Creating Restorative Systems

Daniel W. Van Ness
Prison Fellowship International

Restorative justice gatherings in North America fifteen years ago featured much more limited discussion than conferences today. There was only one restorative program at that time, called victim offender reconciliation program (VORP). In virtually every instance the groups running VORP were community based, meaning that they were run and funded by volunteers or small NGOs, and not by any part of the justice system. Most presentations at those conferences focused on the mechanics of VORP: the role of the mediator, the kinds of cases best suited for VORP, how to get funding, how to get cases referred, how to recruit and train volunteer facilitators, and (such was the extent of optimism) how to avoid being co-opted by a system that hardly even took notice at the time.

Things certainly have changed. In the past decade or so there has been an explosion of interest and activity in restorative justice. New programs and new philosophical and political explanations have emerged and mingled. There has been a growing awareness that these "new" ideas are in fact the rediscovery of old approaches to crime and conflict, and those have helped shape the conversation. Governments have tested restorative programs and in some instances have embraced them. But what does all this activity amount to?

A few years ago, Michael Tonry prepared a report for the US National Institute of Justice. He began as follows: "After a quarter century of changes, there is no longer anything that can be called 'the American system' of sentencing and corrections. As recently as 1975, there was a distinctively American approach, usually referred to as indeterminate sentencing, and it had changed little in the preceding 50 years."[1] He then described how in the past quarter century that consensus had fragmented into four competing conceptions of sentencing --

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[1] Michael Tonry, "The Fragmentaition of Sentencing and Corrections in America," a paper from the Executive Sessions on Sentencing and Corrections, (National Institute of Justice: Washington DC), September 1999, p.1.

indeterminate, structured sentencing (e.g., guidelines), risk-based sentencing and restorative/community justice.

Why did he include restorative/community justice in that list? "A fully elaborated system exists nowhere," he acknowledged, "but there is considerable activity in many States, and programs based on community/restorative principles are beginning to deal with more serious crimes and criminals and to operate at every stage of the justice system, including within prisons."[2] It is, he continued, "spreading rapidly and into applications that a decade ago would have seemed visionary. These include various forms of community involvement and emphasise offender accountability, victim participation, reconciliation, restoration and healing as goals (though which goals are emphasised and with what respective weights vary widely)."[3]

Tonry's comment that there is no fully elaborated system of restorative/community justice is correct, not only in the sense that no jurisdiction has fully embraced restorative/community values and practices but also in the sense that no one has clearly articulated how such a system might work. It is time to begin that work, for reasons I will go into in some detail later. To do so, we must consider several issues.

First, are there degrees of restorativeness, or is a system either restorative or not? Karen Strong and I have assumed the former,[4] as have others,[5] although we have approached the problem differently. This assumption seems merited for several reasons. First, change is usually incremental, which means that restorative approaches that work as designed will begin to have some effect even before all the restorative reforms are implemented. Second, restorative justice reflects values, and is not limited to particular program elements, which

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[2] p. 3.
[3] p. 4.
[4] Daniel W. Van Ness and Karen Heetderks Strong, Restoring Justice, Anderson Publishing: Cincinnati, OH, 2002.
[5] Paul McCold, for example, in describing his Purist model of restorative justice has proposed that programs could be classified based on the extent to which they meet the needs of victims, offenders and their communities. He assigns the name *holistic* to programs that meet the needs of all three parties. *Mostly restorative* programs are those that address the interests of only two. *Partly restorative* programs meet the needs of only one. *Pseudo-restorative* programs are those that call themselves restorative but in fact fail to address the interests of any of the parties. (Paul McCold, "Toward A Holistic vision of Restorative Juvenile Justice: A Reply to the Maximalist Model", Contemporary Justice Review, Dec. 2000, Vol. 3 Issue 4.) In other words, the degree of restorativeness of programs (and

means that it is possible to reflect those values fully or partially. When they are partially

expressed, there will be some restorative impact, but not a fully restorative outcome.

What I would like to do in this chapter is further develop how we might assess whether a

system is minimally, moderately or fully restorative. Second, I would like to similarly suggest a

way that we might think about the relative roles of the state and community in overseeing a

restorative response. Finally, I would like to propose the broad outlines of a restorative system.

Plotting the "Restorativeness" of a System

A variety of values or attributes have been used from time to time to describe restorative

processes and outcomes. Sometimes these are treated as though they were discrete elements

that are either completely present or else completely absent. Experience shows, however, that

these may be partially present and absent. For example, amends – making things right – is

certainly a value of restorative justice. But one offender might make amends by paying

restitution, offering an apology and agreeing to acts of rehabilitation and generosity that the

offender and victim have agreed to. Another offender may only pay restitution. Both have taken

steps to make amends, but one has done more than the other has.

Similarly, processes may reflect restorative values in degree or fully. Non-coercion or

voluntariness is affirmed as a restorative value, but in fact many – perhaps most – offenders

participate in restorative programs not because that is what they desire, but because it is the

least onerous of the options given them. Surely we would acknowledge that programs that use

such limited options have a less stringent definition of "non-coercive" than do others that would

use no coercion at all.

For these reasons, it is best to think of restorative values or attributes as lying on the end

of a continuum on the other end of which is a value or attribute that characterises contemporary

criminal justice. Furthermore, it would be helpful for us to include values or attributes regardless

presumably of systems) is based on the extent to which they meet the needs of all, as opposed to some, of the

of whether they seem to concern restorative processes or restorative outcomes. During the

recent exchanges between Paul McCold, Lode Walgrave, Gordon Bazemore and others on the

Purist and Maximalist models of restorative justice,[6] several observers and the participants

themselves noted that this discussion hinged in part on whether restorative values relate to

process or outcome. It may be my own inclination to look for harmony when two notes are

struck, but it seems apparent to me that both process and outcome are important in a

restorative perspective.[7]

Let me propose four values or attributes that might be described as restorative

processes and four that are more in the nature of restorative outcomes. I suggest that we think

of each of these as lying on a continuum, the other end of which represents its antithesis. The

four values related to restorative processes are inclusion, balance of interests, voluntary

practice, and problem-solving orientation. [8]

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parties.
[6] A thorough discussion of the Purist and Maximalist models, featuring articles by McCold, Walgrave, Bazemore and others, may be found in Contemporary Justice Review, Dec. 2000, Vol. 3 Issue 4.
[7] Part of the difficulty here may be that the distinction between processes and outcomes, while seeming clear, becomes cloudier on close inspection. Can a process really be examined independently of the outcome that results? Can an outcome be considered restorative regardless of how it was achieved? The answers to both questions seems to be "no", which is why I suggest that we address both processes and outcomes as each relates to the other.
[8] These are adapted from Jim Dignan and Kerri Lowey, "Restorative Justice Options for Northern Ireland: A Comparative Review," Research Report 10 submitted by the Criminal Justice Review Group, March 2000.
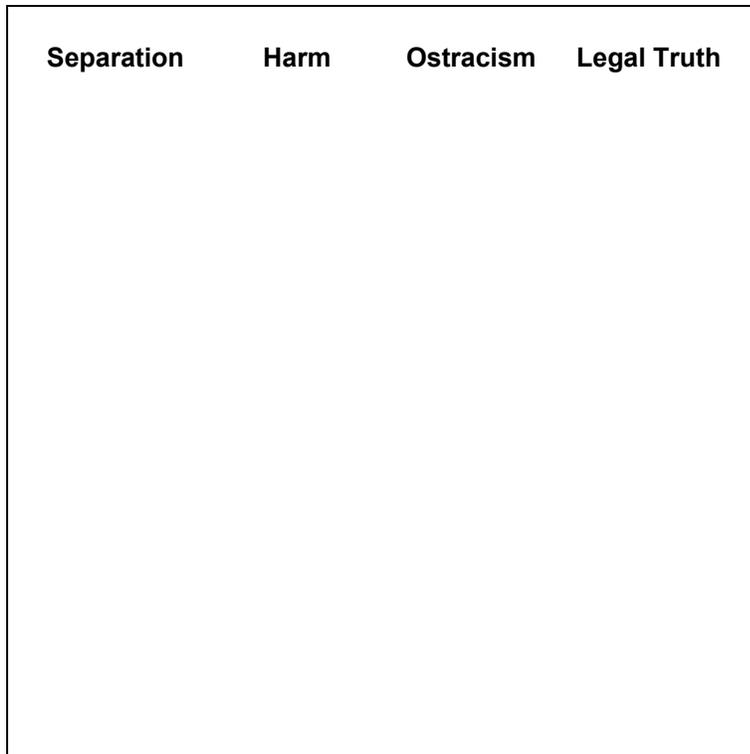
Attributes of Restorative Processes

Inclusion	Balanced Interests	Voluntary	Problem-Solving
Exclusion	Single Interest	Coercion	Reprisal

Figure 1

Inclusion means that all stakeholders are invited to participate. Traditional stakeholders are the government and the offender. Restorative justice adds the victim and community to those two (more on community later). It is understood that the victim and community have their own interests to pursue; they are not involved only to help the government or defense with their cases. This means that the process will need to be adapted when necessary to allow the parties to participate and to look after their interests. At the other end of the continuum is the exclusion of all parties except to the extent required to determine whether the offender broke the law.[9]

Balance of interests means that restorative programs avoid focusing on one task alone, and instead attempt to accommodate the interests of all the parties. For example, while restorative programs respect the importance of the public interest in resolving crimes, they do not address that to the exclusion of the interests of others. The objective is to maintain an

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[9] See Van Ness, supra note 4.

appropriate balance between of all the interests at stake. At the other end of the continuum is the situation in which the only interest pursued is that of determining guilt.[10]

     Voluntary practice means that parties participate and assume responsibilities because they have chosen to, and not because they were required to. In practice, the choice to participate is made in the context of other alternatives, so the "voluntariness" of a party's decision may be limited to the lesser of available evils. For example, an offender may summon the courage to meet with the victim in order to avoid going to prison. At the other end lies a process that routinely relies on coercion to gain the participation of the accused and of witnesses.

     The *problem-solving* orientation of restorative justice causes it to look to the future even as it addresses the past.   Among other things, this means that it is more likely to view crime in its social context than as an isolated event. Contemporary criminal justice focuses instead on whether and how to impose some sort of reprisal on the guilty offender.[11]

Attributes of Restorative Outcomes

Encounter	Amends	Integration	Whole Truth

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[10] Dignan, supra note 8 at 6.
[11] Ibid.

Separation	Harm	Ostracism	Legal Truth

Figure 2

Figure 2 depicts the values or attributes of restorative outcomes. The first continuum

addresses the extent to which the parties have come together in arriving at the restorative

resolution. At one end is the situation in which all interested parties were able to *encounter*

each other. This will have given them an opportunity to work together to achieve the other

restorative outcomes. At the other end is the situation in which the parties have been separated

by the criminal justice process.

The second continuum represents differing understandings of how to respond to the

offender's criminal behavior. At one end is *amends*, in which the offender has made restitution,

offered an apology, undertaken specific behaviors that will lead to change and done acts of

generosity.   At the other end is the situation in which the offender has been required to "pay" for

committing the crime by suffering harm.

The third continuum depicts the relationship between the parties and their communities

at the end of the process. At one end is the full *integration* of both into their communities as

productive and contributing members.   At the other end is ostracism either through enforced

separation of the offender (perhaps through a sentence to prison) or through continuing

stigmatization of both in their roles as victim and offender. In contemporary criminal justice, the

separation of the offender is a desired outcome, and stigmatization of victims and offenders is a

consequential outcome.

The final continuum concerns the nature and extent of the truth that is discovered in the

course of the process. At one end, the parties discover the *whole truth* about the offense,

including matters of culpability, harm, the perspectives of the parties, community impact and the

shared values of the parties. They are able to explore any matter that concerns them. At the

other end lies the more limited legal truth around which contemporary criminal justice focuses its

efforts. It is concerned with what law was broken and whether the defendant is the one who

broke it. Other matters are considered irrelevant and perhaps prejudicial.

Assume for a moment that these eight continuums capture the key values of restorative

processes and outcomes. Assume as well that we are able to calibrate where a program or

system lies along each of these eight continuums. Under those circumstances, we could

identify degrees of "restorativeness" for both processes and outcomes.
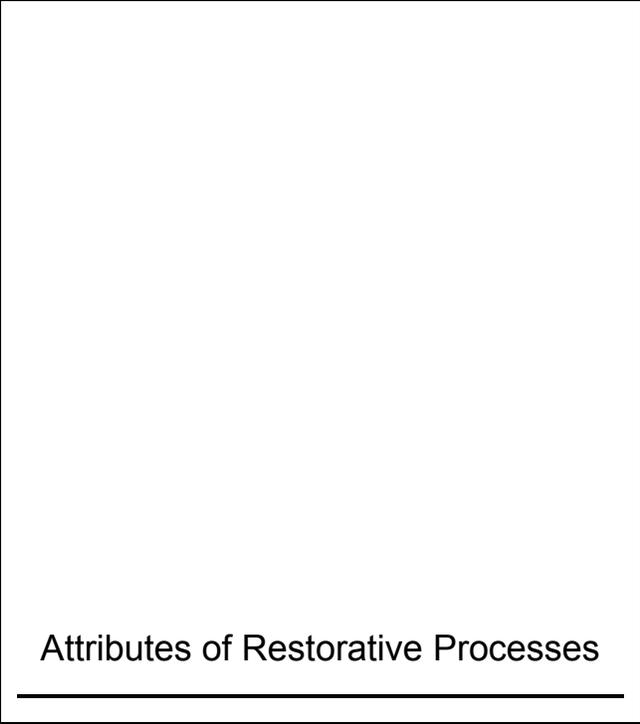
Attributes of Restorative Processes
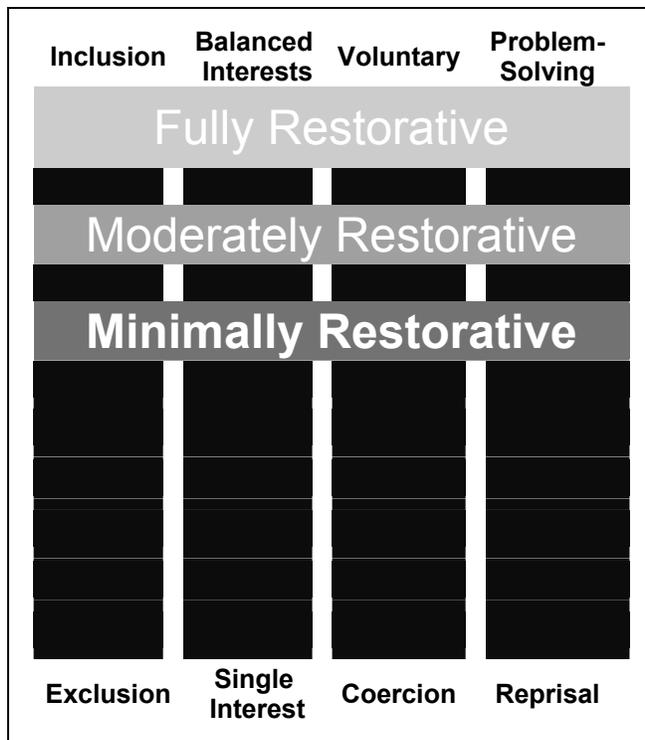
Figure 3

I'll give examples to illustrate why we might think in terms of degrees of restorativeness, although I do not want to suggest that particular restorative programs are necessarily more or less restorative than others. What makes any process restorative is the extent to which it reflects restorative values and attributes, not the name it goes by. An example of a *fully restorative* process might be the circles of Hollow Water, a First Nations community in Canada. In instances of sexual violence, for example, there will be separate healing circles for the victim and the offender, together with their families, supporters and members of their community. After a time, these give way to new circles in which all parties may participate, with the objective being to develop a plan for the future. An example of a *moderately restorative* process could be a conference in which the victim, offender and their supporters meet to discuss the crime and work toward a resolution. The offender chooses to participate rather than go to court. Because of the relative brevity of the meeting, there is little time to probe underlying issues. An example of a *minimally restorative* process might be a conference that involves only the offender and his

supporters. The victim has chosen not to participate, and a police officer or community

volunteer attempts to provide the kind of perspective that the victim would have offered.
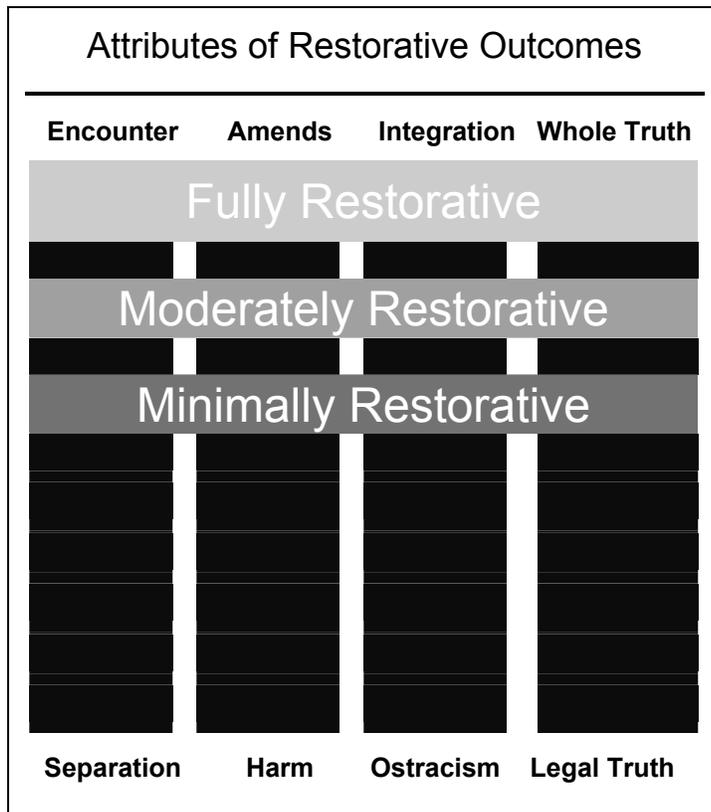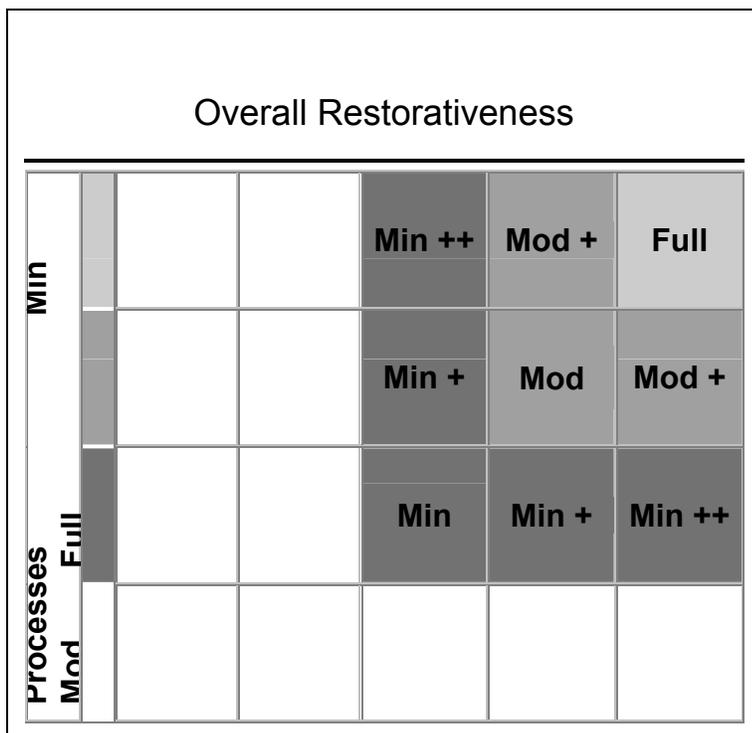

Figure 4

       In the same way we might construct a range of restorative outcomes. An example of a

fully restorative outcome might be one in which the victim, offender and community members

were able to meet and talk, all came to a more complete understanding of what took place and

of the harm that resulted, the offender offered an apology as well as restitution, and the

community members helped organise necessary support for each of them. An example of a

moderately restorative outcome might be one in which the victim and offender met and talked

about what took place and the fear the victim experienced, the offender answered all questions

the victim had and then apologised, and the offender agreed to return to school and participate

in a substance abuse treatment program. An example of a *minimally restorative* outcome might

be one in which the offender met with community members and the victim of a similar crime (the

actual victim chose not to participate), the offender agreed to pay restitution and perform

community service rather than face a potential prison sentence, and the offender agreed to

return to school.

When we design our restorative system, we want one that includes restorative

processes and outcomes. This forces us to consider a constellation of options more complex

than two sets of four continuums, because we will need to explore how the two interrelate. A

moderately restorative process will not necessarily yield a moderately restorative outcome.

Figure 5 shows a grid with one axis representing processes and another representing

outcomes. Many processes and outcomes are not restorative at all (these portions are

represented in white). Others are minimally, moderately or fully restorative (dark grey, medium

grey and light grey, respectively). If we require a restorative program or system to exhibit both

restorative processes and outcomes, we narrow the possibilities significantly. Further, if we

assume that a lower degree of restorativeness on one axis is only marginally improved by a

higher degree on the other, we see that there are a number of ways that systems can be at

least minimally restorative but only one way to make them fully restorative.

Overall Restorativeness

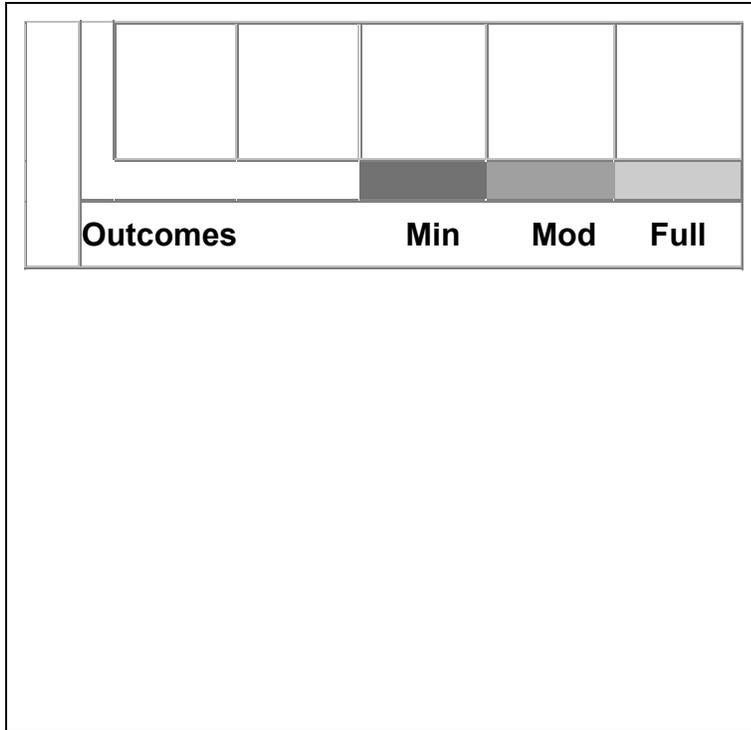| Processes						
Min				Min ++	Mod +	Full
				Min +	Mod	Mod +
Full				Min	Min +	Min ++
Mod						

Figure 5

This may inform the Purist and Maximalist discussion in several ways. It illustrates graphically that the Maximalist approach increases (maximises) the number of people and programs falling within its scope by aiming to be at least minimally restorative. By the same token, it shows that there are indeed differences between it and the Purist model (which is similar to the *fully restorative* category in this discussion).   Finally, it allows us to begin categorising restorative programs based on their values and attributes related to process and outcome.

Considering the Community-Government Relationship

Restorative justice proponents have had an ongoing discussion about community: What is it? How do we define it? Why do some feel that community involvement is valuable or essential? Is the community necessarily benevolent? In part this is because the term is sometimes used to in an almost sentimental way ("longing for a sense of community that never existed") when, as Lode Walgrave has argued, other terms such as solidarity and responsibility

might be more precise.[12] Further, the term is used in significantly different ways: to describe

localities ("the community I grew up in") affinity groups ("the restorative justice community"), or

supporters ("the community of care").

However, when we speak of the roles of the government and of the community, I

suggest that the meaning of community becomes clear: community refers to the non-

governmental actors who respond to crime, to victims and to offenders. A volunteer who listens

to a crime victim is doing so as a member of the community, not part of a governmental

response. A privately funded NGO that helps ex-prisoners return from prison is part of the

community. In this sense, community has a similar meaning to civil society.[13]

Lode Walgrave has suggested that the experiences of Americans and Europeans with

their governments and communities might have coloured the attitudes of restorative justice

proponents in those continents.[14] He suggests that Americans think of government as

bureaucratic, impersonal and formal, whereas Europeans tend to view their state as a tool of the

community, and when needed as a protection against intolerance within communities. There

are undoubtedly other influences as well. Many of the early articulators of restorative justice

were Mennonites, a religious community with a distrust of even the most benevolent

governments. As they developed victim-offender encounter programs, they worked outside of

government and argued that this was an important strategy for restorative justice. Historians

have noticed the parallels between the rise of the current paradigm of justice and the rise of

both centralised governments and the professionalization of justice, typically by government

agencies. Probation, for example, started out as a volunteer movement and then was

incorporated into the formal governmental response. Political perspectives certainly influence

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[12] Lode Walgrave, "How Pure Can A Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of…." Contemporary Justice Review, Dec 2000, Vol.3 Issue 4, p 415.
[13] Of course, not all examples of community involvement are positive. In my country, lynch mobs circumvented the justice process by delivering informal vigilante justice. Furthermore, many communities maintained "peace" by relegating some of its members to second-class status through limitations on education, voting, employment and housing (among other examples) based on race. The community's participation may be constructive or negative, as can that of the other three stakeholders. This is one reason it is important that for government's balancing influence to be present in restorative justice.

the debate. Carolyn Boyes-Watson draws this distinction between the current justice system

and restorative justice:

> The current justice system seeks to use rationalized and impersonal procedures to respond to crime. This paradigm of justice views individuals in isolation from others, and expects their behavior to be judged, punished or corrected by disinterested parties. Punishment is expected to be proportionate to the crime and procedures for evaluating truth are, ideally, uniform, adversarial, and objective. Even those persons deemed less responsible for their actions are handled by professionals equipped with expert knowledge to sort and channel them into appropriate arenas of state management and control.
>
> Proponents of restorative justice use starkly different criteria to determine what constitutes a just response to crime. Since crime is defined primarily as a violation of human relationships, rather than an abstract violation of the law, a restorative response seeks to heal those relationships above all else. While state forms of justice discourage participation of individuals personally know to the parties because they are supposed to lack neutrality, restorative justice processes seek out participation of all who have a stake in the incident and its resolution.[15]

Whether we are suspicious of governments or of communities, it seems clear that we agree that

both exist. Furthermore, we understand that they have a dynamic and complicated relationship.

In democracies, the leaders of governments are persons who have been elected by members of

the community. Sometimes governments side with majority or minority groups within the

community in asserting those groups' values or interests. Governments are overthrown when

they lose support of the community.

At different times in history, governments and communities have carried out similar

functions in responding to crime. Not long ago victims were expected to investigate their own

crimes, and arrest and prosecute their offenders. Their reward, in addition to the satisfaction of

seeing justice done, was the possibility of receiving judicial orders providing for multiple

restitution. Policing was carried out by volunteers who raised the "hue and cry" when they

noticed a criminal running away. Passers-by had a duty to help apprehend the suspect.

However, experience showed that victims, volunteers and passers-by were not reliable

performers of their responsibilities. They were amateurs who often did not know what they were

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[14] Ibid.
[15] Carolyn Boyes-Watson, "In the Belly of the Beast? Exploring the Dilemmas of State-Sponsored Restorative Justice", Contemporary Justice Review, Oct. 99, Vol. 2 Issue 3, p 261.

doing. They were distracted by other responsibilities and failed to complete the tasks they were

expected to carry out.

Government officers, on the other hand, could be trained and hired to do this work full

time. Policies could be set that gave consistency and uniformity to the discretionary decisions

that necessarily are part of the investigation and prosecution of crime. Support structures and

staff could be established to respond efficiently to demand. Increasing professionalization

helped ameliorate the provincial interests and biases that the community volunteers might bring.

In other words, government assumed community responsibilities in responding to crime

because it could do it faster, more efficiently, more fairly and more uniformly than community

members operating individually or even in groups.

My point is that the relationship and relative roles of the government and the community

in responding to crime are dynamic and flexible. While some North American conversation

about community may reflect distrust of government, much of it – perhaps most of it – is

directed toward communities as a challenge to assume neglected responsibilities. The sense is

that people have found it easier to let the police or other government agencies handle problems

rather than to become personally involved.

Why not let the State handle these matters? Are there principles that might help identify

the unique contributions that government and communities can make in the mutual effort to

create safe societies? Karen Strong and I have suggested that government's role is to establish

and preserve a just order and that the community's role is to build and preserve a just peace.[16]

We defined the two terms as follows:

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

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[16] Van Ness and Strong, supra, note 5, at 42.

resolution of conflict. Like peace, a just order is important in preserving safety, and government has both the power and mandate to establish such an order.[17]

Where there is sufficient community peace, there will be relatively little need for order. Where there is little peace, more order will be needed. This has two implications. The first is that communities concerned about safety may, rather than building peace through respectful dialogue and problem solving, resort to police and the courts. They have this right, of course, but a regular abdication of the responsibility to build peace on the part of community can contribute to a reliance on governmental order.[18]

Second, governments typically recognise that community involvement increases their capabilities and credibility. Consequently, police departments may form citizen advisory boards and jails and prisons will appoint volunteer prison visitors. These groups may in some instances have an adversarial posture toward the government agency, but often they help the agency avoid problems or find alternative approaches that work more effectively. Furthermore, recent initiatives in some jurisdictions have attempted to establish closer ties with communities. Examples include community policing, with police officers who walk their beats or ride bicycles, and community courts with smaller geographic scope.

I suggest that when we think of government and community cooperation in bringing about safe societies, we will do better if we contemplate a range of cooperative relationships rather than a binary choice of one or the other being responsible. Figure 6 illustrates this point. While there are some situations that may be handled solely by the government or community, most involve some combination of the two.

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[17] Ibid.

[18] According to the National Crime Prevention Council, "Successful Neighborhood Watches move beyond the basics of home security, watching out for suspicious activities, and reporting them to law enforcement. They sponsor community cleanups, find solutions to local traffic problems, collect clothing and toys for homeless families, organize after-school activities for young people, help victims of crime, tutor teens at risk of dropping out of school, reclaim playgrounds from drug dealers, and for task forces that influence policymakers."   http://www.ncpc.org/2success.htm (as of April 8, 2002) This means that active community involvement is more than a communitarian ideal; it is also (at least in the United States) an effective means of reducing the amount and the harm of crime.
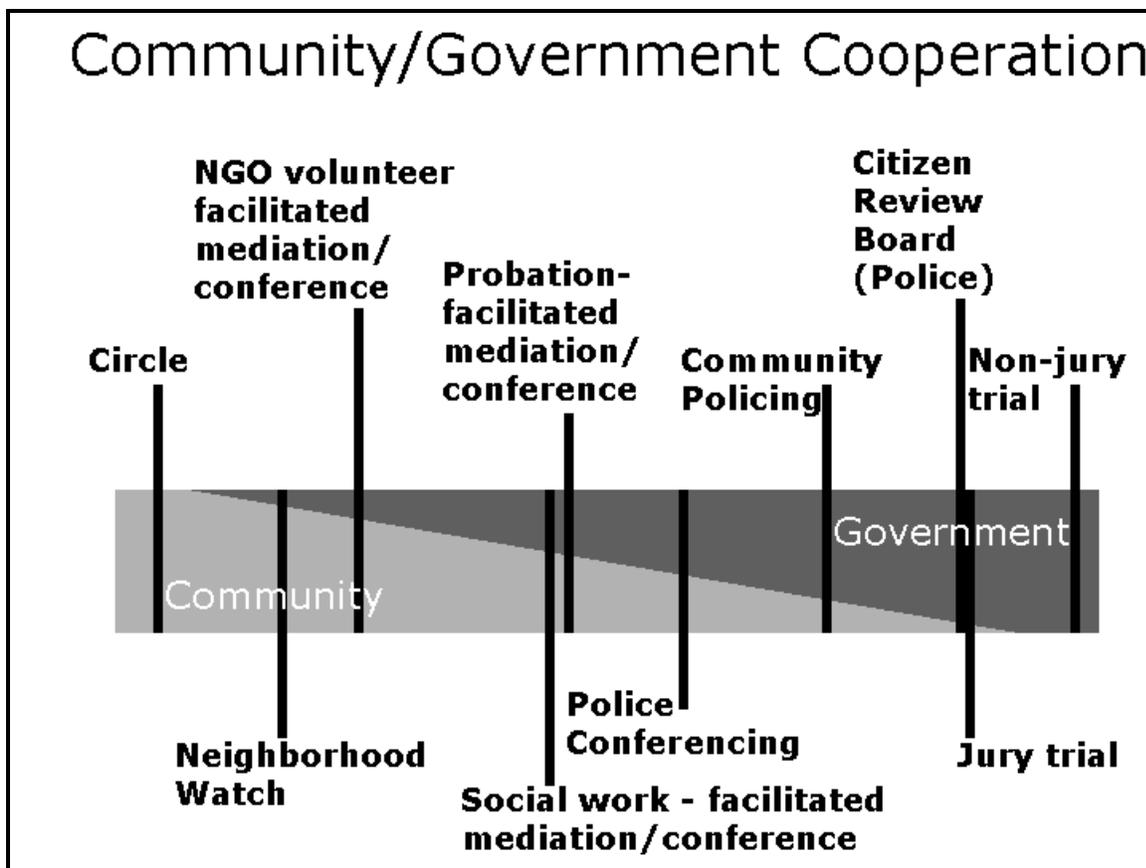
Community/Government Cooperation

Figure 6

For example, a trial that does not involve a jury could be considered solely a governmental process (although community members will probably be asked to testify). A jury, on the other hand, introduces community members into the process, although they are now expected to be unfamiliar with the parties and circumstances. On the other side of the continuum, a circle might be solely a community process, since even though criminal justice system personnel may participate, the process ensures that this is done as a private individual and not as a representative of the justice system.[19]

Conferencing and mediation programs might be placed in different positions along the continuum depending on who administers and facilitates the program. An NGO-run program is more community-based than one that is run by social services departments of governments.

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[19] Boyes-Waston, supra note 14.

Those run by probation are more governmentally-based (at least in jurisdictions where probation performs a "control" function. Police-run conferences are certainly more governmentally-based than the other conferencing options.

Finally, we can also plot examples of community-government cooperation related to various policing models. Neighborhood Watch is principally a community program, but it is formally linked to the police and is predicated on the volunteers contacting the police department if they see evidence of criminal activity. Community policing is largely a governmental activity, but the emphasis on building stronger community ties and actively seeking cooperation of people in the community makes it more community-based than traditional models. Establishing a citizen advisory or review board adds a modest degree of community involvement.

Certainly other examples could be offered, and there may be disagreement about the relative placement of the examples given. However, two observations seem to be worth making at this point. First, the question debated in restorative justice should not be whether the community should take responsibility for parts of a restorative response. Instead we should ask what the optimal role for the community and government may be in particular contexts and for particular purposes. Second, while political and philosophical perspectives will certainly inform that discussion, this is also an area in which research could be very useful. What are the outcomes of various programs, and do those improve or decline (from a restorative perspective) when the extent and nature of community involvement changes?[20]

Constructing a Unified Restorative Model

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[20] For example, one study found improved results when volunteer counselors were added to traditional probation with high-risk young male offenders. Compared to other high-risk offenders, those with volunteer counselors committed fewer and less serious criminal offenses, were employed more regularly, made better educational progress, and appeared to be somewhat less rebellious, less impulsive, and more responsible as measured on the California Psychological Inventory at the end of probation. R H Moore, "Effectiveness of Citizen Volunteers Functioning as Counselors for High-Risk Young Male Offenders," *Psychological Reports,* Volume 61 Issue 3, December 1987, 823-830.

Now we come to the third area of discussion: How we might go about constructing a model of a restorative system? For a number of reasons, it is important to begin design such a system now, even as restorative applications continue to spread rapidly and as we consider issues such as relative restorativeness and community/government cooperation.

First, if changes continue to be made incrementally, restorative justice runs the risk of becoming marginalized. Rather than letting the values and principles of restorative justice transform our entire approach to crime, particular restorative programs will be annexed to existing structures in such a way that their influence is contained.

Second, many proponents have made the claim that restorative justice represents a paradigm shift, a change in patterns of thinking, a new lens through which we look at crime. If so, one would expect a wholesale change in how we approach crime and justice. A shift of the magnitude we claim would surely produce an entirely new system with very different programs, institutions, processes and outcomes.

Third, some policymakers are asking for a system model. The not unreasonable expectation is that after a decade of experimentation, development, evaluation and experience, restorative justice practitioners and advocates would have reasonably clear ideas about what a restorative system might look like. We run two risks in responding to that expectation. The first is to offer incomplete and ill-considered proposals that if implemented would short-change the transformational potential of restorative justice. The second is to lose credibility when it becomes clear that we have done only a limited amount of thinking about what such a system might look like.

Finally, there are hard questions about the feasibility and comprehensiveness of restorative justice that may never be answered until seriously attempts are made to construct a restorative system. *Comprehensiveness* is an issue because some conditions have traditionally been viewed as prerequisites for a restorative response (admission of guilt, willingness to participate, ability to make reparation, etc.). What happens when those conditions are not

present? How could a system respond restoratively with all serious crimes as well as all minor

ones? With offenders and victims who are unwilling or unable to participate, as well as to those

who are willing and able? With cases in which the accused denies guilt? A fully restorative

justice system of the sort anticipated by this project must be capable of effectively and

restoratively addressing the myriad conditions and issues that are normal and routine in the

administration of justice.

The second issue has to do with the *feasibility* of such a system. The "criminal justice

system" is not a system at all, but a collection of responses by public and private agencies,

often in the context of conflicting goals and interests. Is it reasonable to suggest that a system

with restorative values and norms could be implemented when so many different players must

be involved? Furthermore, political concerns are (and should be) of great importance to

policymakers. How might a policymaker consider alternative strategies for introducing and

implementing a restorative system? Finally, can a restorative system handle high volumes of

cases efficiently yet restoratively? Not simply the current high volume of criminal cases (which

represent only a fraction of all crimes because they are only those in which accused offenders

have been identified and caught) but also all those other crimes in which there are victims, but

no identified offenders.

I have previously suggested that a restorative system might take one of four forms in the

way it would relate to conventional criminal justice systems (see figure 7).[21] The first is a unitary

model in which the restorative system is the only one available. The second is a dual-track

model in which both systems stand side by side, with designated passages between them for

parties to move back and forth. The third is a safety-net model in which the restorative system

is the basic response to crime, but conventional processes are available when needed (for

example, for determining guilt when that issue is contested). The final model is a hybrid, in

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[21] Daniel W. Van Ness, "The Shape of Things to Come: A Framework for Thinking about A Restorative Justice
System," paper presented at the Fourth International Conference on Restorative Justice for Juveniles, October 1-4
2000, Tübingen, Germany.

which both approaches are linked into a single system. The example showed in figure 7 is one

that uses conventional processes until guilt is ascertained, at which point it shifts to restorative

processes.

Four Models

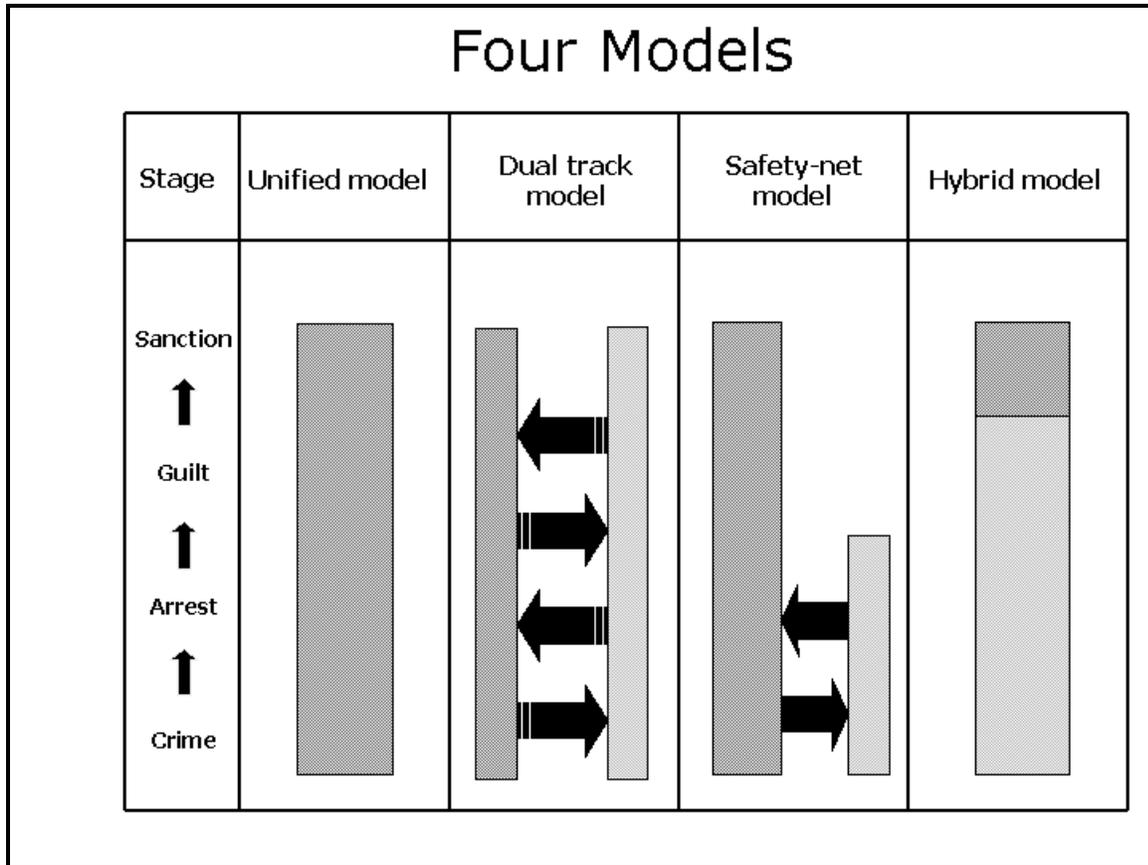| Stage	Unified model	Dual track model	Safety-net model	Hybrid model
Sanction ↑ Guilt ↑ Arrest ↑ Crime				

Figure 7

Models one and two assume that restorative justice is capable of dealing with all kinds of

crimes and at all stages of the justice system. Models three and four assume that for either

conceptual or practical reasons, it will not do so. Consequently, the more challenging models to

examine are the first two, since they must be able to address the issues of comprehensiveness

and feasibility. Perhaps a way to begin is to construct the second model, the dual track system,

and then explore how that could be transformed into a unitary model.

I think that there are several likely elements to either of the two models. The first is a

significant governmental role in organising the restorative system and making it available to all.

This is how the New Zealand Family Group Conferencing program is organised. The government arm responsible for this (let's call it the Office of Restorative Interventions) will require sufficient staff to provide a stable program, but built into its operations would be a large number of volunteer participants recruited from communities. These volunteers would play critical, not cosmetic or supportive roles, which means that both they and the Office of Restorative Interventions would understand their critical nature.

The Office would need to organise responses from the moment that a crime occurs until the final restorative elements have been completed. This means that victim services and support would need to be made available regardless of whether the accused offender is apprehended. These services and support would continue to be available at the request of the victim regardless of the pace of the processes determining offender accountability and response. The Office would also need to organise an investigatory service that would seek to minimize harm even as it explored what happened, who participated and what steps are needed to insure that this person is available for determining accountability.

I anticipate the development of a restorative method of dealing with situations in which the defendant denies having caused harm or violated laws to prevent harm.[22] The defendant and the victim should have the opportunity to get a full and complete explanation of the available processes so that they could make informed decisions. This briefing would probably be given by carefully trained volunteer supporters who would be available to both parties. Furthermore, to the extent that the community had been adversely affected by the crime, a representative of the community might be invited to participate in all future proceedings as a representative of the community. This would ensure that a general invitation to the community is neither ignored or unheard.

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[22] I use the name given to the accused under contemporary criminal justice processes only so that it is clear to whom I am referring. Presumably different names would be assigned that better reflect the person's true position in what should be a less adversarial process.

A full range of restorative processes should be available during the adjudication and sentencing or responsibility phases.[23] It may be that these processes will be used multiple times in the same matter. For example, there may be a need to proceed with an encounter program without the victim because the victim is unable or unwilling to participate within the time in which it is reasonable to seek to determine the defendant's responsibility. Conferences may take place without the direct victim, and instead community members or surrogate victims may participate. At a later date, if the victim decides that it would be useful to meet with the defendant, then a conference, circle or mediation/dialogue might be conducted for those purposes.

The restorative processes used to facilitate the adjudication and responsibility phases would be modified to ensure that the agreement is carried out. If some sort of incapacitation were needed, a form of prison would be available, characterised by two features. First, the goal would be to work with the prisoner so that the need for prison was eliminated. Second, the prison should have meaningful work opportunities within it so that the prisoner could work, earn money and pay restitution.

Conclusion

Much has changed in fifteen years in the restorative justice movement. The question we must ask is whether in another fifteen years restorative justice will play a marginal role in a criminal justice system dominated by other values, or whether it will become the principle response to crime in at least some jurisdictions. The answer to that question will depend on our abilities to measure the restorativeness of systems and programs, to understand and take full advantage of the community-government relationship, and to construct conceptual models.

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[23] See the disclaimer concerning names in the previous note.