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1

Criminology, Conflict Resolution and Restorative Justice

Kieran McEvoy and Tim Newburn

As with many such projects, this book began in a series of conference conversations conducted over a number of years bemoaning our discipline's failure to address a common preoccupation. Its particular genesis was in discussions concerning what we perceived to be criminology's lack of substantive engagement with the processes of conflict resolution. Although, as is discussed below, our focus soon broadened – to include conflict resolution not just at the political level within states but also micro-conflict resolution between indigenous and metropolitan cultures, within and between justice systems, and within neighbourhoods – our deliberations began with the role of criminology in peace processes such as those pursued in South Africa and Northern Ireland.

In all such processes, the standard issues of criminology (policing, prisons, the criminal justice system, the treatment of victims and so forth) clearly remained central both during the respective conflicts and in the subsequent eras of conflict resolution and transition. Criminologists working in such jurisdictions were obviously engaged in research on such matters. However, we felt that greater effort was needed in attempting to link this criminological enterprise in a more systemic and theoretical fashion to the contours of conflict and the process of conflict resolution. If, as Gouldner (1973) suggested, *The New Criminology* succeeded in making criminology intellectually respectable by linking it to wider concerns of social theory, then to us it appeared that these events were too important (and too clearly within the disciplinary remit) for criminology not to have something more to say.

Paul Walton has argued that 'from a small marginal discipline in faculties of law and social science, criminology has emerged as an important and politically crucial discipline...' (Walton, 1998:4). We agree with that assertion. Yet central to the intellectual development

and maturation of a legal/social science discipline is its willingness to encompass the analysis of phenomena which are themselves politically crucial. Writing in the wake of the terrorist attacks on the USA on 11 September 2001, it is all the clearer how important is the study and analysis of political conflict. Criminology, if it wishes to continue to be taken seriously, must contribute to such central debates in the new millennium. Indeed, as both Van Zyl Smit (with regard to South Africa) and McEvoy and Ellison in particular argue (with regard to Northern Ireland), the analytical frameworks and epistemological strengths of criminology offer a particularly grounded vantage point for the analysis of 'terrorism' and how to deal with it.

At the other end of the scale criminologists have, in recent years, shown increasing interest in the resolution of smaller-scale conflicts and what such techniques and processes might have to tell us about our formal systems of justice (both their limitations and how they might be reformed). Despite the relatively recent revival of interest, according to its major proponents 'restorative justice has been the dominant model of criminal justice throughout most of human history for all the world's peoples' (Braithwaite, 1998:323). It appears, to take one example, that during the time of the Roman Empire victims could select between civil and criminal proceedings. Non-judicial forms of dispute resolution took precedence over state-centred remedies. The shift towards state punishment (Lacey, 1988) was a gradual one, moving away from restorative approaches towards retributive models in which crime was treated as a matter of fealty to and felony against the monarch occurring simultaneously with the decline of feudalism (McAnany, 1978; Braithwaite, 2002). Reflecting on this trend in a now famous essay, Nils Christie (1977) commented on the way in which conflict had been appropriated. Criminal conflicts, he argued, have progressively either become other people's property, usually lawyers', or have been defined away by those in whose interest it is valuable to do so.

Christie suggested that criminology itself was complicit in this process and that 'maybe we should not have any criminology' (1977:1). The latter point, it should by now be clear, is not one with which we agree (and nor in practice, it appears, did Christie). Christie's starting-point was that conflicts are important and that industrialized societies, far from having too much conflict, actually have too little. In this he was following John Burton's rather more colourful analogy that conflict is like sex. It is pervasive, should be enjoyed and should occur with reasonable frequency. After it is over, people should feel better as a consequence (Burton, 1972). In this manner, Christie argued that 'conflicts ought to

be used, not only left in erosion. And they ought to be used, and become useful, for those originally involved in the conflict' (1977:1). His view was that conflicts are scarcer than property and are immensely more valuable. They are valuable because they provide an opportunity for participation, an opportunity for the clarification of values and principles, and in the criminal justice setting, an opportunity for victims to gain a better grasp of their experience and reduce their anxiety through contact with the offender. In the current system 'the offender has lost the opportunity for participation in a personal confrontation of a very serious nature. He [*sic*] has lost the opportunity to receive a type of blame that it would be very difficult to neutralise' (1977:9).

Since the publication of Christie's essay a number of authors have sought both to develop more fully theorized versions of non-retributive forms of justice and to promote practical experiments. One of the authors in this volume, Howard Zehr, was among the first to develop an 'alternative justice paradigm' in which it was proposed that victims should play a much more central role and offenders should assume greater responsibility for their actions and for repairing the harm caused (Zehr, 1985, 1990). Zehr's early work placed great emphasis on victim-offender mediation, and such ideas were particularly influential in the UK from the late 1980s onwards (Marshall and Merry, 1990; Wright, 1991; Umbreit, 1994). Criminal-justice-focused forms of mediation and conflict resolution have developed in numerous other directions since then, encompassing both theoretical developments such as 'reintegrative shaming' (Braithwaite, 1989) and 'responsive regulation' (Braithwaite, 2002), as well as practical advances such as 'family group conferencing' (Morris, Maxwell and Robertson, 1993; Morris and Maxwell, 2000), 'sentencing circles', and 'community justice' (Karp, 1998), and advances in business regulation (Ahmed et al., 2001).

It is at this point that work on large-scale conflict resolution and that on alternative justice begin to come together as restorative justice theorists have turned their attention to broader matters than the operation of the criminal justice system. For example, the South African Truth and Reconciliation Commission made specific reference to the concept of restorative justice and the related African notion of *ubuntu* (Truth and Reconciliation Commission, 1998).¹ Villa-Vicenzio (1999), one of the report's authors, has explicitly seen the 'amnesty' process under the TRC (whereby human rights violators were granted immunity from prosecution in return for truth telling) as an expression of the practical applicability of restorative values in a transitional context. Such an approach to restorative justice and conflict resolution has not been without its critics

(e.g. see Leebaw, 2001). None the less, restorative justice has been linked with a wide variety of conflict resolution settings, including discussions concerning post-conflict 'truth' processes in the former Yugoslavia (Nikolic-Ristanovic, 2001) and East Timor (United Nations, 2001), the Gachacha arbitration hearings established in the wake of the massacres in Rwanda (ICRC, 2000), the setting up of the international criminal court (Popovski, 2000) and ongoing attempts at finding alternatives to paramilitary punishment violence in Northern Ireland (McEvoy and Mika, 2002).

At both the macro and the micro level, restorative justice theory and practice offer a template for addressing harms which fits broadly within the increasingly accepted requirements of transition from conflict (Teitel, 2000). A focus on reparation and healing of victims as opposed to retribution visited upon wrongdoers, hearings which are directed towards truth finding rather than adversarial contests, processes which emphasize community involvement and ownership rather than exclusive 'professional' stewardship – these and other features of restorative justice have become increasingly important as ways in which societies seek to emerge from violent and divisive political conflicts.

In perhaps the most far-reaching linkage of restorative justice to conflict resolution, Braithwaite has suggested that the restorative justice paradigm (when linked with work on responsive regulation) is useful 'for reconfiguring how to struggle for world peace' (2002:169). Entering a terrain normally reserved for political scientists and international relations theorists, Braithwaite argues that in light of the end of the cold war, wealthy, economically interdependent states tend to avoid going to war to resolve their differences with each other but rather engage in what he terms 'restorative diplomacy'. Drawing directly from the literature on business dispute regulation and resolution (discussed further below), he argues that they settle disputes through established techniques such as conciliation, mediation, conferences and summits. As developing nations become similarly economically integrated through the process of globalization, Braithwaite (2002:172–4) contends that this creates a more organized sense of 'an international civil society', a process which is directly analogous to the conditions necessary for effective restorative justice at the micro level. Braithwaite goes on to suggest that what he regards as the failings of traditional 'elite' diplomacy (e.g. President Carter's mediation between President Sadat and Prime Minister Begin at Camp David) can be met by 'the democratised peacemaking that is restorative justice'. Modern peacemaking, he argues, must go beyond the notion of top-down deals cut at the negotiating

tables to 'restorative' processes where pragmatic accommodations are stretched to 'shame' violence, move away from retribution, promote the protection of human rights, engender greater communal ownership of the settlement and ensure that all is framed in the generous language of idealism, peace and justice rather than humiliation or victory for any of the protagonists.

While even some restorative justice advocates would balk at the scale of Braithwaite's ambitions, his attempt to draw out the theoretical and practical links between what has traditionally been viewed as the preserve of criminology and the broader process of resolving conflict is formidable. We admire and support that objective. For us, where criminology, conflict resolution and restorative justice meet offers a challenge to the traditional boundaries of the criminal justice process and to conventional, criminological definitions of conflict. The approaches outlined above seek a more holistic understanding of justice which attempts to overcome the long-standing separation of bureaucratic approaches on the one hand and those that place greater emphasis on emotions on the other. As Bazemore (1998:337) puts it, 'this focus implies a vision of justice as "transformative" as well as ameliorative or restorative'. The bottom line in such an approach is that it must involve meaningful forms of participation not only in 'justice' but, at least as importantly, in solving problems, resolving conflicts and rebuilding damaged relationships.

Criminology and the relevance of conflict resolution literature

While conflict resolution has been defined both broadly and narrowly, we have found the definition offered by Ho-Won Jeong most useful for our purposes.² As criminologists, our primary focus in this book is the intersection between law, criminal justice and social regulation on the one hand and the process of resolving conflict on the other. While not the only meeting point (see the chapters below on peacemaking criminology), restorative justice is one of the key criminological arenas in which such ideas coalesce. Bearing in mind that our gaze is primarily limited to matters criminological, we have chosen at this juncture to draw out particular elements of the conflict resolution literature which are relevant for our current purposes. As an academic discipline, conflict resolution has its origins within at least three distinct arenas: international relations and peace studies; alternative dispute resolution; and organizational development and management science

(Tidwell, 1998) – each of which can be directly linked to central criminological problematics.

It is within the field of international relations and peace studies that the phrase conflict resolution is perhaps most often encountered (Burton, 1986, 1987, 1997; Jeong, 1999). It emerged as a distinct discipline within the social sciences in the late 1950s in tandem with the growing realization that war, long seen as a staple form of relations between states, had become ‘in a very real sense a threat to the survival of humanity’ (Rapoport, 1999:vii). By the 1990s, with the demise of the cold war, the focus of the discipline had broadened considerably as scholars and activists recognized that the nature of conflicts had changed. For example, Wallensteen and Sollenberg (1997) note that of a total of 101 armed conflicts between 1989 and 1996, only six were interstate conflicts. The vast majority were between different identity groups defined by racial, religious, ethnic, cultural, political or ideological terms (often a combination), and most such conflicts had a long history.

As the particular configurations of conflicts studied within international relations and peace studies have broadened, so too has the range of conceptual devices used to analyse both conflict and the processes required for its resolution. At least three key features may be drawn from this literature which are of particular relevance to the study of criminology and conflict resolution.

First, the notion of ‘structural violence’ (Galtung, 1975) in particular broadened the focus to an understanding of issues such as poverty and the denial of human rights as forms of violence often as harmful as physical violence itself. Thus, as Murray argues in her chapter below (Chapter 4) with regard to the prevention of political, social or ethnic conflict in Africa, conflict prevention cannot be divorced from the protection of basic human freedoms. More critical variations of this school (particularly those that focus upon gender, race and power relations) often offered the most sustained critiques of forms of conflict resolution such as mediation. These they saw as promoting a manipulative ideology of harmony, one which inevitably favours the dominant class or order (Lederach, 1989). While not all conflict resolution commentators would share that degree of cynicism, a critical attention to social structure has become a key element in more grounded conflict resolution theory (e.g. Dukes, 1996, 1999). Such a focus resonates strongly with a number of criminological intersections with conflict. For example, the chapter below on ‘peacemaking criminology’ by Thomas and colleagues (Chapter 5) is located firmly within this paradigm, arguing in essence that no honest attempts at peacemaking can be made which neglect to

address the pernicious influence of a retribution-obsessed criminal justice complex.

Second, the concept of 'ripeness' in the conflict resolution literature appears to us to be of considerable academic usefulness (Aggestam, 1995; Mitchell, 1995; Lieberfeld, 1999). Simply put, this is a view that *timing* is all in resolving conflict, perhaps best summed up by the poet Seamus Heaney (with regard to the Irish peace process) as a juncture when 'hope and history rhyme'.³ Conflicts may be ripe for conflict resolution at a particular time because of a complex interaction of political, ideological, social, cultural, individual personalities and other factors. A diminution in the legitimacy of the established order and a willingness realistically to address legitimacy deficiencies, pressures for resolution from outside and inside the parameter of the conflict, a viable alternative to armed struggle, individual political leaders willing to take risks and lead their constituencies – these and other factors have all played varying roles in the (apparently) more successful peace processes of recent times. Conversely, conflicts may be *unripe* for resolution, particularly when in the absence of the collapse of an (arguably) viable state system, those seeking to resolve conflict are hamstrung by 'political realities'.⁴ 'Premature resolution' will tend to result in only temporary success (Deutsch, 1987). Both the chapters by McEvoy and Ellison (regarding Northern Ireland – Chapter 3) and Van Zyl Smit (South Africa – Chapter 2) are premised on the notion that these were conflicts which had 'ripened' to a greater or lesser extent at the political level. In addition, the process of conflict ripening in both jurisdictions meant that criminological actors and criminological discourses (on issues such as prisoner release, police and criminal justice reform etc.) were moved centre stage in respect of the overall conflict resolution process.

Third, the forms of conflict resolution themselves reflect important underlying tensions, in particular with regard to the role and legitimacy of the state. Rubinstein (1999) has characterized this well by suggesting that those seeking to resolve conflict fall into two broad camps, *technocratic* and *political*. *Technocrats* tend to accept as 'givens' existing legal, conflict management and other arrangements of the state infrastructure. Within such a framework, conflicting parties are assigned to negotiate their differences in state-sanctioned forums. *Politicals* on the other hand consider such dispute resolution as system maintenance. Theirs is a more ambitious project, not only to resolve individual disputes but also to assist in the creation of a political will designed to make structural changes possible. Thus, for example, a *technocratic* approach to the mechanisms of informal dispute resolution employed by high-crime

communities described below by Sandra Walklate (Chapter 9) would fail to take full account of the centrality of local communities' lack of trust or faith in the state's capacity to 'deliver'. A *political* approach to such problems would not assume state legitimacy as axiomatic but would instead grasp that confidence in state mechanisms must be earned and informed by a much more realistic appraisal of the personal, organizational and community networks where trust and power actually lie in many such communities.

The overlapping sub-discipline of *alternative dispute resolution* (ADR) emerged in the USA in particular from the 1970s onwards in response to increased dissatisfaction with the capacity of the formal justice system to deal effectively with a range of conflicts (Goldberg, Frank and Rogers, 1992). Under the broad ADR umbrella, community mediation centres such as the San Francisco Community Boards (established in 1976), mechanisms for dealing with environmental disputes, family dispute resolution and mediation centres (some of which are centrally linked to the courts) have developed in the USA, Australia, New Zealand and elsewhere over the past three decades (Carpenter and Kennedy, 1988; Astor and Chinkin, 1992). As Mika and Zehr suggest below (Chapter 6), the current prominence of a range of contemporary restorative justice techniques can be traced in part to the ADR movement in the USA, and these are considered at some length below by Rieger and Crawford in their respective chapters on justice practices in Alaska Native villages and the British youth justice system (Chapters 7 and 8).

The final variant of conflict resolution literature is that drawn from management and business literature. Within management science, conflict was originally viewed as inefficiency, an unfortunate by-product of the workplace to be overcome by more efficient management strategies (Mouzellis, 1981). However, later, conflict came to be viewed not necessarily as a totally negative force within organizations but rather something that could be harnessed and directed through 'problem solving', thus improving overall organizational health (Blake and Mouton, 1964; Pascale, 1990; Scimecca, 1991). Most management theorists now view conflict resolution or problem solving as an intrinsic element of the managerial *process*. As Tidwell (1998) argues, many of the conceptual tools and practices currently utilized when discussing social or structural conflicts (such as mediation or arbitration) were mainstreamed by their promotion in labour relations contexts, albeit focused primarily on making conflict less costly and more efficient.

As noted above, Braithwaite (2002) has argued strongly that such practical techniques may be borrowed directly from the business and

management world in order to underpin the application of 'restorative diplomacy' to the resolution of conflict. At the conceptual level, the centrality of a *processual* approach to conflict (a key characteristic of the managerial literature on the topic) is equally significant. Such an approach has led some commentators to refer to *conflict transformation* rather than *conflict resolution* when referring to protracted social or political conflicts (e.g. Rupensinghe, 1995). Transformation is inherently process-focused, a more open-ended and holistic approach to conflict. As Lederach (1995) has argued, conflict resolution connotes a bias towards 'ending a given crisis', whereas conflict transformation allows for a deeper and longer-term analysis of the ways in which conflict changes things both constructively and destructively. A focus on transformation concerns 'broader social structures, change and moving towards a social space open for cooperation, for more just relationships and for non-violent mechanisms for handling conflict' (Lederach, 1995:202).

For criminologists and lawyers who work on conflict, this process orientated attention to the nature of transformative or transitional justice has become a key concern (Osiel, 1997; Hayner, 2001; Mika, 2002). As McEvoy and Ellison argue in their chapter below (Chapter 3), the contours of post-conflict legal order with regard to decisions on whether or not to prosecute previous human rights abusers, instigate truth commissions, or release political prisoners; all of these issues both shape and are shaped by the nature of transition. This notion of a *process* of conflict transformation (rather than a definitive deal after which a conflict may be said to be resolved) more accurately captures the depth and complexity of change which follows intense social or political conflict. As Teitel has suggested, transitions may be conceptualized along a transformative continuum during which

law is caught between the past and the future, between backward looking and forward looking, between retrospective and prospective, between the individual and the collective ... Accordingly in transition, the ordinary intuitions and predicates about law do not apply. In dynamic periods of political flux, legal responses generate a sui generis paradigm of transformative law.

(Teitel, 2000:6)

To recap, the conflict resolution literature echoes a number of central concerns and themes within the discipline of criminology. Our contributors do not (in the main) use the same language as conflict resolution specialists. This is hardly surprising, given that most see themselves as

criminologists and *lawyers* rather than experts in *conflict resolution*. None the less we are struggling with very similar themes.

From the conflict resolution of international relations and peace studies we have drawn particular attention to the notions of structural violence, the centrality of the idea of timing or *ripeness* and the distinction between technocratic and political conflict resolution. All of these notions are centred around the key problematic of the state accepting its role and responsibility to resolve conflict as the defining characteristic of what a state *does*. The traditional Weberian notion of the state defined primarily by its monopoly on the use of force (Weber, 1966) – in effect to engage in *conflict making* – is matched here by an articulation of a parallel responsibility to accept its responsibility to engage in *conflict resolving*. Alternative dispute resolution (ADR) places the community at the front and centre in the process of dealing with conflict and is an important source for discussions concerning the utilization of restorative justice theory and practice in dealing with conflict. Business and management science, in particular with its emphasis on the processual nature of conflict resolution/transformation, resonates strongly with contemporary criminological discourses on transitional justice. While within our respective spheres conflict resolution specialists and criminologists have been talking about many of the same issues, we have often done so by speaking in different tongues.

The collection

Van Zyl Smit's chapter (Chapter 2) charts the complex patterns of criminology in the South African conflict and transition to democracy. He draws out the three central tenets of South African criminology. Afrikaner nationalist criminology provided an intellectual justificatory framework for the apartheid regime. Such criminology fed the state paranoia concerning the communist-inspired onslaught against South Africa and suggested, for example, that the wholesale exclusion of black communities might be justified on the grounds that their 'simpler' natures were better suited to a life removed from urban temptations. Legal reformist criminology, which had both conservative and liberal wings and was dominated by lawyers, focused largely on trying to make the system more humane and more effective. Dominated by a largely technicist framework, these lawyers, judges and civil servants produced research which focused largely upon the formal equality provided by the South African criminal law while at the same time protecting, or at least not undermining, the socio-political status quo of apartheid. The third

tradition identified by Van Zyl Smit is critical criminology within South Africa, a broad church which exposed the legitimacy deficiencies of the criminal justice system and its structural links to the apartheid form of governance, and was committed to democratic change and criminological praxis at local community levels. Van Zyl Smit concludes by acknowledging that while much critical criminological thought has been mainstreamed by the transition to democracy, he remains sceptical as to whether its communitarian ideals will survive the demands of a society where high crime rates persist and an agreement remains to be reached on the values which must underpin the respective roles of the state and local communitarian initiatives.

McEvoy and Ellison (Chapter 3) take up the theme of criminology and political conflict resolution in the Northern Ireland context. Their discussion of criminological research during that conflict focuses on the two broad traditions of positivism and critical criminology, with legal reformism (sometimes uncomfortably) straddling both. They describe as positivistic those who engaged in the study of political violence as a largely security-driven endeavour designed better to understand and therefore either better manage or *defeat* the terrorists. Similarly they argue that other variants of criminology which focused on ordinary crime (which either *blamed* paramilitaries for a perceived breakdown in social order, argued that order was *retained* despite the men of violence or focused on ordinary crime while wilfully ignoring the effects of the conflict – a ‘don’t mention the war’ criminology) may all be accurately described as positivist. They then consider a number of variants of critical criminology, including the response to the institutional sectarianism of the Stormont era and the mobilization of the civil rights campaign, the response to the government attempts at the criminalization of political violence from the mid-1970s onwards and the mainstreaming of critical criminological discourses (arguably to a lesser extent than in South Africa) in the period since the ceasefires. Drawing in particular from the critical criminological tradition, they argue that there are at least four major themes drawn from the criminology of conflict resolution that may be of relevance to the discipline more broadly. These are: criminology as a political project; criminology as a moral project; criminology as an international and comparative project; and finally, the interrelationship between criminology, human rights and conflict resolution. They conclude with some reflections on criminology, transition and the creation of public memory in a post-conflict society.

Rachel Murray (Chapter 4) continues the theme of exploring the relationship between conflict resolution and human rights discourses

and frameworks. She argues that there is a dialectical relationship between human rights abuses and conflict whereby the former often lead to political, ethnic or social conflict whose outbreak often in turn leads to further human rights abuses. However, despite this clear interconnection, Murray argues that often the institutions established to monitor or prevent conflict are institutionally separated from those concerned with human rights violations. By way of example, she considers the respective roles of the Organization of African Unity (which has a specific mechanism designed to 'prevent, manage and resolve' conflict) and the African Commission on Human and Peoples' Rights which is tasked with enforcing the African Charter on Human and Peoples' Rights. She shows how, while both institutions have been engaged in the development of mechanisms to forewarn about events such as occurred in Rwanda in the 1990s, and have recognized the need for greater collaboration, the two frameworks remain quite distinct and are still some distance from the required *holistic* approach to conflict prevention.

In putting together this collection, we were conscious that an important sub-school within the discipline had for some time been wrestling with an approach to crime and criminal justice which was rooted firmly within a conflict framework, that is, peacemaking criminology. Jim Thomas and his colleagues (Chapter 5) offer a sympathetic but critically insightful reflection on the developments within peacemaking criminology over the past two decades or so. Tracing its origins to the criminological work which recognized crime as but one form of violence among many (including war, social and political structures, and other factors that suppress human potential), peacemaking criminology is described as an approach to crime and justice which focuses on universal social justice in order to eliminate other forms of interpersonal violence and harm. Thomas and colleagues address head on some of the criticisms levelled against peacemaking criminology, including the overarching charge that it is really a disparate body of thought focused on the theory that 'it's nice to be nice!'. More specifically, they organize these critiques into five broad thematic categories. These include the charges that peacemaking criminology: is incompatible with Marxist/radical theories; is theoretically akin to functionalism; is inherently conservative; reflects overwhelming intellectual chaos; and lacks intellectual or empirical credibility. Returning to the difficulties of definition, Thomas et al. suggest that peacemaking is perhaps best understood as a metaphor, a lens through which it is possible to reframe and suggest alternatives to existing responses to social offending and control.

Perhaps the best-known theoretical and practical development to emerge from the broad church of peacemaking criminology over the past ten to 15 years has been that within the field of restorative justice. Variants on the theme of restorative justice as conflict resolution take up our next three chapters in this collection.

Harry Mika and Howard Zehr's chapter (Chapter 6) offers an outline of restorative justice as a framework for community justice and conflict resolution at the local community level. As they discuss, while there is some debate as to whether restorative justice may be accurately described as a social movement, or a convergence of different progressive social and political movements, its current predominance as the 'flavour of the month' critique of conventional justice approaches is indisputable. Mika and Zehr caution that unless restorative justice is grounded in a series of properly articulated values and principles, there are real dangers that its potential will be subverted, in particular by its close working relationship with and (at least in some cases) dependence upon the conventional justice system. They suggest that there is a continuum of programme types which operate currently under the umbrella of a restorative framework, from the fully restorative to those that are incompatible with the theory and practice of restorative justice. In articulating their definition of restorative justice values and principles, Mika and Zehr suggest that all should be drawn from the two fundamental understandings, that is, that restorative justice is harm-focused, and that it promotes the engagement of an enlarged set of stakeholders. Their definition is composed of three major headings which include: the notion that crime as a violation of people and interpersonal relations; the idea that such violations impose obligations upon offenders and liabilities upon communities; and the view that justice practice within a restorative framework must be focused upon healing and putting right the wrongs created by the violation. Mika and Zehr go on to suggest that a restorative approach to conflict must not treat it as the product of the mistakes or weakness of individuals, but rather as a phenomenon which is social and relational in nature, extending the gaze to the role of community and the state and beyond the limited venue of crime and delinquency.

Lisa Rieger (Chapter 7) highlights the particular conflict which may be generated by the uneasy application of western models of youth justice to Alaskan Native villages in the area of juvenile justice. Rieger charts the attempts at introducing peer justice models developed in urban American settings (based upon restorative principles) to divert juveniles from the more formal juvenile court system. There is federal pressure to

extend these models to geographically remote villages where many justice services are unavailable. However, as Rieger cautions, the dissemination of a successful mechanism from one venue to another raises significant questions of cultural appropriateness as well as political and structural questions regarding the federal and state government's dictation of solutions and priorities for local communities. She argues that this purported variation of 'restorative justice', using a western blueprint for Native communities, presents an unusual twist where restorative justice is often viewed as attempting to use indigenous peoples' conflict resolution techniques transposed to a western context. Rieger's chapter explores these questions in the context of the shifting boundaries of legal culture in Alaskan Native communities and the difficult relationships between these communities and state and federal government, which in turn highlight the more general conflicts between localized, culturally sensitive justice and the state or national systems within which they operate.

Adam Crawford (Chapter 8) explores similar restorative-justice-related conflicts concerning the operation of the youth justice system in England and Wales. He examines in particular the impact of two important youth justice reforms (the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999) which he argues reflect an eclectic approach by government to the integration of restorative justice into the youth justice system. He focuses on the introduction of referral orders and youth offender panels, by the 1999 Act, which appear to offer the most striking development in restorative justice in England and Wales. Crawford suggests a number of tensions which may appear within the justice system as a result of referral orders, including the swamping of youth offending teams with overwork, resistance amongst magistrates to the curtailment of sentencing discretion leading to greater use of custody, the diminution in the participation of victims and the risk of youth offender panels being overrun by lawyers and becoming overly formalistic. He also points to the inherent strains between the normative objectives of restorative justice (i.e. that it is focused on the individuals, relational, reintegrative etc.) and managerial (e.g. that it is efficient, cost-effective and produces measurable benefits). Crawford goes on to criticize the potential for the Crime and Disorder Act to widen the net through the criminalization of 'anti-social behaviour' and points to central concerns regarding the assumed homogeneity of the moral community encompassing authoritarian notions of appropriate parenting and acceptable youthfulness. He concludes by suggesting that the conflict in the application of restorative justice

provisions to the UK youth justice system reflects a broader tension concerning the respective responsibilities of the modern state regarding its crime control functions in an era when the limitations of the traditional criminal justice system are increasingly acknowledged.

The final chapter, by Sandra Walklate (Chapter 9), focuses on the resolution of conflict at a local neighbourhood level through community self-policing in high-crime areas in the United Kingdom. Based upon a two-and-a-half-year study, Walklate draws on the development of local community norms, values and practices which contribute to the process of dispute resolution in two distinct communities. In one, normative strictures against 'grassing', criminal gangs deemed an integral part of the community, a powerful but unnamed 'Mr Big' who will sort things out, public shaming through graffiti, physical violence – all of these intersect to create an informal hierarchy of making amends and contribute to a highly localized sense of justice. In the other community under examination, the absence of organized gangs actually contributed to a greater sense of insecurity (particularly among the elderly) where there were no working formal or informal means to allow for public making amends. Walklate goes on to argue that the sense of well-being which individuals construct in high-crime areas concerning the resolution of conflict is defined by a square of trust. The square of trust is made up of the state, the level of organization or disorganization of local crime, the level of organization or disorganization of the local community and the mechanisms for sociability within it. In one community, trust in the state (e.g. evidenced by grassing) was foresworn in favour of a reliance on more organized criminal gangs or better inter-community relations which could sort things out, thus creating better social solidarity. In the other, the lack of a parallel organized gang or community infrastructure led to a general trust in state officials to resolve conflict, but with little expectation that this might actually happen. Walklate concludes that if conflict resolution policies are to work, they need to be more realistically rooted in the localized mechanisms which sustain or threaten social regularity and in understanding the processes associated with the manifestation of trust at interpersonal, community and organizational levels.

Many themes link the contributions to this volume. Perhaps the most powerful is the positive approach taken by all the authors. This is not a subject that is held back by a sense of failure or, worse still, an attitude that 'nothing works'. The contributions stand in contrast, therefore, with the doom-laden pessimism of much criminology and the nihilistic impossibilism of the worst forms of postmodern theorizing. It is also an

approach, or set of approaches, that combines criminology and a political project. This project implies something more complex than determining 'whose side are we on?' (Becker, 1967). The 'sociology of the underdog' is by no means entirely absent here, for it is clear from the essays that a key linking theme is the recovery of conflicts from the monopolistic clutches of the state and their return, at least in part, to their key actors. None the less, a broader normative concern with the nature and direction of social change, and the future of participation and democracy, is also evident. And yet, ironically, in some respects some of the barriers to such a project seem more powerful than ever. This is the paradox of late modernity. Though the gap between 'rich' and 'poor' is ever-widening, there appears to be little political will to mitigate, let alone reverse, such processes. Moreover, as several commentators have noted (*inter alia* Hirst and Thompson, 1999; Harvey, 2000), what now sets us apart is not simply the absence of such a project, but the appearance that such a project is impossible. In Roberto Unger's phrase, we appear currently to be 'torn between dreams that seem unrealizable and prospects that hardly seem to matter' (1987:331). What should our response be? At least part of the answer lies within the following quotation from Bauman (1999:8):

We tend to be proud of what we perhaps should be ashamed of, of living in the 'post-ideological' or 'post-utopian' age, of not concerning ourselves with any coherent vision of the good society and of having traded off the worry about the public good for the freedom to pursue private satisfaction. And yet if we pause to think why that pursuit of happiness fails more often than not to bring about the results we hoped for, and why the bitter taste of insecurity makes the bliss less sweet than we had been told it would be – we won't get far without bringing back from exile ideas such as the public good, the good society, equity, justice and so on.

Bauman's view has important implications for the conduct of everyday life in general, and for politics in particular. It also has implications for how, for example, we 'do' criminology. His argument resonates with one recently offered by John Braithwaite (2000:87), who suggests that criminology is a 'dangerous discipline' because its disciples slide back and forth between legal positivism and critical moral relativism. His argument, it seems to us, is especially apt in relation to those contemporary analyses of crime control policy where criminology has come to be dominated by 'explanatory theory' (how the world is) at the expense

of 'normative theory' (how the world should be). His argument is that what is required is a theorization of our current situation which integrates both the explanatory and the normative. It is incumbent upon us not only to attempt to explain how it is that we come to be where we are, but also to render explicit where we believe we should be. This is not a plea for the investigation of 'policy alternatives', important though they may be, but for a fuller, considered exploration of what we might still think of as the 'good society'. As Braithwaite (2000:88) puts it: 'without a broader social and political agenda, it is hard to see how to build a society with less crime and what place, if any, criminal law has in such a project'. It is within this context that the following chapters are best understood.

Notes

1. For a detailed discussion of the notion of *umbundo* and its link to restorative justice see Skelton (2002).
2. 'Conflict can be described as a contentious process of interpersonal or intergroup interactions that takes place within a larger social context. As sources of grievances are often associated with structural injustice, most serious conflicts encompass various types of social problems reflected in intergroup relations. Thus intergroup conflict is often imbedded in a political framework, and its meaning can be socially interpreted and constructed. ... Resolution of serious social conflicts means more than finding solutions to contentious issues. Enduring and mutually assured outcomes will not be attained without taking into account power imbalances and equitable social and economic relations. Self esteem and identity as well as physical well being are key elements to be considered in conflict resolution and peace building. The nature of relations between adversaries needs to be examined in terms of looking for transformative possibilities. In rebuilding communal relations, long term hostile relationships have to be overcome to prevent future occurrences of violent conflict' (Jeong, 1999:3).
3. History says, Don't hope
On this side of the grave.
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up,
And hope and history rhyme.
(S. Heaney, Excerpt from *The Cure at Troy*)
4. For example, in the generic criminological context, political realities such as the pervasiveness of retributive and actuarial responses to crime may appear to mitigate more progressive views being put forward by the political elites because the climate is not right (Taylor, 1999; Young, 1999; Garland, 2001).

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The Prospects for Restorative Justice in the Informal/Formal Justice Complex Part 5: Reparations As Informal Justice: What Are Reparations? Their Origins, Intersections with Mediation and Restorative Justice and Position Within the Juridical Field. Reparations Within the Fields of National and International Conflict. The Strengths and Weaknesses of Reparations. Splits in the Field of Reparations: Reparations for Justice and Reparations for Certainty. Dr. Woolford has published articles on Canadian Aboriginal peoples, genocide and conflict resolution in journals such as *Law & Society Review*, *Critical Criminology*, *Canadian Journal of Sociology*, *Journal of Human Rights*, and *Social Justice*. R.S. Ratner is Professor Emeritus (Sociology) at the University of British Columbia. List of Contributors. Acknowledgements. 1 Criminology, Conflict Resolution and Restorative Justice Kieran McEvoy and Tim Newburn Criminology and the relevance of conflict resolution literature The collection. 2 Criminological Ideas and the South African Transition Dirk van Zyl Smit Introduction Criminology in the time of crisis From resistance to proactive intervention Criminological ideas and the new South African state Constraints on change Prognoses Conclusion. Restorative justice: a somewhat worrisome road The devil is in the details: defining restorative justice Principles of restorative justice Crime is fundamentally a violation of people and interpersonal relationships Violations create obligations and liabilities. 135. Source: (2003) In, Kieran McEvoy and Tim Newburn, eds., *Criminology, Conflict Resolution and Restorative Justice*. Basingstoke, Hampshire, UK and New York, NY: Palgrave MacMillan. Pp. 1-20. Editors and contributors to this book, Kieran McEvoy and Tim Newburn introduce the book in this first chapter to it. They explain the impetus for this collection of essays in the inadequacy of criminology to engage substantively with the processes of conflict resolution. Again, their aim is to link the criminological enterprise in a more systemic and theoretical fashion to the contours of conflict and the process of conflict resolution. With all of this in mind, McEvoy and Newburn go on in this chapter to summarize each of the succeeding chapters in the book.