

Introduction

In the closing chapter of a recent work, *Criminal Punishment and Restorative Justice*,¹ I advanced the view that criminal justice within Britain and a number of other developed democracies worldwide, presently stood at a crossroads. This crossroads was formed by the intersection of two highways: the one carrying the traffic of 'traditional' justice; and the other, the lesser but increasing volume of restorative justice traffic. It was further suggested that eventually and inevitably, choices would have to be made about which of these highways offered the preferable route for the delivery of 'better justice' to all the stakeholders involved in the processes of contemporary criminal justice administration.

THE NEED FOR THIS BOOK

Completion of the book mentioned above had resulted in widespread discussions with colleagues drawn from the very different backgrounds of academic research, penal policy development, criminal law and day-to-day employment within criminal justice systems across the world. In these days of electronic communication, exchanges of views and research material quickly result in the accumulation of papers, articles and correspondence that can become quite overwhelming in its diversity and points of origin—some of it emerging from sources both unexpected and infinitely informative.

These exchanges indicated one pervading thread that effectively made the present crises of policy stagnation experienced within so many jurisdictions assume a common and discernible form: this lies in the evident fact that criminal justice policy, presently and almost everywhere, is influenced and informed much more by prevailing political ideologies and electoral considerations than by criminological principle and rigorous research. The more cynically disposed person would maintain that there is nothing particularly new about this situation, that criminal justice is part of the spectrum of activities that routinely attract political attention within every democracy and that there is a certain inevitability about the reality of this state of affairs. Indeed, enlightened pragmatism would insist that it is naïve to believe otherwise.

Another and perhaps more disturbing strand accompanied the one previously described. It revealed the extent to which a number of criminal justice practitioners found themselves unable, for entirely professional reasons, to express openly views that might be considered critical of the organizations that employed them, because to do so would be considered unacceptably disloyal or disingenuous. Put together, these two situations might, when combined with others relating to a perceived requirement for 'apolitical neutrality', go a long

¹ DJ Cornwell (2006), *Criminal Punishment and Restorative Justice: Past, Present and Future Perspectives*, Winchester, UK: Waterside Press, p.176.

way towards explaining why a preference for the *status quo* rather than for progressive reform is so deeply embedded in so many criminal justice systems today.

In his own account of this situation, David Garland ascribes it to a significant shifting effect within criminal justice that has taken place over the past four decades almost universally. The demise of rehabilitation, the rise of and subsequent retreat from the 'justice model' and the move towards 'populist punitivism' have all led more to confusion than to clarification of the role of criminal justice within many societies. This has left the landscape featureless, devoid of the former reference points that guided the processes of justice and, in Garland's own words:

No one is quite sure what is radical and what is reactionary. Private prisons, victim impact statements, electronic monitoring, punishment in the community, 'quality of life' policing, restorative justice—these and dozens of other developments lead us into unfamiliar territory where the ideological lines are far from clear and where the old assumptions are an unreliable guide ...

For at least two decades now, criminal law and penal policy have been working without clear route maps on a terrain that is largely unknown. If this field is to have any self-consciousness and any possibility of self-criticism and self-correction, then our textbooks have to be rewritten and our sense of how things work needs to be thoroughly revised. (Garland, 2002: 4-5)

There is truth in all of this, much of which emerges in the chapters of this book, but that, to some extent, is history that cannot be rewritten. It may be the legacy of the past, but it is not the foundation for the future.

Restorative justice certainly leads us into waters that, though not entirely uncharted, are at the least tidally uncertain. Its politics and principles are those of inclusiveness, responsibility, reparation and restoration in relation to criminal offending, the administration of justice and penology.² The difficulty with promotion of restorative justice is that it sits uncomfortably alongside the prevailing images of 'contemporary' justice that are predicated on retribution, deterrence, incapacitation, exemplary punishment, social exclusion and social control. In an era in which every social risk has to be 'managed' and if possible reduced or neutralised, restorative justice conveys the message that many of today's politicians and policy-makers least want to hear. That is what the title of this book, *Doing Justice Better*, is all about.

² Here it is important to define the nature of the approach adopted towards the term 'politics' in this work. The sense implied is that which deals with what dictionaries define as 'the complex or aggregate of relationships of men in society, especially those relationships involving authority or power'. This includes the policy-formulating aspects of government, as distinguished from the making of laws in a particular sense.

'RESTORATIVE JUSTICE' AND 'COMMUNITY JUSTICE': A RECIPE FOR CONFUSION?

This book is essentially concerned with the implementation of restorative justice principles within the processes of criminal justice and the implications of such a development for the delivery of 'better justice'. It is not specifically about the endorsement of what has, since the early years of this decade, emerged as the concept of 'community justice', however desirable that initiative may appear to be, or whatever the political motivations for its promotion on an increasingly worldwide basis.³ The reasons for this distinction are important and require clarification at the outset of this entire discussion.

Adoption of restorative justice principles within criminal justice processes requires that structural change be made throughout the spectrum of policies and practices that include punishment philosophy, court procedures, sentencing practices, the use of imprisonment, non-custodial corrections, the status of victims of crime and the involvement of communities in the delivery of justice. As will become evident in later chapters, restorative justice asks different questions of and proposes alternative answers to the way in which contemporary justice systems are administered on behalf of societies. It seeks to liberate justice from what McElrea (2002a and b) has so aptly described as the 'shackles of the past', by making it more humane, appropriate and considerably more likely to reduce re-offending.

'Community justice' has an altogether different agenda. For while, as McCold (2004) points out, it has superficial similarities with restorative justice, it seeks to work within the structures and assumptions that underpin existing criminal justice systems and which protect these processes from precisely those forms of change that restorative justice proposes. At the same time, 'community justice' implies a proliferation in the spectrum of justice-related agencies within modern democracies through its apparently widely 'inclusive' involvement of politicians, legal professionals, criminal justice policy formulators, police and local government authorities, courts, and charitable and voluntary bodies associated with crime and community protection.⁴

These diverse 'community justice' programmes have adopted a linguistic and practical formula within their broadly stated remits that refers variously to restorative justice, reparative justice, restitutive justice, mediation projects, victim-offender mediation, conferencing, community protection, and services for

³ Community justice initiatives have already been developed in the USA, Canada, Australia, South Africa and, latterly, the UK, albeit on different models and with variations in the public and private sector agencies involved (See, for example, Karp and Todd, 2002; Schärf, 2000; Rodgers, 2005; Scottish Parliament, 2006.)

⁴ In England and Wales, the latter include notably the National Association for the Care and Resettlement of Offenders (NACRO), the Prison Reform Trust, the Howard League and Crime Concern, amongst others.

victims, survivors and witnesses, in almost equal measure (*New Statesman*, December 2003). Here, it is of interest to note that at an early British conference held in London in November 2003, the (then) UK Minister for Crime Reduction, Policing and Community Safety (Hazel Blears) advanced the view that 'the future of justice does not exist in isolation, but as part of a wider push to transform public services' (*New Statesman*, December 2003: 2). Such a portmanteau approach is far removed from the prescriptions for restorative justice that lie at the core of this work.

Paul McCold is, I believe, entirely right in suggesting that the greatest threat to adoption of restorative justice principles lies in its becoming submerged in the 'community justice' initiative. This agenda places a focus on the restorative ethos without any essential commitment to the reforms within criminal justice that would be necessary to make reparative and restorative justice operational. 'Community justice' is not specifically about changing court practices to empower victims of crime, not primarily about sentencing reform or making lesser use of custody, not particularly about expanding community corrections and, in fact, not fundamentally about any of the central issues that will concern us in subsequent chapters of this book. However, by apparently adopting some of the language of restorative justice, it may be the case that support for, or endorsement of 'community justice' becomes a preferable political tactic, deliberately designed to confine truly restorative justice to the margins of criminal justice, rather than to confront its central prescriptions.

The explanation offered by McCold has, however, generated its own debate⁵ and while broadly supported by Strang (2004), it has been criticised by Karp (2004), Umbreit *et al.* (2004) and by Mara and Bazemore (2004), though for somewhat different underlying reasons. The latter authors, in particular, regard McCold's explanation as being to an extent incomplete and, in some respects also, of itself confusing. Karp, in particular, views restorative and community justice as being to an extent complementary, with more similarities than essential differences. The central issue for Karp is, importantly, the significant divide between either model and the traditional retributive court and its practices. The same view has been endorsed by Blad (2006a and b) and we return to its implications on a number of occasions within the course of this debate.

These differences in approach notwithstanding, the central issue for restorative justice is that it robustly challenges the *status quo* within contemporary criminal justice in a way that 'community justice' does not, being as the latter evidently is, accommodating of the present situation, though perhaps seeking a wider context for crime control and reduction. As Strang points out, it would be unfortunate if the development of restorative justice were to be circumscribed by the limits of 'community justice' and for this reason alone it seems desirable to maintain a clear distinction between the two prescriptions

⁵ See *Contemporary Justice Review*, Vol.7, No.1 (March 2004) in which responses to McCold were submitted by Strang, Umbreit, Coates and Vos, by Mara and Bazemore and by Karp.

within this work. There are, however, some disturbing signs that within recent approaches to changed practices within the custodial sector of corrections, the emphasis more closely resembles that of a 'community' rather than a restorative justice model. It is largely for this reason that the discussion in later chapters focuses on making prisons reparative and restorative, and on designing for these particular outcomes rather than adopting a wider 'rehabilitative' approach.

THE NECESSITY FOR CHANGE

This book would be unnecessary were it not for the recurring and, in some instances, deepening penal crises that have afflicted so many of the developed democracies over the course of the past two decades. The reasons for these crises are complex, deep-seated and in many respects historical in origin, but it may be contended that they display common features even though they have arisen at different times and in different places. The first of these features is the widespread growth in serious crime; the second is increased severity in sentencing; and the third is the over-use of custodial punishment. Some observers would insist that these features are logically consequent one upon another, though such a contention is not supported in this analysis. If it were demonstrably true that increased use or duration of custodial sentences led to a reduction in serious crime, then the argument would have some force. Since, however, recidivism statistics and evidence-based research provide indications to the contrary, the conclusion is, at the least, equivocal.

Crime apparently reduces for a variety of reasons. One is that it becomes more risk-laden to would-be offenders because the likelihood of detection becomes unacceptable.⁶ Another is that offences become re-specified, downgraded or made non-criminal.⁷ A third is that detection and prosecution rates decrease because police effort is diverted towards other more prevalent or serious crime, or rates of reporting of certain offences by the public decrease because no substantive outcome is likely. Whatever the reasons, however, comparative crime surveys covering the continent of Europe and North America reveal fluctuating patterns of activity that defy generalised analysis and data definitions that are not strictly comparable. Tonry (2003: 3) indicates that crime rates across Europe have fallen since the mid-1990s, though there is some evidence to show that this amounts to a broad generalisation and that in fact the

⁶ There is some evidence to show that in Europe and North America the rate of domestic burglary has reduced significantly as a result of the development and widespread installation of domestic surveillance and alarm systems linked to response organizations.

⁷ As in the UK where cannabis has been downgraded from a Class B to a Class C drug, the possession of which, although still illegal, is now widely considered by police not to warrant prosecution where individuals are found in possession of small amounts for personal use. See: A. Woodcock (2006), 'Cannabis Law Back in the Spotlight', *Independent*, January 5. The Netherlands decriminalised possession of cannabis in 1975, Germany in 1994 and Belgium in 2003 for those aged 18 or over.

more detailed picture is a variable one, with increases in some areas and decreases in others.⁸

Within England and Wales it is certainly the case that overall crime rates have been falling over recent years, though since 2003 rates of non-injurious violence and robbery have shown significant increases.⁹ The *British Crime Survey 2006* indicates a 42 per cent decrease in all offences since 1995, with steadily decreasing trends for crimes of violence, domestic burglary and the volume of overall offences recorded by the police.¹⁰ It therefore seems surprising that over much the same period, the prison population has risen dramatically by a factor of over 50 per cent.¹¹ In 2004-5, the last full year for which statistics are currently available, of an average daily prison population of more than 75,000, 58 per cent were serving sentences of six months or less. As we shall see later, such sentences are altogether unlikely to reduce the high incidence of re-offending and reconviction.¹²

Correctional services in England and Wales¹³ consumed a total resource budget of £3.5 billion in 2003-4, an increase of more than 50 per cent since 1998-9. Home Office estimates indicate that this figure will rise by a further 15 per cent in the financial year 2005-6. Of the increase since 1998-9, £340 million has been invested in prisons and £488 million in additional funding has been absorbed by the (now) National Probation Service. Moreover, capital investment in prisons has risen by only £6 million over the same period, despite the rapid growth in the prison population. In October 2006, 88 of the 142 prisons were overcrowded

⁸ These comments refer to offences recorded by the police. The *International Comparison of Criminal Justice Statistics* (Barclay and Tavares *et al.*, 2003), indicates rising rates in France, Greece and Portugal (all 11 per cent), Holland and Spain (both 10 per cent) and the entire European Union (4 per cent) and falling rates in Italy and Denmark (both 11 per cent), Finland (3 per cent), England and Wales (2 per cent) and Sweden (1 per cent). Source: www.homeoffice.gov.uk/rds/pdfs2/hosb63.asp

⁹ Home Office (2005a), *Crime Statistics – England and Wales*, www.crimestatistics.org.uk/output/page63.asp

¹⁰ The same trends are indicated in the British government's own most recent analysis: *Crime in England and Wales 2005/6* (A. Walker, C. Kershaw and S. Nicholas (eds)), London: Home Office Research, Development and Statistics Directorate (Home Office, 2006a).

¹¹ In fact, since 1993 in England and Wales, the average daily prison population has risen by 70 per cent from 44,500 to 79,500 in October 2006. Home Office median level projections indicate a further rise to some 98,190 by 2010. The average daily prison population in 1997 was 60,000 – 19,640 fewer than the present level of occupancy. Sources: Reform International – www.reform.co.uk/website/crime/factfile.aspx. and Home Office (2006b), *Prison Population Projections 2006-2013, England and Wales* (Statistical Bulletin 11/06), London: Home Office Research, Development and Statistics Directorate (N. deSilva, P. Cowell, T. Chow and P. Worthington (eds)), (July).

¹² In 2003-4, the latest year for which recidivism statistics are available, 61 per cent of all offenders were reconvicted within two years. For the 18-21 year age group the rate was 73 per cent and for male adolescents (aged 15-18) the rate was 82 per cent (Home Office) (2005a *supra*, p.2).

¹³ These include the Prison and Probation Services and the Youth Justice Board (YJB). The former two organizations form the National Offender Management Service (NOMS).

and overall occupancy levels were six per cent in excess of the authorised operational capacity of the total prison estate.¹⁴

These broadly stated statistics give rise to a number of serious questions. Why, when crime recorded by the police has shown a consistent trend of decreasing, have increasing numbers of offenders been sentenced to custody? Why are reconviction rates so high within two years of a sanction having been imposed? Can it be claimed that short custodial sentences are effective and if not, why are so many offenders thus sentenced? What does this all cost the government and the tax-paying public? Is a 60 per cent failure rate in any sense 'value for money'? Are there ways of 'doing justice better'? The even larger question that over-arches all these considerations is that of what ideological imperatives drive the penal policies that produce these results. In short, what are the politics of this penology? These questions and a number of others that derive from them will all be addressed in the chapters that follow.

The statistics do certainly indicate that there is a considerable discrepancy between aspirations and outcomes within the British penal system at the present time. Moreover, the British situation is mirrored in a number of other Western-style democracies throughout the world today. High rates of incarceration and of recidivism together suggest strongly that there is something fundamentally wrong with existing penal policies and practices. Penal policies do not, however, function in a vacuum, or at the very least should not do so. These are a part, albeit a significant part, of the broader spectrum of national social policy that encompasses the welfare and quality of life of all citizens within a state. Prisons are, or should be, part of the communities within which they operate, not fortresses remote from the social environment that surrounds them.

Community corrections should also form part of the social fabric that binds the day-to-day functioning of living communities together, rather than being seen as something that is carried on in an isolated manner that enables offenders to be ostracised and stigmatised. In ideal circumstances, community-based sanctions can provide added value to the amenity of community life by undertaking purposeful work and activities that would, otherwise, remain undone or neglected. Within most countries there is a vast scope for such undertakings that can serve to enhance the quality of life of citizens, providing that the projects selected are properly planned, resourced and supervised.

'Doing justice better' means changing attitudes towards offending and offenders, perceiving offending differently, and attempting to understand its causes and effects within the *total* social structure rather than in a narrower legalistic frame of reference. It also means changing political attitudes and the extent to which these are shaped by short-term electoral ambitions driven significantly by pressures exerted by the mass media. In countries like Britain,

¹⁴ The latter statistics were compiled by the Prison Reform Trust on 23 September 2006 and quoted in *The Observer* newspaper in an article by Jamie Doward (Home Affairs Editor) entitled 'Police Cells Ready as Prison Population Hits Limit of 80,000', London: *The Observer* (2006a), 24 September p. 9.

the need for penological change has become one of the most urgent social priorities that confront governments—regardless of their political preferences and persuasions.

THE POLITICS OF JUSTICE: A BRITISH PERSPECTIVE

Recent experience, particularly in Britain, has confirmed that ideological differences between political parties narrow considerably in relation to crime control and reduction¹⁵ (Garland, 2002: 131-6; Tonry, 2003: 16). Perhaps, stated somewhat differently, the same besetting problems caused by crime and offenders have to be faced by whichever government holds power and the means at their disposal to attempt this (the police, courts and correctional services) tend, ostensibly, to be 'given' factors—at least initially. Thus, within this work, we are concerned with a form of politics that operates less from a distinctive ideological base and rather more from reactive strategies eclectically selected to address presenting situations.

During the mid-1990s there occurred a transition within British penal politics that was to have a profound effect in shaping the nature and extent of the contemporary penal crisis. The sudden switch of emphasis in 1993 from what might be described as 'Nothing Works'¹⁶ to 'Prison Works',¹⁷ and the proposal of mandatory minimum sentences for specific forms of offending by Michael Howard (then Home Secretary) were as perplexing as they were dramatic in their effects upon the custodial penal system. Almost immediately, the prison population began its inexorable rise from an average daily level of 44,500 to the present figure of over 79,500. It was perplexing because only a short time earlier, the same government, in its White Paper *Crime, Justice and Protecting the Public* (Home Office, 1990), had declared that 'prison is an expensive way of making bad people worse'. Garland describes this type of political behaviour as 'acting out', or 'engaging in a form of impulsive and unreflective action, avoiding

¹⁵ This situation has been particularly noticeable in the 1997 transition from a Conservative government to a New Labour one and the striking continuity of policy determination between the respective Home Secretaries Michael Howard and Jack Straw. It is particularly notable insofar as Michael Howard had, shortly before the general election, brought forward extensively punitive proposals for Mandatory Minimum Sentences for the crimes of violence, drug-trafficking and burglary. Though it was widely considered that a traditionally less punitive Labour government would not bring these measures into legislation, the new Home Secretary Jack Straw did so within The Crime (Sentences) Act 1997.

¹⁶ The term somewhat inaccurately attributed to Robert Martinson in his (1974) assessment of programmes for the treatment of offenders within a research study conducted in collaboration with Lipton and Wilks, published in Lipton *et al.* (1975).

¹⁷ The now (in)famous declaration by Home Secretary Michael Howard to the Conservative Party Congress in October 1993: "Let us be clear. Prison works. It ensures that we are protected from muggers and rapists—and it makes many who are tempted to commit crime think twice." See here, for example, the commentary of Cavadino and Dignan (1997a: 38).

realistic recognition of underlying problems, the very fact of acting providing its own form of relief and gratification' (Garland, 2002: 132-3).

Cathartic though such 'acting out' episodes may be for politicians, and there are plenty of other examples of similar behaviour in the past and since,¹⁸ the effects that they have within the penal system are considerable. Worse, the messages that they convey are ones of confusion, lack of wide consultation and precipitance. Neither are such situations greatly helped by the increasing tendency of governments and their policy-drafting civil servants to disregard the expertise of correctional professionals and research-based academic evidence in favour of internally generated prescriptions consistent with prevailing political ideologies. As Garland suggests:

The standing of social professionals within the criminal justice system has been challenged from the late 1970s onwards and this was exacerbated in the 1980s by organizational reforms that shifted decision-making power away from clinicians and practitioners towards accountants and managers. This reduction in the credibility and political influence of criminal justice experts and social professionals has had major consequences for criminal justice policy. Up until recently, these professionals functioned as a kind of buffer, shielding the processes of policy-making and day-to-day administration from the full impact of public opinion. The declining influence of these groups, together with the politicisation of crime policy, has altered the dynamics of policymaking in this area, making it much more open to populist pressure from the outside. (Garland, 2002: 151)

The development described here has also removed from the formulation of penal policies a moderating influence that was capable of offering wisdom and practical experience of 'what works' and what does not. Not all reliable evidence derives from research alone: the observations and experience of professionals working within criminal justice systems are often of equal validity and are frequently more pragmatic.

The emergence of restorative justice during the 1990s and into this present decade on an increasingly worldwide basis has added a new dimension to the debate concerning crime and punishment. It has done so because it vigorously challenges some of the hitherto relatively unchallenged assumptions that underpin contemporary justice administration, definitions of crime, court processes, the use of sanctions, the virtual exclusion of victims and the relationship between offenders, victims, communities and society as a whole.

The title of this book was deliberately selected to indicate that the agenda advanced by restorative justice conveys a wider meaning to the term 'politics'. In the brief overview provided up to this point, we have been confronted with a

¹⁸ Most notably, perhaps, William Whitelaw in relation to detention centres in the early 1980s, Leon Brittan in suddenly changing parole criteria in November 1983 and more recently by David Blunkett in apparently supporting measures to reduce the prison population in a speech to the Prison Service Conference in 2002 and subsequently calling for longer sentences for violent and sexual offenders in the Criminal Justice Bill published in the same year.

narrow and somewhat dogmatic concept of doing justice, much of which has been more responsive to pressures external to penal systems themselves. Crime does not only violate state laws, and to perpetuate such a constricted definition of crime enhances the likelihood of unreasoned responses towards those who commit offences. Crime violates *people* whom we commonly describe as victims. It also violates families and the communities within which victims live and to which, in the main, offenders have to return having been sanctioned. Crime also creates obligations, particularly on offenders, but these obligations extend much wider than might, at first sight, be supposed.

It was mentioned earlier (at *fn. 2 supra*) that the definition of ‘politics’ advanced here is one that embraces ‘the complex or aggregate of relationships of men in society, especially those relationships involving authority or power.’ Commission of crime challenges the authority of the state and places the offender in the power of the state to a considerable extent. The state has a reciprocal responsibility to ensure that offenders are dealt with responsibly, temperately, impartially and without resort to vindictiveness. But the complex or aggregate of relationships necessarily includes victims, communities and the wider society in which reciprocal responsibilities also exist in relation to offenders. This theme is developed further in the chapters that follow and represents the central theme of this work.

‘INSTRUMENTALISM’ IN CRIMINAL JUSTICE

One of the main difficulties that has arisen within criminal justice during the past decade is that in the wake of the vacuum left by the demise of the ‘justice model’, the purposes of criminal punishment have become heavily invested with a political rhetoric that has deliberately set out to ‘emotionalise’ its crusading ‘war on crime’. The linguistics of punishment are replete with slogans intended to idealise the way in which this ‘war’ is being waged in a pro-active manner in many democracies—not least in Britain and America. ‘Tough on crime and the causes of crime’; ‘Three strikes and you’re out’; ‘Prison works’; ‘Truth in sentencing’; ‘If you don’t want the time, don’t do the crime’; ‘No frills prisons’; ‘Decent but austere prison conditions’: all represent what Garland has described as the ‘sound-bite’ nature of penal politics designed to convey a punitive message to both offenders and the public (Garland, 2002: 143).

I agree strongly with Blad’s assertion that we now live in an era in which ‘penal instrumentalism’ reigns (Blad, 2003 and 2006a: 137).¹⁹ This strongly implies that criminal punishment becomes used deliberately as an instrument of social policy and that proper limitations on its use are of secondary importance

¹⁹ Penal instrumentalism, viewed strictly, means the use of criminal punishment for the pursuit of objectives within social policy other than the punishment of offenders. It has, as will be seen later, significant implications for sentencing practice and, in particular, the justification of specific measures for those considered to be criminally dangerous.

to the necessity to be perceived to be 'winning the war' on crime. As we shall see later (*Chapter 6*), this has significant implications for the necessary linkage between community-based corrections and the custodial sector. Hutton (2003: 118) suggests that this trend has much to do with a political consciousness heavily influenced by perceptions of a 'populist punitiveness'²⁰ that may be more imagined than real. We shall return to this discussion in *Chapter 3*.

The importance of 'instrumentalism' for this analysis lies in the difficulties it presents for the development of restorative justice practices that seek a strict limitation on the use of custodial penalties where these can reasonably be avoided. The 'tough on crime' rhetoric enables those antipathetic towards restorative justice to label it as a 'soft on crime' option, as we shall subsequently see in *Chapters 5* and *6*. A further and important consideration that arises from Blad's analysis is the inevitability of punishment that flows from penal policies based predominantly on retribution and deterrence. 'Tough on crime' policies, framed in response to mass media pressures for selective punitive responses to certain forms of crime,²¹ can be pursued for the purposes of short-term electoral advantage. The outcome of adopting measures such as mandatory minimum and extended sentences is that excessive use of imprisonment becomes an almost inevitable outcome. Moreover, punishment for its own sake becomes unavoidable, since to refrain from imposing such penalties undermines the credibility of the penal policies upon which these are predicated.

However it is viewed, penal instrumentalism has serious implications for restorative justice and *vice versa*. Parsimony in sentencing has long been held to be a virtue, but its insistence upon punishing to the least extent consistent with justice has been widely overlooked in the contemporary 'war on crime'. Indeed, as matters stand, there is a voluble faction within every national population that believes that sentences and judges are altogether too lenient (Tonry, 2003: 5). It is within this particular area of discussions about what is assumed to be 'the essential rightness' of criminal punishment that we run into the difficulties associated with the notion of desert.

Desert, of course, means different things to different people. The 'justice model' was predicated on the principle of 'commensurate desert' (von Hirsch, 1976: 66; Hudson, 1987: 37-40), widely interpreted as the proportionality of punishment to the harm caused by crime. This concept acknowledged that

²⁰ A term first used by Sir Anthony Bottoms in 1993, but which has since been taken up by a number of influential criminologists such as Tonry (2003) and Garland (2002). See Sir A. E. Bottoms (1995), 'The Philosophy and Politics of Punishment and Sentencing', in C. Clarkson and R. Morgan (eds), *The Politics of Sentencing Reform*, Oxford: Oxford University Press. As Tonry (2003: 4-5) points out, explanations of the supposed phenomenon of 'populist punitiveness' vary in approach. Most, however, suggest that media sensationalism of serious crime inflates the public perception of the prevalence of such offences and politicians are generally reluctant to correct these misconceptions since it suits their electoral ambitions to allow them to persist in order to justify 'tough on crime' policies.

²¹ Particularly against sexual and violent offenders, as will become evident in *Chapters 6* and *7*.

punishment should not be excessive, but also insisted that it should not be too lenient either. The difficulty caused by the legacy of the model is that it meant all things to all people and interpretations of desert can become value-laden in relation to the seriousness of offences (harm) and the culpability of offenders (blame). For those anxious to pursue increasingly punitive agendas, the justice model presented a perfect justification: ratchet up both the harm and the blame and the extent of punishment must increase accordingly.

Advocates of restorative justice argue the case altogether differently. Acceptance that punishment should be imposed because it is *deserved* does not allow of penalties that are in any way excessive, arbitrary, or imposed for reasons other than to mark the extent of the harm occasioned to victims of crime. Thus, where offenders accept responsibility for the harm done and are prepared to make reparation to victims, a strong case emerges for parsimony—or the infliction of the minimum (or lesser) amount of punishment consistent with achieving a just outcome. It will be evident here that instrumentalism is significantly at odds both with securing just outcomes and limiting punishment when it becomes appropriate to do so.

THE STRUCTURE OF THIS BOOK

The main chapters of this book are each devoted to particular issues that arise directly from the foregoing discussion. The central thesis pursued within each successive chapter is that restorative justice provides a long overdue means of ‘doing justice better’ than is possible in existing circumstances. The reasons why significant change has become so urgently necessary have been outlined earlier, but change will not occur until those responsible for penal policy development can be persuaded that there are preferable, fairer, more humane and less expensive ways of doing justice than are used at present. That these ways may also ultimately lead to crime reduction and lesser use of custodial corrections becomes a major incentive towards change.

In *Chapter 1, The Politics of Restorative Justice*, an assessment is made of the extent to which restorative justice challenges what might be regarded as traditionally accepted approaches to the administration of criminal justice. Implicit within this assessment is the assumption that matters presently stand as they do because national populations and politicians wish it to be so and that the apparatus of criminal justice in most democracies represents policies of deliberate choice.²² If this is the case, then it is necessary to question why, when these policies are defined and put into effect, the outcomes are so consistently

²² This conclusion is advanced by both Tonry (2003: 6) and, somewhat differently by Garland (2002: 142-3). The important issue that this raises is why such political choices are made when evidence is available to show that pursuit of such policies neither significantly reduces recidivism nor changes the behaviour of offenders. The inevitable result is seen in increasing use of custody and an escalation in prison populations.

unsatisfactory and ineffective in terms of reducing recidivism and curbing the social and fiscal costs of criminal justice.

Within the same chapter the motivating factors apparently responsible for the maintenance of the *status quo* are examined in the context of their effects upon the broader spectrum of social policy within modern democracies. Drawing primarily on developments within criminal justice in Britain²³ over the past decade-and-a-half, an analysis is made of the main trends in criminal justice legislation and their potential effects upon the promotion of restorative justice principles and practice.

The inevitable conclusion that emerges from the analysis within this chapter is that implementation of restorative justice principles within existing criminal justice systems would require a new penology of corrections. This becomes necessary because restorative justice seeks altogether different outcomes from the processes of criminal justice and is not tolerant of approaches to justice that imply or promote the inevitability of punishment based primarily upon retribution and deterrence.

In *Chapter 2, Making Justice Restorative*, the need for a new restorative penology is discussed in some detail and the differences of approach between restorative and 'traditional' justice are explored with a view to defining the implications of these differences for delivery of 'better justice'. The difficulties associated with the legacy of the rehabilitative ethic are analysed, particularly in relation to the effect that these have upon sentencing patterns and custodial regimes. The outcome of this discussion suggests the need for a new and significantly different concept of what has previously been described as 'rehabilitation' and the potential implications that this has for operational penology.

One of the problems that assume a measure of inevitability is that of dealing differently with offenders who wish to engage with restorative practices and those who decline, for whatever reasons, to do so. This suggests the necessity for an extent of 'bifurcation' in penal practice that has, hitherto, been regarded as largely undesirable. Though this differential approach is discussed in more detail in later chapters, the issue is raised at this stage because it critically affects the potential effectiveness of sanctions designed to secure restorative outcomes.

Within this chapter also, the different demands of restorative justice on offenders, victims of crime, communities and the legal system are identified, particularly in relation to the more obvious counter-arguments that might be deployed against acceptance of the implications of the need for a new penology. In the final section of *Chapter 2*, an attempt is made to draw together the diverse strands of this discussion and assess the extent to which a new penology is an

²³ The term Britain used here relates primarily to England and Wales, since Scotland and Northern Ireland have separate penal systems and criminal justice legislation specific to their particular geographical situations and devolved administrations.

essential starting point if restorative justice is to enter successfully the mainstream of correctional theory and practice.

In *Chapter 3, Victims' Voices*, the focus of attention is turned towards victims of crime and the extent to which they can or should be regarded as 'key' stakeholders within the concept of restorative justice (Zehr, 2002a: 14; Zehr and Mika, 1998: 47-55). This is a contentious issue raised by advocacy of restorative justice practices and the debate that it gives rise to merits careful consideration. Within the 'traditional' model of criminal justice it is clear that victims, particularly the needs of victims, have not received adequate consideration and, as a matter of essential fairness, a significant change to this situation is long overdue. The debate concerning how far and in what particular respects this change is necessary is bound to have a major impact upon future court practices, custodial correctional regimes and community justice. For all these reasons, the situation of victims becomes an appropriate matter for attention, since it derives from the requirement for a new penology discussed previously and significantly affects the discussion within following chapters.

That chapter, *Chapter 3*, highlights the implications of viewing crime as imposing obligations, violating both victims and communities, and also of creating opportunities for reparative action by offenders. Discussion of these issues leads logically to an analysis of existing provisions for victim support and the question of the extent to which victims enjoy statutory 'rights' in any significant manner at the present time. Though this discussion is based primarily upon the British criminal justice system as it presently operates, there is considerable evidence to suggest that parallel situations exist in many of the world's developed democracies also.

Obligations involve the practical necessity of 'putting things right', but the extent to which this moral imperative is interpreted in contemporary penal practices becomes a matter of considerable conjecture. So also, is the extent to which victims of crime should be permitted to participate within the processes of criminal justice and the implications of this participation for courts, offenders and victims themselves. *Chapter 3* concludes with a brief overview of the reasons why victims occupy such a central place within restorative justice prescriptions and of the desirable, though perhaps contentious, outcomes that might flow from affording victims greater consideration.

Chapter 4, Penal Politics, Reparation and Restoration, is, in many respects, the pivotal one within *Doing Justice Better*. It brings together the currently problematic political aspects of justice and criminal punishment alongside the prospective concepts of reparation and restoration that are central to the operation of restorative justice. The difficulty that this presents is one of reconciling two systems: the one predominantly retrospective, retributive and inevitably punitive; the other prospective, reparative, restorative and impatient of excessive punishment. The suggestion that in present circumstances criminal punishment is used in an 'instrumental' manner becomes a key issue within this

debate,²⁴ since it can be said to be used as much for political ends as for the administration of justice.

Another problem that has to be faced squarely is that of reducing reliance on punishment for the purposes of general deterrence. I have addressed this issue in some detail in earlier work (Cornwell, 1985 and 2006: 53-65), but find the general objection admirably summarised by Beyleveld in the following words:

Deterrence has for too long been associated with the sorts of policies which I regard as extreme. This has made the notion [of deterrence] a politically loaded one. This is unfortunate, for deterrence is, in fact, a pervasive fact of human existence ... It is important to understand its limits and operation, not only for purposes of control, but also for purposes of understanding human behaviour generally. If deterrence is not studied seriously or if deterrence policies are suggested and implemented without adequate grounding, we will achieve neither of these purposes, but merely add fuel to the flames of political passion. (Beyleveld, 1973: 148)

There is no doubt that sentencing offenders for the supposed beneficial effects of general deterrence—whether or not in conjunction with retribution—effectively increases the severity of sanctions and also results in the escalation of prison populations. That its effects in practice are largely unknown and unknowable makes the practice the more arbitrary and cynical, however much it may have attractiveness in a political sense.

Within the same chapter it has also been necessary to clarify the fact that restorative justice is not primarily anti-retributive, neither does it propose itself as a substitute for retribution (Brunk, 2001: 31-56; Zehr, 2002a: 58-9).²⁵ What restorative justice does propose is the general principle of punishing *less*, particularly in instances in which there is no utility in extending punishment and its unpleasant consequences. In other words, we need to move away from the ‘inevitability’ of punishment chiefly to maintain its own credibility and move more towards limiting its use where mitigating factors (such as an offender’s willingness to accept blame and make reparation) indicate more favourable outcomes.

This particular discussion leads logically to the further analysis of the role of reparation within criminal justice and the suggestion that it may be helpful to view reparation, restoration and social reintegration as a sequential process.²⁶ As

²⁴ (See also fn.19 *supra*). Penal instrumentalism refers primarily to the use of punishment for purposes other than those normally expected to flow from it. Here see, for further clarification, the explanation of ‘instrumentalism’ provided by Dworkin (1986: 249-52).

²⁵ As Howard Zehr points out, Conrad Brunk (2001) has argued that at the theoretical or philosophical level, retribution and restoration are not the polar opposites that we frequently assume them to be. In fact, they have much in common. A primary goal of both retributive theory and restorative theory is to vindicate through reciprocity, by evening the score. Where they differ is in what each suggests will effectively right the balance (Zehr, 2002a: 58).

²⁶ Helpful to the extent of assisting us to revise the former concept of rehabilitation in a more practical manner that does not allow the possibility of extended punishment (or indeterminacy) for

will become evident in *Chapters 5 and 6*, the concept of reparative justice may have more immediate appeal to politicians and policy-makers than that of restorative justice with all its challenges to the *status quo*. This does not, in any sense, negate the principles of restorative justice as it is proposed here: rather it represents a pragmatic attempt to cross one bridge at a time, rather than a bridge too far.

In the concluding section of *Chapter 4* the difficult issue of the social reintegration of ex-offenders is considered in relation to prevailing social attitudes and contemporary penal policies. As will be seen in the chapters that follow and in particular in *Chapter 7*, only a new image of corrections will enable public attitudes, shaped and hardened by media sensationalism of crime, to be changed. It will also become clear that—at least in Britain and also in a number of other countries in Europe and elsewhere—politicians anxious to be seen to be ‘tough on crime’ have cynically exploited the ‘fear of crime’ scenario presented by the media both for short-term electoral advantage and to promote increased severity in sentencing and use of custody. This is a principal reason why there is a widespread reluctance to examine the true credentials of restorative justice and a consequent agenda to consign it to the shallows rather than allow it to move into the mainstream of criminal justice policies.

The discussion in *Chapter 5, Making Prisons Reparative and Restorative*, is devoted entirely to the issues involved in transforming prisons to deliver reparative and, ultimately, restorative regimes. From the rather unpromising starting point of the present situation that exists in many countries, it becomes clear that if any progress is to be made, either considerably less use has to be made of imprisonment or many more prisons have to be provided. Prisons filled to, or above capacity simply cannot deliver the quality of regime that allows even the most unrefined of reparative programmes to be made available to all inmates on a consistent basis. These programmes, at the least, require the capacity to address offending behaviour, the facilities to provide reparative work on a daily basis and a staged custodial process that tests the reliability of inmates with external employment within local communities as they approach the time for release.

Changing the ethos of prisons involves abandonment of the present concept of ‘negative’ sanctions.²⁷ Prisons that merely ‘warehouse’ inmates for specified periods of time are unlikely to promote changed behaviour or attitudes to offending and may well release back into communities ex-offenders prone to

the purposes of ‘treatment’, therapeutic intervention, or the exemplary sentencing of certain types of offenders for public protection. This practice is discussed further in *Chapters 6 and 7*.

²⁷ ‘Negative sanctions’ is a term used to describe prison regimes that demand no necessary constructive responses from inmates other than the passing of time in custody until the date of their scheduled release arrives. Overcrowded prisons cannot provide for all inmates regular daily employment that enables wages to be earned, a proportion of which is allocated to victims of crime. In addition, every sentence should commence with a period of induction within which individual offending behaviour is analysed and victim-awareness is promoted.

recidivism. If, however, the perceived purpose of imprisonment is predominantly that of social incapacitation, then existing conditions may be said to meet this aim. In such circumstances it should not be a matter of particular surprise that more, rather than fewer offenders appear before the courts charged with new offences within short periods of time from release. The most recent statistics in Britain indicate rates of reconviction within two years of discharge from custody of 60 per cent for certain forms of offending (Home Office 2001a; Office for National Statistics, 2006: 137-8).²⁸ This is widely believed to be a conservative estimate, but it indicates strongly that under existing circumstances the deterrent effect of imprisonment is low (Home Office, 2002a and b; Roberts and Smith, 2003).

Within many contemporary democracies the purpose of prisons, as expressed in the ideological rhetoric of ruling political parties, is manifestly that of incapacitation justified on the grounds of retribution and deterrence. Imprisonment represents a very high-cost option for delivering retribution where the deterrent effect is so evidently meagre and large numbers of offenders quickly return to prison for 'more of the same'. In *Chapter 5* the logic of this situation is robustly challenged and an altogether more constructive concept of reparative custody is proposed. The regime design and operational ethos of reparative prisons is not difficult to conceive, the under-pinning rationale being provided by clearly specified rules of behaviour, the necessity for addressing offending behaviour and a work-based regime of productive employment that generates revenue for victims of crime and, at the same time, inculcates a regular work pattern in offenders.

The difficulty has to be faced of dealing differently with those offenders willing to engage with reparative regimes, take responsibility for their offences and make reparation to victims and those who refuse to do so. This situation envisages a measure of inevitable 'bifurcation', the implications of which are discussed in *Chapter 5*. In ideal circumstances it would be preferable for entire prison establishments to be given over to reparative regimes and others used to accommodate those who decline to participate in reparative custody. It is not, however, inconceivable that dual regimes might be operated within single prisons, though in such instances, a measure of physical separation would clearly be necessary.

The recommendation is made that reparative regimes should operate the 'direct supervision' model of discipline and control, since this places a clear responsibility on each individual inmate to comply with 'house rules' and

²⁸ The 2006 Edition of *Social Trends*, published by the Office for National Statistics, provides a detailed analysis of reconviction rates for Standard List offences for prisoners in England and Wales discharged in 2001. The rates of reconviction for re-offending within two years are variable as between males and females and reflect particularly high rates for theft (80 per cent and 76 per cent), burglary (76 per cent and 72 per cent) and robbery (56 per cent and 30 per cent), but lower rates (less than 50 per cent) for all other offences. Source: Office for National Statistics (2006), *Social Trends* (No.36), *Chapter 9*, pp. 137-8.

significantly reduces the number of staff members routinely employed on general duties within living units.²⁹ Use of direct supervision methods also enables a greater proportion of staff to be deployed to productive aspects of the regime, delivery of offending behaviour counselling and analysis, recreational activities and similar duties.

Within the same chapter it is also proposed that for a number of reasons, closer links should be established between prisons and the local communities within which they are situated. There is an evident need to reduce what might be termed the 'fortress effect' of prisons, to make these facilities more 'community friendly' and to involve communities to a greater extent in prison regimes. Ultimately, the reparative regimes suggested here would incorporate a logical progression from custody to community-based work for inmates approaching the end of their sentences. It is acknowledged that this carries an inevitable element of risk, but this risk, it is suggested, is far outweighed by the benefits that flow from accepting it. The potential risks and benefits for communities, offenders and criminal justice systems are discussed in some detail toward the end of *Chapter 5*.

Perhaps the most important aspect of reparative regimes lies in their potential to make prisons more humane and purposeful, while at the same time making them a more integral part of the communities in which they are located. The 'community: custody gap' has traditionally been preserved to emphasise the socially exclusive role of prisons, the isolated nature of the custodial process and perceived merit of 'banishing' criminal offenders from contact with wider society. Understandable though such motivations may be in pursuit or reinforcement of a collective morality, the dysfunctional outcomes also have to be weighed and acknowledged. At the least, reparative prisons and their regimes might restore some measure of public confidence in the effectiveness of custodial corrections and the need for victims of crime to become at least a considered part of the penal process.

Chapter 6, Community Justice, forms a natural extension of *Chapter 5*, with its analysis of the non-custodial sector of corrections and of the potential for its expansion. Indeed, it is important that these two chapters are viewed as complementary in nature, since it was suggested in *Chapter 5* that every reparative custodial sentence should include a final period of time spent working within the community from prison. There is, undeniably, an element of public risk inherent in 'work-out' or 'working-out' schemes, but this is probably no

²⁹ Direct supervision regimes have been introduced with considerable success in some prisons within the USA and recently also in South Africa. The Mangaung Correctional Centre in Bloemfontein, Free State Province, is a 3000-bed maximum security facility operated by the private correctional company Global Solutions Limited (GSL) (SA) Pty. Ltd. Since the facility was opened in July 2001, it has operated on a direct supervision basis with a significant reduction in rule-infracting behaviour, inter-personal violence and non-compliant behaviour compared with other penal institutions of a similar nature.

greater than the risk of releasing prisoners from custody into the community on the expiry of sentences without any period of probationary external activity.

The major problems associated with the expansion of non-custodial corrections are two-fold: the allegedly widespread public fear of crime and the 'tough on crime' political ideology that has pervaded penal policies over the past decade, particularly in Britain. Both are discussed in some detail in the opening section of this chapter. There is much evidence that the former is driven by the sensational treatment of serious violent and sexual crime within the mass media which has, to some extent, provided an apparent justification for the development of 'tough on crime' policies by politicians. Some commentators on this situation have strongly expressed the view that it has been cynically and quite deliberately manipulated by politicians anxious to be perceived as 'waging the war on crime' for electoral advantage (Garland, 2002; Tonry, 2003). Moreover, if the truth about crime rates were to be made more widely known, 'tough on crime' policies would lose some of their public appeal and impetus.³⁰ It is of interest that a general downward trend in Europe over the past decade in offences against property and the person should have been accompanied by a widespread increase in the use of custodial sentences. This situation forms the backdrop against which an expansion in the use of non-custodial sanctions has to be viewed.

The confused nature of recent criminal justice policy development and legislation in England and Wales relating to community sanctions is discussed at some length in the second part of this chapter. This discussion is particularly relevant in the light of two separate and influential reports compiled during the early years of the present decade. The first of these reports became known as the Halliday Report³¹ and the second was the independent report commissioned by the Esmeé Fairbairn Foundation (EFF) under the chairmanship of Lord Coulsfield.³² As will be seen in *Chapter 6*, both of these reports were to present some significant difficulties for a government pledged to pursuit of 'tough on crime' policies, and the Halliday Report, in particular, revealed some strange inconsistencies with evidence-based research. The subsequent legislation which was broadly based on it (the Criminal Justice Act 2003) will be seen to have added more confusion than clarity to the entire sector of non-custodial corrections in England and Wales and also to have promoted a further measure

³⁰ The available evidence points strongly to the fact that over the past decade in Europe in particular, rates of domestic burglary and violent crime have fallen significantly, though not uniformly (Home Office, 2001a and 2004). These offences, it is widely claimed by the media, are the two main components of public fear of crime.

³¹ Home Office (2001b), *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, London: Home Office Communications Directorate. The report was named after its director John Halliday and included, significantly, the proposals for 'custody plus', 'custody minus' and 'intermittent custody' that subsequently became part of the White Paper *Justice for All* (Home Office, 2002a) and the Criminal Justice Act 2003.

³² EFF (2004a), *Crime, Courts and Confidence: Report of an Independent Inquiry into Alternatives to Prison*, London: The Stationery Office (TSO).

of crisis within a custodial penal system already operating at all-time record levels of occupancy.

In the third part of *Chapter 6*, the focus of attention is turned to an altogether different and more encouraging situation in Finland and to a brief analysis of how that country deliberately set about reducing its overburdened prison system and simplifying, rather than complicating, its non-custodial sector of corrections over recent decades. The Finnish experience clearly demonstrates that massive prison populations are both undesirable and completely avoidable and, moreover, that crime rates need not increase if greater dependence is placed on community-based sanctions. It is an object lesson in criminological pragmatism that serves to demonstrate, in the starkest terms, the extent to which ideological dogmatism lies at the heart of the crises that afflict so many of our contemporary penal systems.

In the light of the discussion within *Chapter 6* it is difficult to be other than pessimistic about the potential in Britain and many other democracies for an expansion in community-based corrections and lesser use of custody: that is, unless there is a sea-change both in attitudes towards offenders and in the intransigent ideological approaches to penal politics. Restorative justice offers a means of facilitating this change and the Finnish model of justice provides evidence that it is not impossible of achievement. As the old proverb has it: one can take a horse to the water, but one cannot make it drink. Community sanctions are thus likely to remain confined in the present *cul-de-sac* until a serious re-assessment of social priorities allows a more enlightened approach to be adopted.

Perhaps the most distressing aspect of this situation is that it is caused to a considerable extent by a form of intellectual dishonesty. The first strand of this dishonesty is the failure of those making penal policies to acknowledge that to a notable extent recorded crime has diminished, not just in Britain but widely also elsewhere across Europe and North America (Tonry, 2003: 3; Garland, 2002: 106). The most notable decreases have occurred within the offences of domestic burglary and violence against the person—both offences for which conviction normally carries a custodial sentence. Thus to make increased use of imprisonment in such circumstances seems, on the face of matters, particularly perverse.

The second strand of this dishonesty lies in the much-advertised predisposition of some governments—particularly the British government—to rely on evidence-based research in policy determination and then, when this is made available, ignore it to a very significant extent and for entirely ideological reasons. We return to this particular issue in *Chapter 7, Doing Justice Better*, that forms the final part of this work.

DOING JUSTICE BETTER – WHAT RESTORATIVE JUSTICE PROPOSES

The final chapter of this book, *Chapter 7*, is devoted to an appraisal of the ways in which approaches to criminal justice administration would have to change in a restorative justice era. In many respects this chapter draws together the main areas of discussion within the preceding chapters and locates these within a restorative justice framework designed to ‘do justice better’ in the future.

The first part of the chapter deals with the need to change the way in which criminal justice policies are conceived and to move away from the self-consciousness of an era dominated by media sensationalism of crime and reactive policy-making designed, primarily, to secure short-term electoral support for being seen to be ‘tough on crime’. This means, essentially, telling the truth about crime, resolving to use expensive custodial punishment only when it is strictly unavoidable and, when it is used, making it purposeful for offenders, victims and the wider society.

Strategies to *reduce* crime may be altogether different from those designed to *control* crime and this prompts the need to think within a changed conceptual framework that recognises this possibility. This may require the formulation of a new penology as suggested in *Chapter 2*, acceptance of a measure of ‘bifurcation’ within operational penal practice and reconsideration of the use of prisons. Restorative justice may assist us in doing this simply because it proposes a different set of definitions of criminal justice and asks different questions about the preferable outcomes of the justice process.

Giving victims of crime greater consideration within the processes of justice requires that courts operate differently and suggests a measure of pre-trial conferencing and diversion where this is possible and appropriate. Statements made by victims (other than as witnesses)³³ become a sensitive issue both for offenders and for those involved in sentencing. The discussion within *Chapter 7* addresses these issues and their implications for courts, offenders and victims of crime.

The desirability of offenders making reparation to victims of crime is a central feature of restorative justice practice and recurs in the discussion within every chapter of this book. It is, however, only a part of the envisaged process through which restorative justice seeks to vindicate victims and reintegrate offenders within communities. In *Chapter 7* the case is made for reparation, restoration and reintegration to be perceived as a sequential process by which offenders become reconciled with all the stakeholders within the criminal justice process.

³³ Whether in the form of Victim Impact Statements (VISs) that are permitted in the USA or of Victim Personal Statements (VPSs) that have become the pattern in the UK.

The chapter concludes with a number of practical recommendations for making custodial corrections reparative in nature, bridging the conceptual and operational divide between prisons and communities and making more purposeful use of community-based sanctions. The discussion acknowledges the difficulties that have to be surmounted in each of these sensitive areas if restorative justice is to become a reality. It also indicates the many advantages that would flow from such an initiative, not the least of which is to punish less and punish differently. This is, in essence, the motivating rationale for 'doing justice better'.