

The University of Hull

Restorative Justice

Aspirations of Proponents and Experiences of Participants

in

Family Group Conferences

being a Thesis submitted for the Degree of

in the University of Hull

by

Margarita Zernova, LLB

July 2005

Abstract

Proponents of restorative justice aspire to create a radical alternative to the 'traditional' way of thinking about – and responding to – crime. This thesis will examine many of the key aspirations of restorative justice advocates. It will do so on the basis of critical analysis of restorative justice literature and the evidence collected in the course of an empirical study, which involved interviews with participants in family group conferences. The thesis will ask:

- How realistic are the aspirations of restorative justice campaigners?
- What happens when restorative justice ideals are pursued in practice?
- Can restorative justice, as practised within one restorative justice project, claim the mantle of a victim-centred, lay-oriented, empowering, voluntary justice and present a true alternative to the existing paradigms of justice?
- What insights can lay participants in restorative justice interventions bring into the debate about restorative justice?
- Are there problems, tensions and dangers – highlighted by this empirical study – inherent in the current development of restorative justice?

This thesis will demonstrate the existence of a significant gap between aspirations of proponents and practical realities of restorative justice. It will suggest that this gap is unlikely to be minimised, unless restorative justice advocates radically re-consider and alter the direction in which restorative justice is presently evolving. Some suggestions will be made indicating what could be done to minimise the gap.

This thesis will critically analyse some important debates among restorative justice advocates. A particular focus will be on the debate concerning the relationship

between restorative justice and the criminal justice system. The implications of the reliance of restorative justice on the state justice system will be examined in the light of empirical data, and it will be argued that the dependence of restorative justice on the criminal justice system is very problematic and needs to be avoided. It will be suggested that some of the present debates concerning the relationship between restorative justice and the state justice system need to be re-focused and new ones need to be opened.

In the light of empirical findings and on the basis of theoretical arguments, the thesis will criticise the tendency of certain restorative justice advocates to pre-define the objectives of restorative justice, in particular, make restorative justice operate in the name of reparation of harm. Dangers inherent in restricting the focus and goals of restorative justice will be examined.

Through empirical analysis and theoretical reflections, the thesis will identify some other serious dangers and problems inherent in the current development of restorative justice. One major danger is that at present restorative justice may serve to individualise, neutralise and quickly and effectively expunge from the society conflicts with social-structural roots, and thereby prevent a possibility of challenges to social inequalities and injustices. Another major danger is that restorative justice employs its techniques of power to enable the state to govern its subjects at a distance, in a masked fashion, and, consequently, to minimise resistance to the state power and maximise regulatory efficiency. This thesis will suggest radically changing the direction in which restorative justice is developing, which might help avoid some of the present dangers.

Contents

| | | |
|-------------------|---|-----|
| <i>Preface</i> | | 1 |
| PART I | | |
| <i>Chapter 1</i> | Beginning the Journey | 5 |
| <i>Chapter 2</i> | Early Inspirations | 19 |
| <i>Chapter 3</i> | Restorative Justice and the Reform of the Criminal Justice System | 49 |
| <i>Chapter 4</i> | Some Radical Ideas in Recent Writings | 75 |
| <i>Chapter 5</i> | Restorative Justice in Practice | 104 |
| PART II | | |
| <i>Chapter 6</i> | Methodology and Research Problems | 155 |
| <i>Chapter 7</i> | Before the Conference | 180 |
| <i>Chapter 8</i> | Experiencing Restorative Justice | 197 |
| <i>Chapter 9</i> | Emotions During Conferences and Attitudes Towards the Other Parties | 214 |
| <i>Chapter 10</i> | After the Conference | 235 |
| PART III | | |
| <i>Chapter 11</i> | Revisiting the Theoretical Debate I: Restorative Justice and its Promises | 263 |
| <i>Chapter 12</i> | Revisiting the Theoretical Debate II: Empowerment of Stakeholders and the Role of Professionals | 291 |
| <i>Chapter 13</i> | Revisiting the Theoretical Debate III: Problems, Tensions, Dangers | 318 |
| <i>Chapter 14</i> | A New Beginning at Journey's End? | 341 |
| <i>Appendix 1</i> | Summaries of case studies | 374 |
| <i>Appendix 2</i> | Interview schedules | 396 |
| <i>References</i> | | 409 |

Preface

My interest in restorative justice started five years ago when I was finishing my first degree in law. The concept of restorative justice was explained to me in one of the courses I did during my final semester at the university – ‘Crime, Justice and Punishment’. The restorative justice idea captured both my heart and mind. What appealed to me in restorative justice was that it presented a totally new way of thinking about crime and justice, which challenged many of my assumptions and beliefs and provoked many thoughts. It critically revealed problems inherent in the existing paradigm of justice and promised a more constructive and humanistic alternative. From that point, my initial interest rapidly increased. I thirsted for more knowledge on this topic. Doing research for a PhD provided me with an opportunity to pursue this knowledge.

This thesis is therefore the result of a PhD research project, which, for me, was full of challenges and discoveries. One major focus of this work is debates among – and aspirations of – proponents of restorative justice. Another focus is practical realities of restorative justice. In the light of the data I collected through interviews with people who participated in restorative justice interventions, and on the basis of analysis of some ideas of restorative justice proponents, this thesis attempts to answer a number of questions. How realistic are the aspirations of restorative justice advocates? What happens when those aspirations are pursued in practice? How desirable are some of the reforms proposed by restorative justice advocates? How do people who have participated in restorative justice encounters understand and interpret their experiences of restorative justice? What insights can lay participants in restorative justice encounters bring into the debates about restorative justice?

The final draft of this thesis is far from what was anticipated at the beginning, or even in the middle of my PhD. While I was working on the thesis, my views about – and attitudes towards – restorative justice underwent considerable transformations. At the early stages of research I saw myself as a proponent of restorative justice. Later I began to see numerous problems with the way restorative justice was conceptualised by most of its advocates and implemented in practice. I became critical of ideas of some restorative justice proponents and present restorative justice practices. I began to see the idea of reforming the criminal justice system so as to re-orient it away from retributive and towards restorative goals as insufficiently radical. I also started seeing dangers inherent in restorative justice functioning as an extension of the criminal justice system, in particular, the danger of restorative justice enabling the state to exercise control over individuals in a masked, invisible fashion. In addition, I began to criticise the restorative justice campaign for its failure to address the role of social-structural forces that promote crime and conflict and the refusal to ground restorative justice in active resistance to social injustices and commitment to radical social changes.

How and why did these changes in my attitudes occur? The first cause of the transformation was meeting on the internet some campaigners for social justice who held very radical views. Having on-line discussions with those people and reading writings of some radical theorists led to fundamental changes in my worldview and helped reconsider my position on restorative justice. The second cause of the transformation of my attitudes was ‘discovering’ some of the writings of a critic of restorative justice – George Pavlich – and having a conversation with him in one of

the restorative justice conferences I attended. His ideas enabled me to see some serious problems inherent in the views I held at that time and resulted in significant changes in some of my beliefs.

It is my hope that this work will benefit the restorative justice movement by identifying some problems and tensions within restorative justice theory, as well as alert to some potential dangers which may arise when restorative justice is put into practice. I also hope that this work may demonstrate the need to re-focus some of the debates about restorative justice and to open new ones.

Acknowledgments

It took me much longer than was hoped to complete this thesis. Certain things happened which made me shelve it for a long period. However, the support, faith, trust and encouragement of several wonderful people made it possible for me to finish this piece of research. I would like to express my deepest gratitude to Gerry Johnstone, without whom this thesis would have never come into existence, who introduced me to the idea of restorative justice, ignited my interest in it, gave me the idea to do research for a PhD, helped me to get an opportunity to do so, then made it possible for me to return to Hull and finish this thesis, and was such an inspiring and supportive supervisor. I am endlessly grateful to Keith Bottomley for his excellent supervision, help and support, patience and encouragement. My warmest thanks to all people whom I have interviewed for their invaluable help – without them the empirical part of this thesis would not be possible. My sincere thanks to Martin Wright for his friendship, loving care, kindness, help, hospitality, patience,

encouragement, and reading and re-reading this draft and making useful suggestions. I am grateful to Christine Dale for her help during my fieldwork, her hospitality, and kindness. Thanks to Guy Masters for helping me to get access to my interviewees. Thanks to Julia Hennessy for kindly allowing me to do the fieldwork in the restorative justice project. Thanks to all other people in the project who assisted me in various ways. I am grateful to the Law School of the University of Hull for providing me with a postgraduate research studentship, making this research possible. Thanks to proponents and critics of restorative justice whom I met during the conferences I attended for their encouragement and help. Special thanks to George Pavlich for the enlightening ideas and helpful suggestions. Thanks to all those people with whom I had internet discussions, especially Kevin Kinkel, for their friendship, encouragement, interesting and thought-provoking debates and helping me reconsider many of my views and attitudes. Thanks to Suzanne Uniacke and people from the Institute of Applied Ethics of the University of Hull for their trust and support and allowing me to suspend the new research project in order to finish off this thesis. I would like to thank my ex-husband, Matt Moyer, for his love, sweet care, immense emotional support, encouragement, patience, huge help with transcribing interviews, reading and re-reading this text and providing helpful stylistic comments. Special thanks for helping me survive the viva experience. My heartfelt thanks to my family for their unconditional love and total devotion, incessant support and care, always believing in me, being a never-ending source of comfort and helping me get through very difficult times. I am sure there are other people whom I have not mentioned, but who have in some way helped me with this research project. Thanks to you all.

Part I

Chapter 1

Beginning the Journey

Introducing the theme

This thesis is about restorative justice – a concept which has no single meaning (McCold 1998), or a single practical application (Van Ness and Strong 2002: chapter 4; Galaway and Hudson 1996: part III, Morris and Maxwell 2001, Strang and Braithwaite 2001), yet which has attracted many sympathisers across the political spectrum and is rapidly gaining popularity. Some penal reformers see restorative justice as a promising way to redress problems within the existing criminal justice system (Wright 1991,1996, 1999; Walgrave 1995, 1999; Bazemore and Walgrave 1999; Van Ness 1989, 1993; McCold 2000). Religious leaders, who pioneered the concept, are attracted to restorative justice as a humane and morally superior way of responding to crime, which is grounded in the idea of healing wounds caused by crime (Zehr 1990, Consedine 1999, Hadley 2001). Conservative advocates find restorative justice appealing as it emphasises family values and the plight of victims and promises cost-savings and reduction of re-offending. Some liberal thinkers view restorative justice as an individually empowering and less repressive response to crime. Some campaigners for social justice see restorative justice as having potential to create a more just society (Morris 1994, 2000; Sullivan and Tifft 2001).

Explaining the concept of restorative justice is not a straightforward task, as proponents are still debating the meaning of the concept and definitions of restorative justice (McCold 1998, 2000, Bazemore and Walgrave 1999). Quite often restorative

justice is defined by reference to what it is not¹. It is not the 'traditional' way of thinking about crime and justice. Advocates claim that restorative justice understands crime not only as a violation of an abstract entity – the state – but also, and mainly, as a violation of people and human relationships. Restorative justice proponents argue that in the aftermath of an offence restorative justice is concerned not with punishing offenders, but with repairing harm caused by the crime. It is emphasised that restorative justice requires that the key decisions about how the crime should be responded to must not be taken by state officials and legal professionals alone. Ordinary people who are directly affected by the wrongdoing should take an active part in deciding what should happen in the aftermath of the offence. It is also stressed that, unlike the formal coercive legal process, the restorative justice process is characterised by informality and voluntariness. In short, it is claimed by a number of restorative justice campaigners that restorative justice is a radical alternative to the traditional way of understanding crime and justice and dealing with criminal behaviour (Wright 1999, Bazemore 1996, Braithwaite 2003a, McCold 2000, Morris and Young 2000). It is a new pattern of thinking, or a particular 'lens' through which crime and justice could be looked at, or a new 'paradigm' of justice (Zehr, 1989, 1990, 1995, 2002, 2003).

In practice restorative justice may appear under different names and guises (such as victim-offender reconciliation programs, victim-offender mediation, family group conferencing, community conferencing, and sentencing circles) and may be found

¹ However, it is important to point out that this way of presenting restorative justice has been criticised as too simplistic, crude and empirically unfounded (Daly 2000, 2002, Van Ness and Strong 2002:43-45, cf. Zehr 2002:8-13).

both within and outside the criminal justice system. Despite their diversity, what these practices have in common is that they involve a participatory ‘process whereby all people with a stake in a particular offence [victims, offenders and their ‘communities of care’] come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’ (Marshall (1998) quoted in McCold 1998:20). Such process is guided by a set of values: victim healing, offender accountability, individual empowerment, peacemaking, reconciliation², reparation of whatever harm has been caused by the crime, community-orientation, informality, consensual decision-making, and inclusiveness.

In recent years restorative justice advocates have been successful in persuading governments to endorse and fund restorative justice programs, especially in relation to juvenile offenders. Following that, the number of such programs has rapidly increased. A number of jurisdictions have enacted legislative provisions authorising restorative justice interventions³, and international protocols and instruments have also allocated a place for restorative justice (see chapter 6 for more details).

Present empirical research of restorative justice

As restorative justice grew in popularity and its practice expanded, a vast amount of literature has been produced, explaining and promoting the idea of restorative justice, debating theoretical issues, describing practical applications of restorative justice and

² However, some question whether reconciliation is central to restorative justice (Zehr 2002:8).

³ The most recent development in the UK has been the publication of a consultation document on the Government’s strategy on restorative justice in July 2003 (Home Office 2003).

presenting findings from evaluations of restorative justice programs⁴. Yet, at present there are many gaps in our understanding of the phenomenon of restorative justice. This is partly due to the fact that most empirical research tends to pursue a very narrow agenda⁵.

Often the ‘success’ of restorative justice interventions is measured by reference to cost-effectiveness of programs and ‘outcome’ criteria (such as a percentage of encounters resulting in some kind of a settlement, victim satisfaction, restitution compliance rates and reduction in re-offending). One reason for this style and focus of empirical research is the following: to justify their existence and funding, restorative programs must persuade governments and funding agencies that progress towards certain goals is being made (Marshall and Merry 1990:16-17). For example, restorative encounters must be shown as superior to the ‘traditional’ criminal justice because they reduce re-offending, decrease the cost for taxpayers, increase the percentage of restitution settlements and participant satisfaction, and reduce court caseload and prison population. Another reason for evaluating the ‘success’ of restorative justice on cost-effectiveness and ‘outcome’ grounds is that most of the data for such research is easy to collect (Brookes 1998:30). Program management will

⁴ Much research into restorative justice is contained in edited volumes, such as Wright and Galaway (1989), Messmer and Otto (1992), Galaway and Hudson (1996), Walgrave and Bazemore (1999), Walgrave (1998), Morris and Maxwell (2001), Von Hirsh, Roberts, Bottoms, Roach and Shiff (2003) – to mention just a few; in book-length studies, such as Marshall and Merry (1990), Umbreit (1994), Strang (2002), Crawford and Newburn (2003); in research reports, such as Meiers (2001), Miers (2001); and in various articles.

⁵ Some research, however, goes beyond the narrow agenda, for example, Young (2001), Strang (2001).

keep records of cost per case, caseloads, percentage of agreements reached, and percentage of restitution compliance. It does not take much effort and ingenuity to add up these numbers and to produce figures which would impress the audience for which the evaluations are primarily designed.

However, measuring 'success' of restorative programs by reference to 'outcome' criteria is extremely problematic for a number of reasons. One problem is methodology (Walgrave 1992). A typical evaluation of a restorative program would involve a comparison between a group of offenders who have been diverted to a restorative program and a group who have been processed through the 'traditional' justice system. The problem with such research is that its value and reliability depend on the use of randomised samples, but finding and composing appropriate control and comparison groups is extremely difficult. First, as a rule, offenders of a particular type are referred to restorative justice programs. They are usually first-time offenders committing trivial crimes and who are unlikely to re-offend. Second, victims who agree to participate in restorative programs are probably different from those who refuse. Victims agreeing to meet their offenders tend to be people with a high sense of social responsibility towards offenders and a strong desire to help them. Third, many restorative programs are carried out by highly motivated and highly skilled staff, whereas the 'traditional' justice responses are often delivered in very routine and malfunction-prone settings. So, the differences in outcomes may be attributable not to differences between restorative interventions and their alternatives but to intrinsic characteristics of victims and offenders and to differences in staff commitment and motivation.

Another difficulty with evaluating restorative programs by reference to 'outcomes' is that data produced by such research does not necessarily signify very much. For example, widely used evidence for the 'success' of restorative justice is the ability of participants to negotiate some kind of settlement, such as monetary compensation, or an agreement that the offender would work for the victim or community. However, what does the fact of reaching an agreement tell us about its significance for participants? An encounter may be classified as a 'success' if it results in a settlement between the victim and the offender, but an offender's only motivation for settling may be a desire to get the process over with. Alternatively, an encounter may be classed as a 'failure' due to the lack of any reparation settlement. Nevertheless, the participants may have acquired a better understanding of each other's position (Marshall and Merry 1990:30), the victim's fears and sense of disempowerment resulting from crime may have diminished, and the offender may have felt remorse and empathy towards the victim.

Measuring 'success' of restorative programs by reference to other 'outcomes' of restorative interventions is equally problematic. In effect, it involves testing restorative justice against unrealistic and, some would argue, inappropriate goals. The best example would be using recidivism data to evaluate restorative interventions. It is simply unreasonable to expect that an hour-and-a-half restorative encounter would turn around what are quite often life-time problems. Also, evaluation of restorative justice against re-offending rates may be inappropriate because even if restorative justice did not reduce re-offending, there could be other important gains, such as victim healing, individual empowerment, development of participatory skills,

strengthening communities, moral growth of participants in restorative justice encounters, participants in restorative justice encounters practicing self-government and learning to handle their problems themselves, without resorting to the help of professionals and experts (Johnstone 2002: 144-150, Bush and Folger 1994, Christie 1977, 1982).

It has also been suggested that the relevance of the criteria for evaluation of restorative programs, such as participant 'satisfaction' and impact on recidivism, to the purposes to be achieved by restorative programs are far from obvious and rarely explained (Von Hirsch, Ashworth, Shearing 2003:23).

The result of the research agenda into restorative justice, which focuses on the reduction of re-offending rates, cost-effectiveness of restorative justice programs, participant satisfaction and other criteria which are of interest to governments and funding providers, is that many facets of the phenomenon of restorative justice remain largely unexplored, and many important issues have been scarcely investigated. However, there are important questions neglected in the literature, which are capable of being researched.

What lies ahead

Restorative justice proponents have ambitious aspirations. They envisage the creation of a radical alternative to existing ways of thinking about – and responding to – crime. They aspire towards developing a way of doing criminal justice, which would place crime victims and their needs at its centre, and which would be characterised by

individual empowerment of crime stakeholders, 'de-professionalisation', lay-orientation, and voluntariness.

This thesis will examine many of these key aspirations of restorative justice advocates. It will do so on the basis of critical analysis of writings of restorative justice proponents and the evidence collected in the course of my empirical study, which involved interviews with participants in family group conferences. The thesis will ask: How realistic are the aspirations of restorative justice advocates? Are there tensions, hidden problems and potential dangers which may arise when these aspirations are pursued in practice?

The recent growth and increased popularity of the idea and practice of restorative justice has given rise to a considerable divergence in opinion and numerous debates among its advocates about how restorative justice should be conceptualised and how exactly it should evolve. Various models for understanding restorative justice and numerous blueprints for its future development have been put forward, with proponents of different models often having something critical to say about competing models. Some of these debates will be addressed in this thesis, in particular, the debate between those whom I identify as proponents of the 'reformist' and 'radical' strands within restorative justice, and advocates of the 'purist' and 'maximalist' models.

One of the debates which particularly interests me concerns the issue of coercion within restorative justice. Some advocates believe that restorative justice should be confined to voluntary practices and reject judicial coercion (McCold 2000). Others

are willing to bring judicial coercion into the restorative justice paradigm (Bazemore and Walgrave 1999, Walgrave 1999, 2000). This thesis will ask: Do restorative justice advocates not overlook something very important when they debate the issue of coercion within the restorative 'paradigm', while equating the concept of coercion to *judicial* coercion? Can insights of participants in restorative justice interventions and some of my observations shed some light on this issue?

Somewhat related to the above is another issue which is of interest to me and which this thesis will investigate. This issue is the role of professionals, in particular conference facilitators, within restorative justice. How and to what end do they exercise their power in relation to participants in restorative justice interventions? What are the implications of their exercise of power?

An important debate among restorative justice advocates concerns the relationship between restorative justice and the criminal justice system. Some believe that restorative justice should be incorporated into the system as a sentencing option (Bazemore and Walgrave 1999, Walgrave 1999, 2000). Others argue that it should operate by way of diversion from the system (McCold 2000). Proponents of the view that restorative justice should function by way of diversion believe that if restorative justice becomes incorporated into the system as a sentencing option, this would lead to co-optation, dilution of restorative justice philosophy and perpetuation of the existing repressive system. Proponents of the view that restorative justice should be incorporated into the criminal justice system as a sentencing option argue that if restorative justice operates by way of diversion and remains 'pure' and free from

judicial coercion, it would risk marginalization, with no chance to challenge the repressive criminal justice system.

This thesis suggests that this debate needs to be re-focused. Instead of disputing which model of restorative justice implementation is less likely to lead to marginalisation, it would question the assumed undesirability of marginalization. Could it be that keeping restorative justice low-profile could benefit it in the long term? Even if state-managed implementation on a large scale could help avoid marginalization of restorative justice, would such direction of the development of restorative justice be necessarily desirable?

The thesis will also challenge some of the claims made by proponents of both models – the diversion model and the model involving incorporation of restorative justice into the criminal justice system as a sentencing option. It will question whether the proposed models present real alternatives to the existing criminal justice system. The thesis will suggest that if restorative justice is to present a challenge to the existing criminal justice system, perhaps its relationship with the system should be radically reconsidered.

As mentioned above, the issues I have outlined above will be investigated on the basis of critical analysis of writings of restorative justice proponents and the evidence collected in the course of my empirical study. Some important points need to be made about my empirical study.

First, whilst the empirical work is absolutely central to the thesis, the thesis itself is not simply a report of the empirical project. Rather, the thesis contains a mixture of theoretical reflection and empirical analysis. Theoretical arguments are looked at in the light of – and tested against – empirical findings. Empirical data is also used to generate new hypotheses and theoretical arguments and discussions.

Secondly, the empirical study was confined to one restorative justice project and the number of interviewees was rather small. So, it is important to look at my arguments, criticisms, and claims made on the basis of my findings in the light of this fact.

Thirdly, I would like to emphasise that this empirical research is rather different from many other current evaluations of restorative justice programs. The major difference lies in that my study was not designed primarily to answer questions posed by governments or any other bodies pursuing particular interests. Nor did it intend to measure ‘success’ of practical applications of restorative justice with reference to the standard criteria, such as re-offending rates and cost-effectiveness. Rather, my study aimed at letting people who have had a first-hand experience of restorative justice speak for themselves and explain what was important for them. My objective was to invite participants in restorative justice conferences to express their views, share experiences, raise concerns and criticisms, and bring their own unique insights and perspectives to the restorative justice debate. What interested me was how participants in restorative justice interventions interpreted what they saw and heard during restorative justice encounters, and what meanings they attached to what was happening during conferences. I was also interested in seeing how the understanding of the restorative justice process by its participants fitted with the ideas of restorative

justice advocates. How close does restorative justice, as understood and interpreted by its participants, come to the aspirations of campaigners for restorative justice? Can insights of people who participated in restorative justice interventions shed some light on how realistic the aspirations of restorative justice advocates are? Can experiences of participants help to identify problems which are likely to arise when the restorative justice ideals are pursued in practice? These are some of the questions to which this thesis seeks answers.

What about the contributions of this thesis? What are its core conclusions and findings? In general, the findings are rather negative. This work draws attention to some problems and dangers inherent in the way restorative justice is currently practised and conceptualised, and makes a number of criticisms of the present development of restorative justice, at least within the scope of this study. This work also identifies the existence of a significant gap between aspirations of proponents and practical realities of restorative justice. However, despite the rather discouraging findings, the thesis does not suggest rejecting as unrealistic the ideal of creating a radical alternative to the existing criminal justice system. Rather, it makes several suggestions of what could be done in order to minimise the gap between aspirations of advocates and practical realities, and bring the restorative justice practice closer to the ideals of proponents.

How exactly will these and other questions, attempted answers, arguments and debates be organised? What lies ahead of this chapter?

- Chapter two introduces ideas of some writers who provided early inspirations for the development of restorative justice.

- Chapter three will identify and analyse a particular strand of thinking within the restorative discourse – the ‘reformist’ strand. It will also outline some models within that strand (‘purist’ and ‘maximalist’), and will examine some debates concerning the implementation of restorative justice within the criminal justice system.
- Chapter four will present some more radical ideas in recent writings of restorative justice advocates and critics, who are willing to develop a more ambitious vision of restorative justice. That strand of thinking would be identified as the ‘radical’ model of restorative justice.
- In chapter five I look at practical applications of restorative justice and discuss diverse restorative justice practices.
- In chapter six I discuss methodology I used and present my fieldwork experiences. I shall describe the project where I did my fieldwork and explain how it functioned. I shall give details of how I got access to my interviewees and discuss some of the practical and ethical problems I have faced in the course of this study.
- In chapters seven, eight, nine and ten I shall introduce some of my findings relating to experiences of my interviewees and share some of their insights. Chapter seven will focus on pre-conference experiences of my interviewees. Why did they agree to attend family group conferences? What did they expect before conferences?
- Chapter eight will discuss personal experiences of my interviewees during conferences. How were conference participants treated during the conference by other people who attended the conference? Did they feel involved during

the process? What was it like for offenders to apologise and for victims to receive an apology?

- Chapter nine will explore emotions and feelings of conference participants, their attitudes towards others present at the conference, and the emotional transformations which took place (or were expected to take place, but did not) during the conferencing process.
- Chapter ten will analyse experiences of participants after the conference. What did they think the purpose of the conference was? Did the conference achieve anything? What did the participants like and dislike about the conference? What did they consider memorable? Did they have any suggestions how the conferencing process could be improved?
- In chapters eleven, twelve and thirteen I shall revisit the theoretical debate and discuss some of the aspirations of restorative justice advocates in the light of my findings. Chapters eleven and twelve will examine the extent to which the promises made by certain restorative justice proponents have been fulfilled within the context of my study.
- Chapter thirteen will analyse on the basis of my data – and raise some criticisms of – certain arguments made by restorative justice theorists. It will also alert to some tensions, problems and dangers which arise when restorative justice ideals are pursued in practice.
- Finally, chapter fourteen will be the place for a summary of my main findings, some concluding thoughts and suggestions for new debates.
- There are two appendixes to this work. Appendix 1 provides brief summaries of 16 case studies I have dealt with. Appendix 2 contains the interview schedules which I used in the course of my empirical study.

Chapter 2

Early Inspirations

In this chapter I shall introduce some ideas which inspired restorative justice proponents and made important contributions to the development of restorative justice theory and practice. I shall also identify some common aspirations of early proponents. Subsequent chapters of this thesis will analyse some of these aspirations in the light of more recent writings within the restorative discourse and on the basis of my empirical findings.

Restitution paradigm of justice

One early influence in the development of restorative justice was the proposals of the American legal and political theorist Randy Barnett. Barnett rejected the existing paradigm of punishment on the grounds that none of its declared goals – deterrence, retribution and rehabilitation – could justify punishment. Instead he proposed a new paradigm of criminal justice based on the idea of restitution (1977, 1980). In his own words, justice as restitution

...views crime as an offense by one individual against the rights of another. The victim has suffered a loss. Justice consists of the culpable offender making good the loss he has caused. It calls for a complete refocusing of our image of crime. ...Where we once saw an offense against society, we now see an offense against an individual victim. In a way, it is a common sense view of crime. *The armed robber did not rob society; he robbed the victim.* His debt, therefore, is not to society; it is to the victim.

(Barnett 1977:286, original emphasis)

In practice this would mean that if a person is charged with committing a crime, a court would establish guilt or innocence. If an offender were found guilty, he or she

would be sentenced to make restitution to the victim, as well as pay for the cost of his or her apprehension, the cost of the trial, and the legal expenses on both sides. If offenders could pay immediately, that would discharge liability. If offenders were unable to pay, they would either remain in their jobs and pay restitution out of the future wages, or would be confined to an employment project run by a private business. Where offenders were confined to employment projects, they would be released as soon as they had worked off their debt (1977:289). Barnett suggests that potential crime victims could purchase insurance policies. If they actually became victims, they would receive compensation immediately, and the right of restitution would be transferred to the insurance company. The company, in turn, would then have a claim against the offender (1977:290).

Barnett believed that such a system would have a number of advantages. Obvious beneficiaries would be victims who received compensation for their losses. Such a system might also lead to more crimes being reported, because victims would have a personal interest in reporting them. Another beneficiary would be taxpayers who would no longer have to pay for apprehension, arrest, trial and imprisonment of offenders. Barnett argues that there would be advantages for offenders too: restitution would facilitate their rehabilitation. Restitution is socially constructive, so it would contribute to the offender's self-esteem, as well as alleviating guilt and anxiety of offenders, which otherwise could precipitate further offending behaviour (1977:295).

One important implication of such a system is that the state is given a very limited role within the criminal justice process (provision of courts for guilt-finding and sentencing purposes (1977:291)), while certain important functions relating to the

administration of criminal justice are delegated to the private sector (private businesses would run employment projects to which offenders would be sentenced (1977:291), insurance companies would have rights to compensation in place of victims (1977:292), insurance companies would be able to chase and prosecute offenders (1977:294) and supervise their work in employment projects (1977:292)).

The second significant implication of Barnett's model is that the distinction between crime and tort would for most purposes collapse (1977:301, also 1980:119). Crime and tort will merge into 'a single theory of corrective justice that looks to the conduct, broadly defined, of the parties to a case with a view toward enforcing individual rights while obtaining whatever incidental maximization of certain moral goals may be possible' (1980:119). Such corrective justice would not be concerned with the mental attitude of the offender and expressing moral condemnation (1980:120, 122). Rather, it would be concerned with harmful consequences of the criminal act and reparation of the harm caused to victims (1980:130).

Related to the above is the third implication: 'victimless crimes' (if there are such things) would cease to exist (1977:302). There has been no damage caused, therefore should be no liability (1977:302).

There would also be an impact on the legal process: it would be less formal, and the voice of the victim would be added to the procedure (1977:303).

Critics responded to Barnett's proposals (Miller 1977, Kleinberg 1980). It was suggested that the proposed system would be more likely to benefit wealthy victims,

who would have more chances to purchase insurance and to secure a conviction, than poorer victims (Kleinberg 1980:275). Wealthy criminals, for whom paying restitution may be no burden, would also be better off than poorer ones (Kleinberg 1980:278-9). Critics also questioned Barnett's proposal to conceptualise crime as an offence against particular individuals. It is argued that the upset caused by crime is not confined to individual victims and their families. Criminals offend against the society as well. (Kleinberg 1980:276-7). Critics also found it difficult to accept the proposal to legalise 'victimless crimes', especially less controversial ones, such as cruelty to animals, criminal attempts, reckless driving and drunk driving (Miller 1977:359-360). Barnett's proposal to relax procedural safeguards was additionally criticised. Because plaintiffs will have a financial interest in convictions, there may be a strong incentive to manufacture evidence, which in the absence of strong legal safeguards may lead to unjust convictions (Kleinberg 1980:279).

Critics have identified a number of problems inherent in Barnett's model. In response, Barnett suggested that their criticisms resulted from them operating in a totally different philosophical framework and a failure to recognise just how radical his proposals were (Barnett 1980:132). He emphasised that what he proposed was a totally different paradigm of criminal justice, rather than an attempt to reform the old paradigm.

Barnett's proposals to discard the punishment paradigm of justice and replace it with a new one have been influential in the development of the idea of restorative justice. Many of today's restorative justice campaigners may not agree with the exact vision of the new paradigm proposed by Barnett, and may reject the restitutive paradigm as

too narrow. Yet, they would probably agree with the general spirit of Barnett's ideas: punishment may be understood as a paradigm of justice, and restorative justice as an alternative paradigm (rather than an attempt to salvage the existing punishment paradigm) (Johnstone 2003:22).

Conflicts as 'stolen' property

Another major source of inspiration for restorative justice advocates may be found in the works of the Norwegian criminologist Nils Christie (1977, 1981). Christie suggests that there is a tendency in our culture to think of conflicts as pathological, destructive phenomena. It is generally believed that conflicts require speedy resolution, so as to restore peace and harmony in human relationships. It is also presumed that the best way of resolving conflicts is to delegate this task to professionals, trained in handling disputes. Christie argues that

...in a modern criminal trial, two important things have happened. First, the parties are being *represented*. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena, reduced to the trigger-off of the whole thing. She or he is a sort of double-loser; first vis-à-vis the offender, but secondly and often in a more crippling manner by being denied rights to full participation in what might have been one of the more important ritual encounters in life. The victim has lost the case to the state.

(Christie 1977:3, original emphasis)

According to Christie, conflicts have been 'stolen' from people by lawyers, and became the 'property' of legal professionals. Lawyers either prevent conflicts from arising in the first place, or solve them for people who are directly involved in them (1977:4). Other 'professional thieves' of conflicts are treatment professionals who

define conflicts away by 'converting the image of the case from one of conflict into one of non-conflict' (1977:4, emphasis omitted). There are also 'structural thieves' of conflicts: social conditions in the modern industrialised societies. Such societies are characterised by social disintegration, segmentation, and impersonalisation of social life, which makes many conflicts invisible (1977:5-7).

Christie argues that conflicts are 'social fuel' (1977:13). Too little conflict may paralyse the social system. Conflicts are a 'commodity' which ought not be wasted (1982:93). They need to be cultivated, used and become useful (1977:1). When conflicts are 'stolen' from people affected by them, or melted away, or made invisible, there are numerous losses. For Christie, the main loss is the loss of opportunities for norm-clarification (1977:8):

It is a loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land. How wrong was the thief, how right was the victim? Lawyers are ... trained into agreement on what is relevant in a case. But that means a trained incapacity in letting the parties decide what *they* think is relevant. It means that it is difficult to stage what we might call a political debate in the court. When the victim is small and the offender big – in size or power – how blameworthy then is the crime? And what about the opposite case, the small thief and the big house-owner? If the offender is well educated, ought he then to suffer more, or maybe less, for his sins? Or if he is black, or if he is young, or if the other party is an insurance company, or if his wife has just left him, or if his factory will break down if he has to go to jail, or if his daughter will lose her fiancé, or if he was drunk, or if he was sad, or if he was mad?

(Christie 1977:8, original emphasis)

Christie concludes: 'There is no end to it. And maybe there ought to be none.'
(1977:8). He argues that

...it is important not to presuppose that conflict ought to be solved. The quest for solution is a puritan, ethnocentric conception. ...Conflicts might be solved, but they might also be lived with ... maybe participation is more important than solutions.

(Christie 1982:92-3)

Christie goes on to make proposals aimed at creation of neighbourhood courts. Such courts 'would represent a blend of elements from civil and criminal courts, but with a strong emphasis on the civil side' (1977:11). Neighbourhood courts need to be victim-oriented and lay-oriented. After guilt of the offender has been established, the situation of the victim would be considered: what can be done for the victim, firstly, by the offender, secondly, by the neighbourhood, and, thirdly, by the state?

Could the harm be compensated, the window repaired, the lock replaced, the wall painted, the loss of time because the car was stolen given back through garden work or washing of the car ten Sundays in a row? Or maybe, when this discussion started the damage was not so important as it looked in documents written to impress insurance companies? Could physical suffering become slightly less painful by any action from the offender, during days, months or years? But, in addition, had the community exhausted all resources that might have offered help?...

(Christie 1977:10)

Christie believes that such discussions ought to take hours, maybe days, and only after this stage has passed, would the decision on punishment of the offender be taken. Punishment would become the suffering which the judge finds necessary to impose on

offender *in addition* to the sufferings which the offender would have to undergo in his or her restitutive actions in relation to the victim. Such punishment should be in tune with local values.

The neighbourhood court Christie advocates would be characterised by ‘an extreme degree of lay orientation’. It should be a ‘court of equals representing themselves’ (1977:11). He believes that people affected by the conflict should stop handing their conflicts over to professionals for quick and effective resolution. Instead, they should engage in lengthy – or maybe even endless – discussions, unrestricted by legal rules, ‘external’ interpretations of norms and ‘outside’ opinions of what information is relevant to the case. People directly involved in conflict should be at the centre of the conflict-handling process, and professionals should have a very limited role. According to Christie, ‘[e]xperts are as cancer to any lay body’ (1977:11), so the objective is to have as few experts as we dare, especially the ones specialising in conflict handling. If, however, we find experts unavoidable in some situations, Christie suggests:

Let us try to get them to perceive themselves as resource-persons, answering when asked, but not domineering, not in the centre. They might help to stage conflicts, not take them over.

(Christie 1977:12)

Christie recognises that there are numerous obstacles to the creation of neighbourhood courts, one of which is that neighbourhoods are segmented and disintegrated. Giving to what Christie calls ‘killed neighbourhoods’ the task of conflict-handling may be problematic. At the same time, Christie suggests, conflict-handling may have a revitalising effect on local communities:

[Conflict] is neighbourhood property. It is not private. It belongs to the system. It is intended as a vitaliser for neighbourhoods. The more fainting the neighbourhood is, the more we need neighbourhood courts as one of the many functions any social system needs for not dying through lack of challenge.

(Christie 1977:12)

Christie's ideas have been highly influential in the development of restorative justice (Johnstone 2002:145, 2003:23; Bottoms 2003). His critique of the 'traditional' criminal justice process, where the main actors on the criminal justice stage are legal and other professionals (lawyers, prosecutors, judges, probation officers, police, psychiatrists), and ordinary people who are directly affected by the crime (victims, offenders and their communities of care) are excluded from participation in their own conflict, has found a wide acceptance among restorative justice campaigners. Empowering victims, offenders and their communities and returning to them conflicts 'stolen' from them by lawyers has become one of the key aspirations of restorative justice advocates.

However, it is important to point out that although restorative justice advocates would subscribe to Christie's proposals to empower stakeholders in crime and place them at the centre of conflict-resolution process, most of them would do so for reasons rather different from those put forward by Christie. Most restorative justice campaigners see the participatory and empowering restorative justice process as the best way to achieve restorative justice outcomes. It is argued that victims, offenders and their communities can usually come up with more meaningful and satisfying dispositions than those developed by judges and other 'experts' who lack knowledge of, and

connection to, the parties affected by crime, and therefore are incapable of meeting the real needs created by the offence. It is generally believed that the restorative justice process is more likely to lead to reparation of harm caused by the offence, satisfy victims and reintegrate offenders than the 'traditional' criminal justice process. It is believed that the restorative dialogue is the best way to reconcile conflicting parties, resolve the conflict and re-establish peace and consensual community order. The underlying assumption seems to be that conflicts are undesirable, pathological phenomena. Once conflicts have arisen, they should be solved, conflicting parties reconciled, peace re-established, or at least the restorative process must move in that direction – it must aim at minimising conflict, reconciliation, agreement.

As I noted above, Christie views conflict differently. For him conflict is not a 'bad thing'. It is a 'valuable commodity'. Christie argues that conflicts should be nurtured and cared for. He challenges the assumption that conflicts necessarily ought to be solved and suggests that participation in conflict-handling may be more important than solutions. He suggests that perhaps the main value of the restorative justice dialogue resides in the opportunity it offers participants to stage a political debate.

That is, Christie's position radically differs from that of most mainstream restorative justice proponents in several respects. While most restorative justice advocates see restorative justice process as consolidating and strengthening normative standards, Christie calls for endless discussions about what represents the law of the land. While most restorative justice campaigners seem to aspire to eliminate conflict and re-establish consensual order and peace in the community, Christie views conflict as a 'social fuel', an opportunity for progress. While most mainstream restorative justice

proponents view the participatory process as the best means towards achieving declared goals, for Christie participation in itself is of fundamental importance.

What are the implications of these differences? Had Christie's position found a greater acceptance among restorative justice campaigners, would restorative justice have been evolving in a direction different from the direction in which it is currently developing? Most likely yes.

Firstly, at least arguably, restorative justice at present is biased towards consensus and elimination of difference among community members. It neglects social distances between people in their associative environments and aspires to achieve peaceful relations between individuals whose interests may be fundamentally in conflict (Pavlich 1996a). At present, restorative justice favours harmony and stability of the established social order, rather than social change (Dyke 2000, Mika 1992, Pavlich 1996a). It ignores the fact that many disputes and instances of criminal behaviour stem from much deeper and wider social problems (for example, inequalities of wealth and power, inequalities relating to race and gender, oppressions and marginalisation of certain individuals and groups) (Harris 1989, Morris 1995, 2000, Sullivan and Tifft 1998, 2000a, 2000b, 2001, Dyke 2000, Mika 1992, Pavlich 1996a). Reaching reconciliation among the conflicting parties in such circumstances serves to restore and protect the status quo, no matter how unjust that status quo may be. It serves to quickly and effectively expunge from the society conflicts with social-structural roots.

Christie's conceptualisation of conflict and his approach to conflict-handling seems to promise a possibility of a restorative justice process which is less biased towards peaceful resolutions. Instead of aiming at speedily neutralising potentially disruptive disputes, it calls for cultivating and nurturing conflicts. Instead of solidifying and strengthening normative standards and thereby upholding and preserving the presumed consensual social order, it invites opening up political debates of contentious issues – debates which may potentially lead to collective challenges to the status quo and social changes.

Secondly, unlike most today's mainstream proponents of restorative justice – as will be demonstrated in the next chapter – Christie questions the concept 'crime'. He argues that

Crime is not a 'thing'. Crime is a concept applicable in certain social situations where it is possible and in the interests of one or several parties to apply it. We can create crime by creating systems that ask for the word. We can extinguish crime by creating the opposite types of systems.

(Christie 1981:74)

Christie re-defines crime as a 'conflict' requiring an active participation more than it requires solutions, and claims that the main advantage of such an approach would be 'opportunities for norm-clarification' (1981:93). This approach suggests very radical implications for the concept and institution of law (Johnstone 2002:146, Bottoms 2003:86). In particular, it appears to transform the nature of dispute resolution process from judicial to political. It also appears to abandon principles of consistency in decision-making and equal treatment before the law. Christie's approach seems to

be based on the premise that law can never cover every unique situation and that matters cannot be decided ahead of time by a mandate. It acknowledges that it is never possible to make final judgements with regard to the interpretation of norms and values among members of society, and that interpretations of matters of right and wrong should be made in an endless process of discussion. It is through such a continuous discussion process that people develop their moral sense, their sense of justice.

The third implication of the difference between Christie's position and the position of mainstream restorative justice advocates is the following. As I noted above, most mainstream restorative justice advocates appear to value the restorative dialogue not as an end in itself, but as the best means of achieving certain goals (such as settlements between disputants, repairing harm, victim satisfaction, and offender rehabilitation). Consequently, there is a possibility that participatory justice may become redundant if better means of achieving the restorative 'outcomes' could be found, and if those 'better' means did not involve participation by victims, offenders and their communities.

Yet, one can argue that even if no restorative 'outcomes' are attained (no agreement reached, no harm repaired, no reconciliation achieved) or if unrestorative 'outcomes' are brought about (for example, the victim is dissatisfied, the offender is punished), the participatory process is still a supreme and a 'natural' way of 'doing justice' simply because it restores to people control over their own conflicts. It is intrinsically right that people should participate in handling their own conflicts, and even if they make bad decisions and achieve no restorative 'outcomes', or achieve unrestorative

‘outcomes’, their conflict belongs to them, so it is for them to decide what they want to do with it.

Assuming the situation materialised, where a better way of achieving restorative ‘outcomes’ was found that did not require the participatory process, in contrast to the position of the majority of mainstream restorative justice advocates, Christie’s position is unlikely to result in the abolition of the participatory process. This is because, unlike most mainstream proponents of restorative justice, Christie appears to value the participatory process as an end in itself, rather than means towards other ends.

Fourthly, the adoption of Christie’s position could also have important implications for the assessment of success of restorative justice. As I argued in chapter 1, most current research into restorative justice involves testing the success of restorative interventions by reference to restorative ‘outcomes’ (which fits very well with the attitude of most restorative justice proponents that the restorative justice process is merely a means towards declared goals). However, if Christie’s position were adopted, it would probably suggest a very different agenda for empirical research into restorative justice, which would place less emphasis on technocratic measures of success (e.g. percentage of encounters resulting in settlements, restitution compliance rates, re-offending rates). Such a research agenda may involve a shift away from the emphasis on restorative ‘outcomes’ in evaluating restorative programs and towards the restorative process and its potential (e.g. to what extent has the restorative process exposed different values among members of the community and clarified social norms? To what degree has the process uncovered wider inequities and oppressions

which might have generated the conflict in the first place? How effective has the process been in 'nurturing' the conflict and spearheading collective challenges to the unjust status quo?)

One can speculate how restorative justice could have developed, had Christie's radical ideas found wider acceptance. One can also speculate whether such developments would have been desirable. Are there not potential dangers and problems inherent in Christie's proposals?

Take, for example, his proposals concerning the revival of 'killed' neighbourhoods. What Christie proposes seems to involve a creation of unified, homogenous entities with common values and a great degree of cohesion and interdependence. Assuming, of course, this development were possible, how appealing would it be? Would there not be a hidden danger that beneath the unity and homogeneity of such entities may lurk totalitarianism and the danger of excluding 'outsiders'? (Pavlich 2001). Would there not be a possibility that in cohesive interdependent collectivities the interests of individuals may be sacrificed in pursuit of community interests?¹ Also, would there not be a danger that the treatment which disputants might receive in neighbourhood courts would reflect their social standing in the community, with more powerful individuals receiving a more lenient treatment?

In relation to the last point, Christie accepts the possibility that the informal justice may not protect weak parties. As a possible solution he proposes falling back on the

¹ For example, in its quest for harmony and collective cooperation, a community may coerce individual disputants into reconciliation and agreements disadvantageous to them through threats of social sanctions.

state justice to protect the weak (1982:110). It is important to note, however, that Christie is not a proponent of a strong state. Far from it, he calls for 'so little state as we dare' (1981:115). So, falling back on the state is seen as a last resort in the absence of other viable solutions.

Yet it is important to recognise that this solution may not necessarily prevent all potential problems. It is possible that the weak parties may be so weak that they would not dare to appeal to the state against the strong parties. Or, even if the weak party dares to bring legal action, it is quite likely that the strong party may be better able to defend themselves in court than the weak one and thus defeat the weak party's legal challenge. Or what if the strong parties are so strong that they can influence the law-making processes, and, as a result the legal system is biased towards the strong parties?

Christie's proposal to fall back on the state raises some other questions. Will the resort to the state for help not imply giving conflicts away, which is something that Christie wants to avoid? Or what if one of the parties to the conflict is the state itself? How would neighbourhood participatory justice work in such situation? Who, how and in what forum should represent the state?

Christie himself raises concerns about the idea of resorting to the help of the state. His main worry seems to be that bringing the state into the conflict resolution arena would entail the use of penal law, or 'more use of pain', in his own words (1981: 115). Christie recognises that this is a dilemma to which he has no answer at a theoretical level. At a practical level, however, he claims to have an answer:

Our time is the heyday of the large national States. They are seen as natural solutions rather than problem-creating ones. Since that is such an overwhelming tendency, any move in the opposite direction must be a right one. The situation where the punitive consequences of too little State will emerge are so far away that any concrete advice in our recent situation would be to work toward the opposite principle for social organization.

(Christie 1981:115-16)

Although it is obvious that Christie wants to preserve the state justice system at least to some degree, it is unclear exactly what sort of relationship between informal justice and the state justice he envisages. For example, how independent from the system would the neighbourhood courts be? What would be the relationship between the state law (which, it seems, would be retained)² and the law applied in neighbourhood courts? What will happen in cases of conflicts between the two? As far as Christie's call for 'so little state as we dare' is concerned, does the size of the state necessarily directly relate to its regulatory efficiency? Can it be possible for the state to appear to contract in size, yet effectively govern subjects through means other – and more subtle and less visible – than direct control, force and repression?

Before I conclude this subsection, I shall raise some more questions about Christie's ideas, in particular his proposals concerning the role of professionals within lay-oriented justice. As I have pointed out, he calls for having as few experts as we dare, especially the experts specialising in conflict-handling. Professionals present a

² Christie states that within the proposed by him system, 'The first stage will be a traditional one where it is established whether it is true that the law has been broken, and whether it was this particular person who broke it' (1977:10).

danger of taking conflicts over. So, Christie argues, if professionals are really necessary in some cases, their role should be to stage conflicts, not to take them over. They should understand their own role not as dominant and central, but as that of resource-persons. They should leave it to people directly affected by the conflict to base their response to the problem within their own sense of justice.

An interesting question is whether it is possible for professionals to subtly shape the conflict-resolution process and mould its outcomes, and consequently take conflicts over *without* necessarily pushing primary stakeholders in crime out of the dispute-resolution arena (as legal professionals in the 'traditional' criminal trial do). Is it possible for a professional to perceive their role merely as a resource-person, or an information-giver, or a facilitator, yet to have a great deal of power over the lay participants involved in the conflict resolution process, to a significant degree control their attitudes and behaviour during the process and influence the way the conflict is being responded to? Chapters 12 and 14 of this thesis will return to this question.

At the end of this subsection I have raised a number of questions concerning Christie's proposals. I would like to conclude by pointing out that Christie does not claim to have answered all questions and resolved all problems which his ideas give rise to. Indeed, he sees his objective as raising questions, rather than answering them:

I raise many more problems than I answer. Statements on criminal politics, particularly from those with the burden of responsibility, are usually filled with answers. It is questions we need. The gravity of our topic makes us much too pedantic and thereby useless as paradigm-changers.

(Christie 1977:10)

There is a rather interesting parallel between Christie's reference to paradigm-changing and aspirations of another influential writer in the development of restorative justice whose proposals I discussed earlier in this chapter – Randy Barnett. Both seem to aspire to shift paradigms. Later in this chapter I shall return to the concept of paradigm shift, when discussing another highly influential in the development of restorative justice work – *Changing Lenses* by Howard Zehr (1990).

Reintegrative shaming

Now I shall turn attention to another important source of influence in the development of restorative justice – *Crime, Shame and Reintegration* by the Australian criminologist John Braithwaite (1989). There is a notable time gap between the two early inspirations for the development of restorative justice I had discussed above – works of Barnett (1977, 1980) and Christie (1977, 1982) – and Braithwaite's book published in 1989. Yet, this gap is probably not surprising, given that during that decade not much had been happening in the restorative justice arena. Works of such writers as Barnett and Christie were regarded as proposing very interesting theoretical arguments, but they were certainly not seen as likely to have much practical impact. At approximately the same time, victim-offender reconciliation experiments started in North America, but they were fairly marginal. There was also quite a lot of interest in mediation and neighbourhood justice, but again, these were regarded as interesting radical experiments on the margins. In short, the idea of restorative justice was little known at that time. When Braithwaite's *Crime, Shame and Reintegration* came out, it had no connection with restorative justice. That connection was established later.

However, before I link the book to the restorative justice movement, I shall outline Braithwaite's ideas.

In *Crime, Shame and Reintegration* Braithwaite argues that the key to crime control is a cultural commitment to shaming of wrongdoing. However, not any kind of shaming would produce desirable effects. If shaming is stigmatising, and no effort is made to reconcile the offender with the community, the offender is likely to become an outcast from the community of law-abiding citizens. Consequently, he or she would be more likely to join criminal subcultures and immerse themselves into more crime.

Braithwaite contrasts stigmatising shaming with shaming which he calls 'reintegrative' and defines it as

...shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant. Shaming and reintegration do not occur simultaneously but sequentially, with reintegration occurring before deviance becomes a master status. It is shaming which labels the act as evil while striving to preserve the identity of the offender as essentially good.

(Braithwaite 1989:100-1)

So, one difference between reintegrative shaming and stigmatising shaming is that the former is finite and terminated by gestures of forgiveness, while the latter is open-ended and no forgiveness takes place. Another difference, according to Braithwaite, is that stigmatising shaming is disrespectful, while reintegrative shaming is characterised by 'efforts to maintain bonds of love or respect throughout the finite period of suffering shame' (Braithwaite 1989:101).

It is claimed that the process of reintegrative shaming makes the offender powerfully aware of the disapproval of his or her actions by their significant others. The potentially stigmatising effects of shaming are overcome by gestures of re-acceptance and the atmosphere of respect within which the process is conducted.

It is argued that reintegrative shaming can be an efficient and powerful form of social control. However, certain conditions need to be satisfied for reintegrative shaming to become successful. There needs to be a shift away from punitive social control and towards greater moralising social control. Members of the community need to become primary controllers of wrongful behaviour, and active participants in reintegrative shaming of wrongdoers. Citizens need to prefer to handle crime-related problems themselves, instead of delegating them to professionals. Shaming is most likely to succeed in a society characterised by communitarianism and interdependency between its members.

Braithwaite's *Crime, Shame and Reintegration* was published the same year in which the Children, Young Persons and their Families Act 1989 was passed in New Zealand, which introduced family group conferencing for young offenders as an alternative to the court process. Two years later, an experiment started in a town called Wagga Wagga in New South Wales, which involved the police in the exercise of their cautioning powers conducting family group conferences (see chapter 5 for more details). After reading Braithwaite's book, the New South Wales Police Commissioner's Youth Adviser John McDonald noticed the parallel between the Braithwaite's theory and family group conferencing. He contacted Braithwaite and

pointed out that parallel. Braithwaite was invited to Wagga Wagga to observe family group conferences there, and from that point connections were made between Braithwaite's work and restorative justice (Moore and O'Connell 1994, O'Connell 1998). Family group conferencing began to be seen as a translation of Braithwaite's ideas into practice, and restorative justice practitioners adopted Braithwaite's terminology 'reintegrative shaming'. In accordance with Braithwaite's theory, the distinction between 'reintegrative' shaming and 'stigmatising' shaming was made by practitioners and it was ensured that the conferencing process complied with principles of 'reintegrative shaming': shaming is conducted within a continuum of love and respect; the disapproval is aimed at the wrongdoing, rather than the wrongdoer; and shaming is finite and followed by gestures of forgiveness and reacceptance.

For a time at least, Braithwaite's theory lent the restorative justice movement a theoretical identity. However, soon many critics began to question the role of shaming – even of the reintegrative type – in restorative justice, and identified a number of problems inherent in Braithwaite's ideas (Karp 1998, Walgrave and Aertsen 1998, Johnstone 2002:123-132, Van Stokkom 2002). Some of these problems and questions will be outlined below.

One question Braithwaite's theory of reintegrative shaming raises is whether crime control through reintegrative shaming would be possible in modern Western societies. Shaming could be an efficient tool of social control in pre-urbanised and pre-industrialised society, where interdependency was so strong that people cared about the approval or disapproval of their neighbours. However, it is far from obvious that

shaming would be just as effective today, when social bonds within communities are weak or even non-existent.

Braithwaite's response to this problem is that communities that can subject a wrongdoer to reintegrative shaming need to be conceptualised not in geographical terms but as nets of social relationships. It is argued that contemporary city-dwellers are enmeshed in numerous complex relationships and interdependencies, and such interdependencies may provide a basis for constructing communities:

The contemporary city-dweller may have a set of colleagues at work, in her trade union, among members of his golf club, among drinking associates whom he meets at the same pub, among members of a professional association, the parents and citizens' committee for her daughter's school, not to mention a geographically extended family, where many of these significant others can mobilize potent disapproval. ...No matter how exotic my interests are, in the city those interests can become a basis for constructing communities.

(Braithwaite 1993:13)

However, not all critics are convinced. It has been suggested that such interdependencies do not necessarily amount to 'communities' (Johnstone 2002:51). Such interdependencies are weak compared to relationships that existed in pre-industrialised and pre-urbanised societies. Members of modern non-geographical communities lack familiarity, commitment, continuity and emotional depth. It may be relatively easy to withdraw from one such non-geographical communities and join another. As a consequence, it may be difficult for non-geographical communities to influence wrongdoers. Besides, in modern societies there are individuals who are

totally isolated from the rest of the society. In such cases it would be unrealistic to expect that restorative justice might work (Johnstone 2002:49-54).

Another question, which Braithwaite's reintegrative shaming ideas raise, concerns the desirability of such a method of social control. Even if it were possible to mobilise communities and persuade them to subject wrongdoers to reintegrative shaming, would there not be a danger that such a development could lead to a repressive totalitarian society, where conformity is strongly encouraged and diversity is not tolerated?

A new paradigm of justice

Another highly influential book in the development of restorative justice – which I have already mentioned – has been *Changing Lenses* by Howard Zehr (1990), who directed the first Victim Offender Reconciliation Program in the USA. This book was one of the first to articulate the idea of restorative justice. Zehr criticises the existing criminal justice system for its failure to meet the needs of victims. He argues that in the aftermath of crime, victims need compensation for material losses. They need answers to questions, and some of their questions may only be answered by offenders. Victims need opportunities to express and validate their emotions. They need to be empowered and to regain a sense of personal autonomy, which was taken away by the offender. Victims need reassurance that steps have been taken to rectify the wrong and reduce opportunities for its reoccurrence. It is argued that the needs of victims must be met in order to assist the healing process in the aftermath of the crime and to make it easier for victims to put the experience behind them. Yet, the needs of

victims are ignored by the criminal justice system. Indeed, sometimes the system even compounds the injury (1990: chapter 2).

According to Zehr, the criminal justice system does not meet the needs of offenders either. Offenders need to have the opportunity to have their rationalisations of crimes and stereotypes of victims challenged. They need to be held accountable for their actions. They need an opportunity to face up to what they have done and to make things right. They may need help in dealing with guilt. They may need to learn to be more responsible. They may need to learn employment and interpersonal skills. They may need emotional support. They may need to develop a positive self-image. They may need to learn to channel their anger. Zehr suggests that just as in the case of victims, unless these needs are met, closure is impossible. Yet the criminal justice system fails to meet those needs (1990: chapter 3).

Zehr argues that when something is identified as crime in our society, we tend to make a number of assumptions. We assume that crime is a violation of the state, that the lawbreaking defines the offence, that guilt must be fixed, that the guilty must get their 'just deserts', that just deserts require the infliction of pain, and that justice should be measured by the process. Our assumptions shape our response to crime and our understanding of justice. According to Zehr, the reasons why the criminal justice system fails to meet needs of victims and offenders and fails to hold offenders accountable can be traced back to the assumptions we make about crime and justice.

However, this is not the only way of thinking about crime and justice. This is simply one possibility, one 'lens' through which crime and justice could be looked at, or one

possible paradigm. There may be other possibilities, one of which is the restorative paradigm. So, Zehr proposes to change the 'lens' through which we look at crime and justice and adopt a totally different way of thinking about them. When looked at through a restorative 'lens', crime would be understood as a violation of people and relationships. Crime would be seen as creating obligations to make things right. Justice would involve the victim, the offender, and the community in a search for solutions that promote repair, reconciliation, and reassurance (1990:181).

Zehr contrasts the retributive paradigm and its restorative counterpart³. While the former defines crime by violation of rules, the latter defines it by harm to people and relationships. The retributive paradigm views crime as categorically different from other harms. Restorative justice recognises crime as relating to other harms and conflicts. While retributive justice sees the state as a victim, restorative justice views people and relationships as victims. The retributive paradigm sees the state and the offender as primary parties. In contrast, the restorative paradigm views the victim and the offender as primary parties. Retributive justice ignores the needs and rights of victims. Restorative justice sees them as central. While retributive justice neglects the interpersonal dimensions of crime, for restorative justice interpersonal dimensions are central. Retributive justice defines an offence in technical legal terms, while restorative justice understands it in full context: moral, social, economic, and political. Within the retributive paradigm, blame-fixing is central. Within restorative paradigm problem-solving is fundamental. Retributive justice focuses on the past. Restorative justice focuses on the future. The retributive paradigm adopts an adversarial 'battle'

³ However, he has later accepted the view of critics that the polarization of retributive and restorative justice is misleading and hides important similarities between the two paradigms.

model, which alienates stakeholders in crime. Restorative justice takes the form of a dialogue, which aims to reconcile victims and offenders. Retributive justice aims at imposing pain, and adds one social injury to another in the aftermath of crime. Restorative justice aims at restoration and reparation of injuries caused by the crime. Retributive justice discourages repentance and forgiveness, while restorative justice encourages them (1990: chapter 10).

Zehr speculates about how restorative justice could be implemented in practice (1990: chapter 11). One possibility would be to 'civilise' the criminal justice system. This would involve replacing the existing system with one that employs a modified civil procedure, ensuring certain procedural safeguards. Such a system would aim at settlement and restitution, rather than punishment. The state would no longer be considered a victim, and people who are actually affected by crime would be central to the process.

Another possibility would involve retaining the existing criminal justice system and creating an alternative restorative justice system. The two systems could function as two parallel tracks independent of each other. People could have a choice as to which system they want to take their case, and each of the two tracks could serve as a check on the other⁴.

A third possibility suggested by Zehr could involve a creation of a system similar to that in Japan⁵. Such a system would have two parallel, but interlinked tracks, with

⁴ Bianchi in his book 'Justice as Sanctuary' (1994) describes and explains how a two-track system could operate.

⁵ See also Haley (1996).

one track being the formal criminal justice system, and the other being restorative. It would be possible to divert cases from the formal track to the restorative justice track at any stage of the criminal justice process. This would require an offender's admission of guilt, remorse and compensation to the victim, and the victim's willingness to receive compensation. Within such a system victims play an important role in the process, yet the control of the process remains in the hands of authorities.

Zehr acknowledges that retributive justice is deeply embedded in our mentalities and political institutions. It would probably be over-optimistic to expect a 'paradigm shift'. If so, Zehr suggests, perhaps restorative justice could function as a 'sensitizing theory': '[p]erhaps it can at least cause us to think carefully before we impose pain' (1990: 227).

Other early influences and some concluding remarks

There was a number of other theoretical works shaping the development of restorative justice, for example, writings of penal abolitionists (Bianchi and van Swaaningen 1986, Mathiesen 1974, Bianchi 1994, Hulsman 1986), proponents of informal justice (Matthews 1988; Auerbach 1983), peacemaking criminologists (Pepinsky and Quinney 1991), and feminists (Harris 1989, 1991) to name just a few.

Ideas of early inspirers of restorative justice were very diverse. Yet, what appears to unite these writers is that by most standards their proposals were very radical, their aspirations ambitious, and, if put into practice, many of their ideas had a potential to lead to truly revolutionary changes. Probably it is not accidental that the three early inspirers whose ideas I outlined above (Barnett, Christie, Zehr) made references to –

or expressly advocated – a paradigm shift⁶. Their proposals implied a totally different way of constructing reality, a radical shift in perspective.

What also seems to unite the early inspirers of restorative justice is their apparent willingness to re-define the role of the state in the criminal justice process by significantly reducing the state involvement. Thus, Barnett limits the role of the state and allocates important functions relating to administration of criminal justice to private businesses. Christie is willing to fall back on the state only as a last resort in the absence of other solutions. Braithwaite advocates a shift away from formal crime control by the state and towards informal social control by community members. Zehr proposes to replace the formal legal process with mediation-style resolutions. Importantly, none of these writers suggests excluding the state completely from administration of criminal justice. Rather, its role is substantially restricted.

Another common proposal of the early inspirers of today's restorative justice is the de-formalisation and 'de-professionalisation' of the criminal justice process. So, Barnett advocates de-formalising the dispute-settling process and relaxing legal safeguards. Christie argues in favour of a process of conflict handling which would be characterised by 'an extreme degree of lay orientation' and in which parties will represent themselves. Braithwaite suggests re-structuring the criminal justice system in line with the theory of reintegrative shaming, so that the due process model is retained for assessing guilt, and 'the court might then throw the responsibility for

⁶ Although the fourth writer whose highly influential ideas I outlined – Braithwaite – did not explicitly mention paradigm shift, his proposals suggested a radical change in criminal policy: a shift away from the state's punitive control and towards informal moralising social control.

responding to the problem back on to relevant communities of interest creatively assembled in the courtroom by probation professionals' (1989:180). Zehr is critical of the formal criminal justice process governed by systematic rules and proposes a process which would empower its participants and enable them freely exchange information and express feelings.

Another common theme is the proposal to re-conceptualise 'crime'. Barnett proposes to view it as an offence against individual victims, rather than the state, and advocates merging the concepts crime and tort. Christie re-defines crime as a 'conflict', requiring open-ended discussions and not necessarily resolutions. Zehr defines crime by harm to people and relationships, rather than violation of rules.

Finally, three out of four early inspirers of restorative justice (Barnett, Christie, Zehr) believe that criminal justice should become victim-centred.

Many years passed since the publication of the influential works which I discussed in this chapter, and a lot of developments have taken place in the restorative justice arena. How far have the aspirations of early inspirers of restorative justice materialised? Can today's restorative justice claim the mantle of a new paradigm of justice? Has the ambition to minimise the state involvement in the justice process been achieved, or is restorative justice at least moving in that direction? Is restorative justice characterised by a de-formalised and 'de-professionalised' process? Has the aspiration to re-conceptualise 'crime' been achieved? Can restorative justice claim the title of a victim-centred justice? Hopefully, the concluding chapters of this thesis will shed some light on these questions.

Chapter 3

Restorative Justice and the Reform of the Criminal Justice System

In this chapter I shall explore some more recent ideas of several leading restorative justice campaigners and describe and analyse some debates which took place among certain restorative justice proponents. I shall raise questions and criticisms relating to some of their ideas and debates. Then I shall outline a particular strand of thinking within the restorative justice discourse which I call 'reformist'.

(1) Some recent debates among restorative justice advocates

(a) Search for definition

It appears from the recent literature on restorativism that a number of restorative justice proponents have felt a pressing need to 'develop a clear and explicit definition and vision of restorative justice ... [which] should serve as a unifying focus for reflection and experimentation among practitioners and scientists, and should inform policy makers and the public about what restorative justice is and *is not*' (Bazemore and Walgrave 1999:46, original emphasis). It has been argued by a number of restorative justice campaigners that such a definition and vision will benefit restorative justice in numerous ways. It may benefit practitioners by 'giv[ing] them ideas about how they can improve what they are doing', and 'even where practitioners' actions already conform to restorative justice principles, practitioners may benefit by becoming more self-conscious and deliberate about what they do' (Roche 2001:324). It has also been argued that a 'clear and precise' definition would help to preserve the good reputation of restorative justice by excluding from the restorative justice 'tent' things which are *not* restorative justice (Bazemore and Walgrave 1999). The definition would educate the broader community to whom the

term restorative justice means nothing (Roche 2001:343). Finally, it has been argued that it would be 'to the benefit of government and other funders for programs to have a clear idea of what restorative justice means so that, when assessing funding applications that claim to be restorative, they have a set of ready-made criteria for assessing such a claim' (2001:343).

The perceived need for a clear and precise definition of restorative justice led to an interesting initiative, which became known as 'Delphi Debate', organised by the Working Party on Restorative Justice (formed by the Alliance of Non-Governmental Organisations on Crime Prevention and Criminal Justice). This exercise involved an attempt by a number of restorative justice experts to try to develop a consensual definition of restorative justice. After lengthy discussions, Paul McCold – who played a leading role in organising and facilitating the debate – concluded that restorative justice has come to mean all things to all people and that the effort to develop a consensual definition 'largely failed' (McCold 1999:20). Following the failure to reach anything resembling a consensus, the Alliance of NGOs Working Party adopted the 'fundamental principles' of restorative justice developed by Ron Claassen¹ and the definition submitted by Tony Marshall:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.

(Marshall (1998) quoted in McCold 1998:20)

¹ <http://www.fresno.edu/pacs/rjprinc.html> , also reprinted in McCold (2000:413-14).

(b) 'Maximalism' vs 'Purism'

An important debate between proponents of the so-called 'purist' and 'maximalist' models of restorative justice took place after the Delphi initiative.

Not everybody was satisfied with the outcome of the Delphi debate and the adoption of Marshall's definition. As a result, the search for conceptual clarity continued. A number of restorative justice proponents have criticised Marshall's definition, among whom are Lode Walgrave and Gordon Bazemore (1999). According to these two restorative justice advocates, Marshall's definition, is 'at once too broad and too narrow'. It is too narrow because it limits restorative justice to instances where 'coming together' can take place, and excludes from the restorative justice 'tent' situations where a face-to-face meeting between victims, offenders and their communities is either impossible or undesirable (see also Dignan (2005:3-4) for a similar criticism).

At the same time, Walgrave and Bazemore believe that Marshall's definition is too broad because it does not refer to repairing harm (Walgrave and Bazemore 1999). As a consequence of the failure to refer to the reparation of harm caused by the offence, the definition may include various processes which do not constitute restorative justice. For instance, such definition may embrace a process in which stakeholders in a crime come together to discuss feelings and share information, but make no effort to repair the harm, or decide to treat or punish the offender.

It was also suggested that the model of restorative justice which the definition presupposes is likely to operate by way of diverting cases from the 'traditional'

criminal justice system to restorative justice programs outside the system. This would enable informal and voluntary restorative justice encounters to take place. It was argued that as long as restorative justice operates by way of diversion and is confined to voluntary settlements between stakeholders in the offence, 'it will be condemned to remain some kind of a 'soft ornament' in the margins of 'hard core' criminal justice' (Walgrave 1999:131).

Walgrave and Bazemore propose what they think is a preferable definition, which reflects what they argue is the core value of restorative justice:

Restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime.

(Bazemore and Walgrave 1999: 48)

The two restorative justice campaigners use this definition to serve as a foundation for a model of restorative justice which they put forward and which has become known as 'maximalist' restorative justice.

Perhaps the most distinctive feature of the 'maximalist' model is that it intentionally includes judicial coercion under the restorative justice 'tent' in situations where no voluntary reparation of harm occurs. A number of reasons are provided for bringing judicially ordered compensation and reparation into the restorative justice realm. Probably the main reason is the belief that if restorative justice is confined to voluntary informal agreements between victims, offenders and their communities, it will be marginalized with no chance of challenging the existing criminal justice system:

Ultimately, limiting restorative justice to informal and voluntary processes ... seems to uncritically take pressure off courts, corrections and other parts of the justice system to undertake reforms that make these formal justice processes more responsive to the needs of victims, offenders and other community members who do not choose to avail themselves or informal options... In this case restorative justice would simply remain a form of diversion, the application of which may indeed be greatly expanded. However, such expansion would not affect the fundamentally punitive and unsatisfying manner in which societies now deal with most crime. And while their motivation would be to avoid coercion, restorative justice advocates who focus only on the informal side would have no impact on the coercion that is now used by the formal system to enforce punishment and treatment obligations.

(Bazemore and Walgrave 1999:52)

A lot of importance is attached within the 'maximalist' model to judicially-ordered community service, which would enable the offender to fulfil their obligations to the community. Proponents of the 'maximalist' restorative justice believe that the community has been victimised by the offence and can demand compensation through community service. It is argued that community service carried out by the offender can symbolically restore the harm inflicted on the community by the offence (Walgrave 1999). However, it is emphasised that the criminal justice system should not impose reparative sanctions without first attempting an informal restorative justice encounter. It is stressed that priority should be given to voluntary informal settlements without a judicial intervention. It is only where informal voluntary settlements are impossible, or a case is too serious for an informal settlement, that it is necessary to fall back on the judicially-ordered sanctions (Walgrave 1999).

McCold (2000) responded to proposals of Walgrave and Bazemore with criticisms, and articulated his 'purist' model

Another leading campaigner for restorative justice, Paul McCold, offers what he calls a 'purist' model of restorative justice, which 'includes only elements of the restorative paradigm and excludes goals and methods of the obedience and treatment paradigms' (McCold 2000:373). The 'purist' model of restorative justice adopts Tony Marshall's definition quoted above.

According to McCold, this model focuses on meeting the needs of primary stakeholders in crime and utilizes a co-operative problem-solving approach. Involving victims, offenders and their communities in face-to-face meetings and empowering them to develop outcomes is fundamental to McCold's model. The restorative justice advocate believes that cooperative decision-making cannot be forced or accomplished on behalf of primary stakeholders in crime. As a consequence, this model of restorative justice is voluntary and rejects judicial coercion. In practice, 'purist' restorative justice would involve diverting cases from the criminal justice system to victim-offender mediation programs, community conferences, or peace/healing circles. McCold suggests that as more and more cases are diverted from the traditional procedure to restorative justice programs, restorative processes could gradually permeate the formal justice system. Eventually the restorative way of dealing with offences will become the norm and the traditional punishment – an exception.

One McCold's major criticisms of the proposals put forward by Walgrave and Bazemore is that the 'maximalist' model defines formal judicial coercion as a restorative practice, and thus reinforces, rather than challenges, the existing criminal justice system. Another criticism is that the 'maximalist' model neglects the empowerment of stakeholders in the offence:

The Maximalist model utterly fails to account for the communal requirements of restorative justice; and in so doing, fails to challenge the formal authority structure. Deciding for people is fundamentally non-restorative, even when done with good intentions.

(McCold 2000:397)

McCold argues that '[r]estorative justice is about a fundamentally different way of doing justice' (2000:396), but the 'maximalist' model, with its judicially imposed sanctions and its neglect of the restorative process, fails to challenge 'business as usual': 'the same laws, the same process, the same coercion, and the same goals – with one addition' (McCold 2000:396).

McCold emphasises that the 'purist' model proposed by him takes a conservative position on the issue of judicial coercion: 'restorative justice requires cooperation and cooperation cannot be compelled or imposed' (2000:382). However, McCold accepts that

Some formal coercive authority will always be necessary as backup and for failure to comply with restorative agreements. Government agencies have to be involved when the offense is deemed too serious for an informal voluntary response alone. ... When purist programs cannot reach agreements or when offenders fail to comply with agreements, or when offenders deny their responsibility, decline to cooperate, or whose victims decline to participate,

offenders would be adjudicated in court. Those who eventually plea or are found responsible would be ordered to pay victim restitution and participate a set number of hours of work in community service projects.

(McCold 2000:394-5)

What then distinguishes the 'maximalist' position from the 'purist' one on the issue of judicial coercion, given that both seem to accept that judicial coercion sometimes will be necessary? According to McCold, the difference lies in the fact that unlike the 'maximalist' model, the 'purist' model does not see judicial coercion as a restorative practice: '[t]he imposition of minimum force in some situations may be necessary, but that does not make the coercion restorative' (2000:382).

McCold also objects to the 'maximalist' criticism that the 'purist' voluntary restorative justice – operating by way of diversion of cases from traditional prosecution to restorative justice programs – is likely to lead to the marginalisation of restorative justice and is unlikely to challenge the existing way of responding to crime. He believes that there are likely to be three stages in the development of restorative justice. During the first stage it would operate by way of diversion of cases from the traditional criminal justice system to programs operated by NGOs. The second stage would be characterised by the transfer of responsibility for organising and facilitating restorative justice encounters to the criminal justice system. At the third stage restorative justice will begin to permeate the criminal justice system, with the consequence that the system will be transformed (McCold 2000:387-8).

McCold's criticisms of the 'maximalist' model and his proposals of the 'purist' version of restorative justice have generated further discussions and disagreements among restorative justice advocates. Both Walgrave (2000) and Bazemore (2000) responded to McCold's criticisms of the 'maximalist' model, in particular, the criticism concerning bringing judicial coercion into the restorative paradigm. Walgrave cites The Declaration of Leuven and principles of restorative justice as articulated by Ron Claassen as a support for his claim that 'coercion is basically accepted in most restorative thinking' (Walgrave 2000:422). He also points out that McCold himself admits that coercion may be needed at the end of the line, at least in some cases. Bazemore accepts that court ordered restitution and community service address the needs of stakeholders in crime 'rather weakly', yet argues that they

seem better than the primary alternative: not attempting any repair by punishing the offender or ordering that he attend treatment that is disconnected altogether from victim and community. Court-ordered reparation, depending on how it is done, is probably a 'two' or 'three' on most restorative scales where 10 is best, but the most common alternative is generally a zero. Addressing one stakeholder need is better than addressing none...

(Bazemore 2000:471)

Bazemore suggests that opposing court-ordered restitution or community service would not be helpful in the light of the fact that reparative sanctions receive very little priority in the criminal justice system.

Another major ground for debates following McCold's criticisms and proposals has been the question of relationships between restorative justice and the criminal justice

system. If restorative justice is limited to informal voluntary agreements between stakeholders in crime, is it likely to remain a 'soft ornament' in the margin of the criminal justice system? Or does it have chances to transform the system?

As I have already pointed out, McCold believes that restorative justice processes should remain informal and voluntary and should develop in three stages, beginning with diversion of cases from the criminal justice system and eventually leading to restorative justice permeating the system. In his response to McCold, Walgrave argues that McCold is over-optimistic about the possibility of informal restorative processes ever permeating the formal criminal justice system. He believes that at best the formal system may be reduced, giving more space for informal 'prejudicial' processes, but 'the justice system is not permeable' (Walgrave 2000:420).

Not only does Walgrave doubt a possibility of de-formalising the criminal justice system, but he also believes that a de-formalisation of the system is undesirable, because it may lead to various abuses resulting from the community taking power (2000:421).

Some other critics who joined the debate also raised doubts about restorative justice presenting a viable alternative to the existing criminal justice system, if it is limited to informal processes:

...if the definition of restorative justice is indeed tied to a particular kind of informal dispute-resolution processing the effect will be to drastically restrict the scope of restorative justice theory and practice. And restorative justice initiatives themselves are likely to remain

confined for the most part to diversionary processes that will, at best, have a marginal status at the periphery of the regular criminal justice system.

(Dignan 2003:138)

It was argued that the adoption of a process-oriented concept of restorative justice² is undesirable and represents a missed opportunity to bring about broad and far-reaching reforms of the criminal justice system. Instead, restorative justice needs to be conceptualised and developed as a 'fully integrated' part of the criminal justice system, and the criminal justice system needs to be 'radically and systematically' reformed in accordance with restorative justice principles (Dignan 2002, 2003).

Another issue which has generated debates following McCold's critique was the question of what degree of importance should be attached to restorative processes, as opposed to outcomes. A number of restorative justice proponents have joined the debate. They have criticised McCold's 'purist' process-focused model of restorative justice and alerted to the danger that focusing on process and maximally empowering stakeholders in crime may well lead to punitive outcomes. The 'maximalist' model may avoid this particular danger because it sets explicit criteria as to what the outcome should be: it obliges the stakeholders to repair harm caused by the crime. However, the 'maximalist' model does not pay sufficient attention to the participatory process which is a fundamental element of restorative justice. A number of

² That is, a conception of restorative justice based on the belief that what is distinctive about restorative justice is a process which brings together stakeholders in crime. Within the restorative justice discourse, the 'process' conception of restorative justice is often contrasted with the 'value' conception – an understanding of restorative justice based on the assumption that what is distinctive about restorative justice is the underlying values (Braithwaite and Strang 2001:1).

restorative justice advocates have proposed to combine the process-oriented model of restorative justice with the outcome- or value-oriented conception, so as to subject participants in the restorative justice process to an independent set of values (Braithwaite 2000, Braithwaite and Strang 2001, Roche 2000, Boyes-Watson 2000):

...a holistic conception of restorative justice requires both process and values commitments. ...If we have a conference in which all of the parties with a stake in the offense participate actively and it is decided to boil the offender in oil and criticize the victim for bringing the trouble on herself, for outcome reasons we would not want to say the conference was restorative. Conversely, if a judge makes a non-punitive order to help both an offender and a victim to get their lives back together but refuses to hear submissions from them that this is not the kind of help they want, for process reasons we would be reluctant to call this restorative.

(Braithwaite 2000:434-5)

Another issue debated by 'maximalists' and 'purists' was whether or not their respective models represent true alternatives to punishment and treatment paradigms. 'Maximalists' believe that the model proposed by them has a potential to present a 'fully-fledged systemic alternative intended to replace in the longer term both the rehabilitative and retributive ... justice systems' (Walgrave 1999:131). However, McCold accused the 'maximalist' model of absorbing both the rehabilitative and retributive goals. According to McCold, the model incorporates rehabilitative goals because Bazemore and Walgrave argue that restorative justice should 'offer (at a minimum) no fewer opportunities for offender reintegration and rehabilitation than systems grounded in individual treatment assumptions' (Bazemore and Walgrave 1999:363-4). At the same time the 'maximalist' model implicitly includes retributive goals because it views the society as a direct victim of crime to which the offender

owes a direct reparation in addition – or instead of – individual victims. The ‘maximalist’ model allows an obligation to repair ‘[a]n abstract harm to an abstract entity’ to be judicially imposed, therefore it incorporates elements of retributive justice (McCold 2000: 389-90).

Walgrave responded to McCold’s criticisms, arguing that judicially imposed reparation does not constitute punishment, because when a reparative obligation is imposed on the offender, the intention is to repair harm, and not to punish the offender. Walgrave admits that restorative justice is not a soft option. The experience of restorative justice may be painful and unpleasant for offenders. However, he argues, such unpleasantness and pain do not constitute punishment. This is so because the pain caused by a restorative sanction is not intentional, but a side-effect (Walgrave 2000, 2001, 2002, 2003; for a similar view see Wright 1991, 1996). Walgrave also argues that it is important to distinguish restorative justice from punishment for strategic reasons. If the distinction is not maintained, restorative justice will be absorbed into the traditional punitive approach and lost conceptually.

It is important to point out that there is strong opposition within restorative justice discourse to the belief that restorative justice presents an alternative to punishment (Daly 2000, 2002; Barton 2000; Duff 2002, 2003, Johnstone 2002, Dignan 2002, Zedner 1994). It has been argued that it would be misguided and undesirable to view restorative justice and punishment as opposites. Restorative justice is not an alternative to punishment, but an alternative *form* of punishment, because restorative sanctions may be unpleasant, painful and burdensome (Daly 2000, 2002, Duff 1992, 2003). One of the critics who holds these views, Kathleen Daly, believes that to argue

otherwise would be counterproductive for a number of reasons. Offenders would view the claim that they are not being punished when they are subjected to restorative justice interventions as disingenuous and hypocritical. If victims are told that restorative justice is not punishment, they may see restorative justice as denying the validity of their 'legitimate emotions of anger and resentment' which they feel towards offenders (Daly 2000:41). From the point of view of the community, if certain actions are not punished, it may amount to condoning and trivialising them. So, there could be advantages if restorative justice was presented not as something different from punishment, but rather a more constructive use of punishment.

(c) Some questions and critical comments

In this subsection I would like to make some critical comments and raise questions concerning some of the debates I have described above.

(i) Defining restorative justice

The first question concerns what preceded the 'maximalist' vs 'purist' disagreement – the Delphi exercise, involving a search for a definition of restorative justice and conceptual clarity within the restorative paradigm. What appears to underlie the quest for a precise and unified definition and vision of restorative justice is a belief that certainty, clarity and unity within the restorative paradigm are desirable phenomena. It has been suggested, for instance, that a clear and precise definition of restorative justice would help to preserve its good reputation by expelling from the restorative justice realm practices which are not restorative justice.

However, this suggestion seems to be grounded on an assumption that it may be possible to come up with a foolproof definition, the practical application of which will guarantee the preservation of the good reputation of restorative justice. Such an assumption is rather questionable. But even if it were possible to find such a perfect definition, how can it be ensured that the definition will not be misinterpreted or misapplied in practice? Also, even if the definition could indeed help prevent programs which are not restorative justice from qualifying as such, is there not a possibility that losses resulting from restricting the admission into the restorative justice camp may outweigh benefits in the long term? In particular, is there not a danger that imposing strict criteria may stifle creativity, discourage innovation, and reduce diversity within the restorative justice field?

(ii) An alternative to the criminal justice system?

Some other questions I would like to raise concern the relationship between restorative justice and the criminal justice system. As noted above, proponents of both 'maximalist' and 'purist' models of restorative justice aspire to create a radical alternative to the existing criminal justice system which would challenge the system. However, they propose different routes toward that end. The 'maximalists' believe that the desirable end could be achieved if restorative justice was incorporated into the criminal justice system as a sentencing option. The 'purists' argue that an alternative to the criminal justice system could be created by keeping restorative justice informal and voluntary and diverting cases from the criminal justice system into restorative programs operating outside the system.

I would question the potential of both – ‘maximalist’ and ‘purist’ – models to present a genuine alternative to the state justice system and challenge the system.

As far as the ‘maximalist’ model is concerned, it is important to note that its proponents suggest that the proposed ‘alternative’ should develop *within* the criminal justice system, bound by formal legality and implemented by criminal justice practitioners. Is there not a contradiction between something claiming to be an ‘alternative’ to the system and at the same time essentially accepting – and operating within – the institutional and ideological framework of the system? Is there not a danger that attempts to implement restorative justice within the criminal justice system will dilute and distort restorative justice philosophy, lead to co-optation of restorative justice, and perpetuate and strengthen the existing system, instead of challenging it?

The potential of restorative justice operating by way of diversion from the criminal justice system – as advocated by the ‘purists’ – to present an alternative to the system is also doubtful. It appears from proposals of the ‘purists’ that their model would be sanctioned by the system, it will accept the authority of criminal law, and will depend on the system in numerous ways (for example, cases will be referred to restorative programs from the system only if they satisfy the criteria set by the system; should restorative justice ‘fail’ in an individual case, the case would be referred back to the system). What seems to be proposed by the ‘purists’ is restorative justice operating outside the system, but at the same time under the tutelage of the system, surrounded by law, and complementing the system. Is there not a fundamental tension between something aspiring to challenge the system and at the same time complementing it?

In chapter 13 I shall revisit these questions and express doubts about claims by both restorative ‘maximalists’ and ‘purists’ that their respective models have a potential to challenge the criminal justice system. It will be suggested that if restorative justice indeed aspires to present a genuine alternative to the system, a much more radical agenda for the development of restorative justice is needed than that proposed by both restorative ‘purists’ and ‘maximalists’.

(iii) The marginalization issue

My next set of questions relates to the issue of potential marginalization of restorative justice. Some restorative justice advocates whose ideas I outlined in this chapter believe that if restorative justice is conceptualised and practised as a voluntary informal process, it will be marginalized with no chance of influencing events on the criminal justice arena (Walgrave and Bazemore 1999, Walgrave 1999, 2000, Dignan 2003). So, it is argued that restorative justice needs to be made an integral part of the criminal justice system, and a ‘radical and systemic’ reform of the criminal justice system in line with restorative justice values needs to be conducted (Dignan 2002, 2003).

Those who suggest that keeping restorative justice voluntary and informal is likely to lead to its marginalization may be right. However, would the marginalization of restorative justice necessarily be an undesirable development, and would the large-scale state-managed implementation necessarily benefit restorative justice? Firstly, it can be argued that keeping restorative justice low profile may benefit it at this stage, because before a large-scale implementation of restorative justice is attempted, certain

changes in public attitudes and social values need to take place. Before radical institutional transformations are carried out, a fundamental shift needs to occur in people's consciousnesses. So, arguably, today restorative justice need not be more than a 'sensitising theory' (Zehr 1990:227), or a critique which could cause us to think more carefully and critically about our ideologies and actions in the criminal justice arena (and perhaps more generally). Secondly, the idea of grand state-sponsored reforms (with the view of transforming the criminal justice system and thereby avoiding marginalization of restorative justice) has strong authoritarian and totalitarian overtones, and therefore should be treated with great caution. Thirdly, there are numerous historical examples suggesting that large-scale top-down reforms often backfire. In the light of historical precedents it may be wise to be suspicious of grand state-managed social transformations.

(iv) The issue of coercion

Another set of my questions within the context of the debates discussed in this chapter relates to the issue of coercion. The debate appears to have centred on whether judicial coercion should be part of restorative justice, or should restorative justice be limited to voluntary informal encounters. An assumption seems to be made that restorative justice operating by way of diversion from the criminal justice system can qualify as a voluntary way of 'doing justice'. However, is there not a possibility that at least in some cases the consent of offenders to participate in restorative justice programs may be motivated by the fear that unless they agree to take part in a restorative justice encounter 'voluntarily', they will be subjected to judicial sanctions? Given that the threat of judicial sanctions is looming in the background, can restorative justice encounters still be considered voluntary? Also, should the issue of

coercion be limited to judicial coercion? Is it not possible that offenders may be subjected to various informal pressures (for example, pressures coming from their families or other members of their communities) to participate in restorative justice interventions? If so, would such informal pressures not make the consent of offenders to participate in restorative justice encounters less than voluntary? In subsequent chapters I shall return to these questions and look at them in the light of my empirical findings. In the final chapter I shall suggest that the ‘maximalist’ vs. ‘purist’ debate concerning the issue of coercion is misleading, ignores some important issues and needs to be refocused.

(v) The conflict behind the debate.

How can the ‘maximalist’/ ‘purist’ debate be explained? What deeper conflict underlies it? One critic commenting on the distinction between the ‘process’ and ‘value’ conceptions of restorative justice has suggested that

...the tension is between two competing value commitments: (i) to a process in which victims and other stakeholders can participate meaningfully in criminal justice proceedings; and (ii) to case dispositions which are designed to further restorative rather than punitive goals.

(Johnstone 2004:12, original emphasis)

Applying this comment to the ‘maximalist’/ ‘purist’ debate, it can be argued that the debate is a consequence of a potential conflict between two restorative justice values: stakeholder empowerment and promotion of restorative outcomes. The ‘purist’ model prioritises the value of empowerment, while the ‘maximalist’ model ascribes primary significance to achievement of restorative outcomes, in particular, reparation of harm. As a result of attaching an overriding importance to the stakeholder empowerment,

the 'purist' model increases the risk of non-restorative outcomes, especially punishment. The 'maximalist' model avoids this danger by prioritising restorative outcomes, imposed if necessary. The consequence is that the empowerment of stakeholders is sacrificed by the 'maximalist' model, as their decisions may be overruled, or they may not have an opportunity to reach their decisions themselves in the first place.

If the 'purist'/ 'maximalist' disagreement indeed results from a conflict between restorative justice values, the question arises: is it desirable to resolve this conflict? Is it desirable to declare certain restorative justice values as superior to others in all circumstances (as the two models seem to be doing)? Arguably, if some restorative justice values are considered as overarching and universalisable, this can lead to potentially unethical responses at least in some situations (Pavlich 2002b). Maybe a better approach is not to declare some restorative justice values as superior to others. Instead, a case-driven approach could be adopted. If restorative justice values seem to conflict in a particular situation, the ethical work needs to be carried out within the complexities of a concrete situation, rather than through rigid application of pre-established principles and absolute maxims to given situations.

(2) 'Reformist' restorative justice and its defining features

Despite the differences between proponents whose proposals I have outlined in this chapter, I suggest that the writers whose ideas have been discussed above could be classified as belonging to a particular strand of thinking within the restorative justice movement. I shall label this strand 'reformist'. This is a mainstream way of thinking within the restorative discourse. I shall suggest a number of criteria which define the

'reformist' model and distinguish it from another model which will be the subject of the next chapter – the 'radical' restorative justice. It is important to point out, though, that the 'reformist' model (as well as the 'radical' model) are 'ideal types', and proposals of individual proponents may not always fit neatly into either model.

(a) Focus and scope of the campaign

It appears from the writings of 'reformist' restorativists that the main focus of the campaign should be the reform of the criminal justice system in accordance with restorative justice principles (Walgrave 1999, Bazemore and Walgrave 1999, Dignan 2002, 2003, McCold 2000). This is one distinctive characteristic of restorative 'reformism'. Wider social reforms may be considered desirable, but outside the ambit of restorative justice. For example, McCold postulates: '[r]estorative justice is about healing responses to crime or wrongdoing and is not a general social justice theory about the distribution of social and/or economic goods' (2000:361).

(b) Dependence on the criminal justice system

Another distinctive feature is that the 'reformist' model presupposes a significant degree of dependence of restorative justice on the criminal justice system³ (in particular, the state justice system provides a legal and institutional framework, as well as funding and referrals for restorative justice programs; additionally it provides

³ Some 'reformist' restorativists argue that restorative justice should be firmly located within the criminal justice system (the 'maximalist' model). Others argue that it should function by way of diversion from the system (the 'purist' model). Some advocates propose a combination of the 'maximalism' and 'purism' (Wright 1996, Van Ness and Strong 2002, Van Ness 2002).

a back-up in situations where restorative justice is either impossible or undesirable; the system also provides judicial oversight and legal safeguards).

(c) Retaining 'traditional' terminology, concepts and assumptions

There is a tendency among 'reformists' to uncritically bring into the restorative paradigm some important concepts from the 'traditional' way of thinking about crime and justice, such as 'crime', 'victim' and 'offender'. That is, the ideological framework of the 'traditional' response to crime is retained.

(d) Pre-defined goals: reparation of harm

There is a trend within the 'reformist' strand to pre-define what restorative justice should achieve. Most commonly it is argued that restorative justice should aim at reparation of harm. Thus, the Declaration of Leuven postulates: 'Crime... should, in the first place, be dealt with as a harm to victims... Reactions to crime should contribute towards the decrease of this harm...'⁴. Similarly, the Statement of Restorative Justice Principles by the Restorative Justice Consortium proposes that '[p]rimary aim [should] be the repair of harm'⁵. Zehr and Mika, articulating restorative justice principles, state: '[v]ictims and the community have been harmed and are in need of restoration' (Mika and Zehr 2003:143).

(e) 'Ideology of harmony'

⁴ Available at <http://www.sonoma.edu/cja/info/leuven.html> Also reprinted in Johnstone 2003:477-81.

⁵ Available at <http://www.restorativejustice.org.uk/resources/principles.htm> Also reprinted in Johnstone (2003:482-4).

There seems to be a general belief among ‘reformists’ that crime presents ‘a threat to peace and safety in community and a challenge for public order in society’. So, it is argued that ‘[r]eactions to crime should contribute towards the decrease of [such] threats and challenges’ (Declaration of Leuven). Likewise, the Statement of Restorative Justice Principles by the Restorative Justice Consortium defines the principles relating to the interests of local community and society as ‘[t]he promotion of community safety and social harmony’.

(f) Implementation issues

As has been noted earlier, the focus of the ‘reformist’ campaign is on reforming the criminal justice system in accordance with restorative justice values, so issues of implementation are of fundamental importance to ‘reformists’. There are at least three distinctive characteristics of the ‘reformist’ restorativeness in relation to implementation issues.

The first one is that the ‘reformist’ restorative justice attaches a lot of importance to the mechanics of exactly how restorative justice should be put into practice. Representatives of this strand of thinking develop detailed and elaborate plans outlining step-by-step processes of implementing restorative justice (Wright 1996, Van Ness 2002, Walgrave 1999, McCold 2000, Dignan 2002, 2003).

The second distinct feature is that considerable attention is paid to developing ‘standards’, ‘guidelines’ and ‘principles’ for restorative justice, which could guide the implementation process, for example, The Declaration of Leuven, The Statement of Restorative Justice Principles by the Restorative Justice Consortium, Basic Principles

on the Use of Restorative Justice Programs in Criminal Matters (UN:2000)⁶, The Fundamental Principles of Restorative Justice developed by Ron Claassen⁷, principles articulated by Van Ness and Strong (2002), standards for restorative justice suggested by Braithwaite (2002: 563). Besides, as has been demonstrated in this chapter, serious efforts have been made to develop a 'clear and precise' definition of restorative justice.

The third feature relating to implementation issues that that many reformists seem to favour the idea of large-scale state-managed implementation of restorative justice (Wright 1996, Walgrave 1999, Bazemore and Walgrave 1999, 2000, Dignan 2002, 2003).

(g) Legal safeguards and judicial oversight

Conscious of possible abuses of the restorative justice process by the empowered stakeholders, 'reformists' assign a supervisory role over restorative justice processes and outcomes to judges and argue that certain legal safeguards should be integral to restorative justice (Wright 1996, Walgrave 1999, 2000, Bazemore and Walgrave 1999, Dignan 2002, 2003, Van Ness and Strong 2002). Thus, the Declaration of Leuven postulates that '[t]he role of public authorities in the reaction to an offence needs to be limited to... safeguarding the correctness of procedures and the respect for individual legal rights'. Basic Principles on the Use of Restorative Justice Programs in Criminal Matters (UN:2000) state that '[f]undamental procedural

⁶ Available at <http://www.restorativejustice.org/rj3/UNBasicPrinciples/VaNessarticle.htm> Also reprinted in Johnstone (2003: 485-488).

⁷ Available at <http://www.fresno.edu/pacs/rjprinc.html> Also reprinted in McCold (2000)

safeguards should be applied to restorative justice programmes and in particular to restorative processes: the parties should have the right to legal advice before and after the restorative process...’.

(h) Voluntary justice?

Another common (although controversial) theme within the ‘reformist’ discourse is the requirement of voluntariness. There seems to be an agreement that as far as victims are concerned, their participation in restorative encounters should be voluntary. For example, the Declaration of Leuven states that ‘[t]he victim has the right to choose whether or not to participate in a restorative justice process’. However, in relation to offenders the issue of voluntariness is rather contentious, as the debate between the ‘maximalists’ and ‘purists’ outlined in this chapter demonstrates. Some mainstream advocates appear to believe that restorative justice should be voluntary (Marshall 1996, McCold 2000). For instance, the Statement of Restorative Justice Principles by the Restorative Justice Consortium proposes that ‘[p]articipation [should] be voluntary and based on informed choice’. UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters state that ‘[r]estorative processes should be used only with the free and voluntary consent of the parties. The parties should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily by the parties...’. Council of Europe Recommendation No R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters proposes that ‘[m]ediation in penal matters should only take place if the parties freely consent. The parties should be able to withdraw consent at any time during the mediation’⁸.

⁸ <http://www.restorativejustice.org/rj3/Government%20Reports/mediationEurope.html>

Other mainstream proponents seem to accept that a degree of coercion may be acceptable, indeed, necessary, for the achievement of restorative goals. Thus, one of the principles developed by Claassen states that '[r]estorative justice *prefers* responding to the crime ... with the maximum amount of voluntary cooperation and minimum coercion, since healing in relationships and new learning are voluntary and cooperative processes. ...Restorative justice recognizes that not all offenders will choose to be cooperative. Therefore there is a need for outside authority to make decisions for the offender who is not co-operative'⁹ (emphasis added). Similarly, Walgrave acknowledges the value of voluntariness, but does not see it as a necessary requirement. Rather, it is seen as a factor promoting the effectiveness of restoration: '[t]he quality of restoration will considerably improve if the offender cooperates freely... However, voluntary cooperation is not a value on its own, but rather a means of enhancing the quality of possible restoration' (Walgrave 2003:62).

Concluding remarks

In this chapter I have outlined some of the ideas of today's leading proponents of restorative justice, described some of their debates and raised some questions about their arguments. I have also identified a particular way of thinking within the restorative justice discourse – the 'reformist' model – and outlined its specific characteristics. In the next chapter I shall describe another strand of thinking about restorative justice – the 'radical' model, compare it to the 'reformist' model and analyse implications of both models for the development of restorative justice.

⁹ <http://www.fresno.edu/pacs/rjprinc.html>

Chapter 4

Some Radical Ideas in Recent Writings

Among those who have gathered under the banner of restorative justice not everybody sees the reform of the criminal justice system so as to re-orient it away from retributive and towards restorative goals as their primary, or the only, objective. Some restorative justice advocates are critical about defining goals so narrowly and propose a much more ambitious agenda for restorative justice. In this chapter I shall discuss some ideas of such restorative justice proponents. I shall also identify a particular way of thinking within the restorative discourse – ‘radical’ restorative justice, which will be contrasted with the ‘reformist’ strand analysed in the previous chapter. I shall argue that the ‘radicals’ differ from the ‘reformists’ in a number of important ways: (i) they are reluctant to accommodate restorative justice within the structural and ideological framework of the criminal justice system and propose rather different frameworks; (ii) they propose a much broader scope for the campaign for restorative justice, so as to include not only injustices which involve violations of criminal law but also injustices occurring at the social-structural level and which escape legal definitions of crime; (iii) they reject some ‘traditional’ terminology, concepts and assumptions and propose to conceptualise ‘crime’ differently, as well as look at the traditional roles of ‘victims’ and ‘offenders’ in a rather different light; (iv) they are critical of pre-defining goals of restorative justice as reparation of harm and suggest that perhaps a better approach would be to avoid pre-determining outcomes of restorative encounters; (v) they are critical of the ideology of peace and harmony underlying the ‘reformist’ discourse and emphasise the value of a conflict as a fuel for social change; (vi) they are rather vague on practical implementation issues. The implications of both – reformist and radical – strands for the development of

restorative justice will be discussed. Also, I shall attempt to identify some parallels between aspirations of today's radical proponents and critics and ideas of early inspirers of restorative justice.

(1) Breaking away from the existing paradigm

One of such proponents is a radical feminist Kay Harris (1989, 1991, 1998a, 1998b). Harris took an active part in the Delphi debate mentioned in the previous chapter and expressed much more radical and critical views than most other Delphi participants. One of her major criticisms of restorative justice as it is currently developing is that it neglects social-structural causes of crime:

[Restorative justice] often seems to come back to putting everything on an individual offender... That is, the rhetoric states that crime often represents and manifests structural and community and interpersonal problems, reflecting poverty, sexism, racism, inequality, segregation, and other attributes of lives too often lived in an atmosphere of hopelessness and despair, yet when we respond to it, we forget all that stuff. ...if we are serious in believing that such factors have effects, and that they are harmful and threaten domestic tranquillity and security, then [restorative justice] has got to confront those forces with equal emphasis as confronting individual harm-doers.

(Harris (1998b) quoted in McCold 1998:43-44)

Harris has also responded to proposals as to how restorative justice should develop, which have been put forward by Dan Van Ness (1989). She identified a number of problems inherent in Van Ness's model of restorative justice. One such problem is that the model in question individualises crime. The model is based on the assumption that crime is a problem attributable solely or primarily to personal deficiencies of individual lawbreakers, and the role of the social forces that promote

crime and conflict is ignored. Harris argues that the model of restorative justice, which fails to address social injustices and is focused exclusively on getting the offender to repair the damage caused by his or her crime, is likely to reinforce the existing social inequalities. She concludes:

I find it alarming to discuss paradigms relating to justice concerns without addressing how what is being proposed takes into account past and ongoing injustices and contributes toward their redress and elimination. Thus the model is unsatisfactory one for me in that it is not clearly rooted in a commitment to more fundamental social change.

(Harris 1989:30)

Harris's second major criticism of Van Ness's model relates to the reliance which it places on the government, the criminal justice system and its officials. Van Ness proposes to retain the present criminal justice process and to grant victims a formal role in the process, including the right to participate at all stages of the criminal procedure and the right to be represented by lawyers. Harris is critical of these proposals. She doubts that inserting victims into the formal legal process and giving them lawyers would empower victims. Nor does she think that the reforms proposed by Van Ness would help to promote reconciliation between conflicting parties.

Harris argues that unless granting victims and the community a more significant role is accompanied by a corresponding reduction in the power and the involvement of the state in the criminal justice process, it would lead to an even more unbalanced system than the present one. It would result in a situation where

...the offender [finds] himself or herself not only lined up in defence against the state, but also against the victim and perhaps ... some new entity or presence put there to represent 'the

community'. ...Simply injecting into the status quo some kind of formal victim-offender confrontation, replete with lawyers on both sides, and providing for the victim to have a formal say in each step of the traditional process promises only to do more to further unbalance an already skewed system.

(Harris 1989:32)

Harris's further major criticism is directed at Van Ness's proposals relating to incapacitation of 'dangerous' offenders. Van Ness suggests that when there are identifiable risks of future criminal behaviour, in making sentencing decisions, 'restitution principle' should be overridden by the 'incapacitation principle'. To Harris, this recommendation

...represents a fundamental unwillingness to break away from the existing paradigm. It is like announcing that you support peace and disarmament and will try to negotiate with other nations toward those ends, but not with those countries that you regard as dangerous.

(Harris 1989:34)

Harris is critical of Van Ness's willingness to essentially write off an entire group of people and exclude 'dangerous' offenders from the restorative paradigm:

...by ranking the restitution principle second and by suggesting that it may be 'modified by other purposes as appropriate', I fear that what is left looks less and less like a basis for developing a new paradigm and more and more like what others have called 'selective incapacitation' models.

(Harris 1989:35)

Harris suggests that restorative justice is hardly a paradigm at this stage. We seem to be trapped in the old way of thinking, and we are not very close to having even a

skeleton of a new paradigm. Harris argues that in making proposals for change, we need to be primarily guided by value questions and ethical considerations. She puts forward several moral principles which she recommends as the ethical standards by which reform proposals should be judged.

One of the principles proposed by Harris is '[w]hatever means you use will become part of the ends you achieve' (1989:36). She challenges claims that the achievement of aims of security and justice can make morally acceptable employing such methods as imprisonment, coercion, repression and other means which are inhumane or inconsistent with restorative justice aspirations. The end does not justify the means utilised in achieving it.

Another moral principle proposed by Harris is '[n]o ethical decision is exactly transferable from one situation to the next' (1989:36). Harris believes that it is important to consider the actual effects of actions and decisions on people in terms of how they fit with our values and aims and not simply look to law or some other authority for guidance.

Harris suggests as another ethical guideline that '[t]he people with the most ethical right and responsibility to make a decision are the people who will be affected by it' (1989:36). She refers to the works of Nils Christie as a source of support (Christie 1977, 1981), in particular, his aspiration to limit to the minimum the role of the state and the state justice system and its officials in the conflict-handling process. Harris argues that if returning 'stolen' conflicts to their rightful owners – people directly involved in, and affected by, them – is more than a rhetoric within the restorative

justice discourse, restorative justice advocates need to be serious about letting those people exercise power.

Among other ethical guidelines proposed by Harris is 'do unto others as you would have others do unto you' (1989:37). She acknowledges that this moral principle may be particularly difficult to follow when we are confronted with people who have offended against us. Yet, this principle may be most important in situations when it seems that complying with it is most difficult.

Harris's critique of the unwillingness to break away from the existing paradigm – an attitude which may be found in writings of not only Van Ness, but also many other today's restorative justice campaigners – is very important. Her proposal that in developing the new paradigm, restorative justice advocates need to be primarily guided by ethical considerations is also significant. Many restorative justice campaigners seem to be too pre-occupied with developing pragmatic plans for the implementation of restorative justice within the existing system. In doing so, they apparently fail to notice that their proposals serve to effectively perpetuate, rather than challenge, the state justice system and the values underpinning it. However, the new paradigm of justice is unlikely to emerge, unless the ethical (as well as structural) framework of the criminal justice system is discarded and totally different moral values and attitudes are adopted.

(2) From restorative to 'transformative' justice

Arguments in many respects similar to those put forward by Harris can be found in works of a restorative – and social – justice campaigner and penal abolitionist, Ruth

Morris. Morris criticised two leading books in the restorative justice field, 'Changing Lenses' by Zehr¹ (1990) and 'Justice for Victims and Offenders' by Wright (1991), arguing that:

What is missing ... in both books is sufficient attention to the *socio-economic wrongs at the root of our existing definitions of crime and punishment*. Even what we define as crime is powerfully influenced by our socio-economic status system. The vast majority of 'criminals' are powerless individuals from low-status races and groups whose offenses are trivial compared to the wrongs of those who make war, destroy environment, and build industry on unconscionable accident rates and high unemployment. The criminal class in our society is drawn from people who are social cast-offs, who had few opportunities and who are almost designed as objects on whom we can project our anger and vengeance. ...As a result, the roles of victim and offender are accepted by Wright and Zehr, without their recognizing clearly that the roles themselves are a result of a snapshot approach to justice as defined by our particular hierarchically oriented society.

(Morris 1995:290, original emphasis)

Morris is sceptical about attempts to accommodate restorative justice within the existing ideological and structural framework and believes that '[t]rying to patch restorative justice onto the existing fundamentally retributive system is a transplant the social body will reject. ...restorative justice without transformation of the roots of social injustice and without dismantling the contours of our present retributive system is *not* enough' (1995:288, 291, original emphasis).

Morris recommends that if we are seriously talking about justice, we need to reconsider and reformulate restorative justice. It is argued that we cannot continue to

¹ See chapter 2 of this thesis.

think about restorative justice in terms of restoration. Restoration implies that we had had justice and lost it. It implies that we need to restore the status quo, irrespective of whether or not it was just (Morris 2000). Nor can we continue to think of restorative justice as a reaction to a criminal or harmful event. Such conceptualisation of restorative justice presumes that one event can define

...all that matters of right and wrong – it leaves out the past and the social causes of all events. It is like one of those science fiction stories where time stops, and the whole world focuses on this one moment, without a past or future.

(Morris 2000:4)

What Morris puts forward is the idea of ‘transformative’ justice – justice which aims not to restore the status quo, but to transform the world to one with greater social and economic justice. The vision of ‘transformative’ justice proposed by Morris recognises that

Justice is not just about someone who stole ten dollars in the street. Justice is about Native and Black babies dying because we have not provided them with the bare essentials of life. Justice is about job discrimination by race. Justice is about the heritage of slavery, and of workers dying of black lung disease. Justice is about the many ways in which we destroyed whole tribes and communities of indigenous people. And until we come to terms with these injustices, the charades that pass for justice in our court system are petty games of children.

(Morris 2000:152)

Morris makes a set of practical proposals aimed at transforming both the criminal justice system and resisting social injustices. In relation to the criminal justice system, her proposals include educating the general public about injustices that are

taking place in the name of justice within the system, demonstrations, letter writing, petitions, phone calls and meetings with officials, and support for prisoners, ex-prisoners and crime victims, all by the general public (2000: chapter 7). As far as the transformation of social injustices is concerned, Morris provides a variety of advices for political activism and recommendations, such as changing individual lifestyles (so as to defy socially-dominant consumerist values), developing alternatives to corporate media, democratising political systems and resisting the trans-national corporate rule and the globalising market capitalism.

(3) Restorative justice as a needs-based justice

Two other campaigners for restorative justice – Dennis Sullivan and Larry Tifft – are rather critical about the current development of restorative justice:

It is disheartening to see ... how many proponents of restorative justice continue to limit their focus to only the correctional aspects of restorative justice (e.g., victim-offender reconciliation, mediation, and interpersonal conflict resolution programs). They refuse to extend their focus to take into account the 'transformative', economic, and structural dimension of justice: that is, the social-structural conditions that constrain our lives and affect the extent to which any one of us can live restorative lives. ...In other words, many proponents of restorative justice are willing to speak about restorative processes within the context of, or as an alternative to, the criminal justice system, but are unwilling to extend their thinking to recognize that these restorative processes have applicability to all areas of our lives.

(Sullivan and Tifft 2001:94-5)

Sullivan and Tifft argue that to make restorative justice a reality much more is needed than many restorative justice campaigners seem to assume. Fundamental changes are necessary at the social-structural level, which would involve:

...the creation of social arrangements that are from the outset structurally healthy because they are set up to attend to everyone's needs. They are structured in such a way that they do not do violence to anyone or create loss or deficits for anyone by either limiting participation or distributing benefits according to one's position, merit, or desert.

(Sullivan and Tifft 2001:95)

According to Sullivan and Tifft, what is wrong with today's social arrangements is that they are hierarchical and rights-based or deserts-based:

In the rights-based social arrangements or hierarchies, it is believed that one should receive benefits, privileges, and burdens, hold rights, and have access to resources solely on the basis of his or her rank or place. In deserts-based social arrangements or hierarchies, it is believed that a person should receive benefits, privileges, and burdens and have access to resources on the basis of merit or desert, according to the efforts he or she has put forth.

(Sullivan and Tifft 2001:99)

It is argued that rights-based and deserts-based hierarchical social arrangements deny the possibility of satisfying the needs of all. According to Sullivan and Tifft, it is of little value to talk about restorative justice within a context of such relationships. They argue that restorative justice principles derive from a needs-based political economy: a political economy that seeks to take into account the needs of all involved in given social situations. Sullivan and Tifft believe that it is necessary to firmly position restorative justice within the needs-based concept of justice. Restorative

justice needs to concentrate not only on responding to harms and injustices that have already been done (so as to meet the needs of all involved), but also on creating social arrangements that take into account the needs of everybody from the outset structurally. Needs of all in such a political economy 'are met, but met as they are defined by each person' (2001:113), and the aim is to achieve 'equal well-being' for everybody through meeting unique needs of each person at any particular time.

Sullivan and Tifft also argue that needs-based restorative justice cannot be achieved in the face of what they call 'social-structural violence', that is:

...the kind of violence we do when we exercise power over each other, [as well as] the violence that derives from the way we organise our primary social relationships so that we set up patterns of interaction that allow some to thrive at the expense of others.

(Sullivan and Tifft 2001:122)

It is suggested that definitions of 'violence' in our society are faulty (Sullivan and Tifft 2001, also Sullivan and Tifft 1998, 2000a, 2000b). We tend to conceptualise violence as an outright use of force by one individual against another. Sullivan and Tifft refer to this form of violence as 'interpersonal violence'. Yet, every instance of interpersonal violence has a mirror image in power relations at the social-structural level. Interpersonal and social-structural violence are intertwined. They are like two sides of the same coin. They are manifestations and symptoms of the same political economy. It is an economy

...in which acts that create surplus for some and scarce conditions for others (in economic terms) and that support the accumulation of power, prestige, and privilege for some and

impoverisation for others (in political terms) are fostered and rewarded despite their destructive effects on individual and community well-being.

(Sullivan and Tift 2001:158)

However, unlike interpersonal violence, social-structural violence appears in a masked, muted form and is structured into social arrangements in such a fashion that usually it is not even seen as violence. Examples of social-structural violence can be found at all levels of the society, and include any exercise of power over people and satisfying one's needs at the expense of others.

It is also suggested that we tend to deny the existence of social-structural violence because we are all to some degree involved in its creation and perpetuation. It is argued that in order to maintain hierarchical, power-based social relationships individuals invent justifications to claim superiority over others and to create deficits for others and surplus enhancement for themselves (Sullivan and Tift 2001: 160).

Sullivan and Tift further argue that our legal systems are structured in such a way that they are designed to deal mainly with interpersonal violence, and social-structural violence usually doesn't even deserve the designation of crime:

...the harms created by social-structural violence are not taken into account by law because law, as an administrative derivative of power-based political-economic institutions, is structured to direct the eyes of all towards the acts of those who are marginalized or disenfranchised by power. The law directs our attention to their 'reactive' forms of violence, and away from the perpetrators and benefactors of structural violence, hierarchical relations, and an economy that is geared toward deficit creation for some in the interest or surplus enhancement for others.

According to Sullivan and Tifft, the reason why the world is divided into categories of acceptable and unacceptable violence, culpable and non-culpable perpetrators, and worthy and unworthy victims is that such a division helps to maintain a particular political economy.

If both interpersonal and social-structural violence are part and parcel of the way the society is organised, then, it is suggested, the requirements of restorative justice cannot be met, unless the campaign for restorative justice is significantly widened. It needs to be widened in such a way as to confront not only interpersonal violence, but also social-structural violence at all levels of the social existence. Sullivan and Tifft argue that if we aspire towards restorative justice, we need to recognise the harmfulness of power-based social relations and to

...rid ourselves of power-based actions and relations in all areas of our lives. In turn, this requires that we detach ourselves from the benefits that power affords us – privilege, prestige, economic stability, and the positive sense of ‘self-worth’ that is constructed on feeling better than others, and subsequently taking a condescending attitude towards them. ...we must move to create personal relationships, social arrangements, and communities that promote patterns of interaction that are non-hierarchical, non-power based.

(Sullivan and Tifft 2001:160)

Where do we start the process of creating such relationships and social arrangements? Sullivan and Tifft believe that the pre-condition for social transformation is the transformation of our perceptions of our own selves and those around us. We need to begin with examining and radically reframing these perceptions:

Anyone who seeks to adopt a restorative, needs-based perspective on justice must first confront the self that hierarchically ranks the worth of some over that of others and treats the categories created by such rankings as a fact of nature.

(Sullivan and Tift 2001:164)

It is argued that the justifications which individual selves use in order to maintain hierarchical, power-based social relationships need to be challenged and discarded. Individual selves should abandon living according to merits-based and rights-based principles, and instead embrace a needs-based conception of social life. It is alleged that such transformation at personal levels is a pre-condition to transforming our political economy and the creation of 'restorative relationships' – relationships aiming at meeting the needs of all and seeking the equal well-being of all. How exactly would this happen? It is argued that if a needs-based conception of human relationship was first adopted in most intimate relationships (e.g. relationships with partners, children), it would then spill over into relationships at less personal levels and finally throughout the society:

As we develop restorative relationships at the most personal of levels, we find that we are less hampered by the 'it can't be done' or 'one person can't make a difference' syndromes that can deflate our energies for transforming social relationships on a larger scale. Moreover, we come to recognise that hierarchy and exercise of power are neither universal qualities of relationship nor necessary components of social life ... and that we can structure into any sphere of our daily lives a sense of justice that takes into account the needs of others as well as our own.

(Sullivan and Tift 2001:180)

Sullivan and Tifft's idea of restorative justice as needs-based justice is thought-provoking and raises many interesting questions. Apart from numerous practical questions (e.g. How exactly would people's needs be defined? Is it only their own perception of their needs that counts? Is it possible that people may misunderstand their *real* needs? Exactly how would a needs-based political economy be organised and how would it function? How and by whom would it be ensured that everybody's needs are met? What will happen if needs of some individuals and groups are not met? What should happen to those members of the society who do not wish to build social relationships in accordance with the principle 'to each according to their needs'?), there is a very important ethical question: How appealing is the concept of justice based on the principle 'to each according to their needs', irrespective of their moral entitlements? Would the adoption of this principle as a universal moral maxim not lead to unethical choices and undesirable outcomes at least in some circumstances? Besides, is there not something inherently totalitarian and imperialistic in suggesting that we all should embrace the same morality and conception of social life?

(4) Some other radical ideas in recent writings

Some other restorative justice advocates made arguments in favour of a radical agenda for restorative justice, taking into account social-structural sources of crime and conflict.

One such advocate is David Dyke, who argues that proponents of restorative justice fail to address the structural dimensions of criminal conflict, and suggests that contemporary restorative justice practices focus too much on interpersonal

dimensions of crime and ignore the deeper roots of crimes as found in class, race, and gender-based conflicts (Dyke 2000). Dyke believes that the result of such a narrow focus of today's restorative justice practices is that restorative justice serves 'to cover up deeply-rooted divisions in favour of an 'ideology of harmony' wherein mediators and facilitators naively assume that 'shared feelings' will bring empowerment (2000:240). Dyke suggests that it is possible for restorative justice practitioners to design approaches which could reflect the deep structural roots of conflict. In particular, practitioners should be trained to recognise social-structural sources of crime and think more 'globally' about restorative justice, rather than concentrate on finding quick-fix solutions to problems at hand.

Another proponent, Harry Mika (1992), argues that the contemporary practice of mediation and restorative justice is 'astructurally biased': it focuses on interpersonal accommodations between victims and offenders and 'through accident, neglect, or design – fails to address the rootedness of instances or episodes of conflict in human relationships expressed in social organization and structure' (Mika 1992:559-60). Thus, present 'astructurally biased' practices may create a false peace, or neutralise conflict. Mika goes on to suggest certain attributes of the social and political location of a program, the range of program services, and organisation of community reconciliation programs which tend to be more sensitive to the structural dimensions of local conflict.

Another critic, George Pavlich, writing in the context of community mediation, argues that in its current form, community mediation serves to preserve the status quo by wiping out conflicts with social-structural roots:

...community mediation is part of a wider attempt to structure fields of action designed to expunge conflicts from the community. Deploying such mediation programmes involves planning and calculation to set up relational fields in which agents can educate consent and neutralise potentially disruptive disputes. This process provides support for the status quo, without due regard for wider inequities and oppressions that might have generated conflict in the first place.

(Pavlich 1996a:151)

According to Pavlich, at present, community mediation operates as an extension of the legal system. Its margins are bounded by formal legality (through the courts, statutes, funding practices), and it is colonised by system-oriented practitioners. Building on Foucault's work on government (Foucault 1977, 1978, 1980, 1981), Pavlich argues that community mediation needs to be understood as a form of power relating to – although distinctive from – state power (1996a, 1996b). Community mediation is developed outside the state, but for the purpose of strengthening the state. Pavlich argues that mediation employs its own techniques of power (in particular, techniques of discipline and techniques of self²) directed at participants in mediation. The objective is to produce non-disputing individual selves, and consequently achieve dispute settlements in the interests of 'community order', quickly and effectively expunge from the society potentially disruptive conflicts, and support and strengthen the existing social arrangements, without due regard for wider inequities and oppressions that might have generated the conflict in the first place. Pavlich argues that community mediation extends governmental practices to dispute resolution arenas, and allows the state to govern its subjects at a distance, exercising

² That is, techniques aimed at creation of particular individual and self-identities.

power in an invisible fashion in order to minimise resistance to the state power and maximise regulatory efficiency (1996a, 1996b).

Pavlich argues that as long as community mediation complements the legal system and employs its power for the purposes of strengthening state power, it cannot be an alternative to the system. To present a true alternative would require a dispute resolution process that

- does not depend on state law and does not follow the dictates of state agencies;
- does not individualise conflicts, but takes into account their aetiology (in particular, wider social inequalities);
- does not ignore social distances between conflicting parties in their associative environments and does not bias disputants towards a consensus or an elimination of difference;
- does not lean toward restoration of 'community order', rather than fundamental social change;
- does not professionalise community justice;
- does not emphasise technocratic measures of success (that is, the efficiency in settling disputes conceived in statistical terms).

Later, writing in the context of restorative justice, Pavlich (2002a, 2005) pointed out that viewing restorative justice as a way of repairing harms and redressing wrongs, which are defined from within the status quo, seriously compromises the potential of restorative justice to bring about meaningful social changes. Pavlich asks:

...if restorative justice is premised simply on repairing wrongs as enunciated from given contexts, then how can it accommodate calls for significant social change? Viewing restorative justice as a slave to contextual definitions of wrongs commits adherents to the assumption that restorative justice's main purpose is to redress wrongful acts. Missing in this logic is, for instance, the possibility that certain kinds of conflict may well be needed to spearhead important social changes (e.g., to totalitarian contexts). ...responding to individual harms within communities through narrowly conceived restorative justice practices (e.g. FGC, mediation, conciliation, etc.) restricts what sorts of change is possible.

(Pavlich 2002a: 96-97)

Narrowly conceived restorative justice can hardly challenge the 'norms' which define what represents 'harm' in a particular context, or challenge the idea of harm when expressed exclusively in individual or community terms. If it cannot do this, Pavlich asks, is restorative justice really different from the criminal justice system which, according to its advocates, it seeks to replace? Pavlich argues that:

Concentrating effort on local harms leads protagonists to develop political arenas (FGCs) to contain, isolate and thwart the very conflict that might otherwise encourage broader political resistance to oppressive collective domination.

(Pavlich 2002a: 97)

(5) 'Radical' strand within restorative justice discourse

(a) Defining characteristics

In this chapter I have described some radical ideas in today's restorative justice discourse. The radical proponents and critics of restorative justice do not speak with one voice, yet there appear to be some common themes in their writings. On the basis

of such common themes I place these writers into the 'radical' camp, as opposed to the mainstream, or 'reformist', camp described in the previous chapter.

(i) Criticism of the dependence on the criminal justice system

'Radical' restorativists are critical of the 'reformist' willingness to essentially preserve the existing criminal justice system and to accommodate restorative justice within the structural and ideological framework of the present system (Harris 1989; Morris 1995, 2000; Sullivan and Tifft 2001, Pavlich 1996a, 2002a, 2005). So, the first defining characteristic of the restorative 'radicalism' is its reluctance to depend on the criminal justice system.

(ii) Proposal to broaden the scope of the campaign for restorative justice

'Radicals' criticise the 'reformist' restorative justice for proposing a narrow scope for the campaign. For them, restorative justice which is not committed to attending to social-structural sources of crime and conflict is 'not enough'. It is argued that it is necessary to significantly widen the scope of the campaign and firmly ground restorative justice in the commitment to fundamental social changes (Harris 1989; Morris 1995, 2000; Sullivan and Tifft 2001, Dyke 2000, Mika 1992, Pavlich 1996a, 2005; also Sullivan and Tifft 1998, 2000a, 2000b). So, broadening the scope of the campaign is the second defining feature of the restorative 'radicalism'.

(iii) Rejecting 'traditional' terminology, concepts and assumptions

Unlike many 'reformists', the 'radical' strand within restorative justice finds the ideological framework of the criminal justice system and certain fundamental

concepts problematic and proposes to reject them. One of such rejected concepts is 'crime' as defined by criminal law. It is pointed out that crime has no absolute ontology devoid of prior human judgement (Pavlich 2005). It is argued that criminal law is an administrative derivative of a particular political economy and is designed to perpetuate existing power relations (Sullivan and Tifft 2001). Criminal law creates artificial categories of acceptable and unacceptable harms and injustices so as to divert attention from activities of some and towards actions of others (Morris 1995, Sullivan and Tifft 2001). Restorative justice which adopts legal definitions of crime serves to preserve social injustices and maintain the status quo.

The 'radical' position in respect to rejecting 'old' concepts, 'crime' in particular, parallels the approach of early inspirers of restorative justice (see chapter 2). They had also demonstrated the willingness to discard the concept 'crime' and either merge it with tort (Barnett), or see it as a conflict (Christie), or re-conceptualise it in more individual terms (Zehr).

Other rejected by the 'radicals' traditional concepts are 'victim' and 'offender'. It is argued that the roles of 'victim' and 'offender' are 'a result of a snapshot approach to justice' (Morris 1995:290). Or, as Sullivan and Tifft suggest,

...to conceive and speak of others in terms of identity fixing and identity separating categories such as offender and victim is itself a source of harm because these designations are personally deconstructive and non-integrative. By using them, we force upon the person harmed and the person responsible for the harm a fixed, false identity. ...For the person who has harmed, an identity is created and placed so as to separate, brand, marginalize, control,

and constrain. For the person who has been harmed, the assignment of victim status is often disempowering, one more harm to be transcended.

(Sullivan and Tifft 2001:80)

Pavlich points out that 'for some cases that filter into both criminal and restorative justice systems, the designation of victim may not be sought by affected parties, or indeed may not be appropriate to the situation' (2005:58). He also argues that the label 'victim' presumes a disempowered identity, which contradicts with the restorative aspiration to empower victims:

...what purpose lies behind attempts to empower subjects through an identity that is, by definition, disempowered? Is it not more appropriate to try to escape that identity, perhaps by 'empowering' subjects through another identity? Might it not make more sense to support those who have suffered in pursuing identities that are not, by definition, disempowered?

(Pavlich 2005:59)

Assigning the identity of a victim may amount to double victimisation as it fails to enable the subjects to alter the social conditions which might have generated their suffering in the first place (Pavlich 2005, chapter 3).

The label 'offender', according to Pavlich (2005, chapter 4), is equally problematic, because it implies that the offender is the main bearer of harm and places the responsibility for harm almost exclusively on offenders. Yet, in some cases it is the designation of crime itself that generates harm (for example, Apartheid criminal laws criminalising those without passes to 'white areas' or 'mixed' relations, laws criminalising protest, laws criminalising homosexuality, etc.). It is argued that 'approaching the offender as the main bearer of harm deflects questions of justice

away from wider power relations that might be as harmful as the act committed' (Pavlich 2005:81-2).

(iv) Refusal to pre-define goals

Certain 'radicals' criticise the 'reformist' tendency to pre-define goals of restorative justice and argue that aiming at reparation of harm serves to restore the status quo and perpetuate pre-existing inequalities and injustices (Morris 2000, Pavlich 2002a, 2005). This is another characteristic of the 'radical' restorative justice which distinguishes it from its 'reformist' counterpart.

The 'reformist' willingness to pre-define goals of restorative justice can also be contrasted with the approach of one of the early inspirers, Christie, who, in line with the 'radical' restorative justice, refuses to pre-determine outcomes. Thus, Christie rejects the term 'conflict-resolution' as it 'presuppose[s] that conflict *ought to be solved*' (1981:92, original emphasis). He argues that the term 'conflict-participation' is preferable because it 'does not direct attention to the outcome' (1981:93).

(v) Rejection of the 'ideology of harmony'

The 'reformist' aspiration to re-establish peace and harmony in the aftermath of an offence is criticised by the 'radicals'. As I have pointed out in this chapter, several recent proponents and critics of restorative justice argue that restorative justice serves to neutralise and expunge from the society conflicts so as to restore peace and 'community order'. These writers are critical of the mainstream 'ideology of harmony' underlying restorative practices (Dyke 2000:240) and the 'bias toward

consensus or an elimination of difference' (Pavlich 1996a:157). This is another specific feature of restorative 'radicalism'.

An interesting and important parallel exists between the views of restorative 'radicals' and ideas of one early inspirer – Nils Christie. As I noted in chapter 2, Christie believes that conflict is not a 'bad thing'. It is a 'valuable commodity' which ought not be wasted. Conflicts 'ought to be used and become useful'. Conflict is a 'social fuel'. Too little conflict might paralyse social systems (Christie 1977).

Consistently with Christie's views, Pavlich argues:

...conflict need not be seen as intrinsically destructive; it could also be an important way of locating and communicating contradictions, inequities and injustices that affect particular people in given power-knowledge-subjectivity formations. In other words, community mediation might, instead of trying to extinguish conflict in its proximate manifestation between individuals, seek to uncover wider dangers of given associative patterns. It could attend to these in forums designed to bring conflicts to the forefront of the political theatre in a manner quite unlike the artificial, expert-controlled environments of present mediation sessions.

(Pavlich 1996a:152)

That is, restorative justice could serve to 'stage a political debate' (using Christie's terminology (1977:8)) and offer an opportunity for social change.

It needs to be pointed out, however, that just as Christie's views on conflict and proposals to politicise the dispute-resolution process have received rather little attention among most mainstream proponents of restorative justice, so have the views

of the more recent radical advocates and critics of restorative justice. However, had these ideas been taken more seriously, perhaps today restorative justice would have been developing in a rather different direction.

(vi) Implementation issues?

Unlike the 'reformist' restorativists who attach a lot of importance to implementation issues, the 'radicals' appear to be unwilling to design blue-prints for implementing restorative justice. Also, the 'radicals' demonstrate no obvious desire to develop 'standards' and 'principles' for restorative justice; indeed, some actively encourage restorative justice campaigners 'to refuse a blackmail that commands us to come up with well-founded universal principles' (Pavlich 2002b:2).

(b) Common aspirations?

Until now the 'reformist' and 'radical' strands have been presented as proposing approaches which appear to have rather little in common. This may create a misleading picture of the two strands, because proponents of both clearly subscribe to a broader framework of restorative justice values. For instance, all restorativists share the aspiration to create a way of 'doing' criminal justice which places victims at its centre and promotes healing of injuries (an aspiration inherited from early inspirers of restorative justice Barnett, Christie and Zehr), and which involves active participation of stakeholders in crime (another inheritance from some early inspirers, Christie and Zehr in particular).

However, differences emerge at the level of more concrete proposals. For instance, restorativists from both camps may claim that they aspire to empower crime

stakeholders and create a 'de-professionalised' form of justice. However, when concrete proposals are examined, it seems that different restorative advocates attach different meanings to the idea of 'de-professionalisation' and are prepared to embrace the aspiration to empower stakeholders to different degrees. While the 'radicals' appear to be very critical of the reliance by restorative justice on 'the government, the established criminal justice system and its official agents' (Harris 1989:31, Pavlich 1996), many 'reformists' seem to have no problem with judges imposing their decisions in situations where restorative justice is believed to be either impossible or undesirable. Even within the 'reformist' camp, the 'maximalists' are more willing to engage professionals, judges in particular, within the restorative process than the 'purists'. So, the apparently common aspiration to empower stakeholders in crime and restore to them conflicts 'stolen' from them by the state may be translated into rather different concrete proposals by different advocates of restorative justice, which leads to debates and disagreements between them.

Similarly, today's restorativists appear to share an aspiration to create an alternative to the existing way of 'doing' criminal justice. This includes the 'reformists' who talk of developing a 'third model' (Braithwaite 2003a:86), or a 'fully fledged alternative' (Walgrave 1995), or the 'replacement discourse' (Disgnan 2002, 2003) which 'should in the long run replace the punitive or rehabilitative responses to crime' (Walgrave 2000:417-18).

An interesting question is whether the creation of a 'third model' or the 'replacement discourse' entails changes which are as drastic and fundamental as those proposed by the early inspirers or by today's 'radical' advocates of restorative justice. I would

argue that despite the ambitious claims of 'reformist' advocates, the spirit of their aspirations differs from the spirit of the aspirations of those whose proposals I presented in this chapter and chapter 2. It appears that today's mainstream ideas within the restorative discourse are somewhat less ambitious and more pragmatic than those of earlier writers and today's 'radicals'. The 'reformist' writers seem to be more modest, realistic and practical in their proposals. Their proposals focus mainly on developing pragmatic plans how the criminal justice system could be reformed in accordance with restorative justice principles and how restorative justice could be implemented on a large scale, while essentially preserving the institutional and conceptual framework of the criminal justice system.

In contrast, the earlier writers envisaged such developments as erasing the distinction between crime and tort, disappearance of victimless crimes (Barnett, 1977, 1980); extending the victim-oriented and compensation-focused civil law procedure into the criminal law realm, creation of a de-professionalised justice characterised by an 'extreme degree of lay orientation' and politicisation of criminal law and the criminal justice process (Christie, 1977); and, of course, a paradigm shift in our thinking about crime and punishment (Zehr 1990). Today's 'radicals' refuse to accommodate restorative justice within the ideological and structural framework of the criminal justice system and propose to significantly widen the scope of campaign for restorative justice so as to include injustices, harms and wrongs irrespective of whether or not they fall within legal definitions of crime. These ideas suggest a rather different and a politically and ideologically much more ambitious agenda for restorative justice than that proposed by the 'reformists'.

At least arguably, while the proposals of early inspirers of the restorative justice movement and today's 'radicals' could potentially lead to a paradigm shift, the proposals of today's mainstream advocates look more like attempts to salvage the existing paradigm of criminal justice. There seems to be a tendency among today's leading proponents to cling to the existing system, retain assumptions and pre-conceptions underlying the existing paradigm and propose changes aimed at mopping up failures of the old paradigm, rather than discarding it and replacing with something new.

Is this tendency problematic? I would argue that it is. Firstly, this tendency makes some claims of today's leading restorative justice campaigners misleading. For instance, it is claimed by certain restorative justice advocates that restorative justice aims to become a 'fully fledged alternative' which should 'maximally' replace the existing system (Walgrave 1995, 1999, 2000). However, when the exact proposals of such advocates are examined, it appears that the proposed reforms effectively replicate the very system they are supposed to eschew, and provide a recipe for retaining the system, rather than 'maximally' replacing it.

Secondly, the tendency in question is dangerous. Far from challenging – and providing a radical alternative to – the existing system, reforms aimed at redressing some of its failures are likely to serve to strengthen and perpetuate the system.

In the concluding chapters of this thesis I shall return to some of the ideas discussed in this chapter and look at them in the light of my empirical findings. How valid are the concerns and criticisms of radical proponents and critics of restorative justice, at least

within the context of my empirical study? Is there a possibility that restorative justice individualises and neutralises conflicts with social-structural roots? Does restorative justice employ a model of power different from that employed by the state, yet for the purposes of strengthening state power? Are there dangers inherent in practising restorative justice, while essentially preserving the framework of the criminal justice system? Should restorative justice proponents aspire to the reform of the criminal justice system, or should they have rather different – and much more ambitious – aspirations? These are some of the questions which will be dealt with in chapters 12, 13 and 14.

Chapter 5

Restorative Justice in Practice

Introduction

In this chapter I shall shift the focus from restorative justice theory to practice. I shall trace the emergence, evolution and expansion of restorative justice practices around the globe in the last 30 years and discuss recent restorative justice developments in England.

Ancient practice and its revival

According to its proponents, restorative justice is not a new invention. Rather, it is a return to traditional patterns of dealing with conflict and crime that had been present in different cultures throughout human history. It is argued that in the era pre-dating modern states, crime was conceptualised in personal terms and was responded to in a fashion more in line with restorative justice, with the emphasis placed on restitution and reconciliation. The idea that crime demands prosecution and punishment of the guilty was not dominant in the Western world before the twelfth century. The state-administered retributive response to crime that dominates today's justice systems and governs our understanding of crime and justice is a phenomenon just a few centuries old (Zehr 1990: chapter 7; Bianchi 1994; Cayley 1998: chapter 7; Van Ness and Strong 2002: 7-11; Johnstone 2002:36-43; Weitekamp 2003; Wright 1996). The punitive system of crime control evolved and achieved its full development in the second half of the eighteenth century. As other parts of the world were colonised by Europeans, the Western model of justice was imposed on colonised peoples.

Once Western legal systems were established, the informal, community-based forms of conflict resolution survived to some degree – openly or secretly – in many countries. However, in public discourse they were generally considered as practices inferior to law. Since the 1960s, there has been a sea change. Attempts have been made to begin reversing the historical process and revive ancient conflict resolution traditions. A variety of social and political movements have contributed to this reversal, such as the informal justice movement (Abel 1982; Matthews 1988; Auerbach 1983; Christie 1977, 1982), the restitution movement (Barnett 1977, 1980), the victims' movement, penal abolition (Bianchi & van Swaaningen 1986, Mathiesen 1974, Bianchi 1994), peacemaking criminology (Pepinsky and Quinney 1991), the women's movement (Harris 1989, 1991), the growth of interest in native justice traditions of indigenous people (Pratt 1996, Yazzie and Zion 1996, Zion 1998, Griffiths and Hamilton 1996, Stuart 1996, Nielsen 1996, Yazzie 1998, Taraschi 1998). These diverse influences directly or indirectly contributed to the emergence of the idea of restorative justice.

I shall now discuss the main broad categories of 'modern' restorative justice practices: victim-offender reconciliation and mediation programs, family group conferencing, sentencing circles and Navajo peacemaking. I shall also provide some other examples of restorative justice practices, in particular, community reparative boards in Vermont, the Zwelethemba experiment in South Africa and community-based restorative justice projects in Northern Ireland.

Victim-offender reconciliation/mediation programs

In 1974, in the Canadian town of Elmira, two young men vandalised twenty-two properties. At the request of their probation officer, the judge ordered that they meet their victims and bring back a report of the damage they have suffered. The offenders visited their victims and reached restitution agreements with them (Peachey 1989). This spontaneous experiment was the first documented instance of what today is called victim-offender reconciliation, and led to the establishment of a victim-offender reconciliation program under the auspices of the Mennonite Central Committee in Kitchener, Ontario. Soon the idea and the practice spread through the Mennonite community into other parts of Canada and the USA (Zehr 1990: chapter 9).

Victim-offender reconciliation¹ is based on the idea that following a criminal offence, the victim and the offender have a shared interest in righting the wrong. The emphasis is placed on reconciliation, assisting victims in the aftermath of an offence, helping offenders to change their lives, and, more generally, humanising the criminal justice system (Zehr 1990). Victim-offender reconciliation programs typically involve a face-to-face encounter between the victim and the offender². With the help

¹ The early programs were known as 'victim-offender reconciliation programs', however, some objected to the term 'reconciliation', because it was value-laden. Victims' rights advocates believed that the term implied that victims need to reconcile with their offenders. They preferred the term 'mediation'. Today most programs are referred to as 'victim-offender mediation'.

² Sometimes victim-offender reconciliation/mediation programs take form of 'shuttle diplomacy' between the victim and the offender. The victim and the offender do not meet face-to-face, rather a mediator meets with them separately and acts as an intermediary in negotiating a restitution settlement.

of a neutral third party – a trained mediator – they are provided with an opportunity to talk about what has happened and express their feelings. Victims can tell offenders how crime has affected them and ask questions. Then the parties may decide together what needs to be done about what happened, and reach a mutually satisfying agreement. An agreement may involve the offender making financial restitution, working for the victim (or the community), undertaking to behave in a particular way, or attending some rehabilitation program, such as anger management. The mediator facilitates the mediation process, but does not impose outcomes upon the parties. The idea is to promote a dialogue and empower victims and offenders to solve the conflict the way they like (within certain limits) (Zehr 1990, Wright 1996, 1999, Marshall 1995, Marshall and Merry 1990, Chupp 1989, Umbreit 1989, 1994, Umbreit, Coates and Vos 2001).

Such face-to-face encounters between victims and offenders provide victims with a unique opportunity to receive answers to questions, some of which can only be answered by offenders. Victims may express how the offence affected them and how they feel about it, and express it to people who committed the offence against them (Umbreit 1994). Face-to-face encounters with offenders may also help challenge stereotypes which victims may have about offenders and possibly reduce victims' fears. Victims may receive compensation for their losses, and, importantly, have a say over their desired compensation or reparation. All these opportunities may provide victims with a sense of empowerment and assist in the healing process (Zehr 1990).

Offenders are given an opportunity to see whom they have wronged, and how the person was affected by their actions. They may have their stereotypes of victims and rationalisations of their actions challenged. They are invited to take responsibility for their actions and put things right. They may also express remorse and ask forgiveness (Zehr 1990).

As mentioned above, one of the major historical roots of victim-offender reconciliation/mediation were programs initiated and developed by the Mennonite community. There were some other important roots. One of them was the early neighbourhood dispute resolution programs, which emerged in the 1960s and 1970s in the USA (Wright 1991: chapter 4). Another important source of influence was the victims' rights movement (Umbreit, Coates and Vos 2001). Some proponents of the victims' rights movement worked closely with victim-offender reconciliation/mediation advocates in order to ensure that the process was conducted in a victim-sensitive fashion. However, it needs to be pointed out that many proponents of victims' rights were sceptical about – and some even opposed – the idea of bringing victims and offenders together. It was feared that such encounters may compound victims' injuries. It was also believed that victim-offender reconciliation/mediation programs may lead to a reduced punishment for the offender. Some within the victims' rights movement still hold that view (Umbreit, Coates and Vos 2001).

Victim-offender mediation takes place within the context of the criminal justice system as an exercise of police, prosecutor or judicial discretion. Mediation programs

can be located in the police or prosecuting departments, or in non-profit community-based organisations, or church-based organisations.

In 1980s victim-offender reconciliation and victim-offender mediation programs were transplanted to Europe (Marshall and Merry 1990; Wright and Galaway 1989, Kerner, Marks and Schreckling 1992, Iivari 1992, Bonafe-Schmitt 1992, Paliero and Mannozi 1992). Today the victim-offender mediation movement is international in scope. Numerous programs operate in North America and Europe³ (Umbreit 1996; Pelikan 2000, Aertsen 2000, Iivari 2000, Wynne 1996, Jullion 2000, Bannenberg 2000, Claes 1998; Paus 2000, Czarnicka-Dzialuk and Wojcik 2000, Liebmann and Masters 2000). There are also some programs in Australia, New Zealand, and South Africa (Umbreit 1999; Umbreit, Coates, Vos 2001).

Numerous studies of victim-offender mediation programs have been carried out. The research findings have been largely positive. In particular, a high level of satisfaction and perception of fairness with the mediation process for both victims and offenders has been consistently reported (Umbreit 1994, 1996; Umbreit and Coates 1993; Coates and Gehm 1989, Marshall and Merry 1990). For instance, following a 2,5-year study of VOM programs in California, Minnesota, New Mexico and Texas, Umbreit and Coates reported that 79% of victims and 87% of offenders were satisfied; 83% of victims and 89% of offenders thought that the process was fair. It

³ Umbreit estimates that today there are more than 1000 programs throughout North America and Europe (1999:213). Two-thirds of these programs are private community-based or church-based, and about a fourth operate under the auspices of probation and corrections (Umbreit, Coates and Vos 2001).

was also found that victim-offender mediation had a significant impact on the likelihood of offenders successfully completing their restitution obligations (81%), compared with similar offenders who completed court imposed restitution obligations and did not participate in mediation (58%) (Umbreit 1994, Umbreit and Coates 1993). It has been reported that victim-offender mediation led to the reduction of fear and anxiety among victims (Umbreit 1994).

Without wishing to deny the value of Umbreit's study, used as an example of research on VOM above, it needs to be pointed out that the study was not free from methodological problems. The evaluative criteria of this research have been restricted mainly to delivery efficiency (e.g. cost per case), effort (e.g. caseloads per mediator) and outcome (e.g. percentage of agreements, satisfaction rates, agreement compliance rates). As I have pointed out in chapter 1 of this thesis, this type of methodology is typical within empirical research of restorative programmes mainly for two reasons: (1) such data is relatively easy to collect, and (2) such data is necessary to justify the existence and funding of restorative programmes, since governments and findings providers need to be convinced that certain goals have been achieved (Brooks 2001, Marshall and Merry 1990:16-17). However, data produced by research of this type is questionable because positive findings may be the result of self-selection effects. If control groups are used, they are rarely based on random assignments. According to Kurki (2003), it is not uncommon to find that 40 to 45 per cent of cases initially referred to mediation are never mediated because the victim or offender refused to take part (2003:297). So, it may be possible that only those cases were mediated where both the victim and the offender had a pre-existing positive attitude towards mediation. Self-selection bias will be even worse if control groups are composed of

those who were referred to restorative programmes but did not participate (Kurki 203:297).

Besides, data produced by research of this style tells us nothing about the more substantive claims made for restorative justice. Thus, Derek Brookes asks:

...how would we know, on the basis of service-delivery data, whether a particular encounter has, indeed, 'given participants access to a higher quality of justice', 'evoked remorse in the offender', 'enabled the victim to overcome her resentment, fear and negative self-identity', 'repaired the social bonds', 'shamed the offender within a continuum of love and respect', 'decertified his deviant status' and so on? But until such information is forthcoming -- that is, in non-anecdotal form -- there remains little basis for the claim that victim-offender encounters are theoretically grounded in the social and experiential reality of its participants.

(Brookes 1998)

Numerous studies attempted to measure the impact of VOM programmes on re-offending. Some have failed to detect significant effects on recidivism (Roy 1993, Niemeyer and Shichor 1996, Umbreit and Coates 1993, Miers et al 2001). Others have found reductions in recidivism (Nugent and Paddock 1995, Latimer et al 2001). In any event, as I have argued in chapter 1, evaluating restorative programmes by reference to re-offending is very problematic because it involves testing restorative justice against unrealistic criteria (because it is unreasonable to expect that a restorative encounter may resolve what may be deeply rooted problems). It also involves testing restorative justice against inappropriate criteria, because it is far from obvious what relevance recidivism has to the restorative qualities of victim-offender encounters. And, as has been pointed out above, most of the studies on the effects of VOM share similar methodological problems.

Family Group Conferencing: New Zealand experience

Up to the 1990s, restorative justice functioned by way of isolated experiments. Dramatic changes occurred after the Children, Young Persons and their Families Act was passed in New Zealand in 1989. This piece of legislation created a new forum called 'family group conferences' to address juvenile offending, and made family group conferences an official response to juvenile crime.

One of the major origins of this legislation were the demands of the Maori community, concerned about the over-representation of the Maoris in New Zealand courts and prisons.

Family group conferencing, which was introduced by the legislation, has ancient roots⁴. It was adapted from the 'whanau conference' practiced by the Maori people. The Maoris did not have anything similar to the Western criminal justice system. Rather, their way of dealing with conflicts and wrongdoings was embedded in everyday life. The Maoris saw conflicts and wrongdoings as affecting extended families and clans of victims and offenders. So, in the aftermath of crime extended families of the victim and the offender came together and negotiated a conflict resolution (Pratt 1996, Consedine 1999, Maxwell and Morris 1996).

British colonisation brought with it the Western criminal justice system, and the traditional Maori way of responding to wrongdoings almost disappeared. However,

⁴ Some critics, however, dispute this (Cunneen 2003, Zellerer and Cunneen 2001, Daly 2002).

in the 1980s a number of developments (growing crime rates and imprisonment among Maoris, disenchantment with the formal legal process, and a resurgence of interest in the rights and cultures of indigenous peoples) lead to publication in 1988 of a report by Moana Jackson, commissioned by the New Zealand Department of Justice. This report suggested that racial bias was endemic in the criminal justice system (Pratt, 1996). The report also advised that Maoris should be allowed to deal with conflicts and crimes that affected them in a way which was culturally appropriate, which meant returning to the pre-colonial methods of dispute-resolution.

The resulting legislation was the Children, Young Persons and their Families Act 1989. It brought forth a number of important developments, among which was the introduction of family group conferencing as a new forum meant to provide an alternative to the court process. The Act also placed strict controls on police powers to stop, question, search and detain young people. Strict procedures were set for the police to follow when approaching, arresting and interrogating young people. The ideas underlying the newly-created model were: diversion, decarceration, accountability of offenders, victim involvement, reparation and reconciliation, strengthening families, family participation and consensual decision-making, and cultural appropriateness (Maxwell and Morris 1994).

After the implementation of this legislation, only really serious offences by juveniles went to court. Other cases were diverted from the criminal justice system and referred to youth justice coordinators. Youth justice coordinators convene family group conferences, and normally the matter will be handled as decided by the conference, without going to the court. There are two routes to family group

conferences: (1) 'direct referral' to a youth justice coordinator, or (2) where there has been an arrest and charges have been laid, a case can be referred from the Youth Court. Irrespective of how the case was referred to the family group conference, the conference will make recommendations on the outcome. If the case was referred by the court, the recommendations of the family group conference will go to the Youth Court for approval before implementation. The Youth Court may decide cases, if the family group conference recommends it, or where the family group conference could not reach an agreement. The Youth Court usually accepts recommendations made by conferences, but in serious cases it can impose additional sanctions (McElrea 1996, Maxwell and Morris 1994).

A family group conference is attended by the offender, his or her relatives, friends, the victim (assuming that the victim wants to attend, alternatively, a victim representative may attend), a youth advocate (where one has been appointed), a police officer, and possibly a social worker. The youth justice coordinator (who works for the Department of Social Welfare) organises and usually facilitates the conference. At the beginning of a conference, participants introduce themselves, and the facilitator explains the process. Then the police describe the offence, and the offender is invited to admit or deny involvement. If involvement is admitted, the conference proceeds with victims describing the impact of the offence on them. Victims have an opportunity to tell how the crime affected them, describe their experiences, express their emotions, and ask questions directed at offenders. If the victim is represented by someone else, that person reports on behalf of the victim. People who come to conferences to support victims can also tell how they were affected by the offence and ask questions. The offenders' families and friends are also allowed to speak.

Participants will discuss how the injuries caused by crime could be repaired. Then the offender's family deliberates in private to develop a plan concerning what needs to be done to put things right and prevent further offending. The plan needs to take into account the views of victims, the need to hold the offender accountable and include measures necessary to prevent re-offending. The most common outcomes involve an apology to the victim(s) and work for the community. Then the meeting reconvenes and the plan is presented to victims and professionals for discussion.

After the introduction of the 1989 Act evaluations of family group conferences were carried out (Maxwell and Morris 1993, 1994, 1996, 2000). A rather high level of satisfaction was reported among participants, except victims. Thus, Maxwell and Morris found that 84% of offenders and 85% of their parents attending family group conferences were satisfied with the outcome of family group conferences (Maxwell and Morris 1993:115). Only half of victims were satisfied, and about a quarter of victims who attended the conference felt worse after the conference. However, it has been suggested that low levels of victim satisfaction could be partly due to lack of experience in working with victims and the fact that the processes were not established with victims in mind, rather than anything inherently wrong with the system itself (Morris and Maxwell 1993). It was argued that to a large degree victims' views were influenced by dissatisfaction with the process external to family group conferencing (e.g. failure by professionals to inform victims about what happened after the conference and to make necessary arrangements for reparation). It was also suggested that there was no comparable information on victims' satisfaction levels with court outcomes, so the relatively low satisfaction figure could signify a relative success (Maxwell and Morris 1996).

It was also found that restorative justice conferences could reduce re-offending, especially if offenders apologised to their victims and felt truly sorry for what they have done, and provided the reintegrative aspects of restorative justice were achieved (Maxwell and Morris 2000, Morris and Young 2000, Morris and Maxwell 2003). For instance, it was found that in a sample of young offenders who took part in family group conferences in 1990-91, about three quarters were not reconvicted within a year, and more than two fifths had not been reconvicted at all or had been reconvicted only once within six years (Morris and Young 2000).

Before leaving New Zealand and looking at restorative justice in other jurisdictions, it is important to point out that unlike in cases of juveniles, the provision of restorative justice in cases of adult offenders has been very piecemeal. There are several pre-trial diversion and pre-sentencing programs, however, it appears that judiciary do not always view outcomes of restorative justice encounters favourably. For example, *R v Clotworthy* [1998] 15 CRNZ 651 was a case which involved wounding with intent to cause grievous bodily harm, robbery being a motive. After this case was brought to a conference, the victim and the offender agreed that the offender would pay the victim \$25,000 to cover the costs of cosmetic surgery. The sentencing judge, however, ordered the offender to pay the victim \$15,000, and imposed 200 hours of community service and a two-year prison sentence suspended for two years. The prosecution appealed on grounds that the sentence was an insufficient response to a serious crime. The Court of Appeal reduced the reparation to \$5,000 and imposed a term of three years' imprisonment. Critics suggested that this sentence obviously did not meet the victim's wishes (Mason 2000, Morris and Young 2000, Bowen and Thompson 1999).

Family group conferencing developments outside New Zealand

In 1991 an experiment started in Wagga Wagga – a town in New South Wales, Australia – which involved the police in the exercise of their common-law powers of cautioning organising and conducting family group conferences (Moore and O’Connell 1994, O’Connell 1998). Developments in New Zealand provided one source of influence for the Wagga Wagga conferences. However, one obvious difference between the New Zealand model of conferencing and the Wagga Wagga model was that the Wagga Wagga model was entirely police-based, without any other agencies involved in its functioning. The police were the only gate-keepers and undertook the organisation and facilitation of conferences. Another source of influence was John Braithwaite’s theory of reintegrative shaming (Braithwaite 1989) (see chapter 2 for more details). Family group conferences were conceived as instances of reintegrative shaming (Moore 1993, Moore and O’Connell 1994, Braithwaite and Mugford 1994).

Wagga Wagga conferences were evaluated, and findings were positive (Moore and O’Connell 1994). Offenders and their families found conferences an effective and appropriate way of dealing with first-time offending. The research concluded that many offenders had gained an empathic understanding for the victims, and families of offenders noticed positive changes in their children (Moore and O’Connell 1994:69). It was concluded that conferences resulted in improved communication between child-offenders and their parents. It was also found that conferences improved relationships between parents of offenders and police officers. Parents changed their

perceptions of police officers and saw them not just as authority figures but as people offering guidance and help (Moore and O'Connell 1994:70).

The Wagga Wagga conferencing attracted considerable attention and was seen by the police as a promising way of dealing with juvenile offenders. At the same time it attracted criticisms. A concern was expressed that the process gave police too much power (Sandor 1994). Another concern was that legal rights of offenders could be violated (Warner 1994). Besides, conferencing could lead to net-widening, that is, the expansion of the number of people caught in the net of penal control. It was also suggested that when the Maori conferencing practices were transplanted to Australia, it intensified the police controls over Aboriginal people. Also, bringing the Maori practices to Australia was based on a false assumption that all indigenous people were amenable to conference-style resolutions and operated within shaming structures of social control (Blagg 1997).

In 1994, the Wagga experiment was abolished, because it was seen as a soft option for juvenile offenders (Blagg 1997, 2001, O'Connell 1998) and was superseded by the creation of a state-wide program under the auspices of the Department of Juvenile Justice.

In the early 1990s, conferencing spread across Australia: in 1992 it was introduced in Queensland; in 1993 – in Australian Capital Territory; in 1994 – in Western Australia; and in 1997 – in Tasmania (Meiers 2001:61). Legislation has been enacted, which authorised conferencing: in New South Wales – Young Offenders Act 1997 NSW; in South Australia – the Young Offenders Act 1993 SA. In the Australian Capital

Territory conferencing was authorised by earlier legislation: Children Services Ordinance 1989 Act. In Western Australia police cautioning was formally instituted in 1991. In the same year juvenile justice teams were introduced, which are multi-agency bodies designed to divert all but the most serious offenders from the formal system. Legislation authorising conferences now exists in the Northern Territory. The overarching goal in the Australian legislative frameworks is to keep young offenders out of the formal system as much as possible. In addition to legislation-based schemes, conferencing is used in other contexts, such as schools and workplace conflicts, family and child welfare, and care and protection matters (Cameron and Thorsborne 2001, Morrison 2001).

A considerable amount of research involving conferencing schemes in Australia has been carried out. Most findings have been positive, showing a high level of satisfaction with the fairness of the process and outcomes of the process (for an overview of Australian research see Daly 2001). One of the most interesting studies was the Reintegrative Shaming Experiments (RISE) Project carried out in Canberra, ACT (Strang, Barnes, Braithwaite, Sherman 1999). This was a 5-year study, where RISE-eligible cases were randomly assigned to court or conference. This ensured that the control and comparison groups were equivalent on known and unknown variables, so any post-intervention differences between the conference and court groups could be attributed to the intervention, rather than to characteristics of individuals making up each group. One objective of RISE was to measure the impact of 'restorative policing' on offenders' and victims' perceptions of procedural justice and on offenders' post-conference offending. Offences included within the study were drunk driving, juvenile property offenders, and juvenile violent crime. It was found that

offenders participating in conferences reported a higher level of satisfaction and greater procedural justice (which was defined as being treated fairly and with respect), than offenders who were processed by the court. The findings show that conferences increased the respect of offenders towards police and law more than the court did. There was a significant level of victim satisfaction, although there was a degree of dissatisfaction. The findings suggest that victims of more serious crimes are more likely to attend conferences, but at the same time are more likely to be dissatisfied. It was also found that conferences could have different impact on different forms of offending. For example, there seemed to be greater impact on violent offenders.

Restorative justice conferencing proliferated rapidly around the world, and in mid-1990s it was transplanted to the UK. Until recently, in the UK there was no statutory authorisation for conferencing and restorative justice experiments more generally. However, a number of initiatives attempted to implement restorative justice. Some projects attempted to introduce the New Zealand model of conferencing, e.g. London-based Victim Offender Conference Service, the Hampshire Youth Justice Family Group Conference Pilot Project, the Sheffield/Kirklees project, and the Kent intensive support and supervision programme (Dignan and Marsh 2001). The Victim Offender Conference Service in London aimed at offenders aged 10 to 17, and received referrals either after a decision to caution had been taken or after a decision to prosecute had been taken and the offender wanted to plead guilty. The Hampshire project dealt with repeat juvenile offenders who were considered unlikely to respond to further cautioning. Instead of prosecuting (or cautioning them again), they were referred to the project. The Kent project targeted persistent offenders aged mainly 15 to 17, who had been charged or cautioned on three previous occasions in the

preceding twelve months and who had served a custodial or community sentence. The scheme was court-based. Interventions took place between conviction and sentence, or at a point of release from custody or while an offender was on licence. There were also some family group conferencing programs which operated in the child welfare context (Dignan and Marsh 2001).

The Thames Valley Police experiment received an extraordinary amount of publicity. It used the Wagga model of conferencing instead of traditional cautioning (Young and Goold 1999; Pollard 2001, Young 2001, Young and Hoyle 2003). The project became operational across the Thames Valley Police force in April 1998. The clients of the program are all first-time offenders and some second-time offenders, both adult and juvenile, who fit the criteria for a caution or reprimand (Young and Hoyle 2003). Criteria involve the following: there must be sufficient evidence of guilt to give a realistic prospect of conviction, the offender must admit the offence, and the offender, or, in the case of a juvenile, a responsible adult, must give informed consent to the caution (Hoyle et al 2002:6).

Police invite all affected by the offence to the cautioning sessions. A caution is delivered by police officers in accordance with a script derived from the Wagga model. The script helps to facilitate a structured discussion of the harm caused by the offence and how it can be repaired. In accordance with the theory of reintegrative shaming, the facilitators are committed to ensure that the focus of shaming is on the offending behaviour, rather than the offender him- or herself (Hoyle et al 2002:8).

At the beginning of a caution, the police officer delivering a caution would say some words of welcome and describe the purpose of meeting. Then the offender is invited to provide their side of the story. The facilitator would ask questions in order to focus the meeting on the harm caused, e.g. 'Who do you think has been affected by your actions?' 'How have they been affected?'. Then the victim would be invited to present their side of the story. The facilitator would ask questions to encourage the victim to explain how they were affected by the offence, and what harm has been caused. Where the victim does not attend the conference, the facilitator would present the victim's point of view, stressing the harm caused by the wrongdoing. Then people attending the meeting as supporters (usually parents of offenders) are invited to speak and explain how the offence affected them. After all the participants have spoken in turn, the facilitator would ask the offender if he or she wants to say anything to anyone present. At this point the offender may apologise. Then the facilitator would shift the focus of attention on to the issue of what needs to be done to repair the harm caused by the crime. Where victim(s) did participate in the conference, an agreement may be made as to how the offender could compensate the victim(s) or repair harm caused to them in some other way. Then the facilitator would address the offender, emphasising that the offender has begun the process of putting things right; that the offender is in a web of caring relationships; and that the offender is not a bad person, and their actions represented an out-of-character mistake. The session is concluded with the facilitator explaining the legal aspects of the caution and asking the participants to fill in a questionnaire seeking their views on the session (Young and Gould 1999, Hoyle et al 2002:8, Young and Hoyle 2003:277-8).

Research has shown that during the early stages of the implementation of restorative cautions the process was often deficient. Police officers delivering cautions sidelined other participants and occasionally asked questions inconsistent with the purpose of restorative justice (Young and Hoyle 2003:284-6, Hoyle et al 2002:13-14). Later, overall the implementation improved, although this was not always the case (Young and Hoyle 2003:286-9, Hoyle et al 2002:14-17). Nevertheless, victims, offenders and their supporters were generally satisfied with the fairness of the process and the outcomes achieved (Hoyle et al 2002:25). The main element of fair process as understood by the participants was being allowed to have their say on an equal footing with everyone else present. Offenders were very impressed when others present at conferences listened to them (Hoyle et al 2002:27-28). Almost two-thirds of the victims said they felt differently about 'their' offenders as a result of the meeting (Hoyle et al 2002:36). The two-thirds of all participants and three-quarters of offenders thought that cautioning helped the offenders understand the consequences of their offending behaviour (Hoyle et al 2002:30-1). Three-fifths of participants felt that the conference has successfully induced a sense of shame in offenders (Hoyle et al 2002:31). In most cases an apology was offered by offenders. However, it was found that in some cases facilitators pressurised offenders into apologising (Hoyle et al 2002:35-36). About two-fifths of offenders and a third of all participants said that the process made the offender feel like a bad person, which was precisely what the process was meant to avoid (Hoyle et al 2002:34). It was also found that over two-thirds of offenders and 44 per cent of offender supporters felt coerced into participation in a conference (Hoyle et al 2002:20). Researchers linked the quality of facilitation to the impact on participants' experiences and outcomes of the process

(Hoyle et al 2002:34-5). It was also concluded that restorative cautioning appeared to be more effective in reducing the risk of re-offending (Hoyle, et al 2002:48-56).

There are various other police-led restorative justice schemes around the world, which employ models similar to the Thames Valley experiment. One of them is the RISE experiment in Canberra, ACT, mentioned above. Another similar scheme is a program in Bethlehem, Pennsylvania. The Bethlehem scheme deals only with juveniles arrested by the Bethlehem Police Department, who are first time offenders. Research into the scheme has been carried out, where both violent and property offenders were randomly assigned to conferencing or traditional court referral. Cases being conferenced were compared with those referred to court. It was found that offenders were equally satisfied with court or conferencing, with 95% expressing some satisfaction. However, conferencing had higher ratings among crime victims, with 97% satisfaction, compared to 81% satisfaction with the court process. Victims and offenders both felt that they experienced fairness and that offenders were adequately held accountable by either courts or family group conferences (McCold and Stahr 1996, McCold and Wachtel 1998).

Sentencing circles model

In the early 1990s another model of restorative justice emerged in Canada – sentencing circles (Stuart 1996, Griffiths and Hamilton 1996, Cayley 1998:182-198, Roberts and Roach 2003, Ross 2003). This forum was pioneered in Canadian native communities and was informed by native practices. The first use of a sentencing circle took place in 1992. The offender (who was apparently a habitual one) pleaded guilty to carrying a baseball bat with the intention to assault a police officer. The

prosecution insisted that 'the community' wanted him to be sent to jail. Judge Barry Stuart presided over the case. He adjourned the case, and when it was resumed, he reconfigured the court as a circle and invited the family and friends of the offender to find out what the offender's community really wanted. Family and friends of the offender made it clear that they did not want him to go to jail. It was also made clear that they were willing to help in his rehabilitation. The judge made a court order consistent with the wishes of the family. The offender successfully changed his life. This case gave a beginning to the model of restorative justice which today is known as sentencing circles.

The basic model used in sentencing circles is derived from aboriginal peacemaking practices in North America, mediation and consensual decision-making. Circles involve facilitated community meetings attended by victims, offenders, their families and friends, interested members of the community, and usually representatives of the criminal justice system. Participants may be organised in one large circle, or split into an inner and outer circle. The inner circle includes the victim, the offender, their supporters, and criminal justice professionals who are normally involved in court. The outer circle is composed of professionals who may be called upon for specific information and interested members of the community. The 'keeper', or the facilitator of the process, keeps the process orderly, periodically summarises what has been said for the benefit of those present in the circle, ensures respect for the teaching of the circle, mediates differences and guides the circle towards a consensus.

A circle is often opened with a prayer, which heightens the spiritual awareness of participants and calls them to reach beyond their immediate emotions in seeking

responses to problems. Most prayers stress the interconnectedness of all things and all people and induce in the participants a feeling of being a part of the community. The participants start feeling that suffering of people directly affected by the crime is shared by others as well, that the disharmony caused by the offence affects the entire community, and that everybody in the circle shares responsibility for finding solutions to the problems.

Then the keepers of the circle make welcoming statements, introduce themselves and invite other participants in the circle to introduce themselves and explain why they are in the circle. Keepers discuss the teachings of the circle and extract guidelines from them, such as speak from the heart, allow others to speak by speaking briefly, respect others by not interrupting them, remain until the end of the circle and so on.

The circle enables its participants to be heard, express their views and feelings about the offence and propose solutions. Those who participate in the process speak one at a time and may discuss a wide range of issues regarding the crime. The issues discussed may help to understand why the offence occurred and what needs be done to meet the needs of the victim, hold the offender accountable and prevent similar incidents in the future. The discussions need not focus exclusively on the offence committed. They may go beyond immediate issues and uncover deeper problems. The judge, who is present during the process, passes a sentence and makes recommendations on the basis of what has been said in the circle.

It is argued that the circle process empowers its participants to take ownership of the process and to develop solutions to problems in accordance with their values and

customs. It is also argued that the circle process reconnects offenders to their communities, rebuilds broken relationships, and addresses victims' needs. The process educates the community about its problems, fosters a sense of belonging to the community, develops participatory skills of those who attend the process, helps to build communities which can work together, promotes the ability to mobilise local resources and generate community-based solutions to problems. It also helps to reveal underlying causes of crime, which in turn generates community initiatives aimed at redressing the needs of victims and offenders as well as addressing adverse social conditions (Stuart 1996).

The importance of circles also lies in the fact that they help to prevent the culture shock which many First Nation people experience when they have to appear in court. When native people follow their traditional ethic during court appearances (e.g. avoiding to make eye contact, avoiding showing anger, unwillingness to confront or criticize others), their behaviour is regularly interpreted as indifference or uncooperativeness. Circle processes avoid these problems, because they create settings where people can behave in a culturally appropriate fashion.

Today circle sentencing is widespread among aboriginal communities in the Yukon, Canada. Circle sentencing is available to offenders who pleaded guilty, and are motivated to comply with a plan created by a circle. One example of a circle sentencing program is the Kwanlin Dun Community Justice Project, funded by the federal and territorial governments (Cayley 1998:187).

Another Canadian example of a project utilising the circle process is the Community Holistic Circle Healing Program in Hollow Water, Manitoba (Ross 2003). This is a healing program which was designed to deal with high rates of sexual and family abuse among the aboriginal community. It is based on values of the First Nation peoples and has been implemented in four Native communities in Manitoba.

In 1980s, the Native communities in Hollow Water began to realise that alcoholism and incest had reached epidemic proportions within them. A group of social workers mobilised the community to deal with the problem, and a 'community holistic circle healing' was created, as an alternative to conventional criminal justice processing for sex offenders. A protocol was negotiated with the Manitoba Department of Justice that allowed a diversion and non-custodial sentencing of sex offenders. The underlying idea was that the traditional process of prosecuting and jailing offenders is counter-productive. It is believed that instead the problems can be dealt with more effectively within the community context. Offenders are given an option of going through the regular criminal justice system or taking responsibility for their actions and participating in the circle healing. Those who choose the latter are diverted from the court, and sentencing is delayed while a 'healing contract' is worked out.

Before the event called the Special Gathering (involving the victim, the offender and the community) takes place, a lot of preparation work is done with the offender and the victim. The first circle involves a meeting of the circle organisers with the offender. The offender is invited to tell as much as possible about what he has done and to begin to take responsibility for his actions. The next circle is with the family of the offender, when the offender tells his family about his activities. Another circle is

with the victims; at this point the victim tells the offender about the impact of his actions. The fourth circle is the sentencing circle, where the whole case is open to the community, and where judicial authorities also participate. A healing contract would be signed during the process and the offender would publicly apologise to the victim(s) and their communities for the harm caused. The community has an opportunity to speak directly with the victim and the offender and make recommendations to the judge concerning sentencing. Assuming the offender takes responsibility for his actions and is willing to change, the sentence would not involve imprisonment. Rather, it would keep the offender in the community.

There is some evidence that circles may be effective in preventing re-offending: out of forty-three sex offenders who participated in the healing circle program only two re-offended over a ten year period (Cayley 1998). However, it has been suggested that what may be even more important is the healing effect the circles have on communities. This is so because the circle offers a process which restores peace and order in the community. The program heals not only victims and offenders, but the community as well. It was also suggested that perhaps circles could be used outside the native communities and viewed not as an 'aboriginal justice alternative', but as a practice that fits for everybody – just as the Maori traditions have been applied to the whole society in New Zealand through family group conferencing (Cayley 1998).

However, it has been pointed out that circle sentencing might involve dangers. In particular, it may make weak parties even weaker. It may lead to a situation where vulnerable members of the community may find themselves at the mercy of those in

positions of power and influence (Cayley 1998:199-208, Griffiths and Hamilton 1996).

Women's groups in particular have challenged the idea of delegating decision-making to the community and the adoption of community-based alternatives to imprisonment, because they believe this may help perpetuate the inferior status of women in native communities. Concerns were expressed about high rates of sexual and physical abuse in Native communities, and it was argued that local justice initiatives may not provide adequate protection for women (Cayley 1998: chapter 11).

The assumption that communities represent homogeneous units has been challenged, as this assumption overlooks the fact that communities are segmented by such considerations as wealth, gender, family connections, and authority. Unless these inequalities are addressed, the assumption underlying sentencing circles that the participants in a circle have an equal voice is highly questionable. It has been suggested that the presumed homogeneity of the community submerges the interests of victim: the victim is persuaded to comply with the community interest, rather than insist on her own satisfaction. The emphasis within the sentencing circles that the problem is not located within the offender, but rather it is a problem of the community, seems to suggest that the victim (who is also part of the community) shares responsibility for the offence. In effect, within circles victims are encouraged to speak in a context where their voice is denied (Cayley 1998: 201-208, Griffiths and Hamilton 1996:187-8).

Navajo Peacemaking

Another restorative justice practice based on Native American traditions is Navajo peacemaking. In 1982, the Navajo Peacemaker Courts were created, which represented a court-annexed system of popular justice. Within Peacemaker courts, respected community leaders organise and preside over the traditional Navajo process to resolve problems and conflicts, which the Western culture conceptualises as criminal. Peacemaker court decisions are made by the participants, in accordance with Navajo values and thinking.

According to its proponents, Navajo peacemaking is a horizontal, egalitarian system of justice, where everybody is equally important in the peacemaking process. There is no pyramid of power or powerful people making decisions for others (Yazzie and Zion 1996). The Navajo solve their conflicts in the context of families and clans. When there is a dispute, a person who claims to be injured or wronged makes a demand on the accused to put things right. If individuals are unable or unwilling to make a direct demand, they may seek the help of relatives. Alternatively, a complainant may approach a *naat'aanii* and request his or her assistance in resolving a problem. *Naat'aanii* is a leader who is chosen because that person earns the respect of others and who is 'usually someone who thinks well, speaks well, plans well, and shows by his or her behaviour that the person's conduct is grounded in spirituality' (Yazzie 1998:125).

The *naat'aanii* would invite interested parties for a group discussion of a problem, in particular, the clan of the victim and the perpetrator. The peacemaking process begins with a prayer in order to summon supernatural help and to focus the participants in the process on the conciliation. After a prayer, a complainant presents their grievances

and makes a demand as to what she or he wants to happen. Relatives also have an opportunity to participate and express their views about the dispute. The accused has an opportunity to speak as well.

The *naat'aanii* is not a 'neutral' party in the peacemaking process. He or she has a persuasive authority and acts as a guide or teacher. One of the tasks a *naat'aanii* would perform is 'The Lecture'. The *naat'aanii* would

pull wisdom from ancient Navajo journey and creation narratives to show how the same problems arose in the past and how [the] traditional figures dealt with them. Those stories reach inside people to revive the things they learned or should have learned as children. During the lecture, a peacemaker will apply the teachings to the problem and show how and why the excuses [put forward by the perpetrator] are false.

(Yazzie 1998:126)

The *naat'aanii* would draw upon the traditional teachings and propose what the parties involved in a dispute need to do to resolve the problem. After the lecture, disputants would move to discussing the problem and solutions to it. Following the discussion, the parties would make a decision about what to do. It may be decided that the offender makes restitution or reparation. If the offender has no money, members of the offender's family or clan would pay on his or her behalf. When necessary, relatives assume supervisory obligations towards the offender and use social pressure to ensure that the offender behaves in an appropriate fashion.

Peacemaking agreements can be reduced to, and enforced by, court judgement. However, in practice Navajo people prefer informal agreements. In Yazzie and Zion's

words, Navajo peacemaking 'is not a system of law that relies upon authority, force and coercion, but one that utilizes the strengths of people in communities' (1996:171).

Some other examples of restorative justice

(a) Vermont community reparative boards

There are various other practices inspired by restorative justice principles which currently operate in different parts of the world. I will limit myself to providing three examples. The first is community reparative boards in Vermont (Karp and Walther 2001). The program was set up in 1996. The mission of the initiative was to enhance social control at the local level by involving citizens in the justice process. Community boards are an option for offenders convicted of minor offences who would otherwise receive probation or short-term prison sentences. Cases are referred to community boards by judges. Community volunteers serve on boards, and victims are encouraged to attend. Boards are open to the public, so it is not uncommon for observers to be present in addition to board members. Typically three to seven board members attend a meeting. Unlike other restorative justice encounters, community boards are not facilitated by professionally trained mediators or facilitators.

Board meetings start with personal introductions. After that the program's mission and goals are reviewed. The meeting will then discuss the offence and its impact on victims and the community. It will also discuss strategies for reparation and reintegration and negotiate an agreement with the offender. The agreement may include various activities, such as writing a letter of apology, doing community service, or participating in some competency development courses.

Usually offenders return to the board for a mid-term review (half the probationary period) and a final meeting before the offender is discharged upon completing the agreement. Offenders who are unwilling to sign an agreement or fail to comply with the terms of an agreement are returned to court.

Boards have limited power. They cannot retry cases, or overturn judicial determinations of guilt. All they can do is recommend a sanction. Boards cannot create contracts that continue beyond 90 days. Neither can they stipulate any formal terms of supervision or imprisonment. There are also limits on the length of community service and the amount of other types of activities which the boards may assign. Also, only the court can order restitution or financial compensation. Yet, boards have considerable latitude in negotiating agreements tailored to a particular offender.

Research into the community boards has been undertaken, and it was found that 52% of offenders successfully completed terms of the agreements. Some other findings were rather negative. Only 15% of victims attended board meetings. Various explanations have been offered for low victim attendance: victims do not understand potential benefits of the program; offences which are referred to boards are minor, and victims prefer to forget about the experience, rather than belabour it; and victims are primarily interested in receiving restitution, which is court-ordered in Vermont, so their needs might have been sufficiently met before board meetings (Karp and Walther 2001:211).

Concerns have been raised that boards contain an imbalance of powers between older, middle-class, well-educated board members and more youthful, working-class, less-educated offenders. It is questionable whether the process really empowers offenders and whether their participation and contribution to decision-making is meaningful (Karp and Walther 2001:214). The boards were also criticised on grounds that, unlike other restorative justice programs, they do not employ professionally trained facilitators, and 'community volunteers involved in the boards often appear amateurish, undiplomatic, and less knowledgeable about restorative principles than trained mediators' (Karp and Walther 2001:215).

(b) Zwelethemba experiment

Another interesting restorative justice initiative is the Zwelethemba experiment in South Africa (Shearing 2001, Roche 2002). The experiment known as the Community Peacemaking Programme started in 1997. With funding from the South African government and overseas governments, the programme began working with local community. The idea was to develop a community-based conflict resolution process centred around the use of peace committees.

There are two aspects to problem-solving within the Zwelethemba model. The first aspect involves peacemaking and peacebuilding. Peacemaking refers to problem-solving in relation to on-going conflicts that will establish peace with respect to particular disputes. Peacebuilding refers to problem-solving with respect to more broad issues. The second aspect is concerned with sustaining the processes of peacemaking and peacebuilding over time (Shearing 2001, Roche 2002).

After a complaint is made to a peace committee, the committee convenes a meeting where the complainant, the accused, people whom the complainant and the accused have invited, as well as those who were not specifically invited come together. Members of peace committees – or peacemakers – act as facilitators who have no authority to resolve disputes or insist that agreements are kept (Shearing 2001:21, 27). Yet, peacemakers can actively participate in the conflict-resolution process and make suggestions. The role of peacemakers is to facilitate the process and ensure that the agreements that have been reached conform to the Code of Good Practice and the ethical and legal framework it embodies (Shearing 2001:33). Peacemakers come from the same township as participants in a conflict, and have 6-months renewable license. Failure to follow the Code of Good Practice is a ground for not renewing a peacemaker's licence.

The overall objective of peacemaking forums is to bring together local knowledge and resources and provide solutions to the dispute by mobilising the local capacity to deal with problems. Or, as Shearing has put it,

In both the Peacemaking and Peacebuilding Forums the emphasis is not on problems but on the knowledge and capacity available within circles for solving them. The model's technology seeks to 'make people up', 'to hail them out', not as people who have problems – and certainly not as people who give their problems away ... to others experts, state or non-state – but as people who are capable of developing solutions. ...The model views disputes as occasions around which to demonstrate to people that they have the capacity and knowledge required to self-govern.

(Shearing 2001:22)

Importantly, the emphasis is not on reaching particular outcomes, but on empowering participants to resolve their problems themselves:

It is this bringing together of knowledge and capacity to seek a solution, rather than any particular desired form of outcome (for example, 'restoration as a healing component' for victims, restoration as 'accepting responsibility' for offenders and restoration as 'denouncing wrongful behaviour' for communities...), that is at the heart of the model.

(Shearing 2001:20)

If this is indeed so, such approach is rather unusual in today's restorative practice and theory. As I have argued in chapters 3 and 4, there is a tendency among mainstream proponents to pre-define restorative goals – a tendency which has been criticised by more radical critics on the grounds that it is inherently conservative and 'restricts what sorts of change is possible' (Pavlich 2002a: 97).

However, it appears that Zwelethemba peacemaking forums are restricted in their problem-resolution process by the principles set out in the Code of Good Practice (Shearing 2001:21). One of the principles enshrined in the Code is a prohibition against use of force or violence to solve a problem. If it is decided that a coercive response is necessary to resolve a dispute, the matter has to be referred to the police or some other state authority. The Code of Good Practice also requires members of the peace committee to 'respect the South African constitution' and 'work within the law' (Roche 2002:519). Such a conservative position in providing for legality opens up a potential for criticism by radical critics of a type outlined in chapter 4 of this thesis. That is, as a result of accepting the authority of the state law, the experiment operates as an extension of – or a complement to – the legal system. It functions outside the

state, but for purposes of maximising the regulatory efficiency of the state and preserving the status quo 'by expunging conflict from the community, thereby preserving an 'order', within which law may function' (Pavlich 1996:149).

The danger that peace committees may serve to perpetuate the unjust status quo is exacerbated by the fact that the programme operates 'in crowded South African township, comprised of shacks build from scrap wood, hessian sacks, corrugated iron and card-board, and where electricity, running water, public telephones, sewage systems, parks and playing fields remain rare' (Roche 2002:525). Such living conditions may well be the source of many individual conflicts.

However, it has been argued that although bringing about radical social changes is a task beyond the capacities of peace committees, the committees do attempts to address the underlying conditions which may generate individual disputes. For instance, in Zwelethemba the peace committee built a desperately needed children's playground and purchased sleeping mats for a new child care centre in the township. Also 30 per cent of the money earned from peacemaking is used for loans to fund micro-businesses in the township (Roche 2002:525).

An important characteristic of the experiment is that it does not operate by way of diversion from the criminal justice system. Rather, a complainant brings a matter to a peace committee (a local group of peacemakers). This helps to avoid situations where cases come to the program with definitions already attached by the criminal justice system (e.g. what constitutes 'crime', who is a 'victim' and who is an 'offender' in the situation), and a framework within which the case will be responded

to is already pre-established by the system and will direct the process and outcomes.

The consequence of cases coming directly to the programs is that

Events are firmly embedded in a wider and deeper terrain. Thus, for instance, a stabbing is not 'pulled out' of the context of daily life as an 'assault' that has an offender and a victim. Rather it is located within a wider context of often ongoing and long-established patterns of action that include groupings such as families, neighbours and so on. Within this broader context, who is the 'offender' and who the 'victim' very often oscillates depending on just when a snapshot of events is taken – a 'victim' today may well have been an 'offender' yesterday.

(Shearing 2001:24)

A person accused of a wrongdoing is not required to make any admission before a peace committee gathering. Nor are they required to make any admission during a gathering. A consequence, responsibility may swap between or be shared by people involved (Roche 2002:528). Thus, peace committees suggest that restorative justice may be used as a fact-finding forum.

Another interesting consequence of the peace committees receiving cases directly from complainants (as opposed to the criminal justice system) is that committees deal with actions which may be illegal, as well as those which are legal, although may be objectionable (for instance, infidelity, excessive noise late at night, the passing of insults). On one view, intervening in such cases is problematic because it results in net-widening (that is, bringing into the system of social control people who may have otherwise stayed out of them). On another view, such interventions are justifiable because they may prevent more serious harm from occurring. Early interventions

may resolve conflicts, which, unless addressed by peace committees, may escalate into 'state-attention problems' (Roche 2002:527, Shearing 2001:24).

(c) Community-based initiatives in Northern Ireland

Restorative justice initiatives in Northern Ireland are interesting in that they are examples of community-based restorative justice⁵. These projects were established mainly to respond to systems of informal justice developed in the last three decades where both Republican and Loyalist paramilitaries assumed responsibility for the 'policing' of their communities through violent and brutal punishments and banishments (McEvoy and Mika 2001). The restorative justice projects were designed to provide alternatives to paramilitary punishment attacks.

Following heavy criticisms by international human rights organisations and single-issue pressure groups in 1990s, Republicans and Loyalists have permitted intervention on behalf of those under threat of punishments. In 1996, a program was devised at the request of activists from Republican areas which provided training on issues concerning informal justice (McEvoy and Mika 2001, McEvoy and Mika 2002).

Following extensive consultations with Republicans, statutory agencies, community representatives, and political parties a discussion document ('The Blue Book') was produced in 1997, which outlined a model based upon 'community restorative justice' (Auld et al 1997). Following the publication of the document, NIACRO provided funding for four pilot projects in Republican areas.

⁵ There is a number of state-led restorative justice schemes in Northern Ireland as well, but they have not been so high-profile (McEvoy and Mika 2002:534).

The model proposed in the Blue Book was designed to meet several specifications, such as non-violence, meeting the needs and responsibilities of victims, offenders and communities; community involvement in the delivery of the programme; acting within the law; proportionality between sanction and infraction; due process and consistency; inclusive and transparent approach to the management and staffing of the project (Auld et al 1997).

Interestingly, between the publication of the Blue Book and the projects becoming operational several of the proposed features have not been incorporated. For instance, it was originally envisaged that projects would have investigation powers and the power to 'boycott' persistent offenders, but these proposals have not been implemented. Instead, the work of the projects includes 'normal' restorative justice activities, such as preparation of victims and offenders, mediation, family group conferences and the monitoring of agreements (McEvoy and Mika 2001:369, McEvoy and Mika 2002:538).

The projects operating in Republican areas are known as Community Restorative Justice Ireland. Cases are usually referred to a local office by aggrieved parties or another local organisation, or aired with local members of the management committee or the volunteer mediators of the service anywhere they might be found (McEvoy and Mika 2002:538). Community members are encouraged to approach restorative justice projects where they would previously have approached the IRA seeking punishment or threats. Cases involving both criminal and anti-social behaviour are accepted by the projects, ranging from minor disputes (e.g. noise) to serious matters, including paramilitary threats (McEvoy and Mika 2002: 538-9). Assuming that a matter is

within the remit of the service⁶, the project staff assigns the case to teams of trained volunteers who either carry out indirect mediation or prepare parties for - and conduct - face-to-face mediations or conferences. The local service attempts to monitor compliance with agreements made during restorative encounters. Research has demonstrated that large group conferences are not uncommon, and many disputes are long-standing and complex in nature (McEvoy and Mika 2002:538).

The project operating on the Loyalist side is known as 'the Greater Shankill Alternatives'. Its focus is to provide an alternative to punishment violence for young offenders in their community. Upon receiving a referral, the project staff contact the Ulster Volunteer Force to verify that the threat exists and then negotiate lifting the threat of punishment from those who successfully participate in the Alternatives programme. A young person is assigned a caseworker and a contract is drafted specifying victim restitution, community reparation and measures aimed at offending behaviour. A young person has a regular contact with a community panel which monitors the completion of the contract. After the contract is completed, the young person is discharged (McEvoy and Mika 2002:540).

How did the state respond to the community-based restorative programmes? The projects received a cautious welcome. A 'Protocol on Restorative Justice' issued in June 1999 emphasised a complete state control over all aspects of any restorative justice process. The various prerogatives of the police were repeatedly raised. It postulated that

⁶ Some types of conflict are referred to other community or statutory resources, for example, domestic violence and child abuse (McEvoy and Mika 2002:538).

...any community-based initiatives in this area can only be pursued in full cooperation with the police and other criminal justice agencies. This means that any group or structures organised by the community should include provision for full cooperation and communication with the police.

(Northern Ireland Office 1999)

So, complete and unconditional support for the police was demanded of communities with regards to restorative justice programmes. Only schemes making structural provisions for the full participation of the police were allowed.

This situation gives rise to the criticism that restorative justice is 'the co-option of revolutionary struggle and the legitimation of the state' (McEvoy and Mika 2001:378). McEvoy and Mika quote from Saoirse, the magazine of Republican Sinn Fein:

Community Restorative Justice is British double speak for collaboration with Crown Forces... NIACRO is dedicated to recruiting ex-prisoners into a new police force which will serve as an auxiliary wing of the RUC... It is clear that the establishment of a new British police force in the guise of community justice is the initiative of a British colonial agency operating from Stormount.

('Blue Book form New British Police', Saoirse, September 1998,
quoted in McEvoy and Mika 2001:378)

It has been suggested, however, that even if this argument has some validity, it is not a good justification for continued brutal paramilitary punishments (McEvoy and Mika 2001:378).

Recent developments in England

There were some restorative justice projects operating in England since 1980 (Marshall and Merry 1990, Davis, Boucherat and Watson 1988; Dignan 1992; Miers et al 2001), however the widespread development of restorative justice practices did not begin until recently. Important changes in the development of restorative justice in relation to youth offenders in England were brought about by the Crime and Disorder Act 1998 (hereafter CDA) and the Youth Justice and Criminal Evidence Act 1999 (hereafter YJCEA). These two pieces of legislation establish some elements of restorative justice as a mainstream response to youth offending.

Section 37 of the CDA defines the overarching mission for the youth justice system: 'It shall be the principal aim of the youth justice system to prevent offending by children and young persons'. The CDA established the Youth Justice Board, created Youth Offending Teams (multi-agency bodies including a probation officer, a local authority social worker, a police officer, a representative of local health authority, and someone nominated by the chief education officer), and restructured the non-custodial sentences available to the Youth Court.

Section 67 CDA introduced reparation orders. These orders require offenders to make some reparation either to the victim(s) or to the community at large (section 67(2)). There is a presumption in favour of such orders, and the court must give

reasons for not imposing one (section 67(11)). Section 68(1)(b) requires that before making a reparation order, views of the victim(s) should be sought. Youth offending teams must consult victims before recommending to sentencers an imposition of a reparation order. A reparation order may include various activities, for example, writing a letter of apology to the victim(s), undertaking some form of practical activity that benefits the victim or the community at large, mediation or a restorative justice conference.

Section 69 CDA introduced action plan orders. This order may require offenders to make reparation to the victim(s) or to the community at large (section 69(5)(f)).

Reparation to the victim(s) or the community at large may also be included as a requirement of a supervision order (section 71(1) CDA).

Also, offenders who have been given a final warning (section 66 CDA) may be required to take part in a rehabilitation program, which may involve some form of a reparative activity either for the benefit of the victim or the community. It is also possible for some form of mediation, or the Thames-Valley-style restorative cautioning to take place at this point.

Under the YJCEA 1999, all first time offenders who plead guilty (with the exception of those who are given an absolute discharge or who are sentenced to custody) must be referred to youth offender panels. The panels are set up by youth offending teams, and comprise three members. One of them must be from the youth offending team, and the others are drawn from a panel of trained community volunteers. The youth

offender panel involves a conference-type approach and holds a discussion between the young offender, their parents or guardians, the victim(s)⁷, two trained members of the community, a youth offending team worker, and anyone else that the panel considers to be capable of having a 'good influence' on the offender. It is intended that negotiations between the panel and the offender about the content of the contract should be led by the community panel members. The role of the youth offending team member is to advise on potential activities to be included in a contract and to ensure proportionality. The youth offender panel agrees on a contract with the offender. The contract involves activities aimed at preventing re-offending for the duration of the referral order, and which, importantly, should always include reparation to the victim(s) or the community. Where no agreement is reached, the offender is referred back to the court for re-sentencing. Where an agreement is made, the Youth Offending Team monitors the compliance with it. Once the period of the referral order is successfully completed, the offender is no longer considered to have a criminal record under the Rehabilitation of Offenders Act 1974.

It has been argued that the philosophy behind the two pieces of legislation is broadly consistent with restorative justice principles (Dignan 1999, Dignan and Marsh 2001, Crawford and Newburn 2002). This is so because the measures introduced by the CDA and the YJCEA emphasise making offenders accountable by requiring them to undertake some form of reparation for the victim or the community. Also, the legislation provides a greater scope for victims' involvement in sentencing. It is required that victims' views must be sought before reparative interventions. It may

⁷ Where there is no direct victim, the panel may invite someone else who could bring the victim's perspective to the panel discussions.

also be possible for victims to participate in restorative conferences or restorative cautions. Victims may also attend youth offender panels' deliberations. Notably, youth offender panels adopt a conference-type approach, which is based on the idea of inclusion, participation, and consensual decision-making. The intention is that offenders, victims and community members should be empowered to reach an agreement. Emphasis is placed on reparation and reintegration.

Research of the innovations introduced by the CDA and the YJCEA has been carried out. The Home Office evaluation of the Pilot YOTs, entitled 'New Strategies to Address Youth Offending. The National Evaluation of the Pilot Youth Offending Teams', has identified problems relating to the requirement by the CDA to consult victims and, where they so wish, to arrange for them to receive direct reparation from the offender (Holdaway et al 2001). Such consultation process takes time, however the fast-tracking arrangements make it extremely difficult in most cases to ensure that the processes of consulting victims and assessing the offender can be completed by the time the court is ready to pass sentence (Holdaway et al 2001:27).

It has been found that victims of offenders who had been given a final warning were not usually involved in final warning process. In 15 per cent of cases the victim was contacted. Just 4 per cent of victims had some form of direct involvement in reparative or mediating activity. 3 per cent had indirect involvement (Holdaway 2001:80). It has been also found that in relation to reparation orders, victims were contacted in 66 per cent of cases. Of those victims who were contacted, exactly half consented to some form of reparation being made by their offender. Just under two-thirds of those who consented agreed to some form of direct reparation, just over one-third agreed to indirect reparation. There were interesting variations in response rates

across the pilots. The proportion of victims who consented to some form of reparation ranged from 20 per cent of those contacted in one of the pilots to 75 in another. The proportion of victims who were willing to consent to direct as opposed to indirect reparation ranged from a low of 53 per cent to a high of 90 per cent (Holdaway 2001:86).

The Home Office evaluation has found that virtually all YOTs were able to facilitate at least some form of direct reparation for victims. However, some YOTs used 'tokenistic' or 'formulaic' reparative interventions (for example, dictating letters of apology or simply requiring an offender to watch a video regardless of the nature of the offence). It has been suggested that '[s]uch interventions do a major disservice to victims, offenders, the courts, and ultimately, the cause of RJ itself' (Holdaway 2001:28). It has been recommended that YOTs need to be able to offer a sufficient range of meaningful and effective reparative interventions, which should be flexible enough to cater for different types of offenders and offences (Holdaway 2001:28).

The evaluation also recommends that courts should pay closer regard to the assessments provided by the YOT when they determine what kind of reparative activities are most appropriate and practicable in circumstances. They should also remember that victim consultation is likely to be an ongoing process which may not have been finished by the time of the hearing. The evaluation recommends that while the legislation requires the nature of the reparation to be indicated in the order, the precise nature of the reparation is usually best left to the YOTs to determine, particularly where consultation with the victim is still on-going. So, courts may direct YOTs to explore the possibility of the offender making direct reparation (which may involve a restorative justice encounter) for the benefit of the victim who is named in

the order. However, if this proves impossible, YOTs should arrange for the offender to undertake reparation for the benefit of the community. Such an arrangements would provide sufficient flexibility for victims to be consulted properly and the most appropriate forms of reparation may be devised without delaying court proceedings (Holdaway 2001:28).

An interesting finding in relation to reparation orders is that offenders and their parents were split evenly as to whether reparation was a soft option. However, those who had met their victims were less likely to view it as a soft option (Holdaway 2001:81).

Another important finding is that not all victims felt that their needs had been met by the reparation they had received and most felt that the offenders' interests were seen as paramount. Nevertheless, the majority of victims were pleased to have been invited to take part in the process, and felt that meeting their victim or providing direct reparation might help to discourage the offender from further offending (Holdaway 2001:81).

The evaluation has concluded that all the pilot YOTs were strongly committed to using mediation where appropriate, but all have expressed strong concern at the speed with which they were expected to conduct the assessment and consultation process. Moreover, many have expressed strong doubts about the extent to which magistrates and their clerks are fully in tune with the RJ ethos that underpins this aspect of the CDA reforms (Holdaway 2001:39).

Research into referral orders has also been undertaken, and early findings identify a number of problems (Crawford and Newburn 2002, Crawford and Newburn 2003). One of them is that youth offender panels are hardly representative of the community. Community volunteers willing to take part in panels are predominantly female, middle class and middle aged. So, there is a lack of correspondence between community representatives and communities which they seek to represent. It has been suggested that 'there is a danger that community panel members come to constitute something of a 'new magistracy', whose normative appeal may be undermined by their empirical lack of representativeness' (Crawford and Newburn 2002:483).

Another problem is low victim attendance. It was found that victims attended panel deliberations in only 13% of cases where a panel was held and where there was an identifiable victim (Crawford and Newburn 2003). Research shows that working with victims poses a significant challenge for youth offending teams, for whom integrating victims and their perspectives into the core of their services is not an easy task and 'may appear to sit awkwardly alongside concerns for the young people with whom they work' (Crawford and Newburn 2003: 238).

A tension was found between managerial concerns (e.g. speed, cost reductions, performance measurement, etc.) and communitarian appeals of local justice (that is, local people contributing to handling cases in their own local area). Managerial demands often led away from local justice and encouraged professionalisation and centralisation. That is, lay members of the public had less involvement, and government departments and related agencies governed local practices. It was also

suggested that the emphasis on speed and the reduction of delay may undermine victim input into the process. It is doubtful whether victims would want to attend the first panel meeting which is required to be held within 15 working days after court appearance and potentially soon after the offence (Crawford and Newburn 2002:492).

Concerns have also been expressed over the fact that referral orders are coercive, which 'offends cherished restorative ideals of voluntariness' (Crawford and Newburn 2003:239). However, research evidence from pilot sites shows that despite the coercive nature of the orders it was possible to engage offenders and their parents in the process in a more positive and constructive way than that found in criminal courts (Crawford and Newburn 2003:239). It was also pointed out that by making referral orders an almost mandatory sentence of the court for first time juvenile offenders, referral orders ensure a steady supply of cases to youth offender panels, and thus help to avoid one of the main problems for most restorative justice initiatives – insufficient referrals. Crawford and Newburn argue that '[c]oercion provided the capacity to move certain restorative values to the very heart of the youth justice system, and the loss of voluntariness was the price paid' (Crawford and Newburn 2003:239).

A few final words

This chapter has attempted to outline the development of restorative justice in nearly the past 30 years. The growth of restorative justice in popularity has been remarkable, and today practices and policies influenced by restorative justice ideas can be found on every continent, and have a statutory basis in many countries. Restorative justice has secured a place not only in national legislations, but also at the level of international protocols and instruments. Thus, in 1999 the United Nations Economic

and Social Council adopted a resolution, which encourages member states to use restorative justice in appropriate cases. It also called on the Commission on Crime Prevention and Criminal Justice to consider the development of guidelines on the use of restorative justice programs. In May 2000, the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted a declaration, calling on governments to expand their use of restorative justice. After the congress, the United Nations Commission on Crime Prevention and Criminal Justice approved a resolution calling for comment from member states on its draft Basic Principles on the Use of Restorative Justice programmes in Criminal Justice matters (United Nations 2000).

In conclusion, I want to point out that the growth of restorative justice in popularity has been particularly notable in relation to juvenile offenders. One possible explanation is that proponents have been quite successful in persuading governments that restorative justice may be a more effective way of preventing re-offending among young offenders than the 'traditional' approaches. As a result, some elements of restorative justice have been given legislative force and adopted as a mainstream response to juvenile crime. An example of such legislation is Crime and Disorder Act 1998 which defines the principal aim of the youth justice system as prevention or offending by children and young persons. One consequence of incorporating restorative techniques through legislation, the overarching aim of which is prevention of re-offending, is that it has shaped the style and focus of much empirical research into restorative justice. Another consequence is that it has influenced restorative justice practice and altered the original vision of restorative justice by over-emphasising offender rehabilitation (as will be demonstrated in the subsequent chapters of this thesis by reference to one restorative justice project).

Another explanation of the growth of popularity of restorative justice is that the response to youth crime has been differentiated from the response to adult crime for a long time, but the traditional welfare rationale for the distinction is becoming more and more difficult to defend. So, if the distinction between responses to juvenile and adult crime is to be retained, a different rationale is needed. Policy-makers and practitioners see restorative justice as an attractive new rationale, as it allows to hold juvenile offenders accountable, without abandoning welfare concerns completely (Johnstone 2002:166). It allows politicians to “talk tough” whilst behind the scenes enabling sometimes more enlightened practices to be developed and promulgated’ (Crawford and Newburn 2003:11). In the context of rising levels of juvenile crime and a popular belief that juvenile justice is ineffective, restorative justice seems to offer a governmental policy which is likely to win votes due to its emphasis on ‘responsibilising’ juvenile offenders and their families⁸ and the communitarian appeal⁹.

It needs to be noted, though, that one consequence of developing juvenile restorative justice without a corresponding development in the context of adult offending is the distortion of the original vision of restorative justice (Johnstone 2001: 166-7). As pointed out in chapter 2 of this thesis, the early inspirers of restorative justice aspired to develop a way of ‘doing’ criminal justice which would place victims at its centre.

⁸ According to the Minister of State at the time of enacting the Crime and Disorder Act, ‘With the restorative approach there is no way for youngsters – or their parents – to hide from their personal responsibilities’ (Michael 1998).

⁹ For instance, the reparation orders introduced by the Crime and Disorder Act 1998 require the young offender to make reparation either to a specified person or ‘to the community at large’.

If victims are to be central, the age of 'their' offenders seems an illogical basis for allowing or refusing victim participation. Enabling victims of juvenile offenders to derive benefits from restorative justice, while failing to provide similar opportunities to victims of adult offenders seems to unfairly discriminate between victims.

Another consequence of confining restorative justice mainly to juvenile offenders may be that the original vision of restorative justice may be diluted as a result of putting extra-emphasis on offender welfare and rehabilitation. The over-emphasis on offender welfare may lead to a reduced attention paid to needs and interests of victims. In subsequent chapters of this thesis this danger will be illustrated with reference to my empirical findings.

Part II

Methodology and Research Problems

(1) General approaches

In his article 'The Relationship between Theory and Research in Criminology' Anthony Bottoms argues that there is a 'pragmatic division of labour' in criminology between those who are good at empirical research and those who are good at theorising (2000:16-17). Although such 'pragmatic division of labour' may have its advantages, Bottoms criticises this approach and argues that

...[n]either the natural nor the social world can be neutrally observed and reported upon by the research analyst, for we always approach all our empirical observations through some kind of theoretical understandings.

(Bottoms 2000:16)

We see the world through theoretical spectacles. All observations are interpretations of facts which are being observed, and those interpretations are made in the light of theories. So, empirical researchers cannot avoid engagement with theory. At the same time, theorists cannot avoid engagement with a 'real' world, because a 'real' world available for observation and interpretation is an important test for theories (Bottoms 2000:18).

In the course of my research I attempted to engage with both – a 'real' world and theory. I used empirical findings to generate new hypotheses and discussions, and I also looked at theoretical arguments and debates in the light of empirical findings.

To some extent an approach similar to grounded theory has been used (Glaser and Strauss 1967, Strauss and Corbin 1990, 1998a). I did not begin the research with the aim of testing a set of preconceived theories. Rather, to a large degree I started with an open mind, aiming to generate theory from data. Theory derived from data is more likely to resemble the 'reality' than is theory derived from concepts based on speculation (Strauss and Corbin 1998b). If a theory is drawn from data, it is likely to offer insight, enhance understanding of the phenomena and offer a guide for practice.

However, some interview questions and focus of observations were theory-driven and hypotheses-directed. These questions and observations aimed at seeing how aspirations of proponents fitted with practical realities of family group conferencing.

The empirical findings were also used to re-visit – and make contributions to – some theoretical debates within the restorative discourse, in particular, the 'reformist' vs 'radical' and the 'maximalist' vs 'purist' debates analysed in the earlier chapters of this thesis. For example, the empirical data helped to bring into light some problems and dangers resulting from the dependence of restorative justice on the criminal justice system in various ways (as advocated by the 'reformists'), or problems arising as a result of restorative justice operating outside the criminal justice system, but closely connected to it (as proposed by the 'purists'), or dangers resulting from defining reparation of harm as the primary objective of restorative justice (as suggested by the 'maximalists').

(2) Aims and objectives

My empirical study aimed at bringing into the debate about restorative justice unique insights and perspectives of those who had experienced restorative justice first-hand. I wanted to enable participants in restorative interventions to share their experiences of – and thoughts about – restorative justice, express views, raise concerns and criticisms. How did they interpret and understand what was happening in restorative justice encounters? What can they add to our knowledge about restorative justice? I aimed to use empirical data to see how it fits in with some theoretical arguments made within the discourse on restorative justice and debates which have taken place among proponents (in particular, the debates between the ‘maximalists’ and the ‘purists’ (chapter 3) and between the ‘reformists’ and the ‘radicals’ (chapter 4)). I also wanted to look at aspirations of restorative justice advocates (which have been outlined in chapters 2, 3, and 4 of this thesis) in the light of empirical findings and see to what degree those aspirations have been achieved within one restorative justice project. Another aim was to use empirical findings to identify potential problems, tensions and dangers which emerge when restorative justice ideals are pursued in practice.

(2) Research methods

(a) Selecting the research strategy

At an early stage of my research I decided that I would employ qualitative methods. In the light of the aims and objectives of my study, the practices and norms of the natural scientific model, and of positivism in particular, seemed less suitable than the approach emphasising the ways in which individuals interpret their social world. Research methods which embody a view of social reality as an external, objective reality, which is static and separate from the individuals who make it up, appeared

less fitting the nature of my study than the methods embodying a view of social reality as constantly shifting emergent property of individuals' creation (Bryman 2001). A research strategy which abstracted me from the everyday social world, did not allow me to study it directly, and was based on probabilities derived from the study of large numbers of randomly selected cases which stand above and outside the constraints of everyday life did not seem to serve my needs well. An approach which is committed to a case-based position, which directs attention to the specifics of particular cases and examines the constraints of everyday social world seemed a better alternative (Denzin and Lincoln 1998).

I needed to adopt research methods which would emphasise words, rather than quantification in the collection and analysis of data, in order to meet the aims and objectives of my research. I was interested in capturing the points of view and perspectives of participants in family group conferences, so a qualitative research strategy that is sensitive to how participants interpret their social world seemed the direction to choose. Quantitative methods would have been less able to capture individual perspectives because they rely on more remote, inferential empirical material (Denzin and Lincoln 1998). In contrast, qualitative methods could enable me to get closer to the subject's perspective through detailed interview and observation.

If I used a quantitative survey, there would have been a danger of subjects interpreting the same question differently and attaching different meaning to the same terms. A possible solution would have been to use questions with fixed-choice answers, but this approach would have provided a 'solution' to the problem of people attaching different meanings to the same words by simply ignoring it (Bryman 2001).

The nature of my study required me to gain confidence of my research subjects, and it seemed unlikely that a quantitative survey would gain the confidence of the subjects to achieve the necessary rapport (Bryman 2001).

Besides, quantitative survey would have required me to gain access to a large number of subjects, which would have been very difficult – if not impossible – on practical grounds (see the discussion of problems I faced trying to gain access to subjects below). It would also be extremely difficult to secure a representative sample, necessary to generalise findings.

(b) Selecting the primary method

Once qualitative approach had been chosen as the main research strategy, in the light of the aims and objectives of my study, I decided to employ interviews as the primary research method. Other methods of collecting data were considered but rejected. Self-completion questionnaires were considered as one possibility. This method could have been less intrusive than interviews and would have allowed the respondents to complete questionnaires at a time convenient to them (Simmons 2001:87). Besides, it would have been so much easier and cheaper to print out and mail questionnaires and wait for responses, than to travel to distant villages in order to interview my respondents. However, this method was rejected, partly because of the likelihood of low response rate (Simmons 2001:87). But even if the respondents did complete and return questionnaires, their answers could be incomplete, illegible or incomprehensive. This research method would have denied me an opportunity for

probing in open-ended questions and exploring issues in as much depth as I wanted (Noaks and Wincup 2004, Simmons 2001).

For my purposes a telephone survey also would have been inappropriate, as it could exclude some groups (in particular, households without telephone access) and not allowed for the depth of coverage that could be achieved in a face-to-face encounter with respondents¹. Sensitive questions are more difficult to ask at a distance, especially when talking to a person you have never met before, and it is even more difficult to answer sensitive questions in such circumstances. Besides, this research method would have deprived me of an opportunity to see reactions and body-language of interviewees (Simmons 2001:89).

As mentioned above, I selected interviews as the main research method. This method was best suited to 'yield rich insights into people's experiences, opinions, aspirations, attitudes and feeling' (May 1997:109), which was of fundamental importance to achieve aims and objectives of my study. Interviews are a flexible method which could allow me to clarify the answers of my interviewees and explore issues in greater depth. Interviews would not limit responses to fixed choices in the same way as questionnaires would (Noaks and Wincup 2004, Simmons 2001:88). Interviews would also provide me with a considerable scope to explore people's attitudes, feelings, emotions and gain a rich insight into their experiences of restorative justice.

¹ However, two people were interviewed on the phone, because I could not organise face-to-face meetings with them.

Once interviews had been selected as the primary method of research, the question arose: what kind of interviews? If I used structured interviews, an obvious advantage could be that it would be easy to compare responses (May 1997:110). However, if I used that method, there would be very little flexibility in the way questions are asked or answered. I would not be able to improvise, or deviate from the question wording or sequence of questions (Fontana and Frey 1998:52, Punch 1998:176). There would be little scope for interviewees expressing in their own words what the experience meant to them and how they felt about it (May 1997:113). If I used unstructured interviews, the advantage would be the open-ended character of this research method. It would enable interviewees to talk about what they considered to be important and to express their views in the manner they choose (May 1997:112). The difficulty, however, would be in comparing responses. So, I decided to choose semi-structured interviews. The advantage of that method was that I would be free to probe beyond the answers and thus enter into a dialogue with interviewees. This would enable me to seek clarification and elaboration on the answers given. Semi-structured interviews would also allow interviewees to answer my questions more on their own terms (May 1997:111). At the same time, this research method could provide a structure for comparability purposes. This method seemed particularly suitable, given that a considerable number of my interviewees were likely to be young persons. Semi-structured interviews allowed me to adapt the research technique to the level of comprehension and articulacy of the respondents. I could rephrase my questions if young people did not understand them, clarify answers, and, if necessary, give the interviewees extra guidance to help them answer questions.

(c) Interviews

I had interview agendas prepared beforehand to serve as guides during interviews (see Appendix 2). Questions were open-ended, designed to enable interviewees to tell their stories in their own words; for example: ‘what did you expect from the conference?’, ‘why did you agree to attend a conference?’, ‘what was it like to meet the victim?’. If questions were such that the answer could be ‘yes’ or ‘no’, the follow-up question would ask ‘why?’, for example: ‘Was it important to have a conference? Why?’. At the end of each interview, I asked interviewees if there was anything about the conference which they felt was important, but which they had not said yet. Sometimes this led to respondents raising important issues and providing answers to questions which I had not thought of asking.

On several occasions I had to interview more than one person at a time. Group interviews required me to adopt a new role – of a moderator or facilitator in addition to that of an interviewer (Flick 1998:118, Punch 1998:117). The advantage of this method of data gathering was that it could provide information which I could not get through individual interviews (Fontana and Frey 1998:53-55). Opinions presented in individual interviews are detached from everyday form of communication and relations. Group discussions correspond to the way in which opinions are formed, expressed and exchanged in daily interactions (Flick 1998:116, Fielding and Thomas 2001:129). Another advantage was that group interviews allowed corrections by the group of views that are not accurate or not shared by the group, so group interviews could serve as means for validating views and statements (Flick 1998:116). Yet this interviewing method created its own problems. Sometimes I had to keep one person from dominating others; I had to encourage recalcitrant respondents to participate;

and I had to obtain responses from the entire group to ensure the maximum coverage of the question.

I was conscious of the fact that my own presence could change the behaviour of the people being studied. For instance, they may be anxious to impress me and distort responses, or they may give those responses which they believe I want to hear (Fielding and Thomas 2001:127). I tried to interact with my interviewees in as natural and unobtrusive fashion as I could. I modelled the interviews after a conversation between two trusting people, rather than on formal question-and-answer session between a researcher and a subject. I tried to be relaxed myself and attempted to put interviewees at ease.

All interviewees gave permission to tape-record interviews. The tape-recordings were fully transcribed and double-checked to ensure accuracy. Two people were interviewed on the telephone, and other interviews took place face-to-face, mainly in homes and occasionally in offices of interviewees. Most interviews lasted for about 45 minutes, although there were shorter and longer ones. The shortest ones lasted for about half an hour and the longest ones for about two hours.

(d) Other methods of data gathering

Another research method I employed was non-participant observation. I had an opportunity to observe one family group conference (case study 14). I did not tape-record the conference, but took very detailed notes. One advantage of this method over interviews was its non-interventionist character, as I could neither manipulate nor stimulate my subjects (Adler and Adler 1998:80). Another advantage was that

this method made it possible to record behaviour as it occurred. Interviews depend entirely on people's retrospective reports or their own behaviour, and such reports may be made in a somewhat detached mood, in which the interviewee may be rather remote from the stresses relating to the experience about which they are being interviewed (Burns 2000:411). Observation avoided this problem.

I had access to files kept in the family group conferencing project containing some information relevant to case studies (referral forms from Youth Offending Teams, copies of pre-sentence reports, copies of reports for family group conferences, copies of plans developed during conferences, copies of letters of apology, etc.).

Another useful source of information was several informal conversations with a family group conference facilitator, employed by the family group conferencing project in question, who provided me with detailed background of my case studies, and also generously shared her experiences relating to family group conferencing.

(3) Limitations of my empirical study

My study was limited to one restorative justice project and the number of interviewees was rather small². I do not claim that the project where I carried out my research was typical of other restorative justice projects. Indeed, there were some features which made it rather different from many other restorative justice programmes³. Also, although attempts have been made to select the sample

² 47 participants. See the section 'The scope of my study' below.

³ For example, relatively high level of victim participation. See section 'One restorative justice project' below.

randomly, those who agreed to be interviewed may not be 'typical' participants. This raises the problem of generalisability of findings. I have no intention to argue that my data are true for other restorative justice projects. However, my findings may provide some general lessons applicable to other restorative justice experiments.

My empirical study also raises the problem of validity, because the data could be affected by bias from my subjective interpretations of what I observed. To at least partly enhance the validity of findings I used triangulation. If observation, interviews and documentary research produce the same results, arguably, the data are likely to be valid.

(4) Getting started

From the beginning of my research I wanted to interview victims, offenders and perhaps other participants in restorative justice encounters about their experiences of restorative justice. However, when I started doing my PhD, I did not know where exactly I would do the fieldwork. My plan was to approach managers of restorative justice projects and ask their permission to get access to victims and offenders who had participated in restorative justice encounters.

I made the first attempt to gain access to interviewees in January 2001. I approached a manager of a local restorative justice program. The program in question received referrals from a Youth Offending Team and conducted family group conferences with juvenile offenders and their victims. I was granted permission to interview participants in restorative justice encounters, although I was told that I had to wait for three months. Someone else was evaluating the program at that time, and the

manager did not want to overexpose victims and offenders to researchers. However, I was allowed to shadow some project practitioners during their visits to offenders and was permitted to visit the Youth Court with the project workers. When the three months passed, I contacted the manager again, and was informed that he had changed his mind, and I could not interview any victims. He heard about a case where researchers had 're-victimised' victims, and could not take the risk. However, he promised to let me have access to six offenders. We agreed that he would contact them first and ask their permission to pass their contact details on to me. Five of them refused permission, but one seemed to have agreed. When I called the person in question, he asked if the interview was optional for him, or if he had to do it. My response, of course, was that it was optional. He refused to be interviewed.

My next step involved contacting managers of Youth Offending Teams and managers of restorative justice projects around the country in the hope that someone would grant permission for me to gain access to interviewees. One refusal was followed by another. I also approached restorative justice practitioners in conferences I attended and asked for help, but was unsuccessful. I even contacted a manager of a restorative justice project in Russia with a request to allow me to do the fieldwork in his experiment, but his response was negative. I almost lost hope that I would have an opportunity to do my fieldwork in a restorative justice project and interviewed a number of participants in school peer mediation in an attempt to find a 'substitute' for restorative justice.

In August 2001 managers of two restorative justice projects (one in Grimsby and another in Southampton) gave me permission to interview victims and offenders. In

both cases the permission was obtained with the help of my friends who knew the managers of the projects and made personal requests to help me with my PhD and give me access to interviewees. In both cases I had to wait before I could start the fieldwork. The first project at that time was merely in the formative process. No family group conference took place there, so I had to wait for an indefinite period. The manager of the second project said I had to wait until December 2001, because someone else would be doing research until then. When I contacted the manager in December, she said that I had to wait longer, because the previous researcher still had not finished their work. A month later I contacted the manager again, and received a refusal to gain access to interviewees.

I made a few other unsuccessful attempts to gain access to victims and offenders, but in February 2002 I was eventually given permission by the manager of the family group conferencing project where I did my empirical study. That permission was obtained with the help of a friend of another friend, who was working in the project at that time and asked the manager to help me. My empirical study was carried out in summer 2002.

(5) One restorative justice project

The project where I did my research was situated in the South-East of England⁴. The project was established in 1998 and conducted family group conferences in child care and protection cases. Since 2000 it started to work with young offenders (aged 10 to 17), following a successful application for funding made together with a Youth

⁴ The precise location of the project will not be disclosed to preserve confidentiality of my interviewees.

Offending Team (hereafter YOT) to the Youth Justice Board. The Youth Justice Board was the main funder, and other funders included the Social Services, Community Safety project, police, YOTs, and the probation service. The project operated in partnership with the police, YOTs, and Victim Support. The legislative framework was provided by the Crime and Disorder Act 1998.

The project defined its aims and objectives in the following way:

- To deliver restorative justice through the provision of an effective Family Group Conference Service for young people in [the county] who offend and for victims of their crimes.
- To restore the equilibrium to victims of crime and young people who have offended against them.
- To resolve the offence and facilitate reparation for any loss or damage to the satisfaction of victims.
- To enable young offenders to make suitable amends to their victims.
- To enable families to support young offenders by addressing the risk of re-offending and developing a plan to prevent further offending behaviour.

By spring 2002, the project had received over 80 referrals from YOTs and carried out over 40 conferences. In the majority of cases victims attended the conferences. Where they did not attend, either a Victim Support worker or a police officer

represented them. It was estimated that in the first year of the project operating 44% of victims attended conferences and in the second year – 64%⁵.

The process worked as follows. In some cases conferences were court-ordered as part of reparation orders. In other cases, if the court had not seen the report detailing wishes of the victim at the sentencing stage, the court could make a flexible order, enabling the assessment for a conference. If, following the assessment, it appeared that victims wished to be involved, a family group conference could take place.

All referrals had to be channelled through a YOT after a YOT manager had assessed the appropriateness of a referral to the project and had conducted a pre-referral discussion with a project senior practitioner. Before a referral was made, the young offender and his or her parent or guardian had to give consent to participation in a conference. The YOT police officer or a senior practitioner from the project would contact the victim(s), explain the process and ask if they consented to participate in the conference.

The next stage was a so called ‘4-way meeting’ – a meeting of representatives of four agencies: the family group conferencing service, YOT, police and Victim Support.

⁵ The victim attendance rate in this project was much higher than in some other restorative experiments. For instance, in Vermont community reparative boards only 15% of victims attended board meetings (Karp and Walther 2001). Holdaway et al (2001) found in their research of pilot YOTs that in relation to final warnings, just 4 per cent of victims had some form of direct involvement in reparative or mediating activity. In relation to referral orders, it was found that victims attended panel deliberations in only 13% of cases (Crawford and Newburn 2003).

The aims of the meeting were to pull together all relevant information related to the offence; to develop a plan of what needed to be done in the preparation for the conference, to identify and allocate roles and tasks among the professionals, and to set timescales for the conference.

Prior to the conference, a YOT worker would write a report for the conference. The report would have two parts. Part One would be focused on the offence, and Part Two on risks of re-offending and the offender welfare issues. The offender and his or her family would have to sign the report and give consent to share the information contained in Part One of the report with victims and other conference participants, and Part Two with other professionals who would be involved in the conference.

During the preparation for the conference, the conference coordinator would meet with the victim(s) at least twice, explain the process, and prepare the victim for participation. The coordinator would also meet the offender and his or her parent(s)/guardian at least twice and explain to them the conferencing process and prepare them for the conference. Together they would identify family members and significant others who should and who should not be invited to the conference. The coordinator would also make other arrangements necessary for the conference (e.g. arrange the venue and the date of the conference, etc.)

The conference has two main parts. The first part is focused on the offence. During this part the victim(s) can tell how the offence has affected them, ask questions, and express their feelings. The offender is provided with an opportunity to apologise. Then the victim(s) leave and the focus shifts to the prevention of re-offending.

Professionals and the family discuss ways how to keep the offender out of trouble. Then the professionals leave, and the family has private time to develop a plan. The plan needs to include details how reparation will be made to the victim and how the family will help the offender stay out of trouble. Then the plan is shared with professionals. After the conference the coordinator would contact the victim(s) and outline the reparation proposal. The plan needs to be agreed to by a YOT worker, but its implementation lies with the family.

(6) The scope of my study

Family group conferences in my case studies took place over a period from October 2000 to August 2002, with one conference taking place in the year 2000, seven conferences in the year 2001, and seven conferences in the year 2002⁶ (see Appendix 1 for precise dates).

I interviewed in total 47 participants in family group conferences and 6 professionals. Out of the 47 participants, 13 were offenders, 17 victims, 13 offender supporters, and 4 victim supporters. The professionals included a manager of a Youth Offending Team and a case worker from a Youth Offending Team, both of whom had a role to play in making referrals to the Family Group Conferencing project; two family group conference facilitators; and two Victim Support representatives, who attended some conferences in which they represented victims.

⁶ A conference in case study 8 was supposed to take place in 2002, but never took place 'officially' (see Appendix 1)

In total, I dealt with 16 case studies (see Appendix 1). The case studies involved a variety of offences, including assaults (case studies 5, 6, 7, 8, 13, 15), a robbery (case study 5), burglaries (case studies 1, 10, 12, 14, 16), thefts of a vehicle (case studies 2, 4, 11), theft and handling stolen goods (case study 3), and criminal damage (case studies 9 and 14).

(7) Access to interviewees

The first stage of the process involved obtaining permission of the family group conferencing project manager to gain access to my subjects and carry out interviews.

The next stage involved getting the personal consent of my subjects to interview them. Where interviewees were young people, I also needed to obtain permission of their parents (1) to contact their children in order to ask their permission to be interviewed, and (2) to interview their children, assuming that the young people consented to be interviewed.

Using files within the family group conferencing project, I selected case studies which I wanted to investigate (in the original sample there were 26 case studies). I did not have strict criteria for selection, although I wanted to have in my sample a variety of offences, including offences against the person, as well as offences against property, and child victims, as well as adults.

After the selection of potential interviewees, a number of letters were sent to them (or their parents where the interviewees were children) by one of the project practitioners.

Some interviewees (or their parents where interviewees were children) were contacted by the practitioner on the telephone. When letters were sent out to people, or phone

calls were made to them by the project practitioner, the idea was that the practitioner, rather than myself, contacts them first, introduces me to them, explains that I want to interview them, explains briefly what kind of research I am doing, and asks their permission to pass their contact details to me. The letters contained 'opt-out' clauses: the practitioner gave people her contact number and asked them to call her in the next few days, if they objected to their contact details being passed on to me. Letters also said that if people did not contact the practitioner, it would be presumed that I could contact them.

Attempts were made to contact in total 32 offenders⁷ and 23 victims⁸. Where interviewees were children, I contacted their parents and asked their permission (1) to contact their children and ask their consent to be interviewed, and (2) to interview their children (assuming children agree to be interviewed). If I received parental permission, I talked with the children and asked their consent. If the children agreed to be interviewed, and their parents allowed me to interview them, I asked the parents if they had attended the conferences. If the answer was positive, I asked the parents if I could interview them as well.

After the letters had been sent out, only one person (mother of an offender) contacted the project practitioner to communicate her refusal to pass their details on to me.

⁷ The number 32 does not match the number of originally chosen case studies (26) because in case studies 1, 9, 14 and 15 there were two offenders, and in case study 5 – three offenders who attended family group conferences.

⁸ The number 23 does not match the number of originally chosen case studies, because some victims did not leave their contact details, and some victims did not participate in family group conferences – someone else, such as Victim Support representative, or a police officer acted on their behalf.

When people were contacted by the practitioner on the telephone, and agreed to have their details passed on to me, I called them to ask permissions for interviews. When people were contacted by letters, assuming they did not call the practitioner to communicate their refusal to pass on to me their contact details, I called them 7-10 days after the letters had been sent out to them, and asked their permission for interviews.

Out of the people I called, there were 11 refusals from offenders and their parents and 3 refusals from victims⁹. Rather interestingly, all 3 victims from whom I received refusals were children and all were victims of assaults. No adult victim refused to be interviewed. The most common reason for refusal on the part of victims, offenders and their parents was that they wanted to leave their experiences behind and move on. Some refused to be interviewed because they were too busy. Some did not give reasons for refusal¹⁰.

I could not contact 2 victims and parents of 5 offenders. Either they had moved elsewhere, without leaving their new address, or they left incorrect contact details with the family group conferencing project. The remaining 16 offenders and 18 victims agreed on the telephone to be interviewed, and where parental consent was necessary, parents allowed me to interview their children. However, it did not mean that I could interview all of those 16 offenders and 18 victims. 3 offenders and 1

⁹ 8 offenders and 1 victim refused to be interviewed, and parents of 3 offenders and 2 victims did not allow access to their children to ask their permission to be interviewed.

¹⁰ I did not actually ask why people refused to be interviewed, but the vast majority stated their reasons for refusal without me asking them.

victim forgot about the interviews and were not in their homes when I came to see them. For one reason or another those interviews could not be re-scheduled¹¹.

The professionals whom I wanted to interview were contacted by me directly. A family group conferencing project worker suggested a number of people whom I could interview and gave me their phone numbers. I selected six people who were in some way involved in the conferencing process, and asked their permission to be interviewed. There were no refusals.

(8) Research problems: practical problems

Probably the most difficult problem I had to overcome in the course of my study was gaining access to interviewees. As I mentioned above, gaining access involved two stages: obtaining permission from the manager of the restorative justice program, then getting permission of actual interviewees (and their parents where parental consent was necessary). I had to overcome a lot of difficulties before I secured access to my interviewees (see above).

Compared to the problems I had to deal with in an attempt to gain access to my respondents, everything else probably does not even count as a problem. Yet, there were some other challenges. Places where my interviewees lived were scattered throughout a large county. I had to rely on public transport to get there, and on a number of occasions getting to some small villages was rather problematic.

¹¹ There were two more interviewees who forgot about the interviews when I came to see them for the first time (offenders in case studies 2 and 7), but later interviews were successfully re-scheduled.

Another practical problem had to do with the time periods which elapsed between the conferences and the interviews. Some conferences took place rather a long time before the interviews (the longest period was a year and nine months). In other cases interviews took place soon after conferences (the shortest period was four days). I noticed that those whose conferences were recent, tended to be more enthusiastic about the conferences they had attended and were able to provide more vivid details about their experiences and feelings. The memories of those whose conferences took place a while ago were not fresh, and their accounts seemed cooler. I felt that this could negatively affect my data.

Another practical problem was that occasionally it was not easy to understand the language used by my interviewees, in particular offenders. Sometimes they used slang, and, as a non-native English speaker, I had difficulties.

Often interview settings were not conducive to interviews. As I have pointed out above, most interviews took place at the homes of respondents. As a result, there were various interruptions: phone calls interrupting interviews; people coming to visit respondents during interviews; parrots talking so loudly that neither the interviewees could hear me, nor could I hear the interviewees; dogs barking and attempting to play either with the respondents or with me during interviews; babies crying and interrupting interviews; younger brothers and sisters or children of respondents trying to play with the respondents or with me during interviews, or grabbing my tape-recorder and playing with it or throwing it on the floor.

(9) Ethical problems

One ethical issue I had to deal with was ensuring privacy and confidentiality of my interviewees (Noaks and Wincup 2004, Bulmer 2001). One way of overcoming this problem was concealing the location of the project of my study. Another was reporting data in such a way that my respondents cannot be identified. The interviewees were given assurances that they will not be identifiable in the resulting analysis.

Another ethical issue related to informed consent (Noaks and Wincup 2004, Buckland and Wincup 2004, Bulmer 2001). People invited to be interviewed were free to participate or refuse, having been given the fullest information about the nature and purpose of the research and the arrangements for maintaining the confidentiality of the data.

Next ethical problem related to the way the interviewees were first contacted. As I pointed out in subsection 'Access to interviewees' above, letters were sent to them by a project practitioner containing 'opt-out' clauses. Conference participants were invited to contact the practitioner if they did *not* want her to pass their details on to me. If they did not contact her within a week or so, it was presumed that I could call them. This approach placed a burden of taking a positive action on the potential respondents. An ethically preferable alternative was to ask participants to contact the practitioner or me if they *wanted* to participate in research. However, I was worried that very few people would respond to letters, so I made a pragmatic – even though worrying on ethical grounds – decision and chose the 'opt-out' option.

Another ethical concern I had was the following. What caused me discomfort throughout the fieldwork was the thought that I, with my interviews, was reviving in my interviewees memories of events about which they probably wanted to forget. I was worried that asking victims about the events which led to the conferences might bring back painfully unpleasant memories and might cause negative feelings in interviewees. I also imagined myself as one of the offenders and thought how embarrassed I would have felt, if I had to confess to an interviewer about what I had done.

These anxieties and feelings of discomfort remained with me throughout the study, even though on a number of occasions I was re-assured in various ways by my interviewees that they did not mind sharing their experiences with me. Some even appeared to have enjoyed the interviews. Some seemed to interpret interviews as a chance to complain about how badly they were treated by the criminal justice system. Others appeared to see interviews as opportunities not only to talk about conferences and what preceded them, but also to share their problems and life experiences (e.g. what it is like to be a single mother, bringing up three kids who constantly get into trouble; what it is like to live in a family where son and father hate each other; what it is like to be thrown out of the house by the father and have nowhere to live and nothing to eat; what life is like in prison and so on). These people thanked me for listening to them and invited me to come again. Some offenders thought it was 'cool' that they had a chance to participate in a study, and even asked me if they could read the thesis once it is ready. All interviewees wished me good luck with my thesis and said they were glad to help.

The sympathetic attitudes on the part of my interviewees, their kindness and genuine willingness to help made me feel more relaxed and slightly less guilty about questioning them about unpleasant and painful experiences.

Chapter 7

Before the Conference

In this chapter I shall present my findings relating to the experiences of those who participated in restorative justice conferences – victims and their supporters and offenders and their supporters – prior to the conferences they attended. One of the questions on which I sought views of my interviewees was why they agreed to come to family group conferences. Another issue which was of interest to me concerned the expectations my interviewees had before conferences began. Their responses will be provided below.

Before I proceed, a few words need to be said about the abbreviations used in this and subsequent chapters when quoting interviewees. ‘O’ stands for ‘offender’, ‘V’ stands for ‘victim’, ‘OS’ and ‘VS’ refer to ‘offender supporter’ and ‘victim supporter’ correspondingly. ‘Q’ stands for ‘question’ (which I addressed to a particular interviewee). Sometimes abbreviations appear with numbers following them, e.g. ‘V1’, ‘V2’. This means that I had interviewed more than one person from the same case study belonging to a certain category (a reference to a case study is provided at the end of each quote). If there is no number attached to ‘V’, ‘O’, ‘VS’ and ‘OS’, there was only one interviewee from a particular category in the case study in question. Details of case studies are provided in Appendix 1.

(1) Reasons for attending conferences

(a) Views of victims and their supporters

Victims and their supporters offered very diverse explanations regarding their decision to attend a conference. A number of victims attended conferences because

they wanted answers. For instance, one victim wanted to know why she was assaulted by someone whom she did not know. She had done nothing to spark the attack (case study 13). People whose houses were vandalised wanted to know why offenders did so (case study 14). A school caretaker hoped to find out at the conference why offenders had set the school on fire (case study 9). A director of a bus company, whose bus had been stolen, wanted to know why the offender stole the bus (case study 4). One victim of burglary was curious why offenders who had stolen some jewellery broke into the house several days afterwards and returned the stolen items (victim 1, case study 14). Another victim of burglary was terrified when she realised that keys from her workplace were stolen (which potentially could give offenders an access to confidential information and expensive equipment at the victim's workplace), and assumed that she was a part of industrial espionage. She wanted to know why offenders stole those keys. Did they know which doors those keys could open? Given that the keys were well-hidden in the victim's house, how did the offenders find them? Did they know where the victim kept the keys? Or did they find the keys accidentally? (victim 3, case study 14). Another victim of burglary and vandalism came to the conference because he wanted to know whether offenders had any animosity towards him and whether they were planning to burgle and vandalise his house again. (victim 2, case study 14).

Some victims defined their primary reasons for coming to conferences as a desire to express their emotions. Thus, a victim of burglary from case study 1 felt frightened when she entered her house and realised that someone was inside. Even more frightening for her was the thought that it could be her teenage daughter who came home on her own and found strangers inside (victim 3, case study 1).

A teenage victim of assault from case study 6 came to the conference because he wanted a safe environment to confront the offender, who, together with his friends, had bullied and intimidated the victim for a long time, beaten him up and caused bad injuries. The victim thought that expressing his fears and anger would make him feel better:

V: [The conference] gave me a chance to meet him face-to-face and tell him exactly how I felt, without any fear ... Any point of view is easier to handle when talking about it, when you are enraged, angry, afraid or whatever. In my mind, anyway, it makes a lot easier when I say how I feel.

(Case study 6)

The majority of victims came to the conference, hoping that their attendance may help to keep offenders out of trouble in the future:

V2: We hoped [our attendance] would do the boy some good... and hopefully he won't get into trouble again.

(Case study 2)

Some hoped that this objective would be achieved by making offenders understand the wrongfulness of their behaviour and the consequences of their wrongdoing:

V: My reasons for agreeing to attend the conference were to try and help the boy to see that he'd done wrong. ...I hope it will stop him from doing what he did again.

(Case study 10)

V2: I wanted [offenders] to understand what it really meant to people... I wanted to make sure that they understand how people feel about their actions.

(Case study 9)

VS: I wanted for them to realise that they can't go around doing it. That was it. I didn't want it to go any further. I wanted them to know that once a mistake is made, there are consequences to go on. ...I wanted them to know that it is not acceptable in general society.

(Case study 15)

Victims of motor vehicles thefts in particular wanted to make offenders understand that driving the stolen vehicles endangered their own lives and the lives of others, because the offenders were not good drivers. Victims hoped that in the future, offenders would think more carefully about possible consequences of their actions (victims from case study 2, 4, and 11).

Some victims whose primary motivation for attending a conference was helping offenders stay out of trouble hoped that this objective could be achieved by invoking empathy in offenders:

V1: I wanted to say to them, which I did, how would they have felt if I was their grandmother or relative, and see their reaction, and also to see their reaction to seeing me being like this [an old lady, confined to a wheelchair].

(Case study 14)

Two victims got into trouble themselves when they were young (case study 4 and 11). They provided similar reasons for attending. Using the words of one of them, he came to the conference to 'put this lad...in the right direction':

...when I was a lad, I also got into trouble. ...[yet] I ended up being a director of the company, so you can get over these problems if you can put them behind you, and take the lessons that you learn from these things and get on with it. ... if he could put it behind him, then he could go forward and make good of himself.

(Case study 4)

Two victims (victim 1 and 2 from case study 2) attended the conference because they thought that restorative justice was something that could reduce the case load in the criminal justice system and save the taxpayer money.

One of these victims pointed out that she would not have come to a conference if the offender was an adult. I asked why. Her response was: 'Because an adult is old enough to know right from wrong. But children need some leading.' (Victim 2, case study 2).

One victim decided to participate in a restorative justice conference because he wanted to give the new program a try (victim 1 from case study 1).

A motivation of another victim (case study 7) for coming to a conference was curiosity and professional interest (the victim in question was a police officer).

One person, who represented a company in the conference, explained that the reason the company decided to participate in the restorative intervention was that it was their policy to assist the local community (in particular, young people and the disabled) (case study 4).

As far as victims' supporters are concerned, their reasons for attending conferences had to do either with their relationship with the victims, or because the victim wanted them to attend.

It appears from my findings that reasons why victims and their supporters agreed to participate in family group conferences were very diverse, often multiple, and varied from one person to another. Some had altruistic motivations and did not expect any benefits for themselves out of conferences (e.g. wanting to help offenders stay out of trouble and hoping that their participation in conferences might help to achieve that end; hoping that conferencing might help to save the taxpayer money). Others admitted that it was for their own sake that they wanted to participate (e.g. wanting to know whether offenders had any animosity against them and whether offenders were going to harm them again; wanting to satisfy curiosity and professional interest). Most victims and their supporters had more than one motivation for participating in a conference.

It is important to point out that the majority of victims came because they thought it would make offenders realise the consequences of their actions and keep them from further trouble. According to a conference facilitator I interviewed, in virtually all cases, one of the reasons why victims came to conferences was a desire to help offenders. Indeed, the presence or absence of that desire may determine whether or not the victim agrees to come to a conference:

I have to be honest with you. I think [the hope that it would benefit the offender] is an ingredient in all of them. It may not be the primary. But I honestly believe that is what gets

them to the conference. I mean ones I have been involved in – what I have seen – has always been an ingredient.

(From interview with conference facilitator 1)

The facilitator provided an interesting example which might suggest an effective way of making at least some victims participate in conferences:

... A good example of that is recently with the young lad who damaged somebody's car. It was a company car that belonged to ... an adult male. ...My conclusion from speaking to him was actually he didn't see himself as a victim of crime. He wasn't particularly agreeing that it was a nuisance. It hasn't had a lasting impact on him. ...Effectively, that is how our meeting concluded. But then I went on to say, 'So, the only thing left for me to ask of you is whether you would be prepared to come to a meeting purely in order that the young person might benefit from hearing some of those things'. And he said, 'Yeah, sure, I would.' So, he was going to get nothing from it other than that important ingredient which I think is the difference between what makes victims come or not come, is that wanting to do something to help the young person. That might mean all that is left for the victim, the only reason. They might not want 'sorry'. They might not want to understand. ...But they might want to come to do something [to help the young person].

(Interview with conference facilitator 1)

This finding is particularly important in the light of the findings by other researchers which demonstrate low attendance rates by victims in other restorative justice experiments (e.g. Holdaway et al 2001, Crawford and Newburn 2003, Karp and Walther 2001). My data might suggest that placing more emphasis on helping juvenile offenders when conference organisers invite victims to attend conferences might be an effective method of encouraging victims' attendance. This argument is

supported by another finding which will be discussed in chapter 9¹: when meeting offenders, victims often think that it could have been their own child or grandchild, and this thought promotes victims' desire to help offenders. The comment made by victim 2 from case study 2 (quoted above) that she would not have come to the conference if the offender was an adult adds strength to this argument. It appears that at least some victims have a general sense of social responsibility towards young people and are happy sacrifice their time and attend conferences purely for the benefit of offenders².

My suggestion that conference facilitators, when inviting victims to attend a conference, might want to place more emphasis on helping offenders – and perhaps even hint that offenders could be their own children or grandchildren – may be criticised on the ground that it encourages the use of victims for the benefit of offenders. It may be counter-argued that even if this criticism is valid, it is weakened by the fact that victims must *consent* to be used for the benefit of offenders. If such consent is given, the ethical problem ceases to exist, or at least is minimised.

However, there is a serious danger of conference organisers subjecting victims to subtle pressures in obtaining their consent to participate. In chapter 12 I shall argue that people organising conferences are skilled in using subtle techniques which encourage potential conference participants to embrace particular self-identities and

¹ Subsection 'Attitudes of victims and victim supporters towards offenders'.

² Consistently with my findings, Marshall and Merry point out, '[a] striking feature of victims' accounts was the social concern that motivated most of [them]. In several cases this was enhanced by an imaginative sympathy with the offender's experience and by a feeling that 'it could have been my own son (or daughter)' (1990:148).

act in a corresponding way. There is a strong possibility of conference organisers making victims adopt self-identities of responsible citizens willing to fulfil their 'social duty' in helping young people stay out of trouble. What makes it even more problematic is that victims may embrace such self-identities without even realising that they had been subtly pressurised to do so by conference organisers. So, their 'consent' to participate and help offenders may not be as free and voluntary as it might appear.

(b) Views of offenders and their supporters

As far as offenders are concerned, often their reasons for participating in a conference have been affected by the fact that their attendance was not optional: a number of offenders in my sample participated in conferences because they were ordered by the court to do so, and a refusal to attend would lead to further punishment.

However, for some offenders attendance was voluntary³. These offenders came to conferences because they wanted to apologise:

Q: Why did you want to come to the conference?

O1: Just to tell those people I didn't mean it. It'll make me feel better.

(Case study 14)

Q: Why did you decide to attend a conference?

³ This could happen if the offender expressed a desire to apologise to the victim(s), and the YOT, following the assessment of the suitability for the conference, referred the case to the family conferencing project.

O: Because I thought it'd be nice, because [when I stole a bus and was chased by the police], I hit the ambulance as well, and the ambulance driver was there, so it gave me a chance to say sorry to him.

(Case study 4)

Offenders' parents offered more diverse reasons for coming to conferences. Some came simply because they thought they *had to* come, even though they did not particularly want to. Others viewed their attendance as voluntary. Among those who felt that coming to a conference was optional, one common reason for participating was a hope that attending a conference might help their child understand the wrongfulness of her or his behaviour:

OS4: I thought... about our son having to face the victims and understand what he'd done and the effects that it had on people.

OS1: I hoped it would benefit [my son]... it would benefit in helping him to understand what he had done and how it had affected people.

(Case study 14)

Some parents saw additional benefits for their children in dealing with the authorities if the children demonstrate compliance and participate in a conference. This provided additional motivation on the part of offender supporters for attending a conference and encouraging their children to attend:

OS1: ...it would also benefit him with the authorities, to help him get along with them, to make them see that he has, you know, accepted what he has done, that he has gone all the way through with the conference.

(Case study 14)

Often an offender's parents came simply to support their child during a stressful experience (e.g. offender supporters 1 and 2 from case study 14).

The mother of one of the offenders came to the conference because victims were her next-door neighbours. She hoped that meeting victims might help to improve the relationships between them (offender supporter 4 from case study 14).

The mother of another offender agreed to participate in a conference because she saw it as an opportunity for the family to come together and express their feelings (case study 7).

The brother of one of the offenders came to the conference out of curiosity. He wanted to see the victims' side of the story (offender supporter 3, case study 14).

Some offender supporters offered reasons why they did *not* want to go to a conference (even though they came). One offender's mother did not want to come because she felt it would be too embarrassing for her to face the victims – people from the local community who she knew quite well (case study 1). The mother of another offender did not want to come to the conference 'because it was quite a long time after [the offence], and it was bringing it back' (from interview with offender from case study 4).

It appears from my findings that reasons why offenders and their supporters came to conferences were diverse, and quite often depended on whether or not attending a conference was optional. Those offenders whose conferences were court-ordered

often agreed to participate in order to avoid further punishment. The main motivation of those who attended conferences voluntarily was to apologise. A number of offender supporters thought they *had* to come to the conference, but did not want to go there. Most offender supporters who thought that their attendance was voluntary came because they thought there would be various advantages for their children if they attended a conference.

As has been pointed out above, some offenders came to conferences voluntarily. However, it is important to note that the issue of voluntariness with respect to offenders is complex and cannot be reduced to a simple distinction between 'voluntary' and 'coerced'. In chapter 11⁴ I shall argue that such distinction is oversimplified and overlooks the fact that there are degrees of voluntariness. I shall also argue that coercion within restorative justice should not be equated with court orders. Offenders whose attendance of conferences has not been ordered by the court may be subjected to subtle informal pressures coming from conference organisers, YOT workers and possibly their families. In chapter 11 I shall also describe some of the techniques which conference organisers use to secure the consent by offenders to participate. Importantly, this process may be conducted so subtly that offenders may not appreciate that such techniques have been used to obtain their consent. They may believe that the attendance of a conference has been the result of their free choice.

(2) Expectations before the conference

(a) Views of victims and victim supporters

⁴ Section 'A voluntary process?'

Victims in my sample had rather diverse expectations prior to conferences. A number of victims expected to get answers to their questions (e.g. victims 1 and 2 from case study 2, victim 2 from case study 14). Some victims expected to get an apology (e.g. case study 6). A number of victims expected that the conference would help offenders realise the consequences of their actions. Several victims said they did not know what to expect when they went to the conference (e.g. victim 2 from case study 1, victim 1 from case study 9, victims 1 and 2 from case study 14).

One victim had rather negative expectations:

Q: Did you have any expectations before the conference?

V: I did, yeah. I had expectations that in this instance it probably wouldn't achieve a lot. That's not to say that it won't ever achieve anything and it isn't a good thing, but knowing the lad as I do, my expectations were that it would be an unsuccessful conference...

Q: Did you expect an apology?

V: Not a sincere one.

(Case study 7)

Several victims expected that offenders would be rude kids with a particular type of background (broken homes, uncaring families). Victims were surprised to find that often this was not the case (for example, victims 1, 2 and 3 from case study 1; victim from case study 7).

Victims and their supporters had diverse expectations before conferences, which varied from one person to another. Some victims expected an apology, while others did not. Some victims had expectations relating to their desire to make offenders realise the human costs of their offending behaviour. A number of victims said they

did not expect that offenders would be 'normal' and polite kids, nor that their families would be 'normal' and supportive.

Without wishing to deny the fact that unexpected things often happen, it needs to be noted that the finding that some victims did not know what to expect before the conference is somewhat worrying. Could it be attributed to insufficient preparation by conference organisers who have failed to explain the victims what might happen in the course of a restorative encounter and what they might expect? Some previous researchers of restorative schemes have found that many participants arrived at meeting with no idea what they were walking into (Miers et al 2001, Hoyle et al 2002). This finding was explained by the fact that facilitators had inadequately prepared participants (Hoyle et al 2002:18-19).

If victims did not know what to expect in a conference, exactly what have they consented to when they agreed to participate? Can the lack of knowledge of what to expect during conferences create a potential for conferences compounding injuries of victims caused by the crime? Besides, if participants in conferences do not know what to expect, they may have little opportunity to think before the conference what they might want to get out of it, what they might want to ask or say, who they might want to bring with them and so on (Hoyle et al 2002:19).

(b) Views of offenders and their supporters

As far as offenders are concerned, a number of them said they expected to be asked questions and that they would be expected to apologise.

Q: What did you expect before the conference? What did you expect would happen?

O1: I dunno... ...[The conference organisers] said that they'd ask me a few questions. That's it... They just said, 'you'll be asked a couple of questions, just answer them any way you like. And if they probably ask you... they probably want an apology... I'd have to say 'sorry' to them'.

(Case study 14)

The vast majority of offenders and their supporters expected that victims would be angry and shout at them. For that reason they had little enthusiasm for attending a conference.

O: [Before the conference] I didn't know what [the victims] were like. I thought they'd start shouting... But they didn't.

(Case study 2)

OS1: My main concern was that [the victims] would actually have a go at the boys. If I had a choice, I would never have gone [to the conference].

(Case study 14)

OS4: Well, I must admit when I first heard about [a possibility of attending a conference], I thought: "Oh, no", because they are really going to have a go at my son, and calling him names, 'cause I would. I mean, I think I would. But hearing how it has gone in the past, I was quite surprised, really, that people are so forgiving and just how understanding they were. A couple of them said they have children who had gone through similar troubles...

(Case study 14)

Some offender supporters said they expected the conference would help their children-offenders understand the effects of their offending behaviour on people, and it would spark a positive change in their child's attitude:

OS: I was hoping and I did actually get what I expected. The result I expected was for [my son's] attitude towards victims to change, and it did. It did, and it was very pleasant. Before we went there, he was like 'it doesn't matter who they are. I don't care.' It was all very much like that. But afterwards, after he had actually met the victims, his whole attitude changed, which was really nice.

(Case study 16)

OS: I wanted him to face everything, as much as he was going to see. Do you know what I mean? So, I wanted him to see every corner of what crime does. So, I'd like to think I got my boy sorted out.

(Case study 3)

Some offender supporters expected that the conference might be helpful for victims:

OS4: ...I think it is more or less to help the victims, really. They can see, you know, the people who came to their house, and it takes off worries from them, knowing that they wasn't actually personally picked on and chosen, and things like that, really.

(Case study 14)

There were several things that offender supporters did not expect. Some of them said they did not expect that facing victims would be such a difficult experience:

Q: Did you have any expectations before the conference?

OS2: I was worried what it was going to be like. ...it was not quite what we had expected. I expected it to be as it was ran, like the victims were asking questions and... But we weren't prepared for the intensity of the victims looking straight at you. That was a bit disturbing.

(Case study 14)

One offender supporter said he did not expect that there would be so many people in the conference (offender supporter 3, case study 14). I observed that conference myself, and there were over twenty people in the room.

Several offenders and offender supporters said they did not know what to expect from the conference (e.g. offender from case study 10, offender supporters from case studies 2 and 5). One offender supporter said she did not have any expectations and preferred simply not to think about the conference (offender supporter 1 from case study 14).

The finding that offenders and their supporters did not know what to expect causes concern because it might hint at inadequate preparation (see the discussion above in relation to victims).

Most offenders and their supporters had diverse expectations before their conferences. Some expected that there would be benefits for victims. Others expected benefits for offenders. Most offenders and offender supporters expected that victims would be angry and rude. To their surprise, in the vast majority of cases that was not so.

Chapter 8

Experiencing Restorative Justice

The focus of this chapter will be on experiences of victims, offenders and their supporters during conferences they attended. How were they treated during the conferences? Did they feel involved during the process? What was it like for offenders to apologise and for victims to receive an apology?

(1) How conference participants were treated during conferences

(a) Treatment of victims and their supporters by conference facilitators

The vast majority of victims and their supporters were satisfied with the caring way they were treated by the professionals organising the conference. However, one victim supporter was dissatisfied with the way a conference facilitator started the conference:

VS: The conference facilitator asked [the offender] if they could start, and I said, 'hang on, we are not here for [the offender], we are here for [the victim]'. The conference facilitator said 'sorry' and asked [the victim], 'is it all right to start?' She said, 'yeah, fine'. ...I think she should have asked, 'are you all comfortable to start? Shall we start now?', instead of asking [the offender] if she was comfortable to start.

(Case study 13)

One victim felt uncomfortable because she thought the facilitators tried to put her and the offender on the same level during conference preparation. She felt that facilitators acted as if the offender did nothing wrong (case study 8).

Several victims felt uncomfortable because of the 'passive' role played by conference facilitators. They thought conference facilitators should have actively expressed their disapproval of the offenders' behaviour, instead of 'delegating' this task to the victims (victims from case studies 9 and 13).

The above findings give rise to some important questions. One question relates to the incident where the facilitator started the conference by asking the permission of the offender, but failed to ask the permission of the victim. What was behind this omission? Can the omission be attributed to 'implementation' failure on the part of the project and its workers (such as inadequate training and failure by the project worker to understand the victim-focused restorative justice philosophy)? Or should it be attributed to 'systemic' failings on the part of restorative justice operating under the aegis of the offender-centred criminal justice system?

It is interesting that the victim supporter in this case found the courage to intervene to challenge the authority of the facilitator – an expert in matters relating to the conferencing practice – and attempted to shift the focus at the beginning of the conference from the offender to the victim. This intervention on her part is important because it may provide some support for the claim made by some restorative justice advocates that widening the circle of participants in restorative encounters might help prevent domination of some participants by others. For example, Braithwaite and Strang argue that '[w]elcoming plurality is the best way of guaranteeing that there will be someone who will speak up when domination occurs' (Braithwaite and Strang 2000:205; Roche makes a similar point (2003:86)). Arguably, had the victim supporter in case study 13 not attended the conference and had she not spoken up,

there would have been a greater chance of the victim and her needs being marginalised in the course of the restorative encounter.

Another question, which my findings concerning the treatment of victims by facilitators give rise to, relates to the complaint by the victim from case study 8 that during preparation for the conference facilitators attempted to place the offender and the victim on the same level and behaved as if the offender has not done anything wrong. Acting as neutral parties and not taking sides is, of course, an important ingredient of the role of a mediator or a facilitator. It needs to be pointed out that this neutral position might fit very well in civil mediation or Zwelethemba-type projects (see chapter 5 for more details) where disputes arrive to restorative meetings without prior intervention by the criminal justice system, and without the offender being either found guilty or having admitted guilt. In those circumstances there is no 'victim' and 'offender': there are equal parties to a conflict or a dispute.

However, the situation within the project of my research was different. Cases came to restorative justice conferences with problems being pre-defined as 'crimes' which had the 'offender' (whose guilt was either established by the court or admitted by him- or herself), and the 'victim' (whose innocence was beyond question). In such circumstances, it was not unnatural for victims to assume that people organising conferences should treat the respective parties consistently with the pre-established roles – 'victim' and 'offender'. This argument is supported by the finding mentioned above that a number of victims felt uncomfortable when facilitators refrained from expressing disapproval of the offending behaviour in conferences. Victims were

rather confused by – and criticised facilitators for – the ‘passive’ role adopted by them.

(b) Treatment of victims and victim supporters by offenders and offender supporters

Victims were generally satisfied with how offenders and their families treated them during the conference:

One victim, a policeman, expressed dissatisfaction with how he was treated by the offender, but he thought he was treated well by the offender’s family:

Q: How did you feel you were treated during the conference by those in the room?

V: Yeah, very well. All the family were so supportive and respecting the police, and other people organising it were very polite.

Q: What about the boy? Was he polite?

V: Not really. He was just sitting there... He obviously had been forced to go there by his parents. And he didn’t want to apologise.

(Case study 7)

Another victim was not happy with the way he was treated by both the offender and his family:

Q: How were you treated by this boy during the conference?

V: When my mum and me just arrived, [the offender] looked at me at that point, but during the conference he didn’t look at me, he couldn’t be bothered, too lazy, too ... whatever.

Q: What about his family? How did they treat you?

V: His grandma was smoking, and it was a non-smoking building. My mum actually said it. We did say it to [the conference organiser]. We did say... she could have asked. She was

like... you know, like she couldn't be bothered to ask. It made me feel uncomfortable, because you know, she just showed no respect.

(Case study 6)

The majority of victims felt they were listened to, and thought – or at least hoped – that their concerns were taken seriously.

(c) Treatment of offenders and their supporters by conference organisers

Offenders were generally satisfied with how they were treated by the conference facilitators. The most common answers to the question 'how were you treated?' were 'well', 'all right', 'fine', 'pretty fine', 'very good'. A vast majority of offender supporters were also satisfied with the way they were treated by the conference organisers and described them as 'supportive' and 'friendly'. Several offenders and offender supporters referred to the availability of drinks and biscuits during the conference as evidence that they were treated well (e.g. case study 2 and 9).

Some interviewees however, expressed a degree of dissatisfaction. In particular, one offender supporter felt somewhat uncomfortable about the fact that when he came to the conference, he discovered that there was no chair for him in the circle of main participants, and he had to sit behind the main circle. He said that the sitting arrangements discouraged him from active participation in the conference, especially in the beginning of the conference:

OS3: It was [all set] when I got in there. I sat in the back of people.

Q: Would you have preferred to sit in front?

OS3: Yeah, I would have liked to sit in the front. [I would have preferred] to be more central, yeah. I would have preferred to have been in the front.

Q: How did you feel about the fact that there wasn't space for you in the front row?

OS3: I am not sure, really... I didn't expect it. Once I got there, I sat at the back... When I first sat at the back, I didn't say anything. But when people started letting me speak, I felt better about it, because I was still able to speak and put my point across.

(Case study 14)

The finding that offenders (and their supporters) have expressed high levels of satisfaction with the way they were treated by facilitators and found facilitators 'friendly' and 'supportive' is very important and might help explain certain dynamics within the restorative justice process, as well as some of my further findings. In concluding chapters of this thesis I shall argue that by presenting themselves as 'caring friends' and 'helpers', facilitators encourage offenders to open up to them, entrust to them their thoughts and feelings and submit to the guidance of facilitators. Such submission enables facilitators to mould self-identities of offenders so as to invoke remorse and repentance in them, and, consequently, obtain their consent to participate in conferences and apologise to victims. That is, the friendly and caring treatment of offenders by facilitators is instrumental in achieving the goals of facilitators.

I have mentioned the finding that one offender supporter felt dissatisfied with the way he was treated by the facilitator who had failed to ensure that the sitting arrangements were conducive to active participation of the supporter in question. It needs to be noted that the omission on the part of the facilitator in that case was not accidental. The facilitator wanted to exclude the offender supporter from participation in the

conference (I shall deal with this issue in more detail in chapter 12, section 'Governing the conferencing process').

(d) Treatment of offenders and their supporters by victims and their supporters

Regarding treatment by victims, a number of offenders and offender supporters felt that they were treated better than expected. Some responses to the question about how they were treated by victims and their supporters follow:

O1: It was all right. A lot better than I thought it would be, I didn't expect they would be so nice. I thought they would be shouting at me.

(Case study 14)

OS: Okay. Yeah. Before I went ... I thought I would be pre-judged. You know, I've got this child who is unruly, I am a bad parent... Whereas, actually talking to victims myself, that wasn't the case.

(Case study 16)

Some offenders have pointed out that the way victims treated them changed during the course of the conference:

O: [The victim] was fine. He was really fine. He wasn't angry. He was angry at first, but he calmed down after a while.

(Case study 10)

A number of offenders said they felt uncomfortable in the room full of people, all of whom were staring at them (e.g. offenders in case studies 7, 9, 16). Some offender

supporters also felt uncomfortable, because all people in the room were staring at their children (e.g. offender supporter in case study 9, offender supporter 1 in case study 14).

Some offenders and offender supporters were dissatisfied with the way they (or their children) were treated by some conference participants. One offender even walked out of the room in the middle of the conference:

Q: How did people in the conference treat you?

O: My sisters were just sitting there, they didn't know what to say ... my mom was trying to stick up for me. And my dad, whatever I was saying, my dad was trying to say something smart, by taking the micky out of what I said. ...At the end I walked out.

Q: Why?

O: Because everybody was getting at me...

(Case study 7)

The vast majority of offenders and offender supporters felt they were treated with respect. Most felt they were treated fairly. One offender felt he was treated unfairly by a police officer who, according to the offender, tried to make him admit what he did not do (case study 12).

Another offender thought he was treated unfairly, and felt he was punished for something that was the right thing to do, given the circumstances (case study 7).

Using his own words, 'the whole thing was unfair'.

The majority of offenders and offender supporters thought they were listened to, or at least they hoped they were. One offender supporter said he felt he was listened to by some people in the conference, and not by others (offender supporter 3 from case study 14).

From my data it appears that most victims, offenders and their supporters were satisfied with the way they were treated by conference organisers, although there was a degree of dissatisfaction. With some exceptions, my interviewees were also generally happy with how they were treated by the other party and their supporters. Some even felt they were treated better than expected. Some offenders thought the way they were treated transformed in the course of the conference. In some cases the transformation was positive and in others – negative.

(2) Did conference participants feel involved during the conferencing process?

(a) Views of victims and their supporters

The vast majority of victims and victim supporters in my sample felt they were involved during the conference, and that they could say what they wanted to say.

Other victims felt they could have been involved to a greater extent (e.g. victims from case study 11, victim 2 from case study 9).

One victim noted that the conference facilitators made extra efforts to ensure that he was involved (case study 10).

One victim supporter said that although she felt involved, she tried to not participate too much, because she thought the conflict was between her daughter and the girl who

had assaulted her daughter. This victim supporter believed the girls should be given maximum opportunity to resolve their conflict themselves (case study 13).

(b) Views of offenders and their supporters

The vast majority of offenders felt they were involved in the conference and could say what they wanted to say. Some offenders felt that in the beginning they were insufficiently involved, but this trend changed towards the end of the conference. Some offender supporters felt they were involved in the conferencing process and could say what they wanted to say (e.g. offender supporter 4 from case study 14, offender supporter from case study 5). Yet some felt they were insufficiently involved (e.g. offender supporter from case study 7). Some offender supporters felt that perhaps they should have been more active during the conference (e.g. case study 9). Some offender supporters reminded themselves that their role was to support, and not to take over the conferencing process. Towards that goal, they simply sat back and let the victims and offenders speak (e.g. offender supporters 1, 2, and 3 from case study 14).

It appears from my findings that victims, offenders and victim supporters were generally satisfied with their degree of involvement in the conferencing process, however, there was less satisfaction among offender supporters. Some supporters of both victims and offenders were conscious of the fact that their role was to support, and not take over the process.

Should the finding that most victims, offenders and their supporters felt involved in the conferencing process be treated as the evidence that the aspiration of campaigners

for restorative justice to empower stakeholders in crime has been achieved within the project of my study? Hopefully, chapters 12 and 14 of this thesis will shed some light on this question.

(3) Apology

The next set of findings I would like to present concern the issue of apology. What insights did my interviewees have to share in relation to apology?

(a) Views of victims and their supporters

Some victims said that conference organisers informed them before the conference whether or not they were likely to get an apology (e.g. case studies 6 and 7). The vast majority of victims said they felt 'better', 'good', 'satisfied', or 'were glad' when offenders apologised (e.g. case study 6, 10, 11, 13, 14 and 15). For some victims, getting an apology was of fundamental importance (e.g. case study 6).

Some victims were sceptical of an apology's sincerity. Even though offenders apologised to them, they did not feel offenders demonstrated genuine remorse:

Q: How did you feel about it when they apologised?

V2: Um... I dunno, I just felt it wasn't a remorseful apology. I felt it was a rehearsed apology. But I didn't expect anything else. I didn't really expect that we would get any more than that...

(Case study 9)

Q: Did he not apologise?

V: Well, he said sarcastically that he was sorry. [When he was] asked to give a proper apology, he said, 'I'm not apologising'.

Q: When he apologised sarcastically, how did you feel?

V: I don't know. It's a... just insincere, I guess.

(Case study 7)

One victim said he did not care whether the apology was sincere. All that mattered to him was that he had the offender apologise:

V: I respect him for saying 'sorry'. Whether or not he meant it is up to him – it's not my problem.

Q: Is it not important to you?

V: It's important to me that he said it, but I am not one of those people who think that forgiveness is everything, that apology has to be sincere. As I said, I had an apology, and it doesn't bother me whether it's true or isn't true. What matters is that I had him apologise. ...What matters to me is that it brought him down.

(Case study 6)

It appears that the victim quoted above was more concerned with ensuring that the offender has suffered for his wrongdoing than making certain that the offender has accepted responsibility for his wrongful actions through sincere apology.

Some victims and their supporters felt respect for offenders when they apologised:

VS: [Both offenders] had to apologise to [the victim], which takes a lot of guts. ...To apologise is to become an adult. ...Saying it takes a lot of guts, and you know that you are becoming responsible, and I think that gives them a bit of maturity. After you apologise to another person in front of other people - that sort of thing takes a lot of nerve. Everybody said it, and I said it – I said 'thanks for apologising. I know it takes a lot of guts to apologise, to admit your mistakes.'

A number of victims said that offenders promised to send them a written letter of apology after the conference, yet those letters were never received (e.g. case studies 6, 10, and 14).

My data suggest that some victims appeared to attach more importance to apology than others. Nevertheless, the vast majority said they felt good when offenders apologised. While the sincerity of apology was important to some victims, others did not care whether the apology was sincere. All that mattered to them was the existence of an apology. Several victims felt respect towards offenders when offenders apologised.

(b) Views of offenders and their supporters

For some offenders in my sample, apology was optional. For others it was ordered by the court. Yet, some of those for whom it was compulsory wanted to apologise anyway (e.g. case studies 1, 9, and 14). One offender apologised, but did not really mean it (case study 7).

Most offenders said they felt better after they apologised:

O: I really did feel sorry. When I had to say sorry, I felt terrified.

Q: How did you feel when you apologised?

O: I felt actually pretty relieved when I apologised, because it lifted a lot of things off my shoulders. Once I said sorry, I felt much better.

(Case study 10)

O: And at the end they all stopped discussing what happened and they said, 'would you like to say anything?' I stood up and said, 'I'm sorry for everything that's happened. I wish it didn't turn out like this. And I hope that after all this we still can be friends, put it behind us'. And I said 'sorry' again, and sat down... [The victim] and her daughter looked at me and said, 'it's okay, we'll put it behind us'. And I felt better because of that. I had a chance to say 'I'm sorry, and I hope we can still be friends'. And I got home, and I was happier.

(Case study 12)

One offender said he apologised for something he did not do. He said he pleaded guilty in court to avoid a lengthy trial. His conference was ordered by the court. Nevertheless, this offender said he felt better when he apologised because he thought getting an apology made the victim feel good (case study 12).

During the conference which I observed, one offender who had already apologised to victims verbally during the first part of the conference, with the encouragement of a conference facilitator during the coffee break, volunteered to write a letter of apology to the victims. However, during the interview with his parents it transpired that they were not very enthusiastic about him writing a letter of apology, because they saw it as additional punishment:

OS2: He is going to write letters of apology.

OS1: I think the letters are another way of punishing him, even though everyone says it is a good idea. He is quite prepared to do them. He stood up in that meeting and said 'sorry'. Why does he need to have to write it down? I mean, they are not forced to do it. [My son] has said to me that he is sorry. I don't need him to write it down. I don't need him to be punished any more than he is. I just think: 'How many more things has he got to do to prove?' As I said, if they want to do it, then fine. I support them. If he wants to do it, fine. I don't tell them what to do and what not to do and things like that. It is their decision.

When I interviewed the victims from that case study a few weeks later and asked whether they had received the letters of apology, the answer was negative. One has to wonder whether the fact that parents were not supportive of the offender's decision to write the letters to victims had anything to do with it.

Incidentally, it appears to be a common practice within the project of my research for an offender to put their verbal apology offered during a conference into writing and send it to victims after the conference. When I examined files kept within the project, I encountered photocopies of several such letters and questioned their value for both victims and offenders, as well as the desirability of re-visiting issues which had already been dealt with and resolved during conferences.

My findings show that the majority of offenders wanted to apologise and felt better once they did. Some apologised because they had to. The finding that the majority of offenders 'wanted' to apologise probably should not be surprising. Cases where offenders demonstrate no remorse and no desire to apologise are very unlikely to come to a conference in the first place. The following quote from an interview with a conference facilitator supports this suggestion:

CF2: I know beforehand whether [an apology] is going to happen or not...

Q: You would basically know in advance if they are going to apologise?

CF2: I would to a large extent.

Q: If it is obvious to you that they wouldn't apologise, would you go ahead with a conference?

CF2: I think, probably, not. ...I cannot imagine it going ahead, because we would put the victim in a difficult situation, I would think...

(Interview with conference facilitator 2)

From the records kept in the project and informal conversations with a project worker it appears that case study 5 may be an example of a situation where one of the offenders demonstrated no remorse and it was clear that he would not apologise in the conference. The conference went ahead with three other co-defendants participating, however the unrepentant offender was excluded from participation. It was felt that inviting him to the conference may be damaging for the victim.

(4) Forgiveness

Some victims attached little importance to the sincerity of apology and expressions of forgiveness (see a quote from case study 6 in subsection 'Apology. Views of victims and their supporters' above). Other interviewees had different views:

VS: I think the criminal should be given the opportunity to ask to be forgiven if he wants it. And the person who has been offended against should have an opportunity to forgive, because at least the offender has the opportunity to say to this person, 'look, I'm really sorry' and mean it. If he says 'sorry' but doesn't mean it, it won't make things any better. But at least he must have a chance to. And the person who has been offended against, they should have an opportunity to face the offender, and if he asks for forgiveness, to do it. That releases them from the burden. You can't have a burden on you all the time, you need to get rid of it.

(Case study 14)

Several offenders said that the forgiveness of victims was important to them (e.g. case studies 1 and 12).

In the conference which I observed (case study 14), what impressed those present in the room was the forgiveness demonstrated by one of the victims – an old lady in a wheelchair. She was in the hospital, seriously ill, when her house was burgled. During the conference, she recounted how upset she was when she found out that her house had been burgled and how much she cried. Later in the conference the lady said to the offenders that she forgave them and wished them the best for their future. At this point everybody in the room had tears in their eyes.

Conclusion

This chapter focused on experiences of victims, offenders and their supporters during conferences they attended. My data indicate that conference participants were generally satisfied with the way they were treated during conferences by facilitators and other people who attended conferences, although there were some exceptions. Conference participants were also generally satisfied with their degree of involvement in the conferencing process. The least satisfied group were offender supporters.

In relation to the issue of apology, my data suggest that victims generally felt good when offenders apologised, although some victims attached more importance to apology than others. The majority of offenders said that they wanted to apologise to their victims, but some apologised because they had to. A number of offenders said they felt better after they had apologised. While some victims attached little importance to the sincerity of apology and expressions of forgiveness, for others these matters were crucial. Several offenders emphasised the importance of forgiveness for them.

Emotions During Conferences and Attitudes Towards the Other Parties

Restorative justice conferences are profoundly emotional events. Conference facilitators expect to see nervousness, fear, anger, embarrassment, and even tears, and are skilled in dealing with it. At the beginning of the conference emotions are typically negative. A successful conference is considered one where negative emotions are transformed into positive ones. What did my interviewees have to say about emotions they experienced during conferences? Did the desirable transformation from negative to positive emotions take place?

(1) Emotions: victims and their supporters

It seems that victims and their supporters felt particularly uncomfortable both before and at the beginning of the conference. They did not know what to expect:

Q: How did you feel before the conference?

VS: I was a bit concerned for [my daughter], how she would react. And I didn't know how I would react as well. I felt uncomfortable, sitting there and waiting for them [i.e. the offender and her supporters] to come in.

(Case study 13)

During this conferencing stage, nervousness was nearly a universally experienced emotion on the part of victims:

Q: How did you feel about the prospect of meeting [the offender] in the conference?

V1: I felt very nervous. I did feel very nervous. ... I was very nervous, because you don't know what's going to happen.

V2: Very nervous. I was very nervous.

One victim who felt particularly nervous in the conference was a secretary in the school which the offenders attended. She knew the offenders and their mothers personally. Her nervousness stemmed from her feeling of uncertainty as to whether reporting the crime was the right thing to do, given that the offenders were very young and given her relationship with offenders and their mothers (victim 3 from case study 1).

Some victims said they remained nervous throughout the conference (e.g. victim from case study 15). Others said they started feeling more relaxed when they actually saw the offenders and started talking with them (e.g. victim from case 13 and victim 3 from case study 1). Some victims said they did not feel nervous at any stage of the conference (victim from case study 4, victims 1 and 2 from case study 14).

Several victims said they felt fearful while facing offenders. One of the victims was scared because she had never met the offender before the offender assaulted her, and she did not know what kind of person the offender was (case study 13). Another victim (case study 6) was frightened by the number of the offender supporters who came to the conference (the offender in question brought 5 supporters with him: mother, grandmother, sister, aunt, and niece).

Even though offenders apologised and promised not to re-offend, it appears from some interviews that it had little effect on victims' fears. For instance, one victim of burglary said she had fears about meeting the offenders in the street, even after their

apology (victim 3, case study 1). Another victim of burglary said he was scared that the offender may burgle him again (case study 10).

Following the offence, several victims said they were angry with offenders. From the time of the offence to the conference, however, their anger melted away. Meeting offenders during the conference also served to soften their anger:

V: I would've liked to strangle the little bugger myself, because the damage that's been incurred was just excessive. I mean he's actually hit the ambulance, he damaged a number of the vehicle panels, he's done a component damage underneath... I would have liked to just strangle the little bugger. I was very angry. The company, the managing director, just everybody was just bloody angry. ...I suppose the only thing might have been... to have seen the lad earlier, but it could be... it could be difficult. So, it was quite a long time after the event. It could be a good thing, you know, because if it was too soon after the event, you still could be quite emotive...

(Case study 4)

Q: Were you angry at [the offenders]?

V3: Too long ago. No.

Q: What about after it had been done?

V3: When it was first done? Yeah. I suppose I was. I suppose I was angry because I had to cut out the lock, and I had to go down to the shop and buy a new lock and make sure the place was all secure again. It was a day's work wasted. And I didn't have those days to spare, you know.

(Case study 14)

Several victims pointed out that emotions during the conference were carefully restrained by facilitators. In one interview the victim liked how the emotional

atmosphere during the conference was carefully controlled by the professionals running the conference:

V: I think it was handled well, professional. It was very laid back, everybody has got a chance to say what they wanted to say, no one was shouting at anybody. And I think the way it was controlled was the right way, because the people who controlled it were ladies with very soft voices. There were no harsh voices, it was just laid back, and I think it went extremely well.

(Case study 4)

In another interview the victim also felt that the emotional atmosphere during the conference was quiet and subdued:

V1: [The atmosphere in the conference was] quiet, it was just quiet, you know? ...It was quiet and subdued, you know. People, you know, would just talk in-between themselves, you know, so... ... it was just very quiet, you know, very subdued. The boys were sitting there and being shy, which wasn't surprising. ...They were very quiet. They didn't talk at all. They were very quiet. They just sat there... They were quiet all the way through the conference while we were there. So, they seemed perhaps it could have been a bit frightening for them. They seemed to answer in a very low key, with their heads bent down, but that was about it. I think it must have been quite a bit of a frightening experience for them.

(Case study 9)

(2) Emotions: offenders and their supporters

It appears that one of the strongest and most common emotions experienced by offenders was fear. When asked how they felt during the conference, the most frequent response was 'scared'. All offenders I talked to said they felt scared before and at the beginning of the conference.

Q: How did you feel when you were talking to [the victims]?

O1: Scared...

O2: Shaking, I was...

O1: I was scared [about] what they were going to say, because I hadn't really spoken to them since we'd done the houses. I just thought they were going to let out a really big shout. ...I knew after we had done it, when they come home, they would find all this money gone and would be upset. And they would probably want to – I don't know – do something to us, to find out who we all were, I guess.

O1: That's why I was scared to go to that conference, wasn't it?

O2: Yeah.

(Case study 1)

O: [I was] sitting in front of everybody and answering questions... pretty scary, because everybody was there... the police officers, my parents, everybody. ...I was intimidated: two police officers sitting in front of me, three youth justice people sitting next to me, and five family members, so I felt intimidated sitting in front of them. Very scary... All those people asking me questions...

(Case study 7)

A vast majority of offenders said they felt scared and terrified. One offender thought his mother who came to the conference with him must have been scared too (case study 9).

Common emotions offenders experienced included shame, guilt and regret. These emotions seemed to be magnified at the time victims had their say:

Q: How did you feel when you had to tell people what you did?

O: Ashamed. Scared.

Q: What was it like to hear victims telling about the effects the burglary had on them?

O: It made me feel bad... Made me wish I didn't do it.

(Case study 14)

O: When it started, I was still nervous, I was sitting with my head down, and I didn't really know what to do... I was sitting there, quiet, just listening to what everybody had to say. I was kind of nervous and scared. I was just sitting there. I couldn't look up at them. I couldn't look up at them, because I thought, 'what if they look at me?' What I've done is extremely terrible, very very terrible.

[later in the interview]

O: ...most of the family looked at me... and they were just staring at me.

Q: What did [the victim] say?

O: She just said that she felt betrayed, and she could never trust me again.

Q: How did you feel when she said that?

O: I felt... You can't really explain. I just feel like you've let them down. You've done something terrible to them.

(Case study 12)

A number of offender supporters also said that they felt guilty.

OS: It was hard facing [the victims] when they were looking at me in the eyes. But we can't keep an eye on [our children] 24 hours a day. What more can we say? But you still feel guilty.

(Case study 14)

Some offenders and offender supporters said they were angry at the conference. One of these offenders felt that he was a victim of injustice. He felt that what the criminal justice system defined as a 'crime' and punished him for was the right thing to do, given the circumstances (case study 7). He also felt that the person who the system

had defined as a 'victim' was in reality an offender. But what made him particularly angry and led to him walking out of the room in the middle of the conference was that his father took side of the person defined by the system as a 'victim'. This conference culminated in a conflict between the offender and his father. The father threatened to hit the offender, and walked out of the room.

Another offender felt angry during the conference because the behaviour of a police officer, who was present at the conference, made him feel uncomfortable. He felt that the police officer was making accusations against him and trying to make him admit what he had not done (case study 12). When asked what it felt like to hear what the police officer was saying, the offender said he felt angry and found it difficult to restrain his emotions and curb the desire to hit the police officer.

The mother of two offenders felt angry during the conference when the victim (head teacher of the school which the offenders had set on fire) started criticising the offenders (case study 9). One of the offenders was bullied in the school and was beaten up on many occasions. The mother was angry at the school authorities who she felt had done nothing to prevent the bullying and instead blamed her son for provoking it. She thought it was the school authorities' fault that the boys attempted to burn the school down, because the boys believed that by burning down the school they would prevent being bullied. So, when the head teacher started blaming the boys at the conference, their mother (and it appears from the interview with the mother, grandmother too) got very angry. She believed her sons

...got the blame for everything that went on in that school. ... And [the school authorities] said it was [my sons'] fault. Even in this conference meeting they said it was all [my sons']

fault. That's what they said. My mum was sitting there, and she told me she wanted to get up and punch [the head teacher]. I mean, I would've done as well, but there was the police there and everybody.

(Case study 9)

(3) Emotional transformation?

During a number of conferences, it appears that an emotional transformation took place. Those who initially felt scared and nervous, found themselves more relaxed at the end of the conference:

Q: What was it like to see [the victims]?

O: At first, it was scary, but then when they started talking, it was all right.

Q: What was it like to answer questions?

O: That was all right. Scary, but it got better.

(Case study 14)

Q: What was it like in the conference to meet [the victim]?

O: I was frozen at first. I was frozen... I couldn't talk. When I talked, I was shaking. But after, I got used to it.

(Case study 10)

Q: How were you treated during the conference by [the victims]?

O: At the beginning they just stared at me. I was sitting with my head down, because I knew they were watching me. I was sitting and thinking what they were thinking about me. And at the end they just looked at me and I could see that they were basically saying, 'it's okay, let's put it behind us'. And that made me feel better.

(Case study 12)

Several offenders said that the 'turning point' for them was the apology. After they apologised, they felt much better (e.g. case studies 12 and 16).

However, it seems that in some cases such emotional transformation did not take place. Indeed, the atmosphere became more tense as the conference progressed:

Q: And what was the atmosphere [at the conference] like?

OS: It was quite tense. It was relaxed to start with, and then [the offender] started to get fed up, lost interest, then it started to get quite tense, because he wouldn't answer [the conference facilitator's] questions, he wouldn't apologise to the policeman, he thought it was all a waste of time, and he was tired, and hungry, and fed up.

(Case study 7)

In a different case, the offenders' mother pointed out that the atmosphere became increasingly unpleasant:

OS: I hope not all conferences are like that, because when the headmaster started talking, the atmosphere wasn't very pleasant. I just didn't feel relaxed at all. ...I got a headache during the conference. I think I got a headache through the teacher speaking. He was the one who spoke the most. He spoke for ages. My mum told me she just wanted to say 'shut up'. I was glad when he finished. And he was just sitting there, staring at the boys. No, I didn't enjoy that conference.

(Case study 9)

The mother of another offender said that the conference made her feel bad:

OS1: I think [I felt that way] because the old lady, she kept addressing me personally. I found that extremely stressful. I found that very upsetting and very disturbing. I know it was her way of coping with it and dealing with it, but I found that incredibly hard. I really didn't like that at all. If it hadn't been for the boys, I would've gone.

The interviewee in question said that she 'walked out of that meeting feeling like scum'. She said that conference organisers promised that the result of the conference would engender positive feelings. However, her experience demonstrated that it had the opposite effect:

[The conference organisers] have said to me, 'You'll walk out of there, saying 'yeah, that was a good thing''. And I told them afterwards, 'No. You told me that I would walk out of here saying that was a good thing, and I'm not saying it'. ...If I had a choice, I'd never go through that again in my life. ...If I had known and I'd had a choice, I would never have gone. There was one stage in the meeting where if it hadn't been for the boys, I would have walked out. I felt bad.

(Case study 14)

It appears that tears are not uncommon during conferences. In the conference I attended almost everybody in the room started crying when one of the victims, an old lady in a wheelchair, told the offenders how much they had hurt her, and then said that she forgave them and wished them the best. From the interview with one of the conference participants:

OS4: It was so emotional. Everybody felt it when [the old lady] said to him how much she forgave them...

Q: How did you feel?

OS4: I nearly cried my eyes out.

(Case study 14)

In another conference a victim started crying when offenders apologised (case study 1).

Several interviewees said that offenders' mothers were crying during conferences, and victims said they felt sympathy towards them.

V: ...[the offender's mother] couldn't speak. She was so distraught, she couldn't speak....she was just so devastated... just tears... from the moment we started until the moment we stopped. She couldn't speak. And all the way through she just kept crying. Just floods of tears.

(Case study 4)

The mother of one of the victims said she was crying during the conference. She also said she sympathised with the mother of the offender who was also upset:

VS: I felt for her mother, because I know how ashamed I would have been if one of my children did that. I'd be so embarrassed and ashamed, so I felt sorry for the mum. And as soon as she walked in the door, she wasn't bolshie. She was embarrassed, and she was upset, you know. ...It was quite tearful as well. I was crying, and [the offender's] mum was upset. Everybody was upset. I think it's because we've realised that it was a big mistake. It should have never happened. It was the influence of other people, and the drink.

(Case study 13)

(4) Emotions during conferences: perspective of facilitators

Conference facilitators consider emotional expression during conferences very important. As one of the conference facilitators said in the interview, '...you have to have the emotion for it to be a learning experience' (from interview with conference

facilitator 1). So, how exactly do conference facilitators handle emotional tension and outbursts during conferences?

It appears from my interviews and observations that facilitators are equipped with an array of techniques enabling them to manage the conference and channel emotions in a desirable direction (e.g. a lot of private meetings and indirect mediation between victims and offenders before the conference; carefully selecting participants in conferences and excluding from participation certain people; carefully choosing the venue where a conference takes place¹; carefully deciding in advance where particular conference participants are going to sit; creating a calm atmosphere in the room²; imposing ground rules on conference participants and making them agree to them and then ensuring that the ground rules are obeyed; calling a 'time out' when conference facilitators feel necessary; refocusing discussions when conference facilitators believe it would be desirable to do so; acknowledging how difficult it must be for conference participants to take part in the conferencing process; praising and encouraging participants; re-framing, re-stating and re-phrasing what participants are saying; using body language and eye contact to express disapproval, etc.). All these techniques are

¹ The conference I attended took place in a church. Rather interestingly, one of the conference participants acknowledged that the venue affected the process and helped to restrain emotions: 'I think the fact that the conference was in a church helped a lot. ...because people respect the church. So, emotions were constrained. I think it was excellent.' (Victim supporter, case study 14).

² One interviewee pointed out that the fact that the conference was facilitated by ladies with soft voices helped to create a particular type of environment (victim, case study 4). See the quote in the section (1) of this chapter 'Emotions: victims and their supporters'.

extremely subtle, but very effective in managing the conferencing process and emotions it generates.

A conference facilitator I interviewed said that managing a conferencing process requires a lot of skill and knowledge of when it is right to act in a particular fashion, for example, to call 'time out'. She gave me an example of a conference when the offender's mother was crying throughout the conference. The conference facilitators decided not to stop the conference and try to comfort the mother. They thought it was important for victims to see that the offender's mother was upset because of what her son had done and that she was ashamed and disapproved his actions. It was also believed to be constructive for the offender to see his mother crying, because it could have an impact on his attitudes and future behaviour.

During the interview, the facilitator emphasised that experiencing strong emotions may have an educational effect on offenders: '...you actually have to feel an emotion for the learning to sink in. ...you actually have to feel it, you know, reflect on it and feel it' (from interview with conference facilitator 1).

My data demonstrate that conferences are events characterised by strong emotions on the part of victims, offenders and their supporters. It appears that the most common emotions experienced by victims during conferences were nervousness, fear and anger. It seems that nervousness, which victims experienced almost universally before the conference, often diminished in the course of the conference. Fear, however was not completely gone, in some cases even long after the conference. A number of victims had been angry immediately after the crime, but by the time of the

conference, their anger usually subsided. As far as offenders are concerned, all of them said they felt scared before and during the conference. In some cases their fear diminished towards the end of the conference, but in others – it did not. Guilt, shame and remorse were other common emotions among offenders. Offender supporters felt ashamed and embarrassed. Some offenders and offender supporters felt angry.

(5) Attitudes towards the other parties

What were the attitudes of victims and their supporters towards offenders and their supporters? What were the attitudes of offenders and their supporters towards victims and their supporters? This is the subject of the remainder of this chapter.

(a) Attitudes of victims and victim supporters towards offenders

When asked how they felt towards offenders and whether their attitudes towards offenders had changed as a result of the conference, victims gave very diverse answers. The general attitude was positive, with three victims even asking me to wish ‘their’ offenders well, should I meet those offenders during interviews (victim 1 and 2 from case study 2, victim 1 from case study 9).

Some victims said that their attitudes towards offenders changed after the conference. In particular, some victims said that after the conference they felt reassured by offenders (e.g. victim 1 from case study 14).

Following the conference, some victims reported feeling less angry (e.g. case study 4). Others said they didn’t feel angry in the first place (e.g. case studies 1, 9, 11).

Some victims said the conference had little if any effect on their attitudes (e.g. victim from case study 7, victim 1 from case study 9). Some victims found it difficult to say whether their attitudes towards offenders had changed, and had mixed feelings about offenders after the conference (e.g. case study 6).

A number of victims sympathised with offenders, because they thought offenders were scared during the conference:

V1: ...I think when you try to speak to two young boys and you've got fifteen people in the room, it could be frightening.

Q: Fifteen?

V1: About fifteen people there, including me, the headmaster ... you know, the fire service and the police and, you know, all these other people. I think that may have made them feel a little bit... they could have been a little bit frightened, you know.

(Case study 9)

Some victims and victim supporters said they felt sorry for offenders' mothers, who were present at conferences and some of whom cried (e.g. case studies 4 and 13). One victim said after the conference he attempted to comfort the mother of the offender:

V: The most moving moment was when I kissed his mother and said 'it'd be all right'. You know, it was quite moving, because she was just so devastated...

(Case study 4)

As mentioned in chapter 7, some victims said they made certain assumptions about offenders and their families before the conference, and were quite surprised to see that their assumptions were incorrect³:

Q: How did you feel about [the offenders]? What did you think about them before the conference?

V1: I expected them to be ... a bit bolshy, but they weren't. When we came to the conference, they were quite meek and mild, and just ordinary boys really, from ordinary families, nothing like I expected ... that they come from a difficult background, you know.

(Case study 1)

V: It was interesting to see the family, because there is a widely accepted documentary that lots of young people that get into trouble with the police come from poor underprivileged backgrounds and uncaring families. And it was interesting to see that his family were full of support for the lad and were really caring. In fact his dad works in another emergency service, so he is holding down an important respectable career, and it was interesting to see the family background he had. I was surprised it was as caring as it was.

(Case study 7)

Some victims saw in 'their' offenders their own children or grandchildren, and this shaped their attitude towards offenders⁴:

V2: I've never had a bad attitude toward him. I've never had a bad attitude. I've got grandchildren, and I don't know what they are doing. And I hope if they do something wrong, someone will be lenient with them, as I was with that boy.

(Case study 2)

³ A finding consistent with those of Hoyle et al (2002:36).

⁴ A finding similar to that of Marshall and Merry (1990:149).

V: [A young person] who is committing a crime – I see it as perhaps my own son or my own daughter... I see it in a sort of relative way, you know, like within the big wingout [sic], you know, stopping people from doing wrong because you are a little bit older. It could be your son, it could be your daughter, and that's not the right way... Maybe that's where I am coming from.

(Case study 10)

One victim who was not sure if reporting the crime was the right thing to do in the circumstances said that after the conference she was worried about meeting offenders on the street (victim 1, case study 1).

Another victim said he felt uncomfortable during a conference because of the element of betrayal. The offender was a local boy whom the victim knew personally and helped him to fix his bicycle in the past. On two occasions the offender broke into the restaurant the victim owned, and stole various items, including some things which had a sentimental value for the victim. It appeared from the interview that the victim's fear that the offender would burgle him again did not go away even after the offender had apologised in the conference and promised to never repeat his wrongdoings (case study 10).

One victim, when facing the offender, admitted that he himself was also to blame, as he left the car running, thereby facilitating the theft (victim 1 from case study 2).

One victim gave the offender a lift after the conference and was willing to give him driving lessons during weekends (case study 11). One victim was prepared to employ the offender as an apprentice in his company (Case study 4).

It appears from my findings that attitudes of victims towards offenders were very diverse, but generally positive. Some victims sympathised with offenders and their mothers and wanted to help offenders. Some victims said their attitudes towards offenders changed after the conference; others said they did not. Several victims said they made certain assumptions about offenders before they saw them. Meeting offenders challenged those assumptions.

(b) Attitudes of offenders towards victims and victim supporters

Several offenders expressed regrets toward their actions and empathised with their victims:

Q: Do you think it was important to have this conference?

O: It was important, because that man [i.e. the victim] must have been scared. If he did actually know who I was and I didn't say sorry, he must be so scared to see me.

(Case study 10)

A number of offender supporters sympathised with victims too:

OS1: One lady there – when they actually got up and said their sorrys and all that... she started crying, didn't she? I mean, the poor woman had been robbed, right? And she was crying at the letters that they had written to her, you know? I mean, it's unbelievable.

Q: How did you feel about it?

OS1: I felt sorry for her.

OS2: I felt sorry for her as well.

OS1: I mean, she was a really nice woman...

(Case study 1)

One offender empathised with some of his victims but not all of them (case study 4). The offender in question stole a bus, and during a police chase, hit an ambulance, injuring an ambulance driver. As a result, the ambulance driver could not work for many months after the accident. The driver of the ambulance, the director of the bus company and a policeman who chased the bus came to the conference and expressed their disapproval. The offender said he felt sorry for the ambulance driver, but not the director of the bus company or the policeman.

Several offenders did not sympathise with their victims and said they did not like them. One such offender was a boy who was punished for assaulting a police officer. When asked why he assaulted the officer, the offender said that one of the reasons was that he didn't like the officer. Another reason was that the police officer was beating up his friend. The boy had prior dealings with the officer in question and said he did not like him 'because he tries to arrest you for something stupid' (case study 7).

A number of offenders and offender supporters said that they believed victims made certain negative assumptions about them:

OS: ...people pre-judge. They assume that the accused... they are all horrible people, they are all on drugs, and they are alcoholics, and so on...

Q: [to the offender] Did you feel so? Did you think they made such assumptions?

O: Yeah.

Q: Why did you think so?

O: That's what I would've thought if someone burgled my house.

(Case study 16)

The majority of offenders were surprised that victims were so nice to them during conferences. Two offenders were very impressed by the fact that the victims thanked them for simply burglarising, and not vandalising their houses (case study 1). They also said they were even more surprised when they saw one of the victims after the conference and she waved to them.

Several offender supporters were also surprised that victims were kind and not vindictive towards offenders (offender supporters 1 and 2 from case study 1).

Several offenders said that if the roles were reversed, they probably would not be as nice towards people who have committed a crime against them (e.g. offenders 1 and 2 from case study 1). Some offender supporters also said that if they were victims, they probably would not be as nice and understanding towards offenders, as the victims in the conferences were (case study 1).

It has been suggested by some offender supporters that the victims' kind attitude was a result of preparatory work carried out by conference organisers:

OS1: I think ... the people who were actually in charge of this conference, I think they actually saw the victims. They saw the victims first, and, I think, they sort-of told them, didn't they, not to bite the kids' heads off, I think. Do you know what I mean? I think they told them to be careful sort of thing, you know, what they say. There again, I mean they were still very, very understanding anyway.

(Case study 1)

It appears from my data that offenders and their supporters had very diverse attitudes towards victims. Some empathised with victims. Others did not. Some said they did not like their victims. A number of offenders and their supporters were surprised that victims were kind and understanding towards offenders. Some thought that perhaps it was a result of the preparatory work which conference facilitators had carried out with the victims. This last point will be discussed in chapter 12, subsections 'Moulding individual selves prior to conferences' and 'Governing the conferencing process'.

Chapter 10

After the Conference

I shall now examine how interviewees assessed conferences they attended. Specifically, this chapter will focus on what they thought the purpose of the conference was, what they felt conferences achieved, general likes and dislikes of the experience, and what they considered most memorable. At the end of the chapter I shall deal with some suggestions that emerged relating to how conferencing and the criminal justice system could be improved.

(1) The purpose of the conference

(a) Views of victims and victim supporters

The vast majority of victims thought that the purpose of the conference was to make the offender face the consequences of their criminal behaviour. It was generally expected that as a result of the conference, offenders would realise the harm they had caused and the wrongfulness of their actions. Many hoped that this realisation would work toward stopping offending behaviour. Some responses to my question about the purpose of the conference:

V1: Well, I think, it ... seemed they wanted to show [the offenders], you know, the sort of problems they've caused, ... and the problems ... incurred... I think I just wanted to do as others, which was to explain the boundaries and how bad it could have been, but, as I say, I think that's the way they were looking at it: to give them an insight to the boundaries...

(Case study 9)

V2: I think the purpose was for them to ... appreciate the impact that their actions have had on other people, which will then make them think twice about doing such a thing again. Or at least that was the intention expressed to me before we went. It's part of the process, really, it

is in conclusion that they meet with the victims ... in order that that would make them think about their actions, and begin the process of rehabilitation.

(Case study 9)

V: ...I think that was the whole point of it: from him to... to stop the boy from doing another crime. ... I think what the purpose was – for him to be remorseful, to be sad for what he'd done, and to see that he shouldn't be doing what he did, and he wouldn't do it again in the future. You know, and with people being positive and encouraging him...

(Case study 10)

Several victims said the purpose of the conference was to benefit victims. Some responses to my question concerning the purpose of the conference:

V2: As far as people who have been burgled are concerned, it's probably more of a selfish side of thing than anything, because you want to know if those boys are going to re-offend against us, if they had any animosity towards us. ...I think, it was mainly to find out whether they were going to re-offend against us.

(Case study 14)

V: I think the reason it was done is to help the people who were affected during the incident. ... if you are personally affected, as an individual, that might well... you always live in a fear. But if you actually confront the young man and understand that person, why they did it, you know, it's probably worthwhile.

(Case study 4)

Some victims and victim supporters thought the purpose of the conference was to assist both victims and offenders. Some responses to my question about the purpose of the conference:

V1: I think [the purpose was] to see their reaction and to see our own reaction.

VS: I think the whole purpose was to see that the meeting was beneficial for both parties, ...seeing that it is beneficial to all concerned, seeing if it's good for the boys, seeing that it's good for people who have been offended against. ...It is to see if the boys are repentant and to see if the people they offend are able to get back to the normality of life through contact with them and saying how they feel. I think this is what the conference was set out to do.

(Case study 14)

V: ...it's probably to help us and help him. For him – to understand what he'd done, [and], perhaps, depending on a person, he won't do it again. ...I think it was made clear to us that it would help us and it would help him.

(Case study 4)

(b) Views of offenders and their supporters

Similarly to most victims and victim supporters, the vast majority of offenders and their supporters thought the purpose of the conference was to make offenders realise the wrongfulness of their actions and their effect on victims. Hopefully, this realisation would help keep offenders out of trouble. Some responses to my question about the purpose of the conference:

O1: [I think the purpose was] to see how [the victims] felt ... about what we did.

O2: Yeah, and it is probably to let us know what we've done, and what we've put the victims through, and to see how scared they were when they found they had been burgled.

(Case study 1)

O: ...I'd say [the purpose was to provide] a deterrent for people who do ... street robberies, and then come face-to face-with their victims, because normally if you are robbing someone, it's no one ... until you see their face and you hear their feelings and everything.

(Case study 4)

OS: [I think the purpose was] to draw attention to what he's done, and make him listen, and to stop him doing it to anybody else.

(Case study 2)

Several offenders and their supporters thought the purpose of the conference was to help victims by reducing their fears and making them feel safer (for example, offender from case studies 16 and offender supporters 1, 2 and 3 from case study 14).

Some offenders felt the purpose of the conference was to help both the victim and the offender. Some offender supporters held a similar belief:

Q: For whose benefit, do you think, the conference was?

OS: Ummm... I think it's for both, really. [For] the accused – to realise that there are victims, and to see things from their perspective, and their feelings, you know. As well as [for] the victims – to really see that people who do it haven't got three heads, and [it] gives them reasons why, answers questions, 'why?' 'why me?'

(Case study 16)

Q: What did you think the purpose of the conference was?

OS1: I think the focus was to alleviate the fear or some of the fears for the victims, to help them perhaps understand why [the offenders] did it, to help them see what is happening to the boys now [and] what is going to happen to them. [Also], hopefully, to help them see that they had learned from it, and they are going to go on when they come out to not re-offend. I think probably some of their fears are that they would come out and just start burgling other people. ...I think it also – from [the offenders'] point of view – it helped them understand what they have done to people.

(Case study 14)

A number of offenders and their supporters thought that the purpose of the conferences was to apologise to the victims (e.g. offenders from case study 3, 9, 10, 12, and the offender supporter from case 9). One offender supporter thought the purpose was to discuss what had happened and share views (case study 5). One offender felt that in addition to having to say sorry, the purpose of the conference was to help him resolve conflicts within his family (case study 7). Some interviewees were simply unsure of the purpose (e.g. offenders from case study 2 and 16; offender supporter from case study 7).

My interviewees had very diverse views as to what the purpose of the conference was. Some thought that the primary objective was to benefit offenders. Some thought the aim was to benefit victims. Others thought the purpose of the conference was to benefit both victims and offenders. The vast majority believed that the primary purpose was to make offenders realise the wrongfulness of their actions.

(2) Has the conference achieved anything?

(a) Views of victims and victim supporters

A number of victims thought that the main achievement of the conference was that it made offenders see victims' suffering and understand the consequences of their behaviour:

VS: It achieved what it was meant to achieve – the coming together of the victim and the aggressor and the reconciliation, and through that reconciliation the offender was able to see the victims'...

V1: ...the victims' reaction.

VS: Yeah, and the victims' suffering. Yeah, they were able to see the victims' suffering. ...so the victim is able to show exactly how they suffered because of what the aggressor has done. Do you think so?

V1: Oh yeah, yeah, certainly.

(Case study 14)

V1: I think [the offenders] have learnt their lesson. I think they've understood exactly the injustice they've done to us, how they came to our house and upset us, and what it meant to us, which, I think, they probably didn't realise without the conference.

(Case study 1)

A number of victims said they thought having the conference was important, because it benefited offenders. Some responses to my question whether it was important to have a conference:

V1: We thought it was important for the boy [to have the conference], that it would help him in any way.

(Case study 2)

V1: Yes, I think [it was important to have the conference], but more from the kids' point of view than ours. I think they got more out of the conference than we did.

(Case study 1)

According to several victims, the main achievement of the conference was that they were able to confront offenders and tell them how they felt:

Q: Has the conference changed anything?

V: It has changed, because... it's changed the way I look at it, really. It has helped me, but... it helped me at the mental side, because I know that I sat in front of him and told him what I think of him, that he is a coward... everything under the sun I felt at that point. But in a sense, it's also helped me... I mean a few weeks after that I met him, and he looked at me, and I looked straight back at him, because he knew exactly what I was going to say. Yeah, it has helped me, on the mental side.

(Case study 6)

Q: Was it important to have this conference?

V1: Yes! Certainly.

VS: Definitely! If I was a person whose house was broken into, I would really want to confront them. And I would like them to know how I felt, because when something like this happens, it places fear in people.

(Case study 14)

Some victims said that the most important achievement of the conference was getting an apology (e.g. victim from case study 6). For some victims the main achievement was improved relations with offenders (victim from case study 15). Some victims said that meeting offenders face-to-face and seeing who they were has put their minds at ease (victim 1 from case study 1). Some victims felt that the achievement of the conference was that they felt more comfortable about the prospect of meeting offenders in the future (victim 3 from case study 1, victim from case study 13). Several victims were not sure if the conference achieved anything, but hoped it did (e.g. victims from case study 2, victim from case study 11, victim 2 from case study 14). One victim thought the conference achieved nothing, and it was unnecessary to have in his case. However, it could have been important to have a conference, had the crime been more serious (case study 7).

(b) Views of offenders and offender supporters

Several offenders and their supporters said that the main achievement of the conference was that it helped offenders to understand how the victims felt and to realise the consequences of their actions¹:

Q: Do you think it was important to have this conference?

O1: Yeah.

O2: Definitely, definitely, 'cause we wouldn't know what we were putting them through, but they told us...

(Case study 1)

Q: Do you think the conference has achieved anything?

OS4: Yes, I do. It just made the boys realise what they've done and what effects they have caused.

(Case study 14)

Parents of two offenders claimed that the conference was much more effective than the court appearance because it helped offenders clearly understand the seriousness of their actions (case study 1). These parents told me that their children responded to their arrest as if it was a joke. They were laughing and giggling when they were brought to the police station. They also laughed, shouted and talked to each other when they were placed in the adjacent cells. They asked a duty officer to give them some paper to do some drawings, and they asked their parents to bring them some food while they were in cells. When they appeared in court, they behaved in a similar

¹ A finding consistent with Hoyle et al (2002:37).

fashion. The conference, however, provided a totally different experience, which made the offenders realise the seriousness of their actions².

Some offenders said that since the conference they stayed out of trouble, and that was its achievement (e.g. case studies 1 and 10). One offender said that after the conference, he felt less afraid of victims potentially retaliating against him (offender 1 from case study 14).

Some offenders thought the importance of the conference lay in its ability to benefit victims, making them less afraid. Some responses to the question whether it was important to have the conference:

O: To me it was very important... to get everything off my chest, to say 'I'm sorry'. I think it was important to [the victim] and her family, when I apologised to them. Then they would know that I wouldn't do it again.

(Case study 12)

O1: Yeah... If [the victims] see me, they'll know that it was only a kid. Otherwise, they might think it was a big person.

(Case study 14)

O: It was important, because that man must be scared. If he did actually know who I was and didn't say sorry, he must be so scared to see me. I said to him, 'Look, I'm sorry, I really won't do it again'. ...I can see him in the street and say 'hello' to him. And he is probably not scared of me anymore.

(Case study 10)

² In another case the offender and the offender supporter had exactly the opposite view: the court appearance had much more impact on the offender than the conference (case study 2).

Some interviewees said they did not think — or were unsure if — the conference achieved anything (e.g. offender from case study 12, offender supporter from case study 2).

It appears from my findings that the list of what victims, offenders and their supporters saw as the achievements of conferences was very diverse. Several interviewees thought that more than one achievement resulted from the conference. Some interviewees saw benefits for themselves. Some saw benefits chiefly for the other party. Still, some felt the benefits were shared between the two parties. The majority appeared to believe that the main beneficiaries of the conference were offenders who were made to realise the consequences of their actions.

(3) The worst thing about the conference

(a) Views of victims and victim supporters

When asked what was the worst thing about the conference, the interviewees gave very diverse answers. The majority of victims and victim supporters said that the worst element was anticipation. As they walked through the door, they were unsure of what would happen (e.g. victims 1 and 2 from case study 1, victim from case study 11, victim supporters from case studies 13 and 14). One victim supporter, whose daughter was a victim, came a bit early. She said that the worst thing was waiting for the offender and her supporters to come into the room (case study 13). Two victims said the worst thing was to see the offenders' mothers cry (victims from case studies 4 and 13). One victim was dissatisfied with the conference's seating arrangements. He was made to sit opposite the offender — two or three feet away from him. Between

them there was a tray with hot water and coffee. Besides, the offender brought 5 supporters with him, and the victim only had his mom with him. This made him feel uncomfortable. He felt this resulted in a power imbalance, with the offender receiving more support (case study 6).

One victim said that the worst thing about the conference was that it lacked emotion, was too low key and too relaxed (victim 2, case study 9). One victim thought that the worst element of the conference was when the offender simply left. The victim felt that as a result no one benefited from the conference (case study 7). A number of victims and victim supporters felt that nothing upset or hurt them. Consequently, they found it difficult to respond when asked about negative qualities of the conference.

(b) Views of offenders and offender supporters

The most common answer among offenders and their supporters relating to the 'worst thing' was 'walking in there and not knowing what will happen' (e.g. offender supporters from case studies 2, 14 and 16; offenders from case study 2, 10 and 16).

Other responses to the question concerning what they felt was worst about the conference were very diverse. For example: seeing victims' faces and victims seeing the offender's face and thus knowing who the offender was (offender 1 from case study 1); thinking 'What are [the victims] going to do? Are they going to get back at us?' (offender 2 from case study 1); being nervous during the conference (offender from case study 3); hearing the victim's story – how he was affected by the crime and how much he suffered (offender from case study 4); walking out of the conference in the middle of it and thus not staying for the second part when prevention of re-

offending plan was supposed to be made, also, talking to the victim and having a conflict with the father during the conference (offender from case study 7); reading out the apology (offender 1 from case study 9); people in the conference staring at the offenders and the fireman telling them off (offender 2 from case study 9); the police officer making accusations against the offender during the conference (offender from case study 12); and 'sitting there with people ... whose garage I've burgled' (offender from case study 16).

Offender supporters also gave very diverse responses to the question concerning the worst thing about the conference. Some examples: a conflict between the offender and his father, which nearly escalated into violence (offender supporter from case study 7); questions the victims asked them (offender supporter 2 from case study 14); and 'not knowing [before the conference] the emotions it would evoke [and] not knowing how hard it would actually be' (offender supporter 1 from case study 14). Some interviewees said there was nothing 'worse' or 'bad' (e.g. offender supporter 3 from case study 14 and offender from case study 16). One offender simply didn't know what the worst thing was (case study 5).

It appears that what victims, offenders and their supporters saw as the worst thing about the conference was very subjective, although a number of interviewees saw the anticipation of the conference and the accompanying fear of the unknown as the worst element. Some interviewees thought there was more than one 'worst thing'.

(4) The best thing about the conference

(a) Views of victims and their supporters

For the majority of victims and their supporters, the best thing about the conference was getting an apology (e.g. victim from case study 6, victim 1 from case study 14, victim supporter from case study 15). A number of victims thought the best thing about the conference was that offenders were made to realise the wrongfulness of their actions, had a positive learning experience and hopefully would stop offending (e.g. victims from case study 1 and 4). For one victim the best thing was that the conference offered an opportunity to tell the offender how he felt (case study 6). For another victim the best thing was getting answers to the questions she wanted to ask the offender (case study 13). For the mother of this victim the best thing was that her daughter was not scared anymore after she had met the offender and got answers to her questions (case study 13). One victim said that the best thing was an opportunity to meet other participants in the conference and hear how they felt (victim 2 from case study 14). Another victim said that witnessing the attitude of the offender parents who disapproved of their son's behaviour was the best thing about the conference (case study 7). Several victims said that the best thing was walking out of the door after the conference (e.g. victims 1 and 2 from case study 1). One victim supporter was especially glad to see the offender's parents relieved following the conference (case study 14). One victim thought that the best thing was giving the offender a lift at the conference's conclusion (case study 11). Some victims were not sure what the best thing about the conference was (e.g. victim 1 from case study 9 and victim from case study 15).

Among 'other good things' about the conference, the most frequently mentioned were good conference organisation and the professionalism of conference facilitators. The majority of interviewees pointed out that they were very satisfied with the work done by restorative justice professionals, who handled conferences very professionally, and restrained emotions and controlled the atmosphere during conferences well. A number of interviewees also felt that conference facilitators were 'friendly' and 'caring'.

Q: Were there any other good things about the conference?

V1: Well, the chairman was very good, he did a wonderful job at keeping everything in order, in line sort of thing, and keeping everything in the right direction, not letting anybody wander or anything like that... And also his ability to put everybody at ease, make everybody welcome. That's the other good thing about it.

(Case study 1)

Q: Were there other good things about the conference?

V: The way the conference was handled. Everyone was introduced and given a chance to speak, and given a chance to stop at any point and walk out, or stop for 5 minutes to talk to someone. It's almost like reversal roles: the victim has a control over the situation, and the offender submitting to it.

(Case study 6)

(b) Views of offenders and their supporters

The most common answer among offenders and their supporters to the question concerning the best thing about the conference was 'the end' (e.g. offenders from case studies 9, 12, 16). Some offenders said that the best thing was the apology and seeing the victim's reaction (e.g. case studies 10 and 12).

Other responses given by offenders to the aforementioned question were very diverse. Some examples: victims saying to offenders that they were proud of them coming to the conference and apologising (offenders 1 and 2 from case study 1); that the whole incident was over and done with (offender from case study 3); a victim wishing the offender good luck and all the best (offender from case study 4); and no longer fearing victim retaliation (offender 1 from case study 14).

One offender said there was nothing good about the conference. Using his own words, 'everything was bad' (case study 7). Some offenders said they did not know what the best thing was (e.g. case studies 2 and 5).

Responses given by offender supporters regarding the best element of the conference also varied. Some examples: sitting there and talking to everybody and that the meeting was not very long (offender supporter from case study 5); the end of the conference, going home and being able to discuss the conference within the family (offender supporter from case study 9), the second part of the conference when a plan was made how to keep the offender out of trouble, also, helping victims (offender supporter 1 from case study 14); forgiveness by the victim (offender supporter 4 from case study 14); having a plan for the future (offender supporter from case study 16); the chocolate (offender supporter from case study 2).

It appears from my data that what my interviewees considered the best thing about the conference was very subjective. However, several victims saw getting an apology and making offenders realise consequences of their actions as the best thing to come

out of the conference. Several offenders and offender supporters thought the best thing was the end of the conference. Offenders and their supporters commonly thought that the apology was the best thing about the conference. This view coincided with the views of a number of victims.

(5) The most memorable thing about the conference

(a) Views of victims and their supporters

For a number of victims the most memorable thing about the conference was the apology (e.g. victims 1 and 2 from case study 1, victim 1 from case study 2, victims from case studies 6 and 13). One victim said that the most memorable thing was hopefully helping the offender (victim 2 from case study 2). Another victim thought that saying what she wanted to say and seeing the reaction of offenders was most memorable (victim 1 from case study 14). One of the victim supporters said what he remembered most was speaking to offenders after the conference (case study 14). The same victim supporter said he was impressed with the amount of resources used to organise the conference. He noted that a significant memory of the conference was recalling the number of people present. For one victim, it was most memorable to see the offender's mother crying and trying to comfort her after the conference (case study 4). One victim supporter said that the most memorable thing for her was the knowledge that her daughter felt better after the conference, having received answers to her questions from the offender (case study 13). One victim said that the most memorable thing for him was giving the offender a lift after the conference (case study 11).

For two victims, most memorable was the support offenders' families provided the offenders (victim 3 from case study 1 and victim from case study 7). One victim said it was most memorable to hear what other conference participants had to say (victim 2 from case study 14). The same victim also clearly remembered the conference's low-key environment, and that emotions were carefully restrained by facilitators. According to another victim, the entire event was most memorable (case study 10). One victim supporter said that the most memorable thing was getting it over and done with (case study 15). Two victims were unsure what was most memorable (victim from case study 15 and victim 1 from case study 9).

(b) Views of offenders and their supporters

The most common answer given by offenders to the question 'what was the most memorable thing about the conference?' was giving an apology (offender 2 from case study 1; offender from case study 2; offenders 1 and 2 from case study 9).

Other responses varied. Some examples: the policeman reading out the statement at the beginning of the conference (offender from case study 3); at the end of the conference victims wishing the offender good luck in his life (offender from case study 4); speaking to a social worker who represented the victim (offender from case study 5); apologising to the police officer in a sarcastic fashion, so as to make it obvious that the offender does not mean it and is simply laughing, and seeing that everybody in the room was 'faceless' (offender from case study 7); the fact that the conference organisers were nice and quiet, did not pressurise the offender and let him say what he wanted to say (offender from case study 10); hearing from the victim how they felt after the offence (offender 1 from case study 14).

Some offenders did not know what the most memorable thing was (offender 1 from case study 1; offender from case study 16). Another offender felt the entire event was most memorable (case study 12).

Offender supporters gave very diverse answers. Examples: 'sitting there for [the offender], so he wasn't there on his own' (offender supporter from case study 2); sitting there, talking to other mothers, listening to the victim's social worker, finding out what the victim went through and how it affected him afterwards (offender supporter from case study 5); forgiveness by the victim and the victim wishing the offender well (offender supporter 3 from case study 14); the other offender and his family trying to shift blame on to their son (offender supporters 1 and 2 from case study 14); hearing everybody express their feelings (offender supporter 4 from case study 14).

Several offender supporters said what they remembered most was hearing their children apologise (offender supporter, case study 9, offender supporter (case study 16).

Victims, offenders and their supporters listed a variety of things they remembered most. The most common memories regarded apologies. Quite often, when asked separate questions regarding the 'best' and 'most memorable' thing about the conference, answers were closely related. A close correlation between what some felt was the 'most memorable' and the 'worst' thing was also noted.

(6) How the system could be improved

I asked my interviewees if they had any suggestions how conferencing could be improved and received the following responses.

(a) Suggestions by victims and victim supporters

Several victims wished that less time existed between the offence and the conference (e.g. case studies 4 and 7). Hoyle et al (2001:36) make a similar recommendation. Without denying that there may be good reasons for arguing in favour of a smaller time gap between the offence and the conference³, it needs to be said that, at least in some cases, a longer waiting period may have advantages. In chapter 9, subsection 'Emotions: victims and victim supporters', I have quoted a victim who said he felt extremely angry with the offender immediately after the offence and 'would've liked to strangle the little bugger' (case study 4). The victim believed that it would have been more difficult – and perhaps even dangerous – to have the conference earlier because 'too soon after the event you still could be quite emotive' (case study 4).

One victim suggested that it could be helpful to have some form of a de-briefing after the conference, so that victims could discuss the conferencing experience (case study 4). Another victim wanted some feedback about what the conference achieved (victim 2 from case study 9). Some other victims wanted to know how 'their' offenders were doing after the conference (victims 1 and 2 from case study 2; victim 1 from case study 9; victim from case study 10). As mentioned in chapter 9, some even asked me

³ For example, the longer the gap, the more difficult it is for the participants to recall how they felt and what they thought during the offence (Hoyle et al 2002:27), and the likelihood that the sense that the time for apology has passed is greater (Hoyle et al 2002:36).

to call them after I had interviewed 'their' offenders and let them know how the offenders were getting on. It appears from my conversations with the project workers and interviews with victims that the last contact with victims takes place when the conference facilitator calls them after the conference. Yet, this is clearly not enough for some victims. Some of them are interested in long-term effects of their contributions at conferences. This desire seems particularly strong in those who came to conferences with the only – or primary – aim to benefit offenders (for example, victims 1 and 2 from cases study 2, victim 1 from case study 9 and victim from case study 10).

One victim supporter felt that something needed to be done about the beginning of the conferencing process, as she thought it was awkward:

Q: Do you think the conferencing process could be improved or changed in some way?

VS: Um... It's very awkward to start talking about feelings. Perhaps we could write them down at the beginning...

(Case study 13)

As has been discussed in chapter 8, the same victim supporter thought that a conference facilitator should have started the conference by asking all people present in the room (rather than only the offender) whether they were ready to start.

Some victims felt there could be advantages if, instead of leaving after the first part of the conference, they could stay for the entire conference and, perhaps, see more professional input into the conferencing process (victims 1 and 2 from case study 9)⁴.

Some victims felt that the professionals present at the conference were insufficiently involved in the conferencing process and needed to be more proactive in expressing disapproval of offending behaviour:

V2: ...I can't remember anything said by the professionals organising the meeting. They've only done the introduction, so I remember him putting the meeting in context... but can't remember anything said by any of other professionals.

Q: What did you expect them to say?

V2: Well, again, just to re-affirm what impact this had had on the victims. I felt ... it was very shallow... not very effective... ...I think there were people there at that meeting who didn't have anything to say. ... Again, what was interesting was that none of the professionals involved in a conference said 'what you have done is wrong'. No one said that. It was all 'we want you to hear it from the victim'. But no one of them expressed a concern at that meeting – a concern about what they have done.

(Case study 9)

From an interview with another victim wishing for more professional involvement:

Q: ...You said the social worker... didn't speak during the first part of the conference, did they?

V1: No, as I say, it would have been nice to actually find out that side of it. You understand what I mean? All these people: child welfare, child social workers...

⁴ Victims were asked to leave after the first part of the conference because confidential issues relating to offenders and their families were discussed during the second part.

Q: Why would it be helpful?

V1: Perhaps you would have heard more coming from [the offenders], of why they did it, and, you know, they would have been better like that. Then we would have perhaps... We could have understood it more, why they did it. ...As I say, you got all these professional people there... [but] we didn't hear their side of their questioning and their opinions.

(Case study 9)

One child victim felt that having an additional conference facilitator who would express their views on the matter could be helpful (case study 13).

Clearly these victims wanted a much greater professional input to the conferencing process. Their comments might suggest that the aspiration of campaigners for restorative justice to create a 'de-professionalised' way of 'doing' justice is not necessarily shared by all conference participants. Perhaps it could be argued that such participants continue to think within the framework of the 'traditional' expert-driven paradigm of justice and simply fail to realise the benefits which a shift to 'lay-oriented' justice could deliver for them and maybe others. If they only knew that there is a better alternative, they would most likely have requested it. However, in addition to being based on a rather questionable assumption that the alternative system would necessarily be more beneficial to conference participants (and perhaps wider society), this argument has rather paternalistic and authoritarian overtones. It seems to suggest that proponents of 'de-professionalised' justice are better judges of what is in the interests of – and beneficial to – conference participants than the participants themselves.

One victim felt that victims should be given more information about how offenders were prepared for the conference, and thought that before the conference some victim impact awareness work needs to be done with offenders (victim 2 from case study 9). The same victim felt that the conferencing atmosphere needs to be more formal and less relaxed. In chapter 11, section 'An alternative to the offender rehabilitation paradigm?', I shall return to this criticism (apparently shared by Victim Support representatives whom I interviewed) and discuss it in more detail.

Some victims had no suggestions how the conferencing process could be changed, but made recommendations how the criminal justice system more generally could be improved. In particular, some advocated 'short sharp shock treatment', or 'something similar to boot camps', or sending offenders to the army or 'some other place where they could learn discipline' (victims 1 and 2 from case study 2, victim from case study 6). Obviously these victims did not share the aspiration of restorative justice advocates to break away from the existing paradigm of criminal justice.

Another victim who had no suggestions how the conferencing process could be improved made a more general suggestion that more needs to be done for kids in his community. This victim also said he was prepared to contribute to that goal:

V: I feel a lot more could be done for the kids... they are bored in the streets... like community center or something like that ... getting involved in running the community center themselves, or... I am out of suggestions. If you wanted to, I would take him for a drive if he wanted to... I would have given up a Sunday and taken him out... until he's on track, you know, ...to get the experience of driving around fast in a safe environment... get some encouragement... don't know how all this psychological stuff works, but... that's for sure.

(Case study 11)

It appears from my data that the proposals made by victims and their supporters as to how conferencing could be improved were very diverse. Several people wished the conference had been earlier. Several people wanted conference facilitators to be more involved in the conferencing process and to actively express their disapproval of offenders' actions. Some victims wished they could stay for the entire conference, instead of leaving after the first part of the conference. A number of victims wanted to have some feedback after the conference about what the conference had achieved and how 'their' offenders were doing. Some victims made suggestions as to how the criminal justice system more generally could be improved.

(b) Suggestions by offenders and offender supporters

A number of offenders and their supporters were satisfied with the conferences they had attended, and had no suggestions how the system could be improved (e.g. offenders 1 and 2 and offender supporters from case study 1, offender and offender supporter from case study 2, offenders 1 and 2 from case study 9, offenders from case studies 10 and 12, offender 1 and offender supporter 4 from case study 14, offender from case study 16). Other offenders and their supporters made various suggestions regarding improvement of the conferencing process.

One offender supporter thought that it could be better if more victims attended the conference. Yet, when asked whether it would be a good idea to make them come, the answer was 'no'. Attendance for victims should be voluntary, but for offenders it

should not be optional (case study 16)⁵. The same offender supporter suggested that conferencing should be more widely available and the information about the availability of conferencing should be widely publicised.

Some offender supporters thought that offenders' parents needed to be better prepared for the conferencing process. They need to be prepared better emotionally. They need to know in advance what kind of feelings the process may induce:

Q: Do you think [the conferencing process] should have been handled in some different way?

OS1: I think personally... I mean we was told that it wouldn't be easy. We was told it would be very difficult. But I don't think they really made us aware of how difficult it would be. I really think that there could have been emphasis on how hard and what emotions it could evoke on probably everyone's account. ...I do think that perhaps we could have been made more aware of... I mean, [the conference organisers] did come around and go through the report with us and things like that... [but] I don't think we were prepared enough to know what was actually going to happen.

Q [to OS2]: Do you agree?

OS2: Yeah. That's totally how I feel about it. ...When they started asking questions and things like that, then it got worse.

(Case study 14)

It was also suggested that offenders' parents needed to have more information about the wrongdoings of their children. If they did, it would be less of a shock for them to hear victims recount the damage caused:

⁵ This recommendation parallels that of many mainstream proponents of restorative justice, as discussed in chapter 3.

OS1: I think there was also things mentioned that we didn't know about, which was also disturbing. We were never reminded or aware of how much damage the boys had done. Nobody told us that – the police, nobody. It never came out in court. I think the only thing that came out was we knew about them kicking the bedroom door in. We knew about the computer being trashed, but we wasn't aware of them literally trashing the houses. Nobody had ever told us that. So, to sit there and hear that on that day was really hurtful. Things like that coming out was like: 'god!'.

Q: Do you think it would have been helpful to know it?

OS1: Oh yeah, if I had known of that before it wouldn't have been so much of a shock. I mean, I was sitting there and I was absolutely aghast, you know, to think that they did things like that. We had no idea.

(Case study 14)

Some offender supporters felt that they needed more information as to what was going to be discussed during conferences in the presence of the victims. They felt it was inappropriate to raise personal issues, such as drugs and alcohol abuse by their children. They did not want victims to know about those problems. It was suggested that such disclosures should not take place during conferences:

OS3: We needed more information on subject matter, on what was going to be discussed or not discussed, like [my brother's] personal life, his involvement in drugs and alcohol and things like that, things that were personal to [my brother and his parents]. I think they should be banished. ...I think there should be set strict guidelines as to what can be discussed and what can't.

(Case study 14)

But at the same time it was recognised that perhaps the knowledge about certain problems could help victims understand the context within which the offence was committed (offender supporter 1, case study 14).

One offender said that the system could be improved by eliminating the conference, at least in his situation (case study 7).

The offender supporter from case study 9 said she did not think the conferencing process could be changed or improved, but the system (referring to the criminal justice system generally) was 'all wrong' and in need of change.

The mother of another offender said she would never participate in another conference, and suggested that a greater availability of parental advice and easier access to social services is needed (case study 7).

It has been also suggested that more facilities needed to be created for kids in the local community (offender supporter from case study 9). The offender supporter from case study 7 made a similar suggestion.

Conclusion

This chapter focused on assessment of conferences by their participants. When asked what they thought the purpose of the conference was, interviewees expressed very diverse views, although the majority thought that the purpose was to make offenders understand the wrongfulness of their behaviour. Interviewees also expressed a variety of views regarding what they felt was achieved at conferences. The majority felt that

the main achievement was making offenders realise the human costs of their criminal activities.

When asked about what they disliked about the conferences they attended, interviewees expressed very diverse and subjective opinions. Yet, there was a degree of consensus that the worst thing about conferences was their anticipation. Similarly diverse and subjective were the opinions about what interviewees liked about the conferences. A number of interviewees agreed that the best element of the conference they attended was the apology. Likewise, a number of them mentioned apology as the most memorable thing about the conference.

Finally, interviewees made very diverse suggestions as to how the conferencing process and the criminal justice system could be improved.

Part III

Revisiting the Theoretical Debate I: Restorative Justice and its Promises

In this and the next two chapters I shall return to the theoretical debates about restorative justice outlined in earlier chapters of this thesis and explore the implications of my empirical study for the restorative justice theory. As noted in chapter 6, one of the objectives of my empirical study was to use empirical data to see how it fits in with some theoretical arguments made within the discourse on restorative justice and debates which have taken place among proponents. Another objective was to look at aspirations of restorative justice advocates in the light of empirical findings and see to what degree those aspirations have been achieved within one restorative justice project. It was also my aim to use empirical findings to identify potential problems, tensions and dangers which emerge when restorative justice is pursued in practice.

Of course, the size of my study does not allow me to make any statistically significant claims, yet it enables me to highlight some tensions between restorative justice theory and practice. It allows an examination of the extent to which the promises made by – and aspirations of – restorative justice proponents have been fulfilled within the context of my study. It may also shed some light on the important debates among restorative justice proponents and provide some empirical support for certain theoretical arguments made in the course of those debates. Additionally, it might help to highlight some problems and dangers inherent in the current development of restorative justice. I might also help generate new arguments, hypotheses and discussions.

As I have demonstrated in earlier chapters, restorative justice advocates have a number of rather ambitious aspirations. It is believed that restorative justice could present a 'third model' (Braithwaite (2003a) or a 'replacement discourse' (Dignan 2002, 2003) or a 'fully fledged alternative' to both punishment and offender rehabilitation paradigms (Walgrave 1995, 1999, 2000). It is argued that restorative justice empowers stakeholders in crime (McCold 2000) and 'restores the deliberative control of justice by citizens' (Braithwaite 2003a:87). Some argue that restorative justice should offer a way of 'doing' criminal justice which is characterised by voluntariness (Marshall 1996, McCold 2000, the Statement of Restorative Justice Principles by the Restorative Justice Consortium, UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Council of Europe Recommendation N R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters). It is promised that restorative justice will place victims at its centre and see their needs as the primary concern (Mika and Zehr 2003, McCold 2000, Statement of Restorative Justice Principles by Restorative Justice Consortium, Fundamental Principles of Restorative justice by Ron Claassen (reprinted in McCold 2000)). These ambitions will be the focus of this and the next chapter. In the light of my findings, I shall examine how realistic the achievement of these aims is and identify some problems that may arise when aspirations of restorative justice advocates are pursued in practice.

(1) An alternative to punishment?

As argued in chapter 3 of this thesis, restorative justice is frequently portrayed by a number of its advocates as an alternative to the 'traditional' way of responding to crime – punishment of offenders (Zehr 1990; Walgrave 1995, 1999, 2000, 2003,

Wright 1999, McCold 2000). However, there has been strong opposition to advocates of this view. A number of theoretical arguments have been put forward to challenge claims that restorative justice presents an alternative to punishment (Barton 2000, Daly 2000, 2002, Duff 2002, 2003, Johnstone 2000, Dignan 2002). Rather, it has been argued, it is an alternative *form* of punishment (Daly 2000).

What do my findings have to add to this debate? The vast majority of offenders and offender supporters in my sample did not interpret the conferences they attended as punishment. Rather, they saw restorative justice as a strategy aimed at offender rehabilitation. Here are some responses to my question concerning whether or not they considered the conference punishment:

O: No, I didn't see it as a punishment, really, because they just helped me out, not punishing.

They just wanted to help me out.

(Case study 10)

OS3: No, I didn't see it as a punishment. I see it more as an experience that had to teach him.

It was more of like a learning experience.

(Case study 14)

Q: Did you see the conference as a punishment?

O: No. The first part is basically to make you aware that property belongs to somebody else. It's to make you aware of that. But during the second part – the bit about re-offending – is how to put strategies in place to actually try and prevent that.

OS: The conference wasn't a punishment. ...I think the conference is a good thing – making them aware how the victim feels.

(Case study 16)

Only one offender in my sample considered the restorative justice conference he was forced to attend as punishment (case study 7). Two offenders were not sure whether it was punishment (offenders 1 and 2 from case study 1). Three offender supporters felt the conference was punishment (offender supporter 1 and 2 from case study 1 and offender supporter 4 from case study 14).

There seemed to be a similar disagreement among victims in response to the question whether or not the conference was punishment. Two interviewees (both of whom were child victims) felt that it was punishment:

Q: Do you think it was a form of punishment?

V: In a way, yes, because it is very embarrassing.

(Case study 13)

Q: Did you see it as a form of punishment for the offender?

V: Yes, because [the offender] was the top guy in his gang, and now he goes straight back down, because he was caught, he was made to apologise.

(Case study 6)

Other victims felt that the conference was not punishment. They either saw it as a measure designed to rehabilitate offenders, or an opportunity for offenders to apologise to their victims, or an opportunity for participants to express their feelings, or some combination of the above. For example:

VS: No. No, I don't think it was a punishment for an offender to be there. Do you?

V1: No, no. I think it was an opportunity to say they were sorry, an opportunity to say how they felt, and the opportunity for the victim to say how they felt.

V2: No, I don't think it was punishment. ...I don't think they saw being there as a punishment, I think they saw their being there as part of helping them to prevent such things from happening in the future.

(Case study 9)

A number of leading restorative justice proponents and critics convincingly argue that at a conceptual level restorative justice is a form of punishment. Yet, the vast majority of my interviewees did not interpret restorative justice conferences as punishment. Rather, most of them considered restorative justice an intervention aimed at making offenders realise the consequences of their actions and helping offenders to stay out of future trouble. Those few interviewees who felt that the conference was part of punishment pointed out that punishing offenders was neither the only nor the main objective of the conference (victims from case study 6 and 13). It was thought that the main objective was to make offenders understand consequences of their behaviour, to prevent them from doing similar things in the future, and to make the victim feel better.

The finding that participants in restorative justice conferences – especially offenders – did not generally understand conferences as a form of punishment is especially interesting in the light of the fact that in the majority of cases offenders were ordered by the court to attend the conference and apologise to victims, and any refusal to attend a conference could lead to offenders returning to court. In the concluding chapter of this thesis I shall attempt to offer an explanation to this finding.

(2) An alternative to the offender rehabilitation paradigm?

As I mentioned in chapter 3, a number of restorative justice advocates present restorative justice as an alternative to the rehabilitation or treatment paradigm (Walgrave 1995, 1999, Bazemore 1996, McCold 2000). It is argued that the rehabilitation paradigm focuses on identifying and meeting offenders' needs, views offender accountability as irrelevant, and ignores the needs of victims. In contrast, restorative justice holds offenders accountable and sees meeting victims' needs as fundamental. To what degree has the aspiration to create an alternative to the treatment paradigm been realised within the project I studied?

It appears that the vast majority of victims, offenders and other conference participants felt that restorative justice interventions were a form of offender rehabilitation. They thought that the main – or even the only – beneficiaries of the interventions were offenders. It was generally believed that restorative justice conferences were aimed mainly – or even solely – at making offenders understand human costs of their actions¹. Perhaps, this understanding would stop them from engaging in criminal activity in the future. Here are some responses to my question 'What was the purpose of the conference?':

O: I don't know... To keep me out of trouble... To listen what the social workers had to say... How [the victim] felt about it...

(Case study 5)

¹ See chapter 10, sections 'The purpose of the conference' and 'Has the conference achieved anything?' for more details.

OS: To draw attention to what he's done, and make him listen, and to stop him doing it to anybody else.

(Case study 2)

V3: Well, to try and teach the boys the error of their ways and hopefully they won't do it again, and to show them how upsetting it is for the victim...

(Case study 1)

Several victims felt that the motivation behind inviting them to the conference was not to benefit them, but to help offenders stay out of trouble (for example, victims in case study 1, 2, 4, 8, 10, and 11). Victims in my sample did not object to that and were happy to help. Yet, an argument can be made that victims were in effect *used* to rehabilitate offenders.

Victims were not allowed to participate in the second part of the conference during which, with the help of professionals, offenders and their families were expected to develop a plan how to keep offenders out of trouble². Only offenders and their families could attend. The fact that victims were excluded from participating in the second part of the conference might help support the argument that victims were used during the first part of the conference to educate offenders about consequences of

² A conference facilitator explained to me that victims could not participate in the second part of the conference because the information that is private to the offender's family is shared there. If victims wanted to stay, then the family would need to give consent. Some victims said in interviews that they would be interested in staying during the second part of the conference and hearing what the professionals present in the conference had to say (e.g. victims 1 and 2 from case study 9).

their actions³. Once their presence was no longer necessary, they were sent back home.

Some victims whom I interviewed felt that they did not have a sufficient opportunity to discuss the conference shortly thereafter⁴. As mentioned in chapters 9 and 10, some victims felt that they were not given proper feedback. So, during interviews they asked me to call them if I obtained any information about how 'their' offenders were getting along, and to share that information with them (case studies 2, 9 and 10). Some other complaints were also made by victims, suggesting that some victims' needs had not been given sufficient attention (see below the section: 'A victim-centred justice?').

³ However, even if in reality victims were not used in order to benefit offenders, the victim perception that they were is significant in itself, given the difficulties many restorative justice practitioners face when persuading victims to take part in restorative interventions. The above finding might suggest that as a pre-condition for their agreement to attend a conference, there needs to be at least some degree of willingness on the part of at least some victims to help offenders. This suggestion coincides with a view of a conference facilitator I interviewed who argued that in the vast majority of cases, whether or not victims agree to participate in conferences depends on whether or not they are willing to help the offender. See chapter 7, section 'Reasons for attending conferences' for more details.

⁴ After the conference victims are asked to fill in a conference evaluation form and send it by post to conference organisers. Also, conference organisers normally call victims after the conference to thank them for participation. Yet, that was clearly insufficient for at least some victims. Some of my interviewees wished that instead of offenders and their families staying after the first part of the conference and victims leaving, offenders and their families left, and victims stayed and had some form of a de-brief, so that they could share their views and opinions with each other (case studies 4 and 9). See relevant quotes in chapter 10, section 'How the system could be improved'.

A rather interesting finding was that several victims felt uncomfortable because of what they saw as the conference organisers' adoption of non-punitive and non-blaming approaches towards offenders⁵ (for instance, victim and victim supporter in case study 13, victim 2 from case study 9). According to some victims and their supporters, the conference and its preparation were conducted as if the offender had done nothing wrong:

V: It did make me feel as though [the offender] hadn't done anything wrong, though. It did. It did feel like they [i.e. conference organisers] were sticking up for her.

(Case study 8)

These victims wished that during the conference, professionals would actively express their disapproval of offenders' actions. Commenting on the approach taken by facilitators during the conference, one victim said:

V2: I think [the way the conference was conducted was a] too soft approach. I think it could've been a harder and a more direct approach, without being offensive. ...I felt [the conference facilitators] were almost too... almost too accommodating, too sympathetic to the perpetrators, than the victim. It was almost conscious that here we have two young people who might be daunted by this situation, so we'll make them feel as comfortable as we can.

(Case study 9)

⁵ See chapter 8, section 'How conference participants were treated during conferences', subsection 'Treatment of victims and their supporters by conference facilitators' and chapter 10 section 'How the system could be improved' subsection 'Suggestions by victims and victim supporters' for relevant quotes and comments.

A somewhat similar view was expressed by Victim Support representatives who came to one of the conferences (case study 3) to represent a victim who was too ill to attend the conference. During the interview, they feared that if the victim came to the conference, she would have felt uncomfortable. The conference looked more like a birthday party for the offender, rather than a criminal justice intervention. There were huge amounts of food, and everybody was nice and kind to the offender:

Victim Support representative 1: ...what struck us was that the person coordinating [the conference] provided a great deal of food, and there appeared to be a party atmosphere at the conference.

Victim Support representative 2: Yes. It was quite a young offender, so they tried to make it informal and relaxed.

Victim Support representative 1: It was actually bizarre. I'm glad the victim wasn't there. I don't know how effective that was for the suspect and the family of the suspect, but I suspect they wouldn't have the same opinion that we had, because we're approaching it from a different perspective. ... For Victim Support, it was clearly a serious matter, and yet here we were sitting around this feast.

(From an interview with Victim Support representatives, case study 3)

According to Victim Support representatives, in that conference, the offender read out a poem which he had written. He was praised by those in the room. Victim Support representatives also pointed out that the offender felt very comfortable in the conferencing room:

Victim Support representative 2: There were piles of biscuits, and cakes, and drinks. The other thing that didn't help was that the premises that the conference was in – and I can't remember how, but – they were familiar to the young person, the perpetrator. So he felt comfortable there and was dashing in and out, saying: 'I'll go and get this!' and 'I know

where that is!'. I don't think he should be beaten. Not 'beaten', that's not the right word. I don't think he should feel uncomfortable. He shouldn't feel frightened or intimidated. But to get the balance wrong – when he became so familiar, and it was so easy, and it was such a nice place to be – that the balance was out of kilter. ... I think, had the victim been there, it wouldn't have been funny. It would have been very seriously wrong.

(From an interview with Victim Support representatives, case study 3)

I had an opportunity to examine pre-conference reports in individual cases. It was notable that the main focus in the pre-conferencing reports was on identifying reasons for offending behaviour and needs of offenders. A typical report would discuss at length the relationships of the offender with his or her family members, identify problems within the family, and suggest possible solutions. The report will also deal with schooling problems, friendship groups, drugs-related issues, as well as identifying and meeting offenders' needs. Does the offender look bored? If yes, what can she or he do to stay constructively busy? Does he or she have low self-esteem? If yes, how can the offender build his or her self-confidence? Is there anybody in the family with whom the offender finds it easy to talk things through? If no, does the offender need someone outside of the family to discuss her/his feelings? Does she or he have friends who also offend? If yes, what can be done to put some distance between the offender and those friends? Does the offender's mother find it difficult to manage him or her? If yes, who can support her in day-to-day supervision of the offender? What services should the offender and his or her family be provided with? How often should the offender meet the Youth Offending Team worker? How often should he or she have contact with the Youth Centre? How much contact does the family need with the Family Centre and the Child and Family Consultation Service? What educational support does the offender need? Should the offender be referred to

a drug awareness program? The list of these questions and possible solutions to identified problems seems almost endless.

After reading pre-conferencing reports, I did not see similar descriptions of needs of victims and ways in which those needs could be met.

In the conference which I observed (case study 14) it was notable that the prevention of re-offending received a lot of attention during both the first and the second parts. The second part was dedicated solely to developing a plan to help keep offenders out of trouble. During the first part other issues were discussed, but the topic of re-offending was repeatedly brought up. Some extracts from the notes I took during my observation of the first part of the conference:

V3 [to the offenders]: What would make you stop doing it again? Would you carry on?

O1: Not sure.

O2: A conference like this. To see that victims feel like that.

[V3 informs the audience that she has a son of the same age, and invites contributions from others to the discussion of the issue how to keep kids out of trouble. Discussion follows.]

V1 [to the offenders]: How would you feel if it was your mother's house that was burgled?

VS [to the offenders]: What started it?

O2: Need for money.

OS3: They needed money to buy cigarettes and alcohol.

VS: Peer pressure. You are insulted if you can't afford it.

V3 [to the offenders]: Pressure keeping on with friends, but you need to find a new group.

There are other ways to enjoy yourself, which don't cost a lot of money. If you can rise above your friends and find a group of friends who are good lads... There are choices you've got to make.

V2: Do you have any idea what you want to do in the future?

O2: I want to return to the school.

O1: Go back to school and college. I want to be an electrician.

[Everybody in the circle of the conference participants starts suggesting what sort of jobs the offenders could get, so that they have money without resorting to crime].

V3 [to the offenders]: Would you carry on if you were not caught?

Conference facilitator [to offenders]: What will change you?

OS1: He's changed. His attitude has changed. They've given him self-esteem, so that he can succeed...

During the second part of the conference, under the guidance of a YOT worker, a conference facilitator and a person from the social services educational department, the family had to develop a plan which would help to prevent re-offending. The focus was on identifying the needs of the offender and his family and the ways to meet those presumed needs. Some extracts from my notes:

YOT worker [referring to the family]: Without a coordinated effort as a family, he's gonna re-offend. You need a common acceptance. You need to be together on this.

Conference facilitator [addressing the family]: It might be a challenge for him to stay within the boundaries. You need to remind him. You need to focus on the aims and objectives.

[Facilitator and YOT worker instruct the family who and how is going to check on the offender].

YOT worker [addressing the family]: Your problem is the lack of communication. You need to agree how to...

Offender's brother [interrupts]: [His] friends... I know them. Friends affect what he does.

There is a lot of peer pressure...

[Offender's mother interrupts and brings up the issue of cannabis use by the offender.

Facilitator informs the offender about dangers of cannabis use and concludes that the offender needs to be referred to a drug awareness program.]

[later]

Facilitator [addressing the offender]: While you are locked, your parents come and you talk. You need to make time to sit together and have some conversation when he's out. You need time when you are all together.

[The offender's father explains that he works from Monday to Friday, and the only time he has is on Saturday and Sunday.]

Offender's mother: If he came from school, and spent an hour with us, it could be an hour...

Offender's brother: In practice it won't work.

Facilitator: You'll have a plan, so one of you will say, 'hey, guys, we aren't sticking to the plan'.

YOT worker: Young people go off the rails because they don't communicate with their parents. It's the lack of communication...

Facilitator: You need to practise it, and it'll become better. You need to talk about the problem. [Tells how good communication is within her family]. You need to practice communication.

Offender's mother: We live downstairs, and they live in their bedrooms...

Facilitator: You need to practise communication. It's a commitment to collaborate in the interests of [your son] and yourselves.

The above findings seem to suggest that restorative justice, as practised within the project which I studied, with its over-emphasis on offender rehabilitation⁶, can hardly be seen as an example of full-blown restorative justice. At the same time it would be unfair to argue that the experiment fits perfectly well within the offender rehabilitation paradigm. Some needs of victims do receive attention (in particular, the need to express feelings and a disapproval of the offending behaviour, and the need to

⁶ Probably this over-emphasis should not be very surprising, given that the legislative framework for the project was provided by the Crime and Disorder Act 1998, Section 37 of which defines the overarching mission for the youth justice system as prevention of offending by children and young persons.

ask questions). The issue of offender accountability is not totally ignored. Offenders are invited (or forced in some cases?) to acknowledge their wrongdoing and apologise to victims. In extremely rare cases, they are expected to do some material reparation. The project can be seen as a hybrid of the rehabilitation and restorative paradigms, as elements of both could be found within it. This hybrid nature of the project is well reflected in its official statement of principles: 'The focus for the Young Person who has offended is to make amends to the victim, and for the family to address the risks of re-offending and develop a plan to address offending behaviour'.

(3) A victim-centred justice?

In the previous section I touched on the question of how much importance is attached to needs and interests of victims within the project of my study. I shall now explore this issue further.

As I have pointed out in earlier chapters, one of the most important claims made on behalf of restorative justice is that it is a victim-centred justice, the primary concern of which is healing those who have been hurt by crime (Zehr 1990, McCold 2000, Mika and Zehr 2003, Restorative Justice Consortium 2002, Claassen 2000). Do my findings support this claim? To what degree has this aspiration been realised in the project where I conducted my research?

It is essential to point out that this project was limited to juvenile offenders, because this factor may cast doubt on the centrality of interests of victims. The result of this limitation is that only those victims whose offenders happen to be juveniles may get an opportunity to participate in restorative justice encounters (and presumably to derive from them the promised benefits). It may be argued that the fact that the age of

offenders determines the entitlement of victims to benefit from restorative justice programs conflicts with the claim that the interests of victims are paramount. If needs and interests of victims were indeed of fundamental importance, the age of offenders would seem a rather illogical basis for allowing some victims to take part in restorative justice encounters, and denying others a chance to benefit from restorative justice.

One of the conference facilitators I interviewed criticised the project on the grounds that restorative justice discriminates among victims. Her explanation of the present situation was that the project is funded mainly by the criminal justice system, whose primary concern is the prevention of re-offending, rather than victims' needs. To quote that conference facilitator: 'Let's face it, the money is there because of crime agendas rather than victim agendas. It is not a service that is offered universally to victims...' (from an interview with a conference facilitator 1).

Another factor which may cast doubt on the validity of claims that restorative justice is a victim-centred justice (within the project where I conducted my study) is that a considerable number of conferences went ahead, even though victims did not attend. Yet, no conference went ahead without the offender attending. It is noteworthy that in a significant number of cases it was believed that a conference without victim participation could benefit offenders. Yet, it seems it was never believed that a conference without offender participation would be beneficial to victims.

Some findings indicate that certain actions and attitudes of conference facilitators made some victims feel uncomfortable. I have already provided some examples in

the previous section (e.g. victims feeling that facilitators acted as if the offender had done nothing wrong and victims complaining that facilitators were too sympathetic and accommodating to offenders). Another example would be a conference in which the facilitator started by asking the offender if it was okay to begin. The victim (who was apparently a child) was not asked a similar question. This made the victim and her mother feel very uncomfortable. It created an impression that the offender was the most important person in the room, and the victim did not even deserve an inquiry if she was ready to start the conference (case study 13)⁷.

Another source of discomfort reported by some victims was that they were outnumbered by offender supporters. Adult victims usually come on their own. Child victims usually come with a parent and possibly a friend. Offenders tend to come to conferences with several family members and quite often with members of their extended families (which is very much encouraged, because family members might be helpful during the second part of the conference). This results in an imbalance. Offenders bring a lot more supporters than victims do. Some child victims felt especially uncomfortable and vulnerable for that reason (case study 6)⁸.

⁷ See the relevant quote in chapter 8, section 'How conference participants were treated during conferences', subsection 'Treatment of victims and their supporters by conference facilitators'.

⁸ I mentioned this finding to one of the conference facilitators in the project of my study, and she said that this was a mistake made in the past. Today steps are being taken to prevent situations where the offender supporters significantly outnumber the victim supporters. One way of doing it is to ask some of the offender supporters to stay outside the conferencing room during the first part of the conference and join the rest of the offender's family for the second part of the conference, after the victim and her or his supporters leave.

There was another finding, which made me question the centrality of victims within this study and which I have already mentioned in previous section: victims often want feedback after conferences in relation to what the conference has achieved and how 'their' offenders are doing. Yet, it appears that victims normally do not receive that information. This casts some doubt on the claim that needs and interests of victims are of primary importance.

One more factor that makes the centrality of victim needs and interests questionable within this experiment is that too little importance was attached to material reparation. If restorative justice were indeed a victim-centred justice, it would probably be reasonable to expect that reparation of material harm caused to victims by offenders would be seen as an important issue. However, according to my interviewees, the issue of material reparation was not even raised in 12 out of 16 cases (case studies 1, 2, 3, 5, 6, 7, 8, 9, 11, 13, 15, and 16). In only two cases was compensation ordered by the court (case studies 10 and 12), and in only two other cases was a possibility of material reparation discussed in conferences (case studies 4 and 14)⁹.

The project's official statement of principles claimed that '[t]he primary focus of conferences will be the offence that has been committed and reparation of harm'. It appears that if the reparation of harm was indeed 'the primary focus' (which is far from obvious), it was limited to *symbolic* reparation expressed through apology.

⁹ In case study 4 the offender refused to work for the victim, but offenders from case study 14 agreed in the conference to do some work.

Prior to conferences victims were given a leaflet entitled 'Restorative Justice.

Victims have a voice too' which consisted of a set of rhetorical questions:

'Do you want your say? To the offender? About how you feel? How the crime has affected you? Do you want to know? Why it happened to you? More about your offender? What you can do about it? What would they have done to me if.....? What has happened to my property? What have I done to deserve this? Was this a personal attack? Is it my fault in some way? Will they come back?

These and other questions can be answered by Restorative Justice'.

That is, the leaflet clearly pre-defined the role of the victims, and this role appeared limited to asking questions and expressing how victims felt. Victims had no real say over how crime should be responded to, or in defining offenders' obligations. Without denying the value of an opportunity given to victims to ask questions and express emotions, I shall suggest that the functions which victims were allocated within the project of my study were narrowly restricted.

Are the needs and interests of victims the top priority of restorative justice within the project of my study? They are invited to the first part of the conference to express their feelings and to ask questions. Following that, they are expected to leave the conference. Some victims felt that they did not receive proper feedback after the conference. Victims rarely get any material reparation. Even the possibility of it is rarely discussed in conferences. Some words and actions of conference facilitators make victims feel that offenders are the central figures within the conferencing process, as well as the only – or at least the main – beneficiaries of the restorative justice process (e.g. victims from case studies 2, 4, 7, 8, 9, 11, 13, victim supporters from case studies 8 and 13).

Yet, it is important to point out some evidence indicating that interests of victims, at least in some cases, were put above interests of offenders. In case study 5, one of the four offenders had shown no remorse before the conference. Conference organisers decided that it would be better for the victim if the offender in question did not participate in the conference. This decision was made in spite of the fact that conference facilitators felt that attending the conference could potentially benefit the unremorseful offender.

The question whether needs and interests of victims are the top priority within the project where I conducted my study remains unanswered. There is some evidence indicating that their interests were put above the interests of offenders. Some evidence suggests the opposite.

(4) A voluntary process?

Within the restorative justice discourse, the conventional way of 'doing' justice is frequently criticised for being coercive, and restorative justice is presented as an alternative characterised by a voluntary process (Marshall 1996, McCold 2000, the Restorative Justice Consortium 2002, UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Council of Europe Recommendation N R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters). Others, however, find 'restorative coercion' necessary where voluntary restorative justice is impossible or considered undesirable (Walgrave 1999, Bazemore and Walgrave 1999, Declaration of Leuven, Claassen 1996).

What was the position within my project of study in relation to the issue of voluntariness? The promotional leaflet given by conference organisers to participants claimed: 'Restorative Justice is *entirely voluntary* so if you do not want to take part you cannot be forced to' (my emphasis). As one of the conference facilitators whom I interviewed has put it, 'If it is restorative, it has to be restorative. It can't be prescriptive. It can't be forced.... It has to be voluntary in the purest sense of the word for it to be meaningful' (from an interview with the conference facilitator 1).

To what degree has this aspiration been achieved in practice? Did my interviewees feel they participated in a voluntary process?

It appears from my findings that for some offenders in my sample attending a conference was court-ordered. Most offenders whose family group conference attendance was court-ordered did not seem very enthusiastic about attending. It appeared that their attendance was motivated by fear of punishment:

Q: Did you want to go to the conference?

O: No.

Q: Why not?

O: Because I had to sit in a room with a bunch of people I didn't know, and stole from their houses.

Q: What do you think would have happened if you refused to go to the conference?

O: I would probably be taken back to court.

(Case study 16)

Q: Was the conference part of a court order?

O: Yeah, it's part of the court order, I had to do it... I had to do it, or I'd be breached.

Q: Did you *have to* go to the conference?

O: I had to go, because there was no other alternative. They said, 'there is no other alternative, so you have to go through it, otherwise you'll be in more trouble'.

Q: Why?

O: People in the YOT said that. If I didn't go to the conference, I'd have to go to the court...

(Case study 12)

When asked whether they would have gone to a conference if it was optional, opinions of offenders whose conferences were court-ordered varied. Some said they would have gone, others said they would not:

Q: Was the conference optional for you?

O1: No.

O2: No, it wasn't. We had to go.

Q: If it was optional, would you go?

O1: No.

O2: Yeah, I probably would. Although it was a bit scary.

Q: [to offender 2] You said, if it was optional, you would go.

O2: Probably.

Q: Why?

O2: Because... to say 'sorry'.

(Case study 9)

For some offenders in my sample, participation in conferences was optional. Of them, some felt they were merely encouraged to participate:

Q: Was the family group conference a part of the court order?

O: It wasn't part of the court order, but I was encouraged to do it afterwards, just to say sorry to them.

(Case study 10)

Others felt that when they were invited to participate, a degree of pressure was exercised over them¹⁰:

Q: Did you have a choice whether to go to the conference?

O: Umm... Kind of yeah, but the YOT worker was quite pushy...

Q: In what way?

O: Umm... Well, he kept saying it would be nice and everything... My mum didn't really wanna do it 'cause... I didn't really wanna do it because I thought I'd already done most of my sentence inside, and I had only one month left, and I thought that'd be it.

(Case study 4)

It also appears that a number of offenders in my sample were simply unsure whether or not their attendance was optional. So, it seems that the neat distinction made by academic commentators – voluntary vs. coerced – is not necessarily as clear-cut in the minds of participants.

Some offenders said that although they felt pressurised into participating in a conference, they did not feel pressurised during the conference (for example, offender from case study 4).

As far as apologising to victims is concerned, some offenders said they had to apologise. Others said they did so voluntarily. Those who said it was optional for

¹⁰ A finding similar to Miers et al (2001:39)

them to apologise pointed out that they were encouraged by YOT workers and conference organisers to do so. Some offenders who had to apologise said that even if it was optional, they would have apologised anyway.

Several offenders' parents thought that coming to a conference was obligatory not only for their children, but also for them. Some were not sure whether participation in the conferences was optional. While some offenders' parents felt they were not pressurised during the restorative process, others felt they were.

What did conference facilitators have to say in relation to the issue of whether or not attending conferences and apologising to victims was voluntarily? Conference facilitators whom I interviewed argued that offenders should not be pressurised into – and during – the conferencing process, because coercion will provoke resistance on the offenders' part and will block their ability to empathise:

It has to be voluntary in the purest sense of the word for it to be meaningful. ...I think if young people were... their arms twisted up behind their backs, and route-marched up to these things, there would be, I suspect, resistance to taking part in that process. That would block their ability to empathise. They would be sitting there feeling miffed that they were made to come. They wouldn't listen. If they can come to a conference with an agreed expectation, then they feel okay about coming. You can lead a horse to water, but you can't make it drink. I think it is important that it is voluntary in the purest sense.

(From an interview with conference facilitator 1)

I asked a conference facilitator how they balance the importance they attach to voluntariness with the fact that conferences are more often than not ordered by the

court. What happens if an offender, who is ordered to attend a conference and apologise, appears to be unwilling to do so? The facilitator responded:

When you come to see an offender for the first time, you do not say, 'Well, I've come to see you today, because, you know, we are going to have this meeting and you're going to say 'sorry' to the victim.' It isn't like that. It is not prescriptive in that sense. Mostly it comes from themselves.

To my question what conference facilitators do if it does not 'come from themselves' [i.e. from offenders], one response was:

When I go to see a young person, one of the first questions after basic introduction is, 'Do you know why I am here, why I have come to see you?' Nine out of ten, they will say to me, 'yes'. So, I say, 'So, can you explain to me what your understanding of that is?' And they will usually say something about, 'Well, I'll meet the person whose house I've burgled, and I'll say 'sorry' to them'. Now, they may not say that. The one out of ten may not say that. So, then I might say, 'Can you tell me how you think the person might feel about what you did to them?' Some young people are more switched on than others. It is as any kind of interviewing skill, really. You are trying to gain an understanding of whether there is empathy there. For some it is immediate, and others it takes a little bit of pulling out.

(From interview with conference facilitator 1)

The facilitator proceeded to provide an example of a boy who refused to go to the conference because he thought the victims, whose car he had stolen, would strangle him. The facilitator interpreted his fear as based on the ability to empathise with the victims, because the offender was able to put himself into victims' shoes and imagine what he would do to someone who had stolen his car. According to the facilitator, once the offender has demonstrated such ability to empathise,

...then you can switch into: 'So what you are saying is, if that had been your car, you would be really angry about that and you would want to strangle the person that did that to you. So, explain to me why you would feel angry about that?' And they maybe start talking about, 'Well, I saved up for the car...' So, you are pulling bits out to gauge whether there is empathy there, and there usually is, I have to say. Therefore you are giving them an opportunity to say to you, 'Well, you know, I want to say 'sorry''.

(From interview with facilitator 1)

It appears from the interview with the conference facilitator and from observations during my fieldwork that restorative justice professionals employ a set of various subtle techniques (e.g. multiple private meetings, skilful questioning, probing, reframing and restating what offenders are saying in a way that focuses them on certain issues, evoking empathy in offenders, praising and encouraging them, etc.). These techniques are used to obtain the offender's agreement to participate in a conference and apologise to the victim(s). It seems this is done in such a skilful and subtle way that an appearance of a voluntary consent to participate and apologise may be created. Offenders may be made to believe that, despite the fact that attending a conference and apologising was in their court order, they themselves freely chose to attend and apologise.

When it is claimed by its proponents that restorative justice involves a voluntary process, it is important not to overlook the subtle, virtually invisible, informal pressure exercised over offenders by restorative justice professionals. The claims that restorative justice is voluntary need to be looked at in light of the fact that coercion is not necessarily limited to court orders. It may come from different directions, take a much more sophisticated form, and be much more complex in its nature. It would be

additionally misleading to think of coercion within the restorative justice process in 'either/or' terms (that is, either the process is wholly coercive or wholly voluntary). Such thinking would be too crude and simplistic to capture the subtleties and complexities of what happens in practice.

This finding has an important implication for the 'purist' vs 'maximalist' debate outlined in chapter 3. 'Purists' refuse to define judicially ordered reparation as restorative justice and claim that the advocated by them model is an example of voluntary restorative justice. That is, the 'purist' definition of coercion is limited to judicial coercion. My findings suggest that by defining coercion so narrowly, the 'purists' fail to notice the existence of subtle informal pressures to which offenders may be subjected.

Conclusion

In this chapter I looked at some aspirations of restorative justice advocates in the light of my empirical findings. Restorative justice advocates aspire to develop an alternative to punishment and rehabilitation 'paradigms'. They aim to create a way of 'doing' criminal justice which would place victims at its centre. Some also argue that this way of 'doing' justice should be characterised by voluntariness. My findings seem to suggest that within the project where I carried out my study most of these aspirations have hardly been realised.

The validity of the claim that restorative justice presents an alternative to offender rehabilitation becomes questionable when one considers the presence of various elements of the rehabilitation paradigm within the project. Importantly, conference

participants perceived restorative justice as a form of offender rehabilitation. Significant in this context finding is that victims felt they were invited to conferences to help offenders, and the main – or even the only – beneficiaries of the process were offenders. Another important finding is that victims felt that conference facilitators adopted an over-sympathetic approach towards offenders.

Some findings make one doubt the validity of the claim that restorative justice is a victim-centred justice. However, other findings suggest that the interests of victims have been given a priority.

The empirical evidence also puts into question the claim that the restorative justice process is characterised by voluntariness. For a number of offenders, conference attendance was court-ordered. But even where the attendance was not court-ordered, it was not necessarily voluntary in the purest sense. Coercion within restorative justice is not limited to official legal sanctions. There may be other sources of coercion which are more covert and complex in nature. Also, it is misleading to think of coercion in ‘either/or’ terms: either coercive or voluntary. Such way of thinking is too naïve and fails to reflect the intricacies and complexities of what really happens.

The only claim made by certain restorative justice proponents that my findings seem to support is that restorative justice is an alternative to punishment. My interviewees, including offenders, did not perceive conferences as a form of punishment. This finding is rather surprising, given that attending a conference was court-ordered for many offenders. In the concluding chapter I shall suggest a possible explanation of this interesting finding.

Revisiting the Theoretical Debate II:

Empowerment of Stakeholders and the Role of Professionals

Introduction

Restorative justice advocates criticise the 'traditional' criminal justice process on the ground that it disempowers stakeholders in crime (Zehr 1990, Wright 1996, 1999, Van Ness and Strong 2002, McCold 2000, Barton 2000, Braithwaite 2003a). It is argued that within the highly professionalised criminal justice process, legal and treatment experts have 'stolen' conflicts (using Christie's expression (1977)) from victims and offenders, and turned stakeholders in crime into 'idle bystanders in their own cases in what, after all, is *their* conflict' (Barton 2000:67, original emphasis). In contrast, restorative justice is presented by some of its proponents as a lay-oriented process¹, empowering stakeholders in crime to actively participate in developing their own solutions to their problems (McCold 2000, Marshall 1996, Braithwaite 2003a, 2003b). In this chapter in the light of my empirical findings I shall analyse the claim that restorative justice empowers victims, offenders and their communities, and examine the role which restorative justice professionals play within the restorative process – at least within the project of my research.

(1) An empowering justice?

(a) Victim empowerment

As far as victims are concerned, some of my findings make me doubt the degree of their empowerment. Restorative justice conferences take place after sentencing, so even if they empower victims to some degree, it often happens after victims were

¹ Some, however, question the desirability of de-professionalisation (Olson and Dzur 2003).

disempowered by the criminal justice system. Thus, one victim I interviewed was willing to come to court because she wanted to hear the offender's side of the story. In spite of this, she was told that 'there was no need' for her to come (case study 13). Another victim was invited to court and spent the whole day in the waiting room, only to be told to go home, as the offender changed her plea to 'guilty' at the last moment (case study 8). One victim was forced to testify in court and was so traumatised by the process that he refused to attend a conference (case study 5).

It seems all that a victim's empowerment involves is the following: tell offenders how they felt, ask questions and express disapproval. However, they can only do it within ground rules. Victims cannot define offenders' obligations. They may only get some compensation or reparation from offenders if it was ordered by the court, or if the court made a flexible order, and YOT workers made reparation to victims fit within the order.

Case study 8 probably deserves some special attention when discussing the issue of stakeholder empowerment. It *appears* to be a case where stakeholders resolved their conflict themselves, and thus, arguably, it could be seen as a case where stakeholders were maximally empowered to deal with their problem as they wished. The victim and offender in this case were girls from the same school. Of their own choosing, they performed their own informal 'conference' before the official conference organised by restorative justice professionals. The informal 'conference' took place in a school toilet, and involved the victim, the offender and some other girls. After their informal 'conference' the official one was cancelled. I did not have a chance to

interview the offender, but the victim assured me that during their 'conference' they successfully resolved the conflict and became friends.

During an internal meeting of the family group conferencing project workers which I attended, I witnessed a project worker present this case as a perfect example of restorative justice maximally empowering stakeholders in crime to resolve conflicts the way they like. Arguably, though, empowerment of stakeholders in this case is questionable in the light of the fact that the criminal justice system has done all the definitional work, established a framework within which the case was responded to, prosecuted and punished the girl who was defined as an 'offender', and made the girl who was defined as a 'victim' wait for a whole day in the court waiting room to be invited to testify.

Some of my findings cast doubt upon advocates' claims that restorative justice empowers victims. Victims seem to be empowered only to the degree that does not frustrate the achievement of the objectives of the criminal justice system and does not endanger the system's monopoly over how crime is responded to. By allowing victims to attend conferences, ask offenders a few questions and receive an apology, an illusion is created that victims play an active role in the criminal justice process, and the restorative justice process 'belongs' to victims. In reality victims do not have any real say over how their case should be dealt with.

(b) Offender empowerment

There are several findings which question the claim that restorative justice empowers offenders. One such finding is that attending a conference and apologising to victims

was not optional for many offenders – it was court-ordered. As far as offenders whose conferences were not court-ordered are concerned², it is far from obvious how ‘voluntary’ their attendance and apology was, especially when one considers the various techniques employed by YOT workers and conference organisers which are aimed at making offenders attend and apologise (see chapter 11, section ‘A voluntary process?’).

It may be argued that offenders are ‘empowered’ in the sense that they have an opportunity to try to explain to victims and other conference participants the reasons behind their actions³. In practice, however, it appears that offenders will not necessarily be listened to when they try to tell their side of the story (case studies 7 and 9). Some offenders revealed in interviews that they did not even try to present their side of the story in the conference because they did not feel they would be believed anyway (case studies 7 and 12).

Another finding which makes the degree of the offender empowerment questionable is that several offenders said they wished they could invite friends to conferences as supporters, but they were not allowed to do so:

Q: Would you have liked to have someone else come with you to the conference?

O: A friend.

² Sometimes YOTs make referrals to the family group conferencing project, even though a conference is not part of a court order in a particular case.

³ The information pack given to offenders prior to conference listed benefits which attending a conferences could offer to them. Among such benefits was the following: ‘You can get yourself HEARD by the victim and the authorities to explain why you did it...’ (original big print).

Q: Could you not take a friend with you?

O: No, I wasn't allowed to. I would've liked to take a friend, because then there would've been someone to talk to, someone who experiences the same as what I am going through... but I wasn't allowed. Because when I was saying the policeman was nicking people, no one believed me. They were believing the policeman...

Q: Would you have liked to bring several friends with you, or just one?

O: Just one. It'll be easier, or there will be too many people in the room.

(Case study 7)

Q: Did you have an option to bring your friends to the conference in addition to – or instead of – your family?

O: No.

Q: Would you have liked to bring a friend?

O: Yeah.

Q: Just one friend or more?

O: More... Two friends.

Q: Would you have liked to have them there in addition to your family or instead?

O: Instead.

Offender's mother (who was present during the interview) interrupts: What? Instead of us?

O: Yeah.

Offender's mother: Why?

O: Because they would've supported me if they were there.

Offender's mother: We supported you, ... didn't we?

O: But they know what it's like... Have you ever been arrested, mum?

(Case study 16)

It appears from my conversations with conference facilitators that they do not allow offenders to bring their mates to conferences, because they believe it is 'unsafe' to allow such people to attend restorative justice encounters⁴.

Some offenders felt they did not have much say over the rehabilitation plan which was developed during the second part of the conference mainly by professionals and offenders' families. That fact does not add any strength to the claim that restorative justice, as practised within the project of my study, empowers offenders⁵. During the second part of the conference which I observed, I noticed that the main participants in the discussion were the conference facilitator, the offender's mother and the YOT worker. The offender's father and brother had some input into the discussion, but the offender remained silent throughout the meeting and spoke only once. An extract from my notes, illustrating the interaction during the second part of the conference:

[The facilitator explains that after the offender is released from prison and returns home, it would be necessary to set clear boundaries on his behaviour. The boundaries will be enforced by curfew. The facilitator invites the family to pick a time for the curfew. The facilitator, the offender's mother, and the YOT worker discuss what would be the best time for curfew and agree upon a certain time. The offender does not speak].

Facilitator [to the offender]: As a consequence of what you did, you need to prove yourself in the community. Your parents need to know who you are with, what you do, where you go.

Mother: We ask him, but he wouldn't tell us...

⁴ However, a conference facilitator I interviewed pointed out that he would have no problem with allowing an offender to bring a friend to a conference, provided it was an adult friend who was likely to have a positive influence on the offender.

⁵ In one case the offender rehabilitation plan was created while the offender was not even present (case study 7).

Facilitator: You gotta help your mom and dad to make you accountable. [When you come out of the prison], people are gonna point a finger at you. So, you need to earn trust. You need to stick to the rules. You need to learn exerting self-control. If you go to someone's house, you need to tell your parents how you can be contacted....

[The offender's brother raises a question as to what would happen if the offender breaches the rules – how can the rules be enforced? A discussion among the mother, the facilitator, and the brother follows as to how rules could be enforced. The father and the offender are silent].

Facilitator [to the offender]: What will keep you stick to the rules?

Offender [after a long pause]: Mom tried to ground me. I didn't walk out.

Mother: He didn't walk out, but he shouted.

YOT worker [addressing the offender]: Chris, what do you need to do?

Offender: I've got to accept it.

YOT worker: In the army you've got to accept restrictions. It means being mature. So, you need to accept it.

[YOT worker instructs the parents what would encourage their son not to re-offend.]

It also does not seem to empower offenders when one considers a case where, in order to avoid a trial, an offender pleaded guilty to something he claimed he did not do. He was ordered to attend a family group conference and apologise to victims. If he indeed did not commit the crime, he had to offer a false apology (case study 12).

(c) Offender family empowerment

Some offender supporters said that for various reasons (e.g. sitting arrangements, victims taking a too dominant role, etc.) they were not involved to the degree they desired during the first part of the conference. However, offender supporters felt involved in the second part of the conference, which aimed at creating a rehabilitation plan and required mobilising family resources to prevent re-offending.

The rehabilitation plan developed in the second part of the conference requires special discussion. On the basis of the documentary evidence which was kept in the project and which I examined (in particular, pre-conference reports created by YOT workers and actual conference plans) I would suggest that the plan can hardly be seen as a pure creation of 'empowered' families. The basis for the plan had been developed to a large extent by YOT workers before the conference. To support this claim, I shall use an example of a pre-conferencing report from one of my case studies (case study 3).

This is a typical example of a pre-conferencing report. It starts with describing the offence committed by the offender (let us name him Tommy), then it outlines the court order⁶, provides a detailed description of the 'reasons why Tommy gets into trouble' and proceeds to instruct the family what they need to do. The list of the ingredients under the rubric 'what the plan needs to include' is extensive and detailed and sets a clear agenda what the family needs to put in the plan. Here is an extract:

...the family and all the people involved will need to make a plan of action that addresses the reasons why Tommy gets into trouble. In order to think about how everybody can support Tommy in his efforts, we have to think about the following questions:

⁶ The order in this case was the Action Plan Order, which, in addition to requiring that the offender attends a family group conference and apologises to the victim, gives details of what support will be offered to the offender: weekly contact with the YOT worker, support with Education, weekly contact with the Family Centre, monthly contact with Child and Family Consultation Service, weekly contact with Youth Centre

Who can offer mom support in her day-to-day supervision of Tommy? Who can mom call on to back her up if she needs this? Is there someone Tommy can go to if there is an immediate crisis at home if mom needs a bit of time alone?

How often can Tommy go and visit his sister [name omitted]? What support can her partner give to Tommy?

How can mom reward Tommy for positive behaviour? In which ways can this be visually monitored?

Is there someone in the family that Tommy finds it easier to talk things through with? Does he need someone outside of the family circle to talk about how he feels?

Who can support mom to put boundaries around Tommy? E.g. Who does he hang around with? What time does he need to be indoors? Which areas of [the town] does he hang out and may need to avoid? How will this be monitored?

What should Tommy do when he is bullied? What safety net needs to be in place for when this happen [sic]? Who can he report this to? How will they deal with it? Which teacher can he go to if there is a trouble in school?

What help does Tommy need in building his self-confidence? What help does Tommy need with making good choices and not bad choices? What support can the following agencies give: Social Services, YOT, CFCS, Youth Centre, Family Centre, School?

What can Tommy do to constructively stay busy? Is there any time he still feels bored?

(From the Report for Family Group Conference, case study 3)

The plan devised by the family during the conference consisted of answers to the questions posed in the pre-conferencing report. It postulated that 'Tommy will be supervised at all times' and provided detailed provisions of exactly how this would be accomplished. It also outlined how Tommy would be kept 'constructively busy' (presumably, so that he would not have time necessary for engaging in offending behaviour) and described other methods of 'setting boundaries' and 'managing' Tommy's behaviour (for example, negative reinforcement: 'If Tommy's behaviour is bad then the plans for that week (like trips) will be cancelled').

It would not be true to suggest that professionals writing a pre-conferencing report are the sole authors of the plan resulting from a conference. The family clearly make an input. However, that input is carefully restricted by the framework set out in the pre-conferencing report. Through the pre-conferencing report, the professionals who write it pre-determine the nature and the focus of the plan which the family would develop in the conference, ensure that the plan satisfies certain criteria and aims to achieve certain outcomes⁷ and assign a specific role to the family (which is to 'help' the offender stop offending). The professionals carefully guide the family in creating the plan, while delegating the task of fleshing out the detailed provisions of the plan to the family.

One implication of such separation of functions between the professionals and the family is that the resulting plan is likely to be better tailored to the circumstances of the family and, consequently, more effective in achieving its goals than a plan authored by professionals alone, because the family are the best judges of how they can mobilise their knowledge and resources in working towards the desirable outcomes. Yet, the separation of functions allows the professionals to retain an overall control of the nature and contents of the plan.⁸

The second implication is that allowing the family to develop the details of the plan (although within a framework set out by professionals) makes the family believe that

⁷ The main desirable outcome is, of course, stopping Tommy re-offending.

⁸ The argument that professionals retain an overall control is supported by the fact that the plan must be approved by a YOT worker.

they themselves developed the plan during the second part of the conference. That is, it serves to mask the fact that the input by the family was relatively minor, and the plan was based on a detailed report written by professionals long before the conference. This may create a sense of empowerment in family members and reinforce their enthusiasm in implementing 'their' plan.

It is also significant that offenders are given a chance to participate in the development of the plan⁹. Even though the plan does not have any powers of official enforcement attached to it beyond the duration of the court order, it is likely to be complied with even after the expiration of the court order, because offenders participated in its creation and agreed (or were made to agree?) with the plan.

Importantly, if offenders violate the plan, the pressure to comply will come from their family, rather than the state authorities. Such enforcement of the plan can be very effective, and in its duration it may continue far beyond a court order. Thus, offenders' families may be 'empowered' to govern their kids in such a way as to promote the agenda of the criminal justice system¹⁰.

⁹ Although see the findings reported in the previous subsection.

¹⁰ The rehabilitation plan created during the second part of the conference was not the only vehicle through which the criminal justice system 'empowered' parents to govern their kids on its behalf. Another such vehicle was the so called 'STOP' program organised by YOTs, which a number of offenders' parents I interviewed were encouraged or even ordered to attend. I had an opportunity to examine the syllabus and the study manual of the program in question. The program appeared to be designed to equip parents with an array of subtle techniques which could be utilised in manipulating attitudes and behaviour of their kids and ensuring that they become law-abiding citizens (e.g. using positive and negative reinforcement, using 'I' statements instead of 'you')

My data put into doubt the claim by restorative justice advocates that the restorative process is empowering for its participants. Participants appear to be 'empowered' only to the degree that does not frustrate the achievement of the objectives of the criminal justice system. Indeed, in some ways stakeholders are 'empowered' to *facilitate* the attainment of the system's goals.

Before I conclude this section, I would like to suggest that the claim that restorative justice empowers its participants should be looked at in the light of the discussion in the next section concerning the power exercised by conference facilitators in structuring self-identities of conference participants and thereby governing their conduct. The exercise of that power not only makes the degree of empowerment of participants in the restorative justice process somewhat questionable, but also suggests that, at least to a certain extent, the conferencing process might 'empower' its participants to do what those who orchestrate the process permit and want them to do.

(2) The Role of Professionals

I shall begin this section with pointing out that my interviewees did not see the conferencing process as lay-oriented or 'de-professionalised'. Many of them said they were impressed by the number of professionals present at the conferences in

statements in communicating with their kids, etc.). Interestingly, parents seemed to be very satisfied with the program, and believed that it had taught them useful skills. One parent even told me she liked the program so much that decided to attend the same classes for the second time, even though she had to travel a very long distance from her village to the town where the classes were run.

which they participated. I similarly found the number of professionals attending the conference which I observed impressive: there were two conference facilitators, a police officer, two case workers, two other people from the Youth Offending Team, a person from the social services educational department, an observer from the Home Office, and a Youth Offending Team manager.

What I observed in the course of my research was not ‘de-professionalisation’, but rather a *transformation* of the role of the professionals in the criminal justice process. They no longer pushed people directly involved in – and affected by – the conflict out of the arena, effectively turning them into passive onlookers. Indeed, an active participation of crime stakeholders was crucial if a conference were to achieve desirable outcomes. At the same time, professionals had a significant amount of power and an important role to play in managing and directing the restorative justice process, as well as shaping its outcomes.

(a) Moulding individual selves prior to conferences

Professionals engage in much preparatory work prior to the conference (see chapter 6, section ‘One restorative justice project’ for more details). This work is vital and to a significant degree influences both the restorative justice process and its outcomes. At the pre-conferencing stage, professionals write a report which sets an agenda for the restorative justice conference; decisions are taken as to who does and does not attend the conference¹¹; and conference co-ordinators privately meet with all potential

¹¹ The co-ordinators have a final say over who attends the conference and can veto some potential participants.

conference participants at least twice, 'gently persuade'¹² those who display reluctance to participate that they should attend, and prepare participants to play expected roles.

A conference facilitator whom I interviewed described her own role in the preparatory process as 'mediation, facilitation and information-giving'. In an attempt to clarify what this might involve in practice, I asked what coordinators would do, say, in a situation where a victim does not wish to attend. Would coordinators describe possible benefits that victims may derive if they choose to attend and try to persuade them to do so? The response was the following:

...I suppose you can call them possible benefits, what I would describe as what this opportunity might offer them. So, again like you're exploring the notion of empathy with the young person and you're exploring with the victim – by some process, direct or indirect, – what they would want to achieve from a meeting. So, in effect, they identify for themselves what might be the benefits or the deficits. Clearly, if they don't see any benefits, then they are not going to want to take part. So, it is a bit like the same with the young person. You're not saying, 'Oh this would be an opportunity for you to say how angry you feel'. Instead you say, 'Clearly, there may be things that you would want to say to the young person.' Then that might provoke a response, 'Well, actually, I'd really like to tell them that they should have been locked up in prison and burned in water'. I would say, 'From that I gather you are really angry with them for what they did. So would it be helpful to you if they understood that?' So, you're prompting them to say what they think and feel.

(From the interview with the conference facilitator 1)

¹² During the interview with conference facilitator 2 I asked him if, when faced with victims who refuse to participate in a conference, he would attempt to persuade them to attend. His response was: 'Very gently, because it would be a more successful conference. ... Sometimes I just use a little bit of gentle persuasion before they realise exactly what benefits they can get out of it'.

It appears that through skilful questioning, probing, focusing victims on particular issues, re-framing and re-phrasing their statements, conference organisers 'assist' victims to 'say what they think and feel' (or maybe, at least to some degree, what conference organisers *want them to think and feel?*). This often promotes their agreement to participate in a conference¹³, and shapes what they are going to say during the conferencing process.

During pre-conference meetings, under the guidance of conference organisers, certain individual identities in relation to particular problematic situations may be constructed, which potential conference participants are invited to embrace. I will provide an example to clarify this point. It is quite possible that prior to the conversation with coordinators, at least some victims do not even see themselves as victims:

[Another co-ordinator] and I went to see [a man] some time ago. He was driving his car, and his car got hit by a car that had been stolen. The very first thing he said to us was: 'I was quite amused by your reaction, because it refers to me as being a victim of crime'. He said, 'I didn't see myself as a victim at all'. I said, 'Oh, how do you see yourself?' He said, 'Well, I

¹³ The 'gentle persuasion' used by facilitators in order to 'assist' victims to realise what benefits the process would offer (and, as a result of such realisation, consent to participate) is often done through examples from earlier successful conferences. To quote the conference facilitator 2: 'I just try and sell to them the benefits of the process. I'd give them examples of conferences that have been successful'. This is reinforced by the information pack given to victims which quotes statements by victims who had attended conferences, detailing how beneficial the process had been for them.

see myself as being in the wrong place at the wrong time. If I hadn't have been at the junction he wouldn't have hit me'.

(From an interview with a conference co-ordinator)

During private meetings, facilitators may subtly pressurise and encourage people to accept particular self-identities – such as those of victims – and act in a presupposed fashion. So, with the help of a facilitator, a person who did not originally see him- or herself as victim might start believing that they *are* a victim and agree to play an assigned conference role.

Incidentally, victims are given leaflets prior to conferences with the following statement on them, printed in huge red letters: 'YOU HAVE BEEN A VICTIM. Now is your chance to put it behind you'. This might be another technique used to persuade those who do not see themselves as victims that they indeed have been a victim.

A similar process may apply to offenders. Some offenders could feel that in the circumstances doing what they had done was justifiable, and thus did not see themselves as offenders. Following a conversation with conference facilitators, however, they may start feeling empathy towards another person and a desire to apologise for their actions. Just like victims, offenders are given leaflets before conferences which instructed them (also in big print): 'WHAT YOU HAVE DONE IS WRONG. Now you can put it right and move on'. This may be interpreted as a method of encouraging those who had previously denied the wrongfulness of their actions to embrace self-identities of wrongdoers, and re-affirming the role which they were expected to play in conferences. The same leaflet informed offenders about the

'benefits' which the process could provide them with¹⁴, and quoted statements of remorseful offenders who had participated in conferences¹⁵. This could serve to encourage offenders to participate in conferences, as well as invited them to adopt particular identities – identities of repentant selves who have realised the wrongfulness of their actions and wanted to make amends.

A conference facilitator I talked with provided me numerous examples of victims, offenders and their supporters who originally refused to attend conferences and play roles which facilitators invited them to play. However, following private meetings with conference organisers, these individuals changed their mind, attended a conference, and left conference organisers deeply satisfied with the way they performed the expected roles¹⁶.

¹⁴ For example, 'You can get to feel sorry about what happened... You can get to see the effects of your behaviour, how to repair the harm you caused... You can get to know how the victim feels, why you shouldn't commit crime, what you can do about it...'

¹⁵ For example, 'Restorative Justice has made me realise what my victims suffered after the crime. It opened my eyes in a big way regarding my behaviour to get drugs. Thank you for changing my life before it was too late'.

¹⁶ However, it is important to point out that this does not always happen. The process of shaping self-identities of conference participants by facilitators allows the participants a scope for resistance and refusal to adopt a particular self-identity and play the expected of them in the conferencing process role. Yet, it needs to be noted that conference organisers are skilled to assess the likelihood of resistance on part of potential participants, so a person who is likely to resist most probably will not be allowed to participate in the conference.

(b) Governing the conferencing process

The process of moulding people's identities, and, consequently, influencing their attitudes and conduct, is not restricted to the pre-conferencing stage. It continues during the conference itself. Facilitators employ various tools during conferences by: skilfully deciding where people should sit¹⁷; making them agree to – and abide by – the ground rules; calling a 'time-out' if some participants start behaving in an unwanted manner; praising participants for desirable behaviour; acknowledging how difficult it must be for them to attend the meeting and say what they said; skilful questioning, re-phrasing statements, re-focusing discussions, redirecting issues, and so on.

I will provide some examples, demonstrating how these subtle techniques may shape one's self-identity and behaviour during the conferencing process. During the conference I attended (case study 14), there was a participant – the brother of an offender – whom the conference facilitator effectively wanted to silence during the conferencing process. This was so because it was feared that he might influence the process in an undesirable way (as the facilitator explained to me). To achieve her desired objective, the facilitator purposefully did not prepare a chair for the person in question (chairs with names of those who were supposed to sit on them were arranged in a particular order beforehand).

¹⁷ In the conference which I observed, victims, offenders, their supporters, conference facilitators and YOT workers were seated in a circle to emphasise the informal, non-hierarchical nature of the conferencing process. People like myself, who attended the conference, but were not expected to participate, were seated behind the main circle. This underscored the role of those people as mere observers.

I observed the offender's family, including the offender's brother, entering the room, and the facilitator asking them if they wanted some drinks. The brother, behaving in a very confident fashion when he entered the room, said he wanted a cup of tea. Before drinks were served, the participants were invited to take their seats. At this point the offender's brother discovered that there was no chair for him. He seemed unpleasantly surprised and informed the conference facilitator that he could not see his chair. Instead of taking another chair and putting it in the circle where the main participants were supposed to sit (which could be a very easy thing to do), the conference facilitator expressed a surprise, and said, 'Oh, John¹⁸, I did not expect you would come too... Why don't you sit somewhere at the back?'¹⁹. The offender's brother obeyed the command and sat behind the circle of conference participants – together with people, like myself, who were merely observers. At this point the conference participants were asked to remind the facilitator which drinks they wanted. When the offender's brother's turn came, he said he did not want any drinks²⁰. His refusal to accept the hospitality of the facilitator appeared as a form of protest against the way he was treated. He seemed upset, and his behaviour had notably changed. He no longer acted in the same confident fashion as he did when he entered the room. He sat there silently and refrained from participating in the conferencing process for a considerable period, until victims started asking him questions. During the interview, he said to me that the sitting arrangements discouraged him from active participation in the conferencing process.

¹⁸ All names have been changed to preserve confidentiality.

¹⁹ In reality, the conference facilitator did expect that he would come to the conference – she told me about it both before and after the conference.

²⁰ As I pointed out earlier, when he walked into the room he said he wanted a drink.

This example illustrates how determining seating arrangements may influence participants' behaviour in a way desired by facilitators. It also demonstrates that what may appear as insignificant statements (i.e. facilitator expressing surprise and saying that she did not expect a person to come to the conference), as well as behaviour, (i.e. the facilitator could easily have put an additional chair within the circle, instead of making a conference participant sit behind the main circle), may subtly force someone to adopt a self-identity which the facilitator wanted them to adopt. Initially, a person entered the room feeling he was as an important guest there and intended to actively participate in the restorative justice process. Seconds later, he was made to feel that his presence was unimportant and his participation was not very welcome.

I observed a variety of other subtle techniques employed by conference facilitators to influence the behaviour of participants. One such technique involved choosing the venue where the conference will take place. The conference I attended took place in a church. This setting probably influenced the behaviour of at least some participants, as the atmosphere may have been conducive to confession, repentance and forgiveness. I overheard a comment made by the father of one of the offenders suggesting that the place was good for confessions. Another conference participant acknowledged in the interview that the venue affected the process and helped to restrain emotions: 'I think the fact that the conference was in a church helped a lot... Because people respect the church... so, emotions were constrained' (victim supporter, case study 14).

I also noted how skilfully facilitators employed praise and encouragement to elicit certain behaviour from conference participants. At the very beginning of the conference which I observed, the Youth Offending Team workers and conference facilitators praised the offenders for making a lot of progress in recent months and being of reformed character. This set a certain mood for the conference and probably at least to some degree shaped the attitudes and behaviour of participants. The offenders were encouraged to act so as to live up to the self-identities of reformed characters, willing to admit their past mistakes, make amends and become law-abiding citizens. Victims were at least to some degree discouraged from being too harsh on offenders. They were made to believe – or at least invited to consider the possibility – that the offenders were not totally ‘beyond repair’.

I observed other uses of praise by conference facilitators in order to promote desirable behaviour. During the coffee break, I overheard a private conversation between the offenders and a facilitator. The offenders expressed a willingness to write letters of apology to the victims, and the conference facilitator praised them and encouraged them to do so. When the conference was reconvened after the coffee break, the facilitator began with announcing that the offenders decided to write letters of apology, and praised them again – this time publicly – for taking that decision.

I witnessed praise and encouragement being skilfully utilised by a facilitator in another instance. After the second part of the conference, during which the family under the guidance of professionals created a prevention of re-offending plan, I overheard the offender’s family expressing pessimism and doubts about their ability to successfully implement the plan. In response to that, the facilitator praised the

family for their performance during the conference and developing the rehabilitation plan, assured them that what they had just done was 'a breakthrough' and 'a way forward', and encouraged them to stick to the plan. Thus, certain behaviours were reinforced through reassurance, encouragement and praise.

I can provide examples of some other subtle techniques used by facilitators to promote desirable behaviour on the part of conference participants. What follows is an extract from an interview with a facilitator who explained to me what techniques she might employ in order to 'assist' the offender in playing their expected role and making an apology:

So, what I would say, allowing time for composure, so there would be a silence, and I might say something like: 'I am getting the sense that you don't know how to say what you want to say... Do you want to say something?'

'Yes'. (A long pause).

'So is this thing you want to say, is it difficult for you to say it?'

'Yes'. (Another long silence).

'Would it help if you and I went outside and talked about how we did this [in the pre-conference meeting]?'

Say you've had the silence... Because I am a facilitator and I know what a young person wants to say because we discussed that in our [pre-conference meeting], I might prompt them and say:

'Do you remember when I came to see you and we talked about such-and-such a thing? Can you remember what you said to me?'

'Yes.'

'Is this something you want to share now?'

'Yes.'

'So, do you want to say something, or would it help if I reminded you?'

Or, if [the offender] really can't speak: 'Would you like me to share that?'

That has happened in a couple of times where you've got a person who really has been stuffed up. But again, you wouldn't go rushing in there and say, 'Well, when I came to see you, you told me this, this, this and this'. It's about trying to get them to... You are asking them, 'Would it help? I know it is difficult. I think everybody here is finding that this isn't an easy meeting and we all appreciate what effort it is taking for people to speak. Would it be helpful...' It might be that the mum goes outside and comes in with him again or whatever. It is not so much... You are not putting words into their mouth. You are trying to get them to say the words they have already spoken to you.

Facilitators do not literally put words into anybody's mouth. However, they do seem to have a great deal of power over what people say and how they behave. It also seems that what people say in conferences has been rehearsed at least to some degree during earlier private meetings with conference facilitators²¹, and then in a conference participants are prompted to 'say the words they have already spoken to [the facilitator]',²².

²¹ From an interview with a victim (case study 9):

V2: I felt what [the offenders] were saying was what they've been told to say.

Q: Really? Told by whom?

V2: By their relatives, by their social worker... I think what they were saying was... another adult had sat down with them and said, 'when you are asked this question, you should say this'. I didn't feel it was a genuine... I don't think it was remorse... didn't feel there was any remorse. I think it was more of a 'if you are asked this question, you give the right answer'.

²² Conference facilitators also told me that it was a common practice for them and offenders to prepare in advance a written apology statement which offenders would read out in the conference.

(c) Professionals and the second part of the conference

During the second part of the conference, professionals control and lead the process, as well as mould outcomes, very much in the same fashion as during the first part. And, just like during the first part of the conference, offenders and their families may not even realise it.

I had an opportunity to observe the second part of a conference (case study 14). This part was different from the first, but not only because of the absence of victims. I also felt professionals played a much more prominent role than they did during the first part. The process appeared to involve professionals encouraging the family to confess about their own problems, diagnosing and classifying those problems, articulating the visions of individual selves which conference participants need to adopt in order to resolve their problems (as diagnosed and classified by professionals), and assisting conference participants to adopt particular self-identities, which would guide and shape their actions. An extract from the notes I took during the observation:

Offender's father: I find it frustrating. I try to improve things but people aren't listening...

YOT worker: Lack of respect for your opinion...

Father: Yes.

[Offender's mother and brother start arguing who does the most housework].

Brother: I can't do everything!

Mother: You don't do a thing!

Father: It's about helping everyone...

Facilitator: Who doesn't do the cooking, does the dishes. [Instructs the family how to share household responsibilities].

Brother: I saw my parents recently sitting next to each other, and I was shocked – they are talking to each other!

YOT worker: It's a lack of respect...

Brother: When I'm off in the army, it'll be back...

Conference facilitator [addressing the offender]: Chris, when they are being petty, tell them that they are being petty.

Mother: He mediates between us.

Facilitator: It's too much pressure on him to mediate. Chris, just say to them they are petty.

Offender's brother: Yeah, I know... I try to mediate, but when I'm away...

Father: I work hard, bring money into the home. But what I see is a mess in the house.

Facilitator: I'm worried that Chris is caught in your problems.

Father: I want a normal home, everyone working together.

Facilitator: You need a few hours on Saturday... You need time when you are all together...

Mother [interrupts]: I hate to hear that he's bringing money. I was brought up not to do anything... He was brought up to work in the house...

YOT worker: Perhaps your husband shouldn't remind continuously that he's bringing all the money...

(Case study 14)

From what I saw and heard during my research, I did not get the impression that I witnessed a lay-oriented or 'de-professionalised' form of justice. I observed professionals playing leading roles (albeit in a very subtle way). What happens during restorative justice encounters appears to be a consequence of careful preparation and skilful use of special techniques by conference facilitators. The conferencing process seems to be effectively directed, managed and controlled by facilitators; and the outcomes of the conference may be often shaped by those who stage and orchestrate the process. Importantly, this is accomplished in a very careful and invisible way, so that conference participants may not even realise how significant the input of facilitators is. Participants may get an impression that

professionals governing the conference have virtually no role to play in influencing the process and outcomes²³.

Concluding remarks

If the argument that facilitators have a great deal of power in shaping the restorative process and moulding outcomes is valid, the question arises: is this a problem? I suggest that it is, at least within the context of my study. What makes the exercise of power used by facilitators problematic is not necessarily the fact in itself that facilitators can exercise that power, mould people's identities, influence the process and shape outcomes. Rather, the problem is that the power of facilitators within the project of my research was used to reinforce the authority of criminal law and to promote the agenda and values of the criminal justice system. Upholding criminal law and facilitating the achievement of the objectives of the criminal justice system through restorative interventions was a direct consequence of the restorative justice project in question functioning as an extension of – or a complement to – the criminal justice system and depending on the system in various ways²⁴.

So, the problem is not the power of facilitators in itself, but its relation to the power of the criminal justice system. Had restorative justice liberated itself from the dictates of

²³ Hence the finding that several victims I interviewed felt uncomfortable about the 'passive' role the restorative justice professionals appeared to play and wished that the professionals provided greater input, were more direct, were less soft and sympathetic to wrongdoers, and, instead of leaving it to victims to express disapproval, stated their 'professional' opinion and actively expressed disapproval of offenders.

²⁴ The dependence of the project of my research on the criminal justice system is discussed in the next chapter.

the criminal justice system and had it refused to accept the authority of criminal law, the power of facilitators could be used to seek to achieve objectives very different from those which it seeks to achieve at present. For instance, instead of using their power to promote reparation of 'harms' resulting from breaches of criminal law so as to preserve the status quo, facilitators could use their power to seek to uncover and bring to the forefront of the political arena much greater social harms and injustices which tend to escape legal definitions of 'crime'. In the next chapter this argument will be developed further.

Chapter 13

Revisiting the Theoretical Debate III: Problems, Tensions, Dangers

In earlier chapters of this thesis I described a number of aspirations of restorative justice advocates. In the previous two chapters I re-joined the theoretical debate and examined some of those aspirations within the context of my empirical study. In this chapter I shall further revisit the theoretical debate about restorative justice. In the light of my findings, I shall analyse – and raise some criticisms of – certain arguments and claims made by restorative justice theorists. I shall also identify some problems and tensions within the restorative justice theory, which my findings expose, as well as draw attention to some potential dangers.

(1) Repairing 'harm' caused by crime

A common theme within restorative justice discourse is that crime causes harm, and that 'doing justice' involves repairing that harm, so as to restore the status quo (Zehr and Mika 1998, Bazemore and Walgrave 1999, Declaration of Leuven 1997, Van Ness and Strong 2002). In chapter 3 I argued that the defining the goal of restorative justice by reference to reparation of harm was an important feature of the 'maximalist' model within the 'reformist' strand. In chapter 4 I pointed out that more radical writers were critical of the 'maximalist' approach (Morris 2000, Pavlich 2002a, 2005). In this section I shall join the 'radical' critique of pre-defining the goals of restorative justice as reparation of harm, using empirical evidence.

What was the position within the project of my research in relation to pre-defining the goals of restorative justice, in particular, viewing reparation of harm as evidence of restorative justice being 'done'?

The project's statement of principles postulated that '[t]he primary focus of conferences will be the offence that has been committed and reparation to the victim', and one of the project's official goals was '[t]o resolve the offence and facilitate reparation or any loss or damage to the satisfaction of victims'. That is, crime was viewed as causing harm or damage, which needed to be repaired in order to achieve justice.

When crime and justice are conceptualised thus, a number of questionable assumptions seem to be made. First of all, it is assumed that crime necessarily causes harm. Secondly, it is assumed that reparation of that 'harm' is desirable. It is assumed that the status quo was just and fair, characterised by 'right relationships' between individuals and groups, and thus is worth restoring. I suggest that such assumptions may be problematic.

To demonstrate problems inherent in understanding crime as causing harm and justice as reparation of that harm, I shall refer to case study 7 from my empirical research. The case involved a police officer and a boy who pushed the police officer. According to the offender, the conference organiser and the YOT worker who I talked to, the offender pushed the policeman, trying to defend his friend from a violent attack by the police officer in question. In accordance with restorative justice theory, it was assumed that in the aftermath of crime (i.e. an assault on the police officer), the offender needed to take steps to undo the 'harm' caused by the crime. In practice, the offender had to apologise to the police officer during the family group conference.

What seems to have been overlooked in this case was that no obvious harm had been caused to the victim when the offender pushed him. Indeed, the victim did not consider himself a victim. He told this to conference organisers when he was invited to attend the conference. During the interview he mentioned the same to me.

What seems to have additionally been overlooked was that when the police officer was being 'harmed', (i.e. when he was pushed by the offender), the police officer was himself in the process of causing harm by beating up the offender's friend.

It appears that in this case study, an attempt to repair the 'harm' assumed to have been caused by crime, far from repairing anything, has resulted in even more harm. It can be argued that the offender pushing the police officer was a more trivial harm (if it was harm at all), than the harm resulting from the offender being forced to apologise during the family group conference to the police officer. The offender felt he had been made to apologise for something that he believed had been the right thing to do, given the circumstances¹, and this caused in him feelings of anger, resentment, and unfairness (to use his own words, 'the whole thing was unfair').

¹ Rather interestingly, one of the conference facilitators who I talked to, when expressing their views on the matter, said to me that if they were the offender in that case, they would not apologise to the police officer either, given the past behaviour of the police officer (bullying local kids) and the fact that the police officer was beating up a boy on the occasion leading to the 'assault' and subsequently to the conference. According to the conference facilitator in question, they were not the only person who held that view. Some people in the youth offending team dealing with the case also said that they would not have apologised, had they been that offender.

In addition to generating a sense of unfairness within the offender, the conference led to a serious conflict between the offender and his father. The father was upset by the fact that his son did not want to apologise to the officer and threatened to hit the boy. The boy thought it was unfair that his father did not believe his version of the events and took the policeman's side. The conflict culminated in the father throwing his son out of the house soon after the conference, with the result that the boy had nowhere to live and nothing to eat for days.

The aforementioned conference aimed at repairing the harm (which was presumably caused by the crime, in accordance with the prescription of the restorative justice theory). Yet, upon closer examination, it appears that the result for some was a much greater harm and suffering than the 'harm' which the conference was supposed to repair.

The same case study demonstrates problems inherent in adopting the 'status quo's' definition of crime as authoritative and determinative of how crime should be responded to. It was presumed that the status quo – or the pre-crime state of affairs – was right and just. Crime violated that status quo. Following this reasoning, to achieve justice in the aftermath of crime, we should aim at restoring the status quo. To accomplish this, the offender was required to take some kind of reparative action towards the victim, such as making an apology.

What seems to have been overlooked is that the pre-crime state of affairs was not necessarily right and fair, and therefore its restoration would not necessarily achieve justice. It is quite likely that forcing the offender in case study 7 to apologise to the

police officer (who beat up his friend, and who, according to several people involved in the case, continually bullied local kids) has had the effect of legitimising violent and abusive behaviour on the part of the police officer, and served to perpetuate pre-existing oppressions and injustices.

This case study demonstrates some of the problems inherent in making reparation of harm a universal principle in the name of which restorative justice should operate. Allowing reparation of harm to determine the focus of restorative justice effectively reduces the ethical work in responding to a complex situation to a narrow set of questions (Who has harmed whom? What harm has been caused? What needs to be done to repair the harm?), and various other considerations may simply be left outside the ethical enquiry. This leads to pre-determined outcomes and makes it difficult to stage 'a political debate in the court' (using Nils Christie's terminology) (Christie 1977:8).

At this point restorative justice – as practiced within the project of my study – clearly departs from views of Nils Christie (1977, 1982) – an inspirer for restorative justice (see chapter 2 for more details). It also departs from the views of restorative 'radicals' whose critique of pre-defining outcomes has been referred to in chapter 4. Yet, it seems to fit well with the 'maximalist' restorative justice.

(2) Dependence of restorative justice on the criminal justice system

In chapter 3 I outlined the 'reformist' way of thinking about restorative justice which either firmly positions restorative justice within the criminal justice system (the 'maximalist' model) or proposes to practice restorative justice outside, but closely

related to, the criminal justice system (the 'purist' model). The 'reformist' vision of restorative justice involves a significant degree of reliance of restorative justice on the ideological and structural framework of the criminal justice system. In this section I shall examine the dangers of the 'reformist' position in the light of my empirical findings.

Restorative justice in the project where I carried out my research could be viewed as an example of the 'purist' model (McCold 2000). It worked alongside the criminal justice system and was dependent upon the system in a number of ways². What are the implications and consequences of the restorative justice reliance on the criminal justice system? Is the dependence of restorative justice on the system problematic?

(a) Dependence on the system for funding

The project where I conducted my study was funded mainly by the criminal justice system³, which meant that restorative justice was made to a large degree to serve the agenda of the system. The criminal justice system – according to its own priorities – determined the institutional structure of restorative justice, defined the target population, and determined what outcomes restorative justice interventions should aim toward.

² Rather interestingly, a leaflet which was given to potential conference participants explained that restorative justice 'works alongside the formal justice system but the law means it cannot replace it'. Clearly the project was less ambitious than the proponents of restorative justice who believe that restorative justice could provide a 'replacement discourse' and in the long term could 'maximally' replace the existing system (see chapter 3).

³ The project received most of its funding from the Youth Justice Board. Other funders were the Social Services, Community Safety project, the police, YOTs, and the probation service.

Consistently with the overarching aim of the youth justice system, as defined by section 37 of the Crime and Disorder Act ('It shall be the principal aim of the youth justice system to prevent offending by children and young persons'), the primary objective underlying the provision of funding for the restorative justice project by the Youth Justice Board was the reduction of re-offending among youth offenders. This shaped the nature and character of restorative justice interventions and may explain some of my findings. In particular, it may explain the finding that so much importance was attached within the project to issues relating to prevention of re-offending (see chapter 11 for more details) and that the vast majority of conference participants felt that family group conferences were a form of offender rehabilitation (see chapters 10 and 11 for relevant quotes and comments). It may also explain the findings indicating that in a number of situations interests and needs of victims did not get sufficient attention (see chapters 8 and 11 for relevant quotes and discussions).

The fact that the project was funded mainly by the criminal justice system, whose primary objective was to prevent offending among juveniles, also led to a situation where the access of victims to restorative justice was conditioned on when birthdays of 'their' offenders fell. Thus, in one of the interviews with conference facilitators, my interviewee expressed a regret that restorative justice was not universally available to all victims who might have potentially benefited from restorative justice encounters. The interviewee concluded: 'Let's face it, the money is there because of crime agendas rather than victim agendas. It is not a service that is offered universally to victims...'

(b) Dependence on the system for referrals

Cases were referred to the project where I carried out my research usually after the sentencing stage. That is, cases entered the restorative justice project either after the court ordered offenders to attend a conference, or after the court ordered an assessment for a conference, and the assessment recommended a conference. The fact that cases came to the project after they had been processed by the criminal justice system had at least two implications. First, a lot of damage could have already been done by the criminal justice system by the time a case entered the restorative justice project. This could frustrate the achievement of restorative justice objectives. Second, a particular framework could have been established by the criminal justice system, which would direct and shape the restorative justice intervention. I shall deal with both of these implications, providing examples from my fieldwork.

It appears from records kept within the restorative justice project and conversations with the project workers that in case study 5 the criminal justice system, while processing the case before the conference, has added to the injuries and suffering already caused by the crime. The case in question involved an incident of assault and robbery carried out by a group of boys against another boy. On the advice of their lawyers, the offenders pleaded not guilty, which triggered a criminal trial, with the victim being forced to testify in court. According to conference organisers, the victim interpreted the 'not guilty' plea as a way of the offenders saying 'we did not do it, he [the victim] is lying'. What the victim understood as an accusation of dishonesty was even more painful for him than being assaulted and robbed. In addition, the court process and the interrogation by lawyers was very distressful for him. In effect, the criminal justice process added to the pain and suffering of the victim. The offenders

were found guilty and ordered to attend a family group conference and apologise to the victim. However, the victim refused to come to the conference, which probably was not surprising in the light of the painful experiences he had to go through.

There is no way of knowing what would have happened in this case had it not been processed by the criminal justice system first. But what is certain is that cases like this are probably unavoidable as long as restorative justice depends on the criminal justice system for referrals, and is preceded by the criminal justice system intervention. Achieving objectives of the criminal justice system (in particular, establishing guilt) at least in some situations may frustrate the restorative justice goal of healing victims. Indeed, it may add to the injuries caused by the crime.

Another case where a prior intervention of the criminal justice system had compromised the achievement of restorative justice objectives was case study 4. In that case a restorative justice encounter took place after the offender had served his prison sentence. It was suggested at the conference that perhaps the offender should do some work for the victims to repair, at least partly, the damage he had caused. The offender refused to work for the victims, because he felt that he had already been punished enough for his crime. Had it not been for the earlier intervention of the criminal justice system, perhaps the offender would have been more inclined to try to repair some of the damage he had caused, and thus bring the resolution of the case closer to the restorative justice ideal.

Somewhat similarly, the offender's parents in case study 14 objected to their son writing a letter of apology to his victims because they felt it was an additional

punishment on the top of imprisonment⁴. Again, had the criminal justice system not intervened prior to the conference, perhaps writing a letter of apology to victims would have not been seen as an excessive punishment.

The second implication of the criminal justice system being the source of referrals for a restorative justice program is that by the time a case enters the restorative justice project, a lot of definitional work has already been done by the criminal justice system. In particular, what constitutes 'crime', who is the 'victim' and who is the 'offender' in a given case, or the very fact that there is a 'victim' and an 'offender' in a particular situation has already been determined within the framework of criminal law (cf. Shearing 2001).

Since the criminal justice system does the definitional work and pre-establishes the framework within which the case will be responded to, it effectively directs and shapes the restorative process and outcomes (see Dignan (2005:173-5) for discussion of this problem). In some cases, this may be deeply problematic. This can be illustrated by some examples from my research.

Case study 8 involved an assault by one girl on another girl from the same school. The girl defined by the criminal justice system as an 'offender' could not be interviewed. However, it appeared from conversations with the restorative justice project workers that the girl defined by the system as an 'offender' in reality was a victim, and the girl defined as a 'victim' was in reality an offender, who bullied the other girl for a long time and started a fight on the occasion leading to the criminal

⁴ See chapter 8, section 'Apology' for relevant quotes.

prosecution. Thus, the event was taken out of context, and by the time the case came to the restorative justice program, labels 'victim' and 'offender' had been already attached, and the framework within which the case was responded to had been pre-established.

Case study 9 involved damage by fire of school buses and the administration part of a school. The 'offender', a student from the same school, had been severely bullied by students from his school. He complained to teachers about bullying, but teachers did not help him. In fact, they blamed him for provoking the bullying. The 'offender' and his brothers decided to damage school buses on which the bullies travelled to the school. The boys hoped that it would prevent the bullies from getting to the school. Damaging the administration section of the school was a way of retaliation against teachers who ignored the complaints of the 'offender', and, instead of helping him to stop the bullying, blamed him. The 'offender' and his brother were prosecuted, punished and ordered to attend a family group conference, where they had to apologise to school authorities for the damage they had caused.

What seems to have happened in this case is that the imposition of the criminal justice classification of 'victim'/'offender' distorted more than revealed. Attaching the labels 'victim'/'offender' failed to capture the complexities of the case and presented a rather misleading picture of the events. The criminal justice system completely ignored the events which had preceded – and to a large degree led to – the damage to the school and the school buses. The system apparently pulled one event – criminal damage – out of a deeper terrain, and defined the criminal damage as the only event worth attention. The system classified the brothers as offenders, and took no notice of

those who had severely bullied one of them. The case came to the restorative justice project with definitions already attached and the framework already pre-established, and the conference proceeded within the pre-established framework.

When a restorative program gets referrals from the criminal justice system, restorative justice effectively operates as an extension of the system. In effect, restorative justice is being dictated to by the criminal justice system regarding the distinction between 'victim' and 'offender', the definition of 'crime' in a given case, and how cases should be dealt with. This is particularly problematic in the light of the claims made by restorative justice advocates that restorative justice is an 'alternative' to the traditional way crime is being responded to.

However, I would like to finish this subsection on a slightly more optimistic note. There was some evidence in case study 8 hinting at a possibility that during the family group conference information could be revealed, which could challenge the definitions imposed by the criminal justice system and bring to the attention the events which preceded the criminal assault. In that case the conference never took place, but a person who did the preparatory work for the conference and with whom I discussed the case believed that had the conference taken place, perhaps it could bring to light the fact that the 'victim' started the fight on the occasion leading to the criminal prosecution and the conference, as well as the fact that the 'victim' continually bullied the 'offender' over the years. It was also suggested by the conference organisers that the 'victim' feared that information unfavourable to her would be disclosed during the conference and would become known to her parents. That fear prompted her to take steps in order to prevent the conference taking place.

So, the 'victim' approached the 'offender' a few days before the conference in the school, apologised to her and proposed that they should become friends. The surprised 'offender' accepted the proposal. At the request of the 'victim' and with the consent of the 'offender' the family group conference was cancelled.

Had the conference gone ahead, it could well be that information disclosed there would have led to the conference participants re-considering who was the 'victim' and who was the 'offender' and looking at the incident of an assault leading to the conference in a somewhat different light. The conference could have enabled the truth to emerge and the reputation of the 'offender' to be cleared in the eyes of the conference participants and perhaps some others.

Is there a problem, then? If there is a potential that during conferences the misapplied labels could be challenged, is there still a ground for concern? There probably is, for at least two reasons. First, if a case comes to the restorative justice project after it had been processed by the criminal justice system, and during the conference it transpires that, say, a person defined as 'offender' was not as culpable as the criminal justice system made it appear, this would not lead to the removal of a criminal record of the 'offender'. Thus, had the conference in case study 8 taken place, the reputation of the 'offender' could have been cleared in the eyes of those who attended the conference and maybe some others (which, no doubt, is very important), however, she would still have a criminal record. Secondly, it is far from obvious that the evidence challenging the definitions imposed by the criminal justice system would necessarily come to light and would be taken seriously. Case studies 7, 9 and 12 provide examples. In those cases the offenders did not see themselves as offenders. Some of them attempted to

challenge the accusations against them, but no one wanted to listen to them (case studies 7 and 9). One offender did not even attempt to present his side of the story, because he thought no one would believe him, given that he had already been convicted by the criminal justice system (case study 12).

(c) Dependence on the criminal justice system for legal definitions of crime

It appears from the restorative justice discourse and the vast majority of restorative practices that the concept 'crime', as understood within the framework of criminal justice system, is essentially preserved by some restorative justice advocates, especially those who fall within the 'reformist' strand (see chapter 3). The assumption underlying the concept 'crime' that problematic situations labelled 'crimes' are fundamentally different from other problematic situations is retained as well. As argued by the 'radical' restorativists (chapter 4), the consequence of adopting the framework of criminal law is that whatever falls within the legal definitions of 'crime' is being placed within the scope of restorative justice, while other instances of injustices, violence, hurtful and harmful behaviour are considered to be outside restorative justice (as long as no obvious breach of criminal law is involved). This creates artificial distinctions between legitimate and illegitimate instances of violence, harms, and problematic situations, and arbitrarily limits the scope of restorative justice (Sullivan and Tifft 2001, 1998, 2000a, 2000b, Pavlich 2005).

Consistently with the 'reformist' model, the project of my research functioned within the framework of criminal law and thus limited the scope of restorative justice to situations which had attracted legal definitions of crime. Some of my case studies can

serve as examples of problems arising when restorative justice accepts the authority of criminal law.

In case study 13, an incident of an assault by one girl on another girl was defined as crime. Therefore, it fell within the scope of restorative justice. However, the events which preceded and triggered the assault – continual bullying of the victim by a group of girls over many years – escaped the legal definition of ‘crime’. Consequently, those events fell outside the ambit of the restorative paradigm. No doubt, the incident of assault which led to the restorative justice conference was hurtful for the victim. However, it appears from interviews with the victim and her mum that even more hurtful was the continuous bullying over the years. To avoid the bullying, the victim had to change several schools. She was too afraid to go outside her house, unless accompanied by her mum. The girl stopped going to school and often did not leave home for weeks. Eventually, she had to move to another town and stay with her father, which meant she had to live separately from her mum and siblings.

Case study 7 also demonstrates the artificial distinction between legitimate and illegitimate violations of people resulting from the adoption of legal definitions of crime, and shows how the scope of restorative justice may be limited as a consequence of criminal law determining what should fall within the restorative paradigm, and what should fall outside. We learn from that case that keeping a person for 19 hours in a police cell and releasing him without any charges being brought – and then an hour later forcing him to attend a restorative justice conference, where he has to apologise for something that he felt was a right thing to do – is legitimate and thus falls outside the scope of restorative justice. A situation where a 16 year old boy

has nowhere to live and goes without food for several days is legitimate and thus is outside the scope of restorative justice. Bullying of the local youth by a police officer is not defined by the criminal justice system as 'crime' and therefore is outside the ambit of restorative justice. Beating up a person fails to be classified as 'crime', and thus falls outside restorative justice, if the individual who does the beating up wears the police uniform. Yet, pushing a police officer in order to stop him beating up a person is considered a crime and thus within the restorative paradigm.

A broader implication of restorative justice adopting the legal definitions of crime and accepting that some violations of people are legitimate and others are not – depending on whether or not they have been proscribed by criminal law – is that the scope of restorative justice is limited in such a way as to uphold the values and the agenda of the criminal justice system.

In this section I have put forward empirical findings which demonstrate that the reliance of restorative justice on the criminal justice system for funding, referrals and legal framework is problematic. My findings suggest that 'reformist' advocates of restorative justice (chapter 3) might be overlooking some of the dangers and tensions which arise as a result of the dependence of restorative justice on the criminal justice system. My findings also offer empirical support for the theoretical arguments put forwards by the restorative 'radicals' (chapter 4) who are critical of the dependence of restorative justice on the existing system.

(3) Individualising and neutralising conflicts

It is a fundamental tenet of the restorative justice philosophy that crime ruptures human relationships, and 'healing' that relationship, a reduction of hostility and a creation of a positive and peaceful relationship should be one of the main concerns of justice (Zehr 1990, Claassen 1995, Mika and Zehr 2003). In chapter 3, I argued that one of the defining features of the restorative 'reformism' is the generally held belief that crime presents 'a threat to peace and safety in community and a challenge for public order in society' (Declaration of Leuven). So, the objective of restorative justice should be to restore peace, order and social harmony disturbed by crime.

However, is it *always* desirable to 'heal' the relationships ruptured by the crime, so as to reduce hostility, create peace between individuals involved and restore the social equilibrium which had existed prior to the offence? Hopefully, some of my empirical findings might shed some light on this question.

The problem with the assumption that a reconciliation of conflicting parties is a universally desirable outcome is that it seems to overlook the fact that a conflict in a particular case may not be necessarily a self-contained dispute or a problem between people directly involved. It is quite possible that the conflict may be much bigger and deeper, and may have social-structural roots (e.g. poverty, classism, marginalisation of certain individuals and groups, inequalities of power, etc.). A peaceful resolution of an individual conflict may not necessarily reduce the social inequalities which might have generated the conflict in the first place. Yet, it may neutralise and expunge from the society a potentially disruptive conflict with social-structural roots,

thus serving to preserve the status quo, no matter how unjust it may be (Mika 1992, Pavlich 1996a, 2005, Dyke 2000).

I do not have solid evidence demonstrating neutralisation and individualisation of conflicts with social-structural roots within the project of my study. However, in some cases I dealt with there appeared to be some hints which might suggest that what in reality could be social problems were effectively reduced to interpersonal and individual problems and responded to accordingly.

In case study 9 (criminal damage by fire to the school and the school buses), the offenders' mother said in the interview that her kids were bullied because other children knew certain compromising facts about the family background. She also said the bullying was not stopped by teachers in the school, and that her kids got blamed for being bullied due to prejudices on the part of teachers (the offenders were from a poor family). From the interview with the mother:

OS: You know, if you've got money, then the kids are all right in that school.

Q: Why?

OS: Because they flash their cheque books every now and then. You know, pay for this, pay for that. I mean, I can't pay for school trips. I mean, a lot of kids know us anyway, and bully because of that. I mean, they know about my husband...

The above extract from the interview might hint at much more serious problems than the wrongdoing, which was defined as 'crime' – criminal damage – and deserved all the attention. Yet, when the case was responded to, the source of the problem was believed to be within the boys who set the school and the buses on fire, and broader

social problems which could underlie the event of the criminal damage were effectively ignored.

Case study 8 might be another example of a situation where the problem might have been much more serious than the criminal justice system defined it. There is some evidence (mainly conversations with conference organisers and notes kept in the restorative justice project) pointing to a conflict much deeper than a fight on a particular occasion between two girls. It appears that one of the girls (defined by the criminal justice system as a 'victim') was from a middle-class well-off family, and the other (correspondingly defined as an 'offender') – from a disadvantaged low class family. The 'victim' looked down upon the 'offender' and made fun of her dressing style, music she listened to, as well as her attitudes and values. What in reality could well have been a conflict with social-structural roots – classism, social prejudices and discrimination – was reduced to an interpersonal conflict between the two girls. The achievement of reconciliation between the girls – the ultimate goal of restorative justice – has hardly reduced prejudices, discrimination, inequalities and injustices at the social-structural level. The existing inequalities were preserved and protected through quickly and effectively neutralising and expunging from the society a potentially disruptive conflict. The discussion of politically controversial issues was evaded by presenting the problem as an interpersonal dispute. A peace accord was concluded between two people whose interests might be in much lesser harmony than mediators facilitating their reconciliation made them to believe.

Case study 14 might also provide an example of a restorative justice intervention diffusing and trivialising conflicts that could be the result of wider social structures

and inequalities. I attended the family group conference in that case and noticed that, when asked by victims why they committed burglaries, the offenders explained that they did not want to be looked down upon — or excluded from — a group of friends simply because they could not afford to buy certain things. They committed burglaries to obtain money necessary to buy designer clothes, cigarettes and some other items they felt they needed to maintain a certain status in the eyes of their mates.

The case was responded to on the assumption that it involved an interpersonal conflict between the victims and the offenders, and resulted from individual problems located within the offenders. However, there is a possibility that in reality what gave rise to the crime were much deeper social problems (economic inequalities, materialistic values in the society, social prejudices, etc.).

There is a potential danger that through reframing wider social problems as intra- or interpersonal ones, conflicts stemming from social-structural inequalities may be efficiently neutralised, and potential challenges to inequalities of wealth and power in the society may be prevented.

It may be argued that the above examples do not demonstrate a problem inherent in restorative justice. All they demonstrate is that the process dealt only with one aspect of the problem and overlooked others. I would suggest that neutralising and individualising conflicts may or may not be inherent in restorative justice, depending on how restorative justice is conceptualised and practised. If restorative justice accepts the authority of criminal law, upholds the agenda of the criminal justice system, and is narrowly conceived and reduced to practices, such as victim-offender-

mediation programs or family group conferences, which occur under the aegis of the criminal justice system, trivialisation and diffusion of conflicts with social-structural roots is likely.

Some additional evidence supporting the claim that wider and deeper social problems and conflicts could be individualised and neutralised within the context of my study is that only those are allowed to participate in restorative justice processes who are likely to endorse and support values of the criminal justice system. People who could potentially challenge those values and whose participation could potentially influence the process of the conference in a direction deemed undesirable by the criminal justice system tend to be effectively excluded from conference participation. It is quite possible, for example, that the discussion focus during the restorative justice conference in case study 14 could have been different had the offenders' friends been invited to participate. Yet, their participation was prevented and thereby a discussion of politically contentious issues was avoided. Voices of people whose property rights were violated were heard, the wrong done against them was acknowledged, and the values of respect for property were upheld. Voices of those who could tell what it is like to be a young person from a low class family in a society ridden with inequalities of wealth and power were effectively silenced.

Somewhat similarly, in case study 7, there were people whose participation could potentially bring perspectives and views very different from those that were presented in the conference, which was controlled by professionals and dominated by adults. Had kids from the local community who were allegedly bullied by the police officer been invited to attend the conference, a new angle could have emerged from the

conference. Instead of focusing on values of authority and respect for those in power and further silencing voices of those who are already disempowered and marginalized, the restorative justice conference could have uncovered abuses of power, oppressions and injustices, and offered a forum for a political debate. Instead of individualising and privatising the conflict and conceptualising it as a problem located within the individual offender, perhaps a much deeper and wider conflict between the powerful and the powerless in the society could have been unveiled and brought to the forefront of the political arena.

The above examples might be seen as offering some empirical support for the 'radical' critique (chapter 4) which questions the aspiration of mainstream restorativists (chapter 3) to restore peace and harmony in the aftermath of an offence.

Concluding remarks

The findings reported and discussed in this chapter bring to light some problems and tensions within the restorative justice theory, especially the 'reformist' vision of restorative justice. In particular, they demonstrate problems which may result from making reparation of harm an overriding principle of restorative justice (which is one of the key features of the 'maximalist' model within the 'reformist' strand). They also reveal that the reliance of restorative justice on the criminal justice system (which is another defining characteristic of 'reformist' restorative justice) may be problematic, because it forces restorative justice to serve the agenda of the system and uphold its ideology, as well as has negative implications for individual cases. Some of my findings also hint at a possibility that within the context of my study problems and conflicts with social-structural roots could have been trivialised and diffused, which

might give some empirical validity to the 'radical' critique of the mainstream ideas within the restorative discourse.

Chapter 14

A New Beginning at Journey's End?

This thesis began with presenting and discussing some ideas and aspirations of restorative justice proponents. It also identified two distinct strands within the restorative discourse – ‘reformist’ and ‘radical’ (chapters 3 and 4). It proceeded to explore some practical applications of restorative justice (chapter 5). In chapters 7, 8, 9 and 10 I introduced data, which I had collected in the course of my empirical study within a family group conferencing project. In chapters 11, 12 and 13, I engaged with the theoretical debates and revisited the aspirations and promises of restorative justice advocates in the light of my findings. I also analysed and problematised certain arguments and claims made by restorative justice advocates.

So, what are the contributions of this work? What does it add to our knowledge and understanding of restorative justice?

Before I revisit my data and share some of my thoughts about the findings, I want to remind the reader that the size of my study prevents me from making any statistically significant claims about restorative justice. But making such claims is not really my ambition. Rather, what I am aiming at is adding to the restorative justice debate some experiences and perceptions of my interviewees and some arguments based on my interpretations of the insights and views which the interviewees have confided to me.

(1) Restorative justice in the eyes of proponents and participants

One significant issue that seems to emerge from my data is the discrepancy between the meanings which restorative justice theorists attach to certain actions and the interpretations of those actions by lay participants in restorative justice interventions.

a) Whose concept of punishment?

One example of such divergence of understandings is the question of whether restorative justice is an alternative to punishment or an alternative form of punishment. While heated conceptual debates of this issue are taking place within the discourse on restorative justice (Walgrave 1999, 2000, 2001, 2002, 2003; Wright 1991, 1996, 1999; McCold 2000, Bazemore 1996; cf. Daly 2000, 2002; Barton 2000; Duff 2002, 2003, Johnstone 2002, Dignan 2002), the vast majority of the participants in restorative justice conferences whom I have interviewed did not see restorative justice interventions as a form of punishment. Rather, they saw it as a measure designed to help offenders by making them realise the consequences of their actions.

It is particularly interesting that the vast majority of offenders did not understand conferences as a form of punishment, given that most of them were ordered by the court to attend the conference and apologise to victims, and offenders realised that a refusal to attend a conference could lead to them being taken back to the court and punished.

It appears that the meaning which participants in restorative justice conferences attach to the concept 'punishment' differs from the meaning attached to it by certain restorative justice theorists. Painful and unpleasant sanctions, which are ordered by

the court in response to a criminal offence, and which can be judicially enforced, may not necessarily be seen as a punishment by people who have been subjected to those sanctions.

How can this finding be explained? One possible explanation is that the model of power employed by conference facilitators (see chapter 12 for more details) could have masked the essence of the sanctions. Despite the fact that conferences were usually court-ordered, conference organisers refused to resort to openly coercive and repressive methods in making offenders participate and apologise in conferences. Rather, they employed a different – less visible – model of power. This power aimed not at constraining and repressing legal subjects but at producing a particular type of individual selves with certain aspirations and attitudes.

During pre-conference private meetings, conference organisers behaved towards offenders in a friendly, caring, sympathetic and understanding fashion. This discouraged resistance and opposition on the part of offenders, and served to encourage them to reveal their thoughts and feelings and submit to the care and guidance of facilitators. A consent to participate in a conference and apologise to victims was secured by facilitators not through threats of legal punishment, but through the use of much more subtle means. Facilitators promised to offenders various benefits (e.g. attending a conference will help to put the offence behind and move on, it would help the offender to stay out of trouble in the future and to make the most of their lives, etc.). Through skilful questioning, probing, reframing and rephrasing offenders' statements, focusing offenders on certain issues, praising and encouraging them, and using other invisible techniques, conference facilitators

carefully constructed particular self-identities and subtly pressurised offenders to embrace them. These identities were of empathic, repentant and forgiveness-seeking individuals who have realised their past mistakes and who desire to make amends and change their behaviour and attitudes in the future. If offenders did embrace such self-identities, they would believe that they attended a conference and apologised to victims not so much because they had to do it, but because they wanted to.

During the actual conferences, facilitators continued to employ the same mode of power as that employed by them at the pre-conferencing stage. During the first part of the conference, facilitators presented themselves as neutral parties, delegated the disapproval of the offending behaviour to victims and refrained from criticising offenders and expressing their personal views on what had happened. During the second part of the conference, facilitators acted as people caring for the offender's well-being and willing to provide the best help they can to enable offenders to make the most of their lives. As a consequence, an image of conference organisers as friends and helpers caring for their well-being, rather than punishers, was created in the eyes of offenders.

Other professionals participating in conferences – Youth Offending Team workers and social workers – also presented themselves as friends and carers, desiring to help offenders.

Also, a somewhat similar image of victims – the image of helpers – seems to have been produced in a number of cases (not without the assistance of conference facilitators who, just like in dealings with offenders, had employed a whole array of

subtle techniques to craft particular self-identities of victims). During conferences offenders met people whom they had wronged, but who, contrary to expectations of many offenders, instead of being abusive and revengeful, were respectful and often understanding and forgiving. Offenders saw people who had sacrificed their time and came to meetings from which a number of them did not seem to derive any obvious benefits for themselves. They came to conferences because they wanted to help offenders. Some victims shook offenders' hands after the conference and wished them well. Some even started crying, touched by the offenders' apology. Some victims tried to comfort crying mothers of offenders. One victim offered the offender an apprenticeship in his company. Another victim gave the offender a lift and offered him free driving lessons during weekends. Such forgiveness, kindness, generosity and altruism made it difficult for offenders in a number of cases to see victims as punishers.

Also, the fact that offenders were allowed to play an active role in the process, contribute to discussions and perhaps even have some say over the plan developed in the second part of the conference did not appear to 'correspond with their understanding of punishment (as something that is imposed 'from above' on a passive recipient by an authority figure). Important in this respect was the fact that conferences were conducted in an informal and hospitable atmosphere which was designed to underscore the non-hierarchical and participatory nature of the process¹.

¹ Thus, participants usually sat in a circle, they usually introduced themselves by their first names, drinks and snacks were provided, during coffee breaks people could mingle and chat, facilitators tried to make participants feel comfortable and relaxed.

The respectful, friendly and caring attitude on the part of conference facilitators, YOT and social workers, the understanding and kindness on the part of victims, the openly expressed desire by most conference participants to help, and the relaxed and hospitable atmosphere during conferences discouraged offenders from interpreting conferences as punishment. Offenders saw a marked contrast between the treatment they received during conferences and the treatment they were subjected to in the police station following the arrest, in the court, and in prison (for those who were imprisoned)². The hospitality and care they experienced during conferences did not seem to fit well with their idea of punishment.

(b) Whose understanding of coercion?

Another discrepancy between the interpretations of events and experiences by restorative justice theorists and some participants in restorative justice interventions relates to the concept of coercion. It is claimed by certain restorative justice advocates that restorative justice is characterised by a voluntary process, which fundamentally distinguishes restorative justice from the repressive and coercive legal process (Marshall 1996, McCold 2000, the Restorative Justice Consortium 2002, UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Council of Europe Recommendation N R (99) 19 of the Committee of Ministers to

² A leaflet which offenders were given before conferences contained quotes which could serve to reinforce the contrast between the treatment which offenders get within the criminal justice system and restorative justice: 'In court I didn't say nothin', let the lawyer talk. It seemed like no one cared – everyone just doing their jobs. Now with Restorative Justice people care – I speak up and it makes a real difference. Now I'm part of the community here.' 'I had good intentions coming out of jail, but as you walk out ... your only identity is as an offender. But in Restorative Justice you are recognised as a community member. You see people who are willing to help...'

Member States Concerning Mediation in Penal Matters). However, some of the offenders and their supporters I interviewed did not feel that their participation in the restorative process was completely voluntary, even when conferences were not court-ordered. They felt that people organising the conference and the Youth Offending Team workers were 'quite pushy' (using words of one offender) in trying to persuade them to attend a conference. A degree of informal pressure was exerted over them, which made them agree to participate in conferences, even though they did not particularly want to do so.

It appears that when certain restorative justice proponents – 'purists' in particular (chapter 3) – claim that the restorative justice process is voluntary, they seem to equate coercion to formal judicial coercion, backed up with legal sanctions. What seems to be overlooked is that coercion need not come from state authorities and need not have the force of the law attached to it. It may take a very different form, yet secure the same results – obedience and compliance – without resorting to forceful legal methods. The insights of the interviewees who felt that their consent to participate in conferences was obtained through subtle informal pressures suggest that the claims that restorative justice process is voluntary present a misleading picture of the restorative justice process.

(2) Some other insights of conference participants and observations

My interviewees had some other important insights to add to the debate about restorative justice. I shall discuss some of them, as well as some of my own observations which I made during the fieldwork. A particular focus will be on the insights of interviewees and my observations relating to the role of professionals,

empowerment of stakeholders, the role of victims, the importance attached to offender rehabilitation within restorative justice, and the declared goal of restorative justice – reparation of ‘harm’ presumably caused by crime.

a) The role of professionals

Advocates of restorative justice aspire to return to stakeholders in crime the conflict ‘stolen’ from them by professionals (McCold 2000, Braithwaite 2003a, Zehr 1990). My interviewees, however, did not see the restorative justice process as lay-oriented and ‘de-professionalised’. Far from it, a number of them pointed out that they were impressed with a number of professionals present in the conferences. Apparently, they appreciated the care and help provided by conference facilitators, YOT and social workers. They have also noted the guiding role played by the conference coordinators and YOT case-workers in helping the families to develop prevention of re-offending plans, as well as the resources provided by the YOT to keep kids out of trouble. I was also impressed with the number of professionals present at the conference I observed, and did not feel that lay-orientation or ‘de-professionalisation’ would be a correct description of the restorative justice process.

It appears that when proponents claim that the restorative justice process is ‘de-professionalised’, they attach a particular meaning to the concept of ‘de-professionalisation’. It seems that ‘de-professionalisation’ is understood as an absence of legal professionals who push stakeholders in crime off the stage, ‘rob’ them of their conflicts and problems, deprive stakeholders of an opportunity to participate in finding solutions to their disputes, and impose decisions on stakeholders. Professionals, however, need not resort to such drastic methods in order

to control the process and mould the outcomes of a restorative justice encounter. Much more subtle techniques and much less visible forms of power may be employed in the management of the conferencing process and shaping its outcomes.

'De-professionalisation' is therefore not a characteristic of the restorative justice process. Rather, the process is characterised by a *transformation* of the role of professionals and an adoption by professionals of a different model of power. This model of power no longer aims to constrain and repress legal subjects. Rather, it aims at moulding the individual's behaviour through subtle techniques of discipline, and shaping the individual's attitudes and subjective aspirations through pressuring the individual to embrace a particular self-identity (Pavlich, 1996a, 1996b). During private meetings preceding conferences and during actual conferences, the role of professionals is to diagnose and classify the problem, articulate the visions of individual selves which stakeholders in crime need to adopt if the problem (as defined by the professionals) is to be resolved, assist the stakeholders in accepting particular self-identities, and guide their actions during the conferencing process towards desired outcomes.

Importantly, the exercise of this mode of power would not be possible if individuals subjected to it were pushed out of the problem-resolution arena. Rather, it requires an active participation of such individuals³. During private meetings before conferences and during the actual conferences, individuals need to reveal their feelings and thoughts relating to a problematic situation which led to the conference. With the

³ Hence the finding that the vast majority of participants felt involved in the conferencing process (chapter 8).

assistance of facilitators, conference participants need to perform an ethical introspection in order to identify the aspects of their selves which should be changed if the problematic situation were to be resolved. Then, conference participants need to transform their present selves and embrace particular self-identities in relation to a particular problematic situation.

(b) Empowerment of stakeholders?

Restorative justice advocates praise restorative justice for empowering stakeholders in crime to resolve their problems the way they wish (McCold 2000, Marshall 1996, Braithwaite 2003a). Yet, if this claim is looked at in the light of the roles played by professionals within restorative justice and the model of power employed by them in shaping individual identities of conference participants, and in controlling the restorative process and outcomes, the empowerment of stakeholders becomes questionable. It appears that they are 'empowered' to participate in the restorative process and develop outcomes as long as their actions and decisions fit with, and promote, the agenda set out by professionals⁴.

⁴ However, as I have noted in chapter 12, there is some scope for the participants to resist and refuse to adopt the identities which facilitators encourage them to adopt (e.g. the offender in case study 7 who refused to apologise and walked out of the room in the middle of the conference). Yet, it is important to point out that, prior to conferences, facilitators carefully evaluate the attitudes of potential participants, and if it appears that a particular participant is unlikely to adopt a certain self-identity and play the expected role, it is unlikely that the person would be allowed to participate in a restorative justice encounter. Those who have been allowed to participate, yet 'misbehave' during the process get subjected to subtle pressures and micro-punishments by conference facilitators, making them to comply with the roles expected of them and behave in a particular fashion. If this still does not work, a person may be asked to leave the conference, or the conferencing process may be stopped. An interesting question for future researchers to investigate

Within the project where I carried out my study victims were 'empowered' to ask questions and express their feelings (although it could only be done within the framework of the ground rules imposed by facilitators, which could be rather restricting for at least some people). They did not have any real say over the disposal of offenders. They could not attend the second part of the conference as observers, let alone as active participants. That is, victims were empowered only to the extent which did not endanger the monopoly of the criminal justice system over how individual cases should be responded to.

Offenders were 'empowered' to meet victims and say 'sorry'. Yet it is important to look at these opportunities offered to them in the light of the fact that these actions were more often than not court-ordered. It is also important to remember the subtle informal pressures to which conference organisers subjected offenders, trying to make them attend conferences and apologise.

Under the guidance of a conference co-ordinator and a YOT worker families of offenders were 'empowered' to create a prevention of re-offending plan (which had actually been developed to a significant degree by professionals long before the conference and recorded in a pre-conference report (see chapter 11)), to implement that plan, and to ensure compliance with it through utilising informal pressures. That

might be the conditions under which – and reasons why – some people reject the self-identities which conference facilitators encourage them to embrace and refuse to play the roles assigned to them by facilitators in the restorative justice process.

is, families were 'empowered' to assist the state in governing their kids, helping to ensure that they become law-abiding subjects.

One more interesting finding revolves around the idea of stakeholder empowerment and the 'de-professionalisation' of the restorative justice process. The 'passive' role of 'neutral' facilitators adopted by conference organisers during the first part of the conference made several victims feel uncomfortable. Facilitators delegated disapproval of offending behaviour to victims and refrained from expressing their personal views. Some victims wished that instead, they would have actively engaged in the disapproval and stated their professional opinion. Perhaps this insight needs to be considered by restorative justice proponents who advocate assigning a 'neutral' and 'passive' role to facilitators. Clearly, this type of role is not necessarily what all victims want. Some might feel uneasy, being the only people in the conference to express dissatisfaction with offending behaviour, and might want to have people in a position of authority to join them in reprimanding offenders.

But, of course, if facilitators discard their 'neutral' role and join victims in active disapproval of the offending behaviour, in the eyes of offenders they may no longer be 'carers' and 'helpers' to whom they could reveal their thoughts and aspirations. The offenders would be less willing to submit to the guidance of facilitators in the process of structuring their self-identities in relation to the situation leading to the conference. This would seriously reduce the chances of success by facilitators in procuring the attitudes and behaviour on the part of offenders, which is necessary for the achievement of the desired by facilitators outcomes. In other words, the 'neutral'

role⁵ adopted by facilitators diminishes the possibility on resistance on the part of offenders.

(c) Offender rehabilitation

Another interesting insight offered by my interviewees concerns the importance attached to offender rehabilitation within restorative justice. It appears from my findings that the vast majority of interviewees thought that the purpose of conferences was to make offenders understand the consequences of their actions with the hope that this understanding will prevent them from doing similar things in the future. Making offenders realise the wrongfulness of their behaviour was also the most frequently mentioned reason why victims agreed to attend conferences. Also, among the main achievements of the conferencing process the most frequently mentioned one was making the offender appreciate the human costs of their actions and the belief that this may stop re-offending.

A number of interviewees thought that the only, or at least the main, beneficiaries of the conference were offenders. Several victims felt that they were invited to

⁵ Although facilitators may present themselves as 'neutral' parties and may succeed in making participants believe that they are not taking sides, it is far from obvious that the role they play is indeed 'neutral'. The very fact that they facilitate a problem which had been pre-defined as crime by the criminal justice system and where there is a guilty party – the offender – and an innocent party – the victim – makes the neutrality of facilitators questionable. Facilitators (tacitly) adopt the definitions attached by the criminal justice system, and a restorative encounter is facilitated within the framework pre-established by the system. This framework presupposes that the victim and the offender are not equal parties (cf. mediation in civil matters, although some question the 'neutrality' of mediators even in civil matters: Pavlich 1996a)).

conferences to help keep offenders out of trouble, rather than get any benefits for themselves.

If one combines these findings with the fact that the second part of the conference was dedicated solely to the prevention of re-offending, and also considers the content of pre-conferencing reports (a substantial part of which focused on identifying needs and problems of offenders and suggesting ways to meet those needs and solve problems), the alliance of family group conferencing and the offender rehabilitation paradigm becomes noticeable.

It needs to be pointed out that this (over?)-emphasis on offender rehabilitation fits rather well with the role of guides and carers adopted by professionals within the restorative justice process and the model of power employed by them – the power aimed not at repressing and constraining legal subjects, but at governing individual behaviour through subtle techniques of discipline and structuring individual mentalities.

It also needs to be said that the prominent role allocated to offender rehabilitation probably should not be surprising, given the policy context within which the project operated. The legislative framework was provided by the Crime and Disorder Act 1998, which defines the overarching mission of the youth justice system as prevention of offending (section 37).

(d) The role of victims

What do my findings tell about the role of victims in restorative justice encounters? Can the project where I carried out my study claim the title of a victim-centred justice? My data send rather mixed messages. There is some evidence indicating that victims were indeed allocated a central role, yet there is other evidence suggesting that certain needs and interests of victims were effectively ignored.

An important finding in this context is that a number of victims believed that the main, or even the only, beneficiaries of the conferencing process were offenders. Victims believed that they were invited to positively influence offenders and help them stay out of trouble. That is, some victims felt that they were used (even though with their own consent) to rehabilitate offenders.

It is noteworthy that victims were expressly assigned a very specific and limited role within the restorative process. During their private meetings with conference organisers and in the information pack they received it was explained to victims that they would be allowed to tell offenders how they felt, how the crime had affected them, and to ask questions. That is, clear limits were placed on the role which victims were expected to play. Whether through accident or design, the limits on their role were placed in such a way as to avoid a potential challenge to the monopoly of the criminal justice system over the disposal of offenders. Victims had no real say over how offenders should be dealt with. All they were entitled to was to ask a few questions and tell offenders how they felt. Incidentally, educating offenders about consequences of their actions served to promote the objectives of the criminal justice system, because it might invoke empathy in offenders and prevent them from doing

similar things in the future. Also, the unpleasant experience of having to face victims and answer their questions might deter offenders from further wrongdoings.

Victims were informed that family group conferencing was a new program, which allowed them a greater say than the 'traditional' criminal justice process⁶. Thereby victims were assured that they were luckier than other victims who did not have an opportunity to participate in a restorative encounter. Perhaps the knowledge that they were luckier than many others would prevent victims from feeling that the role they were allowed to play was in reality insignificant, and some of their needs were ignored.

(e) Reparation of 'harm'

It appears from the restorative justice discourse that a number of leading advocates of restorative justice – especially those subscribing to the 'maximalist' model within the 'reformist' strand – see reparation of 'harm' presumably caused by crime as an overarching goal of restorative justice (Bazemore and Walgrave 1999, Declaration of Leuven 1997, Van Ness and Strong 2002, Zehr and Mika 1998). Such conceptualisation of the objectives of restorative justice appears to be based on the assumptions that crime causes 'harm' and 'doing justice' requires reparation of that harm.

⁶ The information pack given to victims before conferences described restorative justice as 'a new approach to resolving crime' which enabled victims 'to have a greater say'. It also claimed that within restorative justice '[v]ictims ... have much more influence than they would have in the Courts and the outcomes are more acceptable to them'.

My empirical findings suggest that such assumptions are very problematic. In many criminal offences, it is not obvious that harm has resulted or at least it is not obvious in what sense harm has resulted. In such cases there may be nothing obvious to repair. But even if 'harm' clearly has been caused, it is not obvious whether its reparation is always desirable. Far from improving the situation, attempts to repair the presumed 'harm' may lead to negative results.

Those who believe that restorative justice should operate in the name of reparation of 'harm' also seem to overlook the fact that reparation of 'harm' would involve restoration of the status quo, which may not necessarily be just and equitable. If the status quo was oppressive and unjust, reparation of 'harm' would effectively restore and perpetuate pre-existing dominations and inequities. One of my case studies illustrates this problem.

Also, pre-defining the goal of restorative justice as reparation of 'harm' narrows the scope of issues which potentially could have been discussed in deciding how crime should be responded to, and thereby significantly limits – if not eliminates – the opportunities for ethical and political debate which could have taken place in the aftermath of the offence. When discussions of politically contentious issues are avoided – and some of my findings indicate that this did happen in the restorative project of my study – the potential of restorative justice to challenge the existing injustices and bring about meaningful social changes is severely restricted.

(3) The relationship between restorative justice and the criminal justice system

(a) Implications of dependence of restorative justice on the criminal justice system

There were some findings concerning the relationship between restorative justice and the criminal justice system which deserve some discussion. The restorative justice project where I carried out my research was dependent on the criminal justice system in a number of important ways. Firstly, the project was funded mainly by the criminal justice system, which put certain pressures on the project workers. Secondly, the project depended on the system for referrals, which meant that only cases which satisfied certain criteria set by the criminal justice system came to the project. It also meant that by the time a case came to the restorative justice project, a framework within which the case would be responded to had been already established, the problem had been defined within the framework of criminal law, and labels 'victim' and 'offender' had been attached to people involved. The combined effect of these factors was that the restorative justice project effectively functioned as an extension of the criminal justice system, complementing the system in achieving its objectives, rather than serving as an alternative to it.

This is problematic for a number of reasons. One problem with restorative justice being a complement to the criminal justice system is that it has serious implications for individual cases. Examples have been put forth as to how the rigid framework of criminal law, within which restorative justice was forced to operate, failed to capture the complexities of each individual case, and how the criminal justice system, by performing the definitional work before a case came to the restorative justice project, had shaped the restorative justice process and influenced outcomes.

Some of my findings suggest that restorative justice operating within the legal framework and acting as an extension of the criminal justice system might serve to individualise problems and neutralise conflicts which may have social-structural roots. What in reality may be a deeper social problem gets reduced to inter- and intra-personal problems and responded to accordingly. The consequence is that a problem is 'resolved' in a way congruent with the agenda of the criminal justice system, a conflict is quickly expunged out of the society, a possibility of a collective challenge to the legal system is prevented, and social injustices and inequalities, which may have given rise to a particular conflict, are preserved.

Another implication of restorative justice being a servant to the state justice system is that it enables the state to exercise effective control over troublesome individuals, but to do so in an invisible fashion. As I have argued earlier, restorative justice professionals, by utilising subtle techniques, shape the behaviour and aspirations of participants in the restorative justice process, putting pressure on participants to play certain roles and adopt certain attitudes. Take victims, for example. Part of the self-identity they are invited to adopt involves a belief that crime is a 'community problem', for which the 'responsibility lies with the community'⁷. If victims

⁷ The information pack handed to victims by conference organisers. The pack contained a number of quotes encouraging members of 'community' to accept that crime is their problem for which they should take responsibility. Some examples: 'I never saw it as a community problem before. I always blamed the parents, but now I have seen the truth and responsibility lies with the community to support its people, especially families.' or 'Restorative Justice belongs to everyone. It is a chance to begin to do what we must as a community, to take responsibility for what happens in our community. We've got to do the best we can. It's not good leaving it up to others to do it.'

internalise this belief, they may assume a greater responsibility for preventing crime in their 'communities', and rely less on the criminal justice system. Thus, the objectives of the criminal justice system in governing troublesome individuals may be secured through victims acting as agents of the state. In a somewhat similar fashion, offenders' families who, under the guidance of conference co-ordinators, develop prevention of re-offending plans and then implement them, effectively act as agents of the state, governing their kids on behalf of the state. In the eyes of offenders, disapproval of their offending behaviour comes from victims, and the enforcement of a certain conduct comes from their families, rather than the state. If this would provoke resistance and rebellion on the part of offenders, the rebellion would be directed at their families and other community members, rather than the state. Thus, with the assistance of restorative justice the state exercises control over certain individuals, but does it in a masked form, without risking resistance.

The above findings and arguments are significant in the context of the 'radical'/ 'reformist' debate discussed at the beginning of this thesis. As I have argued, the reformist strand presumes a considerable dependence of restorative justice on the criminal justice system for a legal and institutional framework, as well as funding and referrals. The 'radicals' are critical of such dependence, however, their arguments tend to be purely theoretical. My findings may offer some empirical support for the 'radical' position.

Judges' [sic] do care and want to help, but we've got to do it ourselves. These are not only Judges' problems, they are community problems'.

(b) Restorative 'maximalism' and 'purism'

In chapter 3 of this thesis I described some important debates which took place between certain leading restorative justice proponents. One of those debates related to the question of the relationship between restorative justice and the criminal justice system. Two models of how restorative justice could develop were proposed. Proponents of one model ('maximalist' restorative justice) believe that the most promising way forward for restorative justice would involve incorporating it within the criminal justice system as a sentencing option. Where face-to-face restorative justice encounters between crime stakeholders are impossible or undesirable, judges would order offenders to repair harm. It is argued that only then can restorative justice present a true challenge to the present repressive criminal justice system (Walgrave 1999, 2000; Bazemore and Walgrave 1999). This model was criticised by proponents of the so called 'purist' model for bringing judicial coercion into the restorative paradigm and consequently not presenting a true alternative to the existing coercive and repressive paradigm or justice. It was suggested that a better way forward would be to limit restorative justice to voluntary informal programs operating by way of diversion from the criminal justice system. If this were done, restorative justice would stay 'pure' and free from the coercive elements of the existing paradigm (McCold 1999).

I propose to look at the 'maximalist' vs. 'purist' debate in the light of my findings and the arguments presented earlier. The project of my study may be viewed as an example of 'purist' restorative justice, because it operated outside the criminal justice

system, receiving referrals from the system, and it was claimed that participation was 'entirely voluntary'⁸.

One suggestion I would like to make on the basis of my findings is that the 'purist' model can hardly claim the mantle of voluntary restorative justice, even if it does not define judicial coercion as a restorative practice. It is misleading to argue that restorative justice operating by way of diversion from the criminal justice system is free from judicial coercion, because judicial coercion is looming in the background. If the offender refuses to cooperate with a diversion program, he or she is likely to be subjected to judicial coercion. Also, my findings and arguments presented earlier in this chapter (and chapter 11) suggest that the 'purist' model needs to take into account the existence of informal pressures which offenders may be subjected to. When coercion is narrowly defined as judicial coercion, and it is consequently claimed that the 'purist' model is voluntary (because it does not define judicial coercion as a restorative practice), the informal pressures to which offenders may be subjected in diversion programs are overlooked. Coercion need not take form of court orders. It may come from other directions. It may be exercised in a more subtle and masked form, possibly even without people subjected to pressures realising that they are being pressurised.

On the basis of my findings illustrating the implications of restorative justice operating under the aegis of the criminal justice system, I would like to make some other arguments in relation to the 'maximalist' vs. 'purist' debate. I suggest that neither of the models presents a true alternative to the existing criminal justice system.

⁸ Information pack given to potential conference participants.

This is so because both models accept the authority of criminal law and operate within the legal framework. At best, the models might address some of the failures of the criminal justice system. However, they can hardly challenge the criminal justice system, unless they refuse to depend on it, uphold its values and serve the agenda of the system.

Another argument concerning the 'maximalist' vs. 'purist' debate I would like to make relates to the claims by 'maximalists' that the 'purist' model is likely to lead to marginalization of restorative justice and unlikely to succeed in transforming the criminal justice system, and the refusal by the 'purists' to accept those claims. Both models envisage – and aspire towards – a large-scale state-managed implementation of restorative justice and a transformation of the criminal justice system, even though they suggest adopting different routes toward that end.

I wish to suggest that perhaps the debate needs to be refocused. Instead of evaluating the chances of either the 'purist' or the 'maximalist' model in implementing restorative justice on a large scale with the aim of transforming the state justice system, maybe we should ask: would the state-sponsored implementation of restorative justice on a large scale be necessarily a desirable phenomenon? There are numerous historical examples of centrally-managed large-scale social reforms leading to disasters and inadvertently bringing about suffering for millions. Besides, there is something inherently authoritarian and imperialistic about grand centrally-managed schemes. Maybe it would be wise to reject large-scale 'top-down' social transformations in favour of 'bottom-up' piecemeal changes and local strategies? Maybe keeping restorative justice low-profile and refraining from developing – and

attempting to implement – large-scale centrally-managed schemes could benefit restorative justice in the long term? It is unfortunate that a possibility of restorative justice developing in this direction seems to have been rejected by most leading restorative justice advocates without being seriously discussed.

(4) Choosing allies

Another issue which has received little attention within the discourse on restorative justice is a possibility and desirability of restorative justice movement forming coalitions with grassroots social movements whose aims are consistent with those of restorative justice (although there are some exceptions: Pavlich 1996a, Morris 2000). Maybe grassroots social movements opposing oppressions and injustices could be better allies for restorative justice than the state justice system in the quest for justice? Forming alliances with such movements could benefit restorative justice by significantly widening its agenda and escaping the present situation where the application of restorative justice is limited to wrongs, harms and injustices which fall within the legal definitions of crime. Also, such coalitions could be stronger in their struggles against injustices, social inequalities and dominations, than groups and movements working in isolation. In time, the development of alliances between restorative justice and grassroots social movements could lead to the creation of a way of ‘doing’ justice which could present an authentic alternative to the state-sponsored, professionalised and legalised justice.

(5) Looking at the world through restorative ‘spectacles’?

I would like to make another general comment about restorative justice and its present development. Restorative justice advocates have crafted a particular ‘lens’ through

which they propose to look at crime and justice. They aspire to reform the criminal justice system so as to make it compatible with restorative justice principles. Some even propose to look through the restorative 'lens' at the world more generally and apply restorative justice values in every instance of social interaction (Sullivan and Tifft 2001, Braithwaite 2003b).

What I find problematic is the underlying assumption that restorative justice principles could serve as universal guidelines or absolute moral maxims applicable in every case or circumstance. It seems to be presumed that in each life situation the restorative response – or course of action – can and should be decreed as a good one, in opposition to numerous bad responses. I would question this assumption. No doubt the application of restorative justice principles may lead to positive results in some – perhaps even many – situations. Yet, endorsing restorative justice as a universal response to crimes, conflicts and other problematic situations will not help identify, let alone avert, undesirable consequences. Besides, the assumption that restorative justice principles are universalizable, or necessarily better than any others, reduces the ethical work in every situation to a set of simple questions and a mechanical application of pre-defined rules. It limits moral choices and disables a search for responses which are not centred on a specific set of values. As one critic has pointed out,

The danger of totalitarianism looms large when justice is reduced to programmatic questions that imply the simple application of necessary, absolute maxims to given situations. When principles reign supreme, calling for the elimination of harm in the name of predefined community interest, there is little opportunity to imagine other conceptions of harm, or indeed new collective patterns.

The discovery of the restorative justice 'lens' makes it tempting to look at everything through the same 'spectacles'. Yet, it may be wise to resist that temptation, as the application of a particular set of values prevents us from actively seeking entirely new patterns of social association which may not be seen through the restorative 'spectacles'.

(6) A new beginning?

Proponents of restorative justice envisage an empowering, lay-oriented, victim-centred justice, an alternative to the existing paradigms of justice, which, according to some, would be characterised by voluntariness. The project where I carried out my research falls short of that ideal. The description of restorative justice as lay-oriented or 'de-professionalised' would be misleading. It is professionalised, although the role the professionals play is different from their role in the 'traditional' criminal justice process. Restorative justice within the project I have studied can hardly claim the title of a voluntary justice. Attendance at restorative justice conferences and an apology to victims more often than not was ordered by the court. However, even where it was not, offenders were subjected to subtle informal pressures by conference organisers and YOT workers, trying to make offenders attend conferences and apologise. Whether restorative justice is an empowering form of justice needs to be looked at in the light of the roles played within the restorative justice process by professionals, who in invisible ways manage and control the process and shape and influence outcomes. As to whether or not restorative justice can qualify as a victim-centred justice, my data send mixed messages. Some evidence suggests that needs

and interests of victims were indeed given a priority, but some evidence suggests the opposite. Does restorative justice present an alternative to the earlier paradigms of justice? As far as the retributive paradigm is concerned, it is hard to see restorative justice as a true alternative to it, given that restorative justice accepts the authority of criminal law and complements the criminal justice system in the pursuit of its objectives. At the same time, restorative justice adopts a different model of power over its 'clients'. In this sense it might be seen as an 'alternative'. Is restorative justice an alternative to the rehabilitation paradigm? My findings demonstrate that restorative justice attaches a lot of importance to offender rehabilitation and enters into a close alliance with the traditional offender 'welfare' model. So, a better description of restorative justice may be a 'partner', rather than an 'alternative', to the rehabilitative paradigm.

These findings may not present a very encouraging picture. There appears to be a significant gap between the aspirations of proponents and the realities of restorative justice, at least within the scope of this study. Can that gap be minimised? Can a lay-oriented, individually empowering, voluntary, victim-centred justice ever be possible? Or shall we simply reject as unrealistic the idea of creating a radical alternative to the existing paradigms of justice?

I would like to conclude this work on a positive note and suggest that a true alternative may be possible. However, it is unlikely to emerge, as long as restorative justice obeys the dictates of criminal law, depends on the criminal justice system in a variety of ways, and functions as a servant to the system.

In this thesis I attempted to demonstrate how the role adopted – and the model of power employed – by restorative justice practitioners in the restorative justice process serves to complement the power of the criminal justice system and facilitate the achievement of wider political aims by shaping individual mentalities and governing the conduct of conference participants. The power of conference facilitators operates outside the state, but for the purposes of promoting the state's agenda and strengthening the state's power. The resulting alliance of the two political forces – the power of the criminal justice system and the power of conference facilitators – enables the state to effectively control individuals at a distance. The invisible nature of the power of restorative justice professionals allows this control to be exercised in a masked fashion, concealing the effects, indeed the very existence, of that control from its subjects and consequently reducing chances for resistance on the part of the subjects against state power (Pavlich 1996a, 1996b). Thus, restorative justice in its present form serves to strengthen the state justice system, rather than to challenge it.

If this is so, probably, the development of a true alternative to state-sponsored justice would require a radical disintegration between the power of the criminal justice system and the (invisible) power employed by conference facilitators. It would require a divorce of restorative justice from state-sanctioned justice. Restorative justice cannot be an 'alternative' to the state justice system, and at the same time operate either within the system or as its extension, bounded by formal legality and being colonised by practitioners serving the agenda of the criminal justice system.

No doubt, the separation of restorative justice from state justice is a very difficult task. So, what could attempts to achieve – or at least to work towards achieving – it involve

at a practical level? Most likely, they would involve such developments as the following.

Proponents need to reject the idea of large-scale state-sponsored implementation of restorative justice with the aim of transforming the state justice system.

Present funding practices need to be re-arranged so as to liberate restorative justice from financial dependence on the state and consequently the obligation to follow the dictates of the criminal justice system.

Sources of referrals need to be arranged in such a way as to escape the situation where only cases which satisfy the criteria set by the criminal justice system result in restorative justice 'encounters', and by the time a case comes to a restorative justice project, a particular framework within which the case would be responded to had been already established. Cases could come to restorative justice meetings as a result of self-referrals, referrals by relatives, friends, neighbours, or non-criminal-justice agencies.

Restorative justice needs to refuse to accept the authority of criminal law and adopt legal definitions of crime, so as to avoid the situation where problematic situations labelled as 'crimes' fall within the ambit of restorative justice and other instances of injustices, violence, hurtful and harmful behaviour, which happen to escape the legal definitions of crime, are considered outside restorative justice. Restorative justice

could have a much wider application than present practices seem to imply, and it could be usefully employed in facing oppressions and injustices on a daily basis⁹.

Advocates of restorative justice need to recognise that the potential of restorative justice to provide a forum where silenced voices of the oppressed could be heard and where a political debate could unfold is seriously compromised, if not completely extinguished, when the restorative process is orchestrated by professionals aspiring to guide that process towards outcomes congruent with the objectives of the criminal justice system. It is necessary to resist the power of restorative justice professionals in their attempts to craft particular self-identities of conference participants and refuse to embrace the mentalities and conduct which the professionals pressurise participants to adopt in order to promote the political goals of the criminal justice system¹⁰.

It is also necessary to oppose attempts by the emerging class of restorative justice professionals and ‘experts’ to colonise restorative justice, define its meaning and aims, and market a particular version of restorative justice which serves the objectives of the criminal justice system.

⁹ However, it is important to resist the temptation to view restorative justice principles as absolute moral maxims applicable in every unique circumstance and to assume that a restorative approach is necessarily better than – or superior to – many other possible responses to a particular situation (see subsection ‘Looking at the world through restorative ‘spectacles’?’ above).

¹⁰ What complicates this task is the invisibility of the power of facilitators, but resistance to their power is possible. The refusal by the offender from case study 7 to apologise to the police officer, despite the pressures he had been subjected to, is an example of such resistance.

Proponents need to refuse to restrict the focus and objectives of restorative justice to the achievement of pre-defined goals (such as reparation of harm, or resolution of conflicts). Placing such restrictions on the focus and objectives of restorative encounters leads to pre-determined outcomes, limits the ethical discussion of how crime should be dealt with to a narrow set of questions, prevents a possibility of bringing into light politically contentious issues, and consequently reduces – or even eliminates – the potential of conflicts with structural roots to spearhead important social changes.

It needs to be acknowledged that what may often appear as an inter-personal dispute or an individual problem may in reality stem from much deeper and wider social problems. Consequently, it is necessary to refuse to limit restorative justice to narrowly conceived practices (such as family group conferences, or victim-offender mediation) which individualise disputes, and quickly and effectively neutralise potentially disruptive conflicts. Advocates of restorative justice might want to consider forming coalitions with grassroots social and political movements, the aims of which are consistent with restorative justice. This could lead to formation of alliances which could take restorative justice to a different level and create a new dispute resolution arena where social oppressions and injustices could be resisted.

It is necessary to develop ways to assess the success and value of restorative justice, which, unlike most current empirical research into restorative justice, are not based on technocratic criteria.

Two points need to be noted in relation to the list of suggestion above. First, the list is broadly consistent with the 'radical' restorative justice aspirations: it adopts the 'radical' unwillingness to depend on the ideology and structure of the criminal justice system (although it may go further than some 'radicals' seem to suggest (Harris 1998b, Morris 2000) in its proposal to completely separate restorative justice from the criminal justice system), proposes to broaden the campaign for restorative justice by taking restorative justice outside the criminal justice arena, refuses to pre-define goals of restorative justice and rejects the 'ideology of harmony' inherent in the 'reformist' version of restorative justice. What it adds to the 'radical' critique is the emphasis on the dangers, which might result from the power of system-oriented professionals which they exercise in orchestrating the restorative process and guiding it towards certain outcomes, so as to promote the agenda of the criminal justice system¹¹.

Secondly, the above suggestions are not intended as a prescription of what *must* be done. The ambition behind providing the above list is not to outline and advocate an absolute vision of how restorative justice should be conceptualised and practised. Rather, the objective is to diagnose and problematize the limitations and dangers inherent in the present restorative practice and theory, in particular, identify a gap between aspirations of proponents and practical realities of restorative justice and analyse the implications of that gap. The intention is to criticise and challenge the direction in which restorative justice is currently evolving and to indicate a possibility of a different direction in which restorative justice *could* develop, so as to minimize

¹¹ Although some 'radicals' have discussed the power of professionals – and its implications – in the context of non-criminal mediation (Pavlich 1996a, 1996b) and some have criticised the 'astructural' approach to conflict adopted by restorative justice practitioners (Dyke 2000).

the present gap between aspirations and realities. That suggested direction might alleviate some of the present problems of restorative justice theory and practice, but itself is unlikely to be free from dangers. Those new dangers, as they emerge, will in turn need to be identified and diagnosed, as part of an on-going critique.

It is my hope that this work has contributed towards such a continuous critique of present limitations, in particular, by demonstrating the existence of a gap between aspirations of advocates and practical realities and helping to bring into light some of its implications. I also hope that this thesis has identified some other problems and dangers inherent in the current development of restorative justice and demonstrated a need to re-focus some of the existing debates and open new ones.

Appendix 1

Summaries of case studies

Case study 1

Offence: dwelling burglary x 3

Facts of the case:

Offender 1, aged 13 at the time of the offence, and offender 2, aged 12 at the time of the offence, entered three houses and stole small amounts of money from each. As they were leaving the last house they had burgled, they bumped into the owner, who knew them and reported the case to the police. The offenders were prosecuted and received a 16 hour Reparation Order each. As part of the order, they were required to attend a family group conference.

Conference:

Date of the conference: 2/07/01. The conference was attended by the two offenders, the mother and the father of the offender 1, and the mother of the offender 2, who came to the conference to support the offenders. Also, three victims – the owners of the houses burgled – came to the conference. Victim 1 and victim 2 were owners of one house. Victim 3 was an owner of another house. The owner of the third house that had been burgled refused to attend the conference. The conference resulted in the offenders apologising to victims and the victims accepting the apology.

Interviewed:

O1 – offender 1

O2 – offender 2

OS1 – the mother of offender 2

OS2 – the father of offender 1

OS3 – the mother of offender 1

V1, V2, V3 – victims of burglary

Some additional information:

The offences were committed in a small community, where victims knew offenders and their parents. It appears from interviews with other victims that one homeowner whose house had been burgled decided not to come to the conference, because she knew the offenders' parents and thought it would be too embarrassing for them to face her. The victim who had reported the crime, however, attended the conference. She said in the interview that felt very uncomfortable about the way she handled the situation. She had doubts whether reporting the case to the police was the right thing to do, given the age of the offenders and the fact that she knew the boys and their parents.

Case study 2

Offence: aggravated taking of vehicle without owner's consent, driving otherwise than in accordance with a licence and no insurance.

Facts of the case:

The offender, aged 14 at the time of the offence, was somewhat obsessed with car racing. He stole a car and drove it away. The police cars and a helicopter chased him. He was prosecuted and sentenced to an Action Plan Order. One element of the Order was that the offender should attend a family group conference.

Conference:

Date of the conference: 29/03/01. The conference was attended by the offender, his older brother who came to the conference to support the offender, and the two victims – an elderly couple whose car had been stolen. The offender apologised to the victims at the end of the conference.

Interviewed:

O – the offender

OS – the offender's brother

V1 and V2 – victims

Some additional information:

The victims' car was seriously damaged, but they could not claim insurance because the car-owner was at fault – he left the key inside. Nor did the victims receive any compensation from the offender. In the interview they indicated that they did not want any compensation or reparation. They came to the conference simply 'to help the boy'. The memorable thing about the interview with the victims was that they asked me to call them and tell them how the offender was getting on (should I have a chance to interview him).

Case study 3

Offence: theft and handling stolen goods

Facts of the case:

The offender, aged 12 at the time of the offence, stole a handbag from an old lady. He was prosecuted and made subject to a 3-month Action Plan Order. Part of the Action Plan Order involved attending a family group conference.

Conference:

Date of the conference: 1/03/01. The conference was attended by the offender and his mother who came to support him. The victim was too ill and did not attend the conference. The Victim Support representatives participated on her behalf. At the end of the conference the offender promised to write a letter of apology to the victim.

Interviewed:

O – the offender

OS – the offender's mother

Victim Support Representatives 1 and 2

Case study 4

Offence: taking a bus without consent, failing to stop.

Facts of the case:

The offender, aged 16 at the time of the offence, and his friends were drinking in a pub where they celebrated a friend's birthday. As they were returning from the pub, they were passing a bus station. There was an unattended bus, with the door open (probably a cleaner forgot to lock it). As a joke, one friend suggested taking the bus and driving it around. The offender and one of his friends got on the bus and drove it away. The bus was chased by police cars and a helicopter. When the offender realised that he was being chased, he panicked and continued driving. He drove it for

3 hours before being forced to stop due to a mechanical breakdown. While he was driving it, he exceeded the speed limit, passed several red traffic lights and had an accident, hitting an ambulance. This resulted in the ambulance driver and a nurse receiving minor injuries. The bus was also severely damaged. The offender was sent to prison for 10 months, and it was also decided that he should attend a family group conference.

Conference:

Date of the conference: 5/11/01. The conference was attended by the offender, his mother, who came to support him, and two victims. One victim was a director of a bus company from which the bus had been stolen. Another victim was the driver of the ambulance which the offender had hit. The offender apologised to the victims at the conference.

Interviewed:

O – the offender

V – one of the victims, a director of a bus company.

Some additional information:

The bus company director indicated in the interview that he himself was troublesome as a youngster, but thought he had achieved a lot since then. He came to the conference because he wanted to tell the offender that he could do the same. He was also willing to offer the offender an apprenticeship in his company.

It was suggested by the YOT worker that the bus company employ the offender to do some unpaid work for them as a way of reparation. The company was prepared to do so. However, the offender said in the interview that he did not want to work for the company, because he had already been punished enough for his offence in prison. When I asked him whether he would be willing to do some work for the company had he not gone to prison, his response was 'no'. His explanation was that had he not gone to prison, he would have been ordered too many hours of community service, and that would be enough punishment for him.

During the interview, the offender shared with me his prison experiences, and said that he had learnt various useful life skills in prison, such as how to fight.

Case study 5

Offence: robbery

Facts of the case:

Four offenders, aged 13-14 at the time of the offence assaulted and robbed the victim, a 13 year old boy. They were found guilty and made subject to Action Plan Orders. As part of their orders, they were required to attend a family group conference and apologise to the victim.

Conference:

Date of the conference: 3/01/02. The conference was attended by three offenders, their parents who came to support them, and a social worker who came to represent

the victim. The offenders promised to write letters of apology to the victim at the end of the conference.

Interviewed:

O – one of the offenders

OS – the offender's mother who came to the conference to support the offender

The two other offenders who had attended the conference and the victim refused to be interviewed.

Some additional information:

The offenders pleaded 'not guilty', so the victim had to testify in court. According to the conference organiser, he interpreted their 'not guilty' plea as a way of saying that they did not assault and rob him, and he was lying about the incident. What the victim interpreted as an accusation of dishonesty, combined with interrogation by lawyers in court, caused him a lot of pain and suffering. He refused to attend the family group conference. However, he sent a representative, because he wanted the offenders to return his stolen money.

The conference organiser told me that one of the offenders demonstrated no remorse and made violent threats towards the victim during preparation for the conference. It was a dilemma for conference organisers whether or not to allow the offender to participate in the conference. On the one hand, there was a possibility that the conference could help the offender realise the wrongfulness of his actions and thus benefit the offender. On the other hand, there was a danger of the victim being re-

victimised during the conference if the offender in question was allowed to attend. At the end, it was decided that the interests of the victim should prevail.

Case study 6

Offence: common assault

Facts of the case:

A group of boys bullied the victim (aged 16 at the time of the offence) for a long time, and beat him up on an occasion leading to the conference. One of the boys was prosecuted and invited to the conference. Details concerning his court order are not available.

Conference:

Date of the conference: 26/10/00. The conference was attended by the offender, his mother, grandmother, aunt, sister and niece (who came to support the offender), as well as the victim and his mum (who came to support him). The offender apologised to the victim.

Interviewed:

V – the victim

Offender could not be contacted.

Some additional information:

The victim came to the conference with his mum, but the offender brought his extended family. The victim said in the interview he felt intimidated in the conference by the number of the offender's supporters. Yet, he enjoyed the

conference because he thought it was a humiliating experience for the offender, whom the victim was very angry with.

Case study 7

Offence: assault on a police constable

Facts of the case:

The offender, aged 16 at the time of the offence, was passing by and saw a police officer knocking his friend to the ground and beating him. He felt compelled to intervene and defend his friend and pushed the police officer. He was prosecuted for an assault on the police officer and received a 6 months Supervision Order. The order included a requirement to attend a family group conference and apologise to the police officer.

Conference:

Date of the conference: 17/06/02. The conference was attended by the offender, his mother, father, two sisters, grandmother and brother-in-law who came to support the offender. The victim, police officer, attended the conference and brought another police officer with him. The offender refused to offer a sincere apology to the victim.

Interviewed:

O – the offender

V – the victim

OS – the offender's mother

Some additional information:

The police officer and the offender knew each other prior to the offence. According to the offender and some other local people I talked to (the conference organiser, the YOT worker, the offender's mother), the police officer bullied local kids. The offender said in the interview that one reason he pushed the officer on the occasion leading to the conference was that he wanted to defend his friend, and another reason was that he did not like the officer.

The offender had very problematic relationships with his father. His father was dissatisfied with the fact that the offender was unable to hold a steady job. The offender shared with me in the interview that he had quit two jobs because they were boring and repetitive, and he wanted an interesting job. The offender's father assaulted him and threw him out of the house. Following that, the offender lived illegally with his friend in a hostel. According to YOT workers, he did not work, and went without food. Family group conference organisers hoped that the conference would facilitate the resolution of the conflict between the offender and his father. It was also hoped that the offender would be allowed to live at home with his parents.

The day before the family group conference, the offender was arrested and put in a police cell for 19 hours. An hour before the conference, he was released. No charges were brought. The YOT worker picked him up at the police station and drove him to the place where the conference was organised. The offender was tired, angry and hungry when he entered the conferencing room.

During the conference, when asked to apologise to the police officer, the offender said 'sorry' in a sarcastic fashion. One of the conference facilitators asked him, 'you don't

really mean it, do you?' The response was, 'I don't'. The offender's father got angry and said he was going to hit the offender. The father left the room. The offender left the room too. The father came back and apologised to the police officer. The offender never came back. The offender's family stayed and created a rehabilitation plan for the offender. Part of the plan involved the offender moving back into his parents' house. However, the father allowed this only on the condition that the offender works and stays out of trouble. The brother-in-law promised to provide him with employment in his company.

However, the conflict between the father and the son that had started during the conference escalated, and the father threw the offender out of the house again soon after the conference. At the time when I interviewed the offender (a few months after the conference) he was living in the hostel with his friend and had no job and no money.

Case study 8

Offence: assault by beating

Facts of the case:

The victim, aged 15 at the time of the offence, and the offender, also aged 15, studied in the same school and had an on-going conflict. On the occasion leading to the family group conference, the girls had a fight. According to conference organisers, it was the 'victim' (as defined by the criminal justice system) who started the fight. After the fight, the 'victim' called the police and accused the other girl of assaulting her. That girl was prosecuted, and ordered to attend a family group conference (as part of the Action Plan Order). However, the conference never took place (although

was supposed to take place in February 2002), because the girls negotiated a 'peace treaty' themselves a few days before the conference was supposed to take place. Yet, there had been a lot of indirect mediation carried out by the family group conferencing organisers, which, according to the victim, had prompted the reconciliation.

Interviewed:

V – the victim

VS – the victim's mother

The offender's mother refused permission to interview her daughter

Some additional information:

What surprised me during the interview with the victim was the existence of multiple factual inconsistencies between what she said in the interview and the records kept in the family group conferencing project. After the interview I shared this with a person who attempted to organise a conference in that case. The conference organiser said she believed that in reality the girl defined by the criminal justice system as a 'victim' was an offender, and the girl defined as an 'offender' – a victim. I was also told by the conference organiser that the reason why the reconciliation took place prior to the conference was that the 'victim' was afraid that if the conference takes place, her parents would find out things which she did not want them to know (e.g. that she bullied the 'offender' for a long time, that she started the fight on the occasion leading to the conference, etc.). According to the 'victim', it was herself who approached the 'offender' first, apologised to her, and proposed to negotiate peace between them.

Case study 9

Offence: criminal damage x 3, criminal damage by fire x 2

Facts of the case:

Two offenders, half-brothers, (aged 14 and 12 at the time of the offence) were prosecuted for criminal damage and damage by fire to the school and the school buses. Each received a 6 month Supervision Order. As part of their orders, they were required to attend a family group conference and apologise. Also, as a result of their offences, the boys were permanently excluded from the school.

Conference:

Date of the conference: 27/02/02. The conference was attended by the two offenders, their mother, grandmother and younger brother (who came to support the offenders), the school headmaster and the school caretaker (who were invited as victims), and a fireman who had helped to extinguish the fire set up by the offenders. The offenders apologised in the conference.

Interviewed:

O1 and O2 – two offenders

OS – the offenders' mother.

V1 and V2 – the victims. V1 was the school caretaker who extinguished the fire; and

V2 was the school headmaster.

Additional information:

According to the offenders and their mother, kids from the local school bullied and beat up one of the offenders. The boy complained to his mother about the bullying.

The mother went to school and complained to the teachers. According to the mother, the teachers had not done anything to stop the bullying and instead blamed the boy for provoking attacks on himself. The boy realised that his mother was powerless to do anything about the bullying. As a result, he stopped complaining to her, and started inventing various stories to explain the origins of his very bad bruises. He and two of his younger brothers decided to deal with the situation themselves. They set on fire school buses that the bullies travelled in to school. Their reasoning was that if they damage the buses, it would prevent the bullies from getting to the school. They also set on fire the administrative part of the school, which contained teachers' offices. The offenders felt that these teachers did not help the boy to avoid bullying and instead blamed him, so setting the offices on fire was a form of retaliation.

Although the two older brothers were prosecuted, the youngest one was not, because he was only 9 at the time of the offence.

Case study 10

Offence: commercial burglary x 5

Facts of the case:

The offender (aged 16 at the time of the offences) burgled a number of commercial properties, mostly restaurants, and took mainly cash and cigarettes. He was prosecuted for his offences and was made subject to a 12 month Supervision Order and a 3-months Curfew Order. As part of the Supervision Order, he was ordered to pay compensation to the victims and attend a family group conference.

Conference:

Date of the conference: 7/03/02. The conference was attended by the offender, his mother (who came to support him), and one of the victims of his burglaries (a restaurant owner who apparently knew the offender before the offences, and even helped him to fix his bike). The offender apologised at the conference.

Interviewed:

O – the offender

V – the victim

Case study 11

Offence: theft of a car

Facts of the case:

The offender (aged 17 at the time of the offence) stole the victim's car just before Christmas. He was prosecuted and given a 12 month supervision order. As part of his order, he had to attend a family group conference.

Conference:

Date of the conference: 13/09/01. The conference was attended by the offender and the victim, car owner. The offender apologised at the conference.

Interviewed:

V – the victim

The offender refused to be interviewed.

Some additional information:

The victim (car owner) was a long distance driver who was in trouble himself as a youngster. He came to the conference, hoping to help the offender. He told the offender that what upset him and made him angry was not the fact that the offender stole and seriously damaged the car, but that his wife was extremely upset and worried that the offender could kill himself. Also, the fact that the car was stolen and damaged ruined the family's Christmas plans.

The victim offered to give the offender driving lessons during weekends. After the conference he gave the offender a lift home.

Case study 12

Offence: domestic burglary

Facts of the case:

The offender (aged 15 at the time of the offence) pleaded guilty in court to a charge of domestic burglary. The offender knew the victims. He was a friend of their son, and many times was inside the house. While the victims were away on a holiday, the offender was allowed to enter their house and play computer games. It was alleged that the burglary was committed during one of his visits. The offender was sentenced to a 3 month Action Plan Order, as part of which he had to attend a conference and meet with the victims. He was also ordered by the court to pay compensation to victims.

Conference:

Date of the conference: 18/10/01. The conference was attended by the offender, his mother, his father and his grandfather (who came to support him), and the victims family. The offender apologised to victims.

Interviewed:

O – the offender.

Victims had moved and could not be contacted.

Additional information:

The offender told me that he actually did not commit the burglary. He said he pleaded guilty because the court appearance was just before his 16th birthday, and he wanted to avoid a lengthy trial.

What bothered the offender was that the relationship of trust with the victims had been undermined (although he said he remained friends with the son of the victims). He apologised to the victims and hoped that it could repair broken trust. He said that one of the victims showed signs of forgiveness in the conference, and this made him feel much better.

There was a police officer in the conference who, according to the offender, attempted to make him admit to something he had not done (another burglary committed in the local community). The offender's grandfather was present and tried to defend the offender. The grandfather also tried to calm the offender, because the police officer's accusations made the offender very angry. The offender said he could hardly keep himself from attacking the officer.

Case study 13

Offence: common assault

Facts of the case:

The victim (aged 15 at the time of the offence) and offender (also aged 15) were at a funfair with friends. The offender and her friends approached the victim and wanted to know what the problem was between the victim and another girl, who was a friend of the offender. Before the victim could reply, she was attacked by 10 girls. The offender was responsible for most of the injuries caused to the victim. The offender repeatedly punched the victim in the face. The victim used her handbag to protect herself, but it had been taken from her during the attack. The victim had to go to the hospital. Her bag was returned to her, but without money, jewellery and a mobile phone, which had been there before.

The offender was sentenced to a 3 month Action Plan Order, as part of which she had to attend a family group conference.

Conference:

Date of the conference: 13/02/02. The conference was attended by the offender, her mother and boyfriend (who came to support her), the victim and her mother (who came to support the victim). The offender apologised to the victim.

Interviewed:

V – the victim

VS – the victim's mother

The offender refused to be interviewed.

Some additional information:

The victim and her mother said in the interviews that the victim did not know the offender before the offence. However, the offender was a friend of some girls who knew the victim and with whom the victim had an on-going conflict for many years. Those girls said something negative about the victim to the offender, and that encouraged the attack.

Case study 14

Offence: domestic burglary x 6 and criminal damage x 6

Facts of the case:

The two offenders (both aged 16 at the time of the offence) burgled and vandalised 6 houses. The older brother of offender 2 helped them to dispose of stolen goods. After they were arrested and charged, the older brother went to the victims and asked them to drop charges (because he had to go to the army very soon, and was worried that the fact of the criminal conviction would have negative consequences). The victims felt intimidated when he came to their houses. The police did not have sufficient evidence against the brother of offender 2, so charges against him were dropped. However, the offender 1 and 2 were prosecuted, convicted and sent to prison for 6 and 8 months respectively. They were also ordered to attend a family group conference to which they were brought from the prison.

Conference:

Date of the conference: 1/08/02. The conference was attended by the two offenders, the mother and sister of the first offender, the mother, the father and the brother of the second offender, three victims and one victim supporter. The offenders apologised to the victims in the conference. A possibility of offenders doing some work for the victims was discussed in the conference. This was a family group conference which I observed.

Interviewed:

V1 – victim, an elderly disabled lady, who was in the hospital, recovering after an operation when the burglary and vandalism was committed.

V2 – another victim, who was in the process of re-decorating his house when the offences were committed.

VS – friend of V1 who came to the conference to support her.

O1 – first offender

Second offender could not be interviewed.

OS1 – mother of O2.

OS2 – father of O2.

OS3 – older brother of O2.

OS4 – mother of O1.

Case study 15

Offence: common assault

Facts of the case:

The two offenders bullied the victim (all boys involved studied in the same school and were aged 15 at the time of the offence). On the occasion leading to the family group

conference the two boys attacked the victim by punching and kicking him. The offenders were given Final Warnings and had to attend a family group conference.

Conference:

Date of the conference: 7/06/01. The conference was attended by the offenders and their mothers (who came to support them) and the victim and his father (who came to support the victim). The offenders apologised to the victim.

Interviewed:

V – the victim

VS – the victim's father

The offenders could not be contacted.

Case study 16

Offence: burglary

The facts of the case:

The offender (aged 16 at the time of the offence) and his friends burgled a number of garages. The offender was prosecuted, and it was decided that he attend a family group conference. The details of the court order are not available.

Conference:

Date of the conference: 2/08/02. The conference was attended by the offender and his mother (who came to support the offender), and the victim (one of the garage owners). The offender apologised to the victim.

Interviewed:

O – the offender

OS – the offender's mother

The victim could not be interviewed.

Appendix 2

Interview schedules

(A) Interview with a victim who has participated in a family group conference (FGC)

Before the conference

- Please tell me about the incident which led to the FGC.
- What did you expect from the criminal justice system? How did you expect you would be treated by the system?
- What did you expect from the FGC?
- How did you feel about the offender before the conference?

Meeting the offender

- Why did you agree to meet the offender?

Prompts

- to get paid back for your losses;
 - to get the offender to do something to make up for what he did;
 - to let the offender know how you felt about the crime;
 - to get answers from the offender;
 - to get an apology;
 - to help the offender.
- How did you feel about the prospect of meeting the offender?
 - What was it like to meet the offender?
 - Was it important to meet him/her? Why?

Restorative justice process

- How did you feel you were treated during the conference?
 - by facilitator
 - by offender
 - by others

Prompt:

- were you treated with respect?
 - were you treated fairly?
-
- Do you think the offender was treated fairly?

Empowerment

- Did you feel involved in the conference?
- During the meeting, were you able to communicate all you wanted to and to express your feelings?
- Were your concerns taken seriously?

Apology and forgiveness

- Did the offender apologise?

If 'yes', how did you feel about it?

If 'no', how did you feel about it?

- Has your attitude towards the offender changed as a result?

Supporters

- Did anybody come to the FGC with you?

If yes, who were they? Did they take part in the FGC?

- Was their presence important?
- Would you have liked to have someone else come with you to the FGC?

If yes, whom and why?

Agreement

- What was the outcome of the meeting?

Prompt:

Was a reparation agreement negotiated with the offender? If yes, what did it involve?

- Do you think the agreement was fair to
 - you;
 - the offender.

After the conference

- What do you think the purpose of the FGC was?

Prompts: Was it

- to make you feel better;
 - to make you less afraid that the offender would do it again;
 - to pay you back;
 - to receive an apology from the offender;
 - to punish the offender;
 - to stop him doing similar things in the future;
 - to enable you actively participate in the criminal justice system?
- Do you think the FGC has achieved anything?
 - Are you happy with the outcome of the case?
 - Have your feelings toward the offender changed in any way? How?
 - What was the most memorable thing to come out of the conference?

- What was the worst thing about the encounter?
- Were there any other bad things?
- What was the best thing?
- Were there any other good things?
- Would you recommend a FGC to other crime victims?
- If you were in a position to change/improve the system, how would you change/improve it?
- Are there any other important things I should take into account you haven't said yet?

(B) Interview with an offender who has participated in a family group conference (FGC)

Before the conference

- Please tell me about the incident which brought you to the family group conference (FGC).
- What did you expect would happen? How did you expect you would be treated by the criminal justice system?
- What did you expect from the FGC?

Meeting the victim

- Why did you agree to meet with the victim?

Prompts:

- to pay the victim back for their losses;
- to explain the victim why you did what you did;
- to offer an apology;

- hope of reduced sentence.

- What was it like to meet the victim?
- Was it important to meet him/her? Why?

Restorative justice process

- How did you feel you were treated during the conference?
 - by facilitator;
 - by victim;
 - by others present.

Prompt:

Were you treated with respect?

Were you treated fairly?

Empowerment

- During the conference, did you feel involved?
- Did you have a chance to say what you wanted to say?
- Were you listened to?
- Did you have any say in deciding the outcome of the conference?

Coercion

- Did you feel pressurised in any way?

Prompts: pressurised into:

- meeting the victim;
- answering questions during the encounter;
- apologising;
- agreeing to do the reparation;
- carrying out the agreement.

Feelings/emotions

- How did you feel when telling everyone what you did?
- What was it like to answer questions you were asked during the conference?

Why?

- What was it like to hear the victim telling about the effects of what you did?

Apology

- Did you apologise? Why?
- How did you feel when you apologised?

Supporters

- Did anybody come with you to the meeting?
- Who were they?
- Did they take part in the encounter?
- Why do you think they came?
- Was it important to have them with you?
- Do you think you would have liked to have some other people come with you?

If yes, who and why?

Agreement

- What was the result of the meeting? What was decided you should do?

Prompt:

- Was a reparation agreement negotiated with the victim?
- If yes, what did it involve?

- Do you think the agreement was fair to
 - you;
 - the victim.
- Have you done what you agreed to do?

After the conference

- What do you think the purpose of the FGC was?

Prompts: Was it to

- punish you;
- to stop you doing similar things in the future;
- to make you pay back the victim of your offence;
- to make you apologise.

- Do you think the experience of meeting the victim and of doing what was agreed has achieved anything?
- Has it changed the way you feel about yourself? If yes, how?
- Has it changed the way you feel about other people? If yes, how?
- Has it changed the way you behave towards other people? If yes, how?
- Do you think people behave differently towards you since the encounter?
- If you had not participated in the FGC, what do you think would have happened?
- Have you been in any trouble after the conference?
- What was the most memorable thing to come out of the conference?
- What was the worst thing about the FGC?
- Were there any other bad things?
- What was the best thing about the FGC?

- Were there any other good things?
- If you were in a position to change/improve the system, how would you change/improve it?
- Are there any other important things I should take into account you haven't said yet?

(C) Interview with those who came to a family group conference (FGC) to support victim/offender

Before the conference

- Why did you agree to come to the FGC?
- What did you see as your role there?
- What did you expect from the conference?
- What do you think the overall purpose of the FGC was?
- Do you think the process was fair?
- How were you treated in the conference?
- How do you think other participants were treated?
- Do you think your presence in the meeting was important? Why?
- Did you feel involved in the process?
- Were you allowed to speak? If so, were you able to say everything you wanted to say?
- Were you listened to?
- Did you have any say over the agreement (if one has been reached)?
- Do you think the agreement was fair?
- Do you think the offender was really sorry?
- Questions for the offender supporters:

(1) Did you feel coerced/pressurised in any way at any stage of the process?

(2) Do you think [the name of the offender] has changed in any way following the FGC?

Prompts:

Has his/her

- behaviour;
- attitudes;
- relationships with others changed in any way?

- Do you think the encounter has achieved anything?
- What was the most memorable thing to come out of the conference?
- From your perspective, what was the worst thing about the encounter?
- Were there any other bad things?
- What was the best thing?
- Were there any other good things?
- How would you change/improve the system?
- Are there any other important things I must take into account you haven't said yet?

(D) Questions for restorative justice practitioners

Purpose

- How do you see the purpose of restorative justice interventions?

Prompts:

- To make the victim feel better;
- to make the victim less afraid that the offender would do it again;
- to pay the victim back;
- to receive an apology from the offender;

- to punish the offender;
- to stop him doing similar things in the future;
- to enable victims actively participate in the criminal justice system.

Roles

- How do you see your own role in restorative justice interventions?
- How do you see the roles of other professionals within restorative justice interventions?
- How do you see the roles of victims, offenders and other people who participate in restorative justice encounters?

Before the conference

- Who decides whether a case is suitable for a restorative justice intervention?
How do they decide it?
- What happens to cases which are considered inappropriate for restorative justice interventions?
- Is participation in FGCs optional for offenders and their supporters?
- What is your input during the preparation for a FGC?
- Who decides who should be invited to the family group conference? How do they decide it?
- How do you go about inviting people to the conference?
- How do you explain to victims, offenders and other conference participants what they should expect from the conference and what is expected of them in the conference?

- Do you tell the offenders that they would be expected to apologise during the conference?
- What happens if those who you invite refuse to participate? Would you still attempt to make them come?

If yes,

- why would you do it? (That is, why is it important to try to make people come to the conference when they do not seem to be very enthusiastic about participating in the conference?)
- how would you do it?

- Why do you think those who agree to come to conferences do so?

Conference – general questions

- What do you think it is like for victims, offenders and their supporters to meet the other party (and supporters of the other party)?
- Do you think it is important for them to meet each other? Why?
- Do you have a standard conferencing process that you use? Can you describe it?
- Are there any standard ground rules conference participants must abide by?

If yes,

- what are they?
- is it important to abide by those rules? Why?
- how is it ensured that the participants abide by the rules?
- what happens if they do not abide by the rules?

Conference: first part

- What is your input, during the first part of the conferencing process (i.e. part focused on the offence)?
- Is it always clear who the victim and who the offender in a particular case is?
If no, how do you handle such situations?
- How do you handle strong emotions in the conferencing process?
- How do you handle silences?
- How do you handle power imbalances between parties?
- If the offender does not apologise spontaneously, would you try to prompt him or her to apologise? If yes,
 - why would you do it? (That is, why is important to make the offender to apologise where s/he does not seem to want to do it?)
 - how would you do it?

Conference: second part

- What is your input during the second part of the conference (i.e. part focused on preventing re-offending)?
- Either before or during the conference, do you make any suggestions or give any advise to the family as to the plan they need to develop during the family private time?
- What happens if during the family private time the family comes up with a plan which you find unsatisfactory?
- Does the plan developed by the family have to be approved by anybody?
If yes,

- who has to approve it?
- what criteria does the plan have to satisfy to be approved?
- what happens if the plan does not satisfy the necessary criteria?

Impact of conferences

- Do you think it is important for people to have FGCs? Why?
- What impact do you think restorative justice conferences have on their participants – victims, offenders and their supporters?
- What do you think the most important element(s) within restorative justice interventions is?

Prompts:

- to get offenders pay back for the losses;
- to get the offender to do something to make up for what he did;
- to let the offender know how the victim felt about the crime;
- to get answers from the offender;
- to get an apology;
- to help the offender

Problems and suggestions

- Do you see any problems with the way restorative justice is being currently practiced? If yes, do you think the way restorative justice is being practiced today could be improved in some way? If yes, how would you like to see it improved?
- How would you like to see the future of restorative justice?

References

- Abel, R.L. (1982) (ed.) *The Politics of Informal Justice: The American Experience*. (New York: Academic Press)
- Adler, P.A. and Adler, P. (1998) 'Observational Techniques' in Denzin, N.K. and Lincoln, Y.S. (eds) *Collecting and Interpreting Qualitative Materials*. (Thousand Oaks - London - New Delhi: Sage Publications), pp. 79-109.
- Aertsen, I. (2000) 'Victim-Offender Mediation in Belgium' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 153-192.
- Auerbach, J.S. (1983) *Justice Without Law?* (Oxford: Oxford University Press)
- Bannenberg, B. (2000) 'Victim-Offender Mediation in Germany' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 251-280.
- Barnett, R. (1977) 'Restitution: A New Paradigm of Criminal Justice', *Ethics*, 87, pp. 279-301.
- Barnett, R. (1980) 'The Justice of Restitution', *The American Journal of Jurisprudence*, 25, pp. 117-32.
- Barton, C. (2000) 'Empowerment and Retribution in Criminal Justice', in Strang, H. and Braithwaite, J. (eds.) *Restorative Justice: Philosophy to Practice* (Ashgate/Darmouth: Aldershot), pp. 55-76.
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (UN) (2000), in Johnstone, G. (ed.) (2003) *A Restorative Justice Reader* (Cullompton, Willan Publishing), pp. 485-488.
- Bazemore, G. (1996) 'Three Paradigms for Juvenile Justice' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp. 37-67.
- Bazemore, G. (2000) 'Rock and Roll, Restorative Justice, and the Continuum of the Real World: A Response to 'Purism' and Operationalizing Restorative', *Contemporary Justice Review*, 3, pp.459-477.
- Bazemore, G. and Walgrave, L. (1999) (ed.) *Restorative Justice: Repairing the Harm of Youth Crime*, (Monsey, NY: Criminal Justice Press).
- Bazemore, G. and Walgrave, L. (1999) 'Restorative Juvenile Justice: In Search of Fundamentals and Outline for Systematic Reform' in Bazemore, G. and Walgrave, L. (ed.) *Restorative Justice: Repairing the Harm of Youth Crime*, (Monsey, NY: Criminal Justice Press), pp. 45-74.

- Bianchi, H. (1994) *Justice as Sanctuary: Toward A New System of Crime Control*. (Bloomington: Indiana University Press)
- Bianchi, H. & van Swaaningen, R. (1986) *Abolitionism: Towards a Non-repressive Approach to Crime* (Amsterdam: Free University Press)
- Blagg, H. (1997) 'A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia', *British Journal of Criminology*, pp. 481-501.
- Blagg, H. (2001) 'Aboriginal Youth and Restorative Justice: Critical Notes from the Australian Frontier', in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford – Portland Oregon: Hart Publishing), pp. 227-242.
- Bonafe-Schmitt, J.-P. (1992) 'Penal and Community Mediation: The Case of France' in Messmer, H. and Otto H.-U. (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives*, (Dordrecht, The Netherlands: Kluwer Academic Publications), pp. 179-195.
- Bottoms, A. (2000) 'The Relationship Between Theory and Research in Criminology' in King, R.D. and Wincup, E. (eds) *Doing Research on Crime and Justice*. (Oxford: Oxford University Press)
- Bottoms, A. (2003) 'Some Sociological Reflections on Restorative Justice' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 79-113.
- Bowen, H. and Thompson, T. (1999) 'Restorative Justice and the New Zealand Court of Appeal's Decision in the *Clotworthy Case*', *Journal of South Pacific Law*, 3, available at http://www.vanuatu.usp.ac.fj/journal_splaw/articles/Bowen1.htm
- Boyes-Watson, C. (2000) 'Reflections on the Purist and Maximalist Models of Restorative Justice', *Contemporary Justice Review*, 3, pp. 441-450.
- Braithwaite, J. (1989) *Crime, Shame and Reintegration*. (Cambridge: Cambridge University Press).
- Braithwaite, J. (2000) 'Decomposing a Holistic Vision of Restorative Justice', *Contemporary Justice Review*, 3, pp. 433-440.
- Braithwaite, J. (2003a) 'Restorative Justice and a Better Future' in Johnstone, G. (ed) *A Restorative Justice Reader* (Cullompton: Willan Publishing), pp. 83-97.
- Braithwaite, J. (2003b) 'Principles of Restorative Justice' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 1-20.
- Braithwaite, J. and Mugford, S. (1994) 'Conditions of Successful Reintegration Ceremonies', *British Journal of Criminology*, 34, 139-171.

- Braithwaite, J. and Strang, H. (2001) 'Introduction: Restorative Justice and Civil Society' in Strang, H. and Braithwaite, J. (ed.) *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press), pp. 1-13.
- Brookes, D. (1998) 'Evaluating Restorative Justice Programs', *Humanity and Society*, 22, pp. 23-37.
- Bryman, A. (2001) *Social Research Methods* (Oxford: Oxford University Press)
- Buckland, G. and Wincup, E. (2004) 'Researching Crime and Criminal Justice' in Muncie, J. and Wilson, D. (eds) *Student Handbook on Criminal Justice and Criminology*. (London – Sydney – Portland, Oregon: Cavendish Publishing)
- Bulmer, M. (2001) 'The Ethics of Social Research' in Gilber, N. (ed.) *Researching Social Life. (2nd Ed)* (London – Thousand Oaks – New Delhi: Sage Publications)
- Burns, R.B. (2000) *Introduction to Research Methods*. (London – Thousand Oaks – New Delhi: Sage Publications)
- Bush, R. and Folger, J. (1994) *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition* (San Francisco: Jossey-Bass Publishers)
- Cameron, L. and Thorsborne, M. (2001) 'Restorative Justice and School Discipline: Mutually Exclusive?' in Strang, H. and Braithwaite, J. *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press), pp. 180-194.
- Cayley, D. (1998) *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives* (Cleveland, OH: Pilgrim Press)
- Christie, N. (1977) 'Conflicts as a Property', *British Journal of Criminology*, 17, pp. 1-15.
- Christie, N. (1982) *Limits to Pain*. (Oxford: Martin Robertson)
- Chupp, M. (1989) 'Reconciliation Procedures and Rationale' in Wright, M. and Galaway, B. (eds) *Mediation and Criminal Justice. Victims, Offenders and Community*. (London/Newbury Park/New Dehli – Sage Publications), pp. 56-68.
- Claassen, R. (1996) *The Fundamental Principles of Restorative Justice*. Available at <http://www.fresno.edu/pacs/rjprinc.html> Also reprinted in McCold (2000)
- Claes, M. (1998) 'The Juvenile Mediation Project in Leuven (Belgium)' in Walgrve, L. (ed.) *Restorative Justice for Juveniles. Potentialities, Risks and Problems* (Leuven: Leuven University Press), pp. 367-385.
- Coates, R.B. and Gehm, J. (1989) 'An Empirical Assessment' in Wright, M. and Galaway, B. (eds) *Mediation and Criminal Justice*. (London: Sage)

Consedine, J. (1999) *Restorative Justice: Healing the Effects of Crime* (revised edition) (Lyttelton, New Zealand: Ploughshares Publications)

Council of Europe (1999) *Recommendation N R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters*. Available at <http://www.restorativejustice.org/rj3/Government%20Reports/mediationEurope.html>

Crawford, A. and Newburn, T. (2003) 'Recent Developments in Restorative Justice for Young People in England and Wales. Community Participation and Representation', *British Journal of Criminology*, 42, pp. 476-495.

Crawford, A. and Newburn, T. (2003) *Youth Offending and Restorative Justice: Implementing reform in youth justice* (Cullompton: Willan Publishing)

Cunneen, C. (2003) 'Thinking Critically about Restorative Justice' in McLaughlin E., Fergusson, R., Huges, G. and Westmarland, L. *Restorative Justice: Critical Issues*. (London/Thousand Oaks/New Delhi: Sage Publications), pp. 182-194.

Czarnecka-Dzialuk, B. and Wojcik D. (2000) 'Victim-Offender Mediation in Poland' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 309-336.

Daly, K. (2000) 'Revisiting the Relationship between Retributive and Restorative Justice' in Strang H., and Braithwaite, J. (ed.) *Restorative Justice: Philosophy to Practice* (Ashgate/Dartmouth: Aldershot), pp. 33-54.

Daly, K. (2001) 'Conferencing in Australia and New Zealand: Variations, Research Findings and Prospects' in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford-Portland Oregon: Hart Publishing), pp. 59-83.

Daly, K. (2002) 'Restorative Justice: The Real Story', *Punishment and Society*, 4, pp. 55-79.

Davis, G., Boucherat, J. and Watson, D. (1988) 'Reparation in the Service of Diversion: The Subordination of a Good Idea', *Howard Journal of Criminal Justice*, 27, pp.127-62.

Declaration of Leuven available at <http://www.sonoma.edu/cja/info/leuven.html> or in Bazemore, G. and Walgrave, L. (ed.) *Restorative Justice: Repairing the Harm of Youth Crime*, (Monsey, NY: Criminal Justice Press), pp. 403-407. Also reprinted in Johnstone 2003:477-81.

Denzin, N.K. and Lincoln, Y.S. (1998) 'Introduction: Entering the Field of Qualitative Research' in Denzin, N.K. and Lincoln, Y.S. (eds) *Strategies of Qualitative Inquiry* (Thousand Oaks – London – New Dehli: Sage Publications)

- Dignan, J. (1992) 'Repairing the Damage: Can Reparation be Made to Work in the Service of Diversion?' *British Journal of Criminology*, 32, pp. 453-72.
- Dignan, J. (1999) 'The Crime and Disorder Act and the Prospects for Restorative Justice', *Criminal Law Review*, pp. 48-60.
- Dignan, J. (2002) 'Restorative Justice and the Law: the Case for an Integrated, Systemic Approach' in Walgrave, L. (ed.) *Restorative Justice and the Law* (Cullompton: Willan Publishing), pp. 168-190.
- Dignan, J. (2003) 'Towards a Systemic Model of Restorative Justice' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 135-156.
- Dignan, J. (2005) *Understanding Victims and Restorative Justice*. (Berkshire: Open University Press)
- Dignan, J. and Marsh, P. (2001) 'Restorative Justice and Family Group conferences in England: Current State and Future Prospects' in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford-Portland Oregon: Hart Publishing), pp. 85-101.
- Duff, R.A. (1992) 'Alternatives to Punishment – or Alternative Punishments?' in Cragg, W. (ed.) *Retributivism and its Critics* (Stuttgart: Franz Steiner), pp.44-68.
- Duff, R.A. (2002) 'Restorative Punishment and Punitive Restoration' in Walgrave, L. (ed.) *Restorative Justice and the Law* (Cullompton: Willan Publishing), pp. 82-100.
- Duff, R.A. (2003) 'Restoration and Retribution' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 43-59.
- Dyke, D. (2000) 'Reaching Toward a Structurally Responsive Training and Practice of Restorative Justice', *Contemporary Justice Review*, 3, 239-265.
- Flick, U. (1998) *An Introduction to Qualitative Research*. (London – Thousand Oaks – New Delhi: Sage Publications)
- Fontana, A. and Frey, J.H. (1998) 'Interviewing: The Art of Science' in Denzin, N.K. and Lincoln, Y.S. (eds) *Collecting and Interpreting Qualitative Materials*. (Thousand Oaks - London - New Delhi: Sage Publications), pp. 47-78.
- Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*. (New York: Vintage Books)
- Foucault, M. (1978) *The History of Sexuality, vol. 1: An Introduction*. (New York: Pantheon Books)

- Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings (1972-1977)* (Brighton: Harvester Press)
- Foucault, M. (1981) 'Omnes et Singulatim: Towards a Criticism of 'Political Reason'' in S. McMurrin (ed.) *The Tanner Lectures on Human Values*. (New York: Cambridge University Press)
- Galaway, B. and Hudson, J. (1996) (eds.) *Restorative Justice: International Perspectives* (Monsey, NY: Criminal Justice Press)
- Glaser, B. and Strauss, A.L. (1967) *The discovery of grounded theory: Strategies for qualitative research*. (Chicago: Aldine)
- Griffiths, C.T. and Hamilton, R. (1996) 'Sanctioning and Healing: Restorative Justice in Canadian Aboriginal Communities' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp. 175-191.
- Hadley, L. (2001) *Spiritual roots of Restorative Justice* (Albany, NY: State University of New York Press)
- Haley, J.O. (1996) 'Crime Prevention Through Restorative Justice: Lessons from Japan' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp. 349-371.
- Harris, M. K. (1989) 'Alternative Visions in the Context of Contemporary Realities' in *Justice: The Restorative Vision*. (New Perspectives on Crime and Justice. Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office on Crime and Justice), 7, pp. 29-38.
- Harris, M. K. (1991) 'Moving Into the New Millenium: Toward a Feminist Vision of Justice' in Pepinsky, H.E. and Quinney, R. (eds) *Criminology as Peacemaking* (Bloomington: Indiana University Press), pp. 83-97.
- Harris, M.K. (1998a) 'Reflections of a Skeptical Dreamer: Some Dilemmas in Restorative Justice Theory and Practice', *Contemporary Justice Review*, 1, pp. 55-69.
- Harris, M.K. (1998b), quoted in McCold, P. (1998) 'Restorative Justice: Variations on a Theme', in Walgrave, L. (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research* (Leuven: Leuven University Press), pp. 19-53, at p. 43-44.
- Home Office (2003) *Restorative Justice: the Government's strategy. A consultation document on the Government's strategy on restorative justice*. (London: Home Office. Communications Directorate)
- Hoyle, C., Young, R. and Hill, R. (2002) *Proceed with Caution: And Evaluation of the Thames Valley Police Initiative in Restorative Cautioning* (York: Joseph Rowntree Foundation)

- Hulsman, L. (1986) 'Critical Criminology and the Concept of Crime', *Contemporary Crises*, 10, pp.63-80.
- Iivari, J. (1992) 'The Process of Mediation in Finland: A Special Reference to the Question 'How to Get Cases for Mediation?'' in Messmer, H. and Otto H.-U. (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives*, (Dordrecht, The Netherlands: Kluwer Academic Publications), pp. 137-147.
- Iivari, J. (2000) 'Victim-Offender Mediation in Finland' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 193-210.
- Johnstone, G. (2002) *Restorative Justice. Ideas, Values, Debates*. (Cullompton: Willan Publishing)
- Johnstone, G. (2003) *A Restorative Justice Reader*. (Cullompton: Willan Publishing)
- Jullion, D. (2000) 'Victim-Offender Mediation in France' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 211-250.
- Karp, D. (1998) 'The Judicial and Judicious Use of Shame Penalties' *Crime and Delinquency*, 44, pp. 277-294.
- Karp, D. and Walther, L. (2001) 'Community Reparative Boards in Vermont' in Bazemore, G. and Shiff, M. (eds.) *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati, OH: Anderson Publishing Co), pp.199-217.
- Kerner, H.-J., Marks, E. and Schreckling, J. (1992) 'Implementation and Acceptance of Victim-Offender Mediation Programs in the Federal Republic of Germany: A Survey of Criminal Justice Institutions' in Messmer, H. and Otto H.-U. (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives*, (Dordrecht, The Netherlands: Kluwer Academic Publications), pp. 29-54.
- Kleinberg, S.S. (1980) 'Criminal Justice and Private Enterprise', *Ethics* 90, pp. 270-282.
- Kurki, L. (2003) 'Evaluating Restorative Justice Practices' in Von Hirsch, A. et al (eds) *Restorative Justice and Criminal Justice. Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 293-314.
- Latimer, J., Dowden, C. and Muise, D. (2001) *The Effectiveness of Restorative Justice Practices: A Meta-Analysis* (Ottawa: Department of Justice)
- Liebman, M. and Masters, G. (2000) 'Victim-Offender Mediation in the United Kingdom' in The European Forum for Victim-Offender Mediation and Restorative

- Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 337-369.
- Marshall, T. (1995) 'Restorative Justice on Trial in Britain' *Mediation Quarterly*, 12, pp. 217-231.
- Marshall, T. (1996) 'Evolution of Restorative Justice in Britain', *European Journal on Criminal Policy and Research*, 4, pp.21-43.
- Marshall, T. (1998), quoted in McCold, P. (1998) 'Restorative Justice: Variations on a Theme', in Walgrave, L. (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research* (Leuven: Leuven University Press), pp. 19-53, at p.20.
- Marshall, T.F. and Merry, S.E. (1990) *Crime and Accountability – Victim/Offender Mediation in Practice* (London: Home Office, Her Majesty's Stationery Office)
- Mason, A. (2000) 'Restorative Justice: Courts and Civil Society' in Strang, H. and Braithwaite, J. (eds) *Restorative Justice. Philosophy to Practice* (Darmouth: Ashgate)
- Mathiesen, T. (1974) *The Politics of Abolition* (London: Martin Robertson)
- Matthews, R. (1988) *Informal Justice?* (London: Sage)
- Maxwell, G. and Morris, A. (1993) *Families, Victims and Culture: Youth Justice in New Zealand*. (Social Policy Agency and Institute of Criminology, Victoria University of Wellington, Wellington)
- Maxwell, G. and Morris, A. (1994) 'The New Zealand Model of Family Group Conferences' in Alder, D. and Wundersitz, J. (eds) *Family Group Conferencing and Juvenile Justice: the Way Forward of Misplaced Optimism?* (Canberra: Australian Institute of Criminology), pp. 15-36.
- Maxwell, G. and Morris, A. (1996) 'Research on Family Group Conferences with Young Offenders in New Zealand' in Hudson, J., Morris, A., Maxwell, G. and Galaway B. (eds.) *Family Group Conferences: Perspectives on Policy and Practice* (Monsey, NY: Criminal Justice Press), pp.88-110.
- Maxwell, G. and Morris, A. (2000) 'Restorative Justice and Reoffending' in Strang, H. and Braithwaite, J. (eds) *Restorative Justice. Philosophy to Practice* (Dartmouth: Ashgate), pp. 93-103.
- May, T. (1997) *Social Research. Issues, Methods and Process*. (Buckingham – Philadelphia: Open University Press)
- McCold, P. (1998) 'Restorative Justice: Variations on a Theme', in Walgrave, L. (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research* (Leuven: Leuven University Press), pp. 19-53.
- McCold, P. (2000) 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', *Contemporary Justice Review*, 3, pp. 357-414.

- McCold, P. and Stahr, J. (1996) 'Bethlehem Police Family Group Conferencing Project' (paper presented to the American Society of Criminology, Chicago, 20-23 November 1996. Available at <http://www.restorativepractices.org/Pages/bethlehem.html>)
- McCold, P. and Wachtel, B. (1998) *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (Piperville, Pennsylvania: Community Service Foundation)
- McElrea, F.W.M. (1996) 'The New Zealand Youth Court: A Model for Use with Adults' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp. 69-84.
- McEvoy, K. and Mika, H. (2001) 'Policing, Punishment and Praxis: Restorative Justice and Non-Violent Alternatives to Paramilitary Punishments in Northern Ireland', *Policing and Society*, 11, pp. 359-82.
- McEvoy, K. and Mika, H. (2002) 'Restorative Justice and the Critique of Informalism in Northern Ireland', *British Journal of Criminology*. 42, pp. 534-562.
- Messemer, H. and Otto H.-U. (1992) (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives*, (Dordrecht, The Netherlands: Kluwer Academic Publications)
- Miers, D. (2001) *An International Review of Restorative Justice*. Crime Reduction Research Paper 10 (London: Home Office, Policing and Reducing Crime Unit Research, Development and Statistics Directorate)
- Miers, D. et al (2001) *An Exploratory Evaluation of Restorative justice Schemes*. Crime Reduction Research Paper 9 (London: Home Office, Policing and Reducing Crime Unit Research, Development and Statistics Directorate)
- Mika, H. (1992) 'Mediation Interventions and Restorative Justice: Responding to the Astructural Bias' in and Otto (eds) *Restorative justice on Trial. Pitfalls and Potentials of Victim Offender Mediation – International Research Perspectives* (Dordrecht, The Netherlands: Kluwer Academic Publications), pp. 559-567.
- Mika, H. and Zehr, H. (2003) 'A Restorative Framework for Community Justice Practice' in McEvoy, K. and Newburn, , T. (eds) *Criminology, Conflict Resolution and Restorative Justice*. (New York: Palgrave MacMillan)
- Miller, F.G. (1977) 'Restitution and Punishment: A Reply to Barnett', *Ethics* 88, pp. 358-60.
- Moore, D.B. (1993) 'Shame, Forgiveness and Juvenile Justice', *Criminal Justice Ethics*, 12, pp. 3-25.
- Moore, D. B. and O'Connell, T. (1994) 'Family Conferencing in Wagga Wagga: A Communitarian Model of Justice', in Alder, C. and Wundersitz, J. (eds) *Family*

Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism (Canberra: Australian Institute of Criminology), pp. 45-86.

Morris, A. and Young, W. (2000) 'Reforming Criminal Justice: The Potential of Restorative Justice' in Strang, H. and Braithwaite, J. (eds) *Restorative Justice. Philosophy to Practice* (Dartmouth: Ashgate), pp. 11-31.

Morris, A. and Maxwell, G. (2001) (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford – Portland Oregon: Hart Publishing)

Morris, A. and Maxwell, G. (2003) 'Restorative Justice in New Zealand' in Von Hirsch, A., Roberts, J.V., Bottoms, A., Roach, K, and Schiff, M. (2003) *Restorative Justice and Criminal Justice. Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp.257-271.

Morris, R. (1995) 'Not Enough!' *Mediation Quarterly*, 12, 285-291.

Morris, R. (2000) *Stories of Transformative Justice* (Toronto: Canadian Scholars' Press)

Morrison, B. (2001) 'The School System: Developing its Capacity in the Regulation of a Civil Society' in in Strang, H. and Braithwaite, J. *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press), pp. 195-210.

Nielsen, M. O. (1996) 'A Comparison of Developmental Ideologies: Navajo Peacemaker Courts and Canadian Native Justice Committees' in Galaway, B. and Hudson, J. (eds.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp.207-223.

Niemeyer, M. and Shichor, D. (1996) 'A Preliminary Study of Large Victim/Offender Reconciliation Program' *Federal Probation*, 60, pp. 30-4.

Noaks, L. and Wincup, E. (2004) *Criminological Research. Understanding Qualitative Methods*. (London – Thousand Oaks – New Dehli: Sage Publications)

Nugent, W.R. and Paddock, J.B. (1995) 'The Effect of a Victim-Offender Reconciliation Program on Severity of Reoffense' *Mediation Quarterly* 12, 353-67.

Olson, S. and Drur, A. (2003) 'Reconstructing Professional Roles in Restorative justice Programs' in *Utah Law Review*, 1, pp. 57-89.

O'Connell, T. (1998) 'From Wagga Wagga to Minnesota', paper resented at the First North American Conference on Conferencing, August 6-8, 1998, Minneapolis, Minnesota. Available at http://www.restorativepractices.org/Pages/nacc_oco.html

Paliero, C.E. and Mannozi, G. (1992) 'Mediation and Reconciliation Models in Italian Legal Experience' in Messmer, H. and Otto H.-U. (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives*, (Dordrecht, The Netherlands: Kluwer Academic Publications), pp. 225-238.

- Paus, K.K. (2000) 'Victim-Offender Mediation in Norway' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 281-308.
- Pavlich, G. (1996a) *Justice Fragmented: Mediating Community Disputes under Postmodern Conditions* (London: Routledge)
- Pavlich, G. (1996b) 'The Power of Community Mediation: Government and Formation of Self', *Law and Society Review*, 30, pp 101-127.
- Pavlich, G. (2001) 'The Force of Community' in Strang, H. and Braithwaite, J. (eds.) *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press)
- Pavlich, G. (2002a) 'Deconstructing restoration: the promise of restorative justice' in Wetekamp E.G. M. and Kerner H.-J. (eds) 'Restorative Justice. Theoretical Foundations' (Cullompton: Willan Publishing), pp 90-109.
- Pavlich, G. (2002b) 'Towards an ethics of restorative justice' in Walgrave, L. (ed.) *Restorative Justice and the Law* (Cullompton: Willan Publishing), pp. 1-18.
- Pavlich, G. (2005) *Governing Paradoxes of Restorative Justice*. (London/Sydney/Portland, Oregon: Glasshouse Press)
- Peachey, D.E. (1989) 'The Kitchner Experiment' in Wright, M. and Galaway, B. (eds.) *Mediation and Criminal Justice: Victims, Offenders and Community* (London: Sage Publications), pp.14-26.
- Pelikan, C. (2000) 'Victim-Offender Mediation in Austria' in The European Forum for Victim-Offender Mediation and Restorative Justice (ed.) *VOM in Europe. Making Restorative Justice Work* (Leuven: Leuven University Press), pp. 125-152.
- Pepinsky, H.E. and Quinney, R. (eds) *Criminology as Peacemaking* (Bloomington: Indiana University Press)
- Pollard, C. (2001) 'If your only tool is a hammer, all your problems will look like nails', in Strang, H. and Braithwaite, J. *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press), pp. 165-179.
- Pratt, J. (1996) 'Colonization, Power and Silence: A History of Indigenous Justice in New Zealand Society' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), pp.137-155.
- Punch, K.F. (1998) *Introduction to Social Research. Quantitative and Qualitative Approaches*. London – Thousand Oaks – New Delhi: Sage Publications)
- Restorative Justice Consortium (2002) *The Statement of Restorative Justice Principles*. Available at <http://www.restorativejustice.org.uk/resources/principles.htm>
Also reprinted in Johnstone (2003:482-4).

- Roberts, J. V. and Roach, K. (2003) 'Restorative Justice in Canada From Sentencing Circles to Sentencing Principles' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 237-256.
- Roche, D. (2001) 'The Evolving Definition of Restorative Justice', *Contemporary Justice Review*, 4, pp. 341-353.
- Roche, D. (2002) 'Restorative Justice and the Regulatory State in South African Townships', *British Journal of Criminology*. 42, pp. 514-533.
- Roche, D. (2003) *Accountability in Restorative Justice*. (Oxford: Oxford University Press)
- Ross, R. (2003) 'Returning to the Teachings' in Johnstone, G. (ed.) *A Restorative Justice Reader. Texts, sources, context*. (Cullompton: Willan Publishing), pp.125-143.
- Roy, S. (1993) 'Two Types of Juvenile Restitution Programs in Two Midwestern Counties: A Comparative Study.' *Federal Probation*. 57, pp. 48-53.
- Sandor, D. (1994) 'The Thickening Blue Wedge in Juvenile Justice', in Alder, C. and Wundersitz, J. (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism* (Canberra: Australian Institute of Criminology), pp. 153-166.
- Shearing, C. (2001) 'Transforming Security: A South African Experiment' in Strang, H. and Braithwaite, J. (eds.) *Restorative Justice and Civil Society* (Cambridge: Cambridge University Press), pp.14-34.
- Strang, H. (2001) 'Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration', in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford-Portland Oregon: Hart Publishing), pp. 183-193.
- Strang, H. (2002) *Repair or Revenge* (Oxford: Clarendon Press)
- Strang, H., Barnes, G.C., Braithwaite, J. and Sherman, L.W. (1999) *Experiments in Restorative Policing* (Canberra: ANU). Available at <http://www.aic.gov.au/rjustice/rise/progress/1999.html>
- Strang, H. and Braithwaite, J. (2001) (eds.) *Restorative Justice and Civil Society* (Cambridge University Press)
- Strauss, A. and Corbin, J. (1990) *Basics of Qualitative Research. Grounded Theory Procedures and Techniques*. (Newbury Park - London - New Delhi: Sage Publications)
- Strauss, A. and Corbin, J. (1998a) 'Grounded Theory Methodology: An Overview' in Denzin, N. K. and Lincoln, Y.S. (eds) *Strategies of Qualitative Inquiry* (Thousand Oaks - London - New Delhi: Sage Publications), pp. 158-183.

- Strauss, A. and Corbin, J. (1998b) *Basics of Qualitative Research. Techniques and Procedures for Developing Grounded Theory*. (Thousand Oaks – London – New Dehli: Sage Publications)
- Stuart, B. (1996) 'Circle Sentencing: Turning Swords into Ploughshares', in Galaway, B. and Hudson, J. (eds.) *Restorative Justice: International Perspectives* (Monsey, NY: Criminal Justice Press), pp. 193-206.
- Sullivan D. and Tifft, L. (1998) 'The Transformative and Economic Dimensions of Restorative Justice' *Humanity and Society*, 22, 38-54.
- Sullivan D. and Tifft, L. (2000a) 'The Requirements of Just Community: An Introduction that Takes into Account the Political Economy of Relationship' *Contemporary Justice Review*, 3, 121-152.
- Sullivan D. and Tifft, L. (2000b) *Restorative Justice as a Transformative Process: The Application of Restorative Justice Principles to Our Everyday Lives* (Voorheesville, NY: Mutual Aid Press).
- Sullivan D. and Tifft, L. (2001) *Restorative Justice: Healing the Foundations of Our Everyday Lives* (Monsey, NY: Willow Tree Press).
- Taraschi S.G. (1998) 'Peacemaking Criminology and Aboriginal Justice Initiatives as a Revitalization of Justice', *Contemporary Justice Review*, 1, pp. 103-121.
- Umbreit, M. (1989) 'Violent Offenders and Their Victims' in Wright, M. and Galaway, B. (eds) *Mediation and Criminal Justice. Victims, Offenders and Community*. (London/Newbury Park/New Dehli – Sage Publications), pp. 99-112.
- Umbreit, M. (1994) *Victim Meets Offender. The Impact of Restorative Justice and Mediation* (Monsey, NY: Criminal Justice Press)
- Umbreit, M. (1996) 'Restorative Justice Through Mediation: the Impact of Programs in Four Canadian Provinces' in Galaway, B. and Hudson, J. (eds.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), 373-385.
- Umbreit, M. (1999) 'Avoiding the Marginalization and 'McDonalization' of Victim-Offender Mediation: A Case Study in Moving Toward the Mainstream' in Bazemore, G. and Walgrave, L. (eds.) *Restorative Justice: Repairing the Harm of Youth Crime*, (Monsey, NY: Criminal Justice Press), 213-234.
- Umbreit, M.S. and Coates, R.B. (1993) 'Cross-Site Analysis of Victim Offender Mediation in Four States', *Crime and Delinquency*, 39, pp. 565-85.
- Umbreit, M.S., Coates, R.B., Vos, B. (2001) 'Victim Impact of Meeting with Young Offenders: Two Decades of Offender Mediation Practice and Research' in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford-Portland Oregon: Hart Publishing), pp. 112-143.

United Nations, the Economic and Social Council (2000) *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters*. Available at <http://www.restorativejustice.org/rj3/UNBasicPrinciples/VanNessarticle.htm> Also reprinted in Johnstone (2003: 485-488).

Van Ness, D. (1989) 'Pursuing a Restorative Vision of Justice' in *Justice: The Restorative Vision*. (New Perspectives on Crime and Justice. Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office on Crime and Justice), 7, pp. 11-27.

Van Ness, D. (1993) 'New Wine and Old Wineskins: Four Challenges of Restorative Justice', *Criminal Law Forum*, 4, pp. 251-76.

Van Ness, D. (2002) 'The shape of things to come: a framework for thinking about a restorative justice system' in Weitekamp, G.M. and Hans-Jürgen Kerner (eds) *Restorative Justice. Theoretical foundations*. (Cullompton: Willan Publishing), pp. 1-20.

Van Ness D., and Strong K.H. (2002) *Restoring Justice* (2nd ed.) (Cincinnati, OH: Anderson Publishing Co).

Van Stokkom, B. (2002) 'Moral Education in Restorative Justice Conferences: Managing Shame, Designing Empathy', *Theoretical Criminology*, 6, pp. 339-360.

Von Hirsch, A., Ashworth, A., Shearing, C. (2003) 'Specifying Aims and Limits for Restorative Justice: A 'Making Amends' Model?' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (2003) (eds) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 21-41.

Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (2003) (eds) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing)

Walgrave, L. (1992) 'Mediation and Community Service as Models of restorative Approach: Why Would It Be Better? Explicating the Objectives and Criteria for Evaluation' in , H. and Otto, H.-U. (eds) *Restorative Justice on Trial. Pitfalls and Potentials of Victim-Offender Mediation – International Research Perspectives* (Dordrecht/Boston/London: Kluwer Academic Publishers), pp. 343-353.

Walgrave, L. (1995) 'Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?' *The Howard Journal*, 34, pp. 228-249.

Walgrave, L. (1998) (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research* (Leuven: Leuven University Press).

Walgrave, L. (1999) 'Community Service as a Cornerstone of a Systematic Restorative Response to (Juvenile) Crime' in Bazemore, G. and Walgrave, L. (ed.) *Restorative Justice: Repairing the Harm of Youth Crime*, (Monsey, NY: Criminal Justice Press), 129-154.

- Walgrave, L. (2000) 'How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist?' *Contemporary Justice Review*, 3, pp. 415-432.
- Walgrave, L. (2001) 'On Restoration and Punishment: Favourable Similarities and Fortunate Differences', in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford – Portland Oregon: Hart Publishing), pp. 17-37.
- Walgrave, L. (2002) 'Restorative Justice and the Law: Socio-Ethical and judicial Foundations for a Systemic Approach' in Walgrave, L. (ed.) *Restorative Justice and the Law* (Cullompton: Willan Publishing), pp.191-218.
- Walgrave, L. (2003) 'Imposing Restoration Instead of Inflicting Pain' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Shiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp.61-78.
- Walgrave, L. and Aertsen, I. (1998) 'Reintegrative Shaming and Restorative Justice', *Humanity and Society*, 22, p. 67.
- Warner, K. (1994) 'Family Group Conferences and the Rights of the Offender', in Alder, C. and Wundersitz, J. (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism* (Canberra: Australian Institute of Criminology), pp. 141-152.
- Weitekamp, E.G.M. (2003) 'The History of Restorative Justice' in Johnstone, G. (ed.) *A Restorative Justice Reader. Texts, sources, context.* (Cullompton: Willan Publishing), pp.111-124.
- Wright, M. (1991) *Justice for Victims and Offenders: A Restorative Response to Crime.* (1st ed.) (Philadelphia, PA: Open University Press)
- Wright, M. (1996) *Justice for Victims and Offenders: A Restorative Response to Crime.* (2nd ed.) (Winchester: Waterside Press)
- Wright, M. (1999) *Restoring Respect for Justice.* (Winchester: Waterside Press)
- Wright, M. and Galaway, B. (1989) (eds.) *Mediation and Criminal Justice: Victims, Offenders and Community* (London: Sage Publications)
- Wynne, J. (1996) 'Leeds Mediation and Reparation Service: Ten Years' Experience with Victim-Offender Mediation' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives.* (Monsey, NY: Criminal Justice Press), pp. 445-461.
- Yazzie, R. (1998) 'Navajo Peacemaking: Implications for Adjudication-Based Systems of Justice', *Criminal Justice Review*, 1, pp. 123-131.

Yazzie, R. and Zion, J.W. (1996) 'Navajo Restorative Justice: The Law of Equality and Justice' in Galaway, B. and Hudson, J. (ed.) *Restorative Justice: International Perspectives*. (Monsey, NY: Criminal Justice Press), 157-173.

Young, R. (2001) 'Just Cops Doing 'Shameful' Business? Police-led Restorative Justice and the Lessons of Research' in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford-Portland Oregon: Hart Publishing), pp. 195-226.

Young, R. and Goold, B. (1999) 'Restorative Police Cautioning in Aylesbury – From Degrading to Reintegrative Shaming Ceremonies?', *Criminal Law Review*, pp. 126-38.

Young, R. and Hoyle, C. (2003) 'New, Improved Police-Led Restorative Justice?' in Von Hirsch, A., Roberts, J. V., Bottoms, A., Roach, K. and Schiff, M. (eds.) *Restorative Justice: Competing or Reconcilable Paradigms?* (Oxford and Portland, Oregon: Hart Publishing), pp. 273-291.

Zedner, L. (1994) 'Reparation and Retribution: Are they Reconcilable?', *Modern Law Review*, 57, pp. 228-50.

Zellerer, E. and Cunneen, C. (2001) 'Restorative Justice, Indigenous Justice, and Human Rights' in Bazemore, G. and Schiff, M. *Restorative Community Justice*. (Cincinnati, OH: Anderson Publishing), pp. 245-263.

Zehr, H. (1989) 'Stumbling Toward a Restorative Ideal' in *Justice: The Restorative Vision*. (New Perspectives on Crime and Justice. Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office on Crime and Justice), 7, pp. 1-14.

Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, PA: Herald Press)

Zehr, H. (1995) 'Justice Paradigm Shift? Values and Visions in the Reform Process' *Mediation Quarterly*, 12, pp. 207 - 216.

Zehr, H. (2002) *The Little Book of Restorative Justice*. (Good Books)

Zehr, H. (2003) 'Retributive Justice, Restorative Justice', in Johnstone, G. (ed.) *A Restorative Justice Reader*. (Cullompton: Willan Publishing), pp. 69-82.

Zehr, H. and Mika, H. (1998) 'Fundamental Concepts of Restorative Justice', *Contemporary Justice Review*, 1, pp. 47-55.

Zion, J.W. (1998) 'The Use of Custom and Legal Tradition in the Modern Justice Setting', *Contemporary Justice Review*, 1, pp. 133-148.