Part 1 opens with six chapters explaining and discussing the basic ideas of restorative justice. In the first chapter, we set the scene by looking at what it is that people who promote restorative justice are actually trying to bring about. There is widespread agreement among proponents that the goal is to transform the way contemporary societies view and respond to crime and related forms of troublesome behaviour. However, there are a range of views as to the precise nature of the transformation sought. These are to some extent in tension with one another, suggesting that restorative justice is best understood as a deeply contested concept. We outline three different but overlapping conceptions of restorative justice: the encounter conception, the reparative conception and the transformative conception. We suggest that rather than pushing one of these forward as the true or primary meaning of restorative justice, or trying to gloss over disagreements among proponents, the most fruitful way forward for the restorative justice movement is to keep debating the meaning of the concept but to conduct this debate in a manner consistent with the principles of restorative justice.

The following chapters explore particular conceptions of restorative justice in more detail. In Chapter 2, Susan Sharpe explores what it means to redress wrongdoing by repairing the harm resulting from it. Whereas the notion of repairing harm is often presented as if it required little further elaboration, Sharpe presents a reflective account of the forms reparation can take, what it can accomplish and optimal conditions for achieving those results. From there, she goes on to discuss some of the key issues facing those who propose repair of harm as an alternative to seeking redress through vengeance and retribution: must reparation be onerous for those undertaking it? How important is the principle of proportionality when it comes to reparation? Should those who point to the need for wrongdoers to repair harm also push for perpetrators of systemic injustices to undertake reparation?

Jennifer Larson Sawin and Howard Zehr consider a rather different but equally important aspect of the idea of restorative justice: the idea that
those most directly affected by crimes and other wrongful acts should be engaged and empowered in the process by which it is decided what should be done to put things right. In Chapter 3, after illustrating this idea by an account of the now classic ‘Kitchener experiment’, Larson Sawin and Zehr explore in depth why, for restorative justice advocates, engagement and empowerment are essential to the achievement of justice in the aftermath of crime, and what it means (and what it does not mean) to be engaged and empowered in a justice process. Importantly, they then go on to look at the challenges faced by those who seek to put these ideas into practice – i.e. how in practice does one determine precisely who needs to be engaged and empowered in any particular restorative justice process and how does one ensure that key stakeholders are in fact engaged and empowered?

Increasingly, restorative justice proponents are referring to values as a key means of distinguishing restorative justice from other approaches to crime and wrongdoing. In Chapter 4, Kay Pranis examines how the values of restorative justice are expressed in the literature. Crucially, counter to a recent tendency to draw a sharp distinction between a ‘process’ conception of restorative justice and a ‘values’ conception (a tendency described in Chapter 6), Pranis shows that the discussion of restorative values in the literature is primarily about ‘process values’. That is to say, those who think of restorative justice primarily as a process – whereby parties affected by criminal wrongdoing come together to resolve collectively what should be done about it – are trying to identify and define values which should guide and constrain such processes, thereby ensuring that what happens within them and as a result of them can properly be described as ‘restorative’. These attempts to guide and constrain ‘restorative processes’ raise an important question: are those who are promoting restorative justice now imposing upon people whom they claim to be empowering a set of values which are in fact ‘foreign’ to those people? Pranis, drawing upon her extensive practical work with those developing justice circles in a wide range of settings, suggests not. In her experience, while people do not always behave according to restorative values, they do tend to affirm those values as ones which they should follow.

In Chapter 5, Declan Roche looks at one of the key debates in current restorative justice literature: that concerning the relationship between retributive and restorative justice. He shows how an early and persisting assumption that retributive and restorative justice are polar opposites has been challenged by a number of writers for a variety of reasons. He reviews the work of contributors to this debate such as Kathleen Daly, who argues that the depiction of conventional justice as ‘retributive’ and restorative justice as lacking retributive elements is vastly mistaken and misleading, and the rather different arguments of philosopher Antony Duff, whose position is that our aim in responding to crime should indeed be restoration, but that this should be achieved through a form of retributive punishment (although not necessarily the harsh exclusionary sanctions which other proponents of restorative justice tend to associate with the idea of retribution). For
Roche, the more sophisticated understanding of restorative justice that has emerged from this debate has important implications for thinking about the possible dangers of (well intentioned) restorative interventions and the need for checks and balances – issues which are taken up in a number of later chapters in the Handbook.

The final chapter of Part 1, by Margarita Zernova and Martin Wright, returns to the theme of diversity and conflict within the restorative justice movement over how restorative justice could be conceptualized and practised. This chapter examines closely specific debates between proponents over how restorative justice should be understood and implemented. Zernova and Wright show that, for some, restorative justice should be conceived as a process outside the criminal justice system to which appropriate cases can be diverted if the parties agree. Others would want to include, within the restorative justice tent, alternative sentencing practices within criminal justice, in which offenders are ordered to undertake reparative deeds rather than to undergo more traditional forms of punishment. Another debate which Zernova and Wright elucidate is that between those who think restorative justice should aim primarily at reforming our response to crime (whether by creating alternatives to conventional criminal justice or changing the criminal justice system) and those who think that the project of restorative justice is incoherent and impractical unless it also and perhaps primarily aims to bring about much deeper and wider social changes designed to ensure social justice. Similar to our own position in Chapter 1, Zernova and Wright conclude, not by calling for a more unified vision of restorative justice and the elimination of diversity and conflict, but for an acceptance that differences within a social movement – if discussed in an appropriate way – can be source of strength, keeping the movement open and fluid.
Chapter 1

The meaning of restorative justice

Gerry Johnstone and Daniel W. Van Ness

Introduction

The restorative justice movement is a global social movement with huge internal diversity. Its broad goal is to transform the way contemporary societies view and respond to crime and related forms of troublesome behaviour. More specifically, it seeks to replace our existing highly professionalized systems of punitive justice and control (and their analogues in other settings) with community-based reparative justice and moralizing social control. Through such practices, it is claimed, we can not only control crime more effectively, we can also accomplish a host of other desirable goals: a meaningful experience of justice for victims of crime and healing of trauma which they tend to suffer; genuine accountability for offenders and their reintegration into law-abiding society; recovery of the social capital that tends to be lost when we hand our problems over to professionals to solve; and significant fiscal savings, which can be diverted towards more constructive projects, including projects of crime prevention and community regeneration.

However, there is no agreement on the actual nature of the transformation sought by the restorative justice movement. For instance, some regard restorative justice as a new social technique or programme which can be used within our criminal justice systems. Others seek ultimately to abolish much of the entire edifice of state punishment and to replace it with community-based responses that teach, heal, repair and restore victims, perpetrators of crime and their communities. Still others apply the vision of healing and restoration to all kinds of conflict and harm. In fact, the ultimate goal and primary focus, they suggest, should be on changing the way we view ourselves and relate to others in everyday life (Sullivan and Tifft 2001). What all proponents of restorative justice seek is something better than that which exists, and also something better than the various other alternatives (such as penal treatment) which have been tried, with limited success, in the past.

It is in fact only recently that the restorative justice movement has achieved widespread prominence. Writing in 1998, the founders of the...
Contemporary Justice Review stated: ‘there still remain a considerable number of people involved in the administration of criminal justice and even many who teach about justice issues at the university level, for whom issues of restorative justice, even the term itself, remain quite foreign’ (Sullivan et al. 1998: 8). Today, by contrast, one seldom encounters people involved in the administration or study of criminal justice who are not familiar with the term. Indeed, the concept of restorative justice is already cropping up in other discourses, including those of school discipline, workplace management, corporate regulation, political conflict resolution and transitional justice.

Yet, despite its growing familiarity in professional and academic circles, the meaning of the term ‘restorative justice’ is still only hazily understood by many people. The main goal of this chapter, therefore, is to explore what people who advocate ‘restorative justice’ are actually promoting. This is by no means a straightforward task. The term ‘restorative justice’ appears to have no single clear and established meaning, but instead is used in a range of different ways. Some who have attempted to clarify the meaning of restorative justice have tended to conclude, often with some hint of despair, that ‘restorative justice’ means ‘all things to all people’ (Roche 2001: 342). Moreover, it is not simply that people use the term in different ways in different contexts. Rather, some proponents of restorative justice assert or imply that their use of the concept is the only proper one, and that to use the concept in a different way is to create confusion or to adulterate the concept of restorative justice by applying it to practices or agendas which are not restorative. These assertions can be made with such passion that they take on ‘the tone of a weird inter-faith squabble in an obscure religious sect’ (Bazemore and Schiff 2004: 51; cf. McCold 2004a).

Why so much passion? As we hope to show, it is because restorative justice is not simply a persistently vague concept; it is in fact a deeply contested concept.

What sort of a concept is ‘restorative justice’?

In what follows, in order to explain why ‘restorative justice’ is so profoundly contested, we will undertake a brief examination of the type of concept which restorative justice is. An appraisive concept

Most of those who use the term restorative justice consider it to be a constructive and progressive alternative to more traditional ways of responding to crime and wrongdoing. Hence, for its proponents, the judgement about whether a particular practice or situation is properly characterized as ‘restorative justice’ is not simply a matter of taxonomy, it is a matter of evaluation. The question is whether a particular practice or agenda meets the standards of restorative justice. The appraisive nature of the quest for a definition is brought out explicitly by Declan Roche:
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In the same way that counterfeit goods may tarnish the good reputation of a manufacturer’s brand label, programs that are called restorative when they are not can tarnish the concept … restorative justice should seek to prevent counterfeiters from benefiting from the good name of restorative justice. One way to do this is to continually clarify the meaning of restorative justice so that judgments can be made about how restorative a program or practice really is (2001: 343).

An internally complex concept

Not every constructive and progressive alternative to traditional interventions into crime and wrongdoing can be described as restorative justice. For such an alternative to be credibly described as restorative justice, it will usually have one or more of the following ingredients, which are presented in no particular order of importance:

1 There will be some relatively informal process which aims to involve victims, offenders and others closely connected to them or to the crime in discussion of matters such as what happened, what harm has resulted and what should be done to repair that harm and, perhaps, to prevent further wrongdoing or conflict.

2 There will be an emphasis on empowering (in a number of senses) ordinary people whose lives are affected by a crime or other wrongful act.

3 Some effort will be made by decision-makers or those facilitating decision-making processes to promote a response which is geared less towards stigmatizing and punishing the wrongdoer and more towards ensuring that wrongdoers recognize and meet a responsibility to make amends for the harm they have caused in a manner which directly benefits those harmed, as a first step towards their reintegration into the community of law-abiding citizens.

4 Decision-makers or those facilitating decision-making will be concerned to ensure that the decision-making process and its outcome will be guided by certain principles or values which, in contemporary society, are widely regarded as desirable in any interaction between people, such as: respect should be shown for others; violence and coercion are to be avoided if possible and minimized if not; and inclusion is to be preferred to exclusion.

5 Decision-makers or those facilitating decision-making will devote significant attention to the injury done to the victims and to the needs that result from that, and to tangible ways in which those needs can be addressed.

6 There will be some emphasis on strengthening or repairing relationships between people, and using the power of healthy relationships to resolve difficult situations.
Few would deny the applicability of the concept of restorative justice to an intervention which clearly has all these ingredients. Quite often, however, interventions will possess some of these ingredients, but not others. Whether or not a person defines such an intervention as ‘restorative justice’ will then depend on how important he or she regards any particular ingredient as being. For example, those who regard the first two ingredients as essential to restorative justice will be reluctant to apply the concept to an intervention which lacks them, even if it clearly possesses the other four. Moreover, they may be willing to apply the concept to an intervention which clearly has the first two ingredients even if some of the others are barely present.

An open concept

New and unforeseen developments can affect the way we use the concept of restorative justice. For instance, in the 1970s and 1980s, the concept was most commonly used in the context of North American experiments with victim–offender mediation and reconciliation (Peachey 2003). These programmes rarely included more participants than the victim, the offender and the facilitator. The facilitator was typically a trained community volunteer. Then, in the early 1990s, new ‘conferencing’ approaches to crime emerged from New Zealand and Australia, and were subsequently identified as a form of restorative justice (Zehr 1990: 256–62). In these, much larger groups of people, including the friends and family of the victim and offender, are brought together to discuss and decide a much wider range of issues. Furthermore, criminal justice officials, such as police, may participate in the conferences and even serve as facilitators. Several years later, peacemaking circles of the First Nations peoples in North America began to be recognized by some criminal courts as a way to resolve criminal matters. Circles include not only victims, offenders and their ‘communities of care’, but interested members of the surrounding community as well. The involvement of criminal justice officials also expanded, with prosecutors and judges participating. These developments, unforeseen in the late 1980s, had a profound impact upon the usage of the concept of restorative justice. It came to be understood by some as an approach that places high value on bringing together as many stakeholders affected by a crime as possible. Furthermore, the initial assumption that only community volunteers have sufficient neutrality to facilitate restorative processes has given way in some jurisdictions to an assumption that following best practice standards is sufficient to assure that criminal justice officials can provide the neutral setting necessary for authentic participation by offenders.

These are just two examples of how the generally accepted understanding of restorative justice in the 1970s and 1980s shifted because of developments that few would have anticipated in advance. In fact, those shifts were initially resisted by some as departures from restorative justice principles and values (Umbreit and Zehr 1996: 24–9; Pranis 1997; McCold 2004b).

In sum, we suggest that restorative justice is an appraisive, internally complex and open concept that continues to develop with experience, and that this helps explain why it is so deeply contested.
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Conceptions of ‘restorative justice’

One of the significant implications of viewing restorative justice as a deeply contested concept is that there is not likely ever to be (indeed perhaps should not be) a single accepted conception of restorative justice. Instead, we must acknowledge the differing and indeed competing ideas about its nature. To ignore or gloss over these differences misrepresents the character of the restorative justice movement, presenting it as more unified and coherent than it actually is. Just as importantly, doing this presents it as a more limited and more impoverished movement than it truly is. In an effort to avoid such shortcomings, we will review three conceptions of restorative justice.4

The encounter conception of restorative justice

In recent years a set of new processes has been devised, developed and employed in social responses to incidents of criminal behaviour, processes such as victim–offender mediation, conferencing and circles (Johnstone 2003: part C; Van Ness and Strong 2006: ch. 4). What is most distinctive about these processes is that, rather than remaining passive while professionals discuss their problem and decide what to do about it, victims, offenders and others affected by some crime or misconduct meet face to face in a safe and supportive environment and play an active role in discussion and in decision-making. For instance, with the assistance of a facilitator, they speak openly but respectfully to each other about what happened, express their feelings and have a say in what is to be done about the matter. Such meetings are intended to be democratic experiences in which the people most affected by a problem decide among themselves how it should be dealt with (O’Connell et al. 1999: 17). Rather than being the chief decision-makers, professionals and state officials remain more in the background, making it possible for the stakeholders themselves to make the decisions (Christie 2003).

Many people refer to such processes as ‘restorative justice’ (Robinson 2003: 375). Indeed, this is probably the most common way of using the term. That is to say, ‘restorative justice’ is most commonly used as if it were interchangeable with mediation, conferencing, etc.5 We will refer to this way of defining restorative justice as the encounter conception, a term which captures one of the central ideas of the movement: that victims, offenders and other ‘stakeholders’ in a criminal case should be allowed to encounter one another outside highly formal, professional-dominated settings such as the courtroom.

In order to understand this encounter conception what we need to ask, of course, is why encounters are thought to be better than ‘courtroom’ responses to crime. One possible answer could be that people who are most directly affected by a discussion and decision have a right to be meaningfully involved in the discussion and decision-making process. Adherents to this position might argue that this right must be respected even if doing so disturbs the efficient running of the justice machinery, and even if it results in ‘solutions’ to problems which strike professionals as unenlightened, wrong, absurd and not even in the best interests of the parties involved.6
There are some traces of the above rationale for encounter processes in the discourse of restorative justice. Significantly, however, this is not the main way in which proponents of restorative justice tend to argue for encounters. Rather, the more common argument is that such processes are useful for achieving a whole range of beneficial outcomes. This raises the question of how to characterize encounter processes which clearly fail to achieve such beneficial results: are these examples of restorative justice that have failed, or are they not examples of restorative justice? In order to explore this issue, it will be helpful if we provide a brief account of the beneficial effects typically attributed to encounter processes.

Proponents of encounter processes tend to argue that, when they are used in appropriate cases and properly conducted, a number of beneficial results can emerge. Some of these are familiar within the criminal justice system: rehabilitation (changing offenders’ attitudes makes them less likely to commit new crimes), deterrence (it is difficult for offenders to meet with their victims, and to do so in the presence of family and friends) and reinforcement of norms (the process and the people involved underscore the importance of the norm that the offender has violated). Other benefits are new in the context of criminal justice: it offers victims avenues for receiving restitution, gives them the opportunity to be involved in decisions in the aftermath of the crime, can contribute to reduced fear and an increased sense of safety, and may help them understand offenders’ circumstances that led to commission of the crimes (Robinson 2003: 375–6).

This transformative potential has led some to use encounters to allow the parties to achieve personal growth even if they do not settle claims that victims have against offenders. Umbreit (2001; see also Johnstone 2002: 140–50) contrasts settlement-driven mediation with what he calls humanistic mediation. In humanistic mediation the presenting conflict will receive some attention, but the focus is on helping the parties reach inner resolution through mediated dialogue. This begins with empowerment of the parties and a process of mutual recognition of the other’s humanity:

Through recognition, ‘the parties voluntarily choose to become more open, attentive, [and] responsive to the situation of another, thereby expanding their perspective to include an appreciation for another’s situation.’ Whether an actual settlement occurs is quite secondary to the process of transformation and healing that occurs in their relationship …

One of the most powerful and perhaps most controversial expressions of the transformative qualities of empowerment and recognition has been consistently observed in the small but growing application of mediation and dialogue between parents of murdered children and the offender. After lengthy preparation by the mediator, involving multiple individual meetings, the parties frequently, through a genuine dialogue about what happened and its impact on all involved, get beyond the evil, trauma, and inconsistencies surrounding the event to achieve an acknowledgement of each other’s humanity and a greater sense of closure (Umbreit 2001: 8–9, citations omitted).
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Crucially, however, meetings of stakeholders may not turn out to be transformative or even restorative. They can be conducted in non-restorative ways and arrive at non-restorative results (see Young 2003) such as a now infamous conference which ended with the decision that the young offender should publicly wear a T-shirt emblazoned with ‘I am a thief’ (Braithwaite 2000). The encounter process alone is not enough to assure the desired results. The question then arises: does such an encounter that does not yield the desired results fall within the definition of restorative justice? Roche raises this issue starkly when he suggests that if we adhere to a strict encounter conception of restorative justice, it is difficult to explain why an encounter which resulted in such a decision should not count as an example of restorative justice. Indeed, he suggests: ‘Viewed simply in process terms, any punishment meted out by a victim on an offender, such as lynching and stoning, may potentially satisfy the definition of restorative justice’ (2001: 344).

It is important to be clear about what is going on here. Ambiguity over whether encounter processes are important in their own right (because they enable those affected by crime to meet and be involved in the process of deciding what is to be done about it) or are valued mainly because of the desirable outcomes that they can achieve (but will also fail to achieve) manifests itself in uncertainty over whether encounters which are conducted in ‘non-restorative’ ways and fail to deliver restorative outcomes fall within or outside the definition of restorative justice.

Recently, efforts have been made to resolve this issue by focusing as much upon the distinctive values of restorative justice as upon its distinctive processes. In these efforts, restorative justice becomes redefined, or perhaps we should say more sharply defined, as an encounter process which is guided and constrained by certain values. For instance, Braithwaite (2003: 9–13) suggests that there are three sorts of values to attend to: values that constrain the process to prevent it from becoming oppressive (he mentions the values of non-domination, empowerment, respectful listening and equal concern for all stakeholders, among others); values that guide the process and that can be used to measure the success of the process (values such as restoration of property, emotional restoration, restoration of dignity, compassion, social support and so forth); and values that describe certain outcomes of the process that may, but also may not, emerge from a successful restorative process (values such as remorse, apology, censure of the act, forgiveness and mercy).

Others have proposed alternative sets of values, and it will be necessary for adherents to the values-based encounter conception to continue refining and defining the values that must be present in a restorative process (see, for example, Braithwaite and Strang 2001: 12; Roche 2001: 347; Boyack et al. 2004: 1–12 Supp.). It will also be necessary for them to address the question of where these values come from and what their status is. For instance, what needs to be explained is the precise relationship, if any, between the values being proposed by leading advocates of restorative justice (who tend, after all, to be professionals) and the values adhered to by typical lay participants in encounters. And, to the extent that there are tensions between these two different sets of values, it needs to be made clear how these tensions are to
be resolved. Important initial efforts to do just that are discussed in more
detail by Kay Pranis in her contribution to this handbook. 7

The reparative conception of restorative justice

There are many, however, who use the concept of restorative justice in a
markedly different way; it is a distinctive state of affairs that we should
attempt to bring about in the aftermath of criminal wrongdoing, and which
might be said to constitute ‘justice’. Those who use the concept in this way
share, with adherents to an encounter conception, the goal of revolutionizing
our response to offending and wrongdoing (cf. Wachtel 1997). However, their
ideas about what this project entails are considerably different. For them, it
involves a radical break with certain widely accepted ‘wisdoms’ about what
needs to be done to re-establish just relationships when somebody commits
a crime against another person (or persons).

Conventionally, we assume that if a person commits a serious wrong
against another, a state of injustice arises which needs to be corrected. It
tends to be further assumed that, in order to correct this state of injustice,
the perpetrator of the wrong must undergo pain or suffering in proportion
to the seriousness of the offence. Once the offender has suffered, according
to his or her just deserts, the equilibrium has been restored and justice
prevails.

Proponents of what we will call a reparative conception of restorative
justice reject this way of thinking almost entirely. To be precise, they do
agree that if a person commits a serious wrong against another an injustice
arises which needs to be put right. However, they insist that simply imposing
pain upon offenders is neither necessary nor sufficient to make things right.
They argue that the imposition of pain upon offenders, while it occasionally
provides us with a slight and short-lived sense that justice has been done,
generally fails to deliver a rich and enduring experience of justice. 8 In order
to create such an experience, other things need to happen. In particular, the
harm which the crime has caused to people and relationships needs to be
repaired. This is a very complex process, involving a wide range of things
an offender might do to repair the material and symbolic harm he or she
has caused to his or her victim(s) (see Chapters 2 and 14, this volume; also
Zehr 1990). Some adherents to this reparative conception of restorative
justice suggest further that reparation of harm is a sufficient ingredient of
justice – i.e. in order to achieve justice it is not necessary that the offender
undergoes pain or suffering.

What we want to explore briefly now is how this reparative conception of restorative justice relates to the encounter conception outlined earlier. At
first sight, the two seem barely distinguishable, since it tends to be argued
that in order to achieve the goal of repair of harm, encounter processes
are almost indispensable. This argument is based upon a number of ideas.
In particular, it is suggested that one of the chief ways in which victims
are harmed by crime is that they lose their sense of personal power (Zehr
1990: 27). According to Zehr, one of the reasons why crime is so traumatic
for its victims is that it upsets their belief in personal autonomy (1990: 24).
Hence, for the harm of crime to be repaired, this sense of personal power needs to be returned to them. However, when the case is then dealt with by conventional criminal justice processes, in which victims are largely neglected and expected to play a passive role while professionals make all the key decisions, the victim’s sense of personal power is further damaged rather than repaired. For repair to take place, victims ‘need a sense of control or involvement in the resolution of their own cases’ (1990: 28). Other things that victims need in order to recover from the trauma of crime, according to Zehr and others, are answers to questions that only ‘their’ offenders can answer (and perhaps can only answer convincingly in face-to-face meetings) and the opportunity to express the way they feel about what happened to them and to have their feelings (such as anger, pain and fear) validated by others (1990: ch. 2). For these things to happen, an encounter process is virtually essential.

Turning to offenders, one of the key contributions of the restorative justice movement (broadly conceived) is to argue that, quite apart from any harm they may have suffered in the past (offenders often being the victims of past injustices), they too are harmed by their criminal wrongdoing, since this often has the affect of alienating them – or further alienating them – from their own community. If this harm is to be repaired (i.e. if offenders are to be reintegrated into the community), things need to happen to repair this breach (Burnside and Baker 1994). One thing that can contribute to repair, indeed that may be necessary if repair is to take place, is for the offender to demonstrate genuine repentance and a willingness to make amends for his or her wrongdoing (see Chapter 11, this volume). One significant way in which offenders can do this is to meet with those harmed, listen respectfully to them, answer any questions they may have, apologize and agree to reasonable reparative actions which they suggest. Again, this all points to encounter processes.

An important question, however, is: what happens if such a process is not possible? What if the parties are unwilling or unable to meet? Those who adhere to the reparative conception of restorative justice argue that even then the justice system should respond in a way that repairs, rather than adds to, the harm resulting from crime. A simple example is a sentence of restitution rather than a fine or imprisonment (unless there are overriding considerations of public safety, for example). Under this conception, restorative principles would become a profound reform dynamic affecting all levels of the criminal justice system, whether or not the parties to particular crimes eventually choose to meet. This would revolutionize the justice system, yielding a range of new, restorative responses to all kinds of crimes and circumstances:

While these responses might differ greatly in the case of, say, a minor property crime by a first-time offender and a serious violent crime (based in part on the level of restrictiveness imposed on an offender according to the threat imposed to public safety or to individual victims), restorative interventions would be carried out according to
what must become widely understood basic principles and familiar processes (Bazemore and Walgrave 1999: 45–74, 64).

The important point here is that adherents to a reparative conception of restorative justice, while they express a strong preference for encounter processes, also envisage the possibility of partially restorative solutions to problems of crime emerging outside such processes, including through reparative sanctions ordered and administered by professionals employed by the formal criminal justice system (Van Ness and Strong 2006). Those strongly committed to an encounter conception of restorative justice, on the other hand, have difficulty in seeing how interventions such as these can be properly included within the definition of restorative justice. They lack what, for adherents to an encounter conception, are the most crucial elements of restorative justice – i.e. meetings of key stakeholders to discuss what happened and to agree on what should be done about it (McCold 2004a). Even if they have repair of harm as one of their official goals, such reparative sanctions appear to strong adherents of the encounter conception as professionally imposed measures masquerading as restorative justice in order to benefit from its good name (see the quotation from Roche, earlier in this chapter).

We saw earlier that adherents to an encounter conception of restorative justice have turned to ‘restorative values’ to provide guidance in order to counter certain problems with a pure encounter conception. In a similar vein, adherents to a reparative conception have turned to ‘restorative principles’ in order to ensure that the wide range of reparative interventions that they would include within the definition of restorative justice do not veer into becoming punitive and purely offender oriented. Principles are general guidelines that point from normative theory to specific application (see Chapter 21, this volume). They offer policy guidance to those designing systems or programmes that increases the likelihood that the result will be restorative.

These principles have been expressed in different ways. One useful collection, prepared by Zehr and Mika (Zehr 2002: 40), is called ‘restorative justice signposts’ and takes the form of ten indicators that work being done is actually restorative. Two examples of these indicators are ‘show equal concern and commitment to victims and offenders, involving both in the process of justice’, and ‘encourage collaboration and reintegration rather than coercion and isolation’.

Bazemore and Walgrave (1999: 65) offer three principles to inform the government’s role in restorative justice. First, it would seek to ensure that all parties are treated with equity, meaning that they and others in similar circumstances will feel that they are treated similarly. Secondly, it would seek the satisfaction of the victim, offender and community. Thirdly, it would offer legal protection of individuals against unwarranted state action.

Van Ness and Strong (2006) identify three alternative principles on which a restorative system might be constructed:

First, justice requires that we work to heal victims, offenders and communities that have been injured by crime. Second, victims, offenders
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and communities should have the opportunity for active involvement in the justice process as early and as fully as possible. Third, we must rethink the relative roles and responsibilities of government and community: in promoting justice, government is responsible for preserving a just order, and community for establishing a just peace.

Just as the values espoused in the encounter conception need continuing refinement and definition, so too do principles proposed to guide the reparative conception. Nevertheless, both serve a similar function within their respective conception: to increase the likelihood that what actually takes place in the new processes and justice structures is actually restorative.

The transformative conception of restorative justice

The restorative justice movement has tended to focus its efforts upon changing social responses to crime and wrongdoing. Its initial energies were focused upon revolutionizing societal responses to behaviour which we classify as crime and which is regarded as serious enough to warrant intervention by criminal justice agencies such as the police and correctional institutions. For the most part, this remains the main focus of the restorative justice movement, although it has also been applied to forms of misconduct which, although defined as rule-breaking, are usually not classified or handled as criminal offences, such as misconduct in schools (see Chapter 18, this volume) or in workplaces.

Others, however, go further still and suggest that both the initial and the ultimate goal of the restorative justice movement should be to transform the way in which we understand ourselves and relate to others in our everyday lives (Sullivan and Tifft 2001; cf. Ross 1996 and some of the essays in Strang and Braithwaite 2001). The argument appears to be: 1) that, in the absence of such transformations, any efforts to change specific practices, such as our social responses to crime, are unlikely to succeed and can even have effects quite different from those intended; and 2) that even if such changes do succeed, they can make only a peripheral contribution to the goal of achieving a just society – achieving that goal requires much deeper and more far-reaching transformations.

Such goals entail a conception of restorative justice significantly different from those we have described so far. Under this transformative conception, restorative justice is conceived as a way of life we should lead. For its proponents, among the key elements of this way of life is a rejection of the assumption that we exist in some sort of hierarchical order with other people (or even with other elements of our environment). Indeed, it rejects the very idea that we are ontologically separate from other people or even from our physical environment. Rather, to live a lifestyle of restorative justice, we must abolish the self (as it is conventionally understood in contemporary society) and instead understand ourselves as inextricably connected to and identifiable with other beings and the ‘external’ world.

This has implications in the way we use language (Ross 1996: ch. 5), the way we regard and treat other people and the environment, and the
way in which we allocate resources – which should be on the basis of need rather than right or desert and with the recognition that the needs of all are equally important (Sullivan and Tifft 2001). In such a context, we would probably not make sharp distinctions between crime and other forms of harmful conduct, but simply respond to all harmful conduct (from crime, to economic exploitation, to the use of power in everyday life) in much the same way – by identifying who has been hurt, what their needs are and how things can be put right (cf. Zehr 2002: 38).

It is vision that animates and guides this conception. Restorative justice seems to evoke a passion and commitment among its adherents that cannot be explained by rational cost/benefit calculations. Stories are repeated of dramatic changes in attitude in which the victim and offender recognize within the other a common humanity, empathy develops and inner resolution takes place. But what animate proponents are not simply the transformations taking place in others; they are also, and equally importantly, the transformations they begin to experience inside themselves. Sullivan and Tifft (2005: 154–60) describe this as a transformation of the ‘power-based self’ to the true self, a ‘being, a consciousness, of peace and gentleness’ (p. 155). This does not happen automatically, but instead takes place through a discipline of self-criticism that leads eventually to self-transformation.

For those who come to see restorative justice as a way of life, this recognition that the most profound changes ‘out there’ require (and may generate) inner transformation has political implications. Quinney observes:

All of this is to say, to us as criminologists, that crime is suffering and that the ending of crime is possible only with the ending of suffering. And the ending both of suffering and of crime, which is the establishing of justice, can come only out of peace, out of a peace that is spiritually grounded in our very being. To eliminate crime – to end the construction and perpetuation of an existence that makes crime possible – requires a transformation of our human being ... When our hearts are filled with love and our minds with willingness to serve, we will know what has to be done and how it is to be done (1991: 11–12).

Overlaps and tensions

Earlier attempts to explore disagreements over the meaning of restorative justice include exchanges over the ‘purist’ and the ‘maximalist’ models (cf. Bazemore and Walgrave 1999; McCold 2000; Walgrave 2000; Chapter 6, this volume) and over whether community justice can appropriately be considered part of restorative justice (cf. the entire issue of Contemporary Justice Review, 2004, Vol. 7, no. 1). We, of course, have the benefit of insights those controversies have generated. We have suggested in this chapter that the differences are more than a dispute over models, but not so profound as to conclude that any of the perspectives is outside the restorative justice movement. The differences are over alternative conceptions of restorative justice.
All three conceptions embrace encounter, repair and transformation. The difference between them is where the emphasis is placed. The restorative emphasis of the *encounter conception* is that the parties to a crime should be offered an opportunity to meet and decide the most satisfactory response to that crime. The restorative nature of that process is guided by values which constrain and guide the process and which help describe its desired results. The restorative emphasis of the *reparative conception* is that the response to crime must seek to repair the harms resulting from crime. The restorative nature of that reparation is guided by principles which constrain and guide justice processes and outcomes designed to bring healing. The restorative emphasis of the *transformative conception* is the restorative insight that fundamentally we are relational beings connected through intricate networks to others, to all humanity and to our environment. The restorative nature of those relationships is guided by a vision of transformation of people, structures and our very selves.

Clearly, there are considerable overlaps between these three conceptions. In fact, there is sufficient common ground to regard advocates of each conception as members of the same social movement, rather than as members of quite different social movements which have somehow become entangled. Yet, there are also considerable tensions between them which are not easy to dissolve.

For example, many adherents to an encounter conception do, in fact, share a commitment to the broad approach to crime espoused by those who hold to a reparative conception. However, practice is in many ways more limited and in other ways more extensive than that emerging from the reparative conception. The encounter conception is more limited in that it has no response when the parties to the crime are unable or unwilling to meet. It is more extensive in that its adherents use processes to address harm, conflict or problems that do not involve lawbreaking, or for purposes other than to repair the harm resulting from the lawbreaking.

Furthermore, adherents to both the encounter and reparative conceptions are attracted to and motivated by the vision of transformation. They may apply what they learn from restorative justice to other dimensions of their lives. But they are more likely to explain this in terms of new skills or growing spiritual insight than as necessary elements of doing restorative justice. In other words, restorative justice is considered more limited in application than adherents of the transformative conception claim. It is either a profound and useful process or it is an improved and hopeful way of addressing wrongdoing, but it is not an all-encompassing way of looking at life and relationships.

The overlaps help explain why it has been difficult to arrive at a common definition of restorative justice; we suggest that it will be impossible to do so, for reasons that we might explain using the metaphor of a three-storey home.

Imagine a home built on a gentle hillside with three storeys. Because of the grade of the hill, it is possible to enter the house from outside into each of the three floors. Because of porches and decks on the two top floors, and additions made to the first floor, each floor is a different size. The first floor...
is the largest, while the two upper floors are offset, so that areas of the third floor are directly above the second, but other areas are only above the first floor, creating a porch for those on the second floor. Similarly, some parts of the building are only two storeys high, which offers a deck area for the third floor.

The house stands for the restorative justice movement. The first floor represents the transformative conception, whose application of restorative justice is the most expansive of the three. The second and third floors represent the encounter and reparative conceptions, each of which overlaps the other in some matters but not all, as we have seen. Reflecting on this house suggests at least four reasons for internal disagreement over the meaning of restorative justice.

First, the people who disagree spend most of their time on different floors of the house. As long as we are talking about a restorative process in the context of dealing with crime, people on all floors agree that this is restorative justice. But a process used for purposes other than dealing with a rule violation (for example, helping neighbours find a solution to a problem) will be embraced more by people on the encounter and transformative floors, and either resisted or only half-heartedly accepted by those on the reparative floor. Restitution commitments that emerge from a restorative process are viewed as restorative by all; those that are ordered by a judge are accepted only by people on the reparative and transformative floors. Organizing community members in an economically deprived neighbourhood to oppose a proposed action by City Hall that would harm them is understood to be restorative only by people on the transformative floor.

A second reason for lack of agreement is that there are internal stairs connecting the three floors. This means, for example, that an encounter proponent might walk up to the reparative floor to consider matters like the needs and interests of victims, even though that person would not agree with reparative proponents that all measures to meet those needs and interests are restorative.

A third reason also stems from the fact that people are able to move easily from floor to floor: sometimes they forget what floor they are on, and as a result may wander into areas that do not fall within their conception. This can happen because they haven’t thought through the areas of agreement and disagreement they have with people on other floors. Other times it is because of the topic being discussed. For example, reparative adherents might meet with encounter proponents, to discuss how restorative values are shaping encounters that lie outside the reparative conception, such as in peace-making circles convened to address neighbourhood conflicts.

A fourth reason is that there are a number of points of entry into the building. The ‘normal’ entry, then, could actually be any of the floors, depending on how the person approaches the building. So political perspectives, life experiences, employment and other factors contribute to a person’s perspective as to which floor is the obvious or self-evident floor that should be the ground floor for restorative justice.
Conclusion

There are a number of ways in which its proponents and critics might answer the question: ‘What does restorative justice mean?’ For some it is principally an encounter process, a method of dealing with crime and injustice that involves the stakeholders in the decision about what needs to be done. For others it is an alternative conception of the state of affairs that constitutes justice, one that seeks to heal and repair the harm done by crime rather than to ignore that harm or try to impose some sort of equivalent harm on the wrongdoer. Still others would answer that it is a distinctive set of values that focus on co-operative and respectful resolution of conflict, a resolution that is reparative in nature. Others argue that it calls for the transformation of structures of society and of our very way of interacting with others and our environment. For many it is a vision that things can be made better, that it is possible to aspire to more than fair processes and proportionate punishment in the aftermath of crime, that out of tragedy can come hope and healing if we seek it.

These are different but related conceptions. We have argued that these differences are the consequence of the nature of the concept ‘restorative justice’ itself: it is a deeply contested concept. As a consequence, work to understand the meaning of restorative justice should not have as its goal the resolution of those differences, but instead a deeper appreciation of the richness of the concept and perhaps new insights about how to apply restorative measures to make things better than they are now. The intensity of discourse about those disagreements reveals areas in which proponents have moved from common ground to disputed territory.

How, then, might restorative advocates deal with the tensions that arise from working with people who hold to different conceptions? Restorative justice itself offers some guidance. Encounters are important, and when possible disputes should be explored in safe environments in which disagreeing parties are able to listen and speak. Apology is a useful way to make amends, when that becomes necessary. Conflict is not something to avoid or solve, necessarily; it can be a valued possession for those who are in conflict, and wrestling with that can become the occasion for inner growth and personal transformation.

Above all, allow restorative values to inform conversation and discourse. Zehr and Toews (2004: 403) have distilled these into two words: humility and respect. Humility includes, but is more than, the idea of not taking more credit than one should. It also means having such a profound awareness of the limitations of one’s knowledge and understanding that it is possible to remain open to the truth that others’ life realities are not the same as one’s own, and that therefore they may have insights one does not yet possess. Respect means not only treating all parties as persons with dignity and worth, but also as people with wisdom and other valuable contributions to offer.

We make one final suggestion: it would be useful to adopt names for the different conceptions to avoid disputes that arise because of misunderstanding...
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and to increase collaboration. We have proposed the ‘encounter conception’, the ‘reparative conception’ and the ‘transformative conception’. It may be that there are other and better names. But it does seem sensible, if we cannot settle on a single meaning of restorative justice, to become more adept at articulating its contested meanings.

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Notes

1 At least in Europe, North America, the Pacific and Africa. Interest in restorative justice is growing in Asia and Latin America, but these are early days. On the international development and global appeal of restorative justice, see Part 6 of this handbook.

2 This analysis is influenced by an important essay published in the 1950s by the philosopher W.B. Gallie on ‘essentially contested concepts’ and the work of the political theorist William Connolly, who has developed Gallie’s ideas and applied them in the domain of political discourse (Gallie 1962; Connolly 1993). We believe that these classic works have very important lessons for the restorative justice movement, although in the space available here it is not possible to discuss these theoretical sources or to indicate how we have utilized them.

3 Given the nature of these characteristics, the question is usually to what extent are they present, rather than a simple are they or are they not present. See Van Ness (2003) on the need to think in terms of degrees of restorativeness.

4 We wish to emphasize that, while distinguishing these three conceptions is (in our view) useful for analysing debates about the meaning of restorative justice, we are not suggesting that any actual use of the concept of restorative justice can be neatly matched to a particular conception. Also, we are by no means suggesting that these three conceptions are totally distinct from one another; to the contrary we will point to numerous points of overlap.

5 Although there are some disputes over whether all these processes are properly called restorative justice, or over which of them is the purest form of restorative justice.

6 Analogously, one of the key arguments for democratic governance is that people have the right to govern themselves, even if they do so in what a minority (or outsiders) consider to be an unenlightened manner.

7 While our goal in this chapter is to introduce various ways of conceiving restorative justice, rather than to discuss particular issues in any detail, we do think it necessary to make one suggestion: that efforts to articulate a set of distinctive restorative justice values and to think through their status would be significantly advanced by a prior effort to describe with more sophistication than usual the range of values which underlie conventional criminal justice processes.
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To describe these processes – as is often done – as being underpinned simply by a desire to get even with those who hurt us or to respond to the hurt of crime with the hurt of punishment is too crude. A more fruitful starting point might be to recognize that conventional criminal justice practices tend to embody a wide range of values, and can be better understood as shaped by passionate struggles over which values should predominate in the penal realm, rather than being shaped by one particular set of values (see Garland 1990 for an account of the competition to shape the field of penal practices, in line with particular values and commitments, and of how this results in a highly complex institution which embodies and gives expression to a wide range of values, many of them contradictory). Also, we would go so far as to suggest that, rather than engage in wholesale rejection of traditional criminal justice values in favour of restorative justice values, the restorative justice movement might commit itself to devising responses to crime which incorporate the best of both. For instance, we might conceive of restorative justice as a process which enables people affected by crime to devise responses which meet their local needs and which are closely in keeping with their ethical ideals. We could then recognize that such a response needs to be bounded by broad values more often associated with the idea of the rule of law than with restorative justice. As Braithwaite elegantly puts it, restorative justice (the ‘justice of the people’) needs to be constrained by the ‘justice of the law’ (2003: 14–16).

8 See Zehr (1990) for a rich and sophisticated account of this position. We have relied heavily upon Howard Zehr’s work in this section because we regard it as one of the most cogent expositions of, and arguments for, restorative justice available, and because of its influence on the restorative justice movement (Zehr is often referred to as ‘the grandfather of restorative justice – see Zehr 2002: 76). Just a few of the other works worth consulting in this context are Braithwaite (2002), Cayley (1998), Consedine (1999), Graef (2000), Johnstone (2002), Marshall (2001), Ross (1996), Sullivan and Tifft (2001), Wright (1996) and Van Ness and Strong (2006).

9 These ideas are explored in more depth in Johnstone (2002) and Van Ness and Strong (2006).

10 They call these ‘values’.

11 Stories of transformation abound. The most spectacular stories, told with an air of wonder, are those in which a restorative encounter leads to transformation of the victim, the offender and ultimately of their relationship. Out of evil, something good has come, something far better than could be expected from contemporary criminal justice, and in some ways something better than existed before the crime.

There is almost a mythic dimension in these stories, one that emerges in arguments for restorative justice as well. The themes of rebirth and renewal that recur in mythology and in religion have their place as well in restorative justice. Within the death and destruction of crime lies the possibility of resurrection and new life. This may not be realized in all, or even in most, cases. But the possibility is there, and is realized frequently enough to give reason for hope.

References

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