the assembled audience. During the afternoon of our Listening Day, participants were split into groups for an "inclusiveness exercise." Each group was to brainstorm around the question of how to move forward and be inclusive of women in RJ policy planning and implementation, and in particular, how to include women of diverse communities (Rubin, 2010: 94-95).

The research was also the basis for the Joint Working Group's work:

It is critical to begin discussion from the perspective of what brought the working group together, which was the research and the commitment to consider women's experience and concerns as documented in the research report. By committing to begin with a planned review of the issues as captured in the research report, we set our priority for discussion, and through discussion may explore some of the issues of concern with the representatives from the Restorative Justice Program (JWG Meeting Notes, June 20 2003: 2).

the process involved looking at things based on the agenda that the women's advocacy community brought to us (Participant).

The joint working group met for almost two years. During that time, the group took an unhurried look at women's concerns (Rubin, 2010: 96).

This resulted in the JWG Final Report closely echoing the research. Each of the JWG's three "Priority Areas Identified" came out of the Rubin (2003) research. This was clear in the Final Report:

The Joint Working Group identified two priority areas based in their consideration of the systemic issues identified in the 2003 report and in their own experience (JWG Final Report, 2005: 8).

The role of community was identified in the 2003 report as an area of question and concern (JWG Final Report, 2005: 7).

By far, the issue area of greatest concern to the Joint Working Group was safety…this parallels the 2003 research (JWG Final Report: 5).

The women's groups attempted to set the agenda of the justice system more generally with their response to the 2008 NSRJ program review:

WIJI also questions why, with limited policy development resources, we are looking at coming back to the table again and again to discuss RJ and partner and

sexual violence. There are many more urgent issues to discuss in the justice system's handling of violence against women (WIJI Response, 2009: 14).

Included in WIJI's response was a list of proposed directions for justice policy development. The women's organizations, primarily through the use of their research, were able to strongly influence the agenda of this case.

However, women's organizations' efforts to set the agenda and determine outcomes through their research were resisted by the government. The women's organizations had wanted the government to fully accept the report and wholly endorse its conclusions. The government refused to do so, arguing that the research had major flaws. Government participants were sceptical of the representativeness of the voices in the research. The moratorium had been put in place quickly enough to ensure that no women in Nova Scotia went through an RJ process. The research was therefore, gathering women's prospective opinions about NSRJ. Government representatives in this case were also concerned about the definition of restorative justice that was offered to the research participants:

> What was frustrating was that it purported to be a piece of research about their experience with restorative justice. It was not their experience with restorative justice, there was no program in place, there was no experience, it did not apply to adults, and these were all adult women. There was also an inadequate description of restorative justice even such that it was inaccurate. There was not enough of an introduction of the terms of the program itself in Nova Scotia (Participant).

> That would be very much guided by how the researcher presents RJ "ok you're a victim of family violence how would feel about a process that did..." I think you have to really, really careful of that. And you have to concerned about research...I just don't know. Is this the kind of research that you would want to base a policy on? I don't know (Participant).

The report itself does not provide the definitions that were used in the interviews. Government members felt that the research was not scholarly, that it had too many

methodological flaws. Some government members felt that the analysis was

condescending towards women, that its framing of wife abuse gave women very little

agency. The women's organizations success in setting the agenda with the research was

somewhat mitigated by the government's critiques of the research and their refusal to

fully approve it.

The government allowed the women's groups to set the agenda generally, but

government representatives exerted control by limiting the scope of the agenda. The issue

of the scope of JWG discussions was addressed at a PMC meeting:

> The scope of discussion needs clarification. WRJRC [Women's Restorative Justice
> Research Committee] reps reference broader family violence issues and the failure of
> the formal system in the broader context when bringing forward arguments about
> Nova Scotia Restorative Justice not being acceptable (PMC Meeting Notes,
> November 26, 2003: 3).

The PMC made the decision that this broad scope was not useful and that the discussion

needed to be narrowed:

> We need to focus on formulating policy commentary on the Restorative Justice
> Program as it is currently constituted.
> We need to frame the discussion within the context of the Program Authorization
> (PMC Meeting Notes, November 26, 2003: 3).

The government modified the agenda when they thought necessary.

The second example of the government exerting control arose at the end of the

process. The government, at a PMC meeting, discussed how the dialogue was taking too

long and that they had not yet moved to tangible policy discussions. The decision was

made, within the PMC "that it was time for a conclusion of the dialogue activities to bring

discussion to what can be done, and how" (PMC Meeting Notes, May 26, 2004: 4). The

NSRJ coordinator was tasked with conveying this message to the JWG. The decision to

end the dialogue was made unilaterally and involved simply telling the JWG that it was

time to move on. Not surprisingly, this did not go over well with the women's group

representatives on the JWG. The latter pushed back, and argued that they were not yet

ready to move onto more structured policy discussions:

> Pat initiated discussion around moving on from this phase to the development of
> key themes and possible policy discussion. Representatives of the WJRRC were
> concerned there were still some areas which had not been fully discussed…It was
> agree to try and conclude this phase via two half day work blocks, after which
> next phase discussions could begin. (PMC Meeting Notes, Jul 7 2004: 3).

It is not clear whether the women's groups representatives' response was based on their

desire to continue the dialogue or whether it was a deliberate reaction against the

government's decision to force the issue.

This consultation process involved two very polarized groups struggling for

control. The women's organizations were able to exert a high degree of control despite a

power imbalance that favoured the government. The women were able to set the agenda,

they structured a significant portion of the discussion, and they were able to frame

themselves as legitimate experts through the use of their research. Although the

government representatives, at least partially, endorsed the women's groups as experts

and relinquished a fair degree of control to the women's organizations they did exert

control when they felt necessary. The government designed the format of the regional

workshops and the JWG, they allowed the research to set the agenda but shaped the

agenda when necessary, they also framed the women's groups as legitimate, but not

impartial, participants. The work of this consultation process was controlled by the

women's organizations but that control was intermittently checked by the government.

The Issues

The two groups did grapple with the substantive issues of domestic violence and restorative justice. The framing and presentation of the issues in the JWG Final Report are indicative of the women's groups' control and the extent to which these issues may have suffered due to the focus on process.

Throughout the data it is clear that, though NSRJ was only a youth program, the crimes that were under discussion were sexual assault and intimate partner/spousal abuse. Of these, partner abuse dominated the discussion. In this section I describe how the two sides conceptualized the crime of partner violence. There are differences and overlap in the ways that partner violence was framed.

Wife Abuse.

The conceptualization of partner violence by the women's organizations[3] is crucially important in this case because it was adopted, without critique, in the JWG Final Report. The women's organizations were clearly successful in framing the definition for the group and including it in the Final Report.

For the women's organizations partner violence is qualitatively different from other crimes. It requires, therefore, specialized expert knowledge and handling. The "typical pattern of intimate violence is one in which an abuser controls and intimidates a woman through a pattern of emotional, financial and physical abuse over a period of time" (JWG Final Report, 2005: 5). It is a crime committed by men against women. The only way to understand partner violence is through the lenses of power imbalance and

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[3] In order to access this understanding in a meaningful way I rely heavily on data beyond the one interview I conducted with the women's organization representative. The following description comes primarily from the research that was conducted by Rubin (2003) and the response to the RJ program review submitted by WIJI.

cycles of violence. The women's organizations relied on feminist research and theory as well as the experience of service providers and individual women in developing this understanding.

The women's organizations' research and response also contained specific ideas about the characteristics of the men and women involved. The men that perpetrate partner violence were framed as extremely violent and volatile. Through the highlighting of post-separation violence, and the possible incitement to violence that could take place upon attempts to hold the men accountable, partner violence offenders were constructed as always violent. The causes of male offending were limited to the recognition of power over women. This aetiology was due, in part, to the women's organizations' stated objective, namely focusing their energy, and any response to partner violence, on the woman.

The women's groups framed victims of domestic violence as extremely vulnerable. That they live with high levels of fear was emphasized and illustrated in Rubin (2003) through vivid quotes from survivors and exemplified by a public statement from Rubin in the *Chronicle Herald*, a major Halifax newspaper: "I can't emphasize enough the times I heard the word death as the basic fear of these women" (Arsenault, 2003). In other publications women's organizations emphasized the constraints that fear places on a woman's life "[a] survivor's sense of safety is so deeply compromised after sexual assault they often feel to fearful to go outside, take buses, or walk alone during the day or at night, even when the perpetrator has been incarcerated" (Avalon Sexual Assault Center, 1999). Alongside their fear, numerous other constraints on women's lives were

described by the women's organization including economic constraints, systemic

discrimination, and the presence and care of children.

Representatives of the women's organizations felt that any response to partner

violence should first and foremost be "victim" focused and the victims are primarily

women. The victims' needs and desires ought to take priority in individual cases and

should be canvassed in order to build systematic responses. The primary goal of any

response to partner violence should be victim safety, conceptualized both as psychical

and psychological safety. The criminal justice system and the use of incarceration and

protection orders were seen as the principle ways to achieve safety. The emphasis on

safety is demonstrated in the following excerpt from the research report:

> A crucial prerequisite to restoring harm is to establish women's safety. Women recommended a number of possible measures to prevent further woman abuse:
> - Custodial sentencing for crimes involving violence against women
> - Stricter and better enforced no-contact provisions for abusive men, including no contact involved with child visitation (Women cautioned that women should not be criminalized for contact with the abuser subject to such orders, however)
> - Forced change of residence for abusers
> - Follow up with survivors to monitor their fears
> - Greater availability of silent alarms for survivors, both personal and for houses
> - Presumption against bail in cases of abuse or stalking. (Rubin, 2003: 100).

Determination of risk was perceived as crucial to ensuring safety. They also suggested the

need to raise public awareness through education and more support for community

organizations.

The criminal justice system was highlighted as a necessary tool in the response to

partner violence for several reasons other than safety. The women's organizations

emphasized the symbolic importance of criminalization; sending the message that partner

abuse is wrong. Third, it was briefly mentioned that for some women a punitive response is necessary for their healing. The women's organizations did recognize the failings of the criminal justice system in responding to cases of wife abuse. They used these failings, however, to point to the vulnerability of restorative justice and argued that government energy should be directed towards correcting these deficits rather than introducing an entirely new system.

The government's conceptualization[4] was not laid out in as clear manner as the women's organizations. There was high degree of overlap between the government and the women's organizations' understandings. The government representatives too understood partner violence to be a serious, complex, and gendered crime:

> We thought what we wanted to do with the Framework was to ensure that everybody knows that violence against women is not acceptable. I mean, it was <u>family</u> violence but, you know obviously the violence against women is far more prevalent, not to diminish violence against men but it (violence against women) was really, really important (Participant).

They understood the role of power imbalance. One commented on the high level of agreement between community and government generally:

> And I think that sometimes, we underestimate the number of feminists who work in government. And I think we underestimate, sometimes, the intent. There are some very good people, with very good and very clear understandings of the dynamics of violence against women, of the issues that face women on a daily basis. And of the conflicts or struggles, both from a community perspective and from a government perspective. So I think its really important to acknowledge there are people in the field, both in the community and government who share a very clear, very defined understanding of the issues that are being looked at (Participant).

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[4] I did not rely on the JWG documents as mentioned earlier I felt that they reflected the women's organizations' framing. The "government position" then is not robust and is gleaned primarily from the interview data.

The main area of difference involved conceptions of the men and women involved in these crimes and the nature of their relationship. Government members questioned the level of dangerousness of most offenders. They also reflected on the need to balance the rights of offenders and victims. One member of government found it condescending that a woman's choices were always framed as being constrained and determined by outside forces. She emphasized the agency of women. One aspect of partner violence that was repeatedly discussed by the member of government was the fact that couples who experience abuse often reconstitute:

> Because, if you look at the stats and look at these violent families, how many of those split apart and how many reconstitute after an offence? They were saying "look we're going to be together anyway, I want him to get treatment" (Participant).

> Because what the research tells us is that in an intervention we can change the dynamic even if the relationship continues. So its really important that there be intervention at points of extreme crisis in the relationship. (Participant).

Many members of government felt that an appropriate response had to involve some mechanism that allowed the relationship to continue but the violence to end.

Restorative Justice.

The most interesting finding regarding the framing of RJ is the paucity of data. The focus on process and engagement between the two sides resulted in RJ being pushed almost entirely out of the frame. The Final Report of the JWG can stand as example for the silence in the rest of the data. The report contains no outline or explanation of what restorative justice is. The closest the report comes to defining restorative justice is to state that:

> the Joint Working Group affirmed that Restorative Justice policy and program development processes should be consistent with principles of restorative justice,

such as respectful listening and contributing, and strong community involvement (JWG Final Report, 2005: 4).

While this is an accurate identification of some RJ principles, it does not come close to being a comprehensive definition restorative justice.

A similar document from PEI puts the JWG Final Report into some perspective. As mentioned in the Background chapter of this thesis, the Justice Options project was a consultation project on the issue of RJ and violence against women in PEI. It is a comparable case to the one at hand. A discussion paper was produced by the project on the issue of restorative justice and violence against women. The discussion paper is organized into the following sections:

- Restorative Justice
- Values of Restorative Justice
- Types of Restorative Processes
- Violence Against Women
- Revictimization of Women
- Concerns about Restorative Justice and Violence Against Women
- Potential Benefits of Restorative Justice for Women who are Victims of Abuse (Dodd & Lund, 2002).

The discussion paper clearly contains material about RJ, material about violence against women and finally a look at their interaction. It is instructive to compare this to the main sections of the JWG Final Report:

- Background
- The Joint Working Group
- Outcomes
- Recommendations (JWG Final Report, 2005).

The background section of the report provides information on the background of the consultation, it discusses the moratorium, Rubin (2003) and the Listening Day. It does not provide background on RJ or wife abuse. As mentioned earlier the two out of the three

outcomes were process based outcomes. There is no indication anywhere in the Final

Report of the definition of restorative justice that the JWG was working from.

A possible explanation for this lack of definition is that the audience did not

warrant such a presentation. Perhaps the JWG decided that because this report was

primarily for the RJ PMC it was unnecessary to reiterate the definition of restorative

justice. Perhaps the JWG developed a shared understanding of restorative justice in their

work, but omitted that understanding from the final report. I suspect that this is not the

case, but rather that the group spent little to no time discussing the definition of

restorative justice. My suspicion is rooted in other statements from the data. The first

piece of data that leads me to believe that the JWG did not grapple with the development

of a shared understanding of RJ is the following excerpt, again, from the JWG final

report:

> The Joint Working Group highlighted the following points to address *before*
> *modeling* any safety response for the Restorative Justice Program:
> * *Move a couple steps back and define…what the first principles of RJ are,*
>   *and ensure that these inform the structures that develop.* (JWG Final
>   Report, 2005:6. Italics and bold in original).

The fact that the JWG highlighted the need to define RJ suggests to me that this was not

work that they did themselves.

The meeting notes contained several statements that spoke to confusion within the

JWG about how NSRJ operates. In a 2004 meeting, a time when the group had been

meeting for over a year, there is a note in the meeting minutes that "Pat also raised that

there were assumptions about how RJ processes were delivered which needed to be

clarified before policy discussion could proceed" (PMC Meeting Notes, July 7, 2004: 3).

This refers not to the complex work of constructing a definition of the concept restorative

justice, but confusion around the actual delivery of RJ services in Nova Scotia. A

similar comment is made in other notes:

> Much focus for this portion was on the issues brought forward by the WIJI 2001
> research document. We need an approach which allows the RJ practitioners to
> share more about the process they manage - many assumptions about how they
> carry out their work. (PMC Meeting Notes, November, 2004: 3).

A final aspect of the JWG Final report suggests to me that the group spent very

little time grappling with the definition of RJ and the operation of NSRJ. Several of the

concerns that are present in the Final Report would not be relevant had the JWG worked

out how NSRJ actually operates. In its original formulation, NSRJ dictated that gendered

violence cases would only have ever been referred to RJ post-sentence. If this had been

made clear in the JWG the section of the Final Report on the value of the criminal justice

response would not have been necessary because that response would clearly still apply.

These comments, and other data on how the research set the agenda for the JWG, led me

to a closer examination of the definition of restorative justice that was offered in the

research report.

Rubin (2003) contains no clear definition of restorative justice. The report begins

with a section entitled "Promises, silence and caution: Restorative justice literature and

women's access to justice" however, this section fails to establish a definition of RJ;

instead it begins with feminist critiques of RJ.

In depth examination of the report reveals some of the implicit understandings of

RJ that shaped this research and by extension the JWG work. Restorative justice is

conflated with mediation in this report. The statement "other analyses (especially equity-

oriented and feminist analyses) of restorative justice principles and models have been

published since at least the 1980's outlining prospective concerns that very much affirm

the continuing relevance of unanswered questions regarding impact on women"

(Rubin, 2003: 24) is footnoted to a long list of references, presumably the "other analyses

of RJ". Of seven references provided, five refer not to restorative justice, but to

mediation. The use of restorative justice was framed as inherently trivializing of abuse.

The report makes this point by quoting women's concerns, including the following:

> [Restorative justice] just sends a message to him and to me, again, that [after it was] treated as a joke the first time around, and then to go through [restorative justice] yet again you feel like it was not…serious. To me, it's just giving them one more chance to get away with what they already gotten away with.

It is indicated in an appendix of the report that a portion of the focus groups conducted

were devoted to "[d]escription of project and Restorative Justice goals and processes" but

the report itself does not contain a description of RJ goals and processes. The closest

thing to a definition that is offered comes from the published article by Rubin (2010). She

describes RJ:

> In rooms in churches and meeting halls and community justice offices, a facilitated interaction involving a victim, a violent man, and a support person for the violent man would be used to create sentencing recommendations (Rubin, 2010: 79).

The government members in this case also failed to define what exactly

restorative justice is. Some members described RJ as an "alternative way", as a

"relationship based intervention" and as fully compatible with the existing pro-arrest, pro-

charge policy on domestic violence. The data contains both sides caricaturing the other's

position on the use of RJ in cases of domestic violence. In my interviews the government

members tended to frame the women's groups as taking a "better the devil you know,

than the devil you don't" perspective on the use of the criminal justice system versus

restorative justice. Conversely the women's organizations saw government members (and

supporters of RJ in cases of gendered violence generally) as having a "it can't be any worse, may as well try it" attitude towards RJ. Generally, the data collected on this case did not contain a principled discussion or description of restorative justice.

Conclusion

This case involved two specific groups who came together in a context of suspicion and mistrust. The polarized way in which they engaged only intensified as the consultation process went forward. This led to power and control struggles over the process itself and the issues it was meant to deal with. The Final Report recommended that the moratorium remain and that a collaborative process be developed to explore how to implement some sort of RJ for cases of sexual assault and intimate partner violence. This shows very little movement and growth on the issue from the beginning of the consultation to the end.

Resolving the issue of the use of RJ in cases of gendered violence was not the only goal of the process. Another, and perhaps primary, goal was the building of a mechanism for dialogue between the government and the women's groups. Many participants did speak positively about the overall process. The work became productive as the discussion moved to substantive issues around restorative justice. The process was seen as good way to deepen the discussion around these issues, drawing on a wide variety of perspectives and knowledge bases. One participant discussed the process:

> There was a lot of talk and a lot of learning from each other. And we were able to explore these issues with the depth and sophistication that they deserved. I think it was very positive in that way (Participant).

Though most of the participants spoke highly of the process it is clear that there were tensions in the dialogue and that there were differing conclusions, perhaps based on

differing goals. By the end of the process both groups wanted to broaden the range of

participants and change the subject under discussion. The PMC was clearly ready to start

talking to different groups and people at the end of the process, as noted in PMC meeting

notes:

> Critical to this will be the recognition that the discussion needs to be framed in a
> broader context than just RJ PMC and WIJI, and in order to move towards this,
> some planning will be needed to identify who the other stakeholders and
> contributors could be, and how the process will be defined and framed (PMC
> Meeting Notes, 2005).

They do stress the importance of maintaining a relationship with WIJI. The government

wanted to move on from talking about the dangers of using RJ in cases of gendered

violence to talking about how RJ could be used. One participant commented:

> our hope was that as the process went forward we would eventually be successful
> in articulating that we don't want to see Nova Scotia throw the baby out with the
> bath water and be too restrictive in our understanding of how this type of work
> actually does hold promise for these kinds of cases, within certain parameters
> (Participant).

In an update on "Continuing the Dialogue re Domestic Violence Issues" in the PMC

notes, the focus is on how to do this work and mention is made of the "innovative work

developing in FN communities under auspices of Tripartite Forum's Justice Committee-

Working Group on Family Violence in Aboriginal Communities" being taken (PMC

Meeting Notes, January 24 2007: 2). By the end of the process it was clear that WIJI

wanted to be discussing something else. In their response to the Restorative Justice

Program review, they cautiously welcome renewed dialogue, but stressed that efforts

would be better spent talking about something other than RJ. WIJI addresses their

comments to the Department of Justice rather than the NSRJ program. They referenced a

report submitted to the Department "Justice Innovations and Women's Safety: Learning

from Specialized Courts" and argued that "policy development resources and dialogue time would be better spent on these safety-oriented directions" (WIJI Response, 2009: 15), clearly something that would happen with broader Justice stakeholders.

It seems that both of these groups used this process as a means to differing outcomes. WIJI appears to have used the process to get their foot in the door of government collaboration and co-managed policy development. The government appears to have used this process as an opportunity to begin to legitimize their movement of RJ to gendered violence cases.

Analysis

This chapter takes the empirical findings of the last chapter and examines them through the lens of governmentality theory. This analysis allows me to go beyond reconstructing what happened and moves to examining some of the "hows" and the "whys" of this case. The aim is of this chapter is twofold. I will first provide a sustained analysis of the case under study drawing on debates about power and governance. Next, I will discuss how concepts embedded in governmentality theory can contribute to discussions about violence against women and how we should respond to this social problem.

Power and Resistance

When I began the analysis of this case, I assumed that a Foucauldian conception of power and resistance would be a fruitful way to understand the interaction between the government and the women's organizations. This case appeared, at first, to be a simple example of women's organizations resisting a new government initiated program. I was therefore focused on the resistance of the women's organizations during the design stage of this thesis and throughout the data collection.

I was drawn to governmentality theory partly because of its conception of resistance. Golder & Fitzpatrick (2009), working with Foucault's ideas and writings, emphasize the importance – even the primacy – of resistance. Like Foucault they argue that because power is everywhere so too is resistance. But Golder and Fitzpatrick (2009) argue that this does not mean that power and resistance are opposite forces: "power formations ultimately derive their very content, their very being, from the impelling movement of resistance" (75). Resistance is therefore, constitutive of power (Macleod &

Durrheim, 2002). The potential for resistance is omnipresent and the exercise of it is central to power relations. Without resistance, power would cease to exist.

Some feminist scholars argue generally that this Foucauldian conception of power and resistance is highly productive for feminist analyses. Others assert that it has very little value and could even undermine the gains made by feminist theorists and activists. I assumed it would fit well with my case because feminism is, at its core, an emancipatory project, one that resists oppressive power relations. The conception of power and resistance that I have outlined above allows for the possibility of feminist resistance and points to it as a real, consequential force (McLaren, 2004). I thought this conception of resistance would help explain how the women's groups in this case were able to resist the government and also would centre their resistance as crucially important. The constitutive definition on power and resistance offered by governmentality theory would also allow me to examine and understand the consequences of the women's groups' resistance; did it modify or strengthen government power? I approached my data believing that the identification of power and resistance was a productive first step in understanding the case.

During my data analysis, I focused on the concrete strategies used by the women's organizations and government representatives to identify power and resistance in a way that was congruent with governmentality theory. Because governmentality theory focuses on the technical aspect of government and asks "by what means, mechanisms, procedures, instruments, tactics, techniques, technologies and vocabularies is authority constituted and rule accomplished?" (Dean, 1999: 31) it directed me towards strategies of power and control. I found it fairly easy to identify general trends of power

and resistance such as the announcement of NSRJ and the response of the women's groups. My analtical difficulties started when I began looking for specific techniques and tactics.

As I examined my data I realized that identifying concrete strategies of resistance and power was not an easy task. I was confronted with two problems. First of all, as I looked for concrete strategies of power and resistance, I reverted to thinking of them in a binary way as forces in opposition. In the strategies used by participants I was not seeing a complex, constitutive relationship between power and resistance. Rather I was seeing action responded to with reaction. For example, the women's groups exerted power by controlling the format of the Listening Day. The government, unhappy with that format, resisted by designing the format of the regional workshops. The second problem I had arose when trying to categorize specific techniques as either power or resistance. Strategies that were used in response to some power strategy, and thus should have been resistance, looked very much like power. I was stuck between either polarizing the technologies as opposing forces, contrary to the insight of Golder and Fitzpatrick (2009), or being unable to identify them as power or resistance at all.

Pursuing this line of analysis led me to draw unhelpful or even erroneous, conclusions about my data. I had, when thinking about the potential for resistance everywhere, framed this case as one in which women's organizations resisted government power. This became analytically uninteresting for two reasons. By looking at it this way I could focus only on power as being concentrated in the state rather than being dispersed, as governmentality theorists argue. This led to a rather common sense conclusion: the government had power and the women's groups resisted. This was also, I felt, not

empirically true. My data revealed the women's organizations to have a significant degree of control over the consultation process thus indicating something beyond mere resistance. I considered another interpretation. Perhaps, in this case, the government had resisted the women's organizations' power. This conclusion seemed to overstate the dynamic I saw in my data. To deny that the government used any power at all and simply resisted the women's organizations also seemed empirically untrue. The two concepts that I had thought central to my analysis were in fact leading me to an interpretive impasse.

I found a solution to this quandary by slightly modifying my understanding of power and resistance. In discussing the usefulness of Foucault for feminist analysis Cooper (1994) argues for a "sophisticated analysis of power that does not conceptualize it as the static exercise of a binary relationship – A exercises power in relation to B, B responds by resisting A - but rather perceives struggle, conflict and power as infinitely more complex and over-determined" (442). In her analysis, power is something that both dominant and subordinate forces can exercise. Rather than see dominant forces exercise power and subordinate forces exercise resistance she argues both are using power, "those who resist are exercising power as much as their oppressors; otherwise, by what means do they resist?" (Cooper, 1994: 442). Each exercise of power may be constituted of the opposing exercise of power, but that does not diminish its existence as power. Speaking specifically of the role for resistance in governmentality theory Rose, O'Malley and Valverde (2006) argue that there is "no single movement of resistance to power, but rather a conflict of rival programs and strategies" (100). This conception of resistance as competing power strategies shifted the way I looked at my data.

The idea that both sides in this case were involved in a process by which they resisted each other with power strategies allowed me to do several things. I was able to be more true to my data and acknowledge that the women's organizations had power. I could focus on their actions and give them agency. This does not deny that the government also had power. I did not have to make the analytically suspect statement that the government used no power, was instead simply resisting the women's groups. Instead of struggling to categorize techniques used by the two groups as either power or resistance I could look at them as competing power techniques. In this analysis I focus on how each side mobilized power and on the mentalities of governance used by both the government and the women's organizations.

Resources

I begin with an examination of the resources the two groups drew on to mobilize power. Both government and the women's organizations were able to exercise power using their status as governing authorities. Governmentality theorists have argued that while the state is a central governing authority others, such as families and churches, can also govern (Rose & Miller, 1992). They are all involved in what Garland (1997) refers to as the conduct of conduct. In the case I have studied both sides were able to frame themselves as governing authorities though the resources they need to achieve this status are quite different.

The representatives of NSRJ, in this case, were able to position themselves as "governing authorities" through their association with the state. Even though governance is dispersed it does still centralize in the state. Garland (1997) argues that "to be demarcated in public law as a state agency is to be afforded special access to legal,

economic and military resources, as well as to a special form of authority and a network of supporting organizations" (195). The government was "the" governing authority when it came to crime and this was a tremendous resource of power.

The women's organizations were also able to draw power from their status as governing authorities. They were positioned as governing authorities on the basis of their "expert" knowledge. The groups gave themselves the status of expert based on the knowledge constructed in Rubin (2003). Their past interactions with government constructed them as legitimate governing authorities on the issue of violence against women. For example, the women's organizations had been involved in the crafting of the Framework for Action Against Family Violence. They had received funding from the government to assist in governing wife abuse through their organizations and work. Clearly, the state had a history of recognizing their expertise. The status of governing authority was a large source of power for the women's organizations.

Types of Power

During my analysis of the data, I attempted to identify the types of power that were mobilized by either group in this case. I could quite clearly see the different types of power, as outlined by Foucault, implicit in the different responses to gendered violence. Garland (1997) argues that Foucault's triangle of sovereignty – discipline – government is visible in regards to crime in the construction of: "(i) the legal subject, governed by sovereign command and obliged to obey or be punished; (ii) the criminal delinquent, governed by discipline and required to conform or be corrected; and now (iii) the criminogneic situation, governed by the manipulation of interests and the promotion of mechanisms of self control" (188). Sovereign power is clearly evident in the women's

organizations' fight for the retention of the criminal justice response to wife abuse. Governmental power is present in the restorative justice response to gendered violence. While RJ does not target the criminogenic situation Pavlich (2005) argues that RJ is indicative of governmental power because it strives to hold offenders accountable mainly through their own self transformation and self control. When advocating for a particular response to violence against women, the groups are making assumptions about what kind of power needs to be mobilized.

It was not difficult to see how the different approaches to violence draw on particular forms of power, but it was a much harder task to identify the different types of power used in the consultation process. I am, in fact, unable to do so with the data I have collected. Both the theory and the data constrained my ability to make these identifications. Analyses that use governmentality theory typically focus on "the forms of rule by which various authorities govern populations, and the technologies of the self through which individuals work on themselves" (Garland, 1997: 174). They rarely look to the interactions between governing authorities and I was left with little support from the literature to examine the interactions in this case. Not only was the literature limited, so was my data. I had collected a modest amount of data on this case. Furthermore, the case was only one instance of interaction between these groups who have a larger history of working together than my case could incorporate.

Rationalities

Both groups in this case approached the consultation with certain rationalities. Political rationalities are the justifications, knowledges and ideals that are used in governance (Rose & Miller, 1992). The primary object of governance in this case was the

relationship between the state and women's organizations. Each side had different ideas about the other, their relationship and their role in the relationship. These rationalities around engagement are important in this case because they shaped the power strategies used by both groups and may have ultimately shaped the outcome of the consultation.

My data suggests that the women's organizations came to the consultation process with a rationality of resistance. Though I believe their actions are better understood as power, the organizations retained the sense of resistance. They expected to be faced with a neoliberal government working from a specific set of priorities and assumptions. They expected to be faced with the neoliberal state described in Chapter 1 and therefore they came to the table to resist it. Given these expectations, they would have probably assumed resistance as a means of countering power. The women's organizations believed that the government would exert power and they would resist. They believed that the government would dismiss their concerns, continue to download responsibilities onto the community, and sacrifice women's safety for financial savings. In response, the women's organizations would ensure that their concerns were prioritized and that there be no erosion of the legal protections for victims of gendered violence. The representatives of these groups had previously seen the state frame them as special interests and use "consultation" as lip service. They entered this case determined to resist being characterized in this way or being treated as such.

The women's groups in Nova Scotia were not alone in holding this rationality about the relationship between the state and women's groups. With the deterioration of that relationship, documented in Chapter 1, the Canadian women's movement in general

came to hold a defensive, resistance centered rationality (Dobrowolsky, 2008). Rather than being able to enact new strategies to further empower women, women's groups were forced to "spend inordinate amounts of energy and money on defensive battles" (Snider, 2006: 324) to retain those rights that they had already secured. Bumiller argues, in the American context, "the movement devoted much of its energy to keeping their current services operational in the face of declining support for all welfare programs" (Bumiller, 2008: xiv). We see a general rationality of resistance existent in the women's movement come into play in this case.

My analysis suggests that the government in this case came to the consultation process with a very different rationality. The government representatives in this case framed the process as an opportunity to build a better relationship with the women's organizations. They genuinely saw it as a "diplomatic exercise" in "bridge building" (quotes from participants). The government saw the consultation process as an opportunity to build the relationship and to build better policy, and they were open to the possibility that the knowledge and expertise of the women's groups would contribute to policy.

The language of "partnerships" seems to encapsulate what governmentality theorists call action or governance at a distance. To act at a distance the government identifies a sphere that it wants to manage and shape without direct involvement, and identifies relevant non-governmental actors to implement their agenda. Action at a distance "is made possible through the activities and calculations of a proliferation of independent agents including philanthropists, doctors, hygienists, managers, planners, parents and social workers. And it is dependant upon the forging of alliances" (Rose &

Miller, 1992: 180). In this case did the government try to build a partnership with women's organizations in order to steer the women's groups' governance of gendered violence?

Many governmentality theorists would assume that the answer is yes but I do not think this was the case. I do see this as an example of the government trying to govern at a distance. Central to my conclusion is the fact that "the government" in this case was represented by advocates of the NSRJ program. There is an argument to be made that NSRJ itself is a strategy for the Department of Justice to govern at a distance. The Nova Scotia Restorative Justice Program is firmly based in partnerships, as the Department of Justice's description of the program shows:

> The Department of Justice has entered into service agreements with a network of eight community justice agencies and one tribal organization which offers services specifically for Aboriginal youth. The community justice agencies deliver the Restorative Justice Program and Community Service Order Program services, grounding the Program in the community and bringing the voice of the wider community into the process. (Nova Scotia Restorative Justice Program, 2010).

Woolford and Ratner (2008) make the argument that informal justice processes generally are ways for the state to enact governance at a distance. However, this case did not involve the Department of Justice attempting to bring the women's groups into a partnership with NSRJ in an attempt to strengthen NSRJ as a strategy of governance.

Rather, my data shows that the NSRJ representatives in this case framed themselves primarily a community organization engaging with fellow community organizations. The government here was not looking to divest itself of any direct involvement in restorative justice, as governance at a distance entails. The government instead were looking to build a relationship with the women's groups in order to add their knowledge and ability to restorative justice. Governmentality theory does not seem to

allow for a conceptualization of partnerships beyond those involved in governance at a distance.

Technologies

Political technologies are ways of acting, responding, or governing. These technologies are born out of political rationalities; "it is through technologies that political rationalities and the programmes of government that articulate them become capable of deployment: (Rose & Miller, 1992: 183). Governmentality theorists stress that if governing authorities want to realize their mentalities they must engage in actual practices to do so. These practices can limit the degree to and manner in which those mentalities are realized (Dean, 1999). Each side in this case used specific actions in order to enact their mentalities.

The moratorium was the main technology used by the women's groups. They used it to resist the government by prohibiting the use of restorative justice in cases of gendered violence. For the women's groups the starting point of the consultation was that RJ should not be available in cases of gendered violence. The women's groups were not interested in creating a RJ policy. The remainder of the process, from the women's groups' perspective, was justifying that position and ensuring that the government endorsed it in the Final Report.

In order to resist what they anticipated as a hostile, powerful state the women's organizations ensured that their concerns were front and centre at all times. They did so through the use of their research. Knowledge is a key component in the activity of government; "governing a sphere requires that it can be represented, depicted in a way which both grasps its truth and re-presents it in a form in which it can enter the spheres of

conscious political calculation" (Rose & Miller, 1992: 182). Both sides in this case insisted that domestic violence can only be knowable (and governable) through expert knowledge. The women's organizations were able to construct knowledge through conducting research about the population of concern in this case, victims of wife abuse. In insisting that only their own research represented real women's voices, the women's organizations ensured that their priorities would be central to consultation.

The women's organizations also used protocols and rules as a technology of governance. They expected the government to use their power to control the process and they made certain that this did not happen. The women's groups insisted on rules that resulted in the micromanagement of the JWG rather than using guidelines to co-manage the group. The rules were focused on preventing the government from controlling the process. Early in the case the women's groups established the threat of public embarrassment of the government. If the women's groups were unsuccessful in their resistance within the consultation they would be able to publically resist and pressure the government through the use of the media. I interpret this resistance as a reaction to a government that the women's groups perceived as neoliberal, intent on downloading costs onto communities and lax on violence against women.

The government, working from their own rationality, employed different technologies of governance. Their goal was to build a relationship with the women's groups, and they ceded some power to the women's organizations in an effort to achieve this goal. The government did have the power, in this case, to ignore the women's concerns, dictate the terms of the consultation and frame the women's groups as irrelevant special interests. In choosing not to exercise power in this way the government

created an opportunity for relationship building. When the government did exert power it did so to create movement on policy. The government limited the agenda in order to ensure that the discussions could lead to changes that they, as mainly NSRJ representatives, could implement. For example in their decision to end the dialogue portion of the process, they cited the desire to move on to concrete policy development. The government ceded a degree of power to the women's organizations and attempted to strengthen their relationship and produce policy framing their actions as partnership building strategies.

Outcomes

Clearly the women's organizations and the government used power in different ways, motivated by different rationalities. The interaction of these different technologies led to the unfortunate result of neither party fully achieving the desired outcomes.

My data suggests that the government wanted to build a relationship and a policy. At the conclusion of this consultation they were left with a policy that forbids the use of RJ in cases of gendered violence, and a relationship with a group that has no interest in pursuing the topic. There was no movement on the policy from beginning, when the moratorium was put in place, to the end, where the moratorium remains in place. The relationship seems shaky as one of my research participants commented "I don't think there particularly has been any lasting impact". The consultation process seems to have produced little for the government.

I would argue that this, in part, is attributable to the government's unwillingness to change tactics when confronted with the women's groups' resistance. When discovering that the women's groups were not as willing to be a partner as they had

anticipated, the government seems to have handed all control over to the women's representatives even while recognizing that in doing so they sacrifice the ability to produce meaningful results. As an example, the government did not clarify to the women's groups how NSRJ services are structured and delivered. Had they made very clear that gendered violence cases could only be referred post-sentence they may have removed the basis for a lot of the women's groups concerns, especially those of losing the benefits of the current criminal justice system. No one in my interviews commented on this clear discrepancy between the reality of RJ and the consultation discussions. The government could have brought in supplementary research that would serve to counter the women's groups' research and in an effort to move the women's organizations away from their complete rejection of RJ. There are no indications that the government pursued any of these options. In attempting to build a partnership the government seems to have treated the women's groups extremely sensitively, ceding power and constructing roadblocks in the creation of policy.

The women's groups in this case also seemed to have undermined their larger interests because of how they framed their resistance. The women's groups first initiated the consultation to resist the implementation of RJ. They came together as a coalition that had focused generally on women and justice issues in the past and reenergized for this specific issue. It was not a broad based coalition that asked the government to produce a comprehensive response to domestic violence. Rather the groups exercised a narrow strategy of resistance of NSRJ. In approaching government through the specific resistance of NSRJ, they limited the scope of discussion; it became focused on only criminal justice responses to wife abuse. The women's organizations ended the consultation process

recommending the continued use of what many feminists now recognize to be a neoliberal strategy of criminalization.

The confluence of feminism and neoliberalism is not unique to this case. Kristin Bumiller argues that "the feminist alliance with the state has produced something far more significant than unintended consequences – a joining of forces with a neoliberal project of social control" (2008: 15). She argues that the type of feminist framing of wife abuse used by the groups in this case has been appropriated by the neoliberal state. This has led to a variety of negative consequence such as hyper criminalization of men, especially minority men, and the individualizing of responses to wife abuse victims in the form of medical or psychological assistance to the detriment of addressing systematic oppression (Bumiller, 2008). This case stands as a small example in the wider problem addressed by Bumiller.

The case also sheds interesting light on why feminist advocacy groups end up inadvertently strengthening the neoliberal state. In order to resist RJ the women's groups in this case argued for the retention of the criminal justice system response. The women's organizations had a specific way of thinking about wife abuse as a crime, as outlined in the last chapter. Though their rationality did contain systemic causes of and solutions to gendered violence, the focus was primarily on the individual violent men and abused women. The women's organizations framed wife abuse as committed by dangerous men against vulnerable women. Keeping individual women safe from violent men was seen as the main goal of any governing strategy. This is consistent with a feminist mentality more broadly that tends to conceptualize safety as individualized and "best met by physical distance from the perpetrator, thereby requiring temporarily if not permanent separation

of the perpetrator (through leaving the relationship and/or separation of the perpetrator from physical access to the survivor of violence)" (Kim, 2010: 201). The primary technology that follows from the women's organizations' framing of wife abuse is a criminal justice response. The use of physical force, primarily through incarceration, can provide physical separation and thus individual safety (Snider, 1998). It also serves as a symbolic message that wife abuse is wrong. The women's groups in this case ended up supporting the criminal justice system, and the sovereign power it embodies, because they understood their actions only as resistance to RJ.

Ironically, the women's organizations were forced to defend the status quo by taking a stance of resistance and refusing to talk about new, possible ways to respond to wife abuse. The discourse used by the women's organizations, the governing of dangerous/safe individuals through the use of the criminal justice system, does not challenge neoliberalism. Neoliberalism frames citizens as individuals. It locates both causes and reactions to problems in individual people and so the framing of dangerous men/safe women does not challenge it. The focus in neoliberalism on "rational, responsible and free individuals lead it to a vigorous rejection of correctional and therapeutic programmes of criminal justice" (O'Malley, 1996: 198). In this case the women's organizations' argument echoes this idea:

A unified Nova Scotia response to violence against women should:

- Take a vigorous prosecution approach, including "first time" or "low end"

- Not emphasize a treatment, therapeutic or rehabilitative approach centered on batterers (WIJI Response to the NSRJ Program review).

This type of punitive, criminal justice response to wife abuse is wholly consistent with neoliberal governance.

The government was left with policy recommendations that fit very nicely with neoliberal logic. Given this outcome, I would question the degree to which the women's groups actualized their mentality of resistance. MacLeod and Durrheim (2002) define resistance as "reverse or subjugated discourses and practices subverting hegemonic discourses and practices" (55). In this case, however, the women's organizations end with a very hegemonic discourse around the governance of wife abuse. Feminists have empancipatory discourses around wife abuse that call for less coercive criminal justice responses and that point to the extent of structural violence (Snider, 1998; Vickers, 2002). In their narrow focus on resisting RJ the women's groups in this case failed to utilize these discourses and instead turned to the punitive framing of wife abuse discussed above. The women's organizations in this case could not conceptualize their strategies as power strategies. They ended up entrenching a neoliberal discourse and state power, not because they engaged with government and were co-opted but because they engaged using only a mentality of resistance.

Conclusion

This case seems to have been an opportunity not fully realized by either party. In my reading of the data, both groups were so focused on their framing of the relationship between the state and women's groups that they did not shift their strategies when that framing proved ineffective. Both the government and the women's groups had good reason to hold the mentalities that they did. The government representative believed that they would be able to engage with the women's groups based on the community status of

NSRJ. The women's groups had been affected by the neoliberal cost cutting of other departments in the government and were justified in believing that they would be encountering more of the same in this process. It would have been advantageous, however, for these groups to have been more flexible in their mentalities when confronted with the unexpected.

The government has much to learn from the women's movement and if NSRJ wants to do work around violence against women they must engage with women's organizations. Having said that. NSRJ must be cognizant of how they approach that engagement. NSRJ may not be positioned as "the state" in the same way as other arms of the criminal justice system. However, NSRJ must appreciate that when dealing with women's groups and other non-profit community organizations they are acting in the role of the state; and they are perceived as such. I also do not mean to argue that women's organizations should disengage from the state.

I agree with Brush (2003) when she argues that "states and social policies are too important an arena of feminist mobilization to abandon simply because when we *use* state power, we may *build* state power" (129). Indeed it seems to me that this was a case in which the women's organizations could have used the state power that flows through RJ to empower women. Similarly, I think this was a case in which the government could have used the women's organizations' power around violence against women to improve their services.

Upon reflection, my initial research question may have been over ambitious for a master's thesis. The question of where women's organizations fit in contemporary conditions of governance did focus my research and I believe I have addressed what sorts

of strategies and features of the relationship facilitated the exercise of power in this case. Importantly this analysis has complicated the distinction, often assumed in the literature, between power and resistance and I urge future research to deepen our understanding of these concepts further.

My goal with this analysis, and this thesis, was to explore this case with an eye to improving interactions between these groups. My hope is that the conclusion that the focus on process and strategies of engagement used by the two groups actually limited their ability to accomplish their goals is a lesson that applies to the future of these groups and to the future of state, community group, and women's organization' engagement more generally. RJ organizations must remember that they are implementing RJ in local contexts that are politically and socially unique. While RJ practitioners may hope to do their work based only on RJ principles and free from political influence they must be aware of the context in which they do that work. Forging relationships with women's groups and other community groups will involve grappling with issues, such as power and state and community relationships, that seem extraneous to the practice of RJ. Restorative justice practitioners must be prepared to deal with these larger factors. Women's groups must be able to recognize situations in which they have power. They must be willing to abandon a mentality of resistance whenever possible. There may well be more opportunities for building genuine partnerships with the state and with other community organizations and women's groups should seize these opportunities.

Many scholars have analyzed how feminist discourses around violence against women have been appropriated by and used to the further the ends of the neoliberal state (Bumiller, 2008; Snider, 2006; Walker, 2003). My results suggest that a key component

in the appropriation process is the particular mentality around engagement that women's organizations and government bring together. An instinctive response to the absorption of feminist discourses by the state may be to further resist the state. I hope that my research has shown that instinct needs to be adjusted. Further research examining the complexities of power and resistance and the use of power by women's organizations would be extremely useful. This research should look to the use of power by women's groups in interactions with the state and also to the myriad of ways in which women's groups participate in governance.

In order to study women's groups' role in governance I argue that feminist scholars should continue to engage with governmentality theory, but should do so in a slightly different manner than they have in the past. Governmentality theory "stresses the complexity, ambiguity and the contingency of contemporary political formations to maximize the possibilities for critical responses and interventions" (Larner, 2000: 14). Feminists should use governmentality to further complicate power and resistance and look to how analyses and political strategies shift with this more complex conceptualization. Governmentality theory should also be used by feminists to look for the contingency of neoliberalism. A way in which to do this which is highlighted in the political science literature is the examination of different levels of governance. Utilizing governmentality theory to study governance at the macro, meso and micro levels may assist in finding breaks in contemporary political formulations and highlighting where women's organizations exercise power (Dobrokwolsky, 2009; Rankin & Vickers, 1998). This approach will be incredibly useful to examine, as I have here, the specific ways in which women's organizations participate in and influence contemporary political

formations. Further analyses that pay close attention to the complexity and contingency of power and resistance may produce the strategies necessary to make change that challenges, rather than reinforces the status quo.

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Appendix A: The Interview Guide

How did we get to the moratorium? I understand there was a series of consultations between the government and women's organizations, can you walk me through that process?

Potential follow up questions
> What were some of the strengths of the process?
> What were some of the weaknesses of the process?

Potential follow up questions
> Was it something that either side wanted from the beginning?
> Was it seen as an ultimate outcome or an interim measure?

I have read the report from the Joint Working Committee, how did that group form? What would a typical meeting of this group look like?

Is this a common process with community reps?

Can you tell me about the relationship between the women's organizations and the government?

Potential follow up questions
> What was it like prior to this process?
> What was/is it like after the process?
> Has it, if so how, been affected in regards to other areas?

Has there been any activity recently around this issue?

Is there anything about this that we haven't discussed that you think is important?

Appendix B: Participant Consent Form

Research Information and Consent Form

REB File #09-246

Amanda Nelund
Department of Sociology and Criminology
Saint Mary's University
Halifax, NS B3H 3C3

Would you like to be a part of my research project?
I am a graduate student in the Department of Sociology and Criminology at Saint Mary's University. As a part of my master's thesis, I am conducting research under the supervision of Dr. Diane Crocker, and I am inviting you to participate in my study. This project is being funded by the Social Science and Humanities Research Council of Canada, by a Joseph-Armand Bombardier Canada Graduate Scholarship.

This form will tell you a bit about the study, the kinds of questions I am asking and how I will protect your identity. It will ask your permission to be interviewed.

Your participation is voluntary. You may decide not to participate at any time without consequences.

What is this study about?
This study is about the consultation process which took place between women's organizations and the provincial government around restorative justice. This case will be analyzed to get at larger issues around interactions between women's groups and governments more generally. I am interested in looking at several aspects of the consultation process:
- o   What did it look like?
- o   What were strengths and weaknesses of the process?
- o   What was the relationship between the two groups before, during and since the consultation process?
- o   How was the moratorium developed?

Who is being invited to participate?
I am inviting individuals who were directly involved in the consultation process as *either* a member of government or a member of a participating women's group. Members of both groups are being asked to participate in order to get a holistic understanding of the process.

What will I have to do?
This project involves me interviewing you. These interviews will take place face to face in a location of your choosing and they will last approximately 1-2 hours. The interview will be recorded and transcribed in full by myself. You can decide not to answer any

question that makes you uncomfortable and you can end the interview at any time. If you choose to end the interview it will be your decision as to whether I keep the information you did give me or I destroy that information and not use it in my project. All identifying information obtained in this study will be kept confidential.

How will you protect my identity?
I will protect your identity in many ways:
- o   I will store the consent forms in a locked filing cabinet separate from the interview transcripts
- o   If you say anything that could identify you during the interview I will not include it in the transcript
- o   Anything stored on a computer will be password protected
- o   I will destroy records of these interviews five years after I have presented the results in my thesis
- o   I will present the results in my thesis in aggregate form, you will only be identified as being a member of either group eg "A member of the women's organization commented that…"
- o   I will give the transcripts to you before I begin my analysis and you can remove any information that you feel could identify you
- o   I will give you any direct quotes that I will be using in my thesis to ensure they do not contain any identifying information
- o   Your transcripts will only be looked at by myself and potentially my supervisor

What are the potential risks?
There are no physical risks associated with your participation in this project. A potential risk is that, because the governmental and non-profit communities are relatively small, someone else in these communities may recognize some of your views/experiences. In order to mitigate this risk I will be taking very seriously the commitments to protecting your identity that I have outlined above. If there are any questions that you feel uncomfortable answering you may choose not to respond. You will be able to remove any potentially identifying material from your transcript. Your participation is completely voluntary. You may end the interview at any time without penalty.

What are the potential benefits?
Taking part in this study will not help you directly. You contribution will help construct a public record of an important political consultation. You may also find it useful to reflect on the consultation process and have an outsider examine the process as it may lead to better interactions in the future.

How can I withdraw from this study?
There are several points at which you may withdraw from the study. You may, after reading this, choose not to participate in which case there will be no record of my inviting you to participate. You may, at any time during the interview, end your participation. Anything you have told me at this point will be destroyed. You may, upon receipt of your transcript, choose to withdraw the entire transcript in which case it will be destroyed. Once the analysis process has taken place it will impossible to remove the information

you have provided but I can ensure that none of your direct quotes are put into my thesis. Your participation throughout the project is voluntary and there will be no penalty or consequences for your withdrawal.

What if I have questions or concerns after the interview?
If you have any questions or concerns after the interview please feel free to contact me at amanda.nelund@smu.ca or my supervisor at diane.crocker@smu.ca .

Certification:
This research has been reviewed and approved by the Saint Mary's University Research Ethics Board. If you have any questions or concerns about ethical matters, you may contact Dr. Veronica Stinson, Chair of the Saint Mary's University Research Ethics Board at ethics@smu.ca or 420-5782.

I understand what this study is about and appreciate the risks and benefits. I have had adequate time to think about this and have had the opportunity to ask questions. I understand that my participation is voluntary and that I can end my participation at any time.

Participant's Signature:_____   Date:_____

Please keep one copy of this form for your own records.