Theo Gavrielides *Editor*

Comparative Restorative Justice

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Book Endorsements

Professor Nicholas Jones, Executive Director Canadian Institute for Public Safety Research and Treatment, Canada

"This edited volume brings together restorative justice expertise from around the globe allowing for rich comparisons across multiple locations. The organisation of the book into various comparative aspects (implementing environments of restorative justice, adversarial vs inquisitorial justice systems, and impetuses for restorative justice) provides a novel and compelling comparative framework for engaging with restorative justice for scholars and students of restorative justice."

Professor Loraine Gelsthorpe, Director, Institute of Criminology, University of Cambridge

The concept of *restorative justice* has become part of the lexicon of criminologists and practitioners alike in recent years, but always with a shadow of unresolved paradoxes and with evidence of faultlines. The contributors to this edited volume directly address some of these faultlines by considering context and culture, ancient and modern conceptualisations, theory and practice, and restorative justice in adversarial vs inquisitorial criminal justice settings. The book is wonderfully innovative in scope and critical purview. This is a well-crafted book which lifts debate about restorative justice to a new level. It is a 'must-read' for those who wish to better understand and appreciate the complexities, principles, and practices of restorative justice."

Professor Tim Newburn, London School of Economics

"Over decades now an impressive body of knowledge about restorative justice has developed, been promulgated, and had far-reaching effects. Despite the impact of this global movement there is still much we have to learn about international variation and the nature of the relationship between place and practice in this regard. Drawing together an impressive array of contributors from around the world, *Comparative Restorative Justice* offers the most reliable and up-to-date guide to contemporary developments and pressing issues."

Professor David Nelken, Professor of Comparative and Transnational Law at Kings College London

"Theo Gavrielides, the editor of this intriguing and wide-ranging collection, tells us that the literature concerning restorative justice is replete with references to dilemmas, tensions, and what he calls 'faultlines' concerning its role and remit… The editor's contention, which he makes the raison d'être of this volume, is that bringing to bear a comparative dimension can help us appreciate how far these faultlines are 'merely variations of the rich and diverse restorative justice practices and concept'. The chapters included here have it in them to bring hope to what he calls 'an already damaged restorative justice movement', so that 'we will be in a better position to accept differences and similarities for what they are, and without pitting them against a diverse mirror'."

Professor Francis Pakes, University of Portsmouth, Professor of Criminology, Associate Dean (Research), UK

"This edited volume on *Comparative Restorative Justice* comes at a good time. This is not least because of the enduring crisis of mass imprisonment. It reminds us the comparative criminal justice is not just an academic endeavour but also intensely and increasingly, political. It is for these reasons that comparative restorative justice rightly comes from a place of defiance. It is a truism that comparative research is not easy, beset as it is with issues of culture, language, access, and understanding. And while the scholar often finds inspiration in intriguing and locally successful practices, they cannot close their eyes to the global forces bearing down it. It is up to us to overturn some of those forces and continue with the project to de-Westernise and de-colonise practices, cultures, and minds. This book makes a terrific contribution to this. I have no doubt that it will find its way to a large readership. It deserves it."

Professor William E. Butler, John Edward Fowler Distinguished Professor of Law, Pennsylvania State University, Emeritus Professor of Comparative Law, University of London

"Among the many merits of the present volume is the comparative dimension—a realisation that the foundations of the restorative justice model encounter different and unexpected variants in criminal procedural models past and present. The team of experienced comparatists is well chosen to address the diverse versions of restorative justice at work in the world. One may hope that the comparative approach to the subject represented in this volume will flourish and expand to include other jurisdictions with the same healthy attention to historical experience as well as present challenges."

Professor April Bernard, Editor in Chief, Contemporary Justice Review, Chicago State University, USA

"In this ambitious edited volume, Theo Gavrielides awakens us to the infinite possibilities of restorative justice within a global conceptual framework. This volume fills an important gap in the literature by eloquently defining and exploring the significance of comparative restorative justice and its methodologies across multiple continents. Where Zehr called for the changing of lenses to assess the prevailing justice paradigm, Gavrielides empowers us to broaden our lenses to consider the validity and relevance of decolonised global realities and applications of restorative justice. This important and seminal contribution to the body of knowledge on comparative restorative justice is a useful tool for cross learning and healing the faultlines that often separate theory and scholar from practice and the practitioner by presenting the breadth and depth of their intersections."

Foreword

David Nelken

There can be few recent developments in criminal justice that are as significant as the growing appeal and spread of restorative justice. Admittedly, most jurisdictions still rely mainly on adversarial state-sponsored models of criminal proceedings and do not go all the way to identifying victims as the fulcrum of decision-making or sending conflicts to be resolved "in the community". But the values and practices behind this alternative rationale to handling offending and disputes are gaining ground and are well institutionalised world-wide, especially in matters regarding youth justice or neighbourhood disputing. The subsidiary place of restorative justice can also be misleading given that it functions as a "supplement" (Derrida, 1967) that, while apparently marginal, is at the same time an essential, if challenging, part of the mainstream.

But if restorative justice offers a potential answer to the well-documented failings of criminal justice, it is not free from its own problems. Theo Gavrielides, the editor of this intriguing and wide-ranging collection, tells us that the literature concerning restorative justice is replete with references to dilemmas, tensions, and what he calls "faultlines" concerning its role and remit. These include disagreements about how to characterise restorative justice, how far to treat it as a matter of process or outcomes, and whether it should be seen as an alternative to punishment or a different way of shaping it. Making sense of restorative justice is further complicated by the many contributors here who ask how it relates to older forms of indigenous or local justice, and what we should think of efforts colonisers and the colonised to reinvigorate identifiable elements of such an approach.

The editor's contention, which he makes the raison d'être of this volume, is that bringing to bear a comparative dimension can help us appreciate how far these faultlines are "merely variations of the rich and diverse restorative justice practices and concept". The chapters included here have it in them to bring hope to what he calls "an already damaged restorative justice movement", so that "we will be in a better

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position to accept differences and similarities for what they are, and without pitting them against a diverse mirror". There is indeed much to be said for the idea of appreciating existing diversity in responding to offending behaviour, rather than attempting to reduce such variety to a procrustean bed of standardised justifications of punishment.

Such a strategy can help enlarge our philosophical ideas about what is or should be possible. Much can be learned from fine-grained studies that reveal how far theoretically posed dilemmas actually do cause problems—and how existing practices seek to resolve or conceal them. But it would be a mistake to argue that given ideas and practices are right just because of their geographical location. Tensions and faultlines may be responded to differently, but any local solutions are and can be contested. The claim that "Hawaiian problems need Hawaiian solutions" sounds all too similar to past or present nationalistic posturing. Unfolding a tradition may be a matter of seeking internal consistency over time. But no tradition is an island (Glenn, 2014).

It is precisely because the experience of some places can be relevant for others that we need to study the accounts of restorative justice practices included in this collection. Readers will come to their own conclusions about the lessons to be learnt from the chapters, taken singly and as a whole. All I propose to do here is to summarise some points that struck me in my reading, using a framework that points to classification, description, explanation, interpretation, and evaluation (Nelken, 2010) as some of the key issues that comparative research sets out to clarify.[1] Only with some such framework can we break down into more manageable issues otherwise unwieldly enquiries such as asking, "how can restorative justice embrace the decolonising process?"

Classifying Restorative Justice

How does restorative justice compare to mainstream state criminal justice? Should it be seen as a new way of justifying punishment, or an alternative to it? [2]How far do its various rationales—reconciling with the victim, transforming the self, bringing the community together—dispense with current state punishment justifications in terms of denunciation, retribution, deterrence (both general and individual), and reform? Some of the contributors contrast a focus on violations of rules and on the breaking of relationships; for others what is crucial is the difference between a wrong against the State and an affront to the community. In many countries, we are told, 80% of justice is "informal", but that says little about the form that justice takes. Similarly, what is the line between restorative justice and indigenous justice?

[1] The Editor's organisation of the sections of this book also suggests an interest in distinguishing descriptive, classificatory, and explanatory questions. It should be added for clarity that the five aspects I have highlighted are only separable analytically; in practice, they interrelate and overlap.

[2] Contrast the views of Anthony Duff and Lode Walgrave in Walgrave ed. 2022.

Does the sort of traditional type of honour-based justice system found in Scotland and Albania that we hear about in this volume count as examples of restorative justice? Sayings such as "Forgive if you see fit but if you prefer wash your dirty face" or "an offence to honour is never forgiven" do not seem well aligned with the aspirational claims made by the restorative justice movement.

As with comparative law scholarship more generally, there is some interest in contrasting the way this form of justice fits into the civilian and common law worlds. Some chapters tell us about Latin America, and we are also given information about Germany. On the other hand, we have reports from Australia, New Zealand, and Canada. And there is also an explicit comparison of China with Hong Kong. The centrality of state justice systems and their ability to exert a normative monopoly varies greatly on the ground. An important problem that arises, given the range of places heard from, is the need to theorise the role of restorative justice in situations of legal pluralism (Griffiths, 1986; Berman, 2009). Many of the contributions to this volume concentrate in particular on what they characterise as the difference between newer and older models of restorative justice–often coexisting within the same jurisdiction. This distinction maps very roughly onto other contrasts, such as those between colonisers and the colonised, Europe and the rest, the modern and the traditional, state and indigenous justice, or even the central and the local.

A number of important contrasts are drawn out. Whereas the older/original type of restorative justice sees the offence as something that threatens the community—which avowedly "interested" community leaders seek to resolve, the newer approach looks more to impartial representatives of the community to mediate between individuals. Linked to this are a range of other more debatable differences. Is there a clear line between a view of the self as defined by obligations and relationships to kinship groups and the natural environment, and one that presupposes—and seeks to construct—a rational individual exercising free will? Do older forms of restorative justice depend more on exciting the emotions of sham rather than guilt?

Describing Restorative Justice

Descriptions of actual systems of restorative justice go beyond mere classification. At the most basic level, if we need to know more about restorative justice in action; how it is used, by whom, for what matters, and at what stages of legal procedures. Such research can provide evidence of the complexities and contradictions that cannot always be deduced from models or ideal type categorisations and help reveal any inconsistencies between legal rules and action on the ground. Many commentators point to the lack of resources and governmental support as well as the risk of governments taking over local projects for their own state-centred ends. Others set out to illustrate the similarities and differences between older and newer forms of restorative justice and show how both systems interact.

But if we are going to look for comparative similarities and differences in such justice processes there has, at a minimum, to be some agreement about which

"units" are being compared. The most obvious matters to compare, of course, are countries, and in this collection we learn in particular about Albania, Scotland, Bangladesh, Nepal, India, Australia, New Zealand, Canada Uganda, Lesotho, Eswatini South Africa, Tanzania, Hawaii, Hong Kong China, and Germany. But other objects of comparison may be developments and trends, or processes, procedures, and practices. Chapters in this collection also compare the use of restorative justice for different purposes, for example, in the contexts of responding to issues of mental health, race equality, or environmental crime.

Description should not be allowed to proceed in too untheoretical a fashion. Too often, sets of expert reports found in collective comparative works provide little more than "comparison by juxtaposition"—the result of discussions of the kind, "we do this in place A, what do you in place B?" (Nelken, 2000). To get beyond this kind of comparison, those writing and reading such reports should ask about the appropriateness of what is being compared. Are we comparing "like with like"—and what does that entail? Comparison is most telling where the matters being compared have enough in common for it then to be worth seeking to understand any remaining differences. Conversely, when we contrast places that are very different it is unexpected similarity which shows the comparison to have been worthwhile.

In this collection, differences in the use of restorative justice in Australia and New Zealand or neighbouring countries in Africa illustrate the first type of comparison. The comparative study of China and Hong Kong, which, we are told, have much in common culturally, along with different political and legal systems, is arguably an example of the second type. More complicated cases, where both unexpected similarities and differences are to be found, can be seen in the chapter describing the two different forms of peace-making that take place in Hawaii, as well as that contrasting two forms of restorative justice in Canada. Putting all the chapters together can also raise new questions. Why is it that restorative justice cases in Chile mainly involve offences of theft and damage, just as in the mainstream criminal justice system, whereas, in Germany, we are told, restorative proceedings deal disproportionally with cases involving personal injuries?

Explaining and Interpreting Restorative Justice

A number of explanatory questions are touched on by contributors (and what they have to tell us whets the appetite for more). Why does the interaction between new and old forms of restorative justice in ex-colonial states work out as it does (Cohen, 1994)? Some chapters offer case studies of the outcomes of efforts to introduce such practices, for example, in Tanzania and Chile. The suggestion is made that what happens depends on whether what is being proposed is "congruent" with other aspects of the culture of the society concerned. Progress could perhaps be made by distinguishing more carefully the role of legal culture in particular (Nelken, 2016).

Are we trying to turn the clock back? If the rise of state and the rise of individualism go together, at the expense of intermediate associations the family, the village,

and other locations of 'community' (Tonnies, 1887/2001), can apparent deference to the community be more than rhetoric? Given that the rise of the nation-state was crucial in the development of criminal justice in the West, can we expect ex-colonial states seeking to impose their authority to welcome restorative justice in any form that could threaten their hegemony? Can these considerations help provide some insights into how restorative justice is spreading, where and how is it resisted, and what happens when it is introduced in a top-down fashion or where it is pioneered "from below". Comparative work looking for answers to such questions will be increasingly uneasy with metaphors such as transplants or diffusion. More and more the issue is not transplanting or even diffusion of legal innovations, but the spread of global standards sponsored by intergovernmental and non-governmental organisations (Nelken, 2003, 2019).

A related (if somewhat different question) concerns the reasons why those involved accept to participate in restorative justice. Do offenders agree because they see it as a route to greater leniency? We are told that this is true for China, and it is surely not only the case there. Do victims go along with it because of the possibility of getting compensation? Especially with young offenders, some sort of apology and recognition may be more important. Another, long-standing, question has to do with explaining the type of cases that get delegated from the official system to restorative justice. Fora often the more serious cases are kept to the official state system because they are held to require a higher level of legal protections and processing. But it can be serious cases, especially those involving violence, which are better candidates for mediation and restorative justice than low-level cases such as shoplifting.

A complementary—sometimes even a competing strategy—for making sense of developments in restorative justice puts the emphasis on what can be learnt from trying to grasp differences in cultural meaning and significance. In the case of restorative justice, this includes parsing terms such as Ubuntu (the value of humanity in community) in South Africa, or Ho'oponopopo, (the practice of reconciliation and forgiveness), in Hawaii. But it is important to appreciate that it is not only "the other" who has "culture". Modern Western criminal justice systems continue to be shaped by their Christian roots. And this comes in various versions, including the Mennonite tradition that helped to inspire the revived restorative justice movement. Equally, however, those in the West will want to explore the dark side, the racist, scientistic and ultra-individualistic assumptions, that are built into modern criminal justice. An intercultural dialogue between old and new forms of restorative justice could be of mutual benefit. If it is seen as an advantage of restorative justice over retributive justice that it aims at putting things right for the future (Crawford, 2015), hearing the accounts of how some first nation thinkers experience history reveals a strikingly different conception of the ways the past, present, and future are intertwined. As another example, consider contemporary efforts to develop a criminal justice approach based on accountability without blame (Lacey & Pickard, 2015). How far could this also be a good interpretation of the aims of indigenous restorative justice?

Evaluating Restorative Justice

Last, but not least, especially for policy makers and social activists, there is the question of what makes restorative justice desirable, and how to assess whether is achieving what it aims to do. Evaluating the success of initiatives in criminal justice is dogged by the variety of incommensurable goals it is said to serve, for example, backward-looking justifications such as retribution, as compared to forward-looking aims such as deterrence or reform. How does restorative justice fare when measured in terms of these same goals? The best evidence suggests that where it comes to reducing recidivism, restorative justice at least does no worse than other approaches to criminal justice and that the satisfaction level of offenders and victims is also positive (Sherman & Strang, 2007; Robinson & Shapland, 2008). On the other hand, it is not a way of saving money. Outside of a limited number of jurisdictions, however, there is little data available to draw any firm conclusions about relative success in the use of restorative justice.

But should restorative justice be assessed in these ways? For some commentators, claims about its achievements are not robust until they can tell us about reconviction rates and recidivism. On such a view, success can also be defined as less cases going on to the mainstream system. What is needed therefore are better statistics of referral rates, details of agreements made, and information about how all this affects what happens in rest of criminal justice procedure (e.g. if the case is dismissed). [3]For other advocates of this kind of justice, the growth of victim-offender mediation, or forums for the building or rebuilding of community, offers benefits that go well beyond those provided by the official state system of criminal justice. These writers prefer the use of criteria such as visibility, inclusiveness, being more direct, less damaging, restoring equilibrium, stopping disputes spiralling out of control and the celebration of common values such as simplicity, flexibility, lack of strict rules, or precedent. For some of these commentators, we should avoid giving too much attention to participant satisfaction.

From this point of view "traditional indigenous RJ practices and processes tend to measure 'success' in a more balanced and holistic manner within a framework of repair, resolution, and remorse". More than this, it is said, unlike 'conventional western research methodology', the indigenous process has been intuitively grounded in cultural norms and values and driven by cultural awareness and the notion of an evolutive identity that precedes sociology and the "scientific method". Restorative justice thus calls on us to rethink our ideas about success itself. We are dealing with wounds in collective emotional human relationships, not just a dispute between individuals. The true research task involves us trying to grasp whether forgiveness is being invoked in manipulative ways. Even more demanding, we need to be finding ways to measure both larger spiritual outcomes and the political significance of developing or recovering forms of criminal justice that resonate locally.

[3] In some cases, the lack of data reflects economic constraints and the lack of a research tradition. For countries like Australia and New Zealand, we are told that governments do not prioritise the goals of indigenous communities themselves.

Restorative Justice: The Old and the New

Anyone reading this collection is likely to come away with new questions about what should be seen as the ideal relationship between older and newer forms of restorative justice. Whether we are speaking about the global north, and even more where it comes to the global south, how much space should we give to restorative justice, and should we be trying to make older forms more like the new, or vice versa? In practice, it can be hard to delegate problems to be solved locally when social incentives and sanctions depend so much on national (and increasingly transnational) interdependencies (Nelken, 1985). But there can also be principled objections to preferring the older model to the new.

Contributors warn us that the assumption of innocence, or the right to appeal, rarely feature in indigenous forms of community processing. And where the goal is said to be healing the community, this can precisely involve reproducing patriarchal and caste bias, and marginalising women or low status groups, such as the Dalit in India. Is there an inescapable tension or faultline in choosing whether to reinforce the subordination of the individual to the community, or strengthen procedural rights while still hoping to retain the advantages of a community orientation? On the other hand, while older models of justice explicitly reinforce local hierarchies, the formal and procedural equalities of modern systems of justice do little concrete to remedy substantive social inequalities in the wider society.

Contributors to this volume also force us to confront the bitter truth that countries like Canada and Australia continue to penalise members of indigenous communities in the official state system out of all proportion to their numbers, while at the same time exercising cultural appropriation of their approach to maintaining harmony. People from indigenous communities and minorities, especially those not in close touch with the wider society, often plead guilty in the official system, we are told, because they attach different significance to such a plea. Unique aspects of indigenous culture and community may contribute to guilty pleas, including language barriers, a distrust in the justice system, and a "cultural premium" placed on agreement, cooperation, and taking responsibility.[4] In deciding whose voices must be heard (Spivak, 1988), a crucial role is played by which definition of success in criminal justice we adopt. "Processes of reinscribing colonial power on the bodies of the colonized", Cunneen tells us, 'are not purely or predominantly historical, the contemporary fascination in criminal justice with "what works" and risk assessment provide a new means to achieve racist outcomes in a period of "race blindness". Colonised and racialised peoples' own understanding and explanations for their predicament has no purchase within these "objective" tools (Cunneen, 2021).

[4] By contrast, members of some minorities in the UK and the USA often end up being penalised because they choose more often to plead not guilty and thereby lose the advantages of copping a plea.

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Guest Preface

William E. Butler

For a comparative lawyer such as myself who has specialized in the prerevolutionary Russian, Soviet, and post-Soviet legal systems, there are elements of familiarity with concepts of restorative justice, but never the full package. The juxtaposition is present between the inquisitorial and adversarial models of procedure. There has been, and is, attention in the codes of criminal procedure, even during the Soviet era, to the importance of making amends, to the legal status of the victim in a criminal proceeding, to the individual characteristics—good and bad, exculpatory and incriminating—of the perpetrator of a crime, to the importance of community representation in the proceedings (whether by way of a social accuser and/or defender, lay assessors on courts of first instance, choice of counsel that may or may not include professional lawyers, and others), and to the environmental or contextual circumstances or conditions that may have encouraged or facilitated the commission of a crime.

Elements of the restorative justice model, therefore, were and are present, but not the entire model as a cohesive integrated conceptual approach. What is missing?

Inclusion is present to an extent, most especially through recognition in Russian criminal procedure of the "participants" in a criminal proceeding. But this is a formal recognition, conferring rights and duties, and not designed to facilitate reconciliation. The dimension of encounter is present by implication, but this occurs within a formal justice system and is not intended as a dispute resolution exercise. Making amends is important, for this affects sentencing policy as an explicit factor that Russian courts must take into account. Reintegration into the community has addressed piecemeal through various governmental institutions and non-State organizations, but usually treated in a post-custodial context rather than a stage of a restorative justice model.

Among the many merits of this volume is the comparative dimension—a realisation that the foundations of the restorative justice model encounter different and

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unexpected variants in criminal procedural models past and present. These affect the viability and applicability of the model in theory and in practice and may even differ from one type of criminal offence to another. The contributions to this volume, in a word, cast light on the transplantability of the restorative justice concept from one legal tradition to another, identifying strengths and weaknesses in the model and its adaptability. The team of experienced comparatists is well chosen to address the diverse versions of restorative justice at work in the world.

One may hope that the comparative approach to the subject represented in this volume will flourish and expand to include other jurisdictions with the same healthy attention to historical experience as well as present challenges.

Editor's Preface

Theo Gavrielides

The Book's Impetus and Structure

Restorative justice is no longer an unfamiliar concept at least among researchers, academics, policy makers, and international peace organisations. Over the last five decades, it developed one of the most thorough literatures in social sciences, while many have claimed that we have accumulated more evidences on the effectiveness of its practices than any other criminal justice and justice policy (Gavrielides, 2021; Johnstone, 2018; Braithwaite, 2002).

And yet, restorative justice is faced with a number of persistent paradoxes (Gavrielides, 2014; Pavlich, 2005). For example, despite its popularity within the aforementioned circles, the public, and especially those affected by conflict and harm, know very little about it, or indeed nothing at all (Gavrielides, 2018). While it professes to be a philosophy and a practice for individual empowerment, there is scarce evidence on parties' involvement in its theoretical and practical development. Another paradox relates to its philosophy and history, which according to many were the chain effects of organic human reaction to top-down models of justice that lead to inequality (Gavrielides, 2011; Daly & Imarrigeon, 1998). While the restorative justice norm claims to be at the centre of the battlefield against power abuse (Gavrielides, 2021), there is plenty of evidence that its proponents and practitioners suffer from power-interest struggles themselves (Pavlich, 2018, 2021). In fact, many scholars have warned that, if these internal battles are not addressed soon, they might lead to the demise of restorative justice (Lyubansky & Shpungin, 2015; Gavrielides, 2014).

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Equally important is another paradox relating to the way we have learned to think of restorative justice. Understandably, its early proponents[1] made impressive claims about restorative practices so that enough attention is paid to them by reformists. Subsequently, a strong, and often unfounded, narrative was created using this comparator (i.e. restorative *vs* criminal justice). And while we have learned to think of restorative justice in opposite terms to criminal justice, we have been given little comparative evidence, or indeed theoretical contributions to comparative restorative studies.

It is not possible for one book to address all the aforementioned paradoxes. Here, we will focus on the latter.

In the book's introduction, I define Comparative Restorative Justice as:

> *an emerging comparative study of what structured and unstructured justice systems do – and should do – about preventing or restoring the violation of the social liaison that binds communities together.*

As it will be later analysed, I started from Nelken's definition of Comparative Criminal Justice (2010) by extracting his three definitional axes: *crime problems*, *institutions,* and *the people* involved in the justice process. Subsequently, I used Zehr's changing lenses (1990) to view these terms in an alternative reality and justice paradigm. I then proceed to put these three axes in a historical continuum, while arguing in favour of a consensual conceptual model for understanding comparative restorative justice. Subsequently, I presented evidences of power battles within the restorative justice movement, which have taken the form of faultlines.

The analysis of these false divisions puts the book's ambition into context, as it aspires to take the first collective step towards addressing these internal battles. This is achieved through the volume's various contributions, which provide the context to claim that these faultlines are nothing but comparative axes within the diverse restorative justice field and study. What has been missed by researchers, policy makers, and practitioners from around the world is the significance of comparative restorative justice, and the development of its methodologies. By taking the first collective step towards bridging this gap, we start to see these divisions as comparative learnings for better implementation and theoretical development.

To this end, the book is divided into three parts. **Part I** includes six contributions that look at restorative justice comparatively in relation to its implementing environment, let that be cultural, political, philosophical, historical, or societal. I was particularly pleased to include evidences on the implementation of restorative justice within a more recent environment. Following COVID-19's impact on how we learn and interact with each other, virtual spaces were created to hold new forms of restorative justice. This immediate, innovative response to restoring harm through alternative methods provides evidences that restorative justice will always find its own ways of survival if it is left in the hands of its communities. Early comparative

[1] Arguably, what provoked the interest in restorative justice as such, were three 1977 articles by Randy Barnett (1977), Nils Christie (1978), and Albert Eglash (1977).

evidences of the success, but also difficulties, of this virtual model are presented from a US-based study, which focused on race-related matters.

Part II then looks at obstacles and enablers in relation to the criminal justice system within which restorative justice is called to function, and whether inquisitorial *vs* adversarial jurisdictions impact on its regulation, theoretical development, and implementation. Chile, Hong Kong, Australia, New Zealand, India, Nepal, Bangladesh, and Sub-Saharan Africa provided the geographical context for the five contributions in this section.

Finally, **Part III** compares the reasons that drive governments, international bodies, and practitioners to develop restorative justice, and whether these impetuses impact on ultimate delivery. Power in community settings as well as society is examined as an impetus for restorative justice. This examination is put in the context of indigenous people or traditional forms of justice. A comparison between intentions and implementation of restorative justice by international bodies such as the European Union is also attempted, while the book remains reflective of the internal powers, which affect us all.

Reflections and Acknowledgements

Educated as a lawyer and grounded in the reality of data as a researcher, I have always found it hard to accept alternative visions of justice let alone those that claim to be more than just norms and practices for correcting criminal behaviour, but also guides for our ethos and moral compass. And yet despite these barriers, I have always felt that there was something wrong with the way I perceived and experienced justice.

As I started to learn to observe myself and become the watcher of my own existence, I came to realise that the manifestation of justice and criminal justice, as I experience them in my everyday life, were merely partial pictures of a much bigger whole. When I was able to shake off the everyday images of justice, blindfolded Themis appeared holding her scales and sword in a proud standing position. This image represented a virtue, a value-based notion, a higher purpose and an honourable goal that could indeed give essence to my life path. My brain did not allow me to continue visualising justice in the form of prisons, courts, suited white men, or ministries and politicians. Being in this awakened state of mind I am now able to conclude that this subconscious behaviour of seeing only the partial truth of justice is by no coincidence. It is part of the hidden picture, which I could not see for years. It is also the result of many decades of conscious planning to achieve what Foucault and many others have called "power and control" (1991). By controlling our sense of justice, expectations are directed and the reality can be manipulated. Without this manipulation, there can be change, and change is a thread to *status quo*, which leads to power abuse and inequality.

But I will not go into the details of such a complex topic. Here, I will merely point out that once I had this realisation, I came to accept that what really attracted

me to restorative justice is the sense that I felt of being able to challenge *status quo,* and the power abuse that goes with it. I also came to realise how powerless restorative justice can be, if not elevated to a norm that is free from power abuse itself.

However, first, restorative justice must address the power battles within its own movement, concepts, and practices. Therefore, my ambitions for this volume would be limited, if I failed to put comparative restorative justice within the wider framework of justice norms, which aim to challenge power abuse and inequality. The chapters on indigenous, native, or aboriginal *vs* post-colonial restorative justice, structured and unstructured forms of restorative practices, roadblocks and diverging paths, community vs. legislated restorative justice as well as critiques on formative promises and decolonisation provide rich, new evidences of the nexus between comparative restorative justice and power.

Furthermore, it is my hope that in addition to bridging a gap in the restorative justice literature, this book takes the first step in helping to heal some wounds among restorative justice practitioners, researchers, and theoreticians. To this end, it sets off to start a dialogue about comparative restorative justice, presenting reasons and examples of why comparative studies matter for restorative justice, and the various faultlines that have been developed around its practices and theory.

This volume is dedicated to Hennessey Hayes, one of its authors. He passed away as the book was coming together, and thus this is his last contribution to the restorative justice literature. "I want to inspire and empower people, leading by example! I'm lucky that every day is different, every class I teach is different, it's satisfying knowing it has influenced people's professional pathways", he said.

I am indeed grateful for the support that I received in editing this volume, which was written during unprecedented times. Its idea was first planted by Judith Newlin, Springer Editor in Criminology. After several discussions, we agreed to proceed with an edited collection. I was honoured to receive several positive responses from esteemed colleagues. I am grateful for their patience and diligence especially since they were put under pressure to deliver during difficult times, when COVID-19 presented us with unique challenges not only at work, but also at home.

Special thanks go to my son, Tommy Gavrielides, as well as Sophy Gavrielides and Juozas Kelecius. I am also grateful to the staff and volunteers at the NGO that I set up to promote, but also scrutinise, restorative justice, the RJ4All International Institute[2]. This project ran in parallel with work that I was doing for my monograph *Power, Race & Justice: The restorative dialogue we won't have*[3], which had the same submission deadline. It also ran in conjunction with my day job as well as being a dad! Therefore, the success of this project came down to the patience and love that I received from family friend and the authors, while being unable to engage with life in the rich and interactive ways that I have learned and got used to.

[2] www.rj4all.info (accessed February 2021).

[3] https://www.rj4all.info/Race-Power (accessed February 2021).

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Contents

Contributors

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William E. Butler is a jurist and educator, the John Edward Fowler Distinguished Professor of Law, Dickinson School of Law, Pennsylvania State University (2005–), and Emeritus Professor of Comparative Law in the University of London (2005–). Professor Butler specialises in international and comparative law, focusing principally on Russia, Eurasia generally, and public and private international law. A member of the Dickinson Law community since 2005, he served as Reader (1970–1976) and Professor of Comparative Law (1976–2005) in the University of London—attached to University College London—where he is presently Emeritus Professor of Comparative Law. In 1992, he was elected a Foreign Member of the Russian Academy of Natural Sciences and the National Academy of Sciences of Ukraine, and in 2012, a Foreign Member of the National Academy of Legal Sciences of Ukraine. Both Ukrainian Academies have awarded him their Gold Medal for distinguished contributions to international and comparative legal scholarship, and the Supreme Court of Ukraine its medal "For Fidelity to Law"—all distinctions

rarely awarded to foreigners. He is co-editor of *The Journal of Comparative Law* and founding editor of *Jus Gentium: Journal of International Legal History*.

Theo Gavrielides is a legal philosopher and a restorative justice expert. He is the Founder and Director of the Restorative Justice for All (RJ4All) International Institute, and the Founder of The IARS International Institute, which he directed for 20 years after stepping down in 2020. He is an Advisor to the European Commission's programmes on security, migration, and human rights. Dr. Gavrielides is also a Visiting Professor at the University of East London, Distinguished Policy Fellow at Australian National University, an Adjunct Professor at Simon Fraser University as well as a Visiting Professor at Buckinghamshire New University. He is the Editor-in-Chief of RJ4All Publications, the International Journal of Human Rights in Healthcare, the Youth Voice Journal, and the Internet Journal of Restorative Justice. In the past, he served as the Human Rights Advisor of the UK Ministry of Justice, the Chief Executive of Race on the Agenda, a Trustee of the Anne Frank Trust, and a Member of the Scrutiny Panel of the Crown Prosecution Service. He has edited over 20 books and published extensively on restorative justice, violent radicalisation, criminal justice, human rights, youth justice, and equality.

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Amanda Wilson is a Leverhulme Trust Early Career Fellow at the University of Warwick's Law School. She is currently working on a monograph that pursues a rational reconstruction of restorative justice through critical ethics and moral psychology. Amanda also works closely with a number of key policy and practice organisations including Her Majesty's Prison and Probation Service's Restorative Practice Hub and the European Forum for Restorative Justice. She has been researching and writing about alternative justice mechanisms in the criminal justice field for over a decade.

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Robert E. Mackay is a retired social worker and mediator. He has also worked as an academic, now independently. Rob has worked in restorative justice since 1985. He established Scotland's first victim-offender mediation programme. He has served on the boards of the European Forum for Restorative Justice and the Forum for Initiatives in Reparation and Mediation, and as vice-chair of the EU COST Action A-21 "Restorative Justice Developments in Europe". As an academic, he developed the concept of Law as Peacemaking. He has promoted restorative and peacemaking approaches in institutional abuse. He writes in the area of Law and Literature.

John Winterdyk is recognised as one of the leading criminologists in Canada. He has published over 35 academic books and is credited with dozens of peer-reviewed journal articles. In addition to serving on numerous editorial boards, John is the recipient of the Distinguished Scholarship Award, as well as the co-recipient of the Distinguished Team Research Award. In 2019, he was the recipient of the Arts Faculty Outstanding Scholar Award and was the recipient of the national Public Education Award from the Canadian Criminal Justice Association. John's current research interests include human trafficking, comparative criminology/criminal justice, and crime prevention.

Gabriel Velez is an assistant professor and developmental psychologist in the Department of Educational Policy and Leadership (EDPL) in the College of Education at Marquette University. Dr. Velez studies identity development in adolescents, particularly in relation to citizenship, human rights, and peace, including young people's understandings and responses to peace education and restorative practices in their schools. He has collaborated extensively with schools and non-profit educational organisations in Milwaukee and Colombia. He received a BA in History and Literature from Harvard University and an MA and PhD from the University of Chicago in Comparative Human Development.

Madeline Hahn is currently pursuing both a master's degree in Educational Policy and Foundations at Marquette University and a teaching license. She is also the 2020–2021 Todd A. Berry Fellow at the Wisconsin Policy Forum and is carrying out research on English Language Learners in Wisconsin, including the range of bilingual-bicultural programmes and their impact on academic achievement. Prior to beginning her graduate studies, Madeline was a Fulbright Scholar in Madrid, Spain for two years. She holds a bachelor's degree in Sociology and Spanish from the University of Notre Dame.

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Antonio Butler is a Restorative Practices Practitioner in Milwaukee, Wisconsin, working for the Center for Self-Sufficiency in collaboration with the Office of Violence Prevention. He is originally from Smithville, Mississippi, and has been living in Milwaukee since 2011. He recognises that his background creates disconnections with the Milwaukee community, but firmly believes that he is engaging with it for a reason. To this end, he is eager to see where the work of restorative practices will take him as well as how it will benefit his community.

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William Wood is Senior Lecturer in the School of Criminology and Criminal Justice at Griffith University. His research interests and publications include innovative and restorative justice, youth offending and social responses to youth crime, punishment and incarceration, and crime and media. William holds an MDiv from Union Theological Seminary in New York City, and a PhD in Sociology from Boston College.

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Hennessey Hayes was a leading scholar in the areas of restorative and youth justice. He researched and wrote in the areas of restorative justice, youthful offending, and recidivism for the past several years. He completed several quantitative and qualitative projects on the effects of restorative justice interventions on youthful offending. His publications from the projects appeared in several high impact journals, including the *British Journal of Criminology*, *Justice Quarterly,* the *Australian and New Zealand Journal of Criminology,* and *Current Issues in Criminal Justice*. More recently, his work in restorative justice considered how the language abilities of young offenders referred to restorative justice interventions may impact the degree to which young offenders can effectively participate in highly conversational restorative justice processes.

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Nibras Sakafi a development professional from Bangladesh started her career with GIZ Bangladesh to implement community policing as a preventive approach to reduce crimes. Later with a Master's degree in Victimology and Restorative Justice, she began to work for safeguarding access to justice for the poor and disadvantaged through restorative justice in community. She was one of a core team who developed and piloted a training module on Restorative Justice for the RJ facilitators to support the implementation of restorative strategies in Bangladesh. Currently, she is pursuing a Master's degree in Development and Governance at Universität Duisburg-Essen, Germany.

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Mike Batley is a co-founder and director of the Restorative Justice Centre (RJC), a vibrant, multi-cultural civil society organisation. Within this context, he played a pioneering role in bringing restorative justice into the criminal justice system and public discourse, and in developing associated services in South Africa. He was recognised as an Ashoka Fellow for this work. He has published several book chapters and journal articles on restorative justice. He was part of the group of experts that reviewed the UN Basic Guidelines for Restorative Justice in November 2017. He developed a strategy for strengthening child justice in Eswatini in 2019.

Arthur Hartmann is professor for criminal law and criminology at the University of Applied Sciences in Public Administration in Bremen since 2002 and director of the Institute for Police and Security Research (IPoS) since 2009. He is a doctor (habil.) in law and has a diploma in sociology. In 2019, he has been elected as deputy judge at the Staatsgerichtshof (Constitutional Court) of the Free Hanseatic City of Bremen. From 1987 till 1989 he evaluated two model projects on victim-offender mediation funded by the Bavarian government. The results became part of his dissertation thesis on restorative justice at the University of Munich ("Schlichten oder Richten; 1995"). In 1992, he has been one of the founders of the ongoing German Federal Statistics on Victim-Offender Mediation since then he is co-author of the bi-annual reports published by the German Ministry of Justice. Since 2009, IPoS is responsible for data processing, data analysis, and publishing the reports of the statistics, which is funded by the Federal Ministry of Justice.

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Malina Kaulukukui, MSW retired in 2015 from the School of Social Work, University of Hawai`i, where she focused on behavioural health and cultural programming. She currently assists the University of Hawai''s John A. Burns School of Medicine develop and implement cultural immersion programming for medical students. She is a practitioner of ho'oponopono in the traditional, family-based methodology of Mary Kawena Pukui. She is a respected kumu hula (hula teacher). Since her retirement, Ms. Kaulukukui has created a healing hula programme in the local women's prison, integrating her cultural background with her practice in substance abuse treatment and trauma-informed care.

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In Memory of Hennessey Hayes

Hennessey Hayes

Over the course of writing our chapter for Gavrielides' edited collection, our dear friend and colleague Hennessey Hayes passed away. We honour his memory.

Many readers will be familiar with Hennessey's research in areas of restorative justice and youth justice. Based in Queensland, Australia for most of his career, Hennessey's work made important contributions to several areas of knowledge in restorative justice (RJ). His research on youth justice conferencing in Australia (Hayes, 2005; Hayes & Daly, 2003, 2004) explored and explained variations in youth re-offending, helping scholars better understand conditions under which young people fare better or worse following their participation in youth justice conferences. This group of works, some in conjunction with his colleague Kathy Daly, were important as well for helping to bring more methodological rigour and analytical clarity to understanding the impact of RJ on youth reoffending, and they remain some of the most cited works in this area to date.

Along with these works, Hennessey also made notable scholarly contributions to many other areas of RJ, youth justice, and criminology. His paper on "Apologies and Accounts in Youth Justice Conferencing" (Hayes, 2006) remains perhaps his most notable and original work. Here, Hennessey weaved an erudite and convincing argument that, even under the best of conditions, acts of apology and forgiveness are never self-evident within RJ. Rather, such acts are bound up in the messiness of awkwardly performed rituals, by actors faced with competing and very human emotions of guilt, shame, and the need to save face. This work stands as a good reminder of the difficulty of achieving restorative outcomes with young people that often struggle with balancing the complex emotional, psychological, and communicative aspects of RJ conferencing. In this vein, Hennessey's more recent research had turned towards investigating some of these challenges more in depth—particularly his research with Pamela Snow (Hayes & Snow, 2013) that was investigating the impact of oral language competency in young people on RJ processes and outcomes. It is a loss that he was not able to complete this research.

Aside from his scholarly contributions, Hennessey made equally important contributions to restorative practice. His Restorative Justice course at Griffith University allowed students to become certified as RJ convenors in Queensland. Over the years, Hennessey helped to graduate many students into professional practitioner positions in RJ, and this is probably the aspect of his own life's work he would reflect on with the most satisfaction. His passing will be felt by many former students and colleagues whom Hennessey helped to train, mentor, and encourage to achieve their goals.

Hennessey was also deeply involved in promoting and advocating for RJ in other arenas. For several years, he had organised the annual Youth Justice Forum in Queensland, an annual event that brought scholars, policy makers, and practitioners together in constructive dialogue about youth justice practices. Hennessey was also a member of Restorative Practices International and other organisations or initiatives that promoted learning and practice of RJ.

Finally, to many Hennessey was a dear and generous friend. "Hen" always had time in his life for others, professionally and personally, and this is reflected in the many meaningful friendships he developed over his life. He will be deeply missed.

William R. Wood
Griffith University, Southport, Queensland
March 8, 2021

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About the Editor

Theo Gavrielides, PhD, is a legal philosopher and a world-known restorative justice expert.

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In 2021, Professor Gavrielides received The Liberty of the Old Metropolitan Borough of Bermondsey award as part of the Southwark Civic Awards 2020 for his contribution to the community during difficult times.

In 2001, he founded The IARS International Institute, a user-led charity. In 2020, almost 20 years since IARS' establishment, he stepped down as its Director.

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He is the Editor-in-Chief of the peer-reviewed journals:

- International Journal of Human Rights in Healthcare
- Youth Voice Journal
- Internet Journal of Restorative Justice

Some of his volunteering roles include being a trustee of the Anne Frank Trust, a Governor at Albion Primary School, an Advisory Board Member of the Institute for Diversity Research, Inclusivity, Communities and Society (IDRICS) and as a Member of the Scrutiny and Involvement Panel of the Crown Prosecution Service.

Previously, he was the Chief Executive of Race on the Agenda, a social policy think tank focusing on race equality. He also worked at the Ministry of Justice as the Human Rights Advisor of the Strategy Directorate. There, he worked on the Human Rights Insight Project, which aimed to identify strategies that will further implement the principles underlying the Human Rights Act and improve public services. He also advised on the Ministry's Education, Information and Advice strategy. During 2002–2004, he worked as a Researcher at the Centre for the Study of Human Rights of the London School of Economics and Political Science (LSE).

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