

Criminal Punishment and Restorative Justice

PAST, PRESENT AND FUTURE PERSPECTIVES

David J Cornwell was educated at Christ's Hospital School, Horsham, UK, the Royal Military Academy, Sandhurst, and the University of York. After more than 20 years military service he became a prison governor, leaving HM Prison Service in 1997 to take up a post in the private sector with Group 4 Prison and Court Services. More recently, he has been consultant operations adviser to Global Solutions' Mangaung Correctional Centre in Bloemfontein, Republic of South Africa - during the building, commissioning and initial operation of its 3,000 bed maximum security facility in the Free State Province. He was for several years a tutor at Her Majesty's Prison Service College, Wakefield, Yorkshire, has published various articles and papers and is an active member of the International Corrections and Prisons Association (ICPA).

Throughout his career, David Cornwell has maintained an interest in criminological research - his MA and D. Phil research programmes each focusing on punishment issues relating to young offenders and the criminally dangerous - and he continues to act as a consultant criminologist. He lives with his wife and family in Worcestershire.

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With a Foreword by

Tony Cameron

Contributions by

Fred McElrea, John R Blad and Robert B Cormier

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Her Majesty's Prison Service enabled me to pursue a second career as a member of its governor grades over a period of almost 20 years. This provided continuous exposure to the ways in which prisons operate, prisoners behave and prison staff carry out their very difficult task on behalf of society on a daily basis. A period of almost four years as a tutor at HM Prison Service College at Wakefield, Yorkshire also enabled many contacts to be made and maintained within the academic world, and provided opportunities for continued study and research. For this experience I have always remained extremely grateful.

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Criminal Punishment and Restorative Justice

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Foreword by Tony Cameron

Restorative Justice: A Means of Re-invigorating Criminal Justice?

In recent years, I count myself extremely fortunate to have spent time in the company of many experienced corrections professionals, people whose knowledge of corrections far exceeds my own. Some of the most interesting and lively discussions that I have had with them have centred on how we can regain the public's confidence in the operation of our respective criminal justice systems. I choose the word 'regain' carefully because I sense that in recent decades many jurisdictions, as in the United Kingdom, have experienced a loss of public confidence in how we deal with those who break the law. It seems to me that these conversations revolve around five common themes: reducing rates of incarceration, reducing re-offending, tackling anti-social behaviour, addressing fear of crime and, perhaps most importantly, engaging the victim in the process. Some of the most stimulating ideas that I have heard in this area have been from colleagues in the International Corrections and Prisons Association (Canada, New Zealand, Belgium, and, quite fascinatingly, some of the developing countries) and have revolved about the issue of closing the gap between victim and offender by the use of restorative justice-based principles.

While we need to take action on each of these counts, the area where action is most required is to bring the victim back - centre stage - into the criminal justice arena and, in so doing, to make offenders more aware of the impact of their actions. Concerted action is required to help victims see that the apparatus of criminal justice is not working for its own ends but acting on behalf of the victim. I have no doubt that this is a tall order. Equally, I have no doubt that we will not achieve such a transformation overnight. Where then to start? While the restorative justice approach is not a panacea for every criminal act, there is sufficient evidence to suggest that it has much to offer the politician, practitioner and policy-maker in addressing the reforming of criminal justice. To say that there is a heated debate around restorative justice would be an understatement. It represents, for some, the most influential development in the criminal justice arena in the past decade; for others, however, it is seen to offer high ideals but little practical impact on the system. At a personal level, its potential is underscored not simply by what I have read around this debate but, as I alluded to earlier, by what I have gathered from esteemed colleagues whose correctional services are pioneering its application: from Canada and New Zealand in particular where, building on their Aboriginal roots, the operation of restorative justice has had a ripple effect across the various strands of the criminal justice system. The idea that the actors with a stake in a specific offence resolve collectively to deal with the aftermath of the offence and its implications for the future makes real sense. In The Netherlands too, its application has not simply been limited to the criminal justice system but has permeated areas such as prisons with the application of what has been termed 'restorative detention'.

I shall leave it to others in the course of this volume to consider the objectives, goals and application of the restorative justice approach. It is sufficient for me to say that any approach which seeks to take a holistic view of dealing with crime rather than a fragmented and compartmentalised one is a more logical approach. Any approach which has at its core the need to address victims and seeks to meet fully all their needs, be they financial, material, social and/or emotional, and which equally seeks to have offenders take active responsibility for their actions so that the community can play its part in supporting the re-integration of the offender makes sense in the long-term.

However, before we get carried away, we need to recognise that 'punishment' figures strongly in public discourse today. I have heard many an observer suggest that any move toward a criminal justice system that has a 'restorative' focus - and seeks a mediated solution as opposed to possible confinement - is a 'soft' option. I would disagree. Arguably, restorative justice is no soft option but adds a further relevant and stimulating dimension to the notion of punishment. If the aim of punishment is to increase offender awareness, understanding and empathy - and not simply to inflict pain - restorative approaches are more likely to have an impact. In this sense, restorative justice is very much an alternative punishment and not an alternative to punishment.

We do need to be realistic about how the public views such possibilities. In a climate dominated by 'populist punitiveness', with ever increasing numbers being sent to prison it will be difficult for the restorative justice agenda to move from the periphery to the centre of the debate.

The way to achieve that will be to evidence its effectiveness. In a world where practitioners and policy-makers seek evidence-led initiatives, only when we can show that restorative justice 'works' will the argument in its favour prevail fully. Restorative justice's strength is, to my mind, that it is practice-led. This gives it a dynamism and creativity. Restorative justice is no universal panacea (nor for that matter are cognitive behavioural approaches) but there is emerging evidence from different continents that it has much to offer. What is required is for it to be packaged in a format which the public, politicians and practitioners can find attractive in terms of meeting community concerns which, it should quickly be said, despite massive investment, the criminal justice system has not addressed.

It was an honour to be asked to introduce this book, and greatly stimulating to consider the various ideas and evidence set out in this exciting volume by David Cornwell. Internationally, restorative justice is seen as much more visible and dominant than in any of the United Kingdom jurisdictions. What is important internationally is that restorative justice is at least a player in our ideas for recapturing the criminal justice system, and it is clear to me that in some jurisdictions it is undoubtedly a major player. My belief is that as more evidence becomes available over time this will increase further.

Tony Cameron

President, International Corrections and Prisons Association

January 2006

Preface

One of the core competencies of criminal justice professionals is to demonstrate an understanding of the place of the philosophy of criminal punishment within the science of criminology. To many observers of the subject, the concept of punishment seems in some senses anachronistic and abstruse, lacking an essential coherence, and confusingly circular in its arguments. This is, to some extent, understandable, because the contemporary penal policies of many developed nations display an eclectic and sometimes almost haphazard approach towards the manner in which punishment philosophies are given operational effect.

Changes of emphasis in the determination of criminal justice policies over the past 50 years in particular have sent confused and conflicting messages to justice practitioners, offenders and the public alike. For many academics and students of criminology especially, these constantly changing approaches towards the purposes of criminal punishment have become little short of an intellectual nightmare. They have led, however, to what will be seen to have resulted in a quite deliberate process of penal 'instrumentalism', or of using the processes of the law and punishment for political ends.

Events since the demise of the rehabilitative ethic during the 1970s, and subsequently of the 'justice' model in the late 1980s have served to place retribution and deterrence at the forefront of the punishment agenda within most western democracies. This has transpired even though the latter command little intellectual support among academics and practitioners for reasons that will become clear. There are, however, signs of a significant initiative for change with the emergence of the concept of 'restorative justice' during the 1990s and early 2000s. This initiative represents a serious and thoughtful challenge to traditional approaches to punishment, and its increasing momentum is both hopeful and encouraging.

My former professional career as a prison governor, coupled with a continuing research interest in criminology and penology which has spread over some 25 years, have both been lived out against this ever-changing background. The practical requirements of the former and the intellectual demands of the latter have proved to be a constant source of conflict and, sometimes, of complete frustration. That the two seemed incapable of reconciliation became one of the main reasons for this book being necessary.

As a prison governor I had, on a number of occasions, to deal with extremely angry prisoners and their bewildered families who were directly affected by sudden changes in sentencing rules, parole criteria, release considerations and prison conditions, resulting from policy decisions made almost entirely from political considerations. At the same time as an academic I had to attempt to accommodate these changes within a moral philosophy that rejected, in an outright manner, the basis upon which the changes had been made. Worse, perhaps, having to watch and deal with the suffering that resulted for so many people stretched a sense of professionalism and integrity to its absolute limits.

There are, however, other important reasons for writing this book. The first is that if criminal justice policies based on concepts of punishment are so inconsistent, it is unlikely that intelligent and able people will embark on careers within justice administration based upon the study of criminology. In every area of criminal justice there is a need for dedicated and capable professionals, academically well trained, and who want to make a substantive contribution within penal systems based on fairness, decency and humanity. Changing the

way in which justice operates so frequently, and largely for reasons of ideology rather than of morality, seems altogether unlikely to attract true professionals.

Secondly, if there is uncertainty about the aims of criminal punishment, or a lack of consistency in the way in which it is administered, punishment itself becomes essentially unjust and arbitrary because it deals with like offences unevenly. This makes justice an irrelevant issue to offenders who perceive it as a matter of chance, and pursue criminal lifestyles on a 'some win: some lose' basis. Recidivism statistics in many areas of the world reinforce this contention.

The third reason is that as matters presently stand almost universally, victims of crime have almost no voice or substantive consideration within the processes of justice. This simply has to be wrong because it is the victims of crime who bear the real weight of the harm occasioned by criminal offending. The law, in its majesty, has traditionally chosen to disregard this situation on the structural pretext of administering two party justice (the state versus the offender), and has thus been largely absolved from considering the plight of victims in deciding upon appropriate modes of punishment. Change within this aspect of justice administration is widely considered to be long overdue.

Each of these issues, and many more besides, concerns academics, professionals within criminal justice practice, and students of criminology. They also concern those discerning members of the public in whose name justice is administered, and those who become (actually or potentially) the victims of crime. All in all, it would seem that there are better ways of doing justice than those in which it is presently delivered.

This book, therefore, represents an attempt to bridge the theoretical and practical gaps that presently exist between *thinking about justice* and actually *doing justice*. It is written to encourage the reader, whether student, academic, practitioner, policy developer, politician, or informed observer of criminal justice in action, to approach the administration of criminal justice in that manner.

David J. Cornwell

Kersoe, Worcestershire, United Kingdom

January 2006

Dedication

For Belinda, Letty and Joby Cornwell
Also in loving and grateful memory of my parents
Reginald and Eileen Cornwell

Introduction

Love of justice in most men is no more
than the fear of suffering injustice.

Duc de la Rochefoucauld, *Les Maximes*, 78

Crime, and the measures designed to control and reduce crime, provides a major challenge to national authorities within almost every country of the contemporary world. Delivery of criminal justice is also an expensive item on national economic balance sheets, and its cost within many countries increases year on year. Penal systems, both custodial and non-custodial, are resource intensive in human and material terms, but represent the means by which those who commit crime are punished for the commission of illegal acts. The manner and conditions in which offenders are punished are widely regarded as reflective of the state of civilisation within the countries concerned.

The purpose of this book is to provide an overview of the debate concerning criminal punishment as it has developed over past centuries and into this current millennium. The debate is a complex one, having its origins within a wide range of academic disciplines, but it is, nevertheless, one with which professionals working within the various agencies of criminal justice are confronted inevitably and continuously. So, also, are politicians, and the members of the general public who elect them.

Within every society, whether developed or developing, the process of punishing those of its members who break the law has been perceived to be as much a matter of social necessity as a one of fundamental justice. Laws are, for the most part, enacted to regulate the behaviour of citizens, promote their security, preserve the common interest in peaceful co-existence, and prohibit the commission of acts that cause harm or danger to others. Punishment of wrongdoing is normally considered necessary to encourage the observance of laws, indicate the extent of social disapprobation when laws are broken, and impose appropriate penalties on those who commit offences.

Crime is usually defined as an act or omission that is proscribed by law, but this, in itself, can prove to be an elusive over-simplification. For while in a strictly legalistic sense such a definition may appear concise and satisfactory, it conceals a number of potential difficulties. To the majority of lawyers there is a necessary connection between unlawful actions, the intention and mental capacity of the offender, and the prescribed penalty (or extent of punishment) that should be imposed when the law is broken. However, in instances in which defective laws are enacted, or in which those who act illegally lack the capacity (due to being too young or mentally impaired) to act intentionally, serious difficulties can arise.

There is a sense also in which definitions of crime become political in nature, since wrongful acts defined as crimes are identified and codified by individuals or groups with an interest in making such behaviours illegal within the criminal law, and the power to do so. In this manner, actions such as using certain drugs, committing adultery, or attempting suicide become criminal within some jurisdictions and non-criminal within others. Some would contend that the term 'criminal' is no more than an attributed qualitative description of behaviour that is only conceivable through the language of criminal justice. They would, therefore, question whether punishment as we presently understand and

administer it (rather than other forms of state facilitated intervention) is the most appropriate response to actions that cause harm to others.

Criminology is primarily concerned with the scientific study of crime, its specification, causes and effects, and of its prevention, or at least reduction. Penology, which is closely associated with criminology, is devoted to the study of punishment predominantly within the context of penal codes, the sentencing of offenders, and the implementation of legal sanctions. To a significant extent the two become inextricably intertwined, most notably in relation to the administration of criminal punishment that forms the main focus of this book.

Insofar as professional practitioners within criminal justice administration are concerned, their work almost inevitably requires an understanding both of criminology and of penology, since operationally the two disciplines become largely inseparable. This book is designed to provide a source of background information and discussion within both of these areas of study in a manner that may meet the needs of academics and of practitioners.

There is no doubt that criminology and penology confront both the academic and the practitioner alike with difficult questions that need to be resolved in theory and also in practice. As will become evident, choices ultimately have to be made in relation to a number of important issues, some of which are moral in nature, others ethical, and yet others entirely practical or operational. This necessity is frequently challenging, and sometimes even frustrating. Contemporary political rhetoric is frequently vociferous about national authorities being 'tough on the causes of crime', while at the same time being almost silent about changing the dysfunctional social conditions which might be considered to encourage crime in the first place.

The deliberate use of criminal punishment as a means of deterring (or attempting to deter) those who might be tempted to commit crime has moral and operational implications which extend far beyond what might be considered to be immediately evident. The continuing practice in some countries of using the indeterminate (or indefinite) sentence for certain serious offences or as a means of social protection has similarly questionable morality, and presents a range of serious practical difficulties. If comparatively expensive rehabilitative regimes operated within custodial facilities appear to be largely ineffective in reducing subsequent recidivism (or the commission of further offences), is the case made for their abandonment in favour of less expensive and entirely incarcerative options?

It is also necessary to question whether poor social conditions, limited access to medical care, inadequate educational provision, relative deprivation and poverty are the principal determinants of crime causation, or whether some persons are born with criminal tendencies which lead them inevitably towards criminal careers. Does this account satisfactorily for why some commit crime and others from similar backgrounds refrain from doing so? Even further, it might be proposed that those people who become the victims of crime have a natural right to participate in the legal process that leads to the conviction and sentencing of criminal offenders. If they have no such right, does justice become in any sense flawed or undemocratic?

All of these important issues, and a considerable number of other similarly complex questions and dilemmas, have to be addressed within the scope of criminology and penology. The solutions to them are frequently far from simple, and require an understanding of the social and political structures and national environments within which they occur. These and many associated matters lie at the heart of the discussion within the chapters of this work, since they are

essential to our understanding of the contemporary context within which criminal justice operates.

Each of the chapters which follow is designed to contribute a piece of the jigsaw which, when completed, provides a picture of the contemporary world of criminology and penology. The central theme is the seemingly inescapable fact that crime and crime control are dominant pre-occupations for most national governments, and that criminal punishment as a response to crime is perceived as a moral and social necessity almost universally. Regrettable as this may appear, it is a situation that is unlikely to change in the foreseeable future.

Intuitive logic informs us that crime is an avoidable phenomenon, and thus it should also be reducible. Experience informs us that crime is to some or another extent inevitable, and seems to be resistant to control and reduction. Pragmatism dictates that both crime control and reduction must depend upon a diminution of the causes of crime, however crime may be defined. Thus, the starting point for our inquiry must be how crime is defined, and identification of the causative factors that encourage its commission.

Failure in many countries to achieve the aim of crime reduction, and in some countries to halt an overall increase in crime has led inevitably to considerable frustration with existing criminal justice policies and provisions. Sometimes it seems that policies based on each of the main and traditionally accepted justifications for punishment (retribution, deterrence, reform and rehabilitation), or certain combinations of these, have failed to deliver satisfactory results. This is an unfortunate development, but it also appears to be an almost universal phenomenon, and the reasons for it are examined in some detail. The history of criminal punishment during the previous century reveals very clearly how the pendulum has swung backwards and forwards between policies based on retribution and deterrence towards and again away from those based on reform and rehabilitation. This lack of clarity of purpose within criminal punishment may, to a considerable extent, be an underlying reason why the pursuit of crime reduction has proved to be so elusive.

Widespread disenchantment with the traditionally accepted justifications for, and modes of criminal punishment during the 1990s has led towards a similarly universal search for alternative methods of dealing with criminal offenders within a broader social context than that of mere incarceration or the existing range of non-custodial alternatives. In particular, the demise of the 'justice model' which had seemed to offer so much potential for sentencing reform, effectively fuelled and accelerated the necessity for a radical reappraisal of the crisis situation into which many criminal justice systems had fallen.

The result of this reappraisal has become widely apparent in the emergence of the concept of restorative justice that has gained a foothold within every continent of the world in the new millennium. As will become evident in the later chapters of this work, the concept openly challenges existing assumptions about the delivery of criminal justice, the role of judiciaries and professionals, and the hitherto largely unacknowledged status of the victims of crime. There is little doubt that adoption of restorative justice principles has considerable potential for the advancement of an infinitely more democratic model of justice, particularly in the field of non-custodial corrections. It does, however, introduce a range of difficult problems and dilemmas in its application to more serious forms of offending, and specifically in relation to custodial punishment.

In spite of these evident reservations, the impetus for reform provided by the notion of restorative justice is not only considerable, but it is also potentially durable and capable of widespread adaptation within different cultures and national situations. For these important reasons this survey concludes with a

number of international perspectives on the development of restorative justice initiatives across the world. This is done in open acknowledgement that the concept of restorative justice may be seen to hold the key to a number of the previously unresolved dilemmas confronting criminal justice administration within many contemporary societies.

If there has been a valid criticism of the academic science of criminology in the past, it is, perhaps, that it has tended to raise more questions than it has been able to answer satisfactorily. This book represents an attempt to provide some explanations, and to clarify some of the areas of apparent conflict and confusion in an essentially practical manner. Theory and practice are frequently indifferent bedfellows, but their supposed incompatibilities are far from incapable of wider resolution where there is a will to reconcile their many potential differences.

Chapters 1 and 2 provide a background of the development of criminology over time, and of the study of crime as it has evolved from rather tentative beginnings into the modern era. Definitions of crime have, historically, tended to be elusive and to a considerable extent value-laden, being determined predominantly by the politically powerful in the pursuit of forms of social order reflective of their concepts of acceptable and unacceptable social actions. Thus it has been the case in the past that certain forms of behaviour have attracted moralistic censure as criminal acts, while other and equally harmful anti-social activities have remained at the periphery of such considerations. There is, therefore, a certain ambiguity about what has, and has not, constituted criminal behaviour, and this apparent lack of congruence is frequently the result of cultural and sub-cultural differences between and within societies world-wide.

Criminology, as the study of crime in all its aspects, has had to accommodate consistently changing fashions of thinking about criminal behaviour, its causes, effects, and how those who commit crime should be dealt with. As will become evident, this process continues at the present time in which there is considerable debate concerning the apparent inappropriateness of traditionally accepted approaches to crime control and reduction. Indeed, it may be the case that uncritical adherence to these traditional models of justice administration may even have led to the general escalation of crime within many of the so-called developed modern societies of the world. The opening chapters of this book are therefore devoted to an overview of the emergence of criminology as an academic science, and of the principal influences that have affected its development.

The idea of retribution, or 'paying back' offenders for the harm caused by their wrongful actions, has retained a prominent (sometimes even dominant) place in theories of criminal punishment throughout history. Many would argue that it still continues to do so. In *Chapter 3*, the reasons for this are examined in some detail, since these have an important bearing on the methods by which criminal punishment is given operational effect within penal policies. The emergence of the 'justice model' of punishment in North America and Europe during the late 1970s and 1980s is also discussed in relation to what might be termed the 'penological vacuum' that its demise has created within contemporary considerations relating to crime control and the sentencing of offenders.

In *Chapter 4*, the concept of deterrence (in each of its main forms) becomes the focus of attention, in an attempt to identify its supposed and actual effects in the prevention of crime. In particular, the difficulties associated with the actual measurement or quantification of the deterrent effects of differing modes of punishment are discussed against the background of persistently high rates of recidivism within most modern societies. From this discussion it will become

evident that over-reliance upon the effects of deterrence has significant and potentially unwelcome consequences for the determination of criminal justice policies, sentencing procedures, and consequently, the size of prison populations that are so expensive to sustain.

The concepts of reform and rehabilitation of offenders through punishment are discussed in *Chapter 5*, with particular reference to the effects of the decline of belief in the 'rehabilitative model' of punishment that exerted so much influence during the 1960s and early 1970s throughout the developed world. This particular development, based on a 'nothing works' assessment of the effects of rehabilitative and therapeutic programmes in securing crime reduction, will be seen to have cast a long shadow over the subsequent strategies adopted by penal policymakers in the wake of its demise. It will also be seen to have a very considerable effect upon the willingness of many 'western' nations to examine alternative strategies for crime reduction, and in particular those strategies designed to make lesser use of imprisonment and sentencing indeterminacy.

In *Chapter 6*, the concept of 'restorative justice' is explained and discussed with a view to discerning whether or not it provides a means of reducing reliance upon traditional methods of, and justifications for punishment in a contemporary context. The reasons for the increasing interest in restorative justice among academics and practitioners within criminal justice are explained with particular reference to changing ideas about the entire nature of the exercise of state power and the relationships between individuals and groups and the state within modern societies. Restorative justice to a considerable extent challenges many of the traditional assumptions about the role of the state within the delivery of justice, and particularly the appropriateness of retributive and deterrence-based concepts of criminal justice. On a similar basis it seeks also to place an entirely different emphasis on the processes of punishment, affording victims of crime what it perceives as a rightful and long-neglected place within the considerations that relate to conflict resolution, reconciliation, reparation and rehabilitation. Restorative justice further proposes significant changes to the way in which sentences of imprisonment might be implemented, though this development becomes more a matter of attention in later chapters.

In view of the sometimes contradictory manner in which prevailing concepts of criminal punishment have heavily influenced the formulation of penal policies almost universally in the past, the discussion in *Chapter 7* seeks to determine whether there has ever been, (or might even in the future be), an inclusive theory of criminal punishment. Such a theory, if it could be identified, might prove particularly useful in enabling the competing demands and justifications of punishment to be balanced more effectively, and lead eventually to a more consistent agenda for penal policy-making. In particular, this would involve a measure of reconciliation of the apparently conflicting retrospective and prospective aims of punishment in a manner that would make the entire process more understandable and effective to all those involved within it, and also deliver a better quality of justice.

In this sense, *Chapters 6* and *7* have to be viewed as being to a considerable extent complementary. For while in *Chapter 6* an attempt is made to determine whether the concept of restorative justice provides a synthesis of punishment theories, the emphasis in *Chapter 7* is somewhat different from a philosophical point of view. While it might be possible to arrive at a theory of punishment that broadly accommodated the traditionally accepted purposes of punishment, such a situation might leave matters very broadly where they rest at present, poised somewhat precariously between retrospective and prospective concepts of what punishment is expected to achieve. The purposes of crime reduction would be

unlikely to be achieved in such circumstances for all the reasons previously discussed.

On the other hand, an inclusive theory of punishment might accommodate principal and subsidiary purposes, ordered and prioritised to provide an identifiable and prospective rationale for the use of sanctions predominantly in pursuit of crime reduction rather than essentially for the requital of law. While restorative justice might be considered to have some potential to reconcile the conflicting purposes of punishment, it would seem to have much greater potential to provide an inclusive modality for both the imposition of sanctions and the reduction of crime.

The following four chapters propose and elaborate upon the contention that restorative justice has the potential to define and give operational effect to a concept of justice which, while satisfying the need for offences to be confronted with sanctions, effectively *does justice*. *Chapter 8* provides an overview of this innovative agenda for change, and introduces the authors of the three international perspectives that follow in *Chapters 9, 10 and 11* respectively. Widely drawn perspectives provide evidence that the need for change is perceived as an important priority on a world-wide basis, and that the concept of restorative justice as a catalyst for change has gained a foothold and an impetus that is altogether undeniable.

There is no doubt that restorative justice challenges existing notions of justice administration to a very considerable extent. Principally it does so by re-phrasing the questions about crime and its outcomes in a manner hitherto considered unthinkable, largely because we have become conditioned to consider such issues entirely in terms of offences, state law, and the necessity for punishment. Restorative justice invites a different perspective: who has been harmed, who should accept responsibility, and how can the harm best be put right? No longer need we be constrained to focus on the questions hitherto of dominant interest: what law has been broken, who did it, and what does he or she deserve?

Chapter 9 provides a perspective from New Zealand written by Judge F.W.M. (Fred) McElrea whose experience extends to 12 years as a Youth Court judge, and a further 16 years as a District Court judge. He has also written and lectured internationally on the advantages to be gained from adopting restorative justice principles within mainstream criminal justice policies and practice. Judge McElrea, far from being a sentimental penal 'dove', has an essentially pragmatic view of restorative justice as being very far from a 'soft option' for offenders, and an infinitely better way of dealing with the legitimate (though hitherto largely unacknowledged) rights and expectations of victims of crime. His contribution will be found to be exceptional for its evident humanity, its concern for the outcomes of justice for victims, offenders and society alike, and a rare humility that perceives the role of a judge as that of a facilitator rather than, necessarily, as a dispenser of justice.

McElrea's account is also an important one because it will be seen to have echoes in many respects within those that follow. It is particularly helpful in drawing attention to the values historically inherent in ancient Aboriginal cultures in relation to conflict resolution and reconciliation. This reinforces the view expressed earlier that restorative justice is neither a new construct nor one predominantly of western origin. His assertion that punishment should not be the overriding consideration in dealing with crime is a challenging one, and the reasoning he advances to support it is both refreshing and impeccable.

In *Chapter 10* we are provided with a perspective from the Netherlands, a country traditionally associated with the comparative leniency of its criminal

justice policies, and a sparing approach to the use of imprisonment in response to offending. However, as Dr John Blad of the Law School at Erasmus University, Rotterdam, clarifies, appearances can be extremely deceptive. His analysis illuminates the manner in which Dutch penal policy was subjected to a significant shift of emphasis in the mid-1980s, away from its previously tolerant approach to most forms of offending and sparing use of imprisonment, and towards a far more punitive agenda. This agenda was backed by a major expansion of the Dutch penal estate, and a consequent escalation in the prison population that has been maintained to the present time.

Blad maintains that continued use of punishment primarily for the purposes of retribution and deterrence serves no useful social purpose, and that we might conceive of an infinitely more helpful concept of justice oriented towards sanctions and reparation in its place. Such, he suggests, would enable the use of 'negative' sanctions to be largely discontinued, and make offenders positively accountable for their offences and for 'putting things right' in relation to the victims of crime. Like McElrea, however, Blad perceives no necessity for the concept of restorative justice not to imply punishment: rather he proposes that punishment should not be the *primary* objective in dealing with crime.

His account is a penetrating one in a number of other respects. In making offenders accountable he suggests that it becomes more likely that they will take normative expectations seriously, and thus the likelihood of re-offending will diminish. Like McElrea also, he is sceptical of the role of deterrence, and for the same reasons. Ultimately, he suggests, the fact that we threaten with punishment makes it inevitable that we must actually punish for the sake of maintaining the credibility and integrity of the law. This, Blad maintains, is the essence of the seductiveness of punishment. Restorative justice, Blad believes, holds out the promise that its altogether different approach amounts to a more credible, compassionate and constructive way of doing justice in a contemporary sense. His perspective explains most eloquently how this might be achieved.

The third of the international perspectives on restorative justice comes from Canada, and its author is a practitioner within criminal justice administration and research with experience spanning more than three decades. Dr Robert B. Cormier is a Senior Director of Research and Community Development, based in Ottawa, Ontario, and his account of developments in Canada is both positively encouraging and entirely pragmatic. While it contains many aspects of congruence with the perspectives of McElrea and Blad, Cormier's contribution clearly demonstrates the extent to which restorative justice principles have been adopted and given operational effect within Canadian criminal justice policies and legislation.

Cormier provides a brief review of the general organization and operation of criminal justice in Canada as a backdrop to his main discussion of the manner in which restorative justice has entered mainstream justice considerations. Interestingly, he describes how, in complete contrast to the approach adopted in the Netherlands, Canada deliberately set out to reduce the use of imprisonment in the early 1990s because its social and fiscal costs were deemed to be unsustainable. He also notes that in the wake of the 'nothing works' situation that prevailed in the mid-1970s and onwards, the response in Canada was to *increase* efforts within research, programme development and evaluation, with subsequently beneficial results.

The Canadian perspective bears remarkable similarities to that from New Zealand in relation to the extent to which the particular needs and culture of Aboriginal peoples have been afforded evident recognition within considerations of criminal justice. This has, to some extent, opened the door to

wider application of restorative principles within the mainstream debate and the determination of criminal justice policies and legislation.

Cormier's perspective is also valuable for its account of how Canada responded in a positive and practical sense to the United Nations initiative to develop Basic Principles to safeguard the rights and interests of victims in the implementation of restorative justice programmes. He also indicates how these principles and values became a central feature within the development of Canadian criminal justice from the late 1990s onwards. Cormier was a member of the Canadian delegation to the United Nations Congresses on the Prevention of Crime and Treatment of Offenders on three occasions between 1990 and 2000, and his pragmatic account provides an excellent balance to those quite differently and perceptively advanced by McElrea and Blad.

Viewed together, these three perspectives, although quite different in their approaches, combine to convey the same essential message. This message is that restorative justice deserves, and is achieving, a rightful place within the mainstream of criminological discourse. More than this perhaps, it offers the opportunity to abandon entirely punitive methods of dealing with those who break the law, to make offenders more accountable, and to give appropriate recognition to the legitimate needs of the victims of crime.

In the final chapter (*Chapter 12*), the main strands of the discussion within the foregoing chapters are drawn together in an attempt to provide a conclusion to what has been a complex and often critical debate. The central question raised within this book is whether criminology and criminal punishment presently deliver true justice within modern societies. The inevitable conclusion is that as matters stand they do not, and that the reasons for this are not difficult to perceive. If however, we could be resolute and caring enough in our purpose to do better justice, then the restorative principles described herein provide an admirable and appropriate model for re-shaping contemporary criminal justice.