RESTORING JUSTICE
An Introduction to Restorative Justice

Daniel W. Van Ness
Karen Heetderks Strong
Restoring Justice: An Introduction to Restorative Justice
Fourth Edition

Matthew Bender & Company, Inc., a member of the LexisNexis Group
New Providence, NJ

ISBN: 978-1-4224-6330-7
Phone 877-374-2919
Web Site www.lexisnexis.com/anderson/criminaljustice

All rights reserved. No part of this book may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from the publisher.

LexisNexis and the Knowledge Burst logo are trademarks of Reed Elsevier Properties, Inc.
Anderson Publishing is a registered trademark of Anderson Publishing, a member of the LexisNexis Group

Library of Congress Cataloging-in-Publication Data

Van Ness, Daniel W., 1949-
p. cm.
Includes bibliographical references and index.
ISBN 978-1-4224-6330-7 (softbound)

HV8688.V36 2010
364.6’8—dc22
2010000284

Cover design by Tin Box Studio
Cincinnati, OH
We dedicate this fourth edition to Brenda Van Ness and Gregory Strong, who have helped us learn how shalom is made in daily life.
Comments on Previous Editions of Restoring Justice

As a crime victim, victim advocate, and long-time supporter of restorative justice values and principals, I found Restoring Justice to be an excellent resource for anyone interested in the complex world of restorative justice history, processes, and ideas. Bravo to Dan Van Ness and Karen Strong for offering a balanced approach to restorative justice that understands “real” justice is about repairing the harm and healing those who have been harmed by crime: victims, offenders, and communities. Restoring Justice is a well-written and quite often inspirational book!

Ellen Halbert, Director, Victim/Witness Division, Travis County District Attorney’s Office, Austin, Texas Editor, the Crime Victims Report, a national newsletter

At each edition of Restoring Justice, Daniel Van Ness and Karen Heetderks Strong set the standard and make their volume one of the basic books—or perhaps the basic book—on restorative justice.

Their book reflects the richness of the restorative justice approach, through process analyses with clinical relevance, theoretical thinking with social ethical and social significance, principled exploration on juridical options, and a broad sociological context analysis. Van Ness and Heetderks Strong colour this broad interdisciplinary picture with their own visions and options. In doing so, they deliver a crucial contribution to understanding restorative justice principles and their proper implementation.

Restoring Justice is the result of intensive commitment to the values of restorative justice, balanced with a constructive critical mind for possible problematic implementations, and openness for unanswered questions and unresolved difficulties. It is a landmark in the restorative justice literature.

Lode Walgrave
Professor Emeritus
Catholic University of Leuven
[In Restoring Justice, Dan Van Ness and Karen Strong] challenge researchers and scholars to move beyond measuring only recidivism as the ultimate outcome of evaluation, and victim and offender satisfaction as the primary intermediate measures. Based on this work, we may now instead build upon core principles to develop dimensions and measures of process integrity, as well as theoretical dimensions to assess intermediate outcomes for victim, offender and community.

Gordon Bazemore  
Professor of Criminology and Criminal Justice  
Florida Atlantic University

Restoring Justice is the best, most thorough text on the most important development in the justice system in the last decade: restorative justice. . . . a seminal work. . . . this book does a wonderful job of describing the rationale, presenting the arguments, confronting the criticisms. . . . provides a measured, reliable statement on our need to restore justice.

Todd Clear, Professor of Criminal Justice  
John Jay College of Criminal Justice

. . . a great introductory overview of restorative justice . . . easily understood while also providing significant depth. . . . draws together the significant insights in the field while making several new contributions. . . . invites and encourages change without alienating people who are currently working in the field. I recommend Restoring Justice for both the novice and the seasoned restorative justice reader.

Ron Claassen, Director  
Center for Peacemaking and Conflict Studies  
Fresno Pacific University

. . . an exceptionally good job of clearly articulating the underlying principles and values of restorative justice, including many practical examples. This book will serve as a primary resource for scholars and practitioners involved in the restorative justice movement as it continues to expand.

Mark Umbreit, author of Victim Meets Offender  
Professor, School of Social Work  
University of Minnesota
Restoring Justice is an introduction to the theory and practices of restorative justice. Since the publication of the previous editions in 1997, 2002, and 2006, restorative justice has continued to develop worldwide. We have accordingly updated this edition to include the significant contours of these developments.

Our work on restorative justice began in the mid-1980s when the criminal justice advocacy organization we worked for undertook development of a model built on what was then a largely unknown and incomplete theory called restorative justice. The organization was Justice Fellowship, a criminal justice reform organization affiliated with Prison Fellowship Ministries (both of us now work for other affiliated organizations in the Prison Fellowship movement).

The first step involved articulating what seemed to be the core principles of restorative justice. This took months of work and involved not only our team at Justice Fellowship but also criminal justice practitioners, researchers, elected officials, academics, theologians, and concerned laypersons. After working sessions and multiple drafts, we settled on three basic principles, similar to those proposed in Chapter 3. Then began a three-year project to research and write systematically about the theory undergirding restorative justice, the principles and values guiding its application, and particular programs to bring it into being. These were developed using a similar approach of working sessions, multiple drafts, and external review. Our purpose then was to help Justice Fellowship focus its reform efforts by identifying significant public policy implications of this new theory.

Interest in restorative justice kept growing, and we worked with Anderson Publishing to revise and enhance our internal work to engage a broader audience. Since publication of Restoring Justice in 1997, the movement has both deepened and widened with substantial developments in the concepts, policies, and practices related to restorative justice.

At every stage of our journey with restorative justice we have benefited from the insights, questions, research, writings, experience, and practical contributions of scholars and practitioners around the globe. Our best ideas are the result of interaction with the remarkably generous, creative and courageous people in this field. Although these individuals
may not agree with all of our conclusions, their contributions have enriched and strengthened our work and that of restorative justice advocates and practitioners around the world.

We especially want to thank former colleagues at Justice Fellowship who helped us research and write “Restorative Justice: Theory, Principles, and Practice,” printed and copyrighted by Justice Fellowship in 1989 and 1990. Ideas and portions of these manuscripts are reflected in this book, by permission from Justice Fellowship and our co-authors. As we have prepared each edition of Restoring Justice, we have been continually reminded of the formative and highly meaningful interaction among these individuals as we worked together to challenge, articulate, and refine ideas about restorative justice and their implications. Thomas Crawford poured himself into the project, cultivating personal and intellectual excellence in the process. Lisa Barnes (now Lampman) kept asking the tough questions and pressing for clarity. David R. Carlson played a crucial role in the formulation of the three original Justice Fellowship principles of restorative justice and the development of “Restorative Justice: Theory.” Kimon Sargeant and Claire Souryal assisted in researching and writing “Restorative Justice: Principles and Practice.” Dorothea Jinnah was invaluable as a precise, resourceful, and ever-thoughtful researcher and colleague. Thanks, too, to Ed Hostetter for his online searches and project help. We also thank Lynette Parker and Gregory Strong for their work in facilitating wide access to the excellent resources available at http://www.restorativejustice.org, both as a benefit to us in preparing this updated edition of Restoring Justice, and as a resource to others, worldwide. We are indebted to these co-laborers (and others, too many to name) for their hard work and insightful perspectives.

We are grateful for those at Anderson Publishing Co. (now part of the LexisNexis group) who have been instrumental in bringing Restoring Justice to press and to the attention of readers since 1997. Mickey Braswell cajoled, encouraged, and constructively criticized as we completed the first edition and helped us see the need and potential for the subsequent ones. Ellen S. Boyne applied her adept editing and refining skills to good effect. Carla Hoskins and Kelly Grondin have helped us understand the mysteries of marketing and esoteric matters like translation rights. We have enjoyed working with them all.


In the following chapters we consider why so many people around the world believe that criminal justice is in need of a new vision, and offer a brief history and timeline of significant milestones in the development of restorative justice. We present our understanding of the meaning of restorative justice and explore its conceptual and practical cornerposts. We then explore how restorative justice ideas and values are being (and might be) integrated into policy and practice. Finally, we outline issues that are commonly raised about restorative justice, and summarize various perspectives related to each issue.

As will be clear in Chapter 2, we certainly do not claim to be the first or principal proponents of restorative justice. We are encouraged by the growth of interest in restorative justice worldwide, and the many and diverse examples of its development and practice. Therefore, it is our desire that this volume may benefit those who are exploring restorative justice and encourage practical implementation of its principles, values, and programs in a wide variety of contexts.

We are learners and sojourners in the work of restorative justice. Most of what we have come to understand we received from others. We would like to thank the generous people who have gone before us, including the aboriginal peoples of the world who have preserved restorative approaches for centuries, and also the wonderful people who travel the road with us today. Most of all, we are grateful to Jesus Christ who steadily leads us into deeper understanding of, and appreciation for, true peace—shalom.

Daniel W. Van Ness
Karen Heetderks Strong
November 2009
# Table of Contents

Dedication iii  
Comments on Previous Editions of *Restoring Justice* v  
Foreword vii  

**Part One**  
The Concept of Restorative Justice 1  

**Chapter 1**  
Visions and Patterns: How Patterns of Thinking can Obstruct Justice 3  
   - An Ancient Pattern 6  
   - A Shift in Thinking 9  
   - Critiques Pointing to a New Pattern 12  
      - Informal Justice 12  
      - Indigenous Justice 13  
      - Restitution 14  
      - Victim’s Rights and Assistance 15  
      - Prison Abolition 16  
      - Social Justice 17  
   - Conclusion 18  
   - Notes 18  

**Chapter 2**  
A Brief History of Restorative Justice: The Development of a New Pattern of Thinking 21  
   - The Term “Restorative Justice” 21  
   - Explorers of Restorative Justice Theory 24  
   - Programs Offering Restorative Processes 26  
      - Victim-Offender Mediation 26  
      - Conferencing 28  
      - Circles 29  
   - Incorporation of Restorative Justice into Criminal Justice Systems 30  
   - Timeline of Significant Developments Related to Restorative Processes 31  
   - Conclusion 39  
   - Notes 39  

**Chapter 3**  
Restorative Justice: Justice That Promotes Healing 41  
   - Definition of Restorative Justice 41  
   - Principles of Restorative Justice 43
Values of Restorative Justice 47
Restorative Justice or Restorative Practices? 50
Restorative Justice as Opposed to What? 50
Does Restorative Justice Work? 53
Restorative Justice: A Visual Model 54
Conclusion 58
Notes 59

Part Two
The Cornerposts of Restorative Justice 61

Chapter 4
Encounter 63
  Mediation 66
  Conferencing 68
  Circles 69
  Impact Panels 71
  Elements of Encounter 73
  Issues 75
    Minimizing Coercion 75
    Parties Involved 76
    Accountability for Conduct and Outcomes of Encounters 80
  Conclusion 81
  Notes 81

Chapter 5
Amends 83
  Apology 85
  Changed Behavior 86
  Restitution 87
  Generosity 88
  Issues Related to Restitution 89
    Who Should Receive Restitution? 89
    Should Restitution Reflect the Seriousness of the Offense or of the Injury? 92
    For Which Injuries Should Restitution be Provided? 93
    When Restitution is Not Feasible 93
  Conclusion 95
  Notes 96

Chapter 6
Reintegration 97
  Victims 99
  Offenders 101
  Reintegration 103
  Building a Reintegrative Response 104
  Reintegrating Communities 106
    Support and Assistance Groups 106
    Faith Communities as Reintegrating Communities 108
# Table of Contents

## Part Two

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td><strong>Inclusion</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Restorative Justice and Inclusion</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>Victim Inclusion in the Criminal Justice System</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information</td>
<td>120</td>
</tr>
<tr>
<td></td>
<td>Presence in Court</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td>Victim Impact Statements</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>Giving the Victim Legal Standing to Participate in Criminal Proceedings</td>
<td>123</td>
</tr>
<tr>
<td></td>
<td>The History of Victim Involvement in Criminal Cases</td>
<td>124</td>
</tr>
<tr>
<td></td>
<td>The Professionalization of Justice Reduces the Victims’ Role</td>
<td>128</td>
</tr>
<tr>
<td></td>
<td>Victim and Prosecutor</td>
<td>130</td>
</tr>
<tr>
<td></td>
<td>Victim Participation at Various Stages of Criminal Proceedings</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td>Investigation</td>
<td>133</td>
</tr>
<tr>
<td></td>
<td>Arraignment through Presentencing</td>
<td>133</td>
</tr>
<tr>
<td></td>
<td>Plea Bargaining</td>
<td>134</td>
</tr>
<tr>
<td></td>
<td>Sentencing</td>
<td>134</td>
</tr>
<tr>
<td></td>
<td>Post-Sentencing</td>
<td>135</td>
</tr>
<tr>
<td></td>
<td>The Victim as Civil Claimant in Criminal Cases</td>
<td>135</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>136</td>
</tr>
<tr>
<td></td>
<td>Notes</td>
<td>137</td>
</tr>
</tbody>
</table>

## Part Three

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td><strong>Making Restorative Justice Happen</strong></td>
<td>141</td>
</tr>
<tr>
<td></td>
<td>Building Support for Restorative Justice</td>
<td>141</td>
</tr>
<tr>
<td></td>
<td>Develop a Credible Coalition</td>
<td>143</td>
</tr>
<tr>
<td></td>
<td>Pursue Strategic Goals</td>
<td>145</td>
</tr>
<tr>
<td></td>
<td>Revisit the Vision and Evaluate Impact</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Realign Vision and Practice</td>
<td>151</td>
</tr>
<tr>
<td></td>
<td>Stay Connected</td>
<td>152</td>
</tr>
<tr>
<td></td>
<td>Expect Resistance</td>
<td>152</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>154</td>
</tr>
<tr>
<td></td>
<td>Notes</td>
<td>154</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td><strong>Toward a Restorative System</strong></td>
<td>155</td>
</tr>
<tr>
<td></td>
<td>Uses of Restorative Justice Processes in Contemporary Criminal Justice</td>
<td>155</td>
</tr>
<tr>
<td></td>
<td>Five System Models and “Restorativeness”</td>
<td>159</td>
</tr>
<tr>
<td></td>
<td>A Framework for Assessing the “Restorativeness” of a System</td>
<td>163</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>172</td>
</tr>
</tbody>
</table>
Part One

The Concept of Restorative Justice
The young woman watched intently as the man who raped her was sentenced to prison. But as the rapist was escorted from the courtroom, it was clear to Justice John Kelly that she was no less distraught than she had been throughout the court proceedings. So before the next case was called, Justice Kelly asked the victim to approach the bench. He spoke with her briefly and quietly about what had happened, and concluded with these words: “You understand that what I have done here demonstrates conclusively that what happened was not your fault.” At that, the young woman began to weep and ran from the courtroom. When Justice Kelly called the victim’s family several days later, he learned that his words had been words of vindication for the woman; they marked the beginning of her psychological recovery. Her tears had been tears of healing.

A short time later, this Australian judge spoke at an international conference on criminal law reform held in London. Speaking to 200 judges, legal scholars, and law reformers from common law countries, he laid aside his prepared comments and spoke with great feeling about the need for criminal law practitioners to see themselves as healers. A purpose of criminal law, he said, should be to heal the wounds caused by crime—wounds such as those of the rape victim for whom even the offender’s conviction and sentencing had not been enough.

The rehabilitation model of criminal justice has been by far the most influential school of thought in criminology in the last 200 years. Although the model fell into disrepute among criminal justice policy-makers in the latter decades of the twentieth century, opinion surveys suggest that the desire to rehabilitate offenders remains strong among members of the general public, and even many crime victims. At a fundamental level we recognize that criminal justice should consider not only whether accused offenders have violated the law but also why they have done so. However, even when rehabilitation programs are helpful in
addressing the underlying problems that led to the decision to commit a crime, those programs fail to address all the injuries surrounding the crime. Crime is not simply lawbreaking; it also causes injury to others. While it may be the manifestation of an underlying injury; it also creates new injuries. A purpose of criminal justice should be, in Justice Kelly’s words, to heal those injuries.

As we will see, these injuries exist on several levels and are experienced by victims, communities, and even offenders. The current policies and practice of criminal justice focus almost entirely on the offender as lawbreaker, filtering out virtually all aspects of crime except questions of legal guilt and punishment. This is because a set of assumptions, or a pattern of thinking, structures our perception of crime and, consequently, our sense of what a proper response should be. Howard Zehr’s description of paradigms is pertinent here: “They provide the lens through which we understand phenomena. They shape what we ‘know’ to be possible and impossible. [They] form our common sense, and things which fall outside . . . seem absurd.”

Patterns of thinking are necessary because they give meaning to the myriad bits of data we must deal with in life. Edward de Bono illustrates this using the example of a person crossing a busy road: “If, as you stood waiting to cross the road, your brain had to try out all the incoming information in different combinations in order to recognize the traffic conditions, it would take you at least a month to cross the road. In fact, the changing conditions would make it impossible for you ever to cross.” To avoid this problem, the brain uses “active information systems” to organize data into patterns of thinking that allow us to quickly make sense out of the chaos of information that would otherwise overwhelm us. A pattern of thinking is like the collection of streams, rivulets, and rivers formed over time in a particular place by the rainfall; once the pattern of water runoff is established, rainwater will always flow there, and nowhere else.

However, the reason for their usefulness is also a fundamental weakness of patterns: they limit the data we perceive. We see only what makes sense in the pattern; we simply do not recognize “absurd” information. Therefore, one sign that a pattern of thinking has become deficient is that we increasingly encounter troublesome data that do not fit. We are then forced to make a choice: disregard that evidence or seek a new pattern. For example, at one time scientists believed that the Earth was flat and that the universe revolved around it. However, as astronomers recorded the actual movement of
heavenly bodies, this model became less and less satisfactory. When
Copernicus proposed that the Earth revolves around the sun—not the
other way around—his model offered a much more satisfactory explana-
tion of observable data.

It is normal to think that the way we understand or do something is
not only the right way but the only way, until we encounter other
approaches and recognize that they present alternatives. We may not
adopt those alternatives, but the benefit to having encountered them is
that we realize we have choices. This is why some people travel, read,
watch television programs, go to museums, or listen to music. They are
“broadening their horizons”—discovering that other people in other
times and places have made different choices, and that those choices have
had consequences. And even as they experience the differences, they also
notice things they have in common, and may come to a changed under-
standing of what it means to be human.

In other words, exposure to other ways of doing things helps us rec-
ognize patterns of thinking, allows us to reflect on alternative approaches,
and offers us the opportunity to make choices.

Consider criminal justice. When we hear about a crime, we know that
there are probably victims, people who were harmed by the crime. We also
know that there are laws to protect those people, and that the offender
should be caught and held accountable for breaking those laws. We are not
surprised that criminal cases involve government prosecution of suspected
offenders to determine whether they did in fact break the law. Nor are we
surprised when guilty offenders are sent to prison as punishment or “given
a break” and placed on probation. We may have opinions about whether
the suspect was actually guilty or about the sentence, but we seldom if ever
question the underlying assumptions of the process: crime is lawbreaking;
the focus after crime should be on the suspected offenders, and once found
guilty they should have their liberty taken away or curtailed in some way.

Yet nagging questions surface from time to time, prompted by events or
intuitions that do not fit neatly within the pattern. Perhaps the most pro-
found and obvious ones have to do with victims of crime. Why are some so
dissatisfied with how the criminal justice system treats them? Is it wrong
when victims want to have a say in how the police conduct the investigation,
or how the prosecutor presents the case, or what sentence the judge gives the
offender? Why isn’t it enough for them to sue the offender in civil court?

And what about the high rate of recidivism—repeat offending—
among offenders? As we will see shortly, the institutions of criminal jus-
tice were developed in large part to achieve rehabilitation. For two
centuries, Americans and Europeans have experimented with a succes-
sion of programs to accomplish this purpose. Every such attempt has
ended in disappointment. Why is that so, and isn’t there something we
could do differently to get better results? If not, then shouldn’t we be
trying something different?
What we suggest in this book is that the way we think about crime is inadequate. By defining crime as lawbreaking and then concentrating on the resulting adversarial relationship between government and the criminal offender, we fail to address—or even recognize—certain fundamental reasons for, and results of, criminal behavior. Adding new programs to an inadequate pattern of thinking is not enough if what is needed is a different pattern. That is what this book proposes.

It is not as though our current approach to criminal justice is the only one; there have been times and places when crime was viewed far more comprehensively—as an offense against victims, their families, the community, and society. The goal of justice was to satisfy the parties, and the way to do that included making things right by repairing the damage to those parties, whether the damage was physical, financial, or relational. This is different from an approach that defines crime solely as an offense against the government, and whose goal is crime prevention through rehabilitation, incapacitation, and deterrence.

Let us explore these patterns more closely.

An Ancient Pattern*

The legal systems that form the foundation of Western law did not view crime simply as a wrong to society. Although crime breached the common welfare so that the community had an interest in—and responsibility for—addressing the wrong and punishing the offender, the offense was not defined solely as a crime against the state, as it is today. Instead, it was also considered an offense against the victim and the victim’s family. Consequently, offenders and their families were required to settle accounts

---

* Some commentators have argued that restorative justice proponents use history selectively, offering a partial and misleading account of the past in an effort to legitimate restorative justice. (See for example, Douglas J. Sylvester, “Myth in Restorative Justice History,” Utah Law Review 2003(1): 471–522, and Kelly Richards, “Exploring the History of the Restorative Justice Movement,” paper presented at the 5th International Conference on Conferencing & Circles, organized by the International Institute for Restorative Practices, August 5–7, 2004, Vancouver, Canada). We are not historians, and our purpose here is not to offer a complete view of criminal justice in the past. The systems that included restitution, that gave an important status to the needs of victims, and that sought to repair broken relationships within communities also had other elements that were nothing like restorative justice. Furthermore, powerful victims received different treatment than those who were poor and powerless. We agree that it is important not to view the past with rose-tinted glasses.
with victims and their families in order to avoid cycles of revenge and violence. This was true in small non-state societies, with their kin-based ties, but attention to the interests of victims continued after the advent of states with formalized legal codes. The Code of Hammurabi (c. 1700 B.C.E.) prescribed restitution for property offenses, as did the Code of Lipit-Ishtar (1875 B.C.E.). Other Middle Eastern codes, such as the Sumerian Code of Ur-Nammu (c. 2050 B.C.E.) and the Code of Eshnunna (c. 1700 B.C.E.), provided for restitution even in the case of violent offenses. The Roman Law of the Twelve Tables (449 B.C.E.) required thieves to pay double restitution unless the property was found in their houses, in which case they paid triple damages; for resisting the search of their houses, they paid quadruple restitution. The Lex Salica (c. 496 C.E.), the earliest existing collection of Germanic tribal laws, included restitution for crimes ranging from theft to homicide. The Laws of Ethelbert (c. 600 C.E.), promulgated by the ruler of Kent, contained detailed restitution schedules that distinguished the values, for example, of each finger and its nail. Each of these diverse cultures retained an expectation that offenders and their families should make amends to victims and their families—not simply to ensure that injured persons received restitution but also to restore community peace.

This is suggested, for example, by the language of the Hebrew Scriptures, in which restitution played an important role.* In these writings, the word “shalom” was used to describe the ideal state in which the community should function.** It meant much more than absence

---

* The reason for this short historical review is to demonstrate two things. First, at one
time societal responses to crime included elements that until recently were entirely
omitted from contemporary criminal justice. The second reason is strategic. Restorative
 justice is sometimes discounted on first hearing as an outlandish, naïve attempt to
accomplish something impossible. Anecdotes are somewhat useful in countering this,
but they can be discarded as exceptional cases. So the appeal to those elements of legal
history that are similar to restorative justice themes is an appeal to suspend any imme-
diate judgment that these themes are strange, untested, and never-before-conceived-of.
The argument we make in this chapter is that a reason we may discount the ideas
behind restorative justice is because we unknowingly operate within a pattern of
thinking that leads us to this conclusion. There are in fact other possible patterns of
thought.

* See, for example, Exodus 22 and Leviticus 6. Restitution did not necessarily mean that
justice was done. A Psalm attributed to King David complained that he was forced to
restore what he had not stolen (Psalm 69:4). But the idea of restitution was so well
accepted that it forms the backdrop of a New Testament story about a corrupt tax
collector (Luke 19) and another about a runaway slave (Philemon).

** We distinguish “shalom” from the irrational belief that the world is basically a safe and just
place in which to live. Psychologist Melvin Lerner has concluded that humans need to
believe that people basically get what they deserve, that the world is just and safe even when
events suggest otherwise. This self-delusion, Lerner argues, is necessary in order for people
to function in their daily lives. Melvin J. Lerner, The Belief in a Just World: A Fundamental
of conflict; it signified completeness, fulfillment, and wholeness—the existence of right relationships among individuals, the community, and God. It was a condition in which, as Ron Claassen has said, no one is afraid.

Crime is the opposite of shalom, rupturing right relationships and creating harmful ones. While restitution formed an essential part of the justice process it was not understood to be an end in itself. The Hebrew word for restitution, “shillum,” comes from the same root as shalom, implying that it was related to the reestablishment of community peace. Along with restitution came the notion of vindication of the victim and the law itself. This concept was embodied in another word derived from the same root as shalom and shillum: “shillem.” Shillem can be translated as “retribution” or “recompense,” not in the sense of revenge (that word comes from an entirely different root), but in the sense of satisfaction or vindication.*** In short, a purpose of the justice process was, through vindication and reparation, to restore a community that had been sundered by crime.

This view of justice is not confined to the distant past. Pre-colonial African societies were apparently willing to forgo punishment of criminal offenders in order to resolve the consequences to their victims and the community. Many sanctions were compensatory rather than punitive, intended to restore victims to their previous position. Contemporary Japanese culture exhibits a similar emphasis on compensation to the victim and restoration of community peace. The approach (as we will see later) involves a process that has been referred to as “confession, repentance and absolution.” Indigenous populations in North America, New Zealand, Australia, and elsewhere are finding ways their traditional approaches to crime, which have similarities to restorative justice, might exist in the context of the dominant Western legal system.

Delusion (New York: Plenum Press, 1980), 11–15. But the Hebrew word “shalom” does not imply a delusional belief that all is well. To hold healing and shalom as goals for society’s response to crime is to recognize that hurt and injustice do exist, and that they must be healed and rectified.

*** How is it that a root word meaning “wholeness and unity, a restored relationship” could produce derivatives with such varied meanings in the Hebrew Scriptures? “The apparent diversity of meanings . . . can be accounted for in terms of the concept of peace being restored through payment (of tribute to a conqueror, Joshua 10:1), restitution (to one wronged, Exodus 21:36), or simple payment and completion (of a business transaction, II Kings 4:7). The payment of a vow (Psalm 50:14) completes an agreement so that both parties are in a state of shalom. Closely linked with this concept is the eschatological motif in some uses of the term. Recompense for sin, either national or personal, must be given. Once that obligation has been met, wholeness is restored (Isaiah 60:20, Joel 2:25).” G. Lloyd Carr, “Shalom,” in R.L. Harris et al., eds., Theological Wordbook of the Old Testament (Chicago: Moody Press, 1980), 931.
A Shift in Thinking

For all of its tradition, this approach to criminal justice is unfamiliar to most of us today. As tribal societies in Europe were united into kingdoms under feudal lords, rulers took an increased interest in reducing sources of conflict, and the interests of victims began to be replaced by the interests of the state in the resolution of those conflicts. By the middle of the ninth century, fines paid to the state had replaced restitution as the financial sanction of choice. For common law jurisdictions, the Norman invasion of Britain marked the turning point in this changing understanding of crime. William the Conqueror and his successors found the legal process an effective tool for establishing the preeminence of the king over the Church in secular matters, and in replacing local systems of dispute resolution. The *Leges Henrici Primi*, written early in the twelfth century, asserted royal jurisdiction over offenses such as theft punishable by death, counterfeiting, arson, premeditated assault, robbery, rape, abduction, and “breach of the king’s peace given by his hand or writ.”

Thus, the king became the paramount crime victim, sustaining legally acknowledged (although symbolic) injuries. The actual victim was ousted from any meaningful place in the justice process, illustrated by the redirection of reparation from the victim in the form of restitution to the king in the form of fines. With the new political structure, a new model of crime emerged, one in which the government and the offender were the sole parties. This model brought with it a new
purpose as well: rather than making the victim whole, the system focused on upholding the authority of the state. Instead of repairing past harm, criminal justice became future-oriented, attempting to make offenders and potential offenders law-abiding. It is not surprising, then, that restitution, which is both past-oriented and victim-centered, was eventually abandoned, with fines, corporal punishment, and the death sentence taking its place as the central responses to wrongdoing. Whipping, the stocks, branding, and other forms of public retribution not only inflicted physical pain on offenders but served to humiliate them as well and, it was hoped, to dissuade them and others from engaging in similar behavior in the future.

Partially in reaction to this increasingly brutal treatment of offenders, reformers began to call for a different approach to the punishment of offenders. In the eighteenth century, progressive thinkers in England, such as Henry Fielding, John Howard, and Jeremy Bentham, called for segregation of offenders from their criminogenic environments, much as doctors would quarantine persons with a contagious disease. Like good doctors, they proposed a treatment for those offenders that would focus on “correction of the mind.” In the United States, like-minded reformers convinced policymakers to implement this rehabilitative model of sentencing. With that model emerged an institution that, while novel at that time, has become a symbol of the criminal justice system itself: the prison. Prior to 1790, prisons were used almost exclusively to hold offenders until trial or sentencing, or to enforce labor while a person worked off debts. Reformers in Philadelphia, aghast at the cruelty of contemporary punishments and jail conditions, and stirred by the belief that criminals were the products of bad moral environments, succeeded in persuading local officials to turn the Walnut Street Jail into what they called a “penitentiary,” or place of penitence.

How did they arrive at the idea of imprisonment as the vehicle for reform? It appears they drew from the use of confinement in monasteries beginning as early as the fourth century. Initially confinement was to the monk’s room but over time special rooms were built to hold those who needed time for reflection and change.

The 1787 preamble to the constitution of the Philadelphia Society for Alleviating the Miseries of Public Prisons clearly stated their intention not only to save offenders from dehumanizing punishment, but also to rehabilitate them.

When we consider that the obligations of benevolence, which are founded on the precepts of the example of the author of Christianity, are not canceled by the follies or crimes of our fellow creatures . . . it becomes us to extend our compassion to that part of mankind, who are the subjects of these miseries. By the aids of humanity, their undue and illegal sufferings may be prevented . . . and such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing
habits of vice, become the means of restoring our fellow creatures to virtue and happiness.

Prisoners at this penitentiary were isolated in individual cells, away from the immoral elements of society. They were given a Bible and time to contemplate it. Yet, by the early 1800s, prisons were already being denounced. “Our state prisons as presently constituted are grand demoralizers of our people,” concluded a New York lawyer. This, however, did not discourage prison advocates; if isolation did not achieve the goals of repentance and rehabilitation, then perhaps other measures would work. Succeeding generations of prison reformers moved from theories of repentance to those of hard work, then of discipline and training, and eventually of medical and psychological treatment. Each generation of reformers was disappointed as prisoners proved to be unchanged by their particular model of rehabilitation. As a result of this history, since the mid-1970s many criminal justice policymakers have concluded that rehabilitation is simply an impossible goal, and that pursuing it is a failed policy.

Commentators have offered a variety of practical and conceptual explanations for why rehabilitative programs have not met the expectations of their advocates. The practical explanations have ranged from inadequate funding to improper screening of participants. A challenge to the conceptual underpinnings of the model has been that it reflected an overly optimistic view of human nature—that people are morally good and make bad choices only because of their circumstances. The rehabilitation model was predicated on the assumption that if an individual’s social environment improves, or his or her psyche becomes healthy, that person will naturally make the right choices. Further, it assumed that the state could identify those deficiencies and force the individual to receive treatment that would be effective even though compelled.

Unfortunately, contemporary dissatisfaction with the rehabilitation model of sentencing has not led to rethinking the idea that crime is simply an offense against the state. Instead, it has prompted states to impose increasingly repressive and punitive sanctions against those who commit crimes, with the claimed goals of punishing and incapacitating criminals. This wave of “get tough” measures has been no more successful than the rehabilitation model in controlling crime, and by increasing prison crowding it contributes to the inefficiency and ineffectiveness of the criminal justice system.
Critiques Pointing to a New Pattern

Pre-Copernican astronomers were right that the sun and planets move through the heavens, but they were wrong about one fundamental premise: the Earth is not the stationary center of creation; it too swirls through the universe. Likewise, current criminal justice policy is built on the partial truth that crime involves lawbreaking. The flaw is that it ignores another critical dimension of crime—that it causes injuries to victims, the community, and even to offenders. As a consequence, criminal justice policy is preoccupied with maintaining security—public order—while trying to balance the offender’s rights and the government’s power. These are, of course, important concerns, but order and fairness would be only part of society’s response to crime if its overall purpose were to heal the injuries caused by crime.

What other responses might there be? Over the past decades, a variety of candidates have emerged. Some grew out of critiques of the current system; others out of political, philosophical, and theological foundations at odds with those of criminal justice. While there was diversity in their underlying premises as well as in their conclusions, they pointed toward certain fundamental principles that have contributed to the development of a new pattern of thinking.

Any history of restorative justice must begin with a brief description of certain antecedents as well as to the individuals and organizations that contributed to their development. So we begin by describing critiques and reform efforts whose contributions have been key to the development of the restorative justice movement. In the next chapter we trace key international developments, individuals, and organizations that contributed to the emerging understanding of restorative vision, policies, and programs.

A number of reform initiatives predate and have contributed to restorative justice theory. We do not offer a complete description of any of these critiques or include all of their proponents. Following, however, is a general outline in order to show how each of these has contributed to the emergence of restorative justice theory.

Informal Justice

The informal justice critique developed in the 1970s with the recognition by legal anthropologists that legal structures and ways of thinking about law are specific to particular times and places, and that in virtually all societies, justice is pursued using both formal and informal proceedings. Because the legal system confronted a growing crisis of confidence in the legitimacy of its formal structures, a series of proposals followed for informal alternatives, with “an emphasis on (a) increased participation, (b) more access to law, (c) deprofessionalization, decentralization, and delegalization,
Two of the leading proponents of informal justice were Jerold S. Auerbach (whose *Justice Without Law?* argued forcefully for the need to depprofessionalize the justice system) and Nils Christie. Christie has been frequently cited in restorative justice literature because of several key themes in his work.

Christie, a Norwegian, suggested in the 1977 article, “Conflict as Property,” that conflict is not in fact something to be “solved” but something to be possessed. The criminal justice system, from this perspective, reflects a theft by the state of the victim and offender’s conflict. This represents a real and a serious loss:

This loss is first and foremost a loss in opportunities for norm-clarification. It is a loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land. How wrong was the thief, how right was the victim? Lawyers are, as we say, trained into agreement on what is relevant in a case. But that means a trained incapacity in letting the parties decide what they think is relevant. It means that it is difficult to stage what we might call a political debate in the court.

In his subsequent book on punishment, *Limits to Pain*, Christie drew a connection between this “theft” and the use of punishment. In criminal law, values are clarified by graduated punishment. “The state establishes its scale, the rank-order of values, through variation in the number of blows administered to the criminal, or through the number of months or years taken away from him.” Rather than being made clear through conversation among the participants—the rightful “owners” of the conflict—values are communicated by the state through the infliction of pain. He proposed participatory justice as a better response to crime, a response characterized by direct communication between the owners of the conflict leading to compensation.

**Indigenous Justice**

Related to informal justice have been studies and reflections on what are called customary, traditional, or indigenous approaches to justice. These are the approaches used by people prior to, or alongside of, the Western concepts of justice introduced by colonizers. Indigenous
practices have contributed to restorative justice in at least three ways. First, they have demonstrated that justice practices may reflect an intention to repair harm rather than simply to inflict equivalent harm. Second, as we discuss in Chapter 2, several restorative processes (conferencing and circles) have their roots in indigenous practices: conferencing was adapted from practices of the Maori people in New Zealand and circles from the traditions of First Nations people in Canada. Third, in many non-Western countries the memories of indigenous practices have contributed to acceptance of restorative justice theory and practice.

**Restitution**

Restitution as a reform initiative developed from the rediscovery in the 1960s that paying back the victim could be a sensible criminal justice sanction. Several rationales were offered for restitution: (1) the victim is the party harmed by criminal behavior, (2) alternatives to restrictive or intrusive sanctions such as imprisonment are needed, (3) there may be rehabilitative value in requiring the offender to pay the victim, (4) restitution is relatively easy to implement, and (5) this might lead to a reduction in retributive sanctions when the public observes the offender actively repairing the harm done. Evaluations conducted in the 1970s and 1980s raised questions about whether restitution programs had lived up to those expectations, but restitution has been increasingly ordered (and less frequently collected) in many countries nonetheless.

One of the earliest proponents of restitution was Stephen Schafer, who made a comprehensive and influential case for reinstating the historic role of restitutionary sanctions. In his writings he described the era of compensatory justice prior to the development of centralized governments in Europe as the “golden age of the victim” because it was a time in which the victim’s interests and freedom of action were given greatest deference. He proposed that compensation could once again become a means of sanctioning offenders, either in conjunction with or as an alternative to imprisonment.

Charles F. Abel and Frank A. Marsh, in their 1984 book *Punishment and Restitution*, argued that restitution offers an approach to punishment that is ethically, conceptually, and practically superior to contemporary criminal justice. In their model, imprisonment should be used only as a last
resort for offenders who pose a danger to the community, and those who are imprisoned should be given the opportunity and obligation to earn wages and compensate the victim (and the state for the cost of their incarceration). Most offenders, however, would live outside prison under varying degrees of supervision as necessary, working and paying restitution.

Randy Barnett and John Hagel argued in *Assessing the Criminal* that criminal law should be abolished and replaced with the civil law of torts. They suggested that restitution constitutes a new paradigm of justice, one that is preferable to criminal justice. Crime should be defined by exploring the rights of the victim, not the behavior of the offender. The rights of society are satisfied, they contended, when the rights of individual victims within it are vindicated through restitution.

**Victims’ Rights and Assistance**

As we have seen, until recent years the interests and needs of victims were ignored by criminal justice systems. The contemporary rediscovery of crime victims was the product of an accumulation of criticisms and reforms by individuals and groups who were frustrated and angry that victims’ interests were disregarded by a system preoccupied with the criminal suspect. The reform efforts have focused on three broad thrusts: (1) increasing services to victims in the aftermath of the crime, (2) increasing the likelihood of financial reimbursement for the harm done, and (3) asserting victims’ rights to information and intervention during the course of the criminal justice process.

In *The Crime Victim’s Book*, Morton Bard and Dawn Sangrey addressed the range of needs that crime victims may confront, and gave practical suggestions for how those might be met. They offered advice not only for crime victims, but also for their families and for those who might assist them. Albert Roberts subsequently surveyed victim services programs in the United States; these were often affiliated with parts of the law enforcement system and funded by state or federal grants. He described and evaluated these programs in his book *Helping Crime Victims*.

The harm resulting from victimization can be extensive. There may be direct and indirect financial losses, physical injury, and psychological harms such as fear, trauma, and feelings of guilt. Added to these may be costs for increased insurance and security measures, as well as psychological and behavioral costs in the form of changed patterns, increased precautions, avoidance, and protection. Victim compensation programs, through which governments...
provide financial assistance to crime victims, do not address many of these losses.

The third major reform effort has been to increase the availability of information and opportunities for participation in the criminal justice process. William McDonald’s edited collection of articles, *Criminal Justice and the Victim*, provided a comprehensive survey of the opportunities for, and the barriers to, victim participation in the prosecution and sentencing of the suspect. Beginning with the victim’s decision to call the police and concluding with issues related to the victim and correctional policy, McDonald and his colleagues described the alienating effects on victims of an essentially offender-oriented system.

**Prison Abolition**

Quakers (The Society of Friends) were among those who developed the penitentiary at the Walnut Street Jail in the late 1700s. Nearly two centuries later, during the 1960s and 1970s, members of this Society began urging that the use of prisons be significantly curtailed or abolished, and that other responses to crime be substituted. In part, this was due to prison abuses—abuses that seemed to be inherent in the institution of prison itself and consequently not amenable to reform. This skepticism was increased by the conviction that criminal justice could not be achieved in an unjust society. One influential expression of this concern was *Struggle for Justice*, a report presented to the American Friends Service Committee and published in 1971.

During the late 1960s and into the 1970s, an informal reform initiative emerged in Europe and North America calling for the abolition of prisons. Attracting support from a number of political and philosophical perspectives, the critique’s common theme was that prisons were not only a failure at rehabilitation, they were in fact places of acute suffering by prisoners.

Some proponents of abolition called for prisons to be done away with completely. Others sought to decrease the use of prisons dramatically. Still others campaigned for a moratorium on construction of new prisons. In place of prisons, they suggested that restitution, compensation, and reconciliation programs be established in local communities so that the response to crime could be decentralized. They took inspiration from Jerome Miller, who became head of the Massachusetts Department of Youth Services in 1969. He promptly began shutting down the state’s youth facilities, replacing them with community-based programs. By the time he left his position three years later, there were essentially no custodial facilities remaining for young people in the state.
Some of the leading personalities in this critique included a small group of scholars who became known as the “Utrecht School” because of their affiliation with Utrecht University in The Netherlands: Herman Bianchi and Louk Hulsman, also Dutch; Thomas Mathiesen of Norway; Fay Honey Knopp of the United States; and Ruth Morris of Canada. Key organizations offered leadership for periods of time before being succeeded by others. An early example was the Unitarian Universalist Service Committee’s National Moratorium on Prison Construction, which was active during the 1970s and into the 1980s. Ruth Morris and others organized the first International Conference on Prison Abolition in 1983, a conference that has been repeated every two years since then. A new generation of abolitionists organized the Prison Moratorium Project in New York in 1995, and others subsequently formed the California Prison Moratorium Project.

Social Justice

Gerald Austin McHugh’s *Christian Faith and Criminal Justice* argued that penal models in America grew out of a medieval Christian view of sin and punishment, but that this was not the only relevant motif inherent in the Christian faith, which also affirms values of mercy, relationship, restoration, forgiveness, reconciliation, and hope. He suggested that such values, if applied to criminal justice policy, would result in very different structures and processes from those now in place. Similar biblical reflection has been offered by members of the Mennonite tradition in North America, resulting in a wealth of literature and programs on alternatives to current approaches.

Drawing from his experience as a prisoner and then as an advocate of volunteer involvement within the correctional environment, Charles Colson offered a critique from a different theological perspective. He argued that criminal justice must underscore personal responsibility, and that consequently restitution should be used instead of imprisonment for offenders who do not pose a danger to society. His colleague Daniel W. Van Ness contended in *Crime and Its Victims* that biblical justice is highly concerned with the needs and rights of victims, as well as with the worth of offenders. He proposed a series of public policy implications growing out of this premise.
Feminist scholar M. Kay Harris called for a fundamental restructuring of criminal justice to reflect feminist values—“that all people have equal value as human beings, that harmony and felicity are more important than power and possession, and that the personal is the political”—in place of the values of control and punishment. She suggested that preoccupation with rights blinds parties to the need for a caring and interdependent response. Recognition of the broader dimensions of justice would increase awareness of the need and opportunity for participation by all parties in order to address the needs of all.

In 1991, criminologists Hal Pepinsky and Richard Quinney edited a book titled *Criminology as Peacemaking*. Rather than adopting a negative focus, as does criminology (“what causes deviance and criminal behavior?”) and criminal justice policy (“how do we win the war on crime and violence?”), this book examined the factors that positively contribute to peace and safety. Pepinsky explained elsewhere, “I seek to understand how we become safer in the face of violence. I want to find out what safety is and how we get more of it with one another.”

John Fuller identified the focus of peacemaking as social justice, conflict resolution, rehabilitation, and cooperation. Meaningful communities, he wrote, emerge from democratic institutions and practices in which crime is not excused but in which both individual responsibility and society’s contribution are considered. It is only by transforming both the criminal and society that a community can develop effective, fair, and humane responses to crime.

Conclusion

None of these critiques or reform efforts alone has led to restorative justice theory, but all have influenced its development. Although there is significant common ground—and also notable differences—among them, much in restorative justice theory and practice has been drawn from these predecessors, as we shall see in the next chapter.

Notes


10. Morris and Rothman, supra note 7, at 115.


A BRIEF HISTORY
OF RESTORATIVE JUSTICE

The Development of a New Pattern of Thinking

To date there has been no serious effort to record the history of the modern development of restorative justice. This is a project that needs to be done as the field moves into its fourth decade; before long, people, documents, and memories will be gone, and it will be much more difficult not only to collect information but also to understand how the pieces fit together. In some places, restorative thinking and practices developed internally and it was only later that connections were made with others from other countries or continents. Elsewhere, restorative programs and ideas were imported from outside and adapted to the local context.

We will not attempt such a thorough history in this chapter, but instead will offer a kind of “patchwork history” by focusing on particular topics. First, we consider how the term “restorative justice” came to be used. Next, we examine some of the early attempts to articulate the vision and theory of restorative justice. Then we consider the development of three prototypical restorative processes: victim-offender mediation, conferencing, and circles. We follow this by reviewing the steady incorporation of restorative principles and practices into the criminal justice system. Finally, we present a timeline outlining key events in the development and expansion of restorative justice worldwide.

The Term “Restorative Justice”

To the best of our knowledge, the first use of the term “restorative justice” in the context of criminal justice was by Albert Eglash in several 1958 articles in which he suggested that there are three types of criminal
justice: (1) retributive justice, based on punishment; (2) distributive justice, based on therapeutic treatment of offenders; and (3) restorative justice, based on restitution.* Both the punishment and treatment models, he noted, focus on the actions of offenders, deny victim participation in the justice process, and require merely passive participation by the offender. Restorative justice, on the other hand, focuses on the harmful effects of offenders’ actions and actively involves victims and offenders in the process of reparation and rehabilitation.

As we will see in the next chapter, people do not necessarily mean the same thing when they speak of restorative justice or describe particular programs or interventions as restorative. In his highly influential book, Changing Lenses, Howard Zehr described restorative justice in this way: “Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance.”1 Tony Marshall described it as “a process whereby all the parties with a stake in a particular offense

---

* In previous editions we cited his chapter in a 1977 anthology (Albert Eglash, “Beyond Restitution: Creative Restitution,” in Joe Hudson and Burt Galaway, eds., Restitution in Criminal Justice (Lexington, MA: D.C. Heath, 1977), p. 92. In fact, he developed his ideas of creative restitution nearly 20 years earlier in a series of articles published in 1958 and 1959 (Eglash 1958a, 1958b, 1958c; Eglash 1959–60), one of which was adapted for inclusion in the anthology. Ann Skelton (2005) has traced Eglash’s source for the term “restorative justice” to a 1955 book, The Biblical Doctrine of Justice and Law, which was originally published in German and then translated and adapted into English. The pertinent section addresses the connection between justice and love, and reads in part:

This aligning of justice and love is something which it is the peculiar task of Christian believers to promote, and in doing so they need to see beyond the secular conception of justice in its threefold form of distributive, commutative and retributive justice. Justice also has a restorative element. It is perhaps misleading to picture a fourth element which can be added at will to the other three. Walther Schönfeld (Ueber die Gerechtigkeit, 1952) has suggested an alternative picture in terms of dimensions. He maintains that justice as the world knows it in its public life is three-dimensional, in the way just indicated; but that a four-dimensional justice, or perhaps a fourth dimension of justice, is disclosed to the Church, but hidden from the world, in Jesus Christ. The effect of this four-dimensional vision is to produce an inner transformation of the three dimensional structure; to provide a new total view of man in community; and to uncover possibilities which are simply not there in terms of three-dimensional vision. . . . Restorative justice alone can do what law as such can never do: it can heal the fundamental wound from which all mankind suffers and which turns the best human justice constantly into injustice, the wound of sin. Distributive justice can never take us beyond the norm of reparation; commutative justice can provide only due compensation; retributive justice has no means of repairing the damage save by punishment and expiation. Restorative justice, as it is revealed in the Bible, alone has positive power for overcoming sin. (Heinz-Horst Schrey, Hans Hermann Walz & W.A. Whitehouse (1955), The Biblical Doctrine of Justice and Law (London: SCM Press Ltd) pp. 182–183)
come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.” Martin Wright has argued that the new model should be one “in which the response to crime would be, not to add to the harm caused by imposing further harm on the offender, but to do as much as possible to restore the situation. The community offers aid to the victim; the offender is held accountable and required to make reparation. Attention would be given not only to the outcome, but also to evolving a process that respected the feelings and humanity of both the victim and the offender.”

The differences may be due in part to the diverse critiques and reform efforts that contributed to restorative justice theory. It may also be that each description is partial, like those of blindfolded people explaining what elephants are like based on the part they happen to be touching—the trunk, the leg, the tail. Adding to the confusion, some have chosen to use alternative names to describe what others call restorative justice. Ruth Morris spoke of “transformative justice,” emphasizing that crime is not simply a violation of people and relationships but that it also offers an opportunity for a transformation of those people and relationships; such a transformation would deal with the causes of crime and increase safety in the community. Jonathan Burnside and Nicola Baker used the term “relational justice,” highlighting the importance of crime’s relational (and not simply its legal) dimensions. Marlene Young proposed “restorative community justice” to stress both the importance of community involvement and the value and potency of community action in crime prevention.

There is no authoritative body with the responsibility or credibility to make final determinations concerning what is or is not restorative. Furthermore, the field has developed in piecemeal fashion, over a period of time, and in different parts of the world. Processes now considered core to restorative justice developed independently of restorative thinking. They have been embraced as restorative, and they have influenced and been influenced by efforts to conceptualize restorative theory. Furthermore, innovations coming from outside restorative justice, such as victim assistance, community policing, and problem-solving courts, appear to reflect elements of restorative thinking. So before considering the definition of restorative justice, it might be useful to sketch out a history of its development and growth. We will begin by looking at the writings of people who influenced early restorative justice theory.
Explorers of Restorative Justice Theory

To many, Howard Zehr is the “grandfather” of restorative justice; he was certainly one of the first articulators of restorative justice theory. His interest grew out of work with victim-offender reconciliation programs, and his articles, speeches, books, and teaching have profoundly influenced the field. In his 1990 book, *Changing Lenses*, he consolidated and advanced his critique of criminal justice as failing to meet the needs of victims or offenders. He suggested that the current criminal justice “lens” views crime as lawbreaking and justice as allocating blame and punishment. He contrasted that with restorative justice, which views crime as a violation of people and relationships, which in turn leads to obligations to “make things right” and views justice as a process in which all parties search for reparative, reconciling, and reassuring solutions.

Martin Wright’s prolific and important work has contributed to the development of restorative justice thinking and practice, particularly in Europe. In his 1991 book, *Justice for Victims and Offenders*, he drew from his experiences as an advocate for victims and as an advocate for prison reform in arguing that criminal justice should be restorative rather than retributive. He argued that the present exclusion of victims from the system could be remedied by expanding compensation, restitution, and mediation processes to permit greater participation by both victims and offenders. He suggested that such a model might be constructed by creating two governmental departments. The first, responsible for crime prevention, would emphasize deterrence through enforcement rather than deterrence through punishment. The second department would be responsible for a just response to crimes when they do occur. This would include victim support, mediation, and reparation, as well as courts that emphasize restitution.

In 1992, Virginia Mackey wrote an evocative “discussion paper” on restorative justice for the Criminal Justice Program of the Presbyterian Church (USA). This document was intended to facilitate conversation within that faith community on the problems of current approaches to crime and on biblically reflective alternatives. Using Fay Honey Knopp’s terminology, she proposed a “Community Safety/Restorative Model” predicated on six principles: (1) that safety should be the primary consideration for the community, (2) that offenders should be held responsible and accountable for their behavior and the resulting harm, (3) that victims and communities harmed by crime need restoration, (4) that the underlying conflicts that led to the harm should be resolved if possible, (5) that there must be a continuum of service or treatment options available, and (6) that there must be a coordinated and cooperative system in place that incorporates both public and private resources.
With the appearance of Wesley Cragg’s *The Practice of Punishment* that same year, the discussion of restorative justice took a more conceptual turn. Cragg, a philosopher and a long-time volunteer with a prisoner advocacy and prison reform organization, revisited foundational theoretical positions on the role and use of punishment. He criticized traditional justifications but insisted on the importance of formal processes in which conflict can be resolved. These formal processes, however, should provide within their frameworks the opportunity for informal resolution and offender acceptance of responsibility. Formal justice, in his view, need not be antithetical to virtues such as forgiveness, compassion, mercy, and understanding; what was antithetical in his view was an insistence on punishment, the sole justification of which is to cause suffering.

Others have also attempted to find theoretical frameworks within which to understand and analyze restorative justice. “Reintegrative shaming” is the term John Braithwaite used in 1989 for his theories concerning the reasons and consequences of crime, but it was not until a family group conferencing program was being organized in Wagga Wagga, a city in New South Wales, Australia, that reintegrative shaming and restorative justice were intentionally linked. In 1993, David Moore proposed that the work of Silvan Tomkins and Donald Nathanson may offer a “psychology of reintegrative shaming” and reflected on this approach to crime and reintegration from the perspective of moral psychology, moral philosophy, and political theory. He concluded that reintegrative shaming offered a framework for theoretical analysis and evaluation of conferencing programs.

In a 1993 exchange in the journal *Criminal Law Forum*, Daniel Van Ness and Andrew Ashworth debated the case for restorative justice and the role of victims in the criminal justice process. In his article, Van Ness suggested that there was a historical basis for questioning the criminal-civil separation in Western legal systems and for establishing criminal justice objectives that aimed at addressing the harms experienced by all stakeholders. Ashworth warned that it is important to distinguish between the needs of victims for assistance and any rights that they might have in criminal courts. He also cautioned about attempting to accomplish larger criminal justice goals through sentencing policy.

An attempt to root restorative concepts within a larger conceptual framework was offered in a 1994 book edited by Jonathan Burnside and Nicola Baker, titled *Relational Justice*. Noting the decline in the quality of relationships in Western cultures, these authors considered whether “relationalism” might offer an antidote to problems plaguing criminal justice. Although not specifically referring to restorative justice theory, contributors presented victim-offender mediation and family group conferences as examples of relational justice, and suggested ways the activities of police, probation, and prison authorities might be evaluated by their capacity to strengthen relationships.
Although a number of writers have noted in passing that restorative justice principles may have relevance to crime prevention, one of the more comprehensive proposals on that aspect of criminal justice policy was offered by Marlene A. Young, Executive Director of the U.S.-based National Organization for Victim Assistance in her 1995 paper, *Restorative Community Justice: A Call to Action*. After defining restorative community justice, she reviewed a series of program elements that might constitute a model of such a system. Those included community policing, community prosecution, community courts, and community corrections. The first, community policing, involves police officers actively building strong community bonds within the neighborhoods in which they function. The other three are similar: community prosecution involves a shift from reactive prosecution to proactive problem solving within the community; community courts increase the level of victim and community participation during adjudication; and community corrections offers communities and victims meaningful ways of participating in the correctional process.

**Programs Offering Restorative Processes**

**Victim-Offender Mediation**

Three key programs have influenced the development of restorative justice. The first is victim-offender mediation. While there were attempts during the 1960s and 1970s to bring victims and offenders together in restitution programs, the purpose of those meetings was limited to determining the amount of restitution and making payments. The first modern use of these meetings to allow victims to explain the impact of the crime to the offenders was probably in 1974, in Elmira, Ontario (Canada). Two intoxicated young men, ages 18 and 19, had vandalized the houses and cars of 22 people. They pleaded guilty, and while the probation officer, Mark Yantzi, was preparing a report to the judge, he had a conversation with Dave Worth, a volunteer from the Mennonite Central Committee. In the course of the conversation, they agreed that prison or probation would probably not have the kind of effect on the defendants that meeting the victims, listening to their stories, apologizing, and paying restitution would have. Although the judge was initially resistant to the idea, he ended up ordering that the young men do this as a condition of probation. The results of the meeting were sufficiently positive that judges continued to order this process from time to time. In 1976, the probation officer formed a nonprofit organization to provide and promote these meetings.

The program attracted interest from Canada and the United States, largely through publicity by the Mennonite Central Committee. Three
of the earliest practitioners and writers on mediation in the United States were Howard Zehr, Ron Claassen, and Mark Umbreit. Umbreit has produced a series of articles and books explaining and evaluating victim-offender mediation, including the use of such programs in cases of violent crime. Zehr and Claassen, who themselves are members of the Mennonite Christian tradition, have maintained that church-based—or at least, community-based—programs offer greater potential than state-run programs for helping the parties move toward genuine healing. The community base strengthens the vitality of victim-offender mediation, and it is preferable (even though it may be more work) to organize programs in this way rather than as a part of, or funded by, the criminal justice system.

So early victim-offender mediation began as a program to impact offenders and to help them understand the harm they caused to victims. It also began as a community-based program rather than one carried out by the criminal justice system. Early programs called themselves victim-offender reconciliation programs, wanting to emphasize the relational impact that the process could have.

However, as the programs expanded throughout North America and then around the world, they began to be used by probation offices and other governmental agencies as well as by community-based groups. Many began using the terms “mediation” or “dialogue” instead of “reconciliation” because of concern that the latter term sounded too religious. Eventually victim-offender meetings began taking place even when there was no expectation that it would influence the sentence of the offender in any way. For example, in 1991, the Texas prison system began allowing victims and survivors of serious violent crimes the opportunity to meet with their offender (after careful screening, if they request it). The purpose of the meeting is for the victim and offender to achieve some level of healing.

Apparently, independently of what was happening in North America, victim-offender mediation programs began to be tested in Scandinavian countries. This was in response to Norwegian scholar Nils Christie’s thesis that criminal justice is a process through which the government has “stolen” a conflict that ought to be owned by victims and offenders. The initial pilots were attempts to explore how victims and offenders might be given a role as primary participants. The first pilot began in 1981 in Norway and was sufficiently successful that by the end of the decade around 20 percent of the country’s municipalities offered mediation. These programs tended to be settlement-driven (as opposed
to dialogue-driven). Two years later, similar programs began in Finland and England, although it is fairly clear that some of the influences in England came from North America. From these beginning points, it spread throughout Europe and beyond. Some of the key individuals in introducing mediation to Europe were Juhani Ilivari of Finland, John Harding and Martin Wright of England, and Frieder Dünkel and Dieter Rössner of Germany.22

**Conferencing**

In 1989, the government of New Zealand adopted a new approach to dealing with young offenders. The Children, Young Persons and their Families Act created the family group conference and used it to replace Youth Court for most young offenders (between 14 and 16 years of age, inclusive). This dramatic reform was the result of growing concern about the juvenile justice system, following five years of monitoring and studying the impact of that system on Maori communities. It became evident that the Maori were very concerned about the increasing numbers of their children who were being removed from their families to state facilities by courts. Maori culture is communitarian rather than individualistic, but each individual is a critically important part of the family. Removing a child is destructive of Maori culture because it impairs the family and because children are considered to be the future of the Maori people. The Maori have processes to deal with conflict, but those essentially involve the family in a process of conversation to understand the problem and to find a solution. The solution is generally collective rather than individualistic—the family of the offender assumes responsibility for making things right with the victim and the victim’s family.

Family group conferencing, as created in the legislation, has some similarities with the Maori processes; it also is different in important respects. However, conferencing did take the power to decide what should happen from the judge and place it in the hands of the conference. The community people required to be at the conference are the offenders and members of their family or support group; victims are invited, but if the victims cannot or will not come, the conference can proceed nonetheless.

The New Zealand approach is based in social welfare, not the criminal justice system. An Australian police officer, Terry O’Connell, learned about the New Zealand model and adapted it for use by police as an alternative to charging young offenders with juvenile offenses. He and some colleagues developed a script for police officers to use in facilitating the conferences. In other respects, the New Zealand model and the “Wagga Wagga” model of conferencing are similar. Both have been
adapted to address adult offenders and are being increasingly used around the world.

Conferencing differs from victim-offender mediation in several ways, but one of the most notable is that more people are included in the meetings: in addition to the victim and offender are family members, supporters, and government representatives. Gale Burford, Joan Pennell, Paul McCold, Gabrielle Maxwell, and Allison Morris are some of the leading researchers and expositors of this model.23

Circles

A third method of restorative encounter emerged at roughly the same time as conferencing, this one also having indigenous roots. Known variously as sentencing circles, community circles, and healing circles, these processes drew on aboriginal understandings of justice among the First Nations people of Canada. The first known instance of applying the circle process to a sentencing hearing took place in the town of Mayo in the Yukon Territory of Canada and is reported in a 1992 opinion by the trial judge, Barry Stuart.24 The case involved a 26-year-old offender with a long history of alcohol abuse and 43 criminal convictions. He had been in and out of jails and other state institutions; each time the assessments stated that he needed long-term counseling and substance abuse treatment, among other interventions. These were never provided.

Concerned that this cycle could not be broken by ordering standard criminal justice processes, the judge, probation officer, and Crown counsel began to explore whether there were ways that the sentencing determination could include his family, leadership of his Nation, the victim, and other members of the community. After conversations with the Chief and other First Nations members, the judge modified the physical setting of the courtroom by creating a circle with 30 chairs in which the judge, lawyers, police, First Nations officials and members, probation officer, victim, and others could sit. After opening remarks by the judge and the Crown and defense counsel, the hearing became an informal conversation as discussion moved around the circle. In the end, the First Nation community agreed to help the offender and his family as he dealt with his substance abuse, the offender agreed to a three-part program of treatment, and his family agreed to support him in his change process in tangible ways.

The judge identified a number of advantages to using a circle process as opposed to a traditional sentencing hearing. It challenged the monopoly of the professionals, it encouraged lay participation, it enhanced the amount and quality of information available, it led to a creative search for new options, it promoted a sense of shared responsibility, it encouraged the offender to participate, it involved the victim
in sentencing, it created a constructive environment, it provided everyone with a greater understanding of the limitations of the justice system, it extended the focus of the criminal justice system beyond blame to the underlying causes, it helped mobilize community resources, and it helped merge the values of the First Nation with those of the Canadian government.

Circles have expanded into many parts of North America and are beginning to appear on other continents as well. They are the most inclusive of the three processes, with interested members of the community allowed to participate even if they have no relationship with the victim or offender. Aboriginal leaders have included Berma Bushie of the Hollow Water Community Holistic Circle Healing Program. In addition, non-aboriginals such as Barry Stuart, Bria Huculak, and Kay Pranis have helped adapt circles to non-aboriginal contexts.25

**Incorporation of Restorative Justice into Criminal Justice Systems**

In an increasing number of countries, restorative justice is one of several competing approaches to crime and justice regularly considered by courts and legislatures. As a result, governments are supporting the development or expansion of restorative programs, and many are modifying legislation to provide for restorative interventions.

Some governments have invested substantial resources into restorative programs. Agencies within the U.S. Department of Justice, for example, sponsored a number of initiatives during the 1990s, such as the Office of Juvenile Justice and Delinquency Prevention's Balanced and Restorative Justice Project (BARJ), administered by Gordon Bazemore and his colleagues at Florida Atlantic University. Beginning in 1994, BARJ offered training, technical support, and consultation to state and local officials establishing restorative justice programs. From 1997, the National Institute of Corrections established demonstration projects and provided leader-led and videoconferencing training on restorative justice for criminal justice officials and policymakers through its Academy Division.

The Canadian government has similarly invested resources in training and development of restorative justice programs at the provincial and federal levels. In addition, the federal government adopted sentencing reform legislation in 1995 that incorporated restorative justice in its
sentencing principles, legislation that the Supreme Court of Canada said has marked a “reorientation” in sentencing policy. Even more extensive reforms were contained in its Youth Criminal Justice Act.

New Zealand’s Children, Young Persons and their Families Act, discussed in the previous section, has now been joined by legislation providing restorative processes for adult offenders. A number of states in Australia have adopted juvenile justice bills that are variations on the theme sounded by New Zealand. Similarly, Uganda, South Africa, and other African nations have enacted legislation providing for the use of various restorative practices. Many European countries have adopted restorative approaches to juvenile and adult offending; of particular interest is how former Soviet-bloc countries have made mediation and other restorative processes part of their post-communist codes concerning criminal and juvenile justice. Some Asian and Latin American countries have begun to provide legislative support and openings for restorative processes.

Restorative processes have been used to resolve conflict between citizens and their governments. Bishop Desmond Tutu has described the Truth and Reconciliation Commission in South Africa as an expression of restorative justice. New Zealand appointed a tribunal to provide redress for violations of the Treaty of Waitangi in 1840 between the Queen and the (indigenous) Maori chiefs. This process, which resulted in several very large financial settlements from the government to particular tribes, has been characterized by steps that go far beyond negotiation of restitution to attempts at cultural reconciliation. In the United Kingdom, the Thames Valley police force has used conferencing to resolve citizen complaints against the police.

Intergovernmental bodies have taken note of restorative justice. In 1999, the Committee of Ministers of the Council of Europe adopted a recommendation on the use of mediation in penal matters. That same year the European Union (EU) funded creation of the European Forum for Victim-Offender Mediation and Restorative Justice. The EU subsequently adopted legislation to encourage use of restorative justice by its members. In 2002, the United Nations Economic and Social Council (ECOSOC) endorsed a Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, designed not only to encourage global use of restorative justice but also to provide guidelines for incorporating restorative approaches into criminal justice without violating the human rights of victims and offenders.

**Timeline of Significant Developments Related to Restorative Processes**

On the following pages is a timeline identifying some of the significant developments related to restorative processes. For reasons of space, it certainly does not record all significant developments. In deciding what to include, we looked for: (1) initial use of restorative processes in a
country, (2) initial recognition of restorative processes in legislation, and (3) events that seem in retrospect to have been very important in the subsequent development and use of restorative processes. Examples of the last criterion include significant conferences, pivotal studies, and the creation of organizations that have played or are playing key roles. We have focused more on beginnings than on later developments; for example, we have noted early legislation in some countries but not included subsequent, far more substantial legislative changes.*

What does this brief summary tell us? First, restorative justice is global. Not only has it been influenced by people and developments in many parts of the world, it has also been adopted in diverse cultures, economies, political systems, and legal systems. In fact, one of the remarkable features of restorative justice is that elements of it emerged virtually simultaneously in diverse regions of the world. In some cases, the program or theory was developed prior to contact with the ideas of restorative justice.

Second, there have been stages of growth in the understanding of restorative processes and their impact on the criminal justice system. These might be described as stages in a developing awareness of the potential of restorative justice as a reform dynamic.

- **Restorative justice as a community-based alternative to the criminal justice system.** During the first decade or so, particularly in common law countries, restorative processes were viewed as an alternative, community-based approach to crime. That was certainly true of the first victim offender reconciliation programs in Canada, the United States, and England. In countries in continental Europe, where the legality principle limits the discretion of police and prosecutors to divert cases out of the justice system, some legislative changes were needed, but the purpose of the changes was to allow pilot projects for demonstration and research.

- **Restorative justice as a source of public policy.** In the latter half of the 1980s, countries and organizations began exploring

---

* Of course, the most significant limitation is lack of information, either because we are not aware of all developments, or because we were aware but simply forgot. To those whose energy and resources have brought about valuable contributions to the restorative justice field, and whose part is not recognized here, we apologize and ask that you contact us with information. You may reach us at dvanness@pfi.org or karen_strong@pfm.org.
the policy implications of what was being learned from restorative processes. Justice Fellowship in the United States embarked on a multi-year project to translate restorative vision into principles of public policy; Canada’s Parliamentary Standing Committee (known as the Daubney Committee for its chairman) affirmed that sentencing law changes in that country should take into consideration what was being learned in restorative processes. New Zealand incorporated elements of Maori practices in revising its juvenile justice laws.

• Restorative justice as a viable part of the criminal justice system. The 1990s were a decade of remarkable growth and expansion. New models, and variations on those models, were developed as conferencing and circles took their place with victim-offender mediation. Governments took steps to encourage the use of restorative processes through grants, research, legislative change, and, in some instances (such as the Thames Valley police and the Royal Canadian Mounted Police), through offering restorative processes themselves. Organizations dedicated to promoting and expanding restorative processes emerged. These organizations offered practitioners and researchers the opportunity to network with others and to learn from their experiences. This networking and information-sharing has expanded dramatically with the increasing availability of the Internet and the growing number of excellent sites dedicated to restorative justice.

• Restorative justice as an international reform dynamic. The last few years have seen multinational bodies such as the United Nations, the Council of Europe, and the European Union strongly endorse the potential of restorative justice and urge their member states to introduce and then expand their use of restorative processes. Where early work with restorative processes was done by grassroots organizations, now they have been joined by multinational organizations in calling on governments to use these dramatic new approaches to criminal justice.

<table>
<thead>
<tr>
<th>Timeline of Significant Advances Concerning Restorative Processes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1976</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>1978</td>
</tr>
<tr>
<td>1981</td>
</tr>
<tr>
<td>1983</td>
</tr>
<tr>
<td>1984</td>
</tr>
<tr>
<td>1985</td>
</tr>
<tr>
<td>1986</td>
</tr>
<tr>
<td>1989</td>
</tr>
<tr>
<td>1990</td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>1992</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1993</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1994</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1995</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>1995</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1996</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1997</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1998</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>1998 (cont.)</td>
</tr>
<tr>
<td>1999</td>
</tr>
<tr>
<td>2000</td>
</tr>
<tr>
<td>2001</td>
</tr>
<tr>
<td>2002</td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>2003</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>2005</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>2008</td>
</tr>
<tr>
<td>2009</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Conclusion

Dissatisfaction with modern criminal justice has led to a number of reform movements. Some can be relatively easily incorporated into the criminal justice system, while others are more difficult to reconcile. The intersection of these movements created an environment of discontent, and creativity. Out of it has emerged a new pattern of thinking—restorative justice—one that has been increasingly influential in governmental policy.

Notes

1. Howard Zehr, Changing Lenses: A New Focus for Crime and Justice (Scottdale, PA: Herald Press, 1990), 181. As we will see in the next chapter, he now contrasts restorative justice with contemporary criminal justice, rather than with retributive justice.


4. Ruth Morris, A Practical Path to Transformative Justice (Toronto: Rittenhouse, 1994).


7. Zehr, supra note 1.

8. Ibid., 181

9. Wright, supra note 3.

10. Ibid., 114–117.


12. Ibid., 41–42.


15. See, for example, John Braithwaite, Crime, Shame and Reintegration (New York: Cambridge University Press, 1989). See Chapter 6 for a more extensive discussion of his theory.


18. Burnside and Baker, eds. supra note 5.

19. Young, supra note 6.


Chapter 3

RESTORATIVE JUSTICE

Justice That Promotes Healing

What is restorative justice? It can seem that there are as many answers as people asked. Some definitions focus on the elements of restorative processes. Others begin with the idea touched on in the first paragraphs of Chapter 1—that crime causes harm, and justice should promote healing. Others build on restorative values, such as respect for others. Still others suggest that restorative justice is a holistic approach to life and to relationships, one that has far-reaching effects beyond simply the issue of crime or rule-breaking.

Definition of Restorative Justice

Johnstone and Van Ness\(^1\) have suggested that one explanation for the difficulty in arriving at a single definition is that restorative justice is a *deeply contested concept.* That is, it is a complex idea, the meaning of which continues to evolve with new discoveries. It is also a positive term, meaning that it is considered a good thing to have the name applied to a program or idea. In that sense, it is like the words “democracy” and “justice”; people generally understand what they mean, but they may not be able to agree on a precise definition.

It does seem possible, however, according to Johnstone and Van Ness, to identify three basic conceptions that proposed definitions of restorative justice typically center around. The first is the *encounter* conception. This

---

focuses on the importance of stakeholder meetings and on the many benefits that come as stakeholders discuss the crime, what contributed to it, and its aftermath. It helps identify one of the key differences between restorative processes and criminal justice processes. In restorative processes, the victim, offender, and other interested parties are free to speak and to decide what to do in a relatively informal environment and through that come to terms with what happened. In court, on the other hand, the active participants are generally professionals who have only a professional connection to the crime and to those who were touched by it. Decisions are not made by the parties, but by the judge. While the defendant generally has a lawyer, the victim does not; instead, the victim’s interests are considered to be identical with society’s, which the prosecutor represents. The encounter conception would not consider something restorative if it did not involve the victim, offender, and other parties meeting together.

The second is the reparative conception. “Crime causes harm; justice must repair that harm.” The harm is at many levels, as we will see, and it can often be addressed most fully when the parties meet in a restorative process to explore and respond to those. However, this conception is not limited by the inability or unwillingness of the parties to meet. In those circumstances it would insist that court proceedings focus on identifying and taking steps to repair the harm caused by the crime. This conception would not describe something as restorative if it did not provide some sort of redress to direct victims and, perhaps, communities and offenders as well.

The third is the transformation conception. This is far more expansive than the other two because it has to do with broken relationships at multiple levels of society. It addresses not simply individual instances of harm but goes beyond to structural issues of injustice such as racism, sexism, and classism. Each of these prevents people from living in whole, harmonious, and healthy relationships with others and with their social and physical environments. Restorative justice is therefore a way of life because it addresses all of our relationships, and it offers a way in which broken relationships can be repaired (often through challenging existing societal injustices.) This conception would not describe something as restorative if it did not address structural impediments to wholesome, healthy relationships.

The three conceptions are closely related, and most proponents would find themselves at home in each of the three depending on the context of the conversation. However, most also will, when required to offer a precise definition, articulate something that draws primarily from one, or that establishes a ranking of importance among them.
As will be evident by the end of this book, our understanding of restorative justice falls within the *reparative* conception, with one important proviso: repair is most fully accomplished when it results from an *encounter* of the parties. We suggest the following as our definition:

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders.

While it will be apparent from our final chapter that we believe that those who work for restorative justice will be challenged to seek transformation of perspectives, structures, and people, when we approach the challenge of defining restorative justice we prefer the specificity of the *reparative*, modified by the *encounter*, conceptions.

**Principles of Restorative Justice**

Three key principles govern implementation of restorative justice in processes and in systemic reform. First, justice requires that we work to heal victims, offenders, and communities that have been injured by crime. Second, victims, offenders, and communities should have the opportunity for active involvement in the justice process as early and as fully as they wish. Third, we must rethink the relative roles and responsibilities of government and community: in promoting justice, government is responsible for preserving a just order and the community for establishing a just peace. Let us consider each of these in turn.

*Principle 1. Justice requires that we work to heal victims, offenders, and communities injured by crime.*

Crime leaves injured victims, communities, and offenders in its wake, each harmed in different ways and experiencing correspondingly different needs. To promote healing, restorative justice must respond appropriately, considering the needs and responsibilities of each party.

Victims are those who have been harmed by the offender; this harm may be experienced either directly or secondarily. Primary victims, those against whom the crime was committed, may sustain physical injury, monetary loss, and emotional suffering. These may be only temporary, may last a lifetime, or may cause death. Secondary victims are indirectly harmed by the actions of offenders. These victims may include family members, neighbors, and friends of primary victims and offenders. Their injuries and needs may also be considered in constructing a restorative response to crime.
Because of the varying circumstances of victims, similar injuries may produce substantially different effects. In at least two respects, however, all victims have common needs: the need to regain control over their own lives and the need for vindication of their rights. Being victimized is by definition an experience of powerlessness—the victim was unable to prevent the crime from occurring. As a result, victims often need help regaining an appropriate sense of control over their lives. As described at the beginning of this book, Justice Kelly discovered that because victimization is also the experience of being wronged by another, it brings with it the need for vindication: an authoritative and decisive denunciation of the wrong and exoneration of the one who was wronged.

In order to consider the injuries and needs of the community—and, more importantly, to consider how the community and government may assume complementary roles in establishing safety (see Principle 3)—we need to be clear about what we mean by “community.” This term is used in different ways. Sometimes it refers to a geographic location—the neighborhood in which the victim or offender lives, for example, or in which the crime took place—a “local community.” With increased mobility and transience, however, a more useful definition might be nongeographic, emphasizing the presence of connectedness and relationships: a “community of care.” Sometimes the word is used loosely in everyday conversation as a synonym for civil society as a whole.

Each of these types of communities—the geographic community of the victim, offender, or crime; the community of care; and civil society—may be injured by crime in different ways and degrees, but all will be affected in common ways as well: the sense of safety and confidence of their members is threatened, order within the community is threatened, and (depending on the kind of crime) common values of the community are challenged and perhaps eroded. However, the injury to the first two communities is far more direct than the general injury to civil society. Furthermore, the local community and the community of care share a characteristic of common interest. John Braithwaite has suggested that the term “community of interest” be used because the community is then defined by the willingness of its members to act according to interests larger than their own through a fundamental sense of duty, reciprocity, and belonging. This interest may be in the victim or the offender (and may or may not be motivated by compassion); it may be in reducing crime in the area in which the crime took place; and it may be in restorative justice and how that is applied. A particular community, then, is

Justice requires that we work to heal victims, offenders, and communities that have been injured by crime.
made up of people with sufficient interest to join it. When we speak of community, in this book then, we will mean “community of interest.”

Finally, the injuries of offenders must also be addressed. These injuries can be thought of as either contributing to the crime or resulting from the crime. Contributing injuries are those that existed prior to the crime and that prompted in some way the criminal conduct of the offender. For example, it has been demonstrated that some victims of child abuse become abusers themselves and that some substance abusers commit crimes to support their addictions. While these contributing injuries, or prior conditions, do not excuse the criminal choices of offenders, any attempt to bring healing to the parties touched by crime must address them. Resulting injuries are those caused by the crime itself or its aftermath. These may be physical (as when the offender is wounded during the crime or incarcerated as a result of it), emotional (as when the offender experiences shame), or moral and spiritual (because the offender has chosen to harm another). Further, offenders will likely be injured as a result of the criminal justice system’s response, which further alienates them from the community, strains family relationships, may lead to long-term employment disadvantages, and may prevent them from making amends to their victims. We do not suggest that offenders are relieved of accountability by the recognition of their “injuries.” However, those injuries should be acknowledged and addressed in the response to crime. Unfortunately, there are no terms in the English language that appropriately describe this process. Consequently, we have adopted the admittedly awkward word “habilitation” to express this goal.

Principle 2. Victims, offenders, and communities should have the opportunity for active involvement in the justice process as early and as fully as they wish.

Virtually every facet of our criminal justice system works to reduce victims, offenders, and communities to passive participants. Because the government is considered to be the primary victim, its virtual monopoly over the apprehension, prosecution, and punishment of offenders seems logical and legitimate. Because of the legal presumption of innocence bestowed on all who are charged with crimes, as well as the panoply of due process rights that are afforded them, defendants have few incentives to assume responsibility for their actions and many incentives to remain passive while the government marshals its case and their lawyers attempt to dismantle it. Because victims are not parties of interest in criminal cases, and rather are simply “piece[s] of evidence to be used by the state to obtain a conviction,” they have very limited control over

* One of the important implications of the distinction between “community” and “victim” is that the community may not necessarily speak for the interests of the victim. But the opposite is also true: the victim does not necessarily speak for the community.
what occurs and no responsibility to initiate particular phases of the process. Finally, the direct participation of members of the community is also very limited, consisting almost exclusively of service on grand or petit juries or as witnesses.

Restorative justice, on the other hand, places a much higher value on direct involvement by the parties. For victims who have experienced powerlessness, the opportunity to participate restores an element of control. For an offender who has harmed another, the voluntary assumption of responsibility is an important step in not only helping those who were hurt by the crime but also in building a prosocial value system. Likewise, the efforts of community members to repair the injuries to victims and offenders serve to strengthen the community itself and to reinforce community values of respect and compassion for others.

Principle 3. We must rethink the relative roles and responsibilities of government and community: in promoting justice, government is responsible for preserving a just order and the community for establishing a just peace.

The term “order” is sometimes used as though it were a synonym for public safety; politicians speak, for example, of the need for “law and order” as a means of ending “crime in our streets.” Safety, however, is a broader, more inclusive concept than order. To put it another way, both order and peace are means of securing public safety. As ancient Jewish law incorporated notions of “shalom,” so today we must think of “peace” as a cooperative dynamic fostered from within a community.

Peace requires a community’s commitment to respect the rights of its members and to help resolve conflicts among them. It requires that those members respect community interests even when they conflict with their individual interests. It is in this context that communities and their members assume responsibility for addressing the underlying social, economic, and moral factors that contribute to conflict within the community. Order, on the other hand, is imposed on the community. It establishes and enforces external limits on individual behavior to minimize overt conflict and to control the resolution of conflict.* Like peace,

* There are, of course, other reasons why the government might use force, including most obviously its interest in protecting and advancing its own interests and the interests of its leadership and supporters. We are using “order” more narrowly than the term is often used, particularly when used by governments to justify repressive action. We do not include those uses in this definition.
a just order is important in preserving safety, and governments generally have both the power and mandate to establish such an order.

Both order and peace are appropriate avenues for achieving safety. However, as imposed order increases, personal freedom decreases; hence, peace will be sought in a society that values freedom. Security built primarily on governmentally imposed order is detrimental to a free society, as conditions in police states throughout the world demonstrate. On the other hand, when the community fails to foster peace, it may be necessary for the government to intervene and impose order. The American civil rights movement is an example of that kind of action. Desegregation of public schools was met with violent resistance on the community level, and National Guard troops had to enforce order so that African-American children could enter the schools. The community, content with preserving the interests of the powerful by seeking to maintain the status quo, had failed in its role to seek peace for all members.

Describing peace as the community’s responsibility and order as government’s should not blind us to the difficult and important complexities involved. Each plays a role in achieving peace and order, as we see when community members form Neighborhood Watch programs to prevent crime, when law enforcement uses community policing strategies, or when government programs address economic and social injustices that inhibit peace. We wish to emphasize a point that is often forgotten in the debate about crime and criminal justice: safety comes as both government and community play their parts in upholding order and establishing peace.

**Values of Restorative Justice**

The processes identified with restorative justice—victim-offender mediation, conferencing, circles, and so forth—will not necessarily produce restoration if they are not used according to the principles and values of restorative justice. For example, a program that operates solely during the working day to accommodate the schedule of the paid facilitator is unlikely to be effective in engaging victims who work or have other responsibilities during the daytime. Similarly, a facilitator who does not have a good understanding of the cultural norms of one of the participants may fail to take steps to ensure that the person is able to
participate effectively. A restorative process may be guided by values that are destructive rather than restorative, such as when the participants focus on excusing the wrongdoer, or at the other end of the spectrum, on humiliating that person. These problems may be confronted in a number of ways. One is to provide practice guidelines for practitioners. Another is to develop statements of best practices. A third is to create standards for use in accreditation processes. A final option is to focus on restorative values and to use those in designing and evaluating programs and in training and guiding practitioners.

Each of these approaches has advantages, and they are not mutually exclusive. Standards should reflect values; guidelines should be based on best practices. The first three are more specific to particular programs and justice systems, but values are less dependent on context. As a result, there has been growing interest in using them to measure and maintain the restorative character of particular interventions.

There may be almost as many lists of restorative values as there are definitions of restorative justice. Usually there is a great deal of overlap in the lists, but in some instances it appears that the authors are describing different things. John Braithwaite has suggested that there are three kinds of values. The first keeps the restorative process from becoming abusive or indifferent to the participants. The second has to do with deciding whether the outcome of the process has been successful. The third are what he calls emergent values, those that may or may not result from a successful process (such as forgiveness, remorse, reconciliation, and so forth).5

Another way of saying this might be to think in terms of normative values (the way the world ought to be) and operational values (the way restorative programs should function). Normative values could encompass Braithwaite’s emergent values, but in addition would describe the sort of community and relationships to which restorative justice aspires. Operational values would include both process and outcome values.

We suggest that there are four normative values.* The first is active responsibility, which means taking the initiative to help preserve and

---

* The normative and operational values presented here were developed in a research and design project directed by Van Ness called RJ City. The purpose of the project was to conceive of a jurisdiction that responded to all crimes, all victims, and all offenders as restoratively as possible. For information on the project, visit http://www.pficjr.org/programs/rjcit}.
promote restorative values and to make amends for behavior that harms other people. The second is peaceful social life, which means responding to crime in ways that build harmony, contentment, security, and community well-being. The third is respect, by which we mean regarding and treating all parties to a crime as persons with dignity and worth. The final is solidarity, the experience of support and connectedness, even amid significant disagreement or dissimilarities.

In addition, we propose 10 operational values to guide how restorative processes are managed:

1. Amends: Those responsible for the harm resulting from the offense are also responsible for repairing it to the extent possible.
2. Assistance: Affected parties are helped as needed in becoming contributing members of their communities in the aftermath of the offense.
3. Collaboration: Affected parties are invited to find solutions through mutual, consensual decisionmaking in the aftermath of the offense.
4. Empowerment: Affected parties have a genuine opportunity to participate in and effectively influence the response to the offense.
5. Encounter: Affected parties are given the opportunity to meet the other parties in a safe environment to discuss the offense, harms, and the appropriate responses.
6. Inclusion: Affected parties are invited to directly shape and engage in restorative processes.
7. Moral education: Community standards are reinforced as values and norms are considered in determining how to respond to particular offenses.
8. Protection: The parties’ physical and emotional safety is primary.
9. Reintegration: The parties are given the means and opportunity to rejoin their communities as whole, contributing members.
10. Resolution: The issues surrounding the offense and its aftermath are addressed, and the people affected are supported, as completely as possible.

Of these 10, four seem to be of particular importance: encounter, amends, reintegration, and inclusion. If restorative justice were a building, we would expect to find them as key features or structural elements in its architecture.
They would likely emerge as recurring and important dimensions if one were to monitor many programs in multiple places over time. We have chosen to call these cornerpost values because that underscores their importance. We will consider each of these in detail in the next four chapters.

**Restorative Justice or Restorative Practices?**

As restorative processes have increasingly been applied in educational and business settings, some have suggested that the term “restorative justice” is inappropriate because it implies that they can only be used when the culpability of one party is clear and conceded. In fact, circles and other restorative encounters can be very useful in addressing many kinds of conflicts, whether or not they stem from misbehavior.

In other words, “justice” seems to narrow the use of restorative practices to situations that would ordinarily be handled by the justice system. This has practical consequences in advocacy: should proponents promote restorative practices and encourage their application in multiple contexts, one of which would be in dealing with crime? Or is it better to focus attention on wrongdoing and in particular, criminal wrongdoing?

This is being discussed as both a strategic and principled question. Those who support use of the term restorative justice agree that restorative processes are effective in other settings and that increased use of them anywhere creates a “restorative-friendly” context that might increase their use in criminal matters. So some organizations promoting restorative justice are asking whether they should expand their scope to all applications of restorative practices or maintain the focus on criminal and juvenile justice.6

That is the strategic issue. The question related to principles has to do with what is lost by using the term restorative practices rather than restorative justice. An obvious answer is that justice is lost when responding to crime or other rule violations. One of the needs of victims is to hear that this was not their fault (to the degree that is true). One can argue as well that offenders need to hear that they were wrong, and certainly society expects that there will be denunciation of certain kinds of behavior.

It is clear that there is a huge overlap between restorative practices and restorative justice in terms of world view, values, principles and methods.7 But the similarities are not complete, and it is there that the discussion is likely to continue.

**Restorative Justice as Opposed to What?**

In an early attempt to explain the uniqueness of the restorative vision, Howard Zehr offered a comparison between restorative justice and
retributive justice. What he meant by the latter was criminal justice as we know it, a process focused on determining the guilt of an offender and then imposing a sentence. Gordon Bazemore added to this distinction by contrasting restorative justice with both retributive justice and the rehabilitation paradigm. These differences are useful for purposes of description, but they suffer certain limitations as well.

One is that they do not serve restorative justice well in public debate. Restorative justice includes principles of accountability and acknowledges that accountability may be painful. This is a common understanding of retribution or punishment. The narrow definition given retribution by restorative justice proponents (“pain imposed for its own sake”) may be helpful for analytical precision, but misleading to a public that thinks less precisely.

Furthermore, the restorative-retributive dichotomy concedes too much. The retributive approach has traditionally justified imposing pain by arguing that crime creates an imbalance; the offender has benefited at the public’s expense. The imbalance must be addressed by causing the offender to lose that benefit. But as legal philosopher Conrad Brunk argues, this is what restorative justice also tries to achieve.

So, there is much in the retributivist theory that is very close to Restorative Justice. Restorative Justice is also concerned primarily with making the wrong right or restoring the justice of the situation. It is concerned with demanding that offenders take responsibility for their actions by actively making things right with the victims. It is also concerned that punishment not treat offenders unjustly. But, as we shall see, Restorative Justice gives a much more concrete and practical account of how the injustice done to victims can be redressed, and of how justice can be done to the offender as well.

Similarly, Kathleen Daly has suggested that the distinction between restorative, retributive, and rehabilitative justice can be misleading.

In my view, restorative justice is best characterized as a practice that flexibly incorporates “both ways”—that is, it contains elements of retributive and rehabilitative justice—but at the same time, it contains several new elements that give it a unique restorative stamp. Specifically, restorative justice practices do focus on the offence and the offender; they are concerned with censuring past behaviour and with changing future behaviour;
they are concerned with sanctions or outcomes that are proportionate and that also “make things right” in individual cases.\textsuperscript{11}

Antony Duff proposes that retribution must be restorative and that restoration must have elements of retribution.

I will argue that restorative theorists are right to insist that our responses to crime should seek ‘restoration,’ whilst retributive theorists are right to argue that we should seek to bring offenders to suffer the punishments they deserve; but that both sides are wrong to suppose that these aims are incompatible. Restoration is not only compatible with retribution: it requires retribution, in that the kind of restoration that crime makes necessary can (given certain deep features of our social lives) be brought about only through retributive punishment.\textsuperscript{12}

Interestingly, Zehr himself has moved away from drawing sharp distinctions between restorative justice and retributive justice, for reasons that are similar to those offered by Brunk and Daly. However, he cautions:

Retributive theory believes that pain will vindicate, but in practice that is often counterproductive for both victim and offender. Restorative justice theory, on the other hand, argues that what truly vindicates is acknowledgment of victims’ harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs, and address the causes of their behavior. By addressing this need for vindication in a positive way, restorative justice has the potential to affirm both victim and offender and to help them transform their lives.\textsuperscript{13}

To try to capture these nuances, we will use two related terms to describe these alternative perspectives on punishment. \textit{Retribution} will mean deserved punishment for wrong behavior. The active party is the government, and the purpose of retribution is for the government to inflict harm on the offender proportionate to the wrong done. \textit{Recompense}, on the other hand, will mean the deserved obligation to pay for wrongfully causing an injury. The active party is the offender, and the purpose of recompense is for the offender to repair as fully as possible the injury caused by the wrong.

A second problem with the restorative-versus-retributive dichotomy is that in this context “restorative justice” is presented as the better alternative. This is a questionable tactic strategically because it can inadvertently cause justice system people who might be supportive to focus instead on why the dichotomy is simplistic or unfair. An alternative approach when using dichotomies for teaching purposes is to contrast “restorative justice” with “nonrestorative justice.”
A third drawback to comparing restorative to retributive justice is that “retributive justice” is sometimes used in restorative justice literature to refer to the current criminal justice system. As a matter of fairness to retributivists, however, current criminal justice cannot accurately be called retributive because it is in fact a hybrid of several philosophies of justice (and sometimes, it appears, no philosophy of justice at all). What term should we use to describe current practice, then? Some have proposed “traditional justice.” Unfortunately, that is also used to refer to customary or indigenous practices. Another alternative is “criminal justice,” which emphasizes the offender orientation of current criminal justice practice. However, this usage would encounter the same problem as retributive justice: the common understanding of criminal justice is a societal response to crime and not the narrow definition of a response that focuses on the criminal.

We will use the term “contemporary criminal justice” to describe the current justice system. It is possible that this term could be read narrowly to exclude the long history of offender orientation of the criminal justice system (i.e., contemporary as opposed to historical). We will not give it that narrow reading, and we assume that most readers will not as well.

Does Restorative Justice Work?

Frances Crook, director of the Howard League of Penal Reform, has said that restorative justice is the most over-researched and the most under-used criminal justice innovation. So, is it underutilized because of the research?

Apparently not. Lawrence Sherman and Heather Strang recently analyzed research conducted around the world that matched restorative justice with contemporary criminal justice. They found 36 studies whose direct comparisons were between two reasonably similar groups, one of which received a restorative justice intervention while the other did not. Among their conclusions were the following:

- Crime victims who receive restorative justice do better, on average, than victims who do not, across a wide range of outcomes, including post-traumatic stress.
- In many tests, offenders who receive restorative justice commit fewer repeat crimes than offenders who do not.
• In no large-sample test has restorative justice increased repeat offending compared with criminal justice.
• Restorative justice reduces repeat offending more consistently with violent crimes than with less serious crimes.
• Diversion from prosecution to restorative justice substantially increases the odds of an offender being brought to justice.
• Restorative justice does not conflict with the rule of law, nor does it depart from the basic paradigm of the common law of crime.
• Restorative justice can do as well as, or better than, short prison sentences, as measured by repeat offending.
• Restorative justice reduces stated victim desire for violent revenge against offenders.¹⁵

The report was prepared for a United Kingdom charitable trust. On the basis of their highly favorable evidence, Sherman and Strang recommended that restorative justice “could be rolled out across the country with a high probability of substantial benefits to victims and crime reductions for many kinds of offenders.”¹⁶ Furthermore, restorative justice “as a diversion could provide the basis for far more general use of restorative justice, with possibly substantial crime reductions, less victim post-traumatic stress, and more offences brought to justice.”¹⁷

Restorative Justice: A Visual Model

A series of figures will illustrate some of the key features of restorative justice theory. Figure 3.1 illustrates how contemporary criminal justice focuses exclusively on the offender and the government. The government

![Figure 3.1](image-url)
seeks to establish order by enacting laws and punishing those who violate them. Because the government’s power is great, due process safeguards have developed over the centuries in an attempt to create a fair criminal justice process. One consequence is that the offender’s posture is defensive (and often passive) during the proceedings, while the government plays the active role. Criminal courts are arenas of battle in which the government is pitted against offenders in a high-stakes contest to determine whether the law has been violated, and if so, what form of retribution should be imposed.

Figure 3.2 illustrates the more comprehensive understanding that restorative justice offers concerning the parties with an interest in pursuing justice after a crime. There are actually four parties: victims, offenders, communities, and their governments. Every crime involves specific victims and offenders, and a goal of justice should be to help them come to resolution. In contemporary criminal justice this dimension is largely left to the civil courts to address. But restorative justice posits that the rights of victims should be vindicated and that offenders must make recompense to victims as part of a comprehensive response to crime.

While Figure 3.2 addresses the “micro” dimension of crime, that is, the response to particular victims and offenders, Figure 3.3 illustrates the “macro” response, government’s and the community’s efforts at crime prevention. Safety is sought through some combination of governmentally imposed order and community-built peaceful relationships. Where there is more community peace, less order will be required; where there is more order, community freedom will be externally limited to achieve safety. This dynamic relationship between government order and community peacebuilding is the basis for crime prevention strategies.
Combining Figures 3.2 and 3.3 reminds us that we need to consider the micro- and macro-responses together because they are interrelated. The victim’s and offender’s need for resolution, and the government’s and community’s need for public safety, must be addressed in the same process (see Figure 3.4). This dual thrust
contrasts with the separation of civil and criminal law in most modern jurisdictions, a separation that can force either/or choices for victims and the government in deciding whether and how to proceed against the offender.

Figure 3.5 shows the restorative justice goals that govern the relationship between the government and individual victims and offenders, as well as between the community and those individuals. The government helps re-establish order by ensuring that reparation takes place. It facilitates redress to victims through restitution and compensation while ensuring that offenders are treated with fairness. The community seeks to restore peace between victims and offenders, and to reintegrate them fully into the community. For victims, the goals can be expressed as healing; for offenders, as habilitation.

The circular construction of the figures suggests the dynamic and dependent relationships that are necessary among the parties under restorative justice theory. Peace without order is as incomplete as recompense without vindication; healing without redress is as inadequate as habilitation without fairness. A society cannot select certain features of the model and omit others; all are essential. That very comprehensiveness is a fundamental aspect of the restorative pattern of thinking about crime. Restorative justice theory seeks to address and balance the rights and responsibilities of victims, offenders, communities, and the government.
Conclusion

There are multiple conceptions of restorative justice. For some, its essence lies in encounters, the restorative processes in which parties may find healing. For others, it is a view of justice that insists that the harm caused by crime be repaired to the extent possible. For still others, it is a way of living that transforms relationships with others and with the social and physical environment. We hold to the reparative conception with the understanding that repair is best accomplished when the parties themselves participate cooperatively in determining how that should be done.

Restorative justice focuses on repairing the harm caused by crime and reducing the likelihood of future harm. It does this by encouraging offenders to take responsibility for their actions and for the harm they have caused, by providing redress for victims, and by promoting reintegration of both within the community. Communities and the government accomplish this through a cooperative effort.

Restorative justice is different from contemporary criminal justice practice in a number of ways. It views criminal acts more comprehensively: rather than limiting crime to lawbreaking, it recognizes that offenders harm victims, communities, and even themselves. It involves more parties: rather than including only the government and the offender in key roles, it invites victims and communities as well. It measures success differently: rather than measuring how much punishment has been inflicted, it measures how much harm has been repaired or prevented. Finally, rather than leaving the problem of crime to the government alone, it recognizes the importance of community involvement and initiative in responding to and reducing crime.

Restorative justice responds to specific crimes by emphasizing recovery of the victim through redress, vindication, and healing, as well as recompense by the offender through reparation, fair treatment, and habilitation. It seeks processes through which parties are able to discover the truth about what happened and the harms that resulted, to identify the injustices involved, and to agree on future actions to repair those harms. It considers whether specific crimes suggest the need for new or revised strategies to prevent crime.

Restorative justice seeks to prevent crime by building on the strengths of community and the government. The community can build peace through strong, inclusive, constructive, and just relationships. The government can bring order through fair, effective, and parsimonious use of force. Restorative justice emphasizes the need to repair past harms in order to prepare for the future. It seeks to reconcile offenders with those they have harmed, and it calls on communities to reintegrate victims and offenders.
Restorative processes and practices retain their restorative character as they reflect the values and principles of restorative justice. If these values and principles are lost or violated, then the result may not only be less restorative, it may be destructive. Four of these values are particularly important: encounter, amends, reintegration, and inclusion. It is to these cornerpost values that we now turn.

Notes


3. See Braithwaite, supra note 2, for an extended discussion of how shame can be both beneficial and destructive for offenders and the community.


6. At its 2008 General Meeting, the European Forum for Restorative Justice was presented with a proposal that it expand its scope to include restorative practices in school, communities, and other settings. It is studying this proposal and will make a determination at its General Meeting in 2010.


16. Ibid.

17. Ibid.
Part Two

The Cornerposts of Restorative Justice
This page intentionally left blank
At the end of his epic poem *The Iliad*, Homer recounts an extraordinary midnight meeting between Achilles, the greatest of Greek warriors, and Priam, king of Troy. For 10 years, the Greeks have besieged Troy, and many warriors on both sides have died. Two recent deaths have particular importance to these two men. Achilles is mourning the death of his companion Patroclus, killed by Hector, Priam’s son and the leader of the Trojan forces. Priam in turn grieves for Hector, killed by Achilles in battle as retaliation for the death of Patroclus. Achilles has denied burial to Hector’s body, choosing instead to disgrace it by dragging it around the city of Troy at the back of his chariot and leaving it exposed to the sun and vulnerable to dogs and scavenger birds. The gods have protected Hector’s body from decay and from being torn apart by animals, waiting for Achilles’s anger to subside and for him to return the body to Troy for proper burial. However, Achilles’s grief and anger do not dissipate, even after Patroclus’s funeral and the daily humiliations of Hector’s body. Finally, the gods order him to return the body and they bring Priam to Achilles’s tent under cover of darkness and their protection to negotiate the release of the body.

The two bitter enemies meet for the first time. Each considers himself to be the victim of a great loss, and they weep as they remember their dead loved ones. Priam appeals to Achilles by reminding him of his own father, who would long to have Achilles’ body returned were he the one who had been killed. Stirred by pity, Achilles agrees to return the body, and further agrees to a cease-fire for 12 days while Troy mourns the death of its hero.

In his description of this remarkable meeting, Homer paints a complete picture that depicts sharp emotions (grief, pity, anger, fear, admiration, and guilt), carefully chosen words, an awareness of nonverbal communication, and symbols of hospitality and respect. Achilles washes and covers Hector’s battered body, afraid that Priam’s natural resentment at its degrading treatment would provoke his own explosive anger. They eat together and as they talk with and observe one another, each comes to a reluctant admiration for the other’s strength and wisdom. Achilles prepares a bed for Priam and promises protection on his return trip to Troy.
This meeting offers only an interlude; war resumes at the conclusion of Hector’s funeral. Within days, both Achilles and Priam are dead; Achilles is killed in battle before the walls of Troy, and Priam in the following days when Troy is finally defeated. Interestingly, though, Homer did not include those events in *The Iliad*. Instead, he concludes with this dramatic meeting and a brief account of Hector’s funeral. His theme, the dreadful consequences of Achilles’s anger to both Greeks and Trojans, is completed as he describes the two men’s encounter.*

* Analise Acorn (*Compulsory Compassion: A Critique of Restorative Justice*. Vancouver: UBC Press, 2004) has criticized our use of this story, accusing us of both misunderstanding and misappropriating the account in an attempt to present Homer as “a fellow booster of their agenda. There is a quackery here—a kind of false advertising—that we ought not to overlook” (p. 92). Her assertion is that we suggest that Achilles and Priam achieved reconciliation to right their relationship, although she inconsistently concedes that we place the story in context as an interlude in a decades-long war that concludes shortly thereafter with the death in battle of both men. She complains that we fail to present all of Achilles’s motives in returning the body: pity might have been part of his motivation, but so were gifts brought by Priam and especially the insistence of the gods that he return the body (although we had mentioned the gods’ order in previous editions, we have underscored it in this edition so there can be no mistake).

The premise of Acorn’s book is that “[t]he seductive vision of restorative justice seems, therefore, to lie in a skilful deployment—through theory and story—of cheerful fantasies of happy endings in the victim-offender relation, emotional healing, closure, right-relation and respectful community. Yet, as with all seductions, the fantasies that lure us in tend to be very different from the realities that unfold. And the grandness of the idealism in these restorative fantasies, in and of itself, ought to give us pause” (p. 16). Having adopted this view of restorative justice and its advocates, she assumes that this is what we had in mind; that this story is an attempt to weave “cheerful fantasies of happy endings.” Based on that assumption, she complains that we haven’t gotten the story right and that our failure to do so was intentional.

But we do not believe that restorative justice promises or even is primarily about happy endings. We make this explicit in the last two paragraphs on page 74 (paragraphs that appeared in the previous two editions as well). Happy endings may emerge for some participants in restorative processes, but certainly not for all, as we have stated in this chapter and elsewhere in all three editions of this book. And as Acorn grudgingly acknowledges, we have emphasized that this late-night meeting was a brief, nonviolent encounter in the midst of a savage war. So why do we use this story to begin the chapter on encounter? Because it offers remarkable insights on what can happen when adversaries meet and communicate authentically. The tension, barely contained anger, pragmatic negotiations, grudging admiration, and nonverbal communication so powerfully presented by Homer ring true. This was a true encounter of adversaries and neither a formalized negotiation by proxies nor a judicial proceeding before the gods in which neither party speaks to the other. It includes features that are often found in restorative encounters.

But, asks Acorn, in what way is this justice? The answer is that it is not. Neither Priam nor Achilles has admitted guilt, a prerequisite of virtually all restorative encounters. Although Acorn believes that Achilles is at fault (as, presumably, do most who read this story), Achilles himself does not. He views this as simply a meeting between adversaries with comparable moral standing. That is not the case in restorative encounters. It is the admission of one of the parties to wrongdoing that makes an encounter justice.
Encounter is one of the cornerposts of a restorative approach to crime. It is greatly restricted in conventional criminal justice proceedings by rules of evidence, practical considerations, and the dominance of professional attorneys who speak on behalf of their clients. It is further restricted by the exclusion of key parties: primary and secondary victims. But even defendants are silent pawns in the courtroom, often failing to even comprehend what is taking place because of the arcane language and procedures used.

The guarantee that accused offenders may confront their accusers in court is a well-established international human right. In recent years, some jurisdictions have increased the possibilities for victims of crime to express themselves in, or at least to listen to, court proceedings. Some jurisdictions allow victims to remain in the courtroom to hear testimony about their cases, even though they may themselves be witnesses. Others have given victims the right to address the sentencer (usually the judge) about the impact of the crime on their lives. These innovations are beneficial for victims, and they may have some indirect impact on the attitudes of offenders, but they—like the defendant’s right of confrontation—are limited by the adversarial and judicial dimensions of courtroom proceedings, and by the definition of crime as an offense against government.

* One of this book’s authors (Van Ness) is an attorney who practiced criminal law for a time. On one occasion, the family of an indigent client awaiting trial in the county jail contacted Van Ness; he agreed to represent the accused. The next court date, which was simply a status hearing in which the judge would determine whether the case was ready to go to trial, was the following day. During that hearing, Van Ness informed the judge that he would be representing the client, and that he had not yet received a transcript of the preliminary hearing from the prosecutor, but that the other discovery had been made available that morning. The prosecutor indicated that the transcript would be available in two weeks. Following local custom, Van Ness stated that, notwithstanding that delay, the defense was answering ready for trial and demanding trial under the Speedy Trial Act. The judge continued the case for another 30 days, but (again following local custom) did not mark the case ready for trial. The next hearing would be another status hearing.

When Van Ness spoke with his client after the hearing, it became clear that he had no idea what had taken place. He had heard his previous lawyer, a public defender, demand trial at the last court appearance, and had therefore assumed that the trial would commence that day. Van Ness explained that the demand for a trial simply triggered the Speedy Trial Act, which provided that if he were not tried within 120 days he would be released. The demand for trial was made solely to protect his right to a speedy trial and not because either side was in fact prepared to go to trial. That was not the only point of confusion: the defendant (understandably, as no one had ever explained it) had no idea what discovery was or why it was important. He remembered the preliminary hearing as a court appearance in which something more than usual happened, but at the time he had thought it was the trial and had been surprised that the public defender representing him had not permitted him to testify. He was shocked to learn that the case would not be going to trial even on the next court date, and was dismayed to learn that it would probably not be tried until the 120-day period was nearly over.
In this chapter we will consider several approaches that permit parties to crime to encounter one another outside of the courtroom. We will describe several such programs, including victim-offender mediation, conferencing, circles, and impact panels. We will discuss both common and distinguishing elements among these approaches and will consider strategic and programmatic issues to be explored as their use is expanded.

**Mediation**

Victim-offender mediation programs (VOMs) first appeared in the 1970s, and were a direct contributor to the restorative justice movement. VOMs offer victims and offenders the opportunity to meet together with the assistance of a trained mediator to talk about the crime and to agree on steps toward justice. Unlike a court process, these programs seek to empower the participants to resolve their conflict on their own in a conducive environment. Unlike arbitration, in which a third party hears both sides and makes a judgment, the VOM process relies on the victim and offender to resolve the dispute together. The mediator imposes no specific outcome; the goal is to empower participants, promote dialogue, and encourage mutual problem-solving.*

* We should note that there are differences between mediation conducted by community-based nonprofit organizations and those conducted by judicial authorities. We will not discuss the differences here, because the role of the judicial authorities is very different in civil law and common law countries. For discussion of this issue, see Martin Wright, “Restorative Justice: For Whose Benefit?” and Jacques Faget, “Mediation, Criminal Justice and Community Involvement: A European Perspective” in The European Forum for Victim-Offender Mediation and Restorative Justice, ed., *Victim-Offender Mediation in Europe: Making Restorative Justice Work* (Leuven, Belgium: Leuven University Press, 2000). The process we describe here will be more familiar to those in common law countries. Furthermore, some programs call themselves “victim-offender mediation” but use a process of “shuttle diplomacy” between the victim and offender. In these programs the mediator acts as an intermediary in negotiating a restitution settlement, and the victim and offender are unlikely to meet. These programs are undoubtedly an effective way to determine how amends will be made, and they provide limited opportunities for indirect communication. They may be very useful when one or both of the parties do not want more contact. However, because the contact is only indirect, we do not include these programs as encounters. We suggest that they should instead be considered as processes leading to amends.
The first programs used the name “victim-offender reconciliation program” to emphasize that movement toward reconciliation was an optimal outcome, whether or not the parties actually achieved it. However, some objected to the word “reconciliation” as unnecessarily (and unhelpfully) value-laden. Victim support advocates were concerned that the term implied a duty on the part of victims to reconcile with their offenders. They preferred “mediation” or even better, “dialogue,” because those terms described the process rather than a possible outcome. Mark Umbreit has suggested that the “primary goal of victim offender mediation and reconciliation programs is to provide a conflict resolution process which is perceived as fair by both the victim and the offender.” For this reason, most programs now are referred to as victim-offender mediation programs. We will follow this convention for several reasons. Many crimes involve victims and offenders who were strangers to one another before the offense and, hence, “reconciliation” is not applicable. Furthermore, many victims and offenders who complete the VOM process do not become friends. Apology and forgiveness after a relatively brief meeting can be offered in only a limited way. However, it is important not to lose sight of the fact that reconciliation—however incipient—is a possible result of the process of dialogue.

There is a basic structure to the VOM process, although, like other encounter approaches, its operation should “. . . be dynamic, taking into account the participants and empowering them to work in their own ways.” The meeting allows the victim and offender to pursue three basic objectives: to identify the injustice, to make things right, and to consider future intentions.* Identifying the injustice begins as both parties talk about the crime and its impact from their own perspective and as they hear the other party’s version of the events. Some practitioners have called this “telling their stories.” It is during this stage that the parties put together a common understanding of what happened and talk about how it affected them. Both are given the opportunity to ask questions of the other, the victim can speak about the personal dimensions of the victimization and loss, and the offender has a chance to express remorse. Discussion of how to make things right comes through identifying the nature and extent of the victim’s loss and exploring how the offender might begin to repair the harm caused by the criminal act. This agreement is typically reduced to writing and specifies the amount of financial restitution, in-kind services, or other reparation to which both parties agree. Then the parties consider the future by, for example, setting restitution schedules, follow-up meetings, and monitoring procedures.

* While directing the VORP of the Central Valley program in California, Ron Claassen developed mediator training that presents the basic components as they are discussed here. We are indebted to Claassen for a number of the following insights concerning mediation.
Furthermore, meetings frequently include discussions about the offender’s plans to make a better future by such actions as addressing alcohol or other drug problems, resisting negative family or peer pressures, and devoting time to productive activities such as work, hobbies, or community assistance.

Restorative justice program research to date underscores the often remarkable power of well-run victim-offender mediation. Such encounters help victims achieve a sense of satisfaction that justice is being done and cause offenders to recognize their responsibility in ways that the usual court process does not. Victims confront the offender, express their feelings, ask questions, and have a direct role in determining the sentence. Offenders take responsibility for their actions and agree to make amends to the victim. Offenders often have not understood the effect their actions had on their victims, and this process gives them greater insight into the harm they caused as well as an opportunity to repair the damage. Both victim and offender are confronted with the other as a person rather than a faceless, antagonistic force, permitting them to gain a greater understanding of the crime, of the other person’s circumstances, and of what it will take to make things right.

Conferencing

Family group conferencing (FGC), initiated by legislation in 1989 in New Zealand, was subsequently adapted in Australia and is now being used in one of its various forms around the world. This program actually has traditional roots—the New Zealand model was adapted from the “whanau conference” practiced by the Maori people. The conference process has been most extensively used in cases involving juveniles, although conferences involving adult offenders (sometimes referred to as community group conferences) are increasingly being used as well.

Conferences differ from VOMs in several ways. First, the process is facilitated, not mediated. The facilitator (or “coordinator,” in the New Zealand model) assists the group, making sure the process remains safe for all involved and that it does not wander into irrelevant side issues. (While this is also true of the mediation programs just described, it is not true of some programs that are far more directive and also use the VOM name.) Second, conference participants include not only the victim and offender but also their families or supporters, sometimes referred to as their community of care. The arresting police officer and other criminal justice representatives may also be present. A typical conference might have a dozen or more people in attendance, although conferences have been conducted with substantially more participants. Third, while many
VOM programs emphasize the importance of pre-encounter preparation of the parties in individual meetings, conferences are usually conducted with minimal if any preparation of the parties.

Conferences open with the facilitator explaining the procedure. Then the offenders begin telling what happened in response to open-ended questions from the facilitator. The victims follow in a similar fashion, and describe their experiences, express how this has affected them, and direct questions (if they have them) to the offenders. The victims’ families and friends, and then the offenders’ families and friends, add their thoughts and feelings. Following this phase, the group discusses what should be done to repair the injuries caused by the crime. The victims and their families and friends have an opportunity to state their expectations, and the offenders and their supporters respond. Discussion continues until conference participants agree to a plan, which is then reduced to writing.

Evaluation studies of conferencing indicate that victim satisfaction with conferences is very high. Restitution agreements are reached in virtually all cases, and these agreements are typically completed without police follow-up. Repeat criminal behavior is less than what would normally be expected. Offenders develop empathy for their victims; families of offenders report that their child’s behavior has changed; support networks are strengthened; and the relationships between parents and police officers improve.

Circles

Circles are a community-based decision-making approach that is increasingly used in restorative programs. The basic model used for circles was derived from aboriginal peacemaking practices in North America. Circles are facilitated community meetings attended by offenders, victims, their friends and families, interested members of the community, and (usually) representatives of the justice system. The facilitator is a community member (called a “keeper”) whose role is primarily to keep the process orderly and periodically to summarize for the benefit of the group. Participants speak one at a time, and may discuss and address a wide range of issues regarding the crime, including community conditions or other concerns that are important for understanding what happened and what should be done. The focus is on finding an approach that leads to a constructive outcome, in which the needs of the victim and
community are understood and addressed along with the needs and obligations of the offender. The process moves toward consensus on a plan to be followed and how it will be monitored. Circles do not focus exclusively on sentencing, and the process itself often leads participants to discover and address issues beyond the immediate issue of a particular crime. When sentencing is involved, the circle plan outlines the commitments required of the offender and may also include commitments by others such as family and community members. Noncompliance with the circle plan results in the case being returned to the circle or to the formal court process.

The imprint of traditional rituals is visible on circle sentencing processes and structures, to

listen to conflicts to discover the potentials for positive change that they may hold for us. Conflicts are openings, doorways to new ways of being together. Because they occur within the whole, they bear a meaning that in some way relates to the whole. Perhaps the way things were wasn’t entirely working; conflicts invite us to explore how to change them. Perhaps we’ve accepted norms that conflicts call us to reevaluate.³

Because they do not have to focus solely on the crime, the victim, and the offender, participation in circles is not restricted to the immediate parties to the crime and those closest to them. Circles can include any community members who choose to participate. Every participant is heard—both in expressing their perspectives and feelings about the crime or other issues, and in proposing and committing to solutions. The circle process allows for expression of its members’ norms and expectations, leading to a shared affirmation by the circle—not just for the offender and victim, but for the community at large.

A circle process is initiated when an offender or victim makes application. Support groups may be formed for the victim and the offender. Multiple circles may be held with the support groups before the larger circle occurs. After the circle process has produced a plan by consensus of the whole circle, follow-up circles typically monitor it.
To date, relatively little research on sentencing circles is available, although stories abound to support the general benefits of these processes. Gordon Bazemore and Mark Umbreit report that a study by Judge Barry Stuart in Canada “indicated that fewer offenders who had gone through the circle recidivated than offenders who were processed by standard criminal justice practices.” However, it will be of considerable interest when research is available on a more comprehensive set of outcomes reflecting the circle process’ objective to bring a measure of healing to the community, the victim, the offender, and their families.

**Impact Panels**

Not all offenders are caught. Moreover, even when a crime is “solved” by the conviction of the offender, the victim or offender may not wish to meet with the other, or there may be logistical problems that prevent such a meeting from taking place. In each of these instances, victim-offender panels may provide willing parties an opportunity for a kind of surrogate encounter.

A victim-offender panel (VOP) is made up of a group of victims and a group of offenders who are linked by a common kind of crime, although they are not “each other’s” victims or offenders. In other words, where VOM and conferencing involve crime victims and their offenders, VOPs bring together groups of unrelated victims and offenders. The purpose of these meetings is to help victims find resolution and to expose offenders to the damage caused to others by their crime, thereby producing a change in the offender’s attitudes and behaviors.

VOPs are much more varied in form and content than VOMs and conferencing. A program in England, for example, brings together victims of burglary with youthful offenders who have been convicted of unrelated burglaries. The two groups of four to six persons each meet for three weekly sessions of 90 minutes each. During the meetings, there is discussion and role-play involving all of the participants.

In the United States, Mothers Against Drunk Driving (MADD) organizes Victim Impact Panels (or Drunk Driving Impact Panels, if offenders or other nonvictims are included) to expose convicted drunk driving offenders to the harm caused to victims and their survivors. The offenders are typically ordered to attend by a judge or probation officer.
The victims are selected by MADD or other victim support groups based on two criteria: whether the experience of telling their story is likely to be more helpful than harmful for the victim, and whether they are able to speak without blaming or accusing offenders. There is a single meeting, lasting 60 to 90 minutes, during which the victims speak. Carefully screened offenders may participate as panel members if they have shown remorse, have completed all aspects of their sentence, or have agreed that participation will not result in a reduction of their sentence, and if a screening committee has determined that the remorse expressed seems genuine and that the offender will be an effective speaker. There is no interaction between the victims on the panel and the offenders in the audience, although if the victims agree, there may be a brief question-and-answer period or informal conversation at the conclusion of their presentations.

The Sycamore Tree Project, a program run by Prison Fellowship organizations in New Zealand, England and Wales, Colombia, and a dozen other countries, brings groups of five to six victims into prison to meet with similar numbers of prisoners.* Using a prepared curriculum, they discuss issues including responsibility, confession, repentance, forgiveness, restitution, and reconciliation. At the end of the six- to 12-week project, they draw from their experiences in the program to draft letters addressed (but not delivered) to their own victims or offenders. The program is a prelude to more direct encounters when possible and is an alternative when none is available.

Studies suggest that VOPs can be beneficial to victims and offenders who participate. Victims in the burglary panels reported that they were less angry and anxious as a result of the meetings. Offenders demonstrated a better understanding of the impact of their crime on victims: the number of offenders who believed that burglary victims were more upset about having a stranger come into their house than they were about losing property increased significantly. Research on drunk driving panels has shown a dramatic change in the attitudes of offenders and in the likelihood of recidivism, and it has also shown a significant benefit to the victim participants: 82 percent reported that it had helped in their healing. These results were even more dramatic when the participants were compared with a control group of non-participants after controlling for other variables (such as counseling and elapsed time since the crash); participants manifested a higher sense of well-being, lower anxiety, and less anger than nonparticipants. Studies of offender attitudes before and after participating in Sycamore Tree Project have found that offenders’ thinking had become significantly less criminogenic.

---

* The England and Wales version has been modified due to prison regulations. In that version, one victim participates and the offender group can be as high as 20.
Elements of Encounter

We should note that the previous descriptions are of prototypes or models. In practice, the apparent differences may very well disappear, depending on the circumstances. A “mediation” program may include family members and supporters, for example. Furthermore, some programs calling themselves “victim-offender mediation” or “conferences” may not include key elements of these models. For example, in some programs the “mediation” consists of shuttle diplomacy by a mediator who meets with each party, but does not bring them together. In some “conferences” the victim does not participate. While there can be benefit to the participants in these practices, they cannot be considered fully restorative.

The illustration of encounter in Homer’s *The Iliad* helps identify several elements that contribute to a process of restoration. The first, of course, was that Achilles and Priam actually met. This was not the story of shuttle diplomacy, or of negotiation by proxies. Priam came to Achilles’s tent for the meeting, and the two men talked and ate together. The second is that they spoke personally; each told the story from his own perspective. This personalized approach has been called narrative. They did not attempt to generalize or universalize, but instead spoke with feeling about the particulars of the decade-long conflict that concerned them most. The third is related; they exhibited emotion in their communication. They wept as they considered their own losses. They wept as they identified with those of the other. They experienced not only sorrow but also anger and fear. Emotion played a significant role in their interaction. A fourth element is understanding. They listened as well as spoke, and they listened with understanding, which helped them acquire a degree of empathy for the other. Fifth, they came to an agreement that was particular to Priam’s grievance and was achievable. Achilles agreed to turn over Hector’s body for burial and in addition gave the Trojans time to conduct Hector’s funeral.

These elements are also found in the encounter programs described above. All involve meetings between victims and offenders. In mediation, conferencing, and circles, the victims meet with their own offenders; with VOP, the meetings are between representative victims and offenders. This means that what takes place during the encounter directly engages the other party. This is in contrast to court proceedings, in which the best that will happen is that each party will be able to observe the other’s statements to the judge or jury.
At the meeting, the parties talk to one another; they tell their stories. In their narratives, they describe what happened to them, how it has affected them, and how they see the crime and its consequences. This is a subjective rather than objective account; consequently, it has integrity both to the speaker and to the listener. MADD suggests to victim panelists in drunk driving panels:

Simply tell your story. . . . After you’ve given the facts about the crash, talk about how you feel NOW—not yesterday or a week ago or when the crash happened. This will keep your story relevant and poignant and protect you from giving the same presentation over and over again. Speak what is true for you, and you can trust that it will be “right.”

Narrative permits the participants to express and address emotion. Crime can produce powerful emotional responses that obstruct the more dispassionate pursuit of justice to which courts aspire. Encounter programs allow those emotions to be expressed. This can foster healing for both victims and offenders. All of the encounter programs described above recognize the importance of emotion in training facilitators, preparing participants, and establishing ground rules. As a result, crime and its consequences are addressed not only rationally but from the heart as well.

The use of meeting, narrative, and emotion leads to understanding. As David Moore has observed about conferencing, “in this context of shared emotions, victim and offender achieve a sort of empathy. This may not make the victim feel particularly positive about the offender but it does make the offender seem more normal, less malevolent.” Likewise, for offenders, hearing the victims’ story not only humanizes their victims but also can change the offenders’ attitude about their criminal behavior.

Reaching this understanding establishes a productive foundation for agreeing on what happens next. Encounter programs seek a resolution that fits the immediate parties rather than focusing on the precedential importance of the decision for future legal proceedings. Encounter, therefore, opens up the possibility of designing a uniquely crafted resolution reflecting the circumstances of the parties. Further, they do this through a cooperative process rather than an adversarial one—through negotiation that searches for a convergence of the interests of victim and offender by giving them the ability to guide the outcome.

Do these elements—meeting, narrative, emotion, understanding, and agreement—yield reconciliation when combined? Not necessarily. Achilles and Priam’s meeting did not result in the two men becoming friends, nor did it end the surrounding hostilities. However, it did increase their ability to see each other as persons, to respect each other, and to identify with the experiences of the other, and it made it possible for
them to arrive at an agreement. In other words, some reconciliation had occurred. As Claassen and Zehr have noted:

Hostility and reconciliation need to be viewed as opposite poles on a continuum. Crime usually involves hostile feelings on the part of both victim and offender. If the needs of victim and offender are not met and if the victim-offender relationship is not addressed, the hostility is likely to remain or worsen. . . . If however, victim and offender needs are addressed, the relationship may be moved toward the reconciliation pole, which in itself is worthwhile.7

Issues

Encounters between victims and offenders have a number of advantages, as we have seen, but they also raise some important issues that should be considered carefully before implementing or using such programs. This chapter will conclude with a review of three strategic issues of particular importance to policymakers and practitioners:

1. How to minimize coercion of participants.
2. Whom to include in the encounter.
3. Accountability for conduct and outcomes of encounters.

Minimizing Coercion

One of the central attributes of contemporary criminal justice is that it is coercive: government has the authority to punish offenders and to compel others (including victims) to participate in the process. Encounter programs, on the other hand, are committed to voluntary participation. There is an obvious difficulty in maintaining a truly voluntary process in the context of the highly coercive criminal justice system. Offenders may agree to participate in hopes of a more lenient sentence. This does not necessarily render the offender’s participation involuntary or coerced. The existence of sentencing alternatives that produce results more onerous than those achieved by an encounter does not constitute coercion unless the alternatives are either nonexistent or unjust.
A poorly trained facilitator could exert pressure on the victim in an attempt to overcome early and natural resistance to meeting with the offender. While pressure is wrong, it is appropriate and important that victims as well as offenders receive complete and accurate information about the alternatives they have for resolving the dispute. Eric Gilman suggests that mediation be only one of several options that are offered to victims. He describes the approach used by the Victim Offender Meeting Program of the Clark County Juvenile Court in Vancouver, Washington:

> Through a thoughtfully worded letter and/or phone contact, this initial connection with the victim seeks to:

- acknowledge the harm done to the victim and express the community’s concern about the harm, and express the community’s commitment to hold the offender accountable in ways that are meaningful to the victim (acknowledgement)
- provide the victim with general information about the justice system and specific information about what is happening in their case (information)
- offer victims the opportunity to talk about the impacts of the crime on them (a voice)
- provide choices for participation in the justice process (a choice to participate).

Those who choose to participate—victims as well as offenders—should do so because they believe that there is an advantage to taking this approach. The key, however, is to offer the option of an encounter process as honestly, objectively, and nonjudgmentally as possible so that those who choose otherwise can simply allow the criminal justice system to take its usual course.

**Parties Involved**

As we have seen, the various encounter approaches differ regarding the number of parties involved and the roles they play in the process. The VOM process typically includes a mediator, the crime victim, and the offender—those parties who are most directly involved. Sometimes the victim or offender asks to have parents or friends present, or even (on rare occasions) to be represented by a surrogate. In some programs, the community may be formally represented through designated participants. When there are multiple victims, each victim has the opportunity to participate, and if it is decided that they should meet separately, there could be as many VOM processes as there are victims. Conferences, on the other hand, include family and friends of the parties as well as criminal justice representatives, along with the facilitator. When there
are multiple victims and offenders, they and their families may be included in a single conference. Circles involve the offender, victim, support persons for each, criminal justice representatives, and community members—all facilitated by a community member.

**Facilitators.** In mediation, conferencing, and circles, facilitators are responsible for approaching the victims and offenders, helping prepare them for the meeting, and then guiding the actual meeting. Although many programs rely on trained volunteer facilitators, in the case of serious or violent crimes in which a greater level of therapeutic expertise is needed, professional facilitators may be used instead. In the meetings, facilitators help guide the interaction as needed, ideally following whatever process enhances communication between the victims and offenders and allows the parties to develop their own plan together. Facilitators will take corrective action if the process becomes physically or emotionally dangerous for anyone.

Facilitators do not decide what will happen, as judges or arbitrators do. Nor are they advocates for either the victim or offender in achieving their goals for the reconciliation process. They do not press an offender to show remorse or a victim to speak words of forgiveness. Their function is to regulate and facilitate communication within the encounter setting to create a safe environment in which the parties can make their own decisions. This means that facilitators must remain alert to the potential for new harm to victims, either through the way the process proceeds or because the victims are not ready for the encounter. The victims’ needs and the timing of the victims’ recovery—particularly when the crime was serious or violent—are critical considerations in deciding when or whether cases should be brought to an encounter.

This description refers to the way that facilitators are expected to work when programs are well-run. Training and selection of facilitators is an extremely important function of an effective program, as is in-service training and evaluation according to standards that reflect best practices and restorative values.

**Victims.** Victims who choose to participate in encounter processes have the opportunity to ask questions of the offender, express their feelings about what occurred, and suggest ways the offender can begin to make things right. According to one study, victims’ three most important goals in entering an encounter process were to: (1) recover some losses, (2) help offenders stay out of trouble, and (3) have a real part in the criminal justice process. However, once they had participated in the encounter these goals changed.

Victims are most satisfied with (a) the opportunity to meet the offender and thereby obtain a better understanding of the crime and the offender’s situation; (b) the opportunity to receive
restitution for loss; (c) the expression of remorse on the part of the offender; and (d) the care and concern of the mediator. Even though the primary motivation for participation was restitution, the most satisfying aspect of the experience was meeting the offender.⁹

A subsequent study found that 80 percent of victims who had participated in a mediation meeting reported that they had “experienced fairness,” compared with fewer than 40 percent of victims who had chosen not to enter the program. These victims defined “fairness” as the right to participate directly in the process, as rehabilitation for the offender, as compensation for the victim, as punishment of the offender, and as the offender’s expression of remorse. As noted above, studies of family group conferences and circles indicate a similar degree of victim satisfaction.

Although facilitators are trained not to side with either victims or offenders, the process recognizes that victims generally stand in a different moral position than the offender, having been wronged as opposed to causing the harm.* There are several ways this happens. First, offenders participate only if they have accepted responsibility for what they have done. Second, the process itself focuses on the wrongdoing by engaging the parties directly in conversation about it. Third, the parties examine the moral implications of the offender’s actions.

**Offenders.** The encounter process puts offenders “in the uncomfortable position of having to face the person they violated. They are given the . . . opportunity to display a more human dimension to their character and to even express remorse in a very personal fashion.”¹⁰ Genuine acceptance of responsibility can indicate the beginning of a change of heart in the offender, but such acceptance may take some time.

Encounter processes, however, do change offenders’ attitudes. According to one study, offenders’ reasons for agreeing to participate in encounters included avoiding harsher punishment, getting beyond the crime and its consequences, and making things right. After completing the process, however, they reported that their criteria for satisfaction had changed.

* This is not always true, of course, and what can emerge from a restorative encounter is a more complete picture of the dynamics and interaction between the victim and offender than may emerge during a trial.
[O]ffenders were most satisfied with: (a) meeting the victim and discovering the victim was willing to listen to him or her; (b) staying out of jail and in some instances not getting a record; (c) the opportunity to work out a realistic schedule for paying back the victim to “make things right.” Strikingly, what offenders disliked most was, also, meeting the victim. This reflects the tension between, on the one hand, the stress experienced in preparation for meeting the victim, and, on the other hand, the relief of having taken steps “to make things right.”

It is not surprising that offenders experience this tension because of what they have done. Allowing the offender and victim to address what happened in a nonjudicial context gives the offender freedom to repair some of the damage he or she caused by the crime, and thus gain a better moral footing in the situation.

**Support Persons and Community Members.** The presence or absence of support persons and community members is a significant difference between the prototypical models of VOMs, conferences, and circles. In VOMs, the principal parties are the victim and offender. In conferences, the family, support group members (the “community of care”), and criminal justice professionals are full participants and play an active role in the process up to and including agreement on a plan of action. In circles, this involvement is expanded to include anyone interested in attending for whatever reason, including community members who have no relationship with the victim or offenders (the “community of interest”).

**Government Representatives.** In both the conferencing and circle models, government representatives may participate. These may include the arresting police officer, a social worker, the prosecutor, or the judge—although typically not all of those individuals. In some instances these people serve as facilitators, and in others they are merely participants. Declan Roche recommends that justice system personnel not serve as facilitators because their decision-making roles within the coercive criminal justice system make it difficult for them to be perceived as neutral conveners.

One might ask whether the state should have a participatory role in a restorative process, and if so, why. As we saw in Chapter 3, the government and community make different contributions to establishing safety. The government’s responsibility is to provide a just order, while the community’s is to build a just peace. Order is established in several ways: first, through the use of coercive power when necessary to bring about order in a chaotic environment, such as after a natural disaster or civil disturbances; second, by creating orderly processes for dealing with crimes and their aftermath; and third, by providing in legislation a clear statement about the conduct that society deems to be criminal. It is in this latter role that government representatives may participate; they
bring the perspective of society at large, which means, as Roche suggests, that victims are free to be forgiving if they wish, without sacrificing the principle that criminal behavior is harmful and wrong.13

Accountability for Conduct and Outcomes of Encounters

In criminal cases, accountability is generated in several ways. First, the parties are allowed representation by attorneys, who may make motions concerning the process and outcome in court, may object if they feel the judge or other party is taking inappropriate action, and may appeal to a higher court if the judge rules against them. In addition, adult court proceedings are typically open to the public and media, which means that all participants are vulnerable to public exposure. Encounters, on the other hand, typically take place in private, and usually without lawyers present. Although a well-trained facilitator can help ensure effective practice, the question arises about the accountability of the facilitator and parties to participate in good faith and in keeping with restorative principles and values.

Roche14 has explored this issue in a research project involving 25 programs in six countries. He found that several forms of accountability are present during encounters. One is what he calls deliberative accountability, which stems from the nature of the encounter process itself. Each party becomes accountable to the others to explain their positions because decisions are made on the basis of consensus. Consequently, it is necessary for participants to explain their point of view in order to persuade the others. This creates a kind of balance of power in which no party is able to dominate the others. This informal accountability was supplemented in most programs by the availability of an alternative forum if a party was unhappy with the deliberative process. For example, offenders could choose to leave the restorative encounter and demand a hearing in open court.

This is not the only check against domination by parties over others in the encounter. Another is to include friends and supporters of the parties to offer them encouragement and assistance. This might be particularly useful when parties feel intimidated by other parties, or when one of the parties has difficulty expressing opinions and perspectives. Some programs allow professional advocates to participate, such as in Australia, where offenders may bring lawyers and victims a victim advocate. In Belgium, attorneys routinely attend encounters in order to advise their clients during the proceedings. A third approach identified by Roche is to carefully prepare the parties before the encounter and screen out those who would not be able to participate without dominating or being dominated. This preparation can include provision of legal information.
In addition, the meeting can be structured to reduce domination. One example Roche offers is of a conferencing scheme that provides for a short break in the middle of the meeting so that young offenders may talk with their families. This allows them to express any concerns privately to their families that they may be reluctant to bring to the attention of the whole group.

More traditional forms of accountability are useful as well, according to Roche. He reports that some of the programs he researched allow observers, although they differ over who may observe. Others permit some form of external review. *The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* states that after an encounter the agreement should be reviewed by the law enforcement or judicial officials who referred them in the first place. Roche proposes, however, that this review be only procedural and not substantive so that the officials do not substitute their opinions about the outcomes, but merely ensure that the process itself is protected.

**Conclusion**

Encounter programs offer the parties to crime an opportunity to face one another. The formal criminal justice system separates the parties and limits their contact, reduces the conflict to a simple binary choice of guilty/not guilty, and deems irrelevant any information related to the conflict and the individuals that does not directly prove or disprove the legal elements of the crime charged. An encounter, on the other hand, offers victims, offenders, and others the chance to decide what they consider relevant to a discussion of the crime. The encounter tends to humanize them to one another and permits them substantial creativity in constructing a response that deals not only with the injustice that occurred but with the futures of both parties as well.

**Notes**


13. Ibid., 105.


15. Ibid., 188–225.
Chapter 5

AMENDS

Ebenezer Scrooge is the prototype of a tightfisted, misanthropic miser. Charles Dickens’s story *A Christmas Carol* tells of the conversion of Scrooge by the spirits of Christmas. To help us understand the dramatic change this produced, Dickens begins with a powerful description of the coldhearted, irascible skinflint.

Oh! But he was a tight-fisted hand at the grindstone, Scrooge! a squeezing, wrenching, grasping, scraping, clutching, covetous old sinner! Hard and sharp as flint, from which no steel had ever struck out generous fire; secret, and self-contained, and solitary as an oyster. The cold within him froze his old features, nipped his pointed nose, shriveled his cheek, stiffened his gait; made his eyes red, his thin lips blue; and spoke out shrewdly in his grating voice. A frosty rime [coating] was on his head, and on his eyebrows and his wiry skin. He carried his own low temperature always about with him; he iced his office in the dog-days; and didn’t thaw it one degree at Christmas.¹

Scrooge’s sins against humanity seem endless. He abuses his clerk, Bob Cratchit, paying him the paltry sum of 15 shillings a week and providing miserable working conditions (a single burning coal in mid-winter to warm his working station). He refuses to provide any bonus or other concession to Christmas day aside from the day off, which he grants only grudgingly as “picking his pocket.” He spurns any contact with his family because there is no financial profit in spending time with them. He refuses to contribute to a fund for the poor on the grounds that he already pays taxes for prisons and workhouses. When reminded that many poor cannot go there and others would rather die than do so, he grumbles, “If they would rather die, they had better do it, and decrease the surplus population.”² His demeanor is so hostile that no one ever greets him in the street, no beggar approaches him, no child asks the time, and no stranger ever seeks directions. Seeing-eye dogs lead their blind owners into doorways and courtyards to avoid passing by Scrooge.
Scrooge was not always this way. He was a lonely child who buried himself first in books, and then as he grew older, in work. He fell in love, but delayed marriage so often in order to pursue wealth that his fiancée finally called off the wedding. His first employers were generous to their employees, but as he became an employer himself he viewed such generosity as wasted profit. It was not until he was visited by the ghost of his former partner Jacob Marley, and taken on journeys through time and space with the Spirits of Christmas Past, Present, and Future, that he realized the moral bankruptcy of his life. The purpose of life is not to gain money, but to become a good friend, a good master, and a good man. How those experiences could lead to such a radical transformation is an interesting and profitable matter for reflection. However, that is not why we begin this chapter with Scrooge’s story.

After his night of visions, Scrooge awakens on Christmas morning a changed man. As this final chapter of the story begins, Dickens emphasizes two points: the tangible reality of Scrooge’s surroundings compared to the visions of the previous night, and the equally clear truth that Scrooge is now different. “Yes! and the bedpost was his own. The bed was his own, the room was his own. Best and happiest of all, the Time before him was his own, to make amends in!”

Making amends. That is what interests us about this story. For Scrooge’s efforts to repair the harm of his previous life parallel closely the ways in which he had harmed others in his former life. Before Christmas, he had chased away a boy who sang carols in hopes of a tip; after Christmas, he enjoys an excited conversation with another boy and pays him handsomely to purchase a holiday turkey. Before Christmas, he had abused his employee Bob Cratchit; after Christmas, he anonymously sends him the turkey, gives him a raise, and provides him with enough coal to warm his workstation. He even arranges for medical treatment for Cratchit’s son, Tiny Tim, so that he does not die as was prophesied by the Christmas Spirits.

Before, he was unwilling to contribute to charities serving the poor; after, he makes a very large contribution. Before, he spurned people in the street; after, he greets people with a smile, pats children on the head, questions beggars, and finds that it all gives him pleasure.

Before, he ignored his relatives; after, he attends their Christmas celebration and enjoys himself completely. Before, his response to Christmas was “Bah, humbug!”; after “[i]t was always said of him, that he knew how to keep Christmas well, if any man alive possessed the knowledge.”
In making amends, Scrooge did not try to undo the past, but instead took steps to repair the harm his behavior had caused. Scrooge apologized to Bob Cratchit and to the charitable solicitors. His change was demonstrated behaviorally by attending his nephew’s Christmas party; by paying attention to people in the street, beggars, and little children; by adopting more humane work practices; and by learning to celebrate Christmas well. He made monetary and in-kind restitution by increasing Bob Cratchit’s salary and spending more on fuel at the office. He generously sent the large turkey to the Cratchits as an anonymous gift, gave substantially to charity, and paid for Tiny Tim’s medical treatment.

These four elements—apology, changed behavior, restitution, generosity—are the elements of making amends.* In restorative processes such as mediation, circles, and conferencing, all four play an important role. An evaluation of conferencing in Australia found that 89.7 percent of conferences involved a verbal apology, 34.2 percent involved a commitment not to reoffend, 23.9 percent involved direct restitution, 17.9 percent involved voluntary work for the victim, and 36.8 percent involved community work.5

Apology

What is an apology? Carl D. Schneider suggests that apology has three elements.6 The first is acknowledgment: “It was wrong and I did it.” There is an admission that a norm was violated and that the person

* Linda Radzik, in her insightful book Making Amends: Atonement in Morality, Law, and Politics (New York: Oxford University Press, 2009), presents amends comprehensively as the moral obligation of a wrongdoer to take atoning steps that open the possibility of “moral reconciliation” with the victim and/or the victim’s community. Since wrongdoing causes not just material but relational harm, the elements of amends also include consideration of the victim’s moral claims. It is not sufficient to prescribe a set of restitutionary steps for the wrongdoer (as if to repay a monetary debt); the wrongdoer must demonstrate a commitment to moral transformation that looks to future values and behavior as well. Further, the prerogatives and responsibilities of the victim to accept the wrongdoer’s sincere and proportional amends are essential to the equation, if there is to be genuine repair of the relationship (or redemption, in her terminology). Our example does not delve into, for example, Bob Cratchit’s view of the harms he endured under Scrooge’s unredeemed behavior and the moral obligations Cratchit and his family would perceive as essential to achieving a genuine relationship with Scrooge. We take Radzik’s point. Yet in practical terms, combining our four elements of apology with encounter (as explained in Chapter 4), reintegration (Chapter 6), and inclusion (Chapter 7) creates the conditions under which moral reconciliation can occur to a significant degree (as Radzik acknowledges, p. 159).
making the apology is accountable for that violation. This is different from simply expressing sorrow about the aggrieved person’s beliefs (e.g., “I am sorry that she feels she was injured”) because that admits neither the wrong nor the wrongdoing.

The second element is affect: “I am troubled by what I did.” Julie Leibrich has found that private remorse is the most powerful factor in an offender’s decision to stop offending. A person may express regret or shame in words or by his or her demeanor. Victims who witness this can find it a validating, healing experience. However, we need to understand that regret and the expression of regret are two separate things. A low capability to express regret, while diminishing the impact of the apology for the victim, does not necessarily mean that there is no regret.

The third element of apology is vulnerability: “I am without defense.” The effect of an apology is to make the wrongdoer powerless before the person wronged. The victim may accept the apology and extend at least a measure of forgiveness, or that may not happen. The apologizer cannot know until the apology is offered. When an attempted apology fails to incorporate the element of vulnerability by shifting into an explanation and attempting exoneration, it falls short.

Understood in this way, we can see why an apology is an “exchange of shame and power between the offender and the offended.”8 Where offenders have previously exerted power to the disadvantage and shame of their victims in offering an apology, offenders shame themselves and give the victim power to accept or reject the apology.

Yael Danieli has argued in the context of human rights abuses by governments that an apology alone is insufficient. It must be accompanied by restitution of some sort, even in token amounts.

It’s not the money but what the money signifies—vindication. It signifies the government’s own admission of guilt, and an apology. The actual value, especially in cases of loss of life, is of course, merely symbolic, and should be acknowledged as such. The money concretizes for the victim the confirmation of responsibility, wrongfulness; he is not guilty, and somebody cares about it.9

This may be true for other crimes as well. Most restorative processes result in agreements that require more than an apology from the offender. These elements are mutually reinforcing. Changed behavior, restitution, and generosity underscore the sincerity of the apology.

**Changed Behavior**

A second way to make amends is to change behavior. Minimally, this means to stop committing crimes, but the change can be more constructive
than that. One of the reasons crime victims give for becoming involved in restorative processes is to help “turn the offender around” in order to keep others from becoming victims. This interest in rehabilitation has nothing to do with sentimental feelings for the offender and everything to do with a concern that others not suffer the same fate as they did.

Genuine change has two components: changed values exhibited in changed behavior. Scrooge’s values changed in the course of his three visitations, but his change was not complete until he transformed his new understanding into action the next day. The same is true for offenders.

Three strategies for changing behavior are to change the environment, learn new behaviors, and reward positive change. These elements are discernable in agreements negotiated in many restorative encounters. For example, the offender may agree to stay away from certain places or (more positively) to attend school or work. This changes the environment of the offender and makes it less likely that the offender will repeat patterns of behavior that lead to crime. Offenders learn new behaviors by taking anger management courses, completing drug treatment, or signing up for training in a work area that interests the offender. One type of reward is the follow-up meeting that takes place after many encounters, during which offenders receive positive reinforcement of their efforts to satisfy the agreement.

Restitution

As a formal way of holding an offender accountable, restitution is a prime way for the justice system to respond restoratively to the harm done to victims. Restitution* requires the offender to recompense the victim for the harm sustained. Restitution is typically made by returning or replacing property, by financial payment, or by performing direct services for the victim.

As we saw in Part I, restitution was an important part of criminal justice in the past. Even after the shift in thinking that led to the offender

* In some countries, the term “compensation” is used instead of “restitution.” See, for example, Lucia Zedner, “Victims,” in Mike Maguire, Rod Morgan, and Robert Reiner, eds., The Oxford Handbook of Criminology (New York: Oxford University Press, 1994), 1237, 1239. However, we will use that term more narrowly to refer to payments made by the government or by another party unrelated to the offender, in an amount typically based on the nature and extent of the harm.
becoming the passive recipient of sanctions imposed by criminal courts, calls for restitution sanctions continued to be raised. In his 1516 book, *Utopia*, Sir Thomas More proposed that convicts be sentenced to labor on public works for pay in order to have funds from which to reimburse their victims. The eighteenth-century philosopher Jeremy Bentham argued for mandatory restitution in money or in-kind services in all property crimes. In the latter part of the nineteenth century, a succession of reformers proposed the revival of restitution to international penal conferences. Such calls continued into the twentieth century. In some instances, they were based on the principle of fairness to victims; in others, on the beneficial effects to the offender. It was not until the 1980s, however, that restitution became firmly established in the United States and elsewhere. For the most part, however, it is still only of secondary importance to other, more traditional sanctions in the criminal justice system.

A number of issues need to be addressed for restitution to assume primary importance in a justice system. We will consider some of those later in this chapter.

**Generosity**

The final component of making amends is generosity. Generosity means *going beyond the demands of justice and equity*. Scrooge sent the Cratchits an enormous turkey for Christmas, one that was far larger than they needed. He gave a surprisingly large gift to charity, one that left the fundraiser stunned by its size. In doing more than he needed to do, he showed both the genuineness of his conversion and his desire to make up for the kind of person he had been: he told the fundraiser that there were many years of back payments in his gift.

Albert Eglash addresses this dimension of making amends by proposing something he called “creative restitution,” which means going beyond the required. It involves “going the second mile.” This is a form of restitution negotiated by the offender and victim, in which the offender voluntarily takes on a duty that does more than “balance the books.”

Examples of generosity often involve the offender offering services that do not necessarily benefit the victim and only tangentially relate to any debt to the community as a whole. For example, the offender may
agree to provide artwork for a community center or participate in a home renovation project for a person in need. Because this community service is not directly related to the harm caused, it is difficult to consider it restitution. It looks less like a debt being repaid, and more like a contribution being made. Nevertheless, it is clearly intended to be part of how the offender makes amends.

Issues Related to Restitution

The full restorative potential of restitution comes when it is the result of an agreement made in an encounter. This is because in those circumstances, offenders are able to take active responsibility by choosing to make restitution, whereas if restitution is simply ordered by a judge, the offenders are only passively responsible. Furthermore, in an encounter the parties are able to settle a number of issues for themselves: How much restitution is enough? Who should receive it? What if the offender does not have the resources to pay the victim?

However, in light of contemporary sentencing policies, which are offender-focused, requiring courts to give primacy to restitution would be a significant reform that would move criminal justice in a restorative direction. If that were to happen, policy decisions would need to be made concerning a series of important questions. Let us consider some of those.

Who Should Receive Restitution?

At first glance, the answer to this question seems obvious: the victim. However, there is seldom a single person harmed; there are usually other, secondary victims as well. What about them? If we imagine a series of concentric circles around each crime, the direct victim—the one against whom the crime was perpetrated—would be in the center circle. Other victims could be placed in the remaining circles based on their proximity to the primary victim. Secondary victims or co-victims (such as homicide survivors) would be in the second circle. The local community in which the crime took place would be in the third. Insurers or employers would fall into the fourth circle. Society would be in the outside circle.

What can we say about the idea of an injury to society? Should this be recognized in restorative justice, and if so, how is that injury redressed? In a helpful article, Antony Duff argues that criminal cases involve not only the injuries to victims but injuries that have been caused by wrongful action. Wrongful acts are public harms, not in the sense that the wrong against the public should be set against the wrong to the victim,
but that the public is rightly concerned about what happened to the individual victim. Society is concerned because the wrongful act violates agreed-to moral values captured in the criminal law. He goes on to explore a number of implications that follow from this. One is that the wrongfulness of the behavior can be redressed in ways that offer restitution and restoration to the victim. Another is that repairing the harm caused to the victim may not be a great enough sanction in light of the seriousness of the offense, or conversely, repairing the actual harm to the victim might be far more onerous than the seriousness of the offense would require.

The difficulty arises in attempting to quantify the harm to society. Andrew von Hirsch\textsuperscript{12} has proposed, in connection with a different but related issue,\textsuperscript{*} that harm could be established by determining how it impedes the standard of living of the typical person. How does a particular kind of crime infringe on the typical victim’s physical integrity, material support and amenity, freedom from humiliation, and privacy? One possibility would be to convert this calculation into a common denomination, such a certain number of working days’ wages for the average worker. However expressed, this average infringement, less the actual harm to the particular victim, might be considered the public dimension of the harm. This assumes that the overall harm is relatively constant, and that the proportion of harm that is public, as opposed to belonging to the victim, depends on the actual harm experienced by the victim.

However it is calculated, one might conceive of a court requiring a defendant to pay restitution to a victim, and some other amount, representing the public dimension of the harm, into a restitution fund that could be available for victims whose offenders are not caught or have not paid.

In some ways, restorative justice theory offers a more useful approach, and that is to handle the issue of a societal harm by allowing a government representative to participate in the restorative encounter. In the same way that reparation to the victim can be negotiated with the victim, and that local communities can be represented (for example, in circles), so too can the broader societal interest be addressed by including a government representative. This approach is procedural rather than substantive; the emphasis is on who is invited to the restorative process rather than on precisely what harm was caused to society.

Must a criminal sanction of restitution include all the victims in each of these circles? Can it do so? The claim to restitution loses intensity and

\textsuperscript{*} He was exploring the link between the seriousness of an offense and a particular punishment. Crimes can be listed in order of seriousness, as can potential sanctions. But it is extremely difficult to connect a particular crime with a particular sanction. Von Hirsch suggested that looking at effect on standard of living might be one way to do that.
practicality as the harm involved becomes more indirect, but it does not follow that those claims must be ignored or minimized; after all, criminal laws express the public’s censure of behavior that violates the common good. Even more, criminal laws and the institutions of the criminal justice system encourage a public expectation of safety and security that is violated when crime occurs.

We suggest, as a general principle, that those who have suffered the most direct and specific injuries should receive restitution in criminal proceedings. Therefore, the more indirect or general the injuries, the lower the expectation should be that a judge will order restitution. For practical reasons, it may be useful for legislatures to establish categories of victims and injuries that are eligible for restitution so the decision need not be made on a case-by-case basis, but such categories should reflect the principles of directness and specificity. This will be particularly important in deciding whether community service should be considered a form of restitution. It is sometimes described as restitution for intangible harm done to the community. However, without first defining with some precision the harm done to the community, calling it restitution is more a rhetorical and imprecise name than a meaningful reality. For example, if a burglar who destroyed a school’s computer equipment is sentenced to “community” service picking up highway trash, how can this be described as restitution? It is not at all clear who is being compensated (is it the highway department? taxpayers in general? the people who use the highway?) or how they were directly and specifically injured (or even indirectly injured) by the crime. On the other hand, it would be easier to understand if the community service was to key in data lost when the equipment was destroyed.

One group of restorative justice practitioners and researchers has suggested that the presence of the following factors makes community service more likely to be restorative:

- direct involvement by the victim and offender in a restorative process
- involvement of the community in determining community service that is meaningful to both community and offender
- community members and offender working side by side
- public acknowledgement of offender’s contribution
• opportunities for reflection that help offender and community understand and accept community service as “giving back”

• opportunity for offender to gain or enhance skills or competencies.¹³

What about cases in which an offender has been identified but is never convicted of the particular offense? For example, offenders sometimes plead guilty to certain outstanding charges in return for the prosecution’s dismissal of other counts. Should restitution be ordered for those charges that were dismissed? In the late 1980s, the Criminal Justice Section of the American Bar Association examined the legal boundaries and precedents related to restitution and established Guidelines Governing Restitution to Victims of Criminal Conduct.¹⁴ These require that the offenses be adjudicated before restitution can be ordered. However, the commentary prepared with the guidelines concludes that this merely requires that a court review and sanction the restitution order. Victims in cases dismissed as a result of the plea bargain could receive restitution as part of the overall plea agreement under the guidelines. However, the more remote the claimants are from the case in which the defendant is pleading guilty, the less appropriate it is to pursue restitution as part of the plea.

**Should Restitution Reflect the Seriousness of the Offense or of the Injury?**

Some actions are more detrimental to public order than others. The relative seriousness of a crime is not necessarily reflected solely in the physical damage that results. For example, an act of vandalism, an aborted attempt to break into a building, and a failed assassination attempt may each result in a broken window. However, in the latter two cases, replacing broken glass is not the only issue that must be addressed. This is reflected in the charges that will be brought in each case as well as in the sentences imposed. Standards of lawful conduct must be reinforced by considering both the seriousness and nature of the offense as well as the nature of harm suffered by the victim and the community in which it occurred.

Courts across the United States have used these considerations to design many sentences that are primarily nonincarcерative for a wide range of serious, even violent, offenses. When such sentences include restitution, they address the harm done to the victim and reinforce the unacceptability of the behavior.

Previously, we mentioned von Hirsch’s proposal to quantify the seriousness of an offense by calculating the average impact of that kind of offense on victims’ standard of living. This might be a useful approach when the
matter is before a judge. The other alternative we proposed was procedural: the seriousness of the offense would determine which parties must be present in order to have a satisfactory encounter and agreement on amends. In the most serious crimes, a government representative must be present in addition to the victim, offender, and community representative.

For Which Injuries Should Restitution be Provided?

The government has a legitimate interest in prohibiting behavior that causes or threatens harm to persons or communities. If preventing harm is one of the justifications for making and enforcing laws that prohibit criminal behavior, then it is reasonable to expect that the penalties or sanctions for breaking the laws would include duties to repair the harm. But what kinds of harm can properly be redressed through criminal sanctions? The American Bar Association Guidelines give judges a great deal of latitude, within broad limits, in deciding which harms should be considered. The limits are that the damages should be directly related to the criminal conduct of the defendant and that they should be easily quantified. Claims for damages that lie outside those limits are better resolved in civil court.

We have suggested that a guiding principle for restitution be that the most direct and specific harms suffered should be the first to be redressed through sentences of restitution. For example, if a victim misses two weeks of work due to hospitalization for injuries sustained from a robbery, the lost property and hospitalization expenses are more direct than are the lost wages. They are also more specific than the trauma that may have resulted from the crime.

When Restitution is Not Feasible

Few offenders have the income or resources at hand to repay their victims. This discourages many victims or prosecutors from requesting restitution orders. Studies have shown, however, that restitution is most effective as a sentence when courts and correctional authorities are committed to it as a sentencing priority. For example, prisoners in Belgium are given opportunities to perform community service inside the prison, with the government paying the equivalent of a wage into a restitution fund for the victims of those prisoners based on how long the prisoners work. When probationers complete their probation period but still owe restitution, they could be given extra time to finish their payments without continuing other conditions of community supervision. If a victim’s need for redress is immediate and the victim cannot wait for the offender to pay, the victim could receive funding from a victims’ compensation fund with the offender reimbursing the fund over time.
In some jurisdictions, these compensation funds are established using monies paid by offenders for whom no direct victim needed payment and by excess funds accumulated when sentences exceeded the restitution due the victim. Victims who cannot recover damages from their offenders can be repaid from this fund. Forfeiture laws can be applied so that seized assets are used to support compensation funds or assist communities ravaged by crime. The important thing is that offenders make restitution and that victims receive it—directly when possible, indirectly when necessary.

A commitment to restitution involves a commitment to making it feasible. Committed government and community agencies working together can overcome many impediments to restitution. Too often, an offender’s inability to pay is often simply accepted, and the victim’s hope of redress set aside. The government, local businesses, vocational educators, and others can cooperate to address the reasons why an offender has no means. When rehabilitative interventions are needed, human services agencies could also be involved. The community setting provides a potential network of services and opportunities that can help make restitution work.

Once incarcerated, most offenders have virtually no means of making restitution or paying family support. This is why we believe non-dangerous offenders should serve their sentences in the community, where they may have a better opportunity to redress the harm caused by their crimes. However, what about those offenders for whom the risks and stakes are so high that they must be incarcerated? We suggest that prisons become a place in which prisoners are encouraged to engage in meaningful work.

What kind of work can be considered “meaningful”? We suggest that the following four factors distinguish meaningful work from other forms of prison industry. Each corresponds to one of the four parties addressed by restorative justice: offender, victim, community, and government.

- Meaningful work fosters training in the work ethic and compensates inmates fairly for their labor, preferably at market wages.

- Meaningful work fosters payment of restitution. The primary benefit to victims of prison industries is the restitution they may receive; if offenders are able to work for decent wages,
they have an opportunity to make amends, both financial and symbolic, to their victims.

- Meaningful work fosters development of a productive workforce in the community.
- Meaningful work fosters well-managed correctional institutions by reducing costs and prisoner idleness.

Conclusion

Amends are an important feature of restorative justice. An offender can make amends through apology, changed behavior, restitution, and generosity. Because of the victim’s direct harm, a restorative process that involves an encounter with the victim offers the offender the best opportunity to accept responsibility for making amends and provides a method by which they may agree on how this will be accomplished. However, when an encounter is not feasible or appropriate, courts may require the offender to make amends. Restitution is the most obvious and direct way of doing that, although community service, under the right circumstances, may serve as well.

A restorative system is more concerned with repairing harm than with punishment that ignores the need and obligation to make restitution. It also attempts to reduce the likelihood of future harms, and this means that when incarceration must be used to restrain exceptionally dangerous individuals, the criminal justice process should maximize the likelihood of timely restitution to victims, while effectively managing the potential risk to public safety.

Sanctions should first redress the harm to victims. The risk and needs of offenders as well as the seriousness of offenses can be addressed in ways that do not defeat this primary purpose. Furthermore, the most direct victims should be considered first, and the most specific harms suffered should be the first to be redressed. Therefore, if complete deprivation of liberty is not necessary to manage the risk and stakes, it should not be imposed. This is because a commitment to restitution involves a commitment to making it feasible.

To manage high-risk offenders, restitution programs must be designed with, and given sufficient resources to establish and maintain, supervision components that will meet the risk involved. Finally, a restorative system will strive to develop and maximize the use of restitution sanctions while guarding victims’ and offenders’ interests in an efficient and timely disposition of their cases.

Incarceration need not be the standard against which all punishments are measured. In a restorative system, restitution provides that gauge. If restitution for the harm done to victims is returned to its central place in
the sentencing process, programs will do more than divert nondangerous offenders from prison; they will ensure that offenders make restitution to victims so that a measure of restoration occurs.

Notes
2. Ibid., 65.
3. Ibid., 163.
4. Ibid., 172.
Chapter 6

REINTEGRATION

One of the central characters in Victor Hugo’s classic story *Les Miserables* is Jean Valjean, a man who stole bread for his starving nephew and ultimately served 19 years in prison. After his release, Valjean’s prospects were hindered by the requirement that he present documentation of his “convict” status wherever he goes, with the result that he was repeatedly denied work and shelter. This practical burden only compounded the bitterness and hardness of heart that Valjean had developed over the years. Physically, he was an exceptionally strong man, but he had become stunted in spirit and filled with hatred.

His redemption began one night after police arrested him for a theft committed earlier in the evening. He had robbed a poor but generous bishop who had given him food and shelter, making off with the household silver. When the police discovered the bishop’s silver, they forced Valjean to return to the bishop’s house to be confronted by the churchman. If the bishop denounced him, Valjean was doomed to either more years in the wretched conditions of prison or execution. However, instead of accusing Valjean of robbery, the bishop told the police that the silver was a gift to Valjean and publicly made a further gift of two valuable silver candlesticks. He bade Valjean to go in peace as an honest man and to return any time as a welcome guest. The bishop addressed Valjean as “my brother,” telling him “you belong no longer to evil, but to good.”

Nearly faint with shock and relief at this utterly incomprehensible turn of events, Valjean, as if by habit, stole money from a child only a short time later. The contrast between the identity called out for Valjean by the bishop and the perversity of this petty theft finally broke through his hardness of heart.

[T]his last misdeed had a decisive effect upon him; it rushed across the chaos of his intellect and dissipated it, set the light on one side and the dark clouds on the other, and acted upon his soul, in the condition it was in, as certain chemical reagents act upon a turbid mixture, by precipitating one element and producing a clear solution of the other . . . He beheld himself
then, so to speak, face to face, and at the same time, across that hallucination, he saw at a mysterious distance, a sort of light which he took at first to be a torch. Examining more attentively this light which dawned upon his conscience, he recognised that it had a human form, and this torch was the bishop . . . He filled the whole soul of this wretched man with a magnificent radiance. Jean Valjean wept long. . . . While he wept, the light grew brighter and brighter in his mind—an extraordinary light, a light at once transporting and terrible. . . . He beheld his life, and it seemed to him horrible; his soul, and it seemed to him frightful. There was, however, a softened light upon that life and upon that soul.2

The bishop had given Valjean four critical gifts. First, he provided for his safety by telling the police that the silver in Valjean’s possession was a gift. Second, he demonstrated respect for Valjean’s dignity and worth. This impoverished man bore the label “convict” and because of that was unable to re-enter society. The bishop called him “brother.” Third, despite his own straitened means, he provided practical and material help to Valjean, freely giving him food, a bed, and his valuable silver. Lastly, the bishop provided a moral and spiritual beacon by forgiving Valjean, challenging him to be better than he had been, and demonstrating faith that such change was possible. These four things—safety, respect for dignity and worth, practical and material help, and moral and spiritual guidance and care—worked together to transform Valjean’s image of himself in relation to the hatefulness of society. His life course was altered; he became a responsible person (although haunted by his “convict” past) and one who lived out a commitment to be generous to others despite the bitterness he encountered in them. Valjean’s anger and hatred had defined him and his perception of the world until the bishop gave him the wherewithal to change.

Crime and its aftermath can be defining moments for both victims and offenders, for profoundly different reasons. Victims suffer both practical and emotional losses as well as potential physical harm and the social stigma associated with being a “victim.” Offenders often retreat (as Valjean did) into a forest of bitter rationalization that is compounded by the barriers facing people with a “record.” Restorative justice places a high value on taking the steps needed to help both victims and offenders re-enter their communities as whole, productive, contributing members.

It may seem counterintuitive to discuss reintegration of victims and offenders in the same chapter. Their needs are different, and their moral
positions in relation to the crime are different as well. Nevertheless, victims and offenders often share at least one common problem: the community treats each as an outcast; each is stigmatized. Both victims and offenders find that they threaten many around them. Victims make non-victims feel more vulnerable (“if it happened to her, it could happen to me”). Offenders arouse anger and fear (“if he did it once, he will do it again”). Therefore, without equating their status at all, we would like to focus on how the community might, like Valjean’s bishop, be a catalyst for reintegration of victims and of offenders. First, though, it is important to understand the issues and injuries victims and offenders may carry with them as they begin the process of reintegration.

Victims

The most immediate need for victims of crime is safety. If the offender still has power to harm the victim, as in domestic violence, stalking, kidnaping, and so forth, the victim needs to be rescued from the peril and made safe. Even if the offender does not have that power, victims may feel frightened and vulnerable in the aftermath of a crime. Of course, much of this protective work is done by the police in securing the crime scene, but there are additional needs related to safety that often are met by community and nonprofit organizations. For example, domestic violence shelters provide a safe haven for partners and children of abusers who are in danger of further violence. Many of these are operated by nongovernmental organizations with financial support by the government. Other victims may need assistance in securing their homes in the aftermath of a burglary. Still others may need to move, or may want an escort when they must be in places that make them feel vulnerable, such as parking lots at their places of employment. Steps taken to help victims feel safe are important not only because they increase their actual safety but because they allow the victims to deal more effectively with trauma they may have experienced.

Crime victims are widely diverse in terms of demographics, prior history of victimization, and personal stability preceding victimization. According to Dean Kilpatrick, “most studies show that victims’ demographic characteristics such as gender, race, and age have little (if any) impact on crime-related psychological trauma.” However, prior victimization (especially in cases involving violence or crimes against the person) does increase the incidence of serious trauma for victims. Post-Traumatic Stress Disorder (PTSD) and depression are among the symptoms identified for such victims. Even in cases in which serious psychological trauma is not likely, victims frequently experience a crisis reaction for which some form of intervention is indicated. Arlene Bowers Andrews offers the following description of victims in crisis:
Persons in crisis tend to be emotionally aroused and highly anxious; often they are weepy. Occasionally they will act extremely controlled and noncommunicative as a way of coping with high anxiety, but most often they will express despair, grief, embarrassment, and anger. Their thoughts are disorganized, leading to trouble in relating ideas, events, and actions. They may overlook important details, or may jump from one idea to another, making communication hard to follow. They may confuse fears and wishes with reality. Persons in crisis may not be able to perform routine behaviors such as basic grooming. They may avoid eye contact, and may mumble. Some persons may act impulsively. People in crisis have reported feelings of fatigue as well as appetite and sleep disruptions. They are socially vulnerable, which means that a helper can have significant influence, but so can people with exploitive motives. People in crisis act in ways similar to people with certain forms of chronic mental illness, but it must be emphasized that the crisis state is time limited, usually lasting no more than a few days to six weeks.\(^3\)

For a victim in crisis, the isolation and disorientation may be limited by time, as Andrews indicates. A source of support and understanding, as well as practical links to available resources, can mitigate the intensity of the crisis as well as its duration, and in so doing lessen the damage to relationships, employability, and other factors related to the victim’s long-term readjustment. For a victim experiencing psychological trauma, crisis intervention can involve referral to mental health resources in order that the trauma may be assessed and appropriately treated. Many crime victims do not spontaneously recover without treatment.

Beyond the crisis or trauma resulting from the crime itself, there is also a negative self-identity that sometimes occurs for victims. Morton Bard and Dawn Sangrey have devoted a chapter of *The Crime Victim’s Book* to “The Mark: Feelings of Guilt and Shame.” They quote a robbery victim:

> I just hate to think of myself as a victim. It’s like when I lost my job—I hadn’t done anything wrong, but it was so embarrassing to have to tell people that I had lost my job. And when this happened, I felt the same way. It was like a guilty secret. I didn’t want to talk about it.\(^4\)

Furthermore, Bard and Sangrey point out that crime victims are commonly viewed as having failed to protect themselves. Criminal justice procedures often reinforce this negative view that somehow the victim is responsible for the crime. This stigma may have long-term, unexpected negative results in a victim’s life. Once the immediate crisis has passed, victims are left with an ongoing battle to preserve their sense of self-control and dignity.
Independent of whether there is significant emotional trauma, victims often confront a range of practical concerns such as emergency assistance, crime scene clean-up, transportation, help filling out insurance forms, explanations about the criminal justice process, and so forth. Just as Valjean needed practical assistance, many victims need this as well.

Furthermore, crime can create a spiritual or moral crisis for victims as they try to make sense of what happened to them and how they will respond. Many wonder why this happened to them, what they did to deserve this. Others find that they have had a rather benign view of humanity, a view that is now seriously undermined. Others must come to terms with their fantasies of and desires for revenge; is this healthy and is it justified? If they were practicing members of a religion, their faith may be challenged by what took place. Each of these instances provide an opportunity for growth, but wise assistance may be needed to clarify the issues and come to resolution.

Reintegration for victims, then, focuses first on crisis intervention and help with the trauma resulting from the crime, and then on ongoing support as life is resumed in the new “normal” patterns, while coping with the resurgence of crisis symptoms from time to time. A stabilizing family or community in which the victim feels secure and cared for offers the victim an environment in which to work out the feelings and fears following victimization, and in which to redefine and redirect his or her life.

Offenders

We all must take responsibility for the choices we make in life. This is true for offenders; they must face honestly what they have done, accept accountability, and recognize the effects of their crime on others—the victim, the offender’s family, and the community. This, however, should not blind us to the often overwhelming personal, societal, and spiritual obstacles faced by offenders when it comes to reintegration, obstacles for which the community may have some responsibility. As recidivism rates indicate, too few offenders establish themselves in productive, crime-free lives following their prison sentence. Huge numbers of prisoners are released daily. This group represents the most stigmatized offenders, and...
those perhaps in most need of reintegration. Although not all offenders face the same burdens as transitioning ex-prisoners, the differences are more in degree than in kind. The label of “convict” follows all who have been convicted, not just prisoners.

Prisoners possess an assortment of needs upon release from incarceration. Some of these existed prior to their crime and subsequent incarceration; others are caused or exacerbated by their status as ex-offenders. Together, these needs can present nearly overwhelming obstacles to successful reintegration. Some released prisoners face hostility and potential violence when they return to their communities because of unresolved matters with their victims or the fear of people in the community. (One example is the challenge of finding community placements for pedophiles when their prison sentence is completed.) Although an overt threat of violence may affect only a small number of released prisoners, all face immediate discrimination by society, and this is often compounded for ethnic minorities. One of the most difficult challenges an ex-prisoner encounters is finding employment. A large percentage of ex-offenders lack start-up money for food and clothes, reliable transportation, suitable shelter, adequate education, psychological counseling, and drug treatment. Other difficulties include the lack of societal acceptance or approval, lack of positive role models, peer pressure, unrealistic expectations, an excessive or deficient sense of sin and guilt, fear of failure, distrust of others, hopelessness, and the lure of addictive behaviors. They often do not connect with or have access to resources for overcoming obstacles. Many released prisoners are not aware of public or private agencies that could help, and even when they are, those agencies are overworked.

More than one-half of all American prisoners will have to rely on somebody else for support and a place to live when discharged. Ex-prisoners who live alone or with their parents generally have more problems than those who live with their spouses and children. A majority of marriages or significant relationships break up while one partner is incarcerated. Even prisoners with intact marriages often experience serious marital discord in the post-prison home environment, or an absence of warmth, trust, and support. Offenders may have weak prosocial skills that hinder their relationships with family as well as with friends, neighbors, and employers; many have developed
inappropriate relationships, antisocial values, ethical insensitivity, destructive habits, and an inability to make decisions or plan ahead.

These problems are increased by the specific effects of incarceration, where most decisions—both important and trivial—are made for the prisoner. The regimen inside prison walls produces the so-called “institutionalized mentality” that can make even simple matters on the outside paralyzing to the ex-offender. Matters such as paying an electric bill, pumping one’s own gas, or choosing among various brands at the supermarket are overwhelming, let alone more complex matters like holding down a job or forming a healthy relationship with a significant other. The expectation that offenders can emerge as law-abiding citizens ready to assume a responsible place in the community—even if the community were prepared to accept them as such—is fanciful. Offenders are isolated from the community by their own problems as well as by public distrust and cynicism.

In summary, victims and offenders both experience alienation that results from emotional distress, family tension, physical dislocation, loneliness, and stigmatization. For victims, the sense of isolation adds an additional injury to the crime. Offenders who have “paid their debt to society,” but find that they are still excluded from it, experience this exclusion as an injustice. Like Jean Valjean, victims and offenders need help reintegrating into the community.

Reintegration

When we speak of reintegration we mean re-entry into community life as whole, contributing, productive persons. This means more than being tolerant of the person’s presence; it means acceptance of the person as a member. It requires action on the community’s part, but also on the part of the offender and/or victim involved. For many individuals faced with transition, particularly offenders, reintegration is a misnomer. Their previous immersion in lifestyles characterized by drugs, crime, and other disintegrating realities make it questionable whether real integration was present even before they entered the criminal justice process from which they are now emerging. Furthermore, their experiences in the criminal justice system frequently increase their alienation from the norms and institutions that are viewed as positive and constructive elements of community life. Nevertheless, we will use the term “reintegration” to include those situations that might be better described as “integration.”

We believe that the work of John Braithwaite on what he calls “reintegrative shaming” can help us understand the roles both the community and
the one being reintegrated may play.* Although Braithwaite’s work focuses on how to respond to offenders, many of his observations on the factors that support reintegration can apply to victims as well. For both victims and offenders, a critical next problem is the community’s failure to reintegrate them. For offenders, this goes beyond help with re-entry (although that may be needed); it means finding ways for them to rejoin the community as contributing members, not outcasts. For victims, this goes beyond providing services; it means permitting the individual to leave behind his or her “victim” status and to successfully re-enter community life.

Braithwaite suggests that for reintegration to take place, the relationship between the one reintegrated and the reintegrating community must be characterized by at least three traits: (1) mutual respect for one another, (2) mutual commitment to one another, and (3) intolerance for—but understanding of—deviant behavior. Implicit in these three is that the person being reintegrated and the community feel safe from harm. Interestingly, these four traits are closely related to the four gifts of the bishop to Valjean: safety, respect for his dignity and worth, practical and material help, and moral and spiritual guidance and care.

Reintegration places unusual demands on communities, for it requires that we view others and ourselves as a complex mixture of good and evil, injuries and strengths. Furthermore, it means that while we resist and disparage evil and compensate for weaknesses, we must also recognize and welcome the good and make use of strengths.

Building a Reintegrative Response

What might a comprehensive reintegrative response look like? First, services would be readily available for those who need them as soon as the need arises. These might range from highly intensive support tailored to particular individuals to services that are generally available to all citizens such as social welfare assistance. A victim or offender support

---

* It must be noted that the concept of “shaming” is highly controversial. Some critics believe that shaming is inherently negative, dehumanizing, and counterproductive. In this view, even if shaming techniques are found to produce desirable results, the shaming of a person is always an illegitimate means to that end. Others (following Braithwaite) make much of the distinction between stigmatizing shaming and reintegrative shaming. In this view, there are positive and legitimate ways to acknowledge the wrongness of a deed for which the offender should rightly be ashamed. This is a way of affirming the community’s values and its sense of right and wrong, and inculcating internal controls. The critical key distinguishing reintegrative from stigmatizing shaming is that the experience of shame is then linked with concrete steps to bring the offender into a new status as a fully accepted individual. Theologians are familiar with this process in the concepts of repentance and justification. In any event, as Howard Zehr has observed, by the time a restorative process has ended, shame should have been lifted.
worker would be assigned to work with the person; this individual would be skilled at obtaining assistance, listening sympathetically, and understanding and being able to explain the criminal justice process. Third, a support group would be organized, if necessary, including families, friends, the victim or offender support worker, and providers of needed services.

Victims would find that human and financial resources are available from the moment the crime is reported. The victim support worker (who might be salaried or volunteer) would maintain regular contact and communication with the victim. The two would problem-solve together, and the support worker could serve as advocate for the victim, if necessary, with the employer, families, and so forth.

Susan Herman describes such an approach as “parallel justice.” She suggests that criminal justice is offender-oriented and that efforts to include victims, though important, are inadequate. Restorative encounters may be beneficial for victims, but Herman believes they fall short because they are available to only a small number of victims, are often offender-oriented, do not address all the important needs of victims, and do not provide a role for government in helping rebuild victims’ lives. She proposes that there should be a parallel justice response for victims that would focus on making sure victims are safe, assisting them as they recover from the trauma of their crimes, and making resources available to help them rebuild their lives. She lists four principles that should guide the response to victims:

First, when a crime is reported, the safety of the victim should be a high priority for police and other criminal justice agencies. . . . Second, every victim of crime should be offered immediate support, compensation for losses, and practical assistance. . . . Third, all crime victims should have an opportunity to explain what happened to them, the impact the crime had on their lives, and what resources they need to get back on track. . . . Fourth, case managers should coordinate all available resources to meet victims’ needs.

In a similar way, the resources needed by offenders must be identified and structured so they are readily available to those who need them. These could be coordinated by probation and parole personnel but require other governmental and community assistance as well.

* Herman equates restorative justice with restorative encounters.
Furthermore, some offenders may require intensive supervision and support because of the risk they pose to the community and, sometimes, the potential danger the community poses to them. A case in point is “Circles of Support and Accountability,” part of an intensive reintegration process for high-risk sex offenders returning to the community following the completion of their sentences. The Mennonite Central Committee (Canada) developed the approach under contract with the Correctional Service of Canada. It involves volunteers (primarily from the faith community) forming support groups for transitioning ex-offenders in the context of a structured reintegration program. The Circles of Support and Accountability work cooperatively with the police, neighborhood groups, and treatment professionals to reduce recidivism by individuals convicted of sexual offenses, to help them reintegrate into the community, and to reassure their victims and neighbors. The ex-offenders involved are known to present high potential risk, and this creates understandable fear on the part of the community and the returning ex-offenders. The Circles of Support and Accountability provide specific mechanisms for dealing with the many issues involved and aim to help the ex-offenders establish positive lives in the community—lives that offer greatly reduced risk to the safety of others.

Reintegrating Communities

Braithwaite’s work (discussed above) has been criticized on the grounds that reintegrative shame does not work as well in urbanized and individualistic societies as it does in more communitarian cultures. Much of the discussion on this has focused on the lack of potency of shame, but perhaps a more difficult challenge has to do with the reduced likelihood of reintegration in such societies. If reintegration requires relationships characterized by mutual respect, mutual commitment, and “understanding intolerance” for deviant behavior, then the problem we face has a great deal to do with the lack of such relationships. It is relatively easy to think of ways to stigmatize offenders even in our individualistic society, and such shaming efforts are done today. The problem we face is less how to shame than how to reintegrate. Where can we look for persons willing to offer the respect, commitment, and understanding that is required?

Support and Assistance Groups

One answer is to look to others who have been in a similar situation to create a community for at least some part of the journey toward reintegration. These affinity groups demonstrate that the significant
relationships necessary to reintegration need not have existed prior to reintegration. The common struggle to deal with a crisis and to re-establish oneself in light of that crisis can provide the basis for such relationships.

Self-help and support groups have been developed for both victims and for offenders. Because of common experiences (including shared alienation from the broader community), members of these groups find strength in meeting together to talk with and encourage one another.

An example of a nationally organized effort for victim support is Parents of Murdered Children. There are many other locally organized groups for victims focused on specific needs or shared experiences such as battering, rape, and other violence. Shelley Neiderbach described the effect of victim group counseling sessions in this way:

The degree of victim isolation cannot be overestimated. Crime victims feel lost not only within themselves but within the human community as well. Therefore, the conversion of the . . . [crime victim’s] counseling group into what became a virtual subculture and “intentional family” was swift, predictable, and enthusiastically determined by the participants. This fairly immediate sense of group identity laid the ground-work for the more acute and profound psychological revelations that victims then permitted to surface as the sessions continued.9

Neiderbach distinguished such support groups from “most publicly funded victims’ services,” the object of which is to promote the welfare of the victim “in the service of converting victims to witnesses, so that prosecution rates can be higher.”10 While such programs may perform important services and may be staffed by highly motivated and compassionate people, Neiderbach’s point was that they do not create the kind of relationships necessary to aid in what we have called reintegration. They have a different purpose. Support groups are able to meet some of those unmet needs.

Offenders, too, can benefit from the support, encouragement, and accountability offered by peers in overcoming the challenges of re-entry and reintegration. There are a number of re-entry and aftercare efforts that organize and equip groups of ex-offenders in communities across America, providing encouragement and accountability in staying crime-free and
establishing stable lives. Ex-offenders who have successfully reintegrated and achieved stability often lead these groups.

However, there are limitations to affinity groups. Support groups for victims or offenders offer validation to those recovering from their experiences with crime, and can be a source of strength for them as they work to re-enter their community. However, for reintegration to be complete, similar relationships must be forged with members of the wider community, not simply with others who feel alienated from it or who have shared an experience of need. Otherwise, all that exists is a subculture.

One place to find people in the wider community who are willing to walk alongside persons needing reintegration is faith communities. Churches, synagogues, temples, and mosques are located in most communities, and are usually already meeting local needs. Ram Cnaan of the University of Pennsylvania has done an extensive study of social services in the United States and has documented “the massive involvement of the religious community in social services provision” for a wide range of needs. Cnaan and his colleagues present strong evidence that religious-based services can and do produce positive results, suggesting the contours of a “limited partnership” between government and faith communities for the meeting of needs. The bishop in Les Miserables recognized all the dimensions of Valjean’s bitterness and alienation and was able to respond to his spiritual needs while also meeting his very basic and practical needs for shelter and food. This help was key to his reformation. Communities of faith can offer victims and offenders who seek it a similar chance for help, reaching multiple dimensions of need in the reintegration process.

Faith Communities as Reintegrating Communities

Faith communities have the potential to be agents for reintegration for both victims and offenders. We understand that there are significant obstacles to such an undertaking. Christian churches, the faith community with which we are most familiar, have often been better at proclaiming love than demonstrating it. They are fragmented; they are viewed with suspicion by many nonmembers as more interested in wealth or politics than in sacrificial service; and some of their members too often give simple, glib answers to the searching and questioning that follows a crisis. Nevertheless, the church’s strong and extensive history of involvement with those in need, its traditions that speak of both the call and the resources to undertake such a task, and its presence in virtually every part of the world make it a promising agent for reintegration. We discuss Christian faith traditions to illustrate this point, because that is where our research and experience are most extensive. Others
with different expertise may be able to test our hypothesis with other faith communities.*

**History.** For two millennia, and in a variety of cultures and nations, many churches have served as reintegrating communities for those who are alienated. That has certainly been true in the United States, where the church has been actively involved in issues ranging from the abolition of slavery to the humane treatment of criminals. It was Quakers in Philadelphia who convinced the city to establish what is generally credited as the first penitentiary—a place of penitence—in 1790, as an alternative to cruel corporal punishments. They believed that crime resulted from a negative moral environment, and that the foundation for reformation was to provide a solitary, moral environment.

The first nationally recognized prison expert was Louis Dwight, whose work distributing Bibles for the American Bible Society had taken him into jails, where he was shocked into action by the unconscionable conditions he found. He became a leading proponent of what was called the “Auburn System” of corrections (the first major alternative to the Pennsylvania approach), which emphasized collective treatment of

* There are many faith-based organizations that assist offenders, and the number offering services for victims is growing. Catholic Charities, for example, offers many types of help that are needed in the reintegration process—whether or not they specifically target victims and offenders (http://www.catholiccharitiesusa.org). The Salvation Army, too, is active in providing a great many services in locales across the United States and around the world (http://www.salvationarmy.org), and has particular programs for incarcerated persons and their families. Kairos, Inc. is another well-established organization active in prisoner ministry in the United States and Canada (http://www.kairos-prisonministry.org). The Coalition of Prison Evangelists (COPE) is a network organization for more than 550 Christian ministries in the field of corrections (http://www.copeministries.org). Jewish Prisoner Services, International, helps organize assistance for Jewish prisoners and their families (http://www.jewishprisonerservices.org). The Human Kindness Foundation, based in North Carolina, has been working since 1973 on the Prison Ashram Project in the United States and its corollary, Kindness House (http://www.humankindness.org). Muslim and Islamic programs for prisoners and ex-prisoners are abundant, often working through local mosques or Islamic organizations. The Crime Victims Advocacy Council (CVAC) in Atlanta is an outgrowth of the United Methodist Church, offering support services and advocacy for victims through churches, community organizations, and concerned individuals (http://www.gbgm-umc.org/cvac). Its founder, Bruce Cook, was a recipient of the Justice Department’s Crime Victim Service Award for activism in victim support in April 2000. These are only some examples of the variety of faith-based efforts that have recognized the needs of victims, offenders, and their families.
offenders in religious revival meetings, religious teaching, and congregate labor. Since that time, religiously motivated individuals have proposed and implemented new ways of improving the effectiveness of those prisons through rehabilitative programs.

Although it is clear that prisons as we now use them will never accomplish such rehabilitative purposes, we should not forget the context in which these proposals were raised. These early reformers argued against the inhumane punishments of the time; they proposed, raised support for, and initiated whole new approaches that were designed to be reintegrative. There are important lessons to be learned in why prisons became places of exclusion and disintegration rather than avenues toward reintegration, but the failure of the efforts should not blind us to the significance and enormity of the effort and its intent.

It is also true that religious people and institutions have often been all too happy to relegate to others the responsibility for “law and order,” including increasingly punitive measures against lawbreakers. Gerald Austin McHugh leveled the following indictment in his 1978 book, *Christian Faith and Criminal Justice*:

> Throughout its history, the Christian Church in America has endorsed, tacitly approved, or at the very least been shamefully ignorant of the inhumanities of our criminal justice system. Even after the explicitly religious penal models of the penitentiary movement have faded into history, it was (and is) widely assumed that the punishment of criminals is in some way a holy duty. . . . And where Christians have been concerned with justice, it has all too frequently been the selective vengeance we have sanctioned as retribution, as opposed to the all-encompassing righteousness which is known as justice in the bible. It is not at all unusual to hear a Christian minister decry the rising tide of crime and immorality in print or in the pulpit, but it is rare indeed to hear a Christian minister exhorting the faithful to actually dare to love their enemies.13

Nevertheless, there has been a significant increase in the past 30 years in the numbers of Christians who are actively involved in service to victims and offenders. Prison Fellowship, founded by Charles Colson after his incarceration for Watergate-related crimes, has become one of the largest volunteer organizations in the world, with affiliates in 112 countries. The U.S. Office for Victims of Crime has worked with faith communities since 1982 to help them respond to the needs of crime victims. An increasing portion of the Christian faith community is becoming involved in criminal justice services.

**Tradition.** The Judeo-Christian tradition teaches care for the outcast, relief for those in need, and the intrinsic value of human beings as created
and loved by God. Biblical tradition and stories show God’s desire that all should be redeemed. The commandments to love one’s neighbor and (even more) to love one’s enemy are compelling reasons for churches to rise to their responsibility for assisting with reintegration.

The New Testament story of the Good Samaritan is a direct lesson in caring for a victim of crime. It instructs church members to be good neighbors by offering to assist victims (and other persons in need) in moving toward physical, emotional, and spiritual recovery. As victims deal with their crises, their anger, hurt, disorientation, and isolation may be mitigated by the caring presence of someone willing to help in whatever way the victim needs and wants. Further, some victims may desire to explore the spiritual or theological aspects of what happened to them.14 This is undeniably a difficult and sensitive area; victims who are angry and vulnerable may say or do things that many church members would find distressing or even heretical. When well prepared, though, those people of the church can form communities of reintegration.

We have already mentioned the thousands of church volunteers who are presently involved in reaching out to offenders. Much of this work is going on in prisons and jails, but a great deal of it is also happening within communities. For those who have developed friendships or mentoring relationships with prisoners, it is a hard fact of life that many hopeful and determined prisoners fail to succeed after they are released. All over the world, churches and church members are stepping forward to help those coming back from prison toward reintegration. Halfway houses, job training and placement efforts, alcohol and other drug treatment programs, lifeskills training, and mentoring are some of the ways church members are getting involved.

**Presence.** There are about 350,000 places of worship in the United States. They are visible in every community. This fact has been noted recently by policymakers who recognize that community-based groups, including faith communities, have a potential for delivering social services that may far outstrip government programs in effectiveness. Religious influence—even simple attendance at church or a Bible study—has been shown to mitigate a whole variety of social ills, from drug use, disease, and depression to delinquency and crime.15 This positive association offers hope for reintegration for both victims and offenders, who could benefit from a touch of the “faith factor.” When victims and offenders feel stigmatized and isolated, a faith community can be a source of support. Both can benefit from practical assistance, emotional support, and spiritual nurturing in a context of trust and concern.
and isolated, a faith community can be a source of positive personal contact and support. Both can benefit from available practical and physical assistance, emotional care and support, and spiritual nurturing in a context of trust and concern.

For victims of crime, crisis services can help lessen the duration and severity of the stages of victimization by: (1) helping the victim rebuild a sense of safety and security; (2) allowing the victim to ventilate questions and feelings and validating those feelings; and (3) preparing the victim for what he or she might experience through the crisis. There is no formula for healing. The road to recovery will be different for individual victims, and they must be empowered to work toward it in their own ways.

... [A] “helpful” person who tries to second-guess the victim, imposing what the helper thinks the victim wants, can add to the sense of violation. . . . Really helping a person in trouble requires extraordinary sensitivity and discipline. People who really want to help must focus on the victim, listen carefully for the victim’s expression of his or her needs and then respond to that expression—without imposing their own suggestions or judgments or perceptions. The ideal helper is one who is able to create a climate in which victims will be able to ask for and get whatever help they want.16

In the impact stage of victimization, victims may need a variety of practical services such as transportation to a hospital or clinic; crime scene cleanup; help with police and insurance forms; calling friends or clergy; help with burial arrangements; and assistance with emergency food, clothing, shelter, and finances. Some victims need help navigating the maze of the criminal justice system; therefore, someone able to explain the criminal justice process may be crucial. Because prosecutors’ offices are often unable to notify victims adequately about the progress of their cases, volunteers can work with these offices to keep victims informed of upcoming hearings.

In the crisis phase, victims have emotional needs as well as physical or practical ones. Research has consistently shown that the most significant intervention to crime victims is for someone to demonstrate human care and compassion for them. In all stages of victimization, just having another person on hand can be important. A primary role of the caregiver is to be a friend to the victim. Because victims frequently feel a loss of dignity and control, compassionate care can help restore a sense of worth and self-respect. Although victims may not want to hear answers to their cries of anger and distress, the freedom to express these feelings in a supportive context is deeply needed.

For offenders, basic personal and practical assistance in the critical weeks and months of initial transition to the community can be the key to beating the recidivism odds. In the first months after release, short-term,
practical assistance may be urgently needed. These include the very basics: money, food, clothes, housing, and transportation. However, because of the effects of incarceration and previous life experiences, most prisoners are confused about what to do to meet these basic needs. The stress of the re-entry process can heighten the risk of alcohol or other drug abuse and personal conflict. Many returning prisoners lack the skills and life experience to cope positively with stress and conflict; behaviors that are “normal” in the prison context are starkly different from what is expected in a workplace, for instance. So there is also a significant need for a coach, advisor, or mentor during this period to help with orientation, encouragement, and follow-through.

In order to deal most effectively with this crisis period, practical planning can help the person in transition see beyond the immediate needs to a strategy that will diminish the crisis, build confidence, and promote independence. Over time, some of these basic needs may stabilize, but there may be longer-term issues involved in reintegration. In the following months and years, though crisis times do occur, needs generally have more to do with sustaining a stable residence and job, developing and maintaining healthy relationships with family and friends, setting and meeting personal goals, and reorienting life patterns. The kinds of needs—and their intensity—will vary among individuals, based largely upon the support systems they already may have in place.

In addition to the practical and social issues that complicate the re-entry process, there is also a spiritual dimension to both the problems and resources of ex-offenders. This dimension is evident in the reverberating effects of child abuse and violence, and the chokeholds of addiction and depression. The temptation to take shortcuts or escape routes rather than dealing honestly or effectively with problems and obstacles reflects more than just “bad habits”; they may also have spiritual dimensions. Twelve-step programs have recognized this fact for years; this is arguably one reason for their long-standing success. Ex-offenders in transition need spiritual as well as practical and emotional resources in order to reintegrate successfully into the community and to overcome the many hurdles leading up to that success. Spiritual nurturing and a supportive faith community are beneficial for transitioning offenders in their personal growth and maturation as members of families and society. Faith communities are able to give offenders a place to learn, grow, and gain strength in an atmosphere of both accountability and support.

Government programs are limited in their ability to help victims and offenders with faith issues, but faith-based programs are free to explore such issues if the person desires it. By providing practical assistance and opportunities to discuss spiritual and emotional issues in a supportive context, programs can assist victims and offenders in moving beyond their alienation to greater emotional, physical, and spiritual health. Of course, offenders and victims come from diverse
ethnic, religious, and cultural backgrounds. They may have varying cultural assumptions about managing anger, grief, and stress. They may be deeply involved in other religions or may be hostile to religion. Programs offering a spiritual component must be sensitive to this and able to help the victim or offender gain access to the resources of their own tradition and support network.

Conclusion

We have shown that both victims and offenders wrestle with stigmatization and other issues as they face their futures, and we have suggested that faith communities are a potential resource in every community. Whether it is faith communities, other community organizations, or government agencies that provide the services, the important point is that for restoration to occur, victims and offenders need to find wholeness and establish themselves in the community as participating members. To do so, each has barriers to overcome, and it is our view that it is part of the community’s role to take some responsibility for assisting with the needed reintegration. It is not sufficient simply to see that a victim is paid back—although that is an important goal. The victim’s other harms also need to be addressed within the context of a caring community. It is not enough simply to hold offenders accountable for the harms they have created—although that is also a very important goal. The offender must also be offered a real opportunity to gain a full place in the community. In each case, both victim and offender will frequently need attention and assistance from the community in order for the reintegration process to occur.

As the illustration from Les Miserables reminds us, there are four areas of assistance that a caring community can offer those in the process of reintegration. First, those individuals need protection and other steps to make them safe. Second, they need concrete affirmations of respect for their dignity and worth so that they are no longer treated as outsiders but rather as acknowledged members of the community. Third, they need practical and material help dealing with immediate challenges and needs. Fourth, they need moral and spiritual guidance and care, providing hope for a future that is not determined by the past. Each contributed to bringing Valjean into a new life as a responsible, participating member of society. In working toward the reintegration of both victims and offenders, communities can provide encouragement, practical help, and avenues of hope and purpose, despite the ravages of the past. This not only strengthens the victims and offenders, but also serves to reinforce the values and resiliency of the community itself.
Notes


7. Ibid. 80–81.


10. Ibid.


16. Bard and Sangrey, supra note 4, at 38.
It is a familiar story with an overlooked subplot. A king faces a foreign army with a powerful leader, and desperately seeks a champion willing to meet the hostile warrior in single combat. No one in the king’s army will accept the challenge in spite of the king’s offer of lavish rewards.

The story is from the Bible, the enemy warrior was Goliath, and the king’s eventual champion was David. The fight between David and Goliath is well known and is usually remembered as a metaphor for the courageous underdog who overcomes overwhelming odds. We will return to that metaphor later, but the subplot that is of immediate interest is the account of how King Saul came to include David in his battle plans against Goliath and the Philistine army.

As the story goes, Goliath was a huge man, more than nine feet tall, and so powerful that he struck fear in the king and his whole army. For 40 days, every morning and evening, Goliath had challenged the Israelites to settle their dispute in single combat. In spite of his humiliating derision, no one in the Israelite army was willing to accept the challenge. King Saul offered a generous reward to the man who would defeat Goliath—great wealth, entry into the royal family through marriage, and freedom from taxes—but no one accepted. All were too frightened of this giant warrior.

Although David would later become a brilliant soldier and eventually king, when this story takes place he was too young to enlist in the army. He was the youngest of eight boys, and it was his three oldest brothers who served with King Saul. David lived at home and looked after his father’s sheep. He would not even have been present at the battle except that his father had asked him to take food to his brothers and bring back news from the front. David arrived one morning just as the armies were taking battle positions, and as he was speaking with his brothers Goliath strode onto the battlefield and shouted his usual mockery. David was shocked to see the army of Israel flee in terror. “Who is this foreigner,” he asked, “that he should defy the armies of the living God?”
David was so outspoken about his willingness to accept Goliath’s challenge that in spite of his brothers’ opposition he was given an appointment with King Saul. The king was initially dismissive, but David argued that whereas Goliath might be unbeatable in conventional battle, he could be defeated by unconventional means. Saul’s paradigm was warfare; David’s was shepherding. Saul weighed odds of victory and wisely avoided combat when his army was at a disadvantage. It was better for him to wait than to engage the enemy on its terms. David, on the other hand, was a shepherd who had to act quickly to protect his sheep from predators more powerful than he; he had killed a lion and a bear that endangered his flock. His weapons were not designed to deter others or deflect blows; they were ones that could be used at a moment’s notice, were lightweight, and portable. He used a staff, a sling, and stones. When faced with an enemy, his instinct was not to pause to look for strategic advantage but to rapidly protect his defenseless sheep. God had delivered him on those occasions, David argued, and God would help David triumph over Goliath.

We are not told why the king relented and consented to David’s facing Goliath. It could be that there was something about David’s demeanor that inspired confidence, perhaps Saul realized he had no other alternative, or maybe he came to see that David’s approach was sound. But for whatever reason, he agreed to let the shepherd boy serve as Israel’s champion against Goliath.

Saul offered to provide David with his best armor, but David was not accustomed to helmets, shields, and swords; he said they would hinder his ability to fight. So he took off the armor; seized his staff, his sling, and five smooth stones; and ran onto the battlefield. As Goliath moved forward to attack, David slung a stone at him, hit him in the forehead and knocked him out. Using Goliath’s own sword, David beheaded the giant.

What were the steps by which Saul came to include David in Israel’s national strategy to defeat this foreign power? First, Saul issued an open invitation for someone to fight Goliath. It is obvious from the story that Saul was not interested in accepting Goliath’s challenge himself, so his invitation was clearly sincere.

In fact, he bolstered the invitation with promises of reward, and made sure that everyone in the army was aware of it. He acknowledged to the personal interests of would-be champions in addition to their altruistic love of country and king. David seems to have had mixed motives for the promise of restorative justice lies in the inclusion of victims, offenders, and community members who have been touched by crime.
volunteering; he expressed interest in the reward offered by Saul and also a desire to stand up for Israel and its God against the insults of Goliath. The “noble” motives of saving his country and defending the reputation of God were apparently not inconsistent with a more profane interest in personal wealth and advancement. Saul understood and appealed to both.

Third, he was willing to let David adopt an alternative approach. He made sure that David understood what he was getting into: “You are a boy and he has been a warrior all his life; are you sure this is what you want to do?” Furthermore, because David did not have armor of his own, Saul offered his own tunic and sword, and also supplied a coat of armor and a helmet. Saul did what he could to prepare David for battle. However, David’s lack of military experience meant that this equipment encumbered rather than empowered him. He could not move freely, and he did not know how to use the weapons. So he asked to approach the battle in his own way. He would fight with the weapons he had used before: his shepherd staff and his sling.

Saul invited David, acknowledged and appealed to his interests, and allowed him to use alternative approaches. We suggest that these are critical elements of any attempt at inclusion: invitation, recognition and acceptance of the interests of the person invited, and willingness to adopt alternative approaches that better fit that individual.

Restorative Justice and Inclusion

If we apply this story to the problem of crime and its consequences, Goliath stands for the enormity of crime and its resulting injuries within a society; David, for individual victims, offenders, and affected community members; and Saul, for the governmental “gate-keepers” responsible for determining how to respond to crime. The promise of restorative justice lies in the inclusion of victims, offenders, and community members who have been touched by crime.

When we speak of inclusion, we mean the opportunity for direct and full involvement of each party in the procedures that follow a crime. As we have seen earlier, contemporary criminal justice focuses on the lawbreaking of the offender and, hence, on the state’s interests in punishing guilty offenders. The accused or convicted individual is reduced to a passive participant, and the state is the actor. The victim and members of the community have minimal roles—they participate as witnesses, if at all. Even the accused offender—the focus of attention in criminal proceedings—is for that reason provided lawyers who make motions, examine and cross-examine witnesses, decide who will testify for the defense, and speak to the jury.

The encounter programs discussed in Chapter 4 stand in stark contrast to this. They invite all interested parties to participate, they give those parties the opportunity to pursue their diverse interests, and their
flexibility leaves them open to alternative approaches that fit the particular parties. These are so beneficial that some jurisdictions have adopted laws that grant victims the “right to access to restorative justice programs, including victim-initiated victim-offender dialogue programs offered through the department of corrections.”

But what happens when restorative processes are not available? Can traditional responses be adapted so that they become more inclusive? This is particularly important for victims of crime. The great majority of crimes involve at least two individuals: the victim, who bears the brunt of the harm caused by the crime, and the perpetrator. Yet criminal justice focuses on the criminal act as law-breaking—as an offense against the state. Victims who want to recover damages must file separate civil actions. As a result, a conflict exists between the government and the victim about “ownership” of the victimization experience. The criminal justice process places the government, rather than the actual victim, at the center of the case against the accused offender. The victim’s role is typically limited to being a witness for the prosecution. He or she may file a civil suit to seek damages or other remedies, but the criminal proceeding is designed to serve public goals of incapacitation, rehabilitation, deterrence, or retribution. In that proceeding (legally speaking), the victim’s personal interest in reparation and vindication is irrelevant and therefore ignored.

While the prosecutor and defendant have a formal role in the criminal justice process, victims have no standing to pursue their interests in recovering and/or reducing the likelihood of further damages. Restorative justice theory, with its emphasis on involving all parties and addressing all their harms, rejects this exclusion of victims and provides for their inclusion. It also insists that whenever more conventional processes are used, they should be adapted to provide opportunities for genuine inclusion of the victim.

Victim Inclusion in the Criminal Justice System

There are at least four ways that victims should be included in the criminal justice system, and we might list them in order of increasing “inclusivity.” The least inclusive of the four is to keep them informed of what is happening in their cases. A second is to permit them to observe the proceedings as spectators if they wish, even if they may later be called as witnesses. A third is to permit them to make a formal presentation in court through a victim impact statement. The fourth approach is to give them the right of full participation—to give them legal standing in the criminal justice process in order to pursue reparation. This chapter will examine the latter method in detail, but first it might be useful to briefly review the other three ways to include victims. Each is an established
right in many jurisdictions, often because of concerted activism on the part of crime victims and their advocates.

Information

Crime victims have a basic need for information about the criminal justice process and how it affects them. At least two categories of information are of obvious interest to victims: information about the services and rights they may expect and information about the status of the criminal proceeding in their particular case. Included in the former is information about crime victim compensation; victim services (such as emergency assistance, rape crisis centers, shelters, and general victim service agencies); the steps in a criminal prosecution; contact information; and the victim’s rights during the criminal proceedings.*

* Section 3.1.2 of The United Nations Handbook on Justice for Victims: On the use and application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (April 1998) provides that police inform victims of the following:

- explaining police procedures and investigatory process,
- informing victims about how to protect evidence,
- informing victims of the possibility of infection with diseases or becoming pregnant as a result of a crime,
- providing information to crime victims about their rights, as well as the availability of crime victims compensation,
- immediately referring (verbally and in writing) to community agencies that offer emergency services to victims, as well as information about financial assistance. For example, a brochure should be developed in different languages and given to victims that includes information about emergency and long-term services, victim compensation, likely reactions to crime victimization, and information about the investigative process,
- ensuring that the victim is personally contacted by telephone or in person 24 to 48 hours following the initial response in order to see if assistance has been sought and/or received,
- ensuring that the property of the victim is secured so that personal safety is not compromised as a result of crime,
- establishing procedures to ensure that victims of violent crime are periodically informed of the status of investigations,
- promptly providing crisis intervention and psychological first aid or referring to appropriate services.
Information about the status of the prosecution against the accused offender can take place at any number of stages in the criminal proceedings. Following are some of the junctures at which victims should receive notification:

- Scheduled/postponed/rescheduled hearings
- Bail hearing
- Bail release
- Pretrial release hearing
- Pretrial release
- Dismissal/Dropping of case
- Plea bargains
- Trial dates/times
- Sentencing hearings
- Final disposition/sentences
- Earliest possible release/parole dates
- Post-trial relief hearings
- Appeals process/proceedings
- Conditional release from prison
- Parole hearing
- Parole
- Pardon/Commutation hearings
- Pardon/Commutation
- Final release
- Escape of offender
- Recapture of offender
- Release from mental institution

Presence in Court

As a general rule, persons expected to testify as witnesses in a criminal trial are not permitted to attend the trial. The reason for this is to prevent witnesses from tailoring their testimony to harmonize with what other witnesses have said. In other words, it is designed to ensure that witnesses’ statements can be compared with those of other witnesses in an attempt to determine the truth about what happened. An exception to
this rule exists for criminal defendants. In spite of the fact that they may testify in their defense, their status as a party in the proceedings entitles them to attend the entire trial and to confront the witnesses against them. This exception, however, does not extend to the crime victim because the victim is not a party with legal standing or interest in the criminal case. If the victim is expected to testify for the prosecution, or for the defense, then the victim—like other witnesses—will not be permitted to attend the trial.

This exclusion can come as a surprise to victims or their survivors, because these parties may have a strong interest in observing the case and listening to the evidence and arguments. As a result of advocacy by victim rights organizations, a number of governments have modified this rule to grant victims the right to be present during all or part of the criminal proceedings. In some instances, victims are permitted to attend the trial once they have testified. The rationale for this rule is that once they have offered their testimony the issue of collusion is ended, and there is no longer any reason to keep them out of the courtroom. However, many defense attorneys, eager to keep these persons out of the courtroom lest they sway the jury as sympathetic persons, have taken to listing victims as potential witnesses for the defense—not because they actually intend to call the victims but to keep them out of the courtroom. Most American states, therefore, have adopted rules to permit the victim to attend all proceedings. These states typically give the trial judge the right to exclude the victim when the defendant’s right to a fair trial would be jeopardized.

**Victim Impact Statements**

Presence in court and even testimony to support the criminal case against the defendant are not the same as the right to be heard. Many victims want the opportunity to tell criminal justice decisionmakers how the crime has affected them. Such testimony may be ruled irrelevant and unduly prejudicial to the defendant if offered during the criminal trial itself. Therefore, many jurisdictions have adopted provisions that permit the victim to make a statement either as part of the presentence investigation or as part of the sentencing hearing itself (or both). This permits victims to express their views on the crime, its personal impact, and the sentence that should be imposed. The judge is required only to listen to the victim. In other words, the legal right of the victim is entirely procedural (to speak) and not substantive (there is no requirement that the judge use the information).

Typically, victims may offer evidence about the harm that they or their family suffered as a result of the crime. Again, in some states, victims may also discuss their views about the offense, the offender, and the punishment they feel would be appropriate. These statements may be
given by the victim, the survivor of a homicide victim, or the parent or guardian of a victim who is a minor.

In addition to the sentencing hearing, most states permit the victim to make a statement at parole hearings. This may be done orally or in writing. Some jurisdictions permit the victim to make a statement in a plea agreement hearing and provide for victim statements during hearings on pretrial release of the defendant.

Giving the Victim Legal Standing to Participate in Criminal Proceedings

The injustice of victims’ exclusion from the criminal justice process has become a rallying cry of the victim rights movement, and has resulted in a number of reforms over the last three decades. Among these are victim compensation funds, mandatory restitution legislation, and “victim bills of rights” granting victims rights to such things as information, presence in court, and victim impact statements, among others. As helpful as these advances are, they fall short of providing victims with a formal role as active parties in criminal cases.

For many victims, these reforms offer sufficient opportunities; they may not want to take a more active role in criminal proceedings. There are, however, two reasons why it is useful to consider the fourth, and most inclusive, role of legal standing to pursue reparations. The first is that there will be victims who are interested in participating in this way. The second is that establishing a sound jurisprudential justification for victim involvement at that level will reinforce the justification for less extensive involvement.

When a victim offers a victim impact statement at sentencing, how should the judge receive this information? Should the sentence reflect the harm done to the victim or the victim’s attitudes about the offense and offender? In a criminal justice system that is oriented toward retribution alone, one should question the relevance of information about a victim’s harm or attitudes, because this introduces potential disparities based on the victim’s ability to present compelling testimony to the judge. The issue in retribution is whether the offender violated the law, and the victim’s opinions, strictly speaking, are irrelevant. This concern could be ameliorated by providing that the victim’s testimony should have no effect on the sentence, but then one must ask whether it is fair to invite the victim’s opinion but not use it in some way.

If, however, the aims of criminal justice were modified to emphasize repairing the injuries caused by crime, the procedures of the criminal justice system would need to be reexamined to incorporate more fully the interests of victims in reparation. A direct way of doing so would be to
grant the victim legal standing to argue for restitution at sentencing and at any other stage in which that interest may be affected. While this proposal would dramatically alter contemporary American criminal justice procedures, it would not be without precedent in our legal heritage, as we will show.

In some ways, practice in the United States is already moving in this direction. Despite the traditional distinction between the punishment of criminal offenders through the criminal law and the compensation of crime victims through civil tort law, as a practical matter, the wide acceptance and use of restitution within the criminal justice system has already resulted in the partial merger of criminal and tort law. As a consequence, the victim can be viewed as having a direct interest of a restitutive nature in the criminal proceeding. To the extent that this is true, greater inclusion of the victim in criminal proceedings would be consistent with recent trends. It would also, we suggest, be consistent with legal tradition.

The History of Victim Involvement in Criminal Cases

Even after Henry I succeeded in redefining crime as an offense against the king instead of the victim, the victim was assured a significant procedural role in the criminal process through the mechanism of private prosecution.

Private prosecution had its roots in medieval England, preceding the Norman Conquest. A private prosecutor managed the entire case (from apprehension through trial) as though it were a civil matter. While the private citizen (usually the victim) was required to bear the financial costs of the prosecution, there were also financial incentives for the successful victim, as much as threefold restitution. Nineteenth-century supporters of private prosecution, such as Sir James Stephen, applauded it as a highly effective means of upholding the integrity of law.

Many victims want an opportunity to tell criminal justice decisionmakers how their crime has affected them.
in every way entitled to respect, and have decided peaceably, and in an authentic manner, many questions of great constitutional importance.*

However, during the nineteenth century, British reform advocates such as Jeremy Bentham and Sir Robert Peel began campaigning for the establishment of a public prosecutor. They did not argue for the abolition of private prosecution; in fact, Bentham argued for a system with both public and private prosecution. Private prosecution alone, he believed, was inadequate for crimes that were essentially public in nature. At the same time, he opposed giving the state a monopoly on prosecution because this put too much power in the hands of the government.

There were other complaints as well: that at times of high crime, when so much depended on the deterrent ability of the legal system, it was unwise to rely heavily on the willingness of victims to prosecute; that private prosecution might be ineptly conducted and result in unnecessary acquittals; that it might be motivated by revenge or greed; and that the victim and offender might settle privately.

In 1751, Henry Fielding identified three major causes of a recent increase in crime in London. First, he believed that the poor were becoming increasingly immoral in the face of increased prosperity and business in the city. Second, he thought that the courts were so lenient that they were failing to deter people from turning to crime. Third, and most troubling to Fielding, was the lack of cooperation from victims. Property crime victims were simply not bringing offenders to court, even when they knew who they were and could have them arrested. This reluctance was due in part to the costs and trouble involved, but also to what he thought was “altogether misplaced tenderness that made some men reluctant to see offenders hanged for minor offenses. The weak-kneed responses of victims and the courts were together, he was certain, undermining the deterrent capacities of the law.”

Hay and Snyder recite the duties of a private prosecutor in attempting a successful prosecution:

First, to give evidence to a magistrate (perhaps by first going to a constable, or in order to compel a constable to act on a warrant),

---

* James F. Stephen, A History of the Criminal Law of England (London: Macmillan, 1883), 496. Sir James recognized that private prosecution was subject to criticism, particularly if pushed to an extreme. It never is pushed to an extreme, however: first, because a jury as soon as the character of such a prosecution as I have suggested was exposed, would be certain to acquit, unless there were some extraordinary reason for sanctioning it; and secondly, because the result of such an acquittal would be an action for malicious prosecution followed by a verdict for exemplary damages. Besides which, the management of a criminal prosecution is so expensive, so unpleasant, and so anxious a business, that no one is likely to undertake it without strong reasons. (Ibid., 495–496.) We will see in the Philadelphia Magistrate’s Courts what some argued was a chronic state of “pushing to an extreme.”
thereby being bound, with two others as sureties, in a recognizance (a penal bond) to prosecute. Secondly, to conduct proceedings then and later personally or to engage a solicitor. Third, to interview witnesses and to bring them before the magistrate (or pay the solicitor to do this and most of the following tasks). Fourth, to decide upon the charge, in those many cases where several choices were possible. Fifth, to attend the court clerks (Clerk of Indictments at assizes, Clerk of the Peace at quarter sessions) to draw the indictment, which could take one, two, or even three days’ attendance in the nineteenth century, or to send copies of the depositions to counsel for a bespoke rather than off-the-peg job. Sixth, to ensure the attendance of prosecution witnesses at the grand jury hearing (usually the important ones would already be bound in recognizances to do so) in order to have the indictment found “a true bill,” suitable for trial. Seventh, to ensure the attendance of witnesses at trial. Eighth, to present the prosecution case in open court, including questioning the accused, or to pay counsel to do so. Ninth, to apply for any rewards or other public moneys that were granted by the court for the trouble and expense of prosecution, and to distribute any sums owing to the witnesses, as well as paying the court costs and any fees incurred for solicitor or barrister. Finally, in cases where a conviction was obtained, to intervene further if a pardon was sought by the convict or his friends. Some prosecutors, sharing or shamed into the belief that a sentence was too harsh, joined petitions for mercy in the knowledge that their intervention was given particular notice; others, dismayed that their efforts might be undone by royal clemency, petitioned for the execution of the original sentence.5

One researcher has concluded that informal settlements between victims and offenders were common, particularly in small communities.*

This debate culminated in the passage of the Prosecution of Offenses Act in 1879, which established the office of the public prosecutor, charged with supervising prosecutions of a limited range of offenses in which the ordinary form of prosecution was seen as insufficient. The remainder of the cases was left

---

* “[I]n the small-scale society of the village a prosecution may not have been the most effective way to deal with petty violence and theft. Demanding an apology and a promise not to repeat the offense, perhaps with some monetary or other satisfaction, may have been a more natural as well as a more effective response to such an offense, or perhaps simple revenge, directly taken.” (Douglas Hay and Francis Snyder, eds., “Using the Criminal Law, 1750–1850: Policing, Private Prosecution, and the State,” in Policing and Prosecution in Britain 1750–1850 (Oxford: Clarendon Press, 1989), 8.)
to private prosecutors, and the overwhelming numbers of those prosecutions (some report 80 percent) were initiated by police officers.\textsuperscript{6}

The Professionalization of Justice Reduces the Victims’ Role

It was not until the end of the nineteenth century and the rise of professionalized justice that victims were finally relegated to their current, passive role as witnesses for the prosecution. At the beginning of that century, victims were still the dominant force in criminal proceedings, initiating criminal cases, prosecuting them, and obtaining financial restitution for their trouble. By the end of the century, the police dominated the investigation of crime, the State’s Attorney dominated prosecution, and correctional officials dominated the sentencing process.

Between 1815 and 1900, the United States created its modern criminal justice system. In 1815, key institutions—the police, the prison, probation, and parole—did not yet exist in their modern form. By 1900, they were parts of a new apparatus of social control. To be sure, not every state had adopted all of the new institutions by 1900, but the idea of a criminal justice system was firmly established. This system involved a set of interrelated bureaucratic agencies performing specialized tasks for the purpose of controlling crime, deviance, and disorder. The victim’s role was to serve as little more than a witness.

For years, historians equated adoption of public prosecution with the elimination of private prosecution, and concluded that private actions fell into disuse in the United States after the Revolution. It was historian Allen Steinberg’s research into the magistrate’s courts in Philadelphia that shed new light on the operation of a hybrid public-private prosecution process to late in the nineteenth century. In his book, The Transformation of Criminal Justice: Philadelphia, 1800–1880,\textsuperscript{7} Steinberg makes a convincing case for the dominance of private prosecution until the 1880s (at least in dealing with the largest numbers of prosecutions—those for relatively minor offenses). The reason for this dominance was the popularity of the magistrate courts, operated in Philadelphia by elected officials known as aldermen who conducted administrative as well as judicial functions.

Although these courts were highly informal in operation, the aldermen/justices had the power to hold defendants in jail pending trial by a court of record, to dispose of certain minor cases, and to require the posting of a peace bond. The aldermen were for the most part unschooled in the law, and were even willing to create new offenses on the spot if it seemed necessary. Poor people in particular frequently resorted to aldermen for justice.

According to Steinberg,

Private prosecution gave citizens the power, in practice, to define crime. Because the minor judiciary let them do so, almost
anything that annoyed or irritated a person could be treated as a crime, for whatever motives a prosecutor might have. Private prosecutions fell into two broad groups. Some cases were seriously and fully pursued, others only partially pursued. Within both of these groups, some cases were instituted with the honest intention of attaining some measure of justice, others with ulterior or malicious motives. There were substantial numbers of all types of cases. Aldermen provided people with the freedom to police themselves, to determine when the law should be invoked and, often, how far the criminal justice process should continue, even though in an imperfect and sometimes exploitative way.8

It is the popularity of the magistrate’s courts that Steinberg finds intriguing, particularly in light of what appear to twentieth-century lawyers to be significant flaws in how these courts operated. They were crowded, unruly, and undignified. Because the aldermen were “unencumbered” by the law, the decisions were often arbitrary. As noted previously, this sometimes meant that aldermen created new offenses and made them effective retroactively. Private prosecutors were occasionally motivated by spite; others failed to pursue their cases to completion (sometimes leaving impoverished defendants languishing in jail). Finally, because the aldermen’s fees came from the litigants, there was little incentive for them to refuse a prosecution—and ample opportunity for corruption.

Steinberg concludes that these courts were a form of popular, local, and informal justice. They offered a forum in which disputes could be readily resolved. More important, they offered a forum in which the disputants controlled what happened. While there were regular outcries against the courts’ abuses, these were raised by reformers who did not use the courts.

Eventually, the development of the public police force (combined with the long-standing complaints about abuses of informality) led to a reorganization of the magistrate courts, which effectively ended private prosecution. Philadelphia did not have a police department until 1854. Prior to that time, it relied on a night watch system with only limited police coverage during the day, and the patrol was much more passive than it was proactive. This is why the police force was such an innovation.

According to Roger Lane,

The new police officers were expected to be professionals in the fullest sense. They would not, like the watch, be confined by custom to watching for fires, fights and other overt disturbances. They would not, like sheriffs and constables, rely largely upon the complaints of the injured. The police would prevent
trouble by actively seeking it out on their own, before it had time to reach serious proportions.⁹

Prior to 1854, initiative in the criminal justice system fell to the private citizen. It was the citizen who filed a complaint with the sheriff or with the magistrate. With the advent of the police force, a new possibility emerged for initiating criminal cases, one that was believed would bring greater efficiency to crime fighting: to require that all cases be initiated by the public prosecutor based on investigative work performed by the police.

The principal reason for this development (the transformation to which Steinberg refers in the title of his book) is that other parts of criminal justice had become professionalized. The police and the prison agency were more effective in dealing with lawbreakers than were the victims and community. Salaried magistrates were more likely to administer even-handed justice than were those who were paid for each case they accepted. Nevertheless, Steinberg mourns the demise of the courts and of private prosecution, because in a real sense those courts were “people’s courts.” While that was ultimately their downfall, it was also their strength.

The central point is that, at bottom, the criminal court was dominated by the very people the criminal law was supposed to control. . . . The ordinary people of Philadelphia extensively used a system that could also be so oppressive to them because its oppressive features were balanced by the peoples’ ability to control much of the course of the criminal justice process. Popular initiation and discretion were the distinctive features of private prosecution, rooted in the offices of the minor judiciary where it began, and remained the most important aspect of the process even in the courts of record. Whether it be to intimidate a friend or neighbor, resolve a private dispute, extort money or other favors, prevent a prosecution against oneself, express feelings of outrage and revenge, protect oneself from another, or simply to pursue and attain a measure of legal justice, an enormous number of nineteenth-century Philadelphians used the criminal courts. . . .¹⁰

**Victim and Prosecutor**

Some would argue that the prosecutor adequately represents the victim’s interest. According to the American Bar Association’s Standards
Relating to the Prosecution Function, however, the prosecutor’s responsibilities are “to convict the guilty, enforce the rights of the public, and guard the rights of the accused.” Variants’ interests are not mentioned and could be included (arguably) only within the broad category of “enforcing the rights of the public.” If and when the public’s interest conflicts with the victim’s interest, the victim is clearly not represented. This is reflected in the American Bar Association’s Guidelines Governing Restitution to Victims of Criminal Conduct: “The prosecuting attorney should advocate fully the rights of the victim on the issue of restitution to the extent such advocacy would not unduly prolong or complicate the sentencing proceeding, nor create a conflict of interest for the attorney acting as advocate for the government.”

Sometimes the conflict between victims and prosecutors is not as nuanced as these examples. What happens when the victim disagrees with the prosecutor’s position on sentencing, for example? According to Dignity Denied, a report published by Murder Victims’ Families for Reconciliation (MVFR), victims who oppose the death penalty have been denied rights afforded to other victims. Three rights in particular were implicated:

1. **The right to speak and be heard.** In one case, three relatives of a homicide victim asked to present their views to a parole board hearing on whether to grant a commutation of the death sentence imposed on the offender. The two who opposed the death penalty were denied the right to speak or to offer written testimony; the one who supported the death penalty was the only one afforded this right.

2. **The right to information.** Related to the first right, some prosecutors have refused to provide information about upcoming court proceedings, in particular the sentencing hearing, after learning that the victim opposed the death penalty.

3. **The right to assistance and advocacy.** The report documents a number of cases where opposition to the death penalty meant that state victim advocates provided no support or assistance to the murder victim’s relatives.

The lead author of the study, who was also executive director of MVFR, was Renny Cushing, whose father had been murdered. Cushing was elected to the New Hampshire state legislature and in 2009 secured passage of the Crime Victims Equality Act, which prohibits discrimination against crime victims because of their opposition to the death penalty.

Judith Rowland, a former prosecutor, has argued the need for “independent attorney advocates” to represent victims in the criminal justice system.
In our legal system, it may be a conflict of interest for one attorney to represent two clients in the same cause of action. A very real possibility is that such a conflict arises when a prosecutor represents both the victim and the state in the same criminal action when the aim of the prosecution is to obtain a conviction for the state.

In whose best interest, for instance, is a “nolo contendere” plea, or the dismissal of counts affecting one or more victims while taking a plea to others? As to the former, the prosecutor will be the first to admit that the people’s interest in getting the plea (“nolo” being for the purposes of a criminal proceeding the same as guilty) and not in assisting the victim; in the latter example the risk is great that restitution, insurance, or victim compensation rights may be plea bargained away, lost or compromised.15

What the prosecutor thinks is good for the public may be at odds with the victim’s interest. This argues for victims being given standing to act independently of the prosecutor at any stage in the criminal justice process when their interests in recovering restitution and securing personal protection are at risk. Each victim would necessarily have the right to private representation for those stages of the criminal justice process that relate to the victim’s pursuit of restitution or personal protection. This may actually help the prosecutor: it is obvious that prosecutors rely on victim cooperation to secure convictions. They may benefit, then, if the possibility of securing restitution encourages increased victim participation in the criminal justice process.

In summary, giving victims a formal role in the criminal justice system would result in both an explicit recognition that crime is an offense against the victim and a distinction between the legal interests of the victim and the government.

Victim Participation at Various Stages of Criminal Proceedings

Creating such a role would satisfy two of the three requirements of inclusion: invitation and acknowledgement of interests. The third element is acceptance of alternative approaches. What additional changes would need to be made in criminal proceedings if we add victims as a third party with recognized legal interests?

There is a growing body of literature in American journals on the role of victims in Western European criminal justice systems. This literature yields a wealth of suggested roles for victim inclusion in the criminal justice system of the United States. Although the stages of the criminal justice process vary from country to country, there is a basic process common to almost all jurisdictions—certainly to all common law jurisdictions. We will discuss possible formal roles that victims and their counsel might play in
the following key stages: investigation, bail, trial, plea bargaining, sentencing, and post-sentencing. In each of these stages, there are two basic forms that victim inclusion might take: (1) consultation with the prosecutor, and (2) initiation of action independent of the prosecutor. The first requires direct access to prosecutors; the second, to the judge.

**Investigation**

The decision to prosecute normally rests with the public prosecutor for the reasons that historically gave rise to public prosecution: the need for even-handed and consistent prosecution and the importance of considering public interests over private interests in initiating criminal actions. The decision to charge a defendant nevertheless affects the future interests of the victim. If the prosecutor wants to pursue only one of several potential charges (e.g., charge the offender with a violent crime but not theft), the victim has an interest in negotiating with the prosecutor. Because a victim can secure restitution only after the defendant is found guilty, the victim clearly has an interest in what charges are brought against the accused.

European systems offer four basic options for such intervention: (1) the victim may ask the prosecutor to review an adverse decision, (2) the victim may appeal to the decisionmaker’s superior or to an independent board of complaints, (3) the victim may appeal to the court, or (4) the victim may initiate a private prosecution. These methods of victim intervention employ formal administrative procedures, although few European jurisdictions have a formal appeal process.

An alternative approach is Minnesota’s Office of Crime Victim Ombudsman, established in 1985 to assist victims needing assistance for redress of situations in which their statutory rights have been violated or they have been treated unfairly by the criminal justice system. This service continues under the Minnesota Crime Victim Justice Unit (CVJU), which investigates complaints, acts as a referral and information resource, and serves as a liaison between the victim and the criminal justice agency.

**Arraignment through Presentencing**

Decisions regarding bail could also affect the victim’s interests. For example, victims may believe that their personal or family safety will be at risk should bail be granted. If so, they would be permitted to present
supporting evidence to the judge (independent of the prosecutor) in the interest of limiting future harm at the hands of the defendant. In such a situation, victims could also request a restraining order against a defendant about to be released. It is conceivable that a victim might request that the accused be released on bail in order to continue work and increase the likelihood of collecting future restitution.

Plea Bargaining

Victim involvement in the plea agreement stage is essential. The great majority of all cases are resolved by plea agreement. A plea agreement relieves the court and the prosecutor of the burden of a trial. It is typically an agreement among the prosecutor, defense counsel, and the accused to plead to reduced charges resulting in a lighter sentence. Of 100 felony arrests in the United States, 55 are carried forward. Fifty-two (95%) of these are disposed of by guilty plea. The victim has an interest in securing a plea that will maximize the potential restitution ordered. The interest of the state in obtaining a quick agreement may be at odds with the victim’s interest in restitution.

However, the victim’s interests and the prosecutor’s interests may very well overlap. The victim’s interest in restitution and the state’s interest in efficient resolution of the case are not mutually exclusive. It is conceivable that restitution to the victim by the offender could satisfy at least a portion of the government’s need for punishment. The payment of restitution also might be part of the bargain to reduce other charges.

Sentencing

A number of studies have indicated that victims are more interested in sentencing than in any other stage of the criminal justice process. Eighty percent of California victims interviewed indicated that the existence of their right to speak at felony sentencing was important to them. It is at sentencing that the justice system moves from a legal determination of how to characterize the offender’s behavior (did it violate the law?) to both the practical and symbolic act of deciding what to do about that lawbreaking. According to one study of burglary victims, three basic components make up victims’ understanding of “fairness” when it comes to sentencing: the punishment the offender will be given, the compensation the victim will receive, and the rehabilitation services that will be made available to the offender. Giving victims the right to intervene at sentencing to seek reparation, then, addresses at least one of these dimensions and arguably may address the other two as well.

Restitution is often treated as an “add-on” to the real sentence, even though it is mandated in many jurisdictions. For it to be a meaningful
sanction, judges must fashion sentences in which all components, including restitution, can be satisfied. For example, a sentence to incarceration may preclude the payment of restitution, while a sentence of intensive supervision probation would not. Sentencing should be constructed so as to increase the likelihood of restitution being paid. Restitution should be normative unless there is a compelling, overriding reason for it not to be.

While it is commonly assumed that offenders cannot provide adequate compensation to their victims, studies have concluded that there are relatively few victimizations that are so costly as to negate the possibility of restitution, even after taking into consideration the extremely low income levels of some defendants. One comparative study of restitution programs found that the average compliance rate is 68 percent, suggesting that more offenders are able to comply than is generally believed. Moreover, this does not touch on the rate of compliance that might be achieved if restitution were given higher priority by sentencing and correctional authorities.

Post-Sentencing

Probation and parole violation hearings can affect the recovery of restitution. Victim interest in timely and full recovery is at risk if the offender violates the conditions of probation or parole and is returned to incarceration. The feasibility of restitution recovery from incarcerated offenders is clearly limited. It is not unreasonable, however, to expect offenders released into the community on probation or parole to pay restitution based on realistic payment plans and effectively monitored restitution collection. Both probation and parole supervision could be extended on an informal supervisory level until restitution is paid in full. In addition, currently recognized system deficiencies in monitoring and collecting restitution need to be addressed in order to provide a reparative framework of criminal justice.

The Victim as Civil Claimant in Criminal Cases

In reflecting on how victims’ restitution claims could be incorporated in the criminal justice process, it is worth considering the roles given the victim in other countries, including France. Crime victims there can bring a civil action for damages as part of the criminal proceedings, using the

Victims are more interested in sentencing than in any other stage of the criminal justice process.
partie civile procedure. A victim who brings such a civil action thus becomes a party to the related criminal action and can play an active role, through counsel, in asserting a right to civil damages. A significant number of victims seek this relief rather than instituting civil proceedings.

French experience has demonstrated the advantages of this one-court approach. Combining all the actions in one proceeding has been more efficient and has assured that penal and civil decisions are consistent. For victims, the use of the criminal process has been faster, simpler, and cheaper than the civil proceeding. The prosecutor proves the guilt of the offender, so victims are relieved of that obligation.

A separate hearing on the victim’s civil claim is held after the criminal charges have been settled. If the accused has been found guilty, the victim must (1) show that the injury he or she suffered was directly caused by the prosecuted acts and (2) prove the amount of the alleged damages to his or her person and property. If the accused has been found not guilty, the victim must show by a preponderance of the evidence that the damages suffered were directly caused by a violation of the Civil Code and were the result of the facts adjudicated at the preceding trial.

As previously discussed, victim rights advocates have achieved much over the past three decades. These efforts have demonstrated that change is possible. Although we are proposing more comprehensive changes to expand victim involvement in the criminal justice process, it appears that this is not only a matter of basic fairness and justice, it is also feasible.

Conclusion

Genuine inclusion involves action by the gatekeeper: an invitation, acknowledgement of the interests of the party invited, and acceptance of alternative approaches that may be required. Encounter programs such as mediation, conferencing, and circles are thoroughly inclusive—more inclusive than the criminal justice system can be. However, the criminal justice system could be changed so as to create a significant opportunity for inclusion for those victims who wish to take it.

As we have seen, the real question concerning victim inclusion in the criminal justice system is not whether they will take part but how. They are already involved as citizens and (possibly) witnesses. Moreover, the rise of restitution orders, victim impact statements, and other victim rights initiatives (such as the right to information and presence in court) have begun to give the victim a quasi-party role. A goal that is highly consistent with a restorative response to crime might be to expand and formalize a role for the victim as a party of interest in pursuing restitution. Such a goal would have at least five practical implications for the criminal justice system.
First, victims could obtain legal representation for those stages of the criminal justice process that relate to their pursuit of restitution or personal protection. This would avoid a potential conflict of interest that may impair the prosecutor’s ability to represent the government as well as the victim, and it would symbolically and practically demonstrate the change in the victim’s status.

Second, the decision to prosecute would remain with the prosecutor, because it is that office that is charged with protecting the public’s interest, and for practical reasons of efficiency and fairness. However, because the victim’s interests are affected by that decision, there should be an avenue for appeal open to the victim who disagrees with the prosecutor’s decision.

Third, sentences would be constructed so as to increase the likelihood of restitution being ordered and paid. In other words, restitution would be normative unless there is a compelling, overriding reason not to order it.

Finally, care must be taken that rights given to victims do not diminish the defendant’s rights or limit the prosecutor’s duty to protect the public interest.

These are implications of expanding the criminal justice system to include a formal role for victims to pursue restitution. Victim inclusion addresses the injustice of excluding from the court proceedings those directly harmed by the crime; it moves the criminal justice system toward a more restorative focus.

Notes


6. Ibid., 3.


8. Ibid., 77.

10. Steinberg, supra note 6, at 78.


PART THREE

THE CHALLENGE OF RESTORATIVE JUSTICE
Chapter 8

MAKING RESTORATIVE JUSTICE HAPPEN

Can the current practices of criminal justice really change? It can seem that inertia has entrenched for good the old ways of thinking and doing in criminal justice. But in fact, as we saw in Chapter 2 and will consider again in the next chapter, significant reforms are taking place at local and national levels around the world. Restorative justice advocates are effectively promoting change in public policy debates, within government agencies, and through nonprofit organizations. They are helping turn restorative vision into restorative practice. The following strategies, drawn from their front-line experience, can help others develop plans, generate momentum, make mid-course corrections, and create opportunities to widen the circle of influence for restorative justice action.

Building Support for Restorative Justice

One of the keys to successful implementation of restorative practices is to build support for restorative justice. That support is needed at multiple layers. The first layer is at the core—the agency, nonprofit organization, or legislative committee in which the reforms will be implemented. Staff, volunteers, oversight board members, and other participants in the core agency or group need to be informed and engaged to support the restorative initiative.

The next layer is made up of the surrounding organizations and individuals who work directly with the core group and whose backing is needed for the program or practice to work. These supporters include, for instance, funders, referral agencies, or partners in other programs. Their support is needed because they provide the backdrop against which the restorative initiative plays out. Their resistance would be highly detrimental to the initiative; indifference could hamper it; support will make implementation much easier.
Finally, there is the broader community, which is only indirectly affected by the program or practice. Backing from the community is important because it will reinforce support sought from the core and supporters, and lack of support can create political problems at times of resistance.

Kay Pranis, a restorative justice veteran at the agency as well as the community level, has outlined six recommendations for those who wish to generate support at each of these layers:¹

**First, find your natural allies.** These are people whose values, experiences, and interests resonate with restorative justice values. They are predisposed to be supportive, and simply need information about the vision and values of restorative justice. Find these people by listening to what community members have to say. Think about how restorative principles apply to their concerns. Learn their language—the terminology that they use—so that you can communicate effectively. Then, explain the vision and values of restorative justice, showing how it is similar to approaches they are already aware of and interested in. For example, educators may be interested in the potential for restorative justice to help with discipline in schools. Law enforcement officials may see this as related to the move toward community policing. Business people may respond to discussion about effective government and prudent fiscal policy.

In light of the political support that “get tough” policies seem to have, one might wonder whether the public is likely to be interested in a restorative response to crime. Public opinion surveys in the United States suggest that the public is concerned about crime and wants something done. If the only option offered is getting tough, they will support that as better than doing nothing. However, when people are given options, they are strongly inclined to favor responses to crime that are restitutionary, rehabilitative, and sensitive to victim issues. So getting the word out about such viable options is an important step toward making them a reality.

**Second, avoid becoming identified with a particular political, ideological, or sectarian label.** Associating strongly with a particular political party, for example, will reduce chances of building broad-based support. It may keep some people who agree on restorative justice from joining the efforts to implement it because of disagreement on collateral matters. It may also cause people to assume that restorative justice is of interest only to persons of one political party or of particular religious groups. They may not consider restorative ideas if they don’t identify themselves as part of those groups or affiliations. Therefore, it is wiser to find ways to use terms and highlight concepts that appeal to the values of multiple groups without too closely adhering to the vernacular of any one of them. For instance, political conservatives will resonate with the restorative emphasis on personal accountability and limitations on the role of government. Political liberals will respond to the community-building potential of restorative justice and the emphasis on habilitation of offenders to ease reintegration. Religious people will be interested in the ways that restorative justice reflects themes
within their traditions, and in the spiritual dimension of encounters. Nonreligious people will agree with the themes of respect for the individual and recognition of common values of people in the community.

Third, listen to those who disagree. Although the first point was to find and work with natural allies, it is a mistake to ignore those who disagree. Listen to the concerns of opponents, and try to understand the objections they raise. This is important in part because these people are part of the community, and they deserve to be heard with respect, but also because it may be possible to learn from them and to reshape or improve the proposed program or policy in light of what they have helped you see. It is possible to turn some adversaries into allies by finding the truth in their point of view and incorporating it into the proposals.

Fourth, put victims first. If the people raising objections are victims or victims’ advocates, then pay exceptionally close attention to their concerns. Travel to meet with them if necessary. Ask them to listen as you repeat in your own words what you understand their concerns to be. A sympathetic victim advocate might participate in the meeting to help clarify the concerns and assist with communication. Ask victims and victim advocates for their ideas and suggestions about the program, and incorporate as many as possible. Learn about the issues victims face and the impact of crime on victims. Use victim stories in presentations and materials. Be sure victim concerns and issues are core to the work for restorative justice, and not ancillary.

Fifth, focus on values and vision, but be flexible on practice. There are always multiple ways to achieve goals; if the old approaches are not working or better options emerge, it can be useful to adopt new strategies. This can make it possible to take advantage of opportunities that arise quickly, even if those are not part of a long-term plan.

Finally, be aware of assumptions and stereotypes. Everyone is constrained by their own paradigms, and those who pursue restorative concepts and practices may need to do some fresh thinking themselves (as we will discuss further in Chapter 10). Without taking time to monitor attitudes and preconceptions, restorative justice advocates may miss new opportunities or allies because they simply do not see them.

**Develop a Credible Coalition**

Those working for restorative justice do well to create broad coalitions to reflect the concerns of victims, offenders, the community, and
law enforcement officials. There are two reasons for doing this. First, members of a locality are the best people to design local restorative programs. Involvement by people with diverse interests will generate creative ideas and build consensus. Second, proposals made by a coalition have more credibility than those urged by a single interest group. This is particularly true in criminal justice matters, in which advocacy is often as adversarial as the justice process itself.

This is an obvious idea, but not easy to accomplish. Restorative justice proponent Mark Carey suggests that part of the problem is a “we-they” attitude between the community and the justice system. He reviews a number of factors that insulate the justice system from the community, including limited disclosure of information, removal of emotion from the justice process, and intimidating physical surroundings (such as courtrooms) in the justice system. Add to this the professionalization of justice with its special language and practices, and the community’s general mentality that justice problems should be solved by the justice system and its agents. All of these factors are reinforced by defining and handling crime as lawbreaking—an offense against the government to which the government must respond.

By raising awareness of the personal and community dimensions of the harm resulting from crime, and opening up options for addressing that harm, restorative justice helps the justice system and community find common cause. Restorative justice practices begin to draw the community and justice system together, each doing what it does best, in order to achieve a safe, fair, and constructive outcome.

Another group that may be alienated or isolated from the justice system and wary of restorative justice initiatives is the victim community. Many crime victim advocates are cautious about restorative justice, fearing that victims’ interests will be subordinated by an overriding (even if not explicit) concern for offender rehabilitation. This is a reasonable fear because many restorative justice advocates come from law enforcement, correctional agencies, or nonprofit organizations whose work has traditionally been offender-oriented. In addition, the criminal justice system is so offender-oriented that it is very easy to find restorative justice programs failing to be as victim-centered as they have intended or promised. This is why it is essential to have victims and victim advocates involved in discussing, planning, managing, and evaluating restorative programs.
Pursue Strategic Goals

The failure of contemporary criminal justice is not one of technique but of purpose; what is needed is not simply a new program but a new pattern of thinking. Criminal law does not adequately recognize the harms to the victim, to the community, or to the offender. The offender’s punishment seldom redresses the harm done to the victim or ameliorates the conditions that may have contributed to the crime in the first place. Victims have little or no legal standing in criminal court; their role is limited to assisting the prosecution (when necessary) to convict the offender, although in some places they may also offer an impact statement prior to sentencing.

Given the challenges and impediments to implementing a restorative approach, moving forward will require careful thought and clear strategies. In developing these strategies, it is important to distinguish between the restorative justice vision itself and the strategies for implementing that vision. Strategic goals should be set but not confused with the ultimate objective; their value depends ultimately on whether they bring the system closer to a societal response to crime that reflects the restorative vision. In other words, planners need to be clear about the ends they seek and the means used to get there—and then to remain clear about the differences between ends and means.

Here are suggested strategic goals that would redress the imbalanced focus on government and offenders in most criminal justice policies and practices. These goals may appear as unbalanced as the system they are meant to remedy. This is because they provide counter-weights needed to create balance. The goals emerge from the cornerpost restorative values discussed in Chapters 4 through 7.

**Strategic Goal #1: Give every victim and offender the opportunity to participate in an encounter program.** Encounter programs offer a structured opportunity for victims, offenders, and others to meet, discuss the crime, and work out an acceptable agreement to make things right. Participation in encounters benefits victims and offenders in several ways. It enables each to become an active participant in the justice process. Victims usually receive some form of amends, and they report a higher degree of satisfaction with the justice process after such an encounter. Offenders are given an opportunity to learn how their crimes injured people rather than just an impersonal system, to apologize, and to make amends.

Encounters should not be forced on either party, but they hold great healing potential for those who take the opportunity. Therefore, these programs ought to be available to any victim or offender who wants to use them. While no one should be pressured into an encounter, no one should
be denied the opportunity to participate in one because the means are unavailable. For this reason, every community should establish and maintain sufficient encounter programs to meet local demand.

Strategic Goal #2: Expect offenders to pay restitution and make it possible for them to do so. Accountability includes assuming responsibility to make reparations; therefore, restitution should be a key part of any criminal sentence. However, few offenders have the resources to repay their victims, particularly if they are imprisoned. Furthermore, prisons seldom prepare prisoners to be productive after release. This means that few victims can really expect to receive restitution in contemporary criminal justice systems. This should change. Offenders who do not present a serious risk to the community should be sentenced to community-based supervision in settings that allow them to work, repay their victims, avoid the debilitating conditions in prison, and save the community the tax burden of unnecessary incarceration.

Three factors should be considered in sentencing decisions. The seriousness of the offense should determine the amount of the sanction. The harm to victims should determine the form of the sanction, ensuring an emphasis on reparation. The risk the offender poses should be a limiting factor influencing the amount of restraint the government will place on the offender. Objective criteria need to be established to identify those offenders deemed too dangerous to stay in the community, using a standard such as “high likelihood of seriously threatening criminal behavior.” Even categories as crude as violent-versus-nonviolent suggest that a substantial portion of those now in prison might be sentenced differently under this standard. Criminal justice systems should be accountable for ensuring that amends are collected from offenders and delivered to victims in a timely fashion, just as they should be for the care and reintegration of offenders.

Strategic Goal #3: Let victims be parties in criminal cases, if they wish, in order to pursue restitution. Victims should be given the opportunity to seek restitution in criminal proceedings. They could be given legal standing to protect this interest; they should have the opportunity to be represented by attorneys at any stage at which their stake in restitution could be affected. This would be a complete departure from
criminal justice practice in many common law countries, although it is similar to the rights offered to crime victims in some European countries. It offers at least three advantages over the current criminal/civil distinction in law:

1. The criminal process is more speedy and less costly than the civil process,
2. Permitting victims to seek amends represents institutional recognition that the harm to victims should be repaired, and
3. Granting victims legal standing ensures a clear distinction between the legal interests of the victim and those of the government.

Strategic Goal #4: Provide every victim and offender the help they need to reintegrate as whole and productive members of the community. Most crime victims need assistance of some kind from the moment a crime is committed. They may receive help from family or friends, but often their needs go beyond what those informal networks can provide. The immediate and long-term effects of serious crime can be devastating, but are reduced if immediate aid is available. Crisis intervention services such as emergency shelter, financial assistance, child care, and referrals to social service agencies exist in many places. However, most of these are unable to provide victims with comprehensive help due to staff and funding shortages. Communities must augment these system-based victim assistance programs.

Offenders also need help in reintegrating into the community. This need is particularly acute when the offender has been imprisoned, but exists for many who have served community-based sanctions as well. In addition to barriers the offender may have faced before, he or she now carries the stigma—and in many cases the legal disabilities—that come with being a convicted felon.

In order to meet the challenge of helping victims and offenders reintegrate, communities need to orchestrate cooperative ways to make services known and available to those who need them. This may require networking among various nonprofit, governmental, and even for-profit agencies with a specific emphasis on helping victims and offenders to get ready access to needed help. Faith communities have much to offer victims and offenders. Almost every community has local churches or other faith groups (in some urban communities, they are virtually the only viable nongovernmental institution available), and service
to victims and offenders is consistent with their missions. They are currently a largely unused resource in criminal justice, but the factors that have contributed to that underuse may be overcome. Faith communities can offer relationships of acceptance and accountability that are an essential foundation to helping victims or offenders work reintegrate into the community as whole contributing members.

If these four strategic goals were creatively pursued and progress on them charted and evaluated, the pattern of thinking that shapes our society’s response to crime would begin to change. Both system and community responses would open up to new possibilities for recognizing victims’ harms and offenders’ accountability, for recognizing the personal dimensions of crime and ways to respond to them, and for ensuring that both victims and offenders are able to access reintegrative programs and community relationships.

Revisit the Vision and Evaluate Impact

Work on strategic goals to help restore balance to the system can nonetheless produce programs that fail to reflect restorative principles. For example, victim involvement in criminal trials is a strategic goal, but if such involvement increases the isolation and antagonism of victims and offenders, it would conflict with restorative values of collaboration and resolution. Therefore, it is important to evaluate policies and programs regularly, both in terms of their success at redirecting society’s response to crime and the extent to which they help achieve restoration of victims, offenders, and communities. Even if they start well, policies and programs can lose their original focus as they respond to pressures and changes in environment, personnel, and resources. Therefore, restorative justice advocates would be wise to revisit previously enacted policies and programs to assess the effectiveness of their strategies and outcomes and make adjustments to keep them on track. One expedient reason for evaluation is that arguments for restorative justice depend on practical examples and cost/benefit analysis. Future arguments rest on the credibility of past accomplishments; and past accomplishments are only as strong as their practical outcomes. Therefore, an ongoing commitment to evaluation based on the principles and values of the restorative justice vision builds the necessary research and experience base to secure the future of restorative justice as well as keeping current efforts on track.
Impact evaluations may be highly formal or quite simple, but they are the only way to determine objectively whether a program or policy accomplishes what it set out to do. Evaluation begins with program design, guides the development of ideas into actions, and provides an objective framework for testing whether the program’s features produce the intended benefits or outcomes. Although program administrators may feel threatened when undergoing an evaluation that asks tough questions about the translation of principles into practice, evaluation is the backbone of a healthy program. It provides the opportunity to improve on program strengths and to correct unsatisfactory performance before it weakens the whole program. Evaluation data are the best “proof” to funders, justice officials, and even critics who want objective verification of the benefits of the program.

Evaluation is more easily done when clear goals and measurable objectives have been established at the outset. The discipline of careful planning is a great advantage. The principle of “go slow to go fast” is applicable to those charting the course for restorative justice in practice. Advocates may be eager to accomplish change, but they will only know what they have accomplished if they know what they set out to do, how their methods relate to their goals, and how they will benchmark and measure progress. For restorative justice to take root and bear fruit, its policies, practices, and programs must be observably and measurably connected to the vision—and this will remain true through the inevitable process of growth and adaptation to changing times, new challenges, and fresh opportunities.

One way to generally monitor whether a policy or program is consonant with the vision and values of restorative justice is to use a simple checklist. The following checklist, for example, could be used to assess the relative “restorativeness” of policies or programs.* It is unlikely that any effort would receive a perfect score on every point below, but the more elements that are substantially included, the more restorative the effort will be.

* Howard Zehr has proposed a similar list of questions in Changing Lenses: A New Focus for Crime and Justice (Scottsdale, PA: Herald Press, 1990), 230–231. Those questions are: (1) do victims experience justice? (2) do offenders experience justice? (3) is the victim-offender relationship addressed? (4) are community concerns being taken into account? and (5) is the future being addressed?
1. Does it guide victims, offenders, and communities toward restoration and away from further harm?
   • Leaders and program staff understand and act upon the restorative mission and goals.
   • Restorative directions for all parties are identified and included.
   • Procedures and policies further the accomplishment of reparative and/or reintegrative goals.
   • The victim and the offender are invited and enabled to participate fully.
   • A mechanism is provided for community participation.
   • Victim safety and dignity are diligently protected.
   • Offenders are given respect and are not dehumanized or threatened.
   • The community’s legitimate need for safety is acknowledged and incorporated.

2. Does it produce restorative outcomes for victims, offenders, and communities?
   • Measurable objectives directly related to the restorative purposes of the program or policy are set, tracked, and fed into a continuous improvement process.
   • Analysis of program data gives an honest picture of the program’s restorative nature and activities.
   • Reports are made available to others who are seeking to build restorative justice so that a collective body of experience and knowledge is increasingly available.

3. Does it invite participation by all parties, but function in a restorative direction even when some do not participate?
   • It invites full participation by victims, offenders, and the community.
   • It offers alternatives to compensate for the lack of (or limited) participation by any of the parties while still pursuing restorative ends.

4. Does it encourage voluntary involvement, but function in a restorative direction even when coercion is necessary?
   • It is noncoercive in offering participation to victims and offenders.
• Its social controls, when necessary, interfere as little as possible with the restoration of the victim and offender.

5. Does it harmonize with the role of the state in maintaining a just order and the role of the community in achieving a just peace?

• It facilitates effective community-government cooperation.
• It effectively coordinates public and private resources.
• It successfully maintains the restorative vision as it encounters adverse political and institutional forces.
• Mechanisms are in place to recognize and address injustice or imbalances when they appear.

This kind of checklist can help identify areas needing adjustment or additional resources. A next step would be to go beyond a general assessment of the processes, and work to measure (qualitatively and quantitatively) the actual impact and benefits to the victims, offenders, and communities who are involved with the restorative justice program or effort. We suggest collaboration with local universities or foundations that can help implement and resource this kind of evaluation.

Realign Vision and Practice

Evaluation provides a means to test the link between vision and practice. Claims about a program’s restorativeness must stand the reality test. Proponents of the penitentiary believed sincerely that the penitentiary was the logical, moral, and humane response to law-breaking—especially in contrast to the prevailing practices of the day. In reality, the penitentiary failed to match the vision from which it sprang. Although prisons have not delivered their desired results, confinement has remained a dominant feature of the corrections landscape. Contemporary citizens only rarely question the value of confinement as the “normative” mode of punishment for any crime deemed serious. There is a lesson here. For the Quakers, confinement was a practical way for penitents to focus on their wrongs and change their lives apart from pressures, temptations, and distractions. Instead, it became a means of isolating wrongdoers from their communities. In restorative justice practice, we must be prepared to be creative, flexible, and non-dogmatic about program features while holding firmly to the vision, principles, and values of restorative justice. The way to do that is to pay attention to the results, and then modify the program to better achieve the vision.
Stay Connected

One of the remarkable features of restorative justice has been how similar ideas and programs have emerged spontaneously in different parts of the world. Family group conferencing developed without an awareness of restorative justice; that theory helped locate conferencing within the field of criminology, but did not produce the program.

A second feature has been the exceptional appeal of restorative justice in diverse cultures and places. One could accurately say, as the British once did of their empire, that the sun never sets on restorative justice. That means that developments of theory, practice, and programs are proceeding at a great rate. This contributes to the dynamic creativity of the movement, but also means that its practitioners and advocates need to exchange experiences and discoveries. This need has led to formation of associations such as the Victim-Offender Mediation Association, the European Forum on Restorative Justice, and the International Network for Research on Restorative Justice for Juveniles. It explains why national and international conferences on restorative justice are so well attended.

Internet sites on restorative justice and related issues provide yet another means of exchanging information.*

Those pursuing the restorative vision will gain much by learning from, collaborating with, and challenging each other as well as those who hold other visions and agendas. Restorative justice will continue to be relevant and vital only if it stays in touch with its vision, tests its practices, stretches its applications, and grows with the diversity and creativity of its proponents. Otherwise, this new pattern of thinking and its practical applications will become insulated and marginalized.

Expect Resistance

Machiavelli, in his famous book The Prince, counseled:

[O]ne should bear in mind that there is nothing more difficult to execute, nor more dubious of success, nor more dangerous

---

* One such site is Restorative Justice Online (http://www.restorativejustice.org), maintained by Prison Fellowship International's Centre for Justice and Reconciliation, of which Van Ness is executive director.
to administer than to introduce a new order of things; for he who introduces it has all those who profit from the old order as his enemies, and he has only lukewarm allies in all those who might profit from the new.3

Many of the themes of restorative justice are appealing. In fact, what restorative programs seek—redress for victims, recompense by offenders, development of peaceful communities, increased participation in criminal justice, reintegration, and reconciliation—will have wide appeal (if not dismissed by initial skepticism). However, wide appeal is not the same as deep commitment, and that can have a significant impact on the success of restorative programs.

Restitution is a good example. It enjoys almost universal support from victim rights organizations, prisoner rights groups, liberals, and conservatives. While this makes it a highly attractive feature for restorative justice advocates, countervailing political forces may in the end be more powerful. As researchers Alan Harland and Cathryn Rosen noted in their research on the promise and realities of early enthusiasm for restitution in the 1980s and early 1990s:

If winning popular support for the system is a rationale for using the criminal justice process to compensate victims, however, questions arise again as to the likely fate of restitution when it conflicts with other powerful items on the public popularity agenda. How, for example, are individual decision-makers and policymakers to rank public support for victims against the omnipresent mandate to get tough on crime, if imprisoning more offenders means destroying or deferring for long periods whatever earning capability they may have had to repay their victims?4

This applies as well to restorative justice. Support for restorative measures can dissipate rapidly if the measures become the focus of political controversy.

The criminal justice system, like any bureaucratic system, resists change. Modern prosecutors are agency administrators with their own political and administrative agendas. So too are leaders of all other parts of the criminal justice system, from law enforcement to corrections. Each has its own interests, which are at least as important to it as an overall societal objective for the system. The challenge to restorative justice

The challenge is to draw from public support to establish programs that reflect restorative justice ideals, and then use the successes of those programs to build deeper public commitment.
advocates is to draw from existing public support to establish programs that reflect restorative justice ideals, using those programs to illustrate their value and thus promote deeper public commitment, and building ongoing accountability for maintaining the vision in the implementation of programs.

Conclusion

Restorative justice will not just happen. However, two phenomena in particular are creating openness to this new pattern of thinking. First, the sheer cost of incarceration puts pressure on public budgets. In the attempt to contain the rising costs, correctional, educational, and medical programs are being squeezed. Innovation—particularly if it can demonstrate better results than the status quo—is viewed with interest. Second, people are better connected through online services and other communication technologies that offer instant information and the ability to discuss it in a wide variety of forums.

As restorative programs and approaches are developed for responding to crime, they must anticipate and compensate for the pressures and realities of social change. Program managers must be willing to evaluate their efforts to see whether the programs deliver as promised and produce restorative outcomes. The ultimate test of any policy or program will be whether it helps achieve the overarching goal of restoration—one person at a time as well as in the wider social process. The changes now underway demonstrate the promise of restorative justice. Much more is possible.

Notes


Chapter 9

TOWARD A RESTORATIVE SYSTEM

In this chapter, we will review ways in which restorative justice processes are being incorporated into each phase of contemporary criminal justice, consider possible models of how restorative justice might integrate with contemporary criminal justice, identify strategic issues that must be considered in pursuing those models, and conclude by proposing a framework with which to assess the degree to which systems reflect a restorative character.

Uses of Restorative Justice Processes in Contemporary Criminal Justice

Restorative justice processes were first used as part of presentence preparation. After guilt was determined by plea or trial, the judge or a probation officer responsible for the presentence investigation would refer the matter to the restorative program. If the parties were willing, they would meet in a restorative encounter, and any agreement reached as a result would be presented to the judge as a recommended sentence.

This use of restorative processes continues, as noted below. However, they are now also used in virtually every part of contemporary criminal justice with varying influence on decisions made in the justice system. In some instances, the agreement guides decisionmakers; in others, the process is independent of the justice system and has no effect on the outcome.

Use by police. In a number of countries, police have begun using restorative processes in deciding what to do with juveniles and adults who come to their attention. This is, of course, only possible where police are given discretion to decide how to proceed with a matter. In some jurisdictions, the police conduct conferences themselves rather than referring the young people elsewhere. Thames Valley Police in England train police officers to conduct conferences that may involve the victim and
offender, their family and friends, and in some instances, members of the community. Other countries have adopted similar programs. Successful completion of a mediation agreement can result in the dismissal of charges (or in the decision not to charge), as in Norway.

In a growing number of countries, including New Zealand and England, these measures have been extended to adult offenders as well. In South Africa, Community Peace Committees were formed to assume responsibility for crime prevention and resolution in localities where there was little confidence in the justice system. Recently, however, a pilot project was initiated to form a partnership with the police. While disputants may still go directly to the Community Peace Committee, they may also go to police who will refer appropriate cases to the Community Peace Committee.

**Use by prosecutors.** As a general rule, prosecutors are given more discretionary powers than police, and courts more than prosecutors. In common law countries, prosecutors have the authority to divert cases. Even in civil law countries, though, recent legislation allows prosecutors to refer certain cases to restorative processes. In Austria, for example, prosecutors may send matters to mediation (referred to as “out of court offense compensation”) after they have received positive recommendations from the social worker/mediator. The German Juvenile Justice Act of 1990 allows prosecutors to dismiss criminal cases on their own authority if the juvenile has either reached a settlement with the victim or made efforts to do so.

Following the pattern noted above in relation to police, countries that began with prosecutor-referred restorative processes for juveniles have since extended it to adults as well. An example of this is Austria, which in 2000 authorized prosecutorial diversion (including to victim-offender mediation) for adult defendants facing sentences of not more than five years’ imprisonment. In some other countries, such as Colombia, legislation authorizing the use of mediation has applied first to adult cases, when the prosecutor agrees.

In general, the prosecutor’s authority to divert a matter after charges have been filed appears to depend on the legal tradition of the country. In common law countries, the prosecutor may continue to divert until the trial (and withdraw charges in the event of a successful resolution) without the court’s permission. In civil law countries, the power to divert is more likely to transfer to the judge once charges are laid.

**Use by courts.** Judges use restorative processes both for pretrial diversion and as part of sentencing preparation. In those jurisdictions in which prosecutors have no authority to divert cases once charges are laid, judges may still have that authority. In Italy, for example, a judge may arrange for mediation between a juvenile offender and the victim, and following successful completion may enter an order suspending the trial and imposing probation. In the state of North Carolina, this approach has become so routine in some courts that at the beginning of hearings the prosecutor will
invite any parties interested in mediation to identify themselves, and the judge will explain the benefits of mediation. Trained, volunteer court mediators are present to immediately help willing parties find a mutually acceptable resolution. In some jurisdictions, a judge may offer court-based mediation even after the trial has begun if it appears that the parties might benefit from it. However, as with other diversion programs, the decision by the parties not to participate will not influence the outcome of a trial.

In addition to pretrial diversion of cases to restorative processes, judges may also use restorative processes after conviction or a guilty plea and before sentencing. For example, in Finland, the judge may suspend the matter until an agreement is made and then carried out, at which point the sentence may be waived. Another example is the Restorative Resolutions Project in Canada, which focuses on adult offenders and their victims in cases of serious felonies. During its initial 18 months, judges accepted the plans in 80 percent of the cases.

**Use by probation officers.** Not all offenders and victims are willing or able to participate in a restorative process prior to disposition of the criminal case in court. In those instances, restorative processes may be used in the course of the offenders’ sentences. In Japan, when the offender has been placed on probation, the probation officers may arrange meetings with the victim for the offender to apologize and make restitution. In fact, in 2001, a rehabilitation center was opened in order to arrange conferences between juvenile offenders and their victims. Participation is voluntary and may include family members and supporters of both parties. These conferences may be held prior to the court proceeding or while the juvenile is on probation. The agreement is then sent either to the judge or the probation officer for their use in working with the offender.

**Use in prison.** There are several reasons for providing restorative processes in prison. One is to help prisoners develop an awareness of and empathy for victims. This may be done by bringing surrogate victims (i.e., victims of crimes committed by other offenders) to meet with groups of prisoners. An example is the Sycamore Tree Project, a program used by Prison Fellowship affiliates in a number of countries.

Restorative justice processes are now used in virtually every phase of contemporary criminal justice.

One reason to use restorative justice processes in prison is to create a culture in which conflict is resolved peacefully.
Other programs provide an opportunity for prisoners to meet with their victims, their estranged families, or with hostile communities. As noted earlier, the state of Texas developed a program at the request of victims that facilitates meetings between crime victims or survivors with their offenders. Most of the offenders are serving very long sentences; some are on death row. The program does not affect the prisoners’ sentence length; however, the victims’ opinions are very influential in parole hearings, and some victims have decided not to contest parole after their meetings.

Many prisoners have alienated their families because of their involvement in crime, the embarrassment and harm they have caused their families, and in some cases because of crimes they have committed against family members. Furthermore, communities can be fearful and angry at the prospect of a prisoner returning. Consequently, it may be necessary for prisoners, family members, and community representatives to meet to discuss how to re-establish meaningful relationships together. Volunteers with the Prison Fellowship affiliate in Zimbabwe act as facilitators in conversations between prisoners’ families, the head man of the prisoners’ villages, and the prisoners about the conditions needed for a successful re-entry to the village.

A final purpose for restorative justice processes in prison is to create a culture within prison in which conflict is resolved peacefully. This includes dispute resolution programs for conflict between prisoners. Imprisoned gang leaders in Bellavista prison in Medellin, Colombia, have created a peace table, at which they meet to resolve disputes between gangs arising both inside and outside the prison. Other prisons have programs that address workplace conflict between correctional staff members, including senior management. Such programs have been used in the United States with success in Philadelphia City Prisons and the state of Ohio. The programs have not only helped staff address their own conflicts, they have also improved prison staff members’ ability to deal with conflicts they may have with prisoners.

Use by parole officers. Restorative processes are used in parole in at least three ways. One is when, prior to the decision to parole an offender, the victim and offender have met in a restorative process and made agreements that could be considered in determining whether to parole the offender and what conditions to impose. These restorative processes might have taken place years before the parole hearing. The Parole Act 2002 in New Zealand provides that the dominant concern in deciding whether to release a prisoner on parole is the safety of the public. However, the board is also instructed to give “due weight” to restorative justice outcomes. On the other hand, there are those who oppose use of such agreements. The American Probation and Parole Association’s manual on victim involvement in offender re-entry recommends that prisoners should not be offered, nor should they receive, any favorable
treatment as the result of apologizing to the victim or attempting in some other way to make amends. The rationale is that victims will be able to trust the offenders’ statements more if they know that the offenders have no ulterior motives.

A second use of restorative processes is at the time a release decision is to be made. The National Parole Board in Canada has created specialized hearings when the prisoner is an Aboriginal offender. An “elder-assisted hearing” is one in which an Aboriginal elder participates in the parole hearing in order to inform board members about Aboriginal culture, experiences, and traditions, and their relevance to the decision facing the board members. The elder also participates in the deliberations. A “community-assisted hearing” takes place in an Aboriginal community, and all parties, including the victim and members of the community, are invited to participate in what is called a “releasing circle,” which will consider the question of release.

A third use for restorative processes is immediately before parole to discuss what conditions of parole will be imposed on the parolee after release from prison. The New South Wales Department of Corrective Services uses “protective mediation” in situations where it is likely that an offender will come into contact with the victim on release (e.g., they live in a small community, they are family members, etc.). The mediation is not “face to face,” but is instead conducted by a trained staff person who acts as a “go-between” to clarify the needs and wishes of each party about contact with the other, and helps them arrive at a practical agreement, when possible. The agreement may or may not be made part of the conditions of parole.

**Five System Models and “Restorativeness”**

How might we think systematically about the incorporation of restorative justice processes into contemporary criminal justice? Figure 9.1 offers a visual presentation of five possible models.

Most of the restorative justice programs mentioned in the previous section augment the contemporary criminal justice processes in their countries. That is, they are an alternative the parties may choose instead of proceeding with contemporary criminal justice processes. These alternatives may be available only at certain points in the justice process.
Figure 9.1

<table>
<thead>
<tr>
<th>Augmentation Model</th>
<th>Dual-Track Model</th>
<th>Safety Net Model</th>
<th>Hybrid Model</th>
<th>Unitary Model</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Diagram" /></td>
<td><img src="image" alt="Diagram" /></td>
<td><img src="image" alt="Diagram" /></td>
<td><img src="image" alt="Diagram" /></td>
<td><img src="image" alt="Diagram" /></td>
</tr>
</tbody>
</table>

(RESTORING JUSTICE)

If the parties do not choose a restorative alternative, then their matter is handled in familiar criminal justice fashion (courts, etc.). The results of the restorative process may or may not influence decisions made in the contemporary criminal justice process. Cases are filed, tracked, and monitored by the contemporary justice system and are sent to restorative programs only with the knowledge and consent of a decisionmaker in that system.

There are other alternatives for organizing restorative and contemporary criminal justice responses. In one, the assumption about the preferred approach to resolving crime would change so that the expectation would be that cases are handled restoratively; contemporary criminal justice would serve as a safety net when restorative approaches cannot or do not bring about resolution. For example, if one of the parties does not want to meet, or the parties do meet but are not able to come to an agreement, the matter would then be handled by contemporary criminal justice. Here one would expect a well-defined restorative justice structure, and cases would be processed through that structure unless sent to the contemporary justice system.

An intermediate option would be the dual-track approach, in which two separate systems are offered. One would be restorative in processes and values, and the other would be like the contemporary criminal justice system. The decision about which process to use would be made by the stakeholders—the parties with an interest in the case. Based on crime seriousness, assumptions might be established concerning the parties that must be included in the decision about which approach to use in handling the matter. For example, in the most serious crimes, the government would play a role in making this decision in addition to the victim, offender, and community.

A fourth model is one in which matters routinely proceed through courts and other agencies of contemporary criminal justice until a certain point in the process, at which time the matter is transferred to restor-
ative programs. We might describe this as a hybrid model of justice, in which both restorative and contemporary criminal justice features make up part of the normative process. What makes this model different from the others is that restorative and contemporary criminal justice interventions operate consecutively, and not as multiple alternatives at the same stages of the justice processes.

The fifth model assumes a single, restorative process as the only alternative available. This unitary model must address all crimes, victims, and offenders in a restorative manner without relying on contemporary criminal justice for anything. Such a model would have to address situations in which the defendant denies guilt or raises a legal defense, such as self-defense. It would have to function when victims and offenders are unwilling to participate cooperatively. This is the most challenging model to consider, and is a feasible model only within the reparative or transformative conceptions of restorative justice, not the encounter conception (see Chapter 3).

The feasibility of a unitary model is the subject of a research and design project conducted by Prison Fellowship International. The purpose of the project, called RJ City℠,* is to imagine a city of one million people that has decided to respond as restoratively as possible to all crimes, all victims, and all offenders, and answer this question: What would its restorative system look like? Such a system would face a number of practical realities and challenges to restorative justice thinking that are not necessary to address if restorative justice forms only part of a system’s foundations. For example:

- How would it go about determining guilt or innocence for defendants who plead not guilty?
- What guidelines would there be for law enforcement concerning the use of force and incarceration?
- How would it respond to victims in the immediate aftermath of the crime, and when no offender is apprehended?
- Does the emphasis on cooperative resolution affect how law enforcement investigates crimes?

In addition, any system that seeks to reflect restorative principles and values will need to consider how it will do this over time and with large numbers of employees and volunteers. For example,

* For online information on this project, go to http://www.rjcity.org/.
• How does it determine whether victims, offenders, and community members are in fact experiencing restorative justice?

• How are staff hired, trained, and supervised so that they are likely to demonstrate restorative principles and values in their work?

• The justice system has many levels and interests; is it possible for restorative justice to be the leading principle of the justice system, and for its preeminence to be established restoratively?

In Appendix 1, you will find a case study developed as part of the RJ City project. It illustrates what might happen after a burglary of an elderly woman’s house by two offenders. It suggests how RJ City would respond to the woman, to the offender willing to accept responsibility, and to the other offender who denies that he was involved.

The unitary model is not the only one that raises hard questions about how restorative a program or set of programs may be. For example, most large-scale attempts to initiate restorative justice are designed to divert offenders from the criminal justice system. This was the case, for example, with the Children, Young Persons and Their Families Act adopted by New Zealand in 1989. As a result, the family group conferences called for in the Act may proceed even if the victim chooses not to participate. While this—and, even more, the authority of the police to divert young people through cautions and so forth—has resulted in a significant reduction in the number of young people going through Youth Court and into custody, the focus of the Act is on the offender (it is believed that conferences produce better results than court) and on the government (fewer court cases and young people in custody means lower costs).

Contrast this with the Crimes (Restorative Justice) Act adopted for the Australian Capital Territory (ACT). The statutory objectives of the Act focus on giving crime victims options for participating in decisions about how the harm they have suffered should be repaired. It does this by making restorative justice processes available at all stages of contemporary criminal justice, but does not replace the criminal justice system. Judges or other decisionmakers in the justice system may or may not take agreements reached in the restorative process into consideration as they make those decisions. This Act may or may not result in lower costs to the government, and offenders may or may not be diverted from the justice system.

* However, section 75 of the Act, which addresses a ministerial review and report, includes evaluation criteria such as victim satisfaction, reduction in recidivism, community satisfaction, reintegration of victims and offenders into the community, respect of everyone’s rights, and a perception of fairness by victims and offenders.
Both of these schemes can fairly be called restorative in intention and as moving their jurisdiction toward embracing restorative justice as a fundamental part of their justice systems. The question that we must turn to is how to assess the “restorativeness” of those (and other) approaches.

A Framework for Assessing the “Restorativeness” of a System

It should be apparent by now that it is difficult to answer the question “Is this restorative or not?” for virtually all systems combine restorative and nonrestorative elements. A more helpful question would be “How restorative is this?” A fully restorative system would be one in which the principles and values of restorative justice prevail and, as a result, its processes and outcomes are experienced as restorative by their participants. Unless everyone who works within the justice system, including all volunteers and community members who have contact with the system, are restorative versions of the “Stepford wives,” we can safely assume that no system will ever be fully restorative.

So how might we assess the degree of restorativeness of a system? An obvious point of departure is the principles and values of restorative justice. In Chapter 3 we outlined three key principles and 10 values. We also noted that four of the 10 values seem to be of particular importance, the “cornerpost” values of encounter, amends, reintegration and inclusion. Chapters 4 through 7 addressed each of these in turn. In those chapters, we identified a collection of important component elements for each cornerpost:

- **Encounter:** meeting, narrative, emotion, understanding, agreement
- **Amends:** apology, changed behavior, restitution, generosity
- **Reintegration:** safety, respect, practical and material help, moral and spiritual guidance and care
- **Inclusion:** invitation, acknowledgment of interests, acceptance of alternative approaches

Let us assume for the moment that a system that fully included all of these values and elements could be characterized as fully restorative. What if some of them are absent? How many could we go without and still characterize the resulting system as at least minimally restorative? Certainly more empirical data is needed before we can
definitively answer this question, but we would like to make a few observations.

First, it is difficult to think of any system as restorative that does not fully exhibit the value of inclusion. One of the fundamental principles of restorative justice is that victims, offenders, and communities should have the opportunity for active involvement in the justice process as early and as fully as they wish. The system should not be considered restorative if victims, offenders, and affected community members are not invited to participate; if their interests are not acknowledged; and if alternative approaches are not created to permit their fuller participation in pursuit of those interests. It is not necessary that all parties participate, only that they be included if they choose to do so. Therefore, we suggest that all three elements of inclusion must be present to consider a system even minimally restorative.

Second, incorporation of the other three values will increase the restorative character of the system, but none of those other three are as indispensable to the system as the value of inclusion. To achieve a fully restorative system in which the processes and outcomes are primarily restorative, a system will need to include these three values. Their absence simply reduces the restorative character of the system; it does not eliminate it. For example, while a fundamental principle of restorative justice is that justice requires that we work to heal victims, offenders, and communities that have been injured by crime, it is not essential that the restoration be done by the offender. When the offender is not apprehended, for example, healing may take place through the material, moral, and spiritual assistance that comprises part of the value of reintegration. This would not be a fully restorative response, but it would be substantially restorative.

Likewise, it does not appear that encounter is essential, because the two fundamental principles of opportunity to participate and restoration of the injured could be accomplished, at least to a significant degree, without an encounter. The example of a crime in which the offender is not identified will serve here as well. Significant restoration can still be accomplished through community or social service assistance.

Nor is successful reintegration of both parties essential, because a victim and offender who meet and make amends will have accomplished a substantial degree of restoration even if they are not fully reintegrated into the community in the way that restorative justice anticipates.
Third, the included elements of those values do not have the same weight. For example, a meeting is undoubtedly more important to an encounter than the fact that emotion is expressed. Both often happen, but if only one does, the meeting would be the most essential. We suggest that some of the elements could be clustered and that the following priority order within each value might be assigned:

- **Encounter:**
  1. meeting
  2. communication (narrative, emotion, understanding)
  3. agreement

- **Amends:**
  1. apology
  2. restitution
  3. change (changed behavior, generosity)

- **Reintegration:**
  1. safety
  2. respect
  3. assistance (material assistance, moral and spiritual direction)

- **Inclusion:**
  1. invitation
  2. acknowledgement of interests
  3. acceptance of alternative approaches

Assuming that this ordering is sensible, it seems clear that an encounter that yields an agreement (for instance, through a form of shuttle diplomacy) will be less restorative than one that involves a meeting and an agreement. An encounter with a meeting and agreement will have a more restorative character than an encounter that involves communication (by exchange of letters, for example) but no meeting or agreement.

In fact, we could construct a series of options related to the value of encounter that would not only include these elements but also those elements of criminal justice that run counter to this value. These options are presented in Figure 9.2. The most complete encounter is one that involves

<table>
<thead>
<tr>
<th>Figure 9.2 Encounter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting, communication, and agreement</td>
</tr>
<tr>
<td>Meeting and communication</td>
</tr>
<tr>
<td>Meeting and agreement</td>
</tr>
<tr>
<td>Communication and agreement</td>
</tr>
<tr>
<td>Communication</td>
</tr>
<tr>
<td>Agreement</td>
</tr>
<tr>
<td>No elements of encounter</td>
</tr>
<tr>
<td>Separation of parties</td>
</tr>
</tbody>
</table>
all of the elements described in Chapter 4. The next most complete is one in which there is both a meeting and communication. This is a situation in which the parties are not able to agree on a response, but in which each has been able to tell their stories, express emotion, and come to understand one another. The third cell addresses situations in which there is a meeting but the discussion focuses on negotiation of an agreement. This meeting will probably be relatively short, and the more relational effects of the crime will not be addressed. The fourth cell describes situations in which the parties do not meet directly but communicate indirectly their stories and emotions; as a result, they come to understanding and an agreement. In some cases of incest, for example, any interaction between the victim and offender is conducted through writing rather than in person, due to the victim’s vulnerability to the offender. The next cell describes such an indirect encounter that fails to reach an agreement but in which the parties are able to tell their stories, express emotion, and achieve a degree of understanding. The next cell covers the situation in which an agreement is reached but no other elements of encounter are reached. This possibility will arise in situations in which a probation officer or other person contacts both parties to negotiate an agreement. Little else about the crime and its effects will be exchanged. The next cell describes situations in which neither party has any contact (this is the most likely circumstance under contemporary criminal justice processes). The final category addresses situations in which the parties are kept apart, either for reasons of individual or public safety or to serve the trial interests of the prosecution or defense.

Figure 9.3 presents a similar range of options related to amends. The most expansive way of making amends will involve apology, restitution, and the constellation of changed behavior and generosity. The next most complete form involves an apology and restitution. In this situation, the offender is able to address the past but not the future. The next cell

<table>
<thead>
<tr>
<th>Amends</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apology, restitution, and change</td>
</tr>
<tr>
<td>Apology and restitution</td>
</tr>
<tr>
<td>Apology and change</td>
</tr>
<tr>
<td>Restitution and change</td>
</tr>
<tr>
<td>Apology</td>
</tr>
<tr>
<td>Restitution</td>
</tr>
<tr>
<td>Change</td>
</tr>
<tr>
<td>No amends/new harm</td>
</tr>
</tbody>
</table>
describes those situations in which the offender apologizes and changes. This might occur when there is no actual damage to the victim, when the victim’s damages are covered in some other way (such as through insurance), or when the offender is unable to pay restitution. The fourth cell depicts a situation in which there is restitution and change. An example of this would be when the offender and victim negotiate both restitution payments and additional community service by the offender at an agency selected by the victim. The next cell describes those situations in which an apology is all that is offered by the offender. It may be all that the victim wants, or it could be that for some reason the offender is unable (or fails) to do more. The sixth cell describes the times when restitution is the only amends made. The seventh cell depicts situations in which the offender changes, but there is no apology or restitution. In the final cell, nothing related to amends takes place, or new harm is inflicted—a common result in contemporary criminal justice.

Figure 9.4 reviews different ways in which parties might be reintegrated into the community. The optimal response is for them to be shown respect; given the material, moral, and spiritual assistance they need; and kept safe. The next cell describes situations in which they are shown respect and are kept safe, but do not receive assistance. The third cell describes a situation in which assistance is offered and the parties are kept safe, but the process may be degrading or dehumanizing to the individual. The fourth cell depicts the situation in which the parties are protected but not given assistance or respect. An example of this would be an offender who is imprisoned because of the threat of harm to or from community members. The fifth and sixth cells describe a community response of neglect—indifference to the needs of one or both of the parties. The seventh and eighth cells move to a community posture that stigmatizes or alienates one or both of the parties. This might be done through formal procedures or more likely through informal communication of shame.

<table>
<thead>
<tr>
<th>Respect, assistance, and safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respect and safety</td>
</tr>
<tr>
<td>Assistance and safety</td>
</tr>
<tr>
<td>Safety</td>
</tr>
<tr>
<td>Indifference to either victim or offender</td>
</tr>
<tr>
<td>Indifference to both victim and offender</td>
</tr>
<tr>
<td>Stigmatization or isolation of either victim or offender</td>
</tr>
<tr>
<td>Stigmatization or isolation of both victim and offender</td>
</tr>
</tbody>
</table>
Figure 9.5 shows the range of responses to the value of inclusion. We have suggested earlier that only the first cell is acceptable in a restorative system. It involves an invitation, acknowledgment of the interests of the parties, and acceptance of alternative approaches (if needed) to allow the parties to participate. Lesser options are depicted in the lower cells. One involves an invitation to participate and acknowledges the parties’ different interests, but does not permit alternative approaches that would permit them to satisfy those interests more successfully. The least inclusive posture a system could take would be to coerce involvement in a process that serves the interests of the prosecution or defense.

These tables, when consolidated, suggest a way of assessing the restorative character of particular case, program, or system. When evaluating the handling of a particular case or program, the question will be whether the response was as restorative as possible under the circumstances. It may be, for example, that the particular offender has never been identified. This means that a meeting is not possible, although it may be possible for the victim to meet with surrogate offenders and thereby tell his or her story, express emotion, and gain some understanding of the offender. Furthermore, the victim will not receive amends from the offender. However, a restorative response will ensure that there is sufficient material, moral, and spiritual support to help the victim recover his or her losses.

The restorative character of a system seems to reflect two features. The first has to do with its aspirations as reflected in programs and resources. How far up these charts does the system aspire to go? Or, to ask a somewhat different question, at what level is it willing to settle? The second evaluation criterion has to do with the number of people given access to the restorative system: Is this approach offered to every eligible

<table>
<thead>
<tr>
<th>Inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invitation, interests acknowledged, and alternative approaches accepted</td>
</tr>
<tr>
<td>Invitation and alternative approaches accepted</td>
</tr>
<tr>
<td>Invitation and interests acknowledged</td>
</tr>
<tr>
<td>Invitation</td>
</tr>
<tr>
<td>Permission to participate in traditional ways</td>
</tr>
<tr>
<td>Prevention of parties who wish to do so from observing</td>
</tr>
<tr>
<td>Prevention of parties who wish to do so from participation</td>
</tr>
<tr>
<td>Coercion of unwilling parties to serve state or defense interests</td>
</tr>
</tbody>
</table>
person, or is it limited to a select few? The more people given access to the restorative approach, the more restorative the system will be.

The following three tables deal with the first factor, the level of restorativeness to which the system aspires. Figure 9.6 shows a fully restorative system in which all elements of each of the four values are available. Not all parties will avail themselves of these features because particular circumstances may make that unnecessary or unfeasible. All features are offered, however. If such a system makes this offer to all parties, it is easy to describe the system as fully restorative.

**Figure 9.6**
**Fully Restorative System**

<table>
<thead>
<tr>
<th>Meeting, communication, and agreement</th>
<th>Apology, restitution, and change</th>
<th>Respect, assistance, and safety</th>
<th>Invitation, interests acknowledged, and alternative approaches accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting and communication</td>
<td>Apology and restitution</td>
<td>Respect and safety</td>
<td>Invitation and alternative approaches accepted</td>
</tr>
<tr>
<td>Meeting and agreement</td>
<td>Apology and change</td>
<td>Assistance and safety</td>
<td>Invitation and interests acknowledged</td>
</tr>
<tr>
<td>Communication and agreement</td>
<td>Restitution and change</td>
<td>Safety</td>
<td>Invitation</td>
</tr>
<tr>
<td>Communication</td>
<td>Apology</td>
<td>Indifference to either victim or offender</td>
<td>Permission to participate in traditional ways</td>
</tr>
<tr>
<td>Agreement</td>
<td>Restitution</td>
<td>Indifference to both victim and offender</td>
<td>Prevention of parties who wish to do so from observing</td>
</tr>
<tr>
<td>No elements of encounter</td>
<td>Change</td>
<td>Stigmatization or isolation of either victim or offender</td>
<td>Prevention of parties who wish to do so from participation</td>
</tr>
<tr>
<td>Separation of parties</td>
<td>No amends/New harm</td>
<td>Stigmatization or isolation of both victim and offender</td>
<td>Coercion of unwilling parties to serve state or defense interests</td>
</tr>
</tbody>
</table>
Figure 9.7 describes a system that aspires to something less. In this system, the relational elements of crime and justice are reflected in its commitment to offering parties the opportunity to communicate, the expectation that amends should include an apology, and the recognition that the parties deserve respect and safety as they reintegrate. This system would not accept, for example, a streamlined negotiation process conducted by probation officers to reach restitution agreements quickly without giving the victim and offender the chance to meet. Provided that

<table>
<thead>
<tr>
<th>Meeting, communication, and agreement</th>
<th>Apology, restitution, and change</th>
<th>Respect, assistance, and safety</th>
<th>Invitation, interests acknowledged, and alternative approaches accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting and communication</td>
<td>Apology and restitution</td>
<td>Respect and safety</td>
<td>Invitation and alternative approaches accepted</td>
</tr>
<tr>
<td>Meeting and agreement</td>
<td>Apology and change</td>
<td>Assistance and safety</td>
<td>Invitation and interests acknowledged</td>
</tr>
<tr>
<td>Communication and agreement</td>
<td>Restitution and change</td>
<td>Safety</td>
<td>Invitation</td>
</tr>
<tr>
<td>Communication</td>
<td>Apology</td>
<td>Indifference to either victim or offender</td>
<td>Permission to participate in traditional ways</td>
</tr>
<tr>
<td>Agreement</td>
<td>Restitution</td>
<td>Indifference to both victim and offender</td>
<td>Prevention of parties who wish to do so from observing</td>
</tr>
<tr>
<td>No elements of encounter</td>
<td>Change</td>
<td>Stigmatization or isolation of either victim or offender</td>
<td>Prevention of parties who wish to do so from participation</td>
</tr>
<tr>
<td>Separation of parties</td>
<td>No amends/New harm</td>
<td>Stigmatization or isolation of both victim and offender</td>
<td>Coercion of unwilling parties to serve state or defense interests</td>
</tr>
</tbody>
</table>

Figure 9.7

**Moderately Restorative System**
these services are offered to all victims and offenders, we would call this a moderately restorative system.

Figure 9.8 depicts the minimum to which we suggest a system could aspire and still claim to be restorative. In this approach, the relational elements of crime are not pursued, but material and financial costs of crime are taken seriously. This system is reparative in nature, but its respect for the value of inclusion moves it into the category of restorative justice.

![Diagram of Minimally Restorative System](image-url)
Conclusion

Restorative justice programs and thinking have now expanded throughout the world. This expansion shows no signs of letting up, and while there is always need for caution in making claims about a restorative future, there does seem to be evidence that restorative justice is becoming part of contemporary criminal justice. The extent to which it moves beyond augmenting that system remains to be seen.

One way of tracking the progress of restorative justice within a system is to use a framework such as the one we have proposed to assess the restorative character of the system. The availability of restorative programs is only one indicator; far more important is the importance given to those programs in actual usage. In restorative systems, the values and principles of restorative justice are sufficiently predominant, and competing values and principles are sufficiently subordinate, that as a result the system’s processes and outcomes can be deemed highly restorative.
Chapter 10

TRANSFORMATION

In 1968, Herbert Packer wrote of two approaches to criminal justice, the crime control model and the due process model. While acknowledging the limitations of such dichotomies, he suggested that examining criminal justice in this way would reveal “two separate value systems that compete for priority in the operation of the criminal process.” Packer’s dual models have been both widely admired and criticized. John Griffiths raised one of the more intriguing criticisms. He contended that rather than providing two models, Packer had really only offered one, which Griffiths called the battle model. “Packer consistently portrays the criminal process as a struggle—a stylized war—between two contending forces whose interests are implacably hostile: the individual (particularly, the accused individual) and the state. His two models are nothing more than alternative derivations from that conception of profound and irreconcilable disharmony of interest.”

John Griffiths was not particularly interested in advocating alternative approaches to Packer’s adversarial paradigm of justice, but he did want to demonstrate that ideological preconceptions blind us to the possibilities that lie outside those conceptions. In order to do that, he posited what he called the “family” model. Whereas Packer’s adversarial models assumed disharmony and fundamentally irreconcilable interests amounting to a state of war, Griffiths proposed assuming “reconcilable—even mutually supportive—interests, a state of love.” This would, he argued, significantly change our concepts of crime and the criminal. We would see crime as only one of a variety of relationships between the state and the accused, just as disobedience by children is only one dimension of their relationship with their parents. Furthermore, we would treat crime as normal behavior, expected even if not condoned. We would view criminals as people like us, not members of a special and deviant class of people. Furthermore, we would emphasize self-control rather than the imposition of external controls, and would assign the criminal process an educational function, teaching those who observe it by what it does and how it does it. Although some of Griffiths’s concepts may seem paternalistic or sentimental in view of the very real harms
involved in crime, his family model is a personal model that assumes a kindred relationship between the offender and the community. The adversarial model, by contrast, is impersonal and assumes an antagonistic relationship between the offender and community—one that justifies (and indeed may require) declaring a war on criminals.

Whatever his purposes in outlining the family model, Griffiths did demonstrate the deep differences between it and the battle model. The parallels between restorative justice and the family model are obvious. Restorative justice recognizes the persons involved—not just the laws implicated. Such recognition is inherently transformational. That is, it transforms (rather than merely reforms) the nature of the justice process and our expectations concerning the outcome of that process. To use Howard Zehr’s analogy, things look different when we view them through a new lens. Old problems, issues, and solutions fade in importance as new ones come into perspective. Structures that once made sense are now recognized as inadequate; formulations that once seemed to be the essence of wisdom are transparently foolish. Over time, we begin to see new implications, to ask new questions, to uncover new inadequacies with the status quo, and to qualify and deepen our initial impressions. A hallmark of restorative justice, then, should be transformation.

In previous chapters we have discussed the concepts of restorative justice, its cornerstone values, and the challenge to take the incremental steps needed to put it into practice. In this chapter, we would like to step back a bit and explore the elements of transformation—the metamorphosis needed to bring into reality a restorative system—at three levels: (1) transformation of perspective, (2) transformation of structures, and (3) transformation of persons.

### Transformation of Perspective

Patterns of thinking shape what we know to be true, as we discussed in Chapter 1. Our thought patterns help us order what we experience, hear, and receive so we can function more easily in our daily lives, but they also make our perception selective, and can blind us to conflicting or challenging data. Once we recognize that limitation—often when we are forced to admit the inadequacy of the existing pattern—we are faced with the need to move to an alternative. Whether we know it or not, in such instances, we may be on our way to a transformed perspective.

But how can we find viable alternatives when we are so entrenched that we can neither see nor evaluate them? Edward de Bono has observed
that it can actually be misleading to seek insight by looking to previous situations in which our pattern of thinking changed dramatically. This is because every “creative thought must always be logical in hindsight.”4 It is necessary to connect a creative insight with current reality in order to make use of it. As soon as we have cut the path from the creative idea to our present situation, we discover that the path moves both ways. We now can understand the logic of the new idea, and we may conclude that what we needed all along was better logic. When confronted with the need for more creativity, we remember our past experience and attempt to improve our logic. However, he argues, it was not logic that produced the insight; it was creativity.

Creativity, then, is an important element in transformation of perspective. It entails risk. We attempt something because it makes intuitive sense, or because the circumstances seem to leave us no other choice, but not because we know it will work. Victim-offender mediation, conferencing, and circles did not begin with a theory and move from there to programmatic expression; in fact, the opposite happened. As early program staff and observers began to ask themselves why restorative results were so different from what they had anticipated, they began to understand the psychological, theological, criminological, and philosophical implications of what they observed in practice.

A second element in transformation of perspective is openness to learning how to order our thoughts in a different pattern. This is the approach offered by the Alternatives to Violence Project. This project helps prisoners, accustomed to dealing with conflict through violence, learn nonviolent responses instead. In the course of two three-day workshops, participants first discover, then learn through presentation, discussion, and experience, that violence need not be a given. It is possible to convert hostility, destructiveness, aggression, and violence into cooperation and community. Participants are taught conflict resolution skills and are given opportunities to practice these. The effect of these workshops, however, is more fundamental than simply skill enhancement:

It is enlivening to observe, much less experience, the process at work: affirmation, love, openness, honesty, laughter, respect, diligence, genuineness. At the outset of a workshop, participants seem wary and guarded. Some feign nonchalance with nervous laughter and chatter; others sit cautiously expressionless, arms crossed, registering everything; others engage in conversation, filling this unfamiliar space with something, anything; still others feign aloofness, exuding an air of superiority. By workshop’s end, however, there is a deeply abiding sense of goodwill that permeates the atmosphere. People look at one another rather than through one another or at the floor. Laughter and joking fill the air. Faces are soft.
Eyes sparkle. Smiles abound. Ancient doors have creaked open. Tears spill down radiant cheeks. Heads are on straight; bodies erect. Voices are clear and strong. People approach rather than avoid each other; they connect.

Third, we can look to other places, times, or traditions to find new ways of looking at familiar problems. One of the hallmarks of restorative justice has been the interest of its advocates in looking outside their own present cultures for inspiration and ideas. Considering how crime has been handled in the past or how it is resolved in other cultures helps pull us out of the troughs of our current patterns of thinking about crime. While what we see in the past or in other cultures cannot be transferred directly to our contemporary situations, it may spur us to new ideas and possibilities.

Fourth, we can reflect on alternatives to approaches that we have taken for granted. For example, the adversarial paradigm of crime has significant implications in our thinking about criminal justice. A statue of the goddess Justicia stands above the Old Bailey law courts in London; she is blindfolded as she holds the scales of justice. This reminds us that justice must not be skewed by the status of, relationship to, or hope of reward from one of the parties to a dispute. Impartial justice has become equated with mechanically (and sometimes mechanistically) applying rules to determine an outcome. Dispassionate justice has come to mean indifference concerning that outcome. We are preoccupied with what Jonathan Burnside has called “an antiseptic construal of justice,” one that values “objectivity, impartiality and the fair application of rules.” That, he argues, must be balanced by “a passionate construal of justice [that] would emphasize love, compassion and the vindication of the weak.”

Under such a “passionate construal” of justice, the goddess might throw off her blindfold and draw her sword in righteous anger or open her arms in a merciful embrace. A law court with that sort of statue on its roof would dispense justice differently, but in what ways? What outcomes would we expect? How would its processes be different? How would the architecture of the building change? Would the demeanor of those who staff it be different? Reflection on this sort of question can prepare us for a transformation of perspective.

Another example is the premise that criminal law expresses in a symbolic way the norms of a society. One alternative premise worth exploring is that criminal law, because it is maintained by force, expresses
in a symbolic way the lack of consensus concerning the norms of a society. We might ask why it is that so many of us are disinclined to embrace lawful behavior, causing governments to spend billions of dollars to investigate, punish, and attempt to deter. This could lead into extended and important political, sociological, and theological discussions.

An alternative hypothesis concerning criminal law and societal norms might be the following: society’s norms are best revealed in the course of conversation. Under this perspective, law might be considered the conclusion of a kind of conversation (the lobbying and deliberative process that precedes its adoption), but there are other forms of conversation as well. We might look at the nature of discourse in the media, in entertainment, or in art for clues concerning what is important to our society. We might conclude that because those sorts of discourse are carried on by representatives (e.g., elected representatives who pass laws, columnists or talk-show hosts who find topics that will interest their audiences, artists and producers who need to make money, etc.), they give us skewed and inaccurate perceptions of norms and values. For a more accurate picture, we would need to look at more intimate discussions carried on by the participants themselves, not by representatives. Out of those conversations we may discern a different set (or a different formulation of the same set) of norms. This certainly carries with it important implications for the criminal justice process, and in particular spurs our interest in comparing justice dispensed by professionals with justice arrived at by the participants themselves.

Transformation of Structures

Transformed perspectives lead to the recognition that some of the structures that are interwoven with criminal justice also need transformation. For instance, imbalances of power among the parties in a criminal justice proceeding can exist at many levels and tip the process toward certain outcomes, even if the procedural intent is otherwise. One such imbalance that has received official recognition is the disproportionate power of civil government over individual defendants. A panoply of procedural protections designed to protect defendants’ human rights has been devised to help offset this imbalance.

There are, however, other imbalances as well, such as those that result from poverty. Accused defendants with abundant financial resources receive substantially better representation than do indigent defendants who are assigned overworked, underpaid public defenders. The pithy title of Jeffrey Reiman’s book, *The Rich Get Richer and the Poor Get Prison*, underscores this point. Poverty creates imbalances among victims as well, the majority of whom are as poor and powerless as their offenders. While there has been a steady growth of services to victims over the last 20 years, disenfranchised crime victims—especially those
who are members of racial minority groups—are not benefiting from them as much as wealthier, more powerful victims.

A third example of a power imbalance is the disparity that may exist between victims and offenders caused by social, economic, and political inequities, and by a preexisting relationship between the two (a particular problem in the case of domestic violence cases). As negotiation and mediation become more accepted in resolving disputes, these imbalances become increasingly important for restorative justice practitioners to recognize and address.

The existence of social, political, and economic inequities challenges any society that values justice and fairness. Under the restorative justice model, it poses a special challenge to communities, which are responsible for creating peace, and to governments, which are charged with providing order that protects the disenfranchised. There has been long and heated debate about the extent to which these inequities either cause crime (by reducing the honorable choices available to the offender) or produce unfairness in the criminal justice system. Because the discussion has been linked to issues of offender responsibility and accountability, it has become highly polarized. While a society may determine that such inequities do not reduce or nullify individual responsibility, their existence creates a moral obligation for that society. Just as individuals must accept responsibility for their acts, so societies must assume some responsibility for the inequalities that plague them. It is an essential task to monitor the structures whose interplay affects criminal justice—even so-called restorative justice structures (and perhaps especially these)—to discern imbalances, inequities, or disparities that result in less justice for some, and to seek remediation and even transformation of those structures.

**Transformation of Persons**

In this book, we have used words not usually heard in contemporary debate over criminal justice policy: healing, reconciliation, negotiation, vindication, transformation. They are words that mingle uneasily with much common parlance on how to handle crime. In this book, we have attempted to show that these words and concepts actually resonate within our legal and social traditions, that they are professed by major segments of our societies, and that they are being demonstrated in programs around
the world. They are catalytic words, reminding us of the passionate side of justice, which appears to be neglected in these early years of the twenty-first century.

They are also convicting words. It is easier to hypothesize the “family model” of justice, with its assumption of a state of love, than to live it. It is more orderly to design systems than to encounter living, breathing people. It is simpler to edit a chapter into its final form than to deal with the contradictions and complexities of human relationships.

It is not surprising that encounter has been a hallmark of the restorative justice movement. In victim-offender mediation, conferences, and circles, real people confronting specific crimes meet to understand the dimensions of the injustice done, the harm that resulted, and the steps that must be taken to make things right. Those meetings permit participants to deal with the relational and passionate dimensions of crime as well as the material and factual aspects, and they create the opportunity to seek more satisfying responses than can be offered by antiseptic justice.

Crime and injustice are moral problems at their root. A criminal act’s nature as wrongdoing is important to the participants and to their communities. Its nature as lawbreaking answers a jurisdictional question: will this case be heard in criminal courts? It also represents a violation of legal norms designed (in theory) to uphold the common good. Its nature as wrongdoing has personal and social consequences that surpass questions of procedure but still go to the heart of “common good.”

A danger, however, in recognizing that crime has moral roots is that it can lead us into hypocrisy. “Crime has moral roots; therefore criminals are immoral. I am not a criminal; therefore…” Our glib assertions lead us into another “us/them” dichotomy and intensify, often without our realizing it, the existing state of war against criminals. Charles Colson has remarked that there are two kinds of criminals: those who get caught and the rest of us. Jerome Miller has said that there are two kinds of criminologists: those who view criminals as different from themselves and those who do not.

Hypocrisy, injustice, and indifference are moral problems. The ancient rebuke (made to “good” people) warned that when we are angry with others without cause, we have committed murder in our hearts, and that when we think of them as fools, we have condemned ourselves. When we fail to respond to crime victims as our neighbors and offenders as our brothers and sisters, we ignore the injustice they experience or cause and escape our own responsibility. Where, then, shall we find the resources for transformation of ourselves and of the world? This, Richard Quinney reminds us, is a spiritual issue:

All of this is to say, to us as criminologists, that crime is suffering and that the ending of crime is possible only with the ending of suffering. And the ending both of suffering and of
crime, which is the establishing of justice, can come only out of peace, out of a peace that is spiritually grounded in our very being. To eliminate crime—to end the construction and perpetuation of an existence that makes crime possible—requires a transformation of our human being. . . . When our hearts are filled with love and our minds with willingness to serve, we will know what has to be done and how it is to be done.\(^\text{14}\)

Where can we go to have our hearts and minds so filled? This is a question each person must answer for himself or herself. Many find this place within the reintegrating community we spoke of in Chapter 6: faith communities. That has been our experience. We authors have encountered within our churches the living presence of the One who preached the gospel to the poor, healed the brokenhearted, brought deliverance to captives and recovery of sight to the blind, liberated the oppressed, and proclaimed the year of the Lord’s favor\(^\text{15}\)—one who continues to speak to our own brokenness, “I have loved you with an everlasting love; I have drawn you with loving-kindness. I will build you up again and you will be rebuilt”\(^\text{16}\); one who calls us to “let justice roll on like a river, righteousness like a never-failing stream.”\(^\text{17}\)

A hallmark of restorative justice must be ongoing transformation: transformation of perspective, transformation of structures, and transformation of people. It begins with transformation of ourselves, for we too have recompense to pay, reconciliation to seek, forgiveness to ask, and healing to receive. We look not only for justice “out there,” but must turn the lens on ourselves as well—on our daily patterns of life and on our treatment of and attitudes toward others. Restorative justice is an invitation to reflection and renewal in communities and individuals as well as procedures and programs. Transformation of the world begins with transformation of ourselves—our own values, behavior, mindset, and character. Without this personal transformation, we risk a hollow victory in trying to transform the wider world.

Notes


3. Ibid., 371ff.


9. Colson has used this line regularly in speeches and conversations, although to our knowledge it has not been included in any of his publications.


14. Pepinsky and Quinney, supra note 10, at 11, 12.


This page intentionally left blank
RJ City™ Case Study: When Ed and David Broke into Mildred’s House and Took Things
When Ed and David Broke into Mildred’s House and Took Things

A Story about RJ City’s Response to Crime, Victims and Offenders

One afternoon two young men broke into a house, ransacked it and took small valuables they could easily sell.

This is the story of those two men, the woman who lived in the house, and how RJ City responded to all of them. RJ CitySM is creating a system that will allow it to respond as restoratively as possible to all crimes, all victims and all offenders.

In the course of this story you will meet family members and friends of all three. You will see how the crime had effects that went beyond the harm to the immediate victim.

And you will observe how RJ City’sSM response is different from contemporary criminal justice.

Features

Some of the unique features that you will notice in this Case Study include:

Contents

<table>
<thead>
<tr>
<th>The Break-in</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mildred Returns Home</td>
<td>2</td>
</tr>
<tr>
<td>Victim Support for Mildred</td>
<td>3</td>
</tr>
<tr>
<td>The Arrest</td>
<td>4</td>
</tr>
<tr>
<td>David and the Justice System</td>
<td>5</td>
</tr>
<tr>
<td>Ed and the Justice System</td>
<td>5</td>
</tr>
<tr>
<td>Mildred and the Justice System</td>
<td>6</td>
</tr>
<tr>
<td>The Circle</td>
<td>6</td>
</tr>
<tr>
<td>Adversarial Court</td>
<td>9</td>
</tr>
<tr>
<td>How Things Worked Out for Mildred</td>
<td>10</td>
</tr>
<tr>
<td>How Things Worked Out for David</td>
<td>11</td>
</tr>
<tr>
<td>How Things Worked Out for Ed</td>
<td>11</td>
</tr>
</tbody>
</table>

Notes

1. This story has happy endings. This is not because that always happens in restorative processes, although there are more happy endings than in contemporary criminal justice. This story has happy endings because RJ CitySM does not give up on people. The story is never considered complete until the ending is satisfying, if not happy.

2. This story is fictional and not based on any particular crime or people. However, it reflects only one set of facts and individuals. Other scenarios for use in simulations are available for classroom and other use. These encourage creative application of restorative principles to difficult issues. You can find those, and other RJ CitySM materials, at www.RJcity.org.

3. RJ CitySM is a work in progress, which means that this Case Study is as well. For more information about the features of RJ CitySM response to crime that are reflected in this example, please refer to RJ CitySM: Phase 1 Final Report [http://RJcity.org/the-project/1_Final]. If you have comments, criticisms or suggestions, please offer them. As we learn more, we may modify this story.

4. This is the October 2009 version.
The Break-In

One afternoon, two young men knocked on the door of a home. Getting no answer, they broke in. They moved quickly through the house, looking for small items they could carry easily.

They found what they were looking for in the back bedroom. They ransacked the room, grabbing things they could fence.

“Let's get out of here,” one of them said, stuffing the last of the loot in his pocket.

“All right,” said the other, pulling a watch out of a drawer. They hurried out of the house and ran down the street.

They never thought about who lived in the house, or how those people would feel when they got back home.

Mildred Returns Home

Mildred owns the house and has lived alone for two years since her husband died.

The day of the burglary she was visiting her daughter, Betty. When Betty drove her home, they saw the door was broken and called 911.

While Officer Randy was in the house, John, the Victim Support Coordinator for Mildred’s neighborhood, arrived.

He gave Mildred and Betty a booklet with information about how RJ City responds to crime. It included these provisions:

We are very sorry this happened.

Our commitment to you:
- To protect you.
- To keep you informed.
- To listen to you, if you wish.
- To allow you to not participate, if you prefer.
- To help you find assistance.
- To help you get restitution.
- To treat you with respect.

What we ask of you:
- Treat others with respect.
- Do not retaliate.
- Allow others to participate.

Victims are central in our response to crime.

We will work with you to make it less likely that this will happen again to you or to anyone.
When Officer Randy was sure no one was inside, Mildred, Betty, John and he went through the house together.

Mildred was horrified when she saw her bedroom. Someone had emptied every drawer and ransacked the place.

Just as she had feared, the anniversary watch was missing, along with jewelry and some money.

“Who can help me clean up,” Mildred worried. “My door is kicked in; I won’t be safe.”

Victim Support for Mildred

John told her about a group of volunteers from a nearby church that helps with crime scene clean-up and repair.

Mildred asked him to contact the group, and two hours later Jo and Bill arrived to help straighten up and to repair the door.

Betty insisted that Mildred stay with her for a few nights. She, her husband, and their two children live in RJ City, too.

Sure enough, Helen called later that evening. Mildred told her she was worried about returning home.

“I’m so upset I don’t feel like eating,” she said. “I don’t know my neighbors anymore – so many people have moved in.”

Helen told her that a community group called Caring Neighbors could bring meals for a week or so once she returned home. Mildred liked that idea.

These volunteers help people facing tough times. They are trained to be good listeners, so Mildred found it easy to talk with them.

John told Mildred that a volunteer from his office would call her at Betty’s house that night to see how she was doing.

Helen agreed to visit Mildred each evening to see how she was doing. Each night she and Mildred went through the house to make sure it was secure.

After a couple of weeks, Mildred felt safe enough that it was enough for Helen to just call.
So this is Mildred's support team: her daughter Betty, Victim Support Coordinator John, and Helen the volunteer.

Two weeks later the police received a tip about who had done the burglary, and both young men were arrested.

This is Ed. He has a previous conviction for burglary. He was 19 years old when arrested and not employed or going to school.

Ed denied having anything to do with the break-in, or even being with David.

This is David. He's never been in trouble before. He was 18 and in his final year of high school.

After an initial denial, David soon broke down and confessed. He was ashamed, and worried about how his folks would respond.

He told the police where some of the stolen property was, but some of it had already been sold, including the anniversary watch.

Officer Randy gave both Ed and David a brochure with information about the justice process in RJ City. It included these provisions:

Ed continued to deny he had done anything wrong, so his case was sent to Adversarial Court.

David, on the other hand, wanted to know what the brochure meant when it said "help make things right."

Both were allowed to meet with attorneys who reviewed their options with them.

We are sorry that this crime took place in RJ City. We believe that you were responsible.

You may require us to prove our charges against you in court.

You may accept responsibility.

If you agree, you have an obligation to help make things right.

Crime is about a person (does) it does not define who they are unless they let it.

Our commitment to you:

- To include you.
- To help you make amends and to return to the community with the victims (if they wish) to decide how to do this.
- To treat you with respect.

What we ask from you:

- Treat others with respect.
- Do not retaliate.
- Allow others to participate.
David and the Justice System

David wanted to "make things right," so he met with Brenda, an Offender Support officer. She told him about making amends in RJ City: he would apologize to Mildred, answer her questions, pay restitution and/or do any community service they agreed on.

"Soon Judge Veronica, the Investigating Magistrate will be issuing a report about the burglary. This will include a recommended amount of restitution," Brenda continued.

"If you and Mildred agree with the report, the Magistrate will enter an order requiring you to pay restitution. You can also send Mildred a written apology, if you wish."

"The alternative is to meet with Mildred, answer questions she may have, and together decide what needs to be done to make amends."

Brenda made sure that David had the opportunity to talk with Santiago, a lawyer, about these choices.

After learning more about restorative circles, David decided that he would like to participate in one, if he could bring his parents and some other supporters. Brenda said that she would find out whether Mildred was also interested in participating in a circle.

Ed and the Justice System

Ed told the police that he had nothing to do with the burglary. He was given the opportunity to talk with Priscilla, a lawyer, about the options available to him.
Cases go to Adversarial Court if the suspect denies responsibility or denies legal guilt. Suspects have the right to counsel in an Adversarial Court proceeding.

Victims also have the right to appear with a lawyer concerning the charge, restitution and protection, if necessary. So there could be three attorneys in those trials.

Suspects are also told about cooperative processes, such as restorative circles. These are used only when the suspect admits responsibility.

Mildred and the Justice System

She could ask the investigating magistrate to order David to pay restitution.

John described how restorative circles worked, and explained that David was willing to participate in one. Mildred decided that she wanted to as well, as long as Betty and John could be there, too.

John kept Mildred informed about the progress of the investigation, including the arrests of David and Ed. Once it was clear that David accepted responsibility but Ed didn’t, John explained the alternatives before Mildred.

Ed’s situation was different. Because Ed denied he was involved, his case would go to Adversarial Court for trial. The prosecution would try to prove that Ed was guilty. Mildred could have a lawyer, if she wished, to protect her interests in the charge, in reparation, and in protection.

Mildred was given the chance to talk with Miriam, a Victim Advocate. Those lawyers or para-legals advise victims about their options, including hiring a lawyer for the Adversarial Court trial. Mildred chose not to do that.

The Circle
Mildred and David agreed to hold the circle at the Community Centre because it had a room large enough to hold everyone who would come, and because its central location made it easy for people to get there.

Mildred invited Betty and her husband to come.

She also asked John and Officer Randy to participate.

David’s parents attended.

So did his uncle, with whom he got along well in part because of their mutual interest in fishing.

Brenda attended as well.

Barbara, one of the people who recently moved into Mildred’s neighborhood, heard about the circle and decided to come to present concerns about the effects of crime on community members’ lives.

Because of the nature of the crime, two people facilitated the meeting. Tamara is an experienced facilitator and works for RJ City.

George is a volunteer with skills in facilitating multi-cultural, multi-racial circles. Tamara is thinking about inviting him to become a contract facilitator.

David began with an apology. Mildred asked why he had broken into her house and what had happened to the property.

David said they had sold some of it, including the watch. The rest he had turned over to the police.

Mildred explained to David how the burglary had affected her. She was afraid. She had lost important mementos of her marriage — particularly the watch. She felt like a stranger in her neighborhood. She worried about how much time Betty had to give to her since the burglary.

Betty and her husband spoke about the increased demands this placed on them at a time they were especially busy with their kids. Her husband was involved in Little League and both children had other activities as well. This had already meant a lot of driving for Betty. Now they wanted to support Mildred as well, and that required taking extra trips across town.
David’s coach said he was surprised David invited him to the circle. He had recently kicked David off the baseball team after he started a fight with a teammate. David was a good player, but had recently become disruptive and angry. He wouldn’t talk about what was going on, and after the fight the coach felt he had to remove him from the team.

David’s parents disclosed that his Dad had lost his job six months ago. The financial anxiety had strained everyone’s relationships. His Dad had recently gotten a job, but his shift was at night, which meant he slept in the afternoon. He and David had gotten into arguments about how much noise David made when he came home from school.

David’s Mom said that David seemed to be angry all the time, and that he had started spending time with young men like Ed whom they were worried would get him in trouble.

David’s uncle said that he and David shared a love for fishing. This had often given them a chance to talk, and they seemed to get along well. Lately he hadn’t been around as much because his brother, David’s Dad, was out of work and stressed out. They always get into pointless arguments, so the uncle just stayed away.

Barbara told the group how worried the neighbors were. Most have recently moved into the area, and many families are either single parent or dual-income. They feel particularly vulnerable during the days when no one is home. They had called a public meeting to talk with RJ City officials about how to improve safety.

She said that her young son had asked her the other day if the bad people were going to come to their house and take his toys.

Once again David apologized, saying he had no idea the number of people affected by the break-in. He wished he could undo things. Since he couldn’t, he hoped there was some way he could help repay some of the damage he had caused.

Mildred said it had been very helpful to hear from David and his parents and supporters. She thought David had done a bad thing, but was not a bad person. She accepted his apology and said she hoped he would learn from this.

The discussion then moved to what kinds of things might help make things right. First, David agreed to pay restitution for half the value of the stolen property that was not recovered.

This led to a discussion about how David could make payments without a job. The coach offered to help David get work at a batting cage near school, and said he would stop by regularly to make sure David didn’t lose his good swing.

Third, David’s parents were interested to learn that the local community college offers courses on communicating with teenagers. They decided that they would attend.

In addition, David’s uncle agreed to get together with David every other weekend to do some fishing. That would give them a chance to talk about things David might not feel comfortable raising with his parents.
The coach said that David could rejoin the baseball team as long as he was current in completing his part of the agreement.

David agreed to come to the neighborhood meeting Barbara was organizing, if Barbara introduced him by describing the circle. David's Mom said she would come, too.

Mildred said she would also attend so she could meet her neighbors and say how satisfied she was that David had taken responsibility.

Barbara assured Mildred that she would make sure that people in the community kept an eye on her house. She invited Mildred to visit her and her son at their home.

Mildred accepted the invitation gratefully and said that she loved children and perhaps could care for Barbara's son from time to time.

So this is David's support team: his uncle, Offender Support officer Brenda, and his baseball coach.

Because Ed denied having anything to do with the burglary, his matter was sent to the Adversarial Court for trial. He was told, however, that at any point in the process he could still request that the matter be returned for cooperative resolution.

When cases go to Adversarial Court, the victim has the right to hire an attorney to offer evidence and make arguments on three issues: first, the charges against the suspect; second, any decision that could affect the victim's likelihood of receiving restitution; and third, any decision that could affect the victim's safety.

Mildred decided that she did not want to do that, but she did want to file a victim impact statement and submit a claim for restitution. Helen helped her prepare the statement in the form required by the courts.

Ed was represented by Priscilla. The trial focused on the issues of whether a crime had occurred and whether Ed had been involved in the crime.

Mildred was called to testify; Helen attended court with her that day.

David was also called as a witness. During his testimony he spoke about his agreement.

At the conclusion of the trial, Ed was found guilty. Judge Bernard ordered a pre-sentence investigation into Ed's background, the impact of the crime on Mildred, and the impact on the community.

At the sentencing hearing, the prosecutor, defense attorney (and victim's lawyer), had three been one) were invited to present evidence and make arguments.

When it comes to sentencing, the law requires a judge to consider two key factors: first, the harm done to the victim (to determine the amount of restitution), and second, the risk the offender poses to the community or victim (to determine incapacitative or reintegrative measures).
Thomas, the Offender Support officer assigned to Ed, prepared the pre-sentence report. It showed Ed’s prior burglary conviction, that he had lived with a girlfriend for the past nine months, that he had no job, used marijuana regularly and also abused alcohol.

Ed had dropped out of school when he turned 16. Frank, his woodshop teacher, told Thomas that it was unfortunate that Ed had not developed his interest in woodworking. That was something he had excelled in, and when he quit school it was to take a job as a carpenter. But he got into an argument with his supervisor and was fired.

Ed’s sentence had three parts: First, he was ordered to pay restitution for half the value of the stolen property that was not recovered.

Second, he was assigned to live for 12 months in a closed workshop that manufactures furniture. “Closed” meant that he would be confined there.

Third, he was ordered to follow a reintegration plan that included substance abuse treatment, anger management, and participation in a victim empathy program. If his behavior was good, he could start graduated release after eight months.

This is Ed’s support team: Offender Support officer Thomas, Delbert, director of the closed workshop; and Frank, his former teacher.

How Things Worked Out for Mildred

Barbara made sure that her neighbors who attended the public meeting were introduced to Mildred.

She also invited Mildred to her house where Mildred met Barbara’s young son, Akiliu. Mildred began doing occasional childcare for Akiliu.

Over time, Betty noticed that Mildred was less depressed and dependent than she had been even before the burglary.

Several years later, as Mildred’s health began to deteriorate, she moved to a nursing home. Barbara, Akiliu, and several other neighbors visited her on a regular basis.
How Things Worked Out for David

He entered RJ City Community College and began to coach Little League. Sometimes his team played Betty's husband's team (David's team usually won).

About a year after the circle, David noticed an anniversary clock in the front window of an antique shop. It was in good working order, and he bought it.

David asked Barbara to arrange for him to visit Mildred to talk about how their lives were.

David told Mildred that he continued to be sorry about her husband's watch. He hoped that she would accept the anniversary clock as a gift, even though it could not replace the watch.

Mildred appreciated the gift and displayed the clock on her mantle.

Eventually, David became a restorative circles facilitator. He was an excellent volunteer recruiter for the program.

How Things Worked Out for Ed

Ed did reasonably well while he was in the closed workshop. He was a very good carpenter.

In fact, he surprised Delbert, the director of the workshop, by designing a new piece of furniture that ended up being a top seller.

Ed had noticed that wall-mounted flat screen TVs looked great when they were on, but unattractive when turned off.

So he designed framed mirrors that covered the screen. He used a special glass for the mirror that allowed the screen to be visible when the TV was turned on, but invisible behind a normal-looking mirror when it was off.
However, when he was released he fell in with old friends and began to abuse substances again. He got his money by breaking into houses (but now, after David’s testimony against him, he only worked alone).

During one burglary, he was stunned to see that the owners had covered their flat screen TV with one of his mirrors. This happened shortly after his girlfriend had told him she was pregnant, and he began to think about what was happening in his life.

He got in touch with Frank for advice.

Frank challenged him to deal with his substance abuse problem and promised that if he did, Frank would be there when he was released from treatment.

So Ed checked himself into a House of Refuge with substance abuse programming. When he finished treatment he was sober.

Frank helped him find a part-time job with a cabinetmaker. The owner was impressed with Ed’s work and after six months made the position full time.

For outpatient treatment, Ed joined a twelve step programme. After awhile, he began thinking about how he could make amends to those he had harmed during his burglaries.

He visited Community Restorative Services, a public agency offering conflict resolution services. They contacted the people he had robbed. Most victims were not interested in meeting, but did submit claims for restitution.

He met with several victims in restorative circles, and sent messages of apology to several others who were willing to receive them.

Judge Veronica, the Investigating Magistrate determined that there was evidence to charge Ed with 6 more counts of burglary, but agreed that they would not have been solved without Ed’s coming forward.

So she consolidated the charges and sentenced Ed to probation.

The conditions of probation included completing the restitution agreements he had reached with his victims, and continuing his twelve step program.

Ed settled down, married his girlfriend and raised several children. He continued to improve as a woodworker and volunteered at the closed workshop from time to time.

This Case Study, “When Ed and David Broke into Mildred’s House and Took Things,” was written by Dan Van Ness and is based on the description of RJ City contained in RJ City’s Phase 1 Final Report.

This is the October 2009 version.

©2007 9 Prison Fellowship International
Appendix 2

Internet Resources on Topics in Restorative Justice
The following are topics related to the application of restorative justice. These may be useful to launch further research or to identify paper topics. The abstracts and links are all to Restorative Justice Online (http://www.restorativejustice.org). The site was developed and is maintained by Prison Fellowship International’s Centre for Justice and Reconciliation, of which Dan Van Ness is the executive director.

Aboriginal Traditions

Restorative justice draws from Aboriginal teachings, and yet there may be tension between the two. These articles address the dynamic linkage that exists in attempting to adapt Aboriginal concepts and practices for use in restorative programs. http://www.restorativejustice.org/image/university-classroom/04restorative%20justice%20theory/aboriginal

Biblical Justice

The Bible was a source of inspiration for many who constructed the institutions of contemporary criminal justice. It was also a resource for some of the early practitioners of restorative justice. Its influence on both groups continues. The following articles examine the relationship between biblical justice and restorative justice. http://www.restorativejustice.org/image/other/chapel/biblical-justice-and-restorative-justice

Burglary

Although technically a nonviolent crime, burglary—especially of a residence—can have a significant impact on crime victims. These articles describe how restorative processes have been used to address the material, emotional, physical, and relational injuries that can follow burglary. http://www.restorativejustice.org/image/press-room/07kindscrimes/burglary

Child Protection

While unhealthy dynamics and violent behaviors in families lead to the intervention of government officials to protect children, these same families often have resources and knowledge needed to break the cycles
of negative behaviors. Restorative practices—such as family group conferencing—offer an opportunity of involving extended family members and social service agencies and the troubled families in the process of finding responses and solutions. http://www.restorativejustice.org/image/other/family-relationships/child-protection

Community Justice

These are articles about initiatives to build ties between communities and the criminal justice system in order to better prevent crime, repair harm, and build communities. http://www.restorativejustice.org/image/police/5community-justice-1

Community/Neighborhood/Problem-Oriented Policing

Sometimes linked to restorative values, these approaches to policing emphasize strong relationships between police officers and community members, with an orientation toward helping the community solve problems. http://www.restorativejustice.org/image/police/4community-neighbourhood-problem-oriented-policing

Defense Lawyers

The role lawyers should play in restorative justice programs is a provocative and complex issue. On one hand, defense lawyers are used to speaking for their clients, and restorative processes require the parties to speak for themselves. Nevertheless, a lawyer can be an important safeguard against due process and human rights violations. These articles address these and related matters. http://www.restorativejustice.org/image/court-house/03defense-lawyers

Diversion

Articles and resources concerning use of restorative justice instead of charging, making a finding of guilt or innocence, or sentencing to the more conventional sanctions used by the criminal justice system. http://www.restorativejustice.org/image/legislative-assembly/07restorative-justice-for-diversion-1
Domestic Violence

Domestic violence presents unique challenges and opportunities for restorative justice practitioners. On one hand, the restorative process of taking responsibility, addressing past harm, and planning for a better future can look very much like domestic violence syndrome. On the other, restorative responses can offer alternatives to a victim who has kept silence out of fear that the abuser will be arrested and the family’s means of support ended. These articles address this important area. http://www.restorativejustice.org/image/press-room/07kindscrimes/domestic-violence

Driving While Intoxicated

The consequences of driving while intoxicated can be profound and devastating, and yet the culpability of the driver is related to the decision to drive while impaired—the harm caused was not the result of a deliberate attempt to cause harm. These stories and articles discuss issues related to driving while intoxicated. http://www.restorativejustice.org/image/press-room/07kindscrimes/driving-while-intoxicated

Due Process

Criminal defendants—and victims—have fundamental human rights that must be respected in any state-sanctioned proceeding. A variety of legal protections have been established over the centuries, but for the most part these anticipate a formal legal process. How can the benefits of informal processes be gained without jeopardizing the human rights of the parties? How can those rights be observed without formalizing the informal restorative processes? http://www.restorativejustice.org/image/legislative-assembly/11due-process-issues

Elder Abuse

Elder abuse usually takes place where the victim lives. This is often in the victim’s own home or in the home of a relative with whom he or she lives. It also occurs in institutions that care for the elderly. Consequently, the harm is not only the physical or mental trauma that results, but also the betrayal of trust that the abuse represents. These articles address restorative responses to these issues. http://www.restorativejustice.org/other/family-relationships/elder-care/edit
Environmental Crimes

Environmental crime harms communities and the people living in them in multiple ways. Sometimes those harms continue for generations. These articles discuss the potential of restorative justice as a response. http://www.restorativejustice.org/image/press-room/07kindscrimes/ecological-crimes

Forgiveness

What is forgiveness? Is it a goal of restorative justice, and if not, does it play any role at all in a restorative response to crime? These articles and resources address the difficult and controversial but important topic of forgiveness by victims of crime. http://www.restorativejustice.org/victim-support/09forgiveness/restorative-justice-and-forgiveness/

Gangs

Gangs pose a special challenge to communities and to law enforcement because of the power they are able to exert over the lives of people within their communities. Can restorative processes work when dealing with individuals from violent, tight-knit organizations? These articles discuss that issue. http://www.restorativejustice.org/police/7gangs-and-restorative-justice-1/gangs-and-restorative-justice/

Hate Crime

Hate crimes are directed at victims because of their affiliation with a group against which the offenders have chosen to take action. Not only do victims suffer from direct injuries, they must also come to terms with the deep malice and bias that motivated the crime. These articles address restorative responses. http://www.restorativejustice.org/image/press-room/07kindscrimes/hate-crime

Homicide

Perhaps surprisingly, restorative justice has been used extensively between murderers and the survivors of those they killed. On most occasions, restorative processes take place long after a sentence has been imposed, because of the length of time required for the survivors to
become ready for this form of intervention. These articles describe and discuss this use of restorative justice. http://www.restorativejustice.org/press-room/07kindscrimines/homicide/edit

Judges

Restorative processes are often used instead of court hearings. So what role do judges play in initiating and overseeing them? These articles address judges’ use of and attitudes toward restorative justice programs. Also included are manuals for court-referred restorative justice programs. http://www.restorativejustice.org/court-house/01judges/01judges/

Judeo-Christian Tradition


Living Restoratively

It is one thing to embrace the idea of restorative justice and another to live it. The following articles explore this problem and suggest ways to do both. http://www.restorativejustice.org/image/other/chapel/living-restoratively-according-to-biblical-tradition

Making Amends

Crime causes harm, and the justice response should work to repair those harms. A significant responsibility for that lies with the offender. These articles address some of the ways by which offenders make amends for what they have done. http://www.restorativejustice.org/university-classroom/making-amends/@@folder_contents

Minorities

The overrepresentation of minorities in the criminal justice system is a well-known and apparently intractable problem. It reflects larger societal problems in dealing with race and class. How does restorative justice contribute to the problem or to a solution? These articles consider this

**Neighborhood Disputes**

Restorative processes provide an opportunity for neighbors to develop their own solutions to their conflicts while building more understanding and stronger relationships. http://www.restorativejustice.org/image/other/stronger-communities/neighbourhood-disputes

**Parole**

Articles and resources on parole officers’ work with victims, communities, and offenders in a restorative response to crime. http://www.restorativejustice.org/image/prison/13parole

**Police and Aboriginal Populations**

When police use restorative interventions, the strength of their relationships with the community is a key factor in how restorative the experience actually is for the participants. This is particularly true when the community is Aboriginal. http://www.restorativejustice.org/image/police/6police-and-aboriginal-populations

**Police Cautioning/Diversion**

*Cautioning* is the term used in some countries for a formal police warning used as a diversion from prosecution. Often conditions are imposed on the offender, and in restorative cautioning those may include meeting with willing victims or community representatives, making apologies, paying restitution, or performing community service. http://www.restorativejustice.org/image/police/1restorative-cautioning-police-diversion

**Police Complaints**

Police complaints boards are using restorative processes to resolve community complaints against officers. http://www.restorativejustice.org/image/police/3restorative-processes-and-police-complaints-1
Politics

Any institution must have political support or it will erode or disappear. This is certainly true for restorative justice. But is there an influence in the other direction—can restorative principles and values help shape political discourse? [http://www.restorativejustice.org/image/legislative-assembly/03politics-of-restorative-justice/politics-of-restorative-justice](http://www.restorativejustice.org/image/legislative-assembly/03politics-of-restorative-justice/politics-of-restorative-justice)

Preparation for Release

Articles describing restorative justice programs whose objective is to prepare prisoners (and sometimes their families, victims, and/or communities) for release. [http://www.restorativejustice.org/image/prison/07preparation-for-release](http://www.restorativejustice.org/image/prison/07preparation-for-release)

Probation

Articles and other resources on the role, effectiveness, and responsibilities of probation officers in restorative justice programs. [http://www.restorativejustice.org/image/court-house/04probation-officers](http://www.restorativejustice.org/image/court-house/04probation-officers)

Prosecutors

Articles about the use of restorative justice programs by prosecutors, as well as articles by prosecutors about their experiences with them. [http://www.restorativejustice.org/image/court-house/02prosecutors-1/prosecutors](http://www.restorativejustice.org/image/court-house/02prosecutors-1/prosecutors)

Restorative Dialogue


Retribution

Is there a role for punishment in restorative justice? And if so, how would its use be different from punishment as we know it now?
http://www.restorativejustice.org/university-classroom/04restorative%20justice%20theory/retribution/

**Schools**

Restorative practices are used to address disciplinary and other matters in schools with students at every age level. These resources are related to the implementation of restorative practices in the school environment. http://www.restorativejustice.org/press-room/06outside/schools

**Sentencing**

These are articles and other resources on the issues and possibilities related to judges using restorative justice when imposing and (if necessary) enforcing sentences. http://www.restorativejustice.org/legislative-assembly/08restorative-justice-and-sentencing-1

**Sexual Violence and Abuse**

Few crimes have more power to produce profound injury to victims or outrage and fear in communities than sexual violence. These articles and resources address the use of restorative justice with sexual violence and abuse victims and perpetrators. http://www.restorativejustice.org/press-room/07kindscrimes/sex-offences

**Shame**

Shame is a powerful emotion. Some have suggested that restorative justice allows offenders to experience and then remove a sense of shame for their behavior. These articles discuss the usefulness or destructiveness of including shame as a part of restorative justice theory and practice. http://www.restorativejustice.org/image/university-classroom/04restorative%20justice%20theory/shaming

**Theft**

Theft often requires no direct contact between the victim and offender. Nevertheless, the injuries to the victim are real. These articles
and resources address the use of restorative justice in responding to victims and perpetrators of theft. http://www.restorativejustice.org/press-room/07kindscrimess/theft

Truth Commissions

While South Africa’s Truth and Reconciliation Commission has received significant attention, it was neither the first nor the last Truth Commission appointed. This section organizes articles on the topic by country. http://www.restorativejustice.org/other/peace-commission/present-and-past-truth-commissions-1

Victim Assistance

A primary principle of restorative justice is that crime causes injuries and justice should repair them. Victim assistance is a way of both limiting and beginning to repair those injuries. These articles and resources concern efforts to offer support and assistance to crime victims. http://www.restorativejustice.org/victim-support/01victimassistance

Victim Awareness and Empathy Programs

Articles concerning the use of victim panels, meetings with surrogate victims, and victim awareness classes to lead prisoners to consider the effects of their behavior on their victims. http://www.restorativejustice.org/prison/02victim-awareness-and-empathy-programmes

Victim Compensation

Restorative justice underscores the need for victims’ harms to be repaired to the extent possible. Compensation and restitution are two ways this may be done. Restitution is paid by the offender, while compensation is paid by the government. These are articles on compensation and the issues it raises. http://www.restorativejustice.org/victim-support/02victimcomp

Victim Impact Statements

Victim impact statements are typically presented before an offender is sentenced, although they may also be requested in advance of decisions
to release a prisoner. The following articles and resources concern how and why victims prepare victim impact statements. http://www.restorative justice.org/victim-support/04impact

Violent Crimes

Studies have shown that restorative justice processes may be more useful for victims and offenders after violent crimes than after less serious ones. These articles and resources explore that counter-intuitive finding and other matters concerning restorative justice and victims and perpetrators of violent crime. http://www.restorativejustice.org/press-room/07kinds criminals/violent-crimes

White-Collar Crime


Workplaces

Workplaces have rules of conduct and disciplinary processes to deal with violations of those rules. Restorative justice processes are being used as an alternative to more conventional adjudicatory hearings. These are articles and resources on the use of restorative justice in the workplace. http://www.restorative justice.org/press-room/06outside/healthier-workplaces
A comprehensive library of restorative justice resources is found online at http://www.rjonline.org/. This online library contains citations and abstracts (and in some cases full text) of books, articles, theses, video programs, etc., dating from the current date back to 1970.


## SUBJECT INDEX

<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abolition movement, for prisons</td>
<td>16–17</td>
</tr>
<tr>
<td>Aboriginal peoples</td>
<td></td>
</tr>
<tr>
<td>circles (community/healing/sentencing)</td>
<td>29–30, 69</td>
</tr>
<tr>
<td>conferencing and, 28–29</td>
<td></td>
</tr>
<tr>
<td>elder-assisted hearings for (Canada)</td>
<td>159</td>
</tr>
<tr>
<td>Internet resources about</td>
<td>199, 204</td>
</tr>
<tr>
<td>Absolution</td>
<td>8</td>
</tr>
<tr>
<td>Absurd information, patterns of thinking and, 4</td>
<td></td>
</tr>
<tr>
<td>Accountability</td>
<td></td>
</tr>
<tr>
<td>for conduct and outcomes of encounter, 80–81</td>
<td></td>
</tr>
<tr>
<td>in criminal cases, 80–81</td>
<td></td>
</tr>
<tr>
<td>deliberative, 80</td>
<td></td>
</tr>
<tr>
<td>informal, 80</td>
<td></td>
</tr>
<tr>
<td>offender injuries and, 45</td>
<td></td>
</tr>
<tr>
<td>for reparations, 146</td>
<td></td>
</tr>
<tr>
<td>as restorative justice principle, 51</td>
<td></td>
</tr>
<tr>
<td>Acknowledgment, in apology</td>
<td>85–86</td>
</tr>
<tr>
<td>Active information systems, of the brain</td>
<td>4</td>
</tr>
<tr>
<td>Active responsibility, 48–49, 89</td>
<td></td>
</tr>
<tr>
<td>Adversarial court</td>
<td>183, 193</td>
</tr>
<tr>
<td>Adversarial justice systems</td>
<td>176</td>
</tr>
<tr>
<td>Adversarial paradigm of justice/crime, 173, 174, 176</td>
<td></td>
</tr>
<tr>
<td>Affect, in apology</td>
<td>86</td>
</tr>
<tr>
<td>Affinity groups (support groups, for victim/offender reintegration),</td>
<td>106–108</td>
</tr>
<tr>
<td>Africa. See also individual nations</td>
<td></td>
</tr>
<tr>
<td>compensation in pre-colonial societies, 8</td>
<td></td>
</tr>
<tr>
<td>investment in restorative justice programs, 31</td>
<td></td>
</tr>
<tr>
<td>African-Americans, civil rights movement and, 47</td>
<td></td>
</tr>
<tr>
<td>Agreement, in encounter, 73–75, 163</td>
<td></td>
</tr>
<tr>
<td>Alternative approaches</td>
<td></td>
</tr>
<tr>
<td>in inclusion, 119, 132, 163</td>
<td></td>
</tr>
<tr>
<td>transformation of perspective and, 175–176</td>
<td></td>
</tr>
<tr>
<td>Alternatives to Violence Project, 175</td>
<td></td>
</tr>
<tr>
<td>Amends, 165. See also Victim-offender mediation programs (VOMs)</td>
<td></td>
</tr>
<tr>
<td>apology, 85–86</td>
<td></td>
</tr>
<tr>
<td>in assessment framework, 166–167</td>
<td></td>
</tr>
<tr>
<td>changed behavior, 85, 86–87</td>
<td></td>
</tr>
<tr>
<td>defined, 85n</td>
<td></td>
</tr>
<tr>
<td>in fully restorative system, 163</td>
<td></td>
</tr>
<tr>
<td>generosity, 85, 88–89</td>
<td></td>
</tr>
<tr>
<td>Internet resource about</td>
<td>203</td>
</tr>
<tr>
<td>as operational value in restorative process, 49</td>
<td></td>
</tr>
<tr>
<td>restitution, 85, 87–88, 89–95</td>
<td></td>
</tr>
<tr>
<td>American Bar Association (ABA)</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice Section, 92</td>
<td></td>
</tr>
<tr>
<td>Guidelines Governing Restitution to Victims of Criminal Conduct, 92,</td>
<td>93, 131</td>
</tr>
<tr>
<td>on restitution, 92</td>
<td></td>
</tr>
<tr>
<td>Standards Relating to the Prosecution Function, 130–131</td>
<td></td>
</tr>
<tr>
<td>American Bible Society, 109</td>
<td></td>
</tr>
<tr>
<td>American civil rights movement, 47</td>
<td></td>
</tr>
<tr>
<td>American Friends Service Committee, 16</td>
<td></td>
</tr>
<tr>
<td>American Probation and Parole Association, 158–159</td>
<td></td>
</tr>
<tr>
<td>Antiseptic construal of justice, 176</td>
<td></td>
</tr>
<tr>
<td>Apology</td>
<td></td>
</tr>
<tr>
<td>amends and, 85–86, 163</td>
<td></td>
</tr>
<tr>
<td>in conferencing, 85</td>
<td></td>
</tr>
<tr>
<td>defined, 86</td>
<td></td>
</tr>
<tr>
<td>exchange of shame and power, 86</td>
<td></td>
</tr>
<tr>
<td>following victim-offender mediation, 67</td>
<td></td>
</tr>
<tr>
<td>of government, 86</td>
<td></td>
</tr>
<tr>
<td>limited, 67</td>
<td></td>
</tr>
</tbody>
</table>
Apology—cont’d

no favorable treatment following, 158–159
restitution and, 86
Appeal element, in inclusion, 118–119
Arbitration, victim-offender mediation
distinguished from, 66
Argentina, restorative justice principles
and practices in, 36
Arraignment, victim inclusion in,
133–134
Asia, restorative justice principles and
practices in, 31
Assessing the Criminal (Barnett and
Hagel), 15
Assessment. See Evaluation
Assessment framework, for restorative
justice system, 163–171
Assistance, as operational value in
restorative process, 49
Assistance groups, for victim/offender
reintegration, 106–108
Assumption of responsibility, 46
Auburn System of corrections, 109–110
Augmentation model, of restorative
justice, 159–160
Australia, 8. See also Family group
conferencing (FGC)
apology, changed behavior, restitution,
generosity, and, 85
conferencing in, 68, 85
encounter participants in, 80
juvenile justice bills, 31
restorative justice principles and
practices in, 34, 35
Wagga Wagga family group conferences
in, 25, 28–29
Australian Capital Territory (ACT),
Crimes (Restorative Justice) Act, 162
Austria
mediation referrals by prosecutors, 156
prosecutorial diversion in, 156
restorative justice principles and
practices in, 34
Bail proceedings, victim inclusion in,
133–134
Balanced and Restorative Justice Project
(BARJ), 30, 35
Barangay Justice System (Philippines), 37
Basic Principles on the Use of Restorative
Justice Programmes in Criminal
Matters (United Nations), 31, 37, 81
Battle model, of criminal justice, 173, 174
Behavior. See Changed behavior
Belgium
encounter participants in, 80
restitution in, 93
restorative justice principles and
practices in, 36, 38
Bellavista prison (Medellin, Colombia),
peace table in, 158
Best practices, 48
“Beyond Restitution: Creative
Restitution” (Eglash), 22n
Biblical Doctrine of Justice and Law, The
(Schrey, Walz, and Whitehouse), 22n
Biblical justice, 7n2, 8n3, 17, 22n, 24,
199
Biblical tradition, in faith communities,
110–111
Brazil, restorative justice principles and
practices in, 36, 37
Breach of the king’s peace, 9
Bulgaria, restorative justice principles and
practices in, 37
Burglary, 199
California, victims’ right to speak at
felony sentencing, 134
California Prison Moratorium Project, 17
Canada
circles in, 14, 29–30
Circles of Support and Accountability,
35, 106
Correctional Service of Canada, 106
eyearly victim-offender mediation in,
26–27
First Nations people in, 14, 29–30
incorporation of restorative justice in
sentencing principles, 30–31
investment in restorative justice
programs, 30–31
Mennonite Central Committee, 26–27,
106
National Parole Board, 159
Parliamentary Standing Committee
(Daubney Committee), 33, 34
parole hearings for Aboriginal
offenders, 159
prisoner ministry in, 109n
restorative justice principles and
practices in, 33, 34, 35, 36
Restorative Resolutions Project, 157
R. v. Moses (sentencing circle case;
1992), 35
sentencing law changes, 33
victim-offender mediation started in, 26
victim-offender reconciliation programs in, 32
Youth Criminal Justice Act, 31
Caregivers, of victims, 112
Caring response, 18
Catholic Charities, 109n
Cautioning, 204
Center for Alternative Dispute Resolution (Chile), 36
Centre for Justice and Reconciliation (Prison Fellowship International), 152n, 161, 199
Centre for Restorative Justice (China), 38
Changed behavior amends and, 85, 86–87, 163 strategies for, 87
Changed values, 87
Changing Lenses (Zehr), 22, 24, 149n
Child Justice Act South Africa (2009), 38
Uganda (1996), 36
Child protection, Internet resource about, 199–200
Children, Young Persons and their Families Act (New Zealand; 1989), 28, 31, 34, 162
Chile, restorative justice principles and practices in, 36
China, restorative justice principles and practices in, 38
Christian Faith and Criminal Justice (McHugh), 17, 110
Christianity. See also Faith communities alignment of justice and love, 22n criminal justice and values of, 17 idea of imprisonment from, 10–11 Judeo-Christian tradition, in reintegration, 110–111 on justice, 22n on punishment and mercy, 17 restorative justice elements of, 17 Christian organizations, 109n. See also Faith communities Christmas Carol, A (Dickens), amends in, 83–85, 87, 88
Committee of Ministers of the Council of Europe, 31
Common law, 66n
Communication. See Encounter
Community. See also Faith communities;
Reintegrating communities;
Reintegration circles and, 70
crime as damage to peace of, 7, 8
definition, 44
fair and humane, in response to crime, 18
healing of, 43–45
injuries to and needs of, 44–45
involvement in the justice process, 45–46
meaningful, 18
members of, and encounter, 79
peace as responsibility of, 46–47, 79, 178
in place of prison, 16
as provider of safety need, 99
reintegration and, 104
responsibility of, 46–47, 79, 178
in restorative justice support, 142
stigmatization of victims and offenders by, 99
types of, 44–45
victim distinguished from, 45n
in visual model of restorative justice, 55–57
“we-they” attitude, with justice system, 144
Community-assisted hearings, for Aboriginal offenders (Canada), 159
Community-based programs, 27, 32
Community circles, 29
Community corrections, 26
Community courts, 26
Community group conferences, 68
Community justice, Internet resource about, 200
Community Justice Initiatives (Canada), 33
Community Mediation and Safety Center (Romania), 37
Community of care, 44, 68, 79
Community of interest, 44–45, 79
Community-oriented policing, Internet resource about, 200
Community Peace Committees (South Africa), 156
Community policing, 23, 26

Community prosecution, 26
Community Safety/Restorative Model (Mackey), 24
Community service
in Belgian prisons, 93
offender’s ability to pay restitution, 93–95
as restitution, 89, 91–92
Commutative justice, 22n
Compensation
in place of prison, 16
prisoners’ opportunity to provide, 14–15
restitution distinguished from, 87n
victim participation and, 24
Compulsory Compassion: A Critique of Restorative Justice (Acorn), 64n
Conferencing, 14, 23. See also Family group conferencing (FGC)
apology in, 85
emotion in, 73
facilitators in, 77
government representatives in, 79–80
meeting element of, 73–74
participants in, 76–77, 79
reintegrative shaming and, 25
as restorative process program, 28–29
support persons/community members in, 79
transformation and, 179
victim-offender mediation distinguished from, 29
victim-offender panels (VOPs) distinguished from, 71
Confession, 72
Confession, repentance and absolution process, 8
Conflict
between government and victim, for ownership of victimization experience, 120
of victim and offender, 13, 27
between victim and prosecutor, 131–132
“Conflict as Property” (Christie), 13
Conflict resolution, 66. See also Victim-offender mediation programs (VOMs)
Alternatives to Violence Project and, 175
as focus of peacemaking, 18
among the Maori people, 28
citizen-government, 31
Contemporary criminal justic
coerciveness of, 75–76
failure of, 145
restorative justice compared to, 53–54, 58
restorative justice models and, 159–163
restorative justice processes in, 155–159
RJ City project (case study) and, 185–196
usage of term, 53
visual model, 54–57
Contributing injuries, of offenders, 45
Conversation, norms of society and, 177
Cook, Bruce, 109n
Cooperation, 18
Cornerpost values. See Amends;
Encounter; Inclusion; Reintegration
Corporal punishment, 10
Correctional Service of Canada, 106
“Correction of the mind,” 10
Corrections, community, 26
Costa Rica, restorative justice principles and practices in, 36, 38
Costs, of victimization, 15–16
Council of Europe, endorsement of restorative justice, 33
Court mediators, 157
Courts
community, 26
consideration of restorative justice by, 30
magistrate’s, 128–129
people’s, 130
use of restorative justice processes, 156–157
victim-offender mediation vs., 66
victim’s right to presence in, inclusion, 120, 122–123
Co-victims, restitution and, 89
Creative restitution, 22n, 88
Creativity, in transformation of perspective, 175
Crime
as damage to community peace, 7, 8
as defining moment for victims and offenders, 98
injured parties of, 4
as lawbreaking, 4, 5, 14, 24
macro response to, 55, 56
micro dimension of, 55
as moral problem, 179
as offense against the king, 125
as offense against victims, their families, the community, society, and the government, 6
restitution’s preferred definition of, 15
royal jurisdiction over offenses, 9–10
Zehr’s definition, 22
Crime and Disorder Act (England; 1998), 37
Crime and Its Victims (Van Ness), 17
Crime control model, of criminal justice, 173
Crime-related psychological trauma, 99–100
Crimes (Restorative Justice) Act (Australian Capital Territory), 162
Crime victims. See Victims
Crime Victims Advocacy Council (CVAC), 109n
Crime Victim’s Book, The (Bard and Sangrey), 15, 100
Crime Victims Equality Act (New Hampshire; 2009), 131
Criminal behavior, failure to address reasons for, 6
Criminal-civil separation, 25
Criminal justice
ancient approach to, 6–8
battle model, 173, 174
crime control model, 173
defined, 51, 53
due process model, 173
family model, 173–174, 179
as healing mechanism, 3
modern thinking about, 9–11
nagging questions, 5
personal responsibility and, 17
rehabilitation model, 3–4
shift in patterns of thinking, 4–5, 9–11
unachievable in unjust society, 16
victims’ dissatisfaction with, 5
Criminal Justice and the Victim (McDonald), 16
Criminal Justice Program, of the Presbyterian Church (USA), 24
Criminal justice system. See also Victim inclusion, in criminal justice proceedings
crime control model, 173
defined, 51, 53
due process model, 173
family model, 173–174, 179
as healing mechanism, 3
modern thinking about, 9–11
nagging questions, 5
personal responsibility and, 17
rehabilitation model, 3–4
shift in patterns of thinking, 4–5, 9–11
unachievable in unjust society, 16
victims’ dissatisfaction with, 5
example, in RJ City case study, 189–192
focus on offender, 5
history of, 128–130
incorporation of restorative justice into, 30–31
inefficiency and ineffectiveness of, 11
Criminal justice system—cont’d
opportunity for active involvement in, by victims, offenders, and communities, 45–46
professionalization of justice and reduction of victims’ role in, 128–130
resistance to change by, 153–154
restorative justice
as a community-based alternative to, 32
as viable part of, 33
security maintenance function of, 12
victim as civil claimant in criminal cases, 135–136
victims’ inclusion and role in, 25, 27–28, 120–125
Criminal law
failure to recognize harms, 145
healing as purpose of, 3–4
norms of society and, 176–177
restorative justice, torts, and, 15
values clarified by graduated punishment, 13
Criminal Law Forum, 25
Criminal law practitioners, as healers, 3
Criminal proceedings. See Victim inclusion, in criminal justice proceedings
Criminology, 18
Criminology as Peacemaking (Pepinsky and Quinney), 18
Crisis intervention, 100, 101
Crisis phase, of victimization, 112
Crisis services, 112
Cultural reconciliation, 31
Cushing, Renny, 131
Customary approach, to justice, 13–14
Czech Republic, restorative justice principles and practices in, 37
Daubney Committee (Canada), 33, 34
Death sentence, 10
Debtor’s prison, 10
Decentralization, of the justice system, 12, 16
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations), 121n
Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (United Nations), 31, 37, 81
Defense lawyers, 200
Delegalization, of the justice system, 12
Deliberative accountability, 80
Demeanor, in apology, 86
Demographics, of victims, 99
Depression, 99
Deprofessionalization, of the justice system, 12–13
Desegregation of public schools, 47
Deterrence, through enforcement or punishment, 24
Dialogue. See also Victim-offender mediation programs (VOMs)
Internet resource about, 206
usage of term, 27, 67
Dialogue-driven programs, 28
Dignity, respect for, as reintegration element, 98
Dignity Denied, 131
Direct harm, 15
Direct injuries, 91, 93
Directness, principle of, 91
Direct victims, restitution and, 89
Discretionary power, of prosecutors, 156
Disharmony, 173
Disorientation, of victims, 100
Dispassionate justice, 176
Dispute Resolution Foundation (Jamaica), 35
Distributive justice, 22, 22n
Diversion
Internet resource about, 200, 204
programs offering, 156–157
Diversionary mediation, 34
Domestic violence
Internet resource about, 201
shelters, 99
Drunk driving, Internet resource about, 201
Drunk Driving Impact Panels (MADD), 71, 72, 74
Dual-track model, of restorative justice, 160
Due process, Internet resource about, 201
Due process model, of criminal justice, 173
Dwight, Louis, 109
Economic and Social Council (ECOSOC; United Nations), 31
Elder abuse, Internet resource about, 201
Elder-assisted hearings, for Aboriginal offenders (Canada), 159
El Salvador, restorative justice principles and practices in, 38
Emergent values, 48
Emotion
  in encounter, 73–75, 163
  in training of facilitators, 74
  of victims, 100
Emotional injuries, of offenders, 45
Empathy, 69
Empathy programs, 207
Employment problems, of released prisoners, 102
Empowerment, 49, 66

Encounter
  accountability for conduct and outcomes, 80–81
  in assessment framework, 165–166
  circles, 69–71
  elements of, 73–75, 165
  empowerment in, 66
  example (The Iliad), 63–64, 73, 74–75
  facilitators in, 76, 77, 80
  family group conferencing (FGC), 68–69
  follow-up meetings in, 67, 87
  in fully restorative system, 163, 164
  goals and objectives in, 67, 77–78
  government representatives in, 79–80
  as hallmark of restorative justice, 179
  impact panels, 71–72
  issues in, 75–81
  mediation and, 66–68
  meeting, narrative, emotion, understanding, and agreement in, 73–75
  minimizing coercion, 75–76
  offenders in, 78–79
  as operational value in restorative process, 49
  parties involved, 76–80
  privacy of, 80
  restrictions on, 65
  review of agreement by referring party, 81
  support persons/community members in, 79
  victim-offender mediation programs (VOMs) and, 66–68
  victim-offender panel (VOP) and, 71–72
  victim-offender participation in, 145–146
  victims in, 77–78
  voluntary participation in, 75

Encounter conception, of restorative justice, 41–42, 43

England
  adult-offender mediation in, 156
  conferences conducted by police officers, 155–156
  conferencing in, 31
  early reform movement, 10
  Leges Henrici Primi in, 9
  mediation in, 156
  private prosecution in, 125
  redress for violations against Maori people, 31
  restorative justice principles and practices in, 34, 35, 37, 38
  Sycamore Tree Project, 72
  Thames Valley Police, restorative justice use by, 31, 33, 35, 155–156
  victim-offender mediation in, 28
  victim-offender panels in, 71
  victim-offender reconciliation programs in, 32

Environmental crimes, Internet resource about, 202

Essentially contested concepts, 41n

Europe
  restorative justice principles and practices in, 31, 36, 37, 38
  victim-offender reconciliation programs in, 32
  European Commission for the Efficiency of Justice (CEPEJ), 38
  European Forum for Victim-Offender Mediation and Restorative Justice, 31, 37
  European Forum for Restorative Justice, 59n6, 152
  European Union (EU), 31, 33, 37

Evaluation
  guidelines for, 150–151
  impact, 149–151
  realignment of vision and practice and, 151
  of restorative justice policies and programs, 148–151

Facilitators
  accountability of, 80
  in circles, 69
  emotion in training of, 74
  in encounter, 77
  in family group conferencing, 68–69
  functions of, 77
  poorly trained, 76
  training and selection of, 77

Fairness
  victims’ experience of, in encounter, 78
Fairness—cont’d
victim’s understanding of, 134
in visual model of restorative justice, 54–57

Faith communities
Circles of Support and Accountability (Canada), 106
elements, 109n
government-based programs vs., 113
history, 109–110
Judeo-Christian tradition, 110–111
limitations to, 108
presence of, 111–114
as reintegrating communities, 108–114, 147–148
results of works by, 108
victim and offender assistance from, 111–114, 147–148

Faith factor, reintegration and, 111–112

Family group conferencing (FGC), 36.
See also Conferencing
creation of model of, early days, 34
development of, 152
evaluation studies of, 69
Internet resource about, 200
participants in, 68–69
process of, 68–69
recidivism after, 69
reintegrative shaming in, 25
as relational justice, 25
victim-offender mediation programs (VOMs) distinguished from, 29, 68–69
without victim, 162

Family model, of criminal justice, 173–174, 179

Feminist values, restructuring of criminal justice and, 18

Fielding, Henry, 10, 126

Fines, 9

Finland
restorative justice principles and practices in, 34
victim-offender mediation in, 28, 157

First Nations people (Canada), circles tradition in, 14, 29–30

Florida Atlantic University, 30

Follow-up meetings, in encounter, 67, 87
Forfeiture laws, restitution and, 94
Forgiveness, 25
as emergent value, 48
Internet resource about, 202
limited, 67

Sycamore Tree Project and, 72

Formal justice, 25

Foundation Center for Attention to Victims of Crime (Mexico), 35

Four-dimensional justice, 22n

France, victims’ right to civil action in criminal cases, 135–136

Fresno Pacific University, 38

Fully restorative system, 163–164, 169

Gacaca (traditional courts; Rwanda), 37
Gangs, 158, 202

Generosity, amends and, 85, 88–89, 163

“Genesee Justice” program (Batavia, New York, Sheriff’s Department; 1981), 34

Geographic community, 44

Germanic tribal laws, 7

German Juvenile Justice Act (1990), 156

Germany, victim-offender mediation in, 28

“Get tough” measures of punishment, 11, 142

Globalization, restorative justice and, 31–38

“Golden age of the victim,” 14

Government
adversarial relationship with offenders, 6
apology and restitution by, 86
community, public safety, and, 46–47
conflict of ownership of crime and, 120
crime as offense against, 6
faith-based programs and, 113–114
faith communities and, 108
force by, 46, 46n
investment in restorative justice programs, 30–31
limitations of, filled by faith-based programs, 113–114
monopoly of, in response to crime, 29, 45
order, as responsibility of, 47, 79, 178
as primary victim, 45
relationship with victims, offenders, and community, 30–31
representatives of, in encounter, 79–80, 90
restorative programs for juveniles, 31
support of restorative justice processes, 33
in visual model of restorative justice, 54–57

Governmental power, imbalance and, 177–178
Great Britain. See England
Guidelines Governing Restitution to Victims of Criminal Conduct (ABA), 92, 93, 131

Habilitation, 45, 57, 142
*Handbook on Justice for Victims* (United Nations), 121n
*Handbook on Restorative Justice* (United Nations), 38

Harm
from crime, 89–92. See also Restitution from victimization, 15–16

Hate crimes, 202

Healing
community-based programs as aid in, 27
as justice requirement, 43–45
as purpose of criminal law, 3–4
through encounter programs, 74
through victim-offender panels, 72
in visual model of restorative justice, 57

Healing circles, 29

Hebrew justice
restitution in, 7–8
shalom, 46

*Helping Crime Victims* (Roberts), 15

Henry I, 125


Hollow Water Community Holistic Circle Healing Program, 30

Homicides, restorative justice and,
Internet site about, 202–203
Homicide survivors, 89

Hong Kong, restorative justice principles and practices in, 37

Hostility, 75

Howard, John, 10

Howard League of Penal Reform, 53

Hugo, Victor, 97

Human Kindness Foundation, 109n
Human rights abuses, apology, restitution, and, 86

Humiliation, 10

Hybrid model, of restorative justice, 160–161

Hypocrisy, 179

*Iliad, The* (Homer), encounter in, 63–64, 73, 74–75

Imbalance, in power structures, 177–178

Impact evaluations, 148–151

Impact panels. See Victim-offender panels (VOPs)
Impact stage, of victimization, 112

Impartial justice, 176

Imprisonment. See also Prison
idea from Christianity, 10–11
as last resort, 14–15
restitution and, 14–15, 94, 135

Incarceration. See Imprisonment; Prison Inclusion. See also Victim inclusion, in criminal justice proceedings
in assessment framework, 163, 164, 165, 168

elements of, 118–119, 165
example (David and Goliath), 117–119
in fully restorative system, 163, 164
as operational value in restorative process, 49
restorative justice and, 119–120

Independent attorney advocates, 131–132

Indifference, 179

Indigenous justice, contributions to restorative justice, 14

Indigenous peoples, restorative justice among, 8. See also Aboriginal peoples; Maori people

Indirect harm, 15

Informal accountability, 80

Information needs, victim inclusion and, 120, 121–122

Information-sharing, 33

Injuries. See also Victims to community, 44–45
crime and, 4
direct, 91
of offenders, 45
specific, 91

Injustice
identification of, 67
as moral problem, 179

Institute for Conflict Resolution (Bulgaria), 37

“Institutionalized mentality,” 103

Insurers, restitution and, 89

Interest, local community, community of care, and shared, 44–45

Intergovernmental bodies, restorative justice by, 31

International Conference on Prison Abolition, 17

International Institute for Restorative Practices, 37
International Network for Research on Restorative Justice for Juveniles, 152

Internet resources
for faith-based organizations, 109n
for restorative justice topics, x, 36, 161n, 199–208

Intervention, 100

Investigation
alternative approach (Minnesota), 133
European system, 133
victim inclusion in, 133

Invitation element, in inclusion, 118, 119, 163

Islamic programs for prisoners and ex-prisoners, 109n

Isolation
of offenders, 103, 112
of victims, 100, 103, 107, 112, 144

Italy
mediation in, 156
restorative justice principles and practices in, 34

Jails. See Imprisonment; Prison

Jamaica, restorative justice principles and practices in, 33, 38

Japan
compensation theory and restoration of community peace in, 8
probation officers’ use of restorative justice processes, 157

Jesus Christ, 22n

Jewish law, ancient, 46

Jewish Prisoner Services, International, 109n

Judeo-Christian tradition, in reintegration, 110–111, 203

Judges, Internet resource about, 203

Jurisdiction, royal, over certain crimes, 9

Justice
as allocating blame and punishment, 24
antisepctic construal of, 176
commutative, 22n
connection with love, 22n
dispassionate, 176
distributive, 22, 22n
formal, 25
goal of, 6, 55
healing of victims, offenders, and communities injured by crime and, 43–45
impartial, 176
indigenous, 13–14
informal, 12–13
parallel, 105
participatory, 12–13
“passionate construal” of, 176
professionalization of, and reduction of victim’s role, 128–130
“real,” v
relational, 23
retributive, 22, 22n
social, 17–18
theories and theorists of, 21–23
three- and four-dimensional, 22n
traditional, 53
transformative, 23
Zehr’s definition, 22

Justice Fellowship, ix–x, 33, 34

Justice for Victims and Offenders (Wright), 24

Justice Without Law? (Auerbach), 13

Justification, 104n

Juvenile Justice and Welfare Act (Philippines; 2006), 38

Juvenile justice system. See also Family group conferencing (FGC)
among the Maori people, 28
Balanced and Restorative Justice Project (BARJ), 30, 35
custodial facilities replaced by community-based programs, 16
German Juvenile Justice Act (1990), 156
governmental restorative programs for juveniles, 30, 31
International Network for Research on Restorative Justice for Juveniles, 152
in Japan, 157
in New Zealand, 28–29, 31, 33
New Zealand laws revised, incorporating Maori practices, 33
police use of restorative justice processes and, 155
prosecutor-referred restorative processes, 156

Kairos, Inc., 109n

Keeper (facilitator), 69

Kelly, John, 3, 4, 44

Kindness House, 109n

King, as paramount crime victim, 9

King David, 7n1

King’s peace, 9

Latin America, restorative justice principles and practices in, 31
Law of the Twelve Tables, 7
Laws
   ancient, 6–7
   codes of, 7
   Germanic tribal, 7
   Roman Law of the Twelve Tables, 7
Laws of Ethelbert, 7
Legal standing, of victims in criminal proceedings, 120, 124–125
Leges Henrici Primi, 9
Les Miserables (Hugo), as reintegration example, 97–99, 101, 103, 104, 108, 114
Lex Salica, 7
Limits to Pain (Christie), 13
Living restoratively, 203
Local communities, 16, 44, 89, 90
Love, connection with justice, 22n
MADD. See Mothers Against Drunk Driving
Magistrate’s courts, 128–129
Mandatory restitution, 88
Maori people
   conferencing tradition among, 14, 28, 68
   influence on juvenile justice laws of New Zealand, 33
   practices of, incorporated into New Zealand juvenile justice laws, 33
   redress for violations against, 31
   Whanau conference, 68
Marriage, damage to, due to spousal incarceration, 102
Massachusetts Department of Youth Services, 16
Material help, in reintegration, 98, 163
Meaningful work, in prisons, 94–95
Mediation, 24, 27. See also Victim-offender mediation programs (VOMs)
   by community-based nonprofit organizations and judicial authorities, 66n
   diversionary, 34
   in encounter, 66–68
   facilitators in, 77
   global use of, 156
   meeting element of, 73–74
   participants in, 70
   protective, 159
   usage of term, 27
Mediators. See Facilitators
Meeting, in encounter, 73–75, 163, 165
Mennonite Central Committee (Canada), 26–27, 106
Mennonite tradition, 17
Mercy, 25
Mexico, restorative justice principles and practices in, 35
Middle Eastern codes, ancient, 7
Miller, Jerome, 16, 179
Minimally restorative system, 171
Minnesota Crime Victim Justice Unit (CVJU), 133
Minnesota Department of Corrections, 35
Minnesota Office of Crime Victim Ombudsman, 133
Minorities
   discrimination of released prisoners, 102
   racial, imbalance of power and, 177–178
   restorative justice and, Internet site about, 203–204
Moderately restorative system, 170–171
Monetary payment, restitution and, 87–88, 94
Moral and spiritual guidance and care, as reintegration element, 98, 114, 163
Moral education, as operational value in restorative process, 49
Moral injuries, of offenders, 45
Moral problems, 179–180
Moral reconciliation, 85n
Mothers Against Drunk Driving (MADD), Victim Impact Panels/Drunk Driving Impact Panels of,
   71–72, 74
Municipal Mediation Act (Norway), 34
Murder Victims’ Families for Reconciliation (MVFR), 131
Muslim and Islamic programs for prisoners and ex-prisoners, 109n
Narrative, in encounter, 73–75, 163
National Institute for Crime Prevention and Reintegration of Offenders (South Africa), 35
National Institute of Corrections, 30
National Moratorium on Prison Construction, 17
National Organization for Victim Assistance, 26
National Parole Board (Canada), 159
NATO Advanced Research Workshop on Conflict, Crime and Reconciliation, 34
Negative self-identity, of victims, 100
Negotiation by proxies, 73
Neighborhood disputes, 204
Neighborhood policing, Internet resource about, 200
Neighborhood Watch programs, 47
Netherlands, The, 17
Networking, 33
New South Wales
  Department of Corrective Services, 159
  protective mediation, 159
  Wagga Wagga family group
    conferencing and restorative justice in, 25, 28–29, 34
New York, “Genesee Justice” program (Batavia), 34
New Zealand, 8
  adult-offender mediation and processes in, 31, 156
  Children, Young Persons and their Families Act (1989), 28, 31, 34, 162
  conferencing tradition in, 14, 28–29, 68
  Parole Act (2002), 158
  redress for violations against Maori people, 31
  restorative justice principles and practices in, 34, 35, 37
  restorative processes
    for adult offenders, 31, 156
    implementation, 33
  Sycamore Tree Project, 72
  Youth Court, 28, 162
Night watch system, 129
Norman Conquest, 9, 125
Normative values, 48–49
Norms of society, criminal law and, 176–177
North America, 8, 17, 27
  circles among aboriginal peoples, 69
  victim-offender mediation in, 28
North American indigenous peoples, 8
North Carolina, mediation in, 156–157
Norway
  adult diversionary mediation, 34
  diversion mediation project, 34
  mediation in, 156
  restorative justice principles and practices in, 34
  victim-offender mediation in, 27–28
Notification, of victims, about the status of offender prosecution, 122

Observers, of encounter, 81
O’Connell, Terry, 28

Offenders. See also Apology; Circles;
  Conferencing; Encounter;
  Restitution; Victim-offender mediation programs (VOMs)
  ability to pay restitution, 93–95, 146
  adversarial model of criminal justice and, 174
  adversarial relationship with government, 6
  alienation of families by, 158
  apology by, 85–86
  changed behavior of, 87
  in circles, 69–71
  coercion to participate in encounter, 75–76
  contributing injuries to, 45
  crime as defining moment for, 98
  crime of, as offense against victim, 9–11
  in encounter, 78–79, 145–146
  faith communities as help to, 111–114
  after family group conferencing, 69
  family model of criminal justice and, 174
  focus on, 5
  guarantee to confront their accusers, 65
  healing of, 43–45
  humanizing of victims by, 74
  inability to pay restitution, 93–94, 135
  injuries of, 45
  “institutionalized mentality,” 103
  Internet resources for, 109n
  involvement in the justice process, 45–46
  isolation of, 103, 112
  labeling of, 102
  needs upon release from incarceration, 102–103, 112–113
  obstacles faced by, 101, 102
  parallel justice and, 105
  power imbalance with victims, 178
  practical assistance for, 112–113
  public retribution against, 10
  recidivism of, 101
  re-entry of, victim involvement in, 158–159
  re-entry process, 107–108, 112–113
  reintegration by, 101–103
  reintegration help for, 147–148
  resources needed by, 105–106
  resulting injuries to, 45
  retribution, recompense, and, 52
  shift in thinking about, 10–12
  spiritual resources for, 113
  stigmatization of, 99, 101, 111–112
  support groups for, 107–108
in victim-offender panels (VOPs), 71–72
in visual model of restorative justice,
54–57
Offender support groups, 107–108
Office of Crime Victim Ombudsman
(Minnesota), 133
Office of Juvenile Justice and Delinquency
Prevention, 30
Ohio, workplace (prison) conflict
programs, 158
Online resources. See Internet resources
Operational values, 48, 49
Order
defined, 46
government responsibility to provide,
47, 79, 178
peace vs., 46–47
in visual model of restorative justice,
54–57
“Out of court offense compensation”
(Austria), 156
Overcrowding, “get tough” measures and
prison, 11
Paradigms, Zehr’s descriptions of, 4
Parallel justice, 105
Parents of Murdered Children, 107
Parliamentary Standing Committee
(Daubney Committee; Canada), 33, 34
Parole, Internet resource about, 204
Parole Act (New Zealand; 2002), 158
Parole hearings, victim statements at, 124
Parole officers, use of restorative justice
processes by, 158–159
Parole violation hearings, victim inclusion
in, 135
Participatory justice, 12–13
Passive responsibility, 89
Past, crime handling in, transformation of
perspective and, 176
Patterns of thinking
ancient (restitution and vindication), 6–8
defined, 4
described, 4–5
discounting of restorative justice, 7n1
for reflection on alternative approaches, 5
restorative justice antecedents, 12–18
shift to government and offender
model, 9–11
transformation of perspective and,
174–177
usefulness of, 4
weakness of, 4–5
Peace
as avenue for achieving safety, 47
community’s responsibility for creating,
46–47, 79, 178
in visual model of restorative justice, 56
Peaceful social life (normative value), 49
Peacemaking
Aboriginal circles and, 69
as social justice, 18
Peace table, in Bellavista Prison,
Colombia, 158
Pedophiles, 102
Peel, Robert, 126
Penitentiary. See also Prison
defined, 10
Quakers as founders of, 16, 109
vision and practice realignment, 151
Walnut Street Jail, 10–11, 16
Pennsylvania approach of corrections, 109
People’s courts, 130
Personal responsibility, 17
Persons, transformation of, 178–180
Perspective, transformation of, 174–177
Philadelphia, Pennsylvania
Magistrate’s courts in, 128–129
prisons and restorative justice processes
in, 158
Philadelphia City Prisons, 158
Philadelphia Magistrate’s Courts, 126n
Philadelphia Society for Alleviating the
Miseries of Public Prisons, 10
Philippines, restorative justice principles
and practices in, 37, 38
Physical injuries, of offenders, 45
Plea agreement, victim statements and,
124
Plea bargaining, 92, 134
Poland, restorative justice principles and
practices in, 36
Police
development of public forces,
129–130
information provided to victims, 121n
Thames Valley (England), 31, 33, 35,
155–156
use of restorative justice processes,
155–156
Police complaints, 204
Politics, 205
Portugal, restorative justice principles and
practices in, 38
Positive reinforcement, 87
Post-sentencing, victim inclusion in, 135
Post-Traumatic Stress Disorder (PTSD), 99
Poverty, imbalances in criminal justice and, 177–178
Powerlessness, of victims, 6n, 177–178
Practical and material help, as reintegration element, 98, 163
*Practice of Punishment, The* (Cragg), 25
Presbyterian Church (USA), Criminal Justice Program of, 24
Presence in court, right to, in victim inclusion, 120, 122–123
Presentencing, victim inclusion in, 133–134
Pretrial diversion, 157
Primary victims, 43, 45
*Prince, The* (Machiavelli), 152–153
Prior conditions, 45
Prison. See also Penitentiary; Punishment abolition movement for, 16–17
emergence of, 10–11
failure at rehabilitation, 16
as last resort, 14–15
meaningful work in, 94–95
overcrowding and “get tough” measures, 11
use of restorative justice processes by, 157–158
Prison Ashram Project, 109n
Prisoners, alienation of, 158
Prison Fellowship, 110, 157, 158
Prison Fellowship International, 36, 72, 152n, 161, 199
Prison Fellowship Ministries, ix–x
Prison Moratorium Project (New York), 17
Private prosecution
history of, 125–128
magistrate’s courts and, 128–129
motivations of, 129
public police force development and, 129–130
“pushing to the extreme,” 126n
Private remorse, 86
Probation
Internet resource about, 205
in Japan, 157
Probation and Mediation Services Act (Czech Republic; 2001), 37
Probation officers, use of restorative justice processes by, 157
Probation offices, victim-offender mediation and, 27
Probation violation hearings, victim inclusion in, 135
Problem-oriented policing, Internet resource about, 200
Problem-solving courts, 23
Professionalization of justice, reduction of victims’ role due to, 128–130
Prosecution
Internet resource about, 205
victim inclusion in, 16
Prosecution of Offenses Act (England; 1879), 127
Prosecutorial diversion (Austria), 156
Prosecutors
decision to prosecute by, 133
discretionary power of, 156
use of restorative justice processes by, 156
victims and, 130–132
Protection, as operational value in restorative process, 49
Protective mediation, 159
Psychological trauma, crime-related, 15, 99–100
Psychology of reintegrative shaming, 25
Public harms, 89–90
Public opinion surveys, 142
Public order, 12
Public police force, private prosecution and, 129–130
Public policy, restorative justice as source of, 32–33
Public prosecutor, 133
Public retribution, 10
Public safety, government and community responsibility for, 46–47
Punishment. See also Prison
corporal, 10
denial of victim participation in, 22
deterrence through, 24
“get tough” measures, 11, 142
as replacement of restitution, 10
restitution approach to, 14–15
retributive justice and, 22, 22n
*Punishment and Restitution* (Abel and Marsh), 14
Punishment model, 22
Quakers (Society of Friends)
as founders of the penitentiary movement, 16, 109
penitentiary philosophy, 151
prison abolition movement, 16–17
Racial minorities, as powerless victims, 177–178
Real Justice, 35

Recidivism
  beating the odds, 112–113
defined, 5
  as failure of rehabilitation attempts, 5
  after family group conferencing, 69
  rate of, 5
  reasons for, 101–102

Recompense
defined, 52, 53
  in Hebrew justice, 8, 8n3
  restitution and, 87
  in visual model of restorative justice, 55–57

Reconciliation, 48, 72
cultural, 31
  Murder Victims’ Families for Reconciliation (MVFR), 131
  objection to term, 27, 67
  in place of prison, 16

Redemption, 85n

Redress, in visual model of restorative justice, 57

Re-entry process, for offenders, 107–108, 112–113, 158–159

Reform
  as contributor to restorative justice theory, 12–18
  of prisons, early days, 10–11, 110
  restitution as initiative of, 14–15
  restorative justice as dynamic for, 33
  for victims’ rights, 15–16

Regret, expression of regret, and apology, 86

Rehabilitation
  early prison reform and, 10–11
  “get tough” measures vs., 11
  impossibility of, 11, 110
  peacemaking and, 18
  prisons as failure at, 16
  recidivism as failure of, 5
  restorative justice compared to, 50–53
  victim’s view of, 87

Rehabilitation model, of criminal justice, 3–4

Rehabilitative model, of sentencing, 10

Reintegrating communities
  faith communities, 108–114
  support and assistance groups, 106–108

Reintegration
  in assessment framework, 163, 164–165, 167
  building, 104–106
  communities and, demands on, 104

defined, 103
  elements of, 98, 163, 165
  example (Les Misérables), 97–99, 101, 103, 104, 108, 114
  faith communities as help to, 180
  in fully restorative system, 163, 164, 169
  guidance and care element, 98
  help element, 98, 114
  help for victims and offenders, 147–148
  material help in, 98
  moral and spiritual direction in, 98, 114
  of offenders, 101–103, 147–148
  as operational value in restorative process, 49
  parallel justice, 105
  relationships, 104, 106
  respect element, 98, 114
  safety element, 98
  stigmatization vs., 98, 99, 100, 111–112
  victims in, 99–101, 147–148

Reintegrative shaming
  re-entry for both victim and offender and, 103–104
  restorative justice linked to, 25
  stigmatizing shaming distinguished from, 104n

Relational harm, 85n

Relationalism, 25

Relational justice, 23, 25

Relational Justice (Burnside and Baker), 25

Release, preparation for, 205

Releasing circles, 159

Religious-based services. See Faith communities

Remorse, 48, 86

Reorientation in sentencing (Canada), 31

Reparation, in victim-offender mediation programs, 67

Reparative conception, of restorative justice, 42, 43

Repentance, 8, 11, 72, 104n

Research Institute of Crime Prevention and Control (China), 38

Resistance, to restorative justice, 152–154

Resolution
  as operational value in restorative process, 49
  in visual model of restorative justice, 55–57

Respect
  as normative value, 49
  as reintegrative element, 98, 104, 114, 163
Responsibility, 72
  acceptance of, 78
  active, 48–49, 89
  assumption of, 46
  personal, 17

Restitution, 24
  abandonment of, 10
  as active responsibility, 89
  as “add-on” to real sentence, 134–135
  agreements of, in family group conferencing, 69
  amends and, 85, 87–88, 163
  in ancient codes, 6n, 7
  calculation of, 90
  community service as, 89, 91–92
  compensation compared to, 87n
  in dismissed cases, 92
  early enthusiasm for, 153
  feasibility and unfeasibility of, 93–95, 135
  historic background of, 87–88
  impediments to, 94
  imprisonment replaced by, 17
  incarceration of offenders and, 94, 135
  injuries requiring, 93
  injury to society, 89–90
  in later times, 9–11
  mandatory, 88
  meaningful, 135
  monetary payment and, 87–88, 94
  offender’s ability to pay, 93–94, 146
  offenders identified but not convicted, 92
  prisons replaced by, 16
  rationales for, 14
  as reform initiative, 14–15
  replacement of, by fines to state, 9
  requirements of, 87
  resistance to, 153
  restorative justice based on, 22
  secondary victims, 89
  in sentencing, 134–135
  seriousness of offense and, 92–93
  specific injuries, 91
  as strategic goal, 146–147
  victims’ right to pursue, in criminal cases, 146–147
  who should receive?, 89–92

Restitution in Criminal Justice (Hudson and Galaway), 22n
Restorative and Community Justice Programme (Jamaica), 38
Restorative community justice, 23, 26
Restorative Community Justice: A Call to Action (Young), 26
Restorative dialogue, 206
Restorative justice, 72. See also Restitution
  accountability and, 51
  antecedents of, 12–18
  Christianity, the Bible, and, 22n
  circles as, 29–30
  citizen-government conflicts and, 31
  as a community-based alternative to the criminal justice system, 32
  conceptions of, 41–43, 58
  conferencing as, 28–29
  contemporary criminal justice compared to, 53–54, 58
  creation of model of, early days, ix–x
  criminal justice systems and, 30–31, 32, 33
  critiques and reform efforts, 12–18
  defined, 41–43
  development of, 12–18, 31–38
  direct involvement by parties, 46
  discounting of, 7n1
  does it work?, 53–54
  encounter as hallmark of, 179
  encounter conception, 41–42, 43, 161
  explorers of, 24–26
  focus of, 22
  four parties in, 55–57
  fully restorative, 163–164, 169
  fundamental principle, 164
  globalization of, 31–38
  goal of, 57
  government investment in, 30–31
  inclusion in, 117–137
  indigenous justice and, 13–14
  informal justice critique, 12–13
  innovations in, 23
  intergovernmental bodies, 31
  as an international reform dynamic, 33
  key features of, 54–57
  models, 159–163
  person transformation and, 178–180
  perspective transformation and, 174–177
  principle-based focus, vi
  principles of, 43–47
  prison abolition movement, 16–17
programs offering, 26–30
promise of, 118
proponents’ selective use of history, 6n as public policy source, 32–33
reparative conception, 42, 43, 161
restorative practices vs., 50
retributive justice and rehabilitation compared to, 50–53
richness of, v
social justice movement, 17–18
structure transformation and, 177–178
term usage, 21–23
theories and theorists of, 24–26
timeline of, 31–38
transformation as hallmark of, 174, 180
transformation conception, 42
transformative conception, 161
value of, 22n
values of, 47–50, 59
victim-offender mediation as, 26–28
victims’ rights and assistance, 15–16
visual model, 54–57
Restorative Justice Online (http://www.restorativejustice.org), x, 36, 152n, 199
Restorative justice processes
in contemporary criminal justice, 155–159
court use of, 156–157
parole officer use of, 158–159
police use of, 155–156
prison use of, 157–158
probation officer use of, 157
prosecutor use of, 156
Restorative justice strategies
assessment and evaluation, 148–151
build support for, 141–143
coalition development, 143–144
impact evaluation, 148–151
learning, collaborating, and challenging, 152
resistance to, 152–154
strategic goals, 145–148
vision and practice realignment, 151
vision review, 148–151
Restorative justice systems
access to, 168–169
aspirations in, 168
assessment framework for, 163–171
elements of, 163
fully restorative, 163–164, 169
minimally restorative, 164, 171
models, 159–163
moderately restorative, 170–171
substantially restorative, 164
Restorative Justice: The Evidence, 38
“Restorative Justice: Theory, Principles, and Practice,” x
Restorative practices, 50
Restorative Resolutions Project (Canada), 157
Resulting injuries, of offenders, 45
Retail Theft Initiative (England), 35
Retribution
defined, 51, 52
in Hebrew justice, 8
Internet resource about, 206
public, 10
shellem and, 8
in visual model of restorative justice, 54–55
Retributive justice, 22, 22n, 50–53
Revenge, 7
Rich Get Richer and the Poor Get Poorer, The (Reiman), 177
RJ City project (case study), 48n, 161, 162, 185–196
Romania, restorative justice principles and practices in, 37
Roman Law of the Twelve Tables, 7
Royal Canadian Mounted Police, 33, 36
R. v. Moses (sentencing circle case; Yukon Territory Court, Canada; 1992), 35
Rwanda, restorative justice principles and practices in, 37
Safety
public, 46–47
as reintegration element, 98, 99, 163
in visual model of restorative justice, 56
Safety net model, of restorative justice, 160
Salvation Army, 109n
Scandinavia, victim-offender mediation in, 27
Schools, 206
Secondary victims, 43, 89
Security, 47
Self-control, 173
Self-help groups, for victim/offender reintegration, 107
Sentencing
incorporation of restorative justice principles in, 30–31
Internet resource about, 206
Sentencing—cont’d
rehabilitative model of, 10–11
reorientation in, 31
restitution in, 134–135
restorative processes for, 156–157
victim impact statement at, 123–124
victim inclusion in, 16, 134–135
Sentencing circles, 29–30, 35, 70, 71
Settlement-driven programs, 27–28
Sexual violence and abuse, Internet resource about, 206
Shalom
in ancient Jewish law, 46
meaning of term, 7–8, 46
Shame
apology and, 86
Internet resource about, 205
Shaming, 25, 103–104, 104n
Shared interest, local community, community of care, and, 44–45
Shillem/shillum, meaning of term, 8
Shuttle diplomacy, 66n, 73
Social, political, and economic inequities, power imbalance and, 177–178
Social justice movement, 17–18
Social services, 108
Social welfare model, 28
Society, restitution to, 89–92
Society of Friends. See Quakers (Society of Friends)
Solidarity, as normative value, 49
South Africa
Child Justice Act (2009), 38
Community Peace Committees in, 156
National Institute for Crime Prevention and Reintegration of Offenders, 35
restorative justice principles and practices in, 31, 35, 36, 38
Truth and Reconciliation Commission, 31, 35, 207
Soviet-bloc countries, restorative justice principles and practices in, 31
Specific injuries, 91, 93
Specificity, principle of, 91
Speedy Trial Act, 65n
Spiritual and moral guidance and care, as reintegration element, 98, 114
Spiritual injuries, of offenders, 45
Standard of living, quantifications of harms and, 90
Standards, 48
Standards Relating to the Prosecution Function (ABA), 130–131
Stereotypes, 143
Stigmatization, of victims and offenders, 98, 99, 100, 111–112
Stigmatizing shaming, 104n
Structures, transformation of, 177–178
Struggle for Justice, 16
Stuart, Barry, 30, 71
Support groups, for victim/offender reintegration, 106–108
Support persons, in encounter, 79
Supreme Court of Canada, 31
Sycamore Tree Project, 72, 157
Texas
early victim-offender mediation, in prisons, 27
prisons and restorative justice processes and, 158
Thailand, restorative justice principles and practices in, 38
Thames Valley Police (England), restorative justice use by, 31, 33, 35, 155–156
Theft, Internet resource about, 206
Therapeutic treatment, of offenders, 22
Three-dimensional justice, 22n
Tort law, 15
Traditional approach, to justice, 13–14, 53
Traditional justice, 53
Training
of facilitators, 74, 76, 77
on restorative justice, 30
Transformation, 173
as hallmark of restorative justice, 174, 180
of persons, 178–180
of perspective, 174–177
of structures, 177–178
Transformation conception, of restorative justice, 42
Transformation of Criminal Justice: Philadelphia, 1800–1880 (Steinberg), 128–129
Transformative conception, of restorative justice, 161
Transformative justice, 23
Trauma, psychological, crime-related, 99–100
Treatment, of victims, 100
Treaty of Waitangi (1840), 31
Trials, victims’ presence at, 122–123
Tribunal of Restorative Justice (El Salvador), 38
Truth and Reconciliation Commission (South Africa), 31, 35, 207
Truth commissions, 207
Tutu, Desmond, 31
Twelve-step programs, 113
Twelve Tables (Roman Law), 7
Uganda, restorative justice principles and practices in, 31, 36
Understanding, in encounter, 73–75, 163
Unitarian Universalist Service Committee, National Moratorium on Prison Construction, 17
Unitary model, of restorative justice, 160, 161, 162
United Kingdom. See England
United Methodist Church, 109n
United Nations
  Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 121n
  Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 31, 37, 81
 Economic and Social Council (ECOSOC), 31
derendorsement of restorative justice, 33
Handbook on Justice for Victims, 121n
Handbook on Restorative Justice, 38
restorative justice principles and practices in, 37, 38
United States
  churches as reintegrating communities, 109–110
  early victim-offender mediation in, 26–27
  “Genesee Justice” program, 34
  Justice Fellowship in, 33, 34
  legal standing of victims to address court, 125
  prisoner ministry in, 109n
  prisons and restorative justice processes in, 158
  professionalization of justice, reduction of victims’ role in, 128–130
  restitution established in, 88
  restorative justice principles and practices in, 34, 35, 37, 38
  social services in, 108
  victim-offender panels in, 71–72
  victim-offender reconciliation programs in, 32
workplace (prison) conflict programs, 158
University of Pennsylvania, 108
U.S. Association for Victim Offender Mediation, 34, 35
U.S. Department of Justice, 30
U.S. Office for Victims of Crime, 110
U.S. Office of Juvenile Justice and Delinquency Prevention, 35
Utopia (More), 88
Utrecht School, 17

Values. See also Amends; Encounter; Inclusion; Reintegration
  changed, 87
  changed behavior and, 87
  clarified by graduated punishment, in criminal law, 13
  communicated by the state through the infliction of pain, 13
  feminist, restructuring of criminal justice and, 18
  of restorative justice, 47–50, 163
Victim advocates, 136, 143, 144
Victim assistance, 23, 207
Victim awareness, 207
Victim bills of rights, 124
Victim-blaming, 100
Victim compensation programs, 15–16, 207
Victim impact statement, 120, 123–124, 207
Victim inclusion, in criminal justice proceedings
  at arraignment through presentencing, 133–134
  example (David and Goliath), 117–119
  history, 125–128
  information needs, 120, 121–122
  at investigation stage, 133
  legal standing of victim to participate, 120, 124–125
  notification of victims, about offender prosecution, 122
  in offender re-entry, 158–159
  plea bargaining and, 134
  at post-sentencing, 135
  presence in court, 120, 122–123
  prosecutor and, 130–132
  reduction of, as result of professionalization of justice, 128–130
  restitution and, 146–147
  restorative justice and, 119–120
Victim inclusion — cont’d
at sentencing, 134–135
at stages of proceedings, 132–136
victim as civil claimant in criminal cases, 135–136
victim impact statement, 120, 123–124

Victimization
costs of, 15–16
crisis phase, 112
harm resulting from, 15–16
impact stage, 112

Victim-offender mediation, 23
conferencing distinguished from, 29
as relational justice, 25
as restorative process program, 26–28

Victim-Offender Mediation Association (VOMA), 35, 152

Victim-offender mediation programs (VOMs).
See also Encounter arbitration distinguished from, 66
community-based, 27
conferencing distinguished from, 29
court process distinguished from, 66
family group conferencing (FGC)
distinguished from, 68–69
future intentions, 67, 68
goal of, 67
identification of injustice in, 67
participant empowerment, 66
participants in, 76, 79
power of, 68
pre-encounter preparation, 69
purpose of, 26–27, 66–68
as relational justice, 27
reparations (making things right), 67
as restorative process program, 26–28
structure of, 67
support persons/community members in, 79
terminology variations in, 67
transformation and, 179
victim-offender panels (VOPs)
distinguished from, 71

Victim Offender Meeting Program (Washington), 76

Victim-offender panels (VOPs)
benefits, 72
examples, 71–72
meeting element of, 73–74
participants in, 71
purpose of, 71
victim-offender mediation and conferencing distinguished from, 71

Victim-offender reconciliation programs (VORPs)
first use of, in Canada, 33
history of, 27

Victim participation, in the prosecution and sentencing of the suspect, 16

Victims
absence of, in family group conferencing, 162
alienating effects on, of offender-oriented system, 16
apology to, 85–86
during bail procedure, 133–134
biblical justice concerned with, 17
in circles, 69–71
as civil claimant in criminal cases, 135–136
common needs of, 44
community distinguished from, 45n
concerns of, about restorative justice, 143
contemporary rediscovery of, 15
crime as defining moment for, 98
crime as offense against, 6, 6–8
in crisis, 99–100
crisis phase of victimization, 112
defined, 43
demographic characteristics, 99
direct, 89
dissatisfaction with criminal justice system, 5
in encounter, 77–78, 145–146
fairness concept and, 78, 134
faith communities as help to, 111–114
goals of, in encounter, 77–78
harm to, extensiveness of, 15
healing of, 3–4, 27, 43–45
history of inclusion in criminal cases, 125–128
humanizing of, by offenders, 74
impact stage of victimization, 112
information provided by police, 121n
as injured parties, 4, 12
innovations for, 65
Internet resources for, 109n, 206, 207
involvement in the justice process, 45–46
isolation of, 100, 103, 107, 112, 144
legal standing of, to participate in criminal proceedings, 124–125
life in the new “normal” patterns, 101
negative self-identity of, 100
negative view of, by others, 100
parallel justice for, 105
plea bargaining and, 134
post-sentencing and, 135
powerful vs. powerless, 6n, 177–178
power imbalance with offenders, 177–178
practical concerns of, 101
primary, 43, 45
professionalization of justice, and reduction of role of, 128–130
prosecutors and, 130–132
reintegration by, 99–101, 147–148
reintegration help for, 147–148
right to pursue restitution, in criminal cases, 146–147
right to speak at felony sentencing, 134
right to speak in court, 65
role of, in criminal justice process, 25, 27–28
safety need of, 99
secondary, 43, 89
sentencing and, 16, 134–135
shift away from restitution to, 9–11
spiritual or moral crises of, 101
stigmatization of, 98, 99, 100, 111–112
support groups for, 106–108, 107
support of, for restorative justice, 143
in victim-offender mediation programs (VOMs)
in victim-offender panels (VOPs)
Vulnerability
in apology, 86
of victims, 100

Wagga Wagga, New South Wales, Australia
family group conferencing programs in, 25, 28–29, 34
restorative justice practices in dealing with juvenile offenders, 28–29
Wales, Sycamore Tree Project, 72
Walnut Street Jail, 10–11, 16
Washington (state), 76
Web sites. See Internet resources
“We-they” attitude, between community and justice system, 144
Whanau conference, Maori people and, 68
White collar crime, 208
William the Conqueror, 9
Witness
presence at trials, 122–123
victim’s role as, 120, 123, 128
Witness statements, 122–123
Workplaces, restorative processes in, 208
Worth, Dave, 26
Wrongful acts, 89–90

Yantzi, Mark, 26
Youth Court (New Zealand), 28, 162
Youth Criminal Justice Act (Canada), 31
Youth Justice and Criminal Evidence Act (England; 1999), 37

Zimbabwe
Prison Fellowship in, 158
restorative justice principles and practices in, 35
This page intentionally left blank
AUTHOR INDEX

Abel, Charles F., 14–15, 19n17
Acorn, Analise, 64n
Aersten, Ivo, 59n7
Allen, G.D., 115n15
Andrews, Arlene Bowers, 99–100, 115n3
Ashworth, Andrew, 25
Auerbach, Jerold S., 13, 19n12

Bacon, G. Richard, 19n22
Baker, Nicola, 23, 25, 39n5, 40n18, 181n6
Bard, Morton, 15, 19n19, 100, 115n4, 116n16
Barnes, Lisa (Lampman), x, 115n14
Barnett, Randy E., 15, 19n18
Bazemore, Gordon, vi, xi, 30, 51, 59n9, 71, 81n4, 96n13
Beattie, J.M., 137n4
Bentham, Jeremy, 10, 88, 126
Bianchi, Herman, 17
Biles, David, 40n16, 82n6
Black, M., 41n
Boddie, Stephanie C., 115n12
Bottoms, Anthony, 59n5, 59n12, 96n11
Braithwaite, John, 25, 39n15, 44, 48, 59n2, 59n3, 59n5, 59n11, 103–104, 106, 115n5
Braswell, Mickey, x
Brunk, Conrad G., 51, 59n10
Burfard, Gale, 29, 40n23
Burnside, Jonathan, 23, 25, 39n5, 40n18, 176, 181n6
Bushie, Berma, 30, 40n25
Cardenas, Juan, 59n4, 137n3
Carey, Mark, 144, 154n2
Carlson, David R., x
Carr, G. Lloyd, 8n3
Christie, Nils, 13, 19n13, 19n14, 27

Claassen, Ron, vi, 8, 27, 40n21, 67n, 75, 82n7
Claire Souryal, x
Clear, Todd, vi
Cnaan, Ram, 108, 115n12
Coates, Robert, 82n11
Colijn, G.J., 96n9
Colson, Charles, 17, 20n24, 110, 179, 181n9
Connelly, William, 41n
Copernicus, 5
Cragg, Wesley, 25, 39n13, 39n14
Crawford, Thomas, x
Crook, Frances, 53, 60n14
Cushing, Robert Renny, 131, 138n13
Daly, Kathleen, 51–52, 59n11
Danieli, Yael, 86, 96n9
Davis, Robert C., 115n3
de Bono, Edward, 4, 19n3, 174–175, 181n4
Dickens, Charles, 83, 96n1, 96n2, 96n3, 96n4
Duff, Antony, 52, 59n12, 89–90, 96n11
Dünkel, Frieder, 28, 40n22
Eglash, Albert, 21–22, 22n, 88, 96n10
Evans, T.D., 115n15
Faget, Jacques, 66n
Freeman, Richard B., 116n15
Fuller, John R., 18, 20n29
Galaway, Burt, xi, 19n15, 19n16, 22n, 40n22, 40n23, 59n9, 82n9, 82n11, 96n7, 96n10
Gallie, W.B., 41n
Gartner, J., 115n15
Gehm, John, 82n11
Gilman, Eric, 76, 82n8
Gittler, Josephine, 138n11
Goodwin, Catharine M., 96n15
Griffiths, John, 173–174, 180n2, 181n3
Hadley, Michael L., 59n10
Hagel, John, 15, 19n18
Halbert, Ellen, v
Harding, John, 28, 40n22
Harland, Alan T., 153, 154n4
Harris, M. Kay, 18, 20n26
Harris, R.L., 8n3
Hay, Douglas, 126–127, 127n, 137n5, 137n6
Hearn, Michael Patrick, 96n1
Hennessey, Hayes, 96n5
Herman, Susan, 105, 115n6, 115n7
Holzer, Harry J., 116n15
Homer, 63, 73, 74
Hostetter, Ed, x
Huculak, Bria, 30, 40n25
Hudson, Joe, xi, 19n15, 19n16, 22n, 40n23, 59n9, 82n9, 96n7, 96n10
Hugo, Victor, 115n1
Hulman, Louk, 17
Idler, E.L., 115n15
Ilivari, Juhani, 28, 40n22
Jinnah, Dorothea, x
Johnstone, Gerry, 41, 59n1
Kasl, S.V., 115n15
Kilpatrick, Dean G., 99, 115n2
Knopp, Fay Honey, 17, 24
Lampman, Lisa (Barnes), x, 115n14
Lane, Roger, 129–130, 138n9
Larson, D.B., 115n15
Lazare, Aaron, 96n8
Lee, David, 39n5
Leibrich, Julie, 96n7
Lerner, Melvin J., 7–8n2
Liebich, Julie, 86
Lipkin, R., 96n13
Littell, M. Sachs, 96n9
Lord, Janice Harris, 82n5
Lurigio, Arthur J., 115n3
Machiavelli, Niccolò, 152–153, 154n3
Mackey, Virginia, 24, 39n11, 39n12
Maguire, Mike, 87n
Marsh, Frank A., 14–15, 19n17
Marshall, Tony, 22–23, 39n2
Mathiesen, Thomas, 17
Matthews, Roger, 19n11
Maxwell, Gabrielle, 29, 40n23
McCaslin, Wanda D., 40n25
McCold, Paul, 29, 40n23
McDonald, William F., 16, 19n21
McHugh, Gerald Austin, 17, 20n23, 110, 115n13
McKelvey, Blake, 19n9
McKillop, Sandra, 40n16, 82n6
McWhinnie, Andrew, 115n8
Miller, Nick, 20n24
Moore, David, 25, 40n16, 40n17, 74, 82n6
More, Thomas, 88
Morgan, Rod, 87n
Morris, Allison, 29, 40n23
Morris, Norval, 19n7, 19n10
Morris, Ruth, 17, 23, 39n4
Nathanson, Donald, 25
Neiderbach, Shelley, 107, 115n9, 115n10
Neto, Virginia V., 138n16
Nolan, Pat, 115n11
Packer, Herbert, 173, 180n1
Parker, Lynette, x
Pennell, Joan, 29, 40n23
Pepinsky, Harold E., 18, 20n27, 20n28, 181n5, 181n10, 181n14
Peters, Tony, 40n22
Pollefeeyt, D., 96n9
Pollock, Frederick, 19n5
Pranis, Kay, 30, 35, 40n25, 81n3, 96n13, 142, 154n1
Prenzler, Tim, 96n5
Quinney, Richard, 18, 20n27, 179–180, 181n5, 181n10, 181n14
Radzik, Linda, 85n
Reiman, Jeffrey H., 177–178, 181n8
Reiner, Robert, 87n
Richards, Kelly, 6n
Roach, Kent, 59n5, 59n12, 96n11
Roberts, Albert R., 15, 19n20
Roberts, Julian, 59n5, 59n12, 96n11
Roche, Declan, 79–81, 82n12, 82n13, 82n14, 82n15
Rosen, Cathryn J., 153, 154n4
Rössner, Dieter, 28, 40n22
Rothman, David, 19n7, 19n10
Rowland, Judith A., 131–132, 138n15
Rucker, Lila, 181n5
Sangrey, Dawn, 15, 19n19, 100, 115n4, 116n16
Sargeant, Kimon, x
Schafer, Stephen, 14, 19n16
Schiff, Mara, 59n5, 59n12, 96n11
Schneider, Carl D., 85–86, 96n6
Schönfeld, Walther, 22n
Schrey, H., 22n
Schulter, Michael, 39n5
Schweigert, Francis J., 181n7
Shattuck, Michelle, 115n14
Sheffer, Susannah, 138n13
Sherman, Lawrence, 53–54, 60n15, 60n16, 60n17
Skelton, Ann, 22n
Skogan, Wesley G., 115n3
Skotnicki, Andrew, 19n8
Snyder, Francis, 126–127, 127n, 137n5, 137n6
Steinberg, Allen, 128–130, 137n7, 137n8, 138n10
Stephen, James, 125–126, 126n
Stern, Vivien, 19n6
Stott, John, 20n24
Strang, Heather, 53–54, 59n11, 60n15, 60n16, 60n17
Strong, Gregory, x
Strong, Karen Heetderks, v, vi
Stuart, Barry, 40n25, 81n3
Sylvester, Douglas J., 6n
Toews, Barb, 115n6, 115n7
Tomkins, Silvan, 25
Umbreit, Mark S., vii, 18n1, 27, 40n20, 67, 71, 81n1, 81n4, 82n9, 82n10, 96n13, 138n17
Van Ness, Daniel W., v, vi, x, 17, 20n25, 25, 41, 48n, 59n1, 65n, 152n, 199
Villmoare, Edwin, 138n16
von Hirsch, Andrew, 59n5, 59n12, 90, 90n, 92–93, 96n11, 96n12
Walgrave, Lode, vi, xi
Walz, H., 22n
Wedge, Mark, 40n25, 81n3
Whitehouse, W., 22n
Wilbour, Charles E., 115n1
Wineburg, Robert J., 115n12
Wortley, Richard, 96n5
Wright, Martin, 23, 24, 28, 39n3, 39n9, 39n10, 40n22, 66n, 82n11
Young, Marlene A., 23, 26, 39n6, 40n19
Zedner, Lucia, 87n
Zehr, Howard, 4, 19n2, 22, 24, 27, 39n1, 39n7, 39n8, 40n21, 50–51, 52, 59n8, 60n13, 75, 81n2, 82n7, 104n, 115n6, 115n7, 149n, 174