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STUDIES IN RESTORATIVE JUSTICE

Restorative justice and criminal justice

The case for parallelism

Derek R. Brookes

eleven

Criminal justice is primarily designed to serve the public interest in relation to criminal acts. Restorative justice is designed to address the harm-related needs of individuals in the aftermath of wrongdoing. These distinct aims require such different processes and priorities that any attempt to integrate restorative justice within the criminal justice system will almost invariably undermine the quality and effectiveness of both. In this book, the author argues that the optimal relationship between the two should therefore be one of maximum independence: the instruments of the state should not be used to impose or enforce the decision to participate in restorative justice, any component of the restorative justice process or its outcome. It is also suggested that, in the absence of legislative innovation, this kind of separation is likely to require that restorative justice is situated after a case has actually exited the justice system, or after it has, in legal terms, effectively done so, as in a post-sentence context.

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Studies in Restorative Justice
Restorative justice offers a unique approach to crime and victimisation and a change of course from the traditional preoccupation with retribution and transgression of rules in the criminal justice system. This book series aspires to highlight the many accomplishments achieved through the use of restorative justice practices in response to crime and social conflict. It is a collection of ground-breaking theoretical essays on the principles, uses and versatility of restorative justice as well as state-of-the-art empirical research into the implementation of restorative justice practices, experiences in these programmes and evaluation of its impact on victim recovery, reoffending and community capacity building. Contributors include established scholars and promising new scholars.

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Preface

Over the past few decades, many jurisdictions have shown a growing interest in using restorative justice as a means of responding to criminal behaviour.[1] In taking such an approach, they have invariably needed to find a workable solution to the question of how restorative justice processes should be situated in relation to the existing criminal justice system. The most common approach has been to incorporate restorative justice into the justice system as a conditional diversionary mechanism.[2] The offender is given an opportunity to take part in restorative justice instead of being subject to the usual legal consequences, such as prosecution or a traditional sentence. If they agree to take part and do so successfully, then the legal consequences they would otherwise have faced are usually waived, amended or substantially reduced.

There are other possible approaches that could be used, but restorative justice advocates have tended to focus their energy on this diversionary model. And they have had considerable success. As William Wood and Masahiro Suzuki report, 'most RJ programs have been institutionalized within conventional criminal justice systems, often coupled with diversionary practices or as an alternative sanction within them' (2016: 154). However, is the diversionary model the best solution? It does seem to be generating largely positive results. But what if there was an alternative and this option was not only workable but also grounded in a more secure theoretical basis? What if this alternative could result in a higher level of quality and effectiveness for both restorative justice and the criminal justice system? Granted, it would require a considerable effort to transition away from the existing diversionary paradigm. Nevertheless, given the potential benefits, would not such an alternative be worth taking seriously?

It was precisely this set of questions that motivated the journey of research and reflection presented in this book. I have worked for over twenty years as a restorative justice practitioner, policy maker, trainer, researcher and advocate. But over a decade ago,

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1 There are many definitions and theories of restorative justice, not all of which are entirely compatible (for a useful catalogue, *see* Olson and Sarver, 2022: 947). I take it that the primary aim of restorative justice is to provide an opportunity for those responsible for wrongdoing and those who have been harmed by their actions to enter into a safe and voluntary dialogue for the purpose of working towards moral repair. *See* §1.2.2 for more details, and Brookes (2019a) for a theoretical explanation of this account.

2 My use of the blanket term 'diversionary' in this book is not restricted to pre-charge or pre-trial diversion programmes (e.g. Black, 2009: 546). Rather, it includes *any* judicially authorised mechanism or approach that diverges from or is an alternative to the usual criminal justice outcome. I will also assume, unless otherwise specified, that a diversionary approach is conditional. Thus, an approach is diversionary if it occurs prior to a legal decision – for example, charge, prosecution, sentence or parole – with the intention that, should the offender meet certain specified conditions, the relevant authority may (and usually will) waive or alter the legal consequences to which the offender would otherwise have been subject.

I began to realise that the difficulties and compromises that plagued the diversionary model were far more challenging than I had wanted to believe. So I decided to investigate the possibility of a different approach, one that has received surprisingly little attention.[3] The more I considered this option – sifting through the theoretical frameworks, the ethical issues, the empirical evidence and the practical concerns – the more it became apparent to me that this was indeed a viable alternative. On this model, restorative justice would operate as a legally independent process. There would be no legal consequences, whether or not the offender participated. Neither the process itself nor any outcome agreement would be reviewed, authorised, imposed or enforced by the judicial system. Given this kind of dual track separation between restorative justice and criminal justice, it seemed appropriate to call the alternative model 'Parallelism'.

At first, I assumed that putting in place various safeguards would ensure that restorative justice could operate independently regardless of when it occurred within the criminal justice process, including prior to the judicial decision to prosecute or sentence the offender. But over time, it became clear that, given the number of obstacles to such an approach, the optimal solution for a Parallelist model would be to make restorative justice available in only two circumstances: (1) after the case had exited the justice system entirely or (2) when it had, in legal terms, effectively done so, as in a post-sentence setting. This restriction would guarantee independence given that the legal consequences of the crime will have already been fixed. A decision about whether to make an arrest, file charges, prosecute or amend a sentence could not be influenced by the outcome of a restorative justice process.

To be clear, the use of restorative justice in such a way is not a new phenomenon: there are many jurisdictions that offer restorative justice in a prison setting, for instance. But using an exclusively Parallelist approach across the board has, to my knowledge, never been offered, let alone conceived of as a way of mainstreaming restorative justice. My own introduction to the possibility came by way of working within a system that was already effectively independent of the criminal justice system. I had the good fortune of spending seven years (2001-2008) in Scotland – working with a community justice organisation called *Sacro* – to develop and implement restorative justice largely within the context of the Children's Hearing System.[4] This is an institution for which the legally independent

3 Jennifer Brown's 1994 article 'The Use of Mediation to Resolve Criminal Cases: A Procedural Critique' is, to my knowledge, the only other extended defence of a parallelist approach – one that I discovered only after completing much of this book. Her case is encouragingly similar, in many respects, to my own. She writes: 'This Article seeks to shift [Victim-Offender Mediation] firmly into the private sphere, and calls for a decoupling of mediation from the criminal justice system. The mediation should not affect public proceedings against the offender. A Chinese wall is necessary to protect the integrity of the criminal justice system and the integrity of mediation as a fundamentally voluntary process. [P]ublic power should be used only to vindicate public interests' (Brown, 1994: 1308-1309).

4 'Sacro' is an acronym for 'Safeguarding Communities, Reducing Offending'. *See* www.sacro.org.uk.

use of restorative justice could not have been a more natural fit. The Hearing System has a welfare-based framework, and so the young people who participated in restorative justice were able to do so without any legal carrots or sticks to motivate them.[5] Experiencing first-hand the many advantages of offering restorative justice in such a context has had a significant impact on my openness to Parallelism. But it was only in the last few months of my time in Scotland that I began to think about whether this level of independence could be viable in the very different context of the criminal justice system.

Since then, it has been a long journey. I was side-tracked for a number of years when I was given the opportunity to design a restorative justice policy framework for a government body in Australia. I spent countless hours consulting with local stakeholders on how best to minimise the problems that infected the diversionary model. This involved speaking with criminal justice professionals, legal scholars, victim groups, restorative justice advocates, First Nations peoples, community leaders and so on. Every group I encountered shared a significant receptiveness to the idea of restorative justice. However, the same objections kept reoccurring, and the vast majority, from every sector, were directed against the diversionary approach, rather than restorative justice itself. I eventually realised that, if restorative justice was ever to stand a chance of fulfilling its potential as a mainstream option, there would need to be an alternative. And so, I returned to thinking about Parallelism.

Articulating and defending the Parallelist model turned out to be far more complicated than I expected, with innumerable questions and concerns that called for a substantive response. Three of these issues – which I discuss in more detail throughout the book – may be worth briefly mentioning at the outset. They were perhaps the most significant obstacles to my own acceptance of Parallelism, so there may be others who have the same preliminary concerns.

1. I initially embraced the use of restorative justice as a diversionary mechanism largely because I saw it as a way of avoiding or at least curtailing the most damaging aspects of the criminal justice system.[6] Yet Parallelism seemed to leave the status quo in place. However, I came to see that this concern was misplaced. Parallelism is only viable as a normative framework on the assumption that criminal justice has an essential and legitimate role in society. Its foundational remit is to serve the public interest by upholding the rule of law, thereby protecting the freedom and equality of all citizens without fear or favour.[7] But it

5 For details, *see* Restorative Justice Services in the Children's Hearings System (2005).

6 This seems to be a common motivation. As Howard Zehr notes: 'The Western idea and implementation of restorative justice developed initially as a response to problems within the Western legal system' (Zehr, 2019: xxvii).

7 The rule of law, like much else, is a contested idea. However, Richard A. Epstein, a professor of law, has argued that, for most purposes, the following can be taken to include its most essential elements: (i) individual cases are decided by reference to general rules; (ii) the general rules apply equally to all, including to the state; (iii) the general rules are sufficiently certain so that, at the least, they apply in such a way that

follows that Parallelism cannot be fully implemented unless the criminal justice system is fulfilling this role. Thus, far from being a negligent bystander, Parallelism has a built-in incentive to reform (or even transform) the system, as well as being part of the solution itself.

2. It once seemed to me that the case for Parallelism would depend on showing that the diversionary model was incapable of delivering positive outcomes. Yet such a claim would contradict the large number of empirical studies that show otherwise. I eventually realised this was not a zero-sum calculation, but rather a matter of weighing up the comparative advantages of each model. It is possible to make a case for Parallelism as the *optimal* model, without thereby making the highly dubious claim that the alternatives are wholly ineffective.

3. One pragmatic concern I had with Parallelism was that I could not envisage any well-established diversionary restorative justice scheme being dismantled, at least not overnight and not without more empirical research. But then it occurred to me that a gradual evidence-based transition was available. Any jurisdiction wishing to test the Parallelist approach could simply add one or more extralegal referral routes to its existing diversionary scheme. Once the case numbers were sufficiently large, the quality and effectiveness of the two approaches could then be compared in a statistically meaningful way. If the evidence indicated that Parallelism was the optimal model, then the diversionary protocols could be phased out over time.

I subsequently discovered many more issues that a Parallelist model would need to address – hence this book.[8] But with these three initial concerns out of the way, I was able to move forward. In the end, the case for Parallelism, as I came to see it, boils down to this: Restorative justice and criminal justice involve fundamentally incompatible processes and priorities. Yet the diversionary approach requires that the two are merged together into a single justice mechanism. This confused hybrid cannot help but make it considerably more difficult for both restorative justice and criminal justice to realise their full potential in terms of quality and effectiveness. Since Parallelism would remove this impediment, it is likely to be the optimal model.

To be clear, this book is offered as a preliminary theoretical exercise. While my arguments are informed by existing empirical studies, there is, as yet, no empirical evaluation of Parallelism in comparison to alternative models. Hence, my intention here is only to show that the case for Parallelism is, in theory, sufficiently plausible to warrant further empirical investigation.

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like cases are treated alike; (iv) the general rules are prospective and not retrospective; and (v) the decision-making procedures used are fair (Epstein, 2005: 1-15).

8 For a quick overview, *see* 'Parallelism, concerns addressed' in the Index.

1 Introduction

This chapter presents an overview of the variety of differing approaches to situating restorative justice in relation to the criminal justice system. It introduces Parallelism and proposes that this model could resolve the debates between the other contenders. It then presents the nature of the case that will be made for Parallelism by specifying its limitations, defining key terms, explaining its methodology and how its main components are reflected in the structure of the book.

1.1 The debate

1.1.1 Integrationism

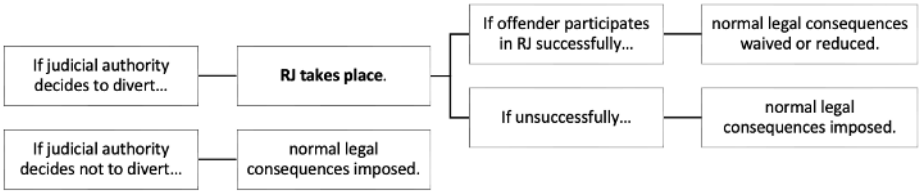
In most jurisdictions that employ restorative justice to address criminal behaviour, cases are referred as a diversionary option. A judicial authority – police officer, prosecutor, judge or magistrate – offers the offender the opportunity to take part in restorative justice instead of being subject to the usual legal consequences, such as an arrest, prosecution, a traditional sentence, supervision conditions, parole release conditions and so on.

This offer is always provisional. If the offender agrees to take part in a restorative justice process and does so in a way that the authority regards as successful, then the legal consequences they would otherwise have faced are normally waived, amended or significantly reduced. The offender is not arrested or charged, they avoid prosecution, their prison sentence is reduced, the usual sanction is replaced or modified so as to incorporate the restorative justice outcome agreement and so on. The offender may choose not to accept this offer, or they may not cooperate with the restorative justice process. For instance, they may not show up for meetings, or they could fail to complete the outcome agreement as required. In such cases, the diversionary approach will normally be deemed unsuccessful by the judicial authority, and they are then very likely to impose the legal consequences that the offender would ordinarily have received.

I will call this kind of relationship between restorative justice and criminal justice the 'Integrationist' model. It is sometimes called a 'Diversionist' model, but the term 'integration' seems to be a more accurate representation. The term 'diversion' means a 'deviation or alteration from the natural course of things' (Black, 2009: 546). Hence, labelling this kind of relationship as a 'diversion' could suggest that, once a referral has been made, the restorative justice process will then travel down its own path, entirely independent of the criminal justice system. But legally speaking, this is not how most

diversionary mechanisms work.[1] Judicial authorities do not generally refer a case to restorative justice and then wash their hands of the matter, since they will not yet have made a final ruling with respect to the case: it is classed as 'pending' or unresolved. And so they will oversee the process and review the outcome. If the offender fails to comply with the terms of the diversion, they cannot simply walk away. They will then be subject to the legal consequences they would ordinarily have received. So, in this model, restorative justice remains inextricably tied to the criminal justice decisions, procedures and objectives (Figure 1.1).

Figure 1.1 The Integrationist Model



1.1.2 Maximalism

There is a far more ambitious view about how restorative justice should be situated vis-à-vis the criminal justice system. This position has been called 'Maximalism'.[2] But to understand what it is that differentiates this model, we first need to explain another central tenet of Integrationism.

For the Integrationist, a process will only count as 'restorative justice' if those who participate in it do so voluntarily. The participation of the victim and any support persons must also be voluntary. But the focus of this requirement is normally directed towards the offender since their legal situation makes them more vulnerable to coercion. The voluntarist requirement, according to Integrationists, entails the following: the offender must be given the opportunity (1) to speak honestly and openly about what they did and how they now feel about it, and (2) to collaborate with the other participants in devising an agreement about how they can make amends for the harm they have caused.

1 Diversion to restorative justice can be 'unconditional' in the sense that, once the referral has been made, the case is effectively closed. But aside from this approach being very rare, the decision to divert rather than prosecute is still conditional upon the offender admitting responsibility for the crime, and so this would be an Integrationist, rather than a Parallelist approach (*see* §3.1 for more detail).

2 'Maximalism' is typically contrasted with a model that has been called 'Minimalism', but since Minimalism is identical to Integrationism as I have defined it, I shall continue to use 'Integrationism' instead.

Integrationists also take the view that these core voluntarist parameters are not sacrificed when restorative justice is used as a diversionary option. This means that, from an Integrationist perspective, a restorative justice process will still count as 'voluntary' even when the state threatens to impose the legal consequences that the offender would otherwise have received should they fail to complete the restorative justice agreement as required.

Some Integrationists have even argued that the voluntarist line has not been crossed when the judicial authorities *mandate* that an offender take part in restorative justice and then incorporate the agreement into the offender's sentence. This is because, in such a context, the state has not thereby ordered the offender to admit responsibility, offer an apology or say anything they do not want to say within the meeting itself. This *would* violate the voluntarist requirement, and so the process could no longer be legitimately classified as 'restorative justice'. Likewise, if the judicial authority alone determines what the sentence will be, thus refusing to take into account the participants' agreement, then this too would, in their view, not count as 'restorative justice'. For example, New Zealand's use of conferencing as a diversionary mechanism allows the state to compel an offender to take part in restorative justice. However, since the outcome agreements are not determined by the court, Paul McCold – who calls Integrationism 'the Purist model' – argues that conferences held under these conditions would nevertheless satisfy the voluntarist requirement for restorative justice:

> Conferences are held prior to court appearance where the offender fails to deny charges and the cases are disposed (diverted) at that time. Those who deny responsibility are adjudicated in court, and if found responsible are mandated to participate in a conference to determine sentence conditions. While offenders may be directed to participate by the court and the terms of the conference are sanctioned by the court, outcomes are not determined by the court.… New Zealand has [thereby] created [a] restorative juvenile justice system without abandoning the informal collaborative approach suggested as a hallmark of the Purist model. (2000: 385-386)

Advocates of the Maximalist model argue that the Integrationist's voluntarist requirement effectively prevents restorative justice from having any place in the way that the criminal justice system deals with the majority of cases. Many crimes will be deemed too serious or unsafe for diversion, and many offenders will either be unwilling or unsuitable for a voluntary approach. As Lode Walgrave puts it:

> [R]estricting restorative justice to voluntary deliberations would limit its scope drastically.… The criminal justice system would probably refer only a selection

> of the less serious cases to deliberative restorative processes, thus excluding the victims of serious crimes who need restoration the most. (2007: 565)

Thus, in their quest for the most comprehensive application of restorative values possible, Maximalists are willing to jettison the voluntarist requirement. This allows them to expand what counts as 'restorative justice' to include sanctions that have been entirely determined by the court, so long as they have a reparative orientation. This type of sanction might require the offender to pay restitution or compensation either to the victim directly or a victim's fund. Again, the offender might be ordered to engage in reparative work that would benefit the victim or, where there is no identifiable victim, the community (Duff, 2003: 57, Walgrave, 2003: 62). As Jim Dignan suggests:

> [I]n cases for which informal restorative justice processes may be inappropriate, inapplicable or inadequate by themselves, it is possible to envisage a range of non-custodial court-imposed punishments that could be adapted to promote restorative outcomes. (2003: 151)

Most Maximalists even allow for the possibility of compulsory detention being classified as 'restorative', but they argue that the justification would, again, need to be oriented around reparative objectives. For instance, Walgrave argues that incarceration might be used to 'enforce compliance with the restorative sanctions' (2003: 62). Dignan writes that offenders could 'undertake adequately paid work in prison in order to provide financial compensation for or on behalf of victims' (2003: 151). David Boonin suggests that the state could imprison an offender with the intent of restoring the victim (and/or the affected community) to the level of security they enjoyed prior to the offence, rather than in order to make the offender suffer or undergo hard treatment. This rationale, according to Boonin, would radically alter the conditions of incarceration:

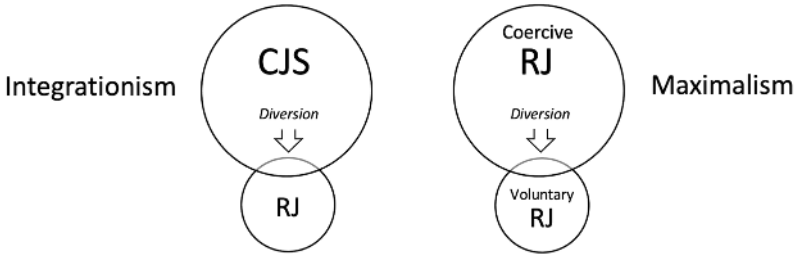
> [W]hen offenders are incarcerated on punitive grounds, they are routinely deprived of goods such as cigarettes, television, exercise equipment, and a long list of other things that might make life in prison less unpleasant. If the goal of incarcerating an offender is to make him suffer, these deprivations will often be justified. But if the goal is simply to ensure that his community is restored to the level of security it enjoyed prior to his offense, then there will be no justification for making his life any less pleasant than is required by his incarceration. (2008: 234)

Reparative sanctions already play a role in most criminal justice systems. But the problem, according to Maximalists, is that they are relatively insignificant compared to retributive

sanctions, such as financial penalties and imprisonment. Reparative sanctions should, in their view, replace the current retributive philosophy that dominates sentencing. As Dignan argues, 'restorative justice could form the basis of a replacement discourse in which the emphasis would be on more constructive and less repressive forms of intervention' (2003: 151).

It is important to note that Maximalists do not reject voluntary forms of restorative justice. Indeed, they usually concede that voluntary participation produces a higher quality of restoration and that there should therefore be a presumption in favour of diversion wherever possible. But voluntariness, in this view, is not a defining attribute of restorative justice. As Walgrave puts it, for Maximalists, 'cooperation is not a value on its own, but rather a means of enhancing the quality of possible restoration' (2003: 62). Even when the judicial authority has alone determined the nature of a reparative sanction, this can nevertheless achieve a measure of restoration. The Maximalist holds that what is essential to restorative justice is that, in the aftermath of a crime, the harms that were caused are repaired. And this objective, in their view, should become the primary focus of the criminal justice system, using whatever forms of restorative justice are most suitable. If a voluntary approach is viable, then the diversionary option should be used. If not, then a coercive (court-imposed) reparative sanction could be employed so as to achieve the same restorative end (Figure 1.2).

Figure 1.2 Distinguishing Features



1.1.3 Substitutionism

The most radical position on how restorative justice should be situated in relation to criminal justice might be called 'Substitutionism'.[3] According to this view, the criminal

3 It might also be called 'Penal Abolition', but this term only refers to what should happen to the criminal justice system. Whereas 'Substitutionism', as I am using the term, identifies restorative justice as its replacement, and so is better able to capture how this model, like all the others, is concerned with the *relationship* between restorative justice and criminal justice.

justice system is seen in an entirely negative light, and so it aims to replace the system with restorative justice over time. To be clear, this is not the same kind of 'replacement' advocated by Maximalists. For Substitutionists, restorative justice must be entirely voluntary, and so they would not accept that the term 'restorative justice' can be extended to include reparative sanctions. Indeed, Substitutionists go a step further than Integrationists insofar as they hold that the coercive elements of a diversionary mechanism will effectively undermine the voluntariness of a restorative justice process.

Substitutionism is unlikely ever to eventuate. It is difficult to imagine any modern state electing to rid itself of the rule of law, together with the institutional apparatus by which that rule is upheld – police, courts, lawyers, compulsory detention and so on. Substitutionism is nevertheless held as a matter of principle by many restorative justice advocates, if not explicitly then by implication. For example, many would argue that restorative justice is morally superior to the typical deliverances of criminal justice. It is hard to interpret this as anything other than a call for the justice system to be wholly replaced by or transformed into restorative justice. As Robinson puts it, most of the leading advocates of restorative justice 'conceive of restorative processes not simply as a potentially useful piece of, or complement to, the criminal justice system, but as a *substitute* for it' (2003: 377).

Having said this, many advocates are Substitutionists in principle but Integrationists in practice. Zehr, for instance, writes:

> Restorative justice advocates dream of a day when justice is fully restorative, but whether this is realistic is debatable, at least in the immediate future. More attainable, perhaps, is a time when restorative justice is the norm, while some form of the legal or criminal justice system provides the backup or alternative. Possible, perhaps, is a time when all our approaches to justice will be restoratively oriented. (2002: 59)

This incongruity could be justified as a long-term strategy of infiltration and eventual conversion. Carolyn Boyes-Watson, for instance, argues that 'the incompatibility between institutions of the justice system and restorative justice may generate a kind of creative tension that opens space for the transformation of those institutions' (2004: 216). But Integrationism is also a pragmatic necessity. It is the only model that most governments have, so far, been prepared to fund, or that criminal justice agencies and other stakeholders have been willing to endorse. Hence, Substitutionists have had little choice but to toe the line in the hope that the diversionist strategy will eventually 'starve the beast'. As Jorge Perán argues:

> A clear RJ strategy aimed at implementing restorative diversion programmes would lead to more social benefits than a strategy of prison reform. While it is true that any honest attempt to improve prisons is positive, I believe that the best and most feasible way of improving prisons is to empty them. (2017: 194)

1.1.4 Resistance to integrationism

There is one position that might be thought of as the flip side of Substitutionism. This is the view that restorative justice should be excised from the criminal justice system, or at least severely restricted. Low referral rates and a political reticence to expand the use of restorative justice as a diversionary mechanism suggest that this position is widely shared, particularly among criminal justice professionals, legal scholars, public servants and politicians. Advocates of the Integrationist model typically explain this resistance in pejorative terms. They refer to territorialism, fear of change, unrealistic demands for evidence, political risk-aversion or a deep-seated belief that the only kind of justice worth the name is retributive. Walgrave, for instance, writes:

> All institutions display some form of institutional inertia, a kind of resistance against change, based on fear of the unfamiliarity of the proposed innovation and on the perceived risk of loss of power and influence. (2007: 575)

Some of this may well be true. But it is not clear that the integration of restorative justice is being held back for these reasons alone. In light of the evidence of low recidivism rates and the positive experience of most victims, one would expect these forms of resistance to give way. As researchers Lawrence Sherman and Heather Strang reported over a decade ago:

> The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out nationally. RJ is ready to be put to far broader use. (2007: 4)

More recently, in 2017, following a review of 84 evaluations of restorative justice services for young offenders, David Wilson, Ajima Olaghere and Catherine Kimbrell concluded:

> The bottom line for restorative justice programs and practices is that the evidence is promising, suggesting possible but still uncertain benefits for the youth participants in terms of reduced future delinquent behavior and other non-delinquent outcomes. Victim participants in these programs, however, do

> appear to experience a number of benefits and are more satisfied with these programs than traditional approaches to juvenile justice. (2017: 3)[4]

Perhaps, then, we need to look for another explanation for the political and institutional hesitancy. It could be that decision-makers can see that the way in which restorative justice has, thus far, been incorporated into the criminal justice system cannot avoid compromising due process protections, such as the right to legal representation, proportionality constraints, the presumption of innocence and equality before the law. As Ann Skelton argues:

> [T]he need to protect the puny individual against the might of the state was certainly the main reason why fair trial rights and due process rights developed in the criminal justice system and became part of our human rights protections, and why lawyers, in particular, are nervous about letting go of them. (2019: 32-33)

Integrationists routinely argue that these concerns can be adequately met by a combination of training and legislation.[5] But this remedy has not been universally accepted as sufficient. Concerns about due process safeguards continue to be raised by legal professionals, victim groups and criminologists. As Braithwaite notes, 'the strongest opposition [to restorative justice] has come from lawyers, including some judges, under the influence of well-known critiques of the justice of informal crime processing' (1997: 3).[6]

Another explanation might be that decision-makers have been listening to the research that shows how, when the Integrationist approach is used, restorative justice processes are routinely co-opted, undermined, delayed and diluted by criminal justice priorities. For instance, Stefanie Tränkle writes that Victim-Offender Mediation (VOM) in Germany and France 'is not able to put into practice its specific modus operandi'. And this, she argues, is due 'mainly to its structural link to the penal law':

> The informal and pedagogical logic of mediation is constrained by the penal framework, namely its power to impose its formal and bureaucratic logic on

4 It should be noted that the authors of this report were also critical of the general quality of recidivism research in the restorative justice field, as were Nadine Smith and Don Weatherburn, who, a few years earlier, stated that the studies they reviewed 'provide little basis for confidence that conferencing reduces re-offending at all' (Smith & Weatherburn, 2012: 6).

5 For example, '[The solution to concerns about Integrationism is to require] highly trained personnel … underpinned by a legislative framework to ensure accountability and transparency' (ACT Restorative Justice Sub-Committee, 2003: 11).

6 Quoted in Clairmont (2005: 249).

> the mediation process. The penal law dominates the procedure and impedes the interaction process. (2007: 395-396)[7]

How should the advocates of Integrationism deal with these concerns? Could it be argued that they are nothing more than teething issues? Are they merely crinkles that will get ironed out over time as restorative justice and criminal justice learn how to accommodate each other? Or is there a need to acknowledge that the resistance of decision-makers is not unfounded? Could it be that any attempt to integrate restorative justice into the criminal justice system will invariably generate these kinds of tensions?

My proposal here is that these problems are indeed unavoidable. Restorative justice and criminal justice are inherently designed to achieve different ends. Thus, any attempt to integrate the two by using a diversionary approach cannot help but produce a 'tug of war' situation. When restorative justice is made the priority, the normal demands of due process will tend to be relaxed. But then it is soon recognised that compromising the rights of the participants is unacceptable. So, new guidelines or legislation is introduced to preserve the relevant safeguards. Yet this can only be done if some essential element of restorative justice gives way. The battle rages, back and forth, each side legitimately anxious to retain as much of its terrain as possible. If we were to portray this situation pictorially, it might look like the following (Figure 1.3):

Figure 1.3 Competing Priorities

The resulting amalgamation can, and often does, achieve positive outcomes on both sides. I have no intention of contradicting the empirical evidence. Nor do I wish to impugn the

7 As the name implies, VOM employs a rationale, a set of techniques and a structure that is specific to mediation. As argued in Brookes and McDonough (2006), there are a number of problems with using mediation in the context of crime or wrongdoing. Tränkle also identifies these concerns but unfortunately argues that they are endemic to restorative justice, rather than simply the misapplication of mediation. Her point about the detrimental impact of a penal framework nevertheless remains intact.

expertise and dedication of restorative justice practitioners who are currently operating within an Integrationist framework. Again, by highlighting flaws in the Integrationist model, I am not denying or minimising the positive experiences that participants in restorative justice have gained in the context of this approach. The Integrationist model is capable of producing exceptional results. My contention is only that, when restorative justice and criminal justice are intermingled in this way, each is more likely to fall short of its own distinctive benchmarks and priorities. Integrationism is inherently restrictive. It has multiple built-in obstacles to the goal of reaching the highest standards possible for both restorative justice and criminal justice. Such a limitation cannot help but encourage the resistance of decision-makers, and rightly so. It is for this reason that we need to search for a different way of situating restorative justice in relation to criminal justice.

1.1.5 Parallelism

There is one alternative that would seem to offer a promising solution to many of the problems that inflict Integrationism. I will call this approach the 'Parallelist' model. The foundational principle upon which Parallelism is based is this:

> Restorative justice should be legally independent: the criminal justice system must not determine, impose or enforce the decision to participate in restorative justice, what happens in the process itself or the outcome.

The advantage of this model is that it avoids almost all of the compromises that are intrinsic to Integrationism. In other words, it is a win-win solution for both restorative justice and criminal justice. If these two processes were to operate independently, it is more likely that their respective principles and values would not clash with or undermine each other. Instead, they would be free to operate at the highest levels of quality and effectiveness.

Parallelism might also provide a win-win solution to the debates that have raged between restorative justice advocates. For example, Parallelism is consistent with Substitutionism insofar as both propose that, in order to preserve what is essential to restorative justice, it should operate in complete independence of the criminal justice system. Substitutionists will, of course, continue to reject the legitimacy of criminal justice. But they could see Parallelism as an interim position that is less likely to realise their fears of restorative justice becoming co-opted or compromised by criminal justice.[8]

8 Václav Havel offers a similarly parallelist suggestion on how best to replace totalitarian systems. 'One of the most important tasks the "dissident movements" have set themselves is to support and develop [parallel social structures].… What else are those initial attempts at social self organization than the efforts of a certain part of society to … rid itself of the self-sustaining aspects of totalitarianism and, thus, to extricate

Parallelism is also able to incorporate some of the key principles that motivate both Integrationism and Maximalism, and, hence, offers a resolution to the disagreement between the two. With respect to Integrationism, Parallelism not only preserves the voluntarist requirement but does so in a more credible manner. Unlike the Integrationist approach, it allows the offender to make decisions about whether and how they participate in restorative justice without needing to weigh up the potential legal costs and benefits. The absence of this kind of Sword of Damocles, as I argue later, is likely to increase the quality of restorative justice substantially.

With respect to Maximalism, the Parallelist model does not entail a hands-off approach to criminal justice. Far from it, Parallelism includes principled reasons for wanting to ensure that the criminal justice system carries out its primary function of serving the public interest to the best of its ability. Since there is good reason to think that replacing the current retributive philosophy with a reparative orientation is most likely to achieve this end, as the Maximalist suggests, it follows that any transition to the use of reparative sanctions will be strongly supported by the Parallelist. The key difference is that Parallelism does not thereby erode the important distinction between restorative justice and criminal justice. On the Parallelist view, it is unnecessary and unhelpful to classify reparative sanctions as 'restorative justice'. State-imposed sanctions, as we shall see, serve a very different purpose, and so, even if they have a reparative orientation, they should still be categorised as 'criminal justice' disposals, with all that this entails in terms of applying the rule of law, due process, proportionality constraints and so on.

Parallelists will also be strongly motivated to make sure that what might have been gained by a restorative justice process is not 'destroyed by the alienating and negative effects of adversarial justice', as Tony Marshall puts it (2003: 31). Hence, Parallelism will be supportive of criminal justice reform or even radical transformation where necessary. It will not be my purpose to suggest detailed proposals here, but there are well-known changes that would no doubt increase the overall compatibility between restorative justice and criminal justice. For example, victimless acts, such as traffic violations and other minor regulatory offences, could be decriminalised and transferred to a 'system of administrative sanctions' (Blad, 2003: 203). The application of therapeutic jurisprudence would render the system less confrontational and relationally destructive. Offenders could be offered the opportunity to take part in a victim awareness programme as a voluntary adjunct to every criminal justice disposal. Victims of crime could, as Susan Herman proposes, be assigned a case manager 'who would have the authority to ensure that

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itself radically from its involvement in the [totalitarian] system? … The ultimate phase of this process is the situation in which the official structures … simply begin withering away and dying off, to be replaced by new structures that have evolved from "below" and are put together in a fundamentally different way' (Havel, 1978: 102, 108).

wherever possible, victims seeking resources and services have priority access to them' (2004: 81). Governments could deploy far more resources into addressing the underlying discriminatory and socioeconomic causes of crime, as in justice reinvestment schemes.[9] Prisons could be eliminated entirely or transformed into something more like the Norwegian model.[10]

Having said this, it is important to be clear about the extent to which Parallelism would endorse or require changes to the criminal justice system. First, Parallelism is predicated upon the assumption that criminal justice plays a legitimate role in bringing about core aspects of justice in the aftermath of a crime, but only if it does so by upholding the rule of law. Parallelism would not, therefore, support any reform which sought to remove or devalue this essential ingredient. Second, a full-blown Parallelist model is likely to require significant reforms to any existing criminal justice system. However, the restorative justice arm of this model is entirely independent, and so it can be implemented without needing to wait for such fundamental changes.[11]

This is not to say that setting up a Parallelist approach to restorative justice will have no impact. There is, for instance, evidence that it could help to repair some of the damage experienced in the preceding judicial process. Susan Miller, for instance, found that victims who met with the offender in a post-sentence (pre-release) setting saw the restorative justice process as 'essential' in 'providing a mechanism to combat feelings of being trivialized, condescended to, and disempowered by the criminal justice process' (2011: 187). Similarly, in their interviews with victims who had also participated in a post-sentence context, Tinneke Van Camp and Jo-Anne Wemmers found that, for some, the process, served to 'overcome the frustrations' that they suffered in the court:[12]

> For example, the court record or the criminal trial did not allow them to have all the answers they were looking for in relation to the facts and the motives of the offender. The criminal trial did not bring the same understanding of the facts and motives as the direct dialogue with him. The only way to know the truth was to speak with him in an informal setting independent of the judicial system, so that he could tell the real things without legal repercussions. (2011: 189, my translation)

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9 This approach is explored in, for example, Bonig (2013), Schwartz (2010), Wood (2014).

10 As suggested in Andvig, Koffeld-Hamidane, Ausland and Karlsson (2020). For a critique of this model, *see* Smith and Ugelvik (2017).

11 Similarly, if a criminal justice system was reformed (or transformed) along the lines suggested earlier, then this arm of Parallelism could likewise be regarded as fully operational even if extralegal restorative justice services had yet to be set up or rolled out across the relevant jurisdiction. But this sequence of implementing Parallelism would, I take it, be considerably less likely than the reverse.

12 Both of these sources also found that victims expressed the desire that the judicial process should therefore be reformed so as to avoid these kinds of frustrations occurring in the first place. *See* §2.1.2 for details.

Even so, it is important to be clear about the primary role of restorative justice in a Parallelist model. While it may help to 'clean up the mess' left by a criminal trial, restorative justice per se is not designed to rescue a dysfunctional criminal justice system. Indeed, as we shall see, when restorative justice is co-opted for this purpose, it is far more likely to be damaged itself as a result. What is needed to ensure that victims do not feel 'trivialized, condescended to, and disempowered' in a court process is not a workaround or a band-aid solution but major systemic reform.

1.1.6 Logistical questions

Any implementation of Parallelism will require answers to important pragmatic questions. How and when would referrals be made? Who would deliver restorative justice services? On what basis would restorative justice services be funded, and by whom? How would key administrative difficulties be resolved, such as making contact with victims, informing participants of the availability of restorative justice, finding suitable venues, carrying out the process within a reasonable time frame, monitoring outcome plans and so on? The answers to these questions will, for the most part, depend on specific political contexts, local partnerships and negotiated agreements. Nevertheless, I will suggest some general answers to such questions by drawing upon Parallelist principles and the empirical evidence to date (see §3.2).

The most important logistical question, of course, is how to ensure that restorative justice can in fact operate as a legally independent service. The answer to that question, in my view, is unlikely to be solved by the kind of legislative protections that have thus far been used in diversionary contexts. My proposal here will be that, in the absence of significant legal innovation, the goal of legal independence will require that restorative justice is only offered after the case has actually or effectively exited the justice system. In practice, this will mean that it must take place (1) after the case has been formally closed or unconditionally dismissed or (2) as a voluntary adjunct to either a sentence or a lengthy non-restorative justice (henceforth 'non-RJ') unconditional diversionary programme (see §3.1 for details).

It might be questioned whether the term 'Parallelism' is appropriate for such a model, given that restorative justice would not always be operating at the same time as the criminal justice process. However, two lines can be parallel without being situated side-by-side at every point. One parallel line can, for instance, be located before and continue after the other line ends. Moreover, what is essential to the concept, as I am using it, is the kind of relationship that holds between the two approaches. Restorative justice will operate in parallel to the criminal justice system when they operate independently, but without any implication that one is superior to or takes priority over the other. This is why a term

like 'Supplementalism' is less accurate, since it suggests that restorative justice is an add-on or extension of criminal justice, and, as such, carries less importance or value with respect to what is required for justice to be done in the aftermath of a crime.

1.2 The case

1.2.1 Scope

The case for Parallelism presented here involves a claim about how restorative justice should be situated vis-à-vis the criminal justice system. But there are several definitions of 'restorative justice' available, each of which is grounded in a distinct theoretical perspective. Likewise, most countries or regions will have a 'criminal justice system' of some kind, but these are based upon quite different legal systems – Civil Law, Common Law, Religious Law or combinations thereof – as well as having distinct legal cultural values and structures. These differences are very likely to affect how restorative justice is integrated into any particular criminal justice system. Given this variety, it would be unrealistic to claim that this case for Parallelism will be universally applicable as it stands. Nevertheless, I would hope that, with appropriate adjustments and occasional exceptions, it could potentially apply to most jurisdictions and on most accounts of restorative justice.

Take the issue of jurisdictional differences: when I provide examples of issues that arise for Integrationism, these are typically drawn from a particular legal system and culture, namely, Common Law as practiced in liberal democracies. I do not specify the adaptations that would need to be made for the issue in question to apply, if it does, within any alternative legal system or culture. Thus, if, for instance, it turns out that I have identified a problem with Integrationism that would not apply in the same way, or not at all, in some other jurisdiction, then I would concede the exception. But I would maintain that there will nevertheless be a suite of problems – mostly similar to those I have identified – that plague any attempt to integrate restorative justice into a criminal justice system regardless of its legal and cultural particularities, and that these problems are most likely to be solved by ensuring that restorative justice can operate as a legally independent (or 'extralegal') service.

1.2.2 Terminology

As mentioned earlier, there are many definitions of 'restorative justice'. I have nevertheless tried to use this term in a way that will be relatively uncontroversial to most restorative justice advocates and practitioners, at least as it is used within an Integrationist context.

Thus, I take it that restorative justice is fundamentally about *enabling those responsible for wrongdoing and those who have been harmed by their actions to enter into a safe and voluntary dialogue for the purpose of working towards moral repair*.[13] This kind of dialogue will usually cover three basic topics, roughly in the following order: the *facts* (what happened), the *consequences* (how people have been harmed) and the *future* (what needs to happen to repair or make amends for the harm). Towards the end of the exchange, an outcome agreement will be negotiated. This will typically include details such as how the person responsible will provide material or symbolic reparation to the person harmed, a commitment not to reoffend, resources that might support their desistance and so on.

There are several ways in which this kind of facilitated dialogue can take place. The person harmed and person responsible can meet on their own, assisted by a facilitator, in a *face-to-face meeting*. If support persons are also invited – such as friends, partners, parents, social workers and so on – then a *conference* or *circle* can be arranged. If such a meeting is not considered safe or appropriate by the facilitator, or if those involved decide against it, then a *shuttle dialogue* process can be used. This is where the facilitator acts as a go-between, conveying information, letters or audio/video recordings from one participant to the other.

There are also cases in which either the person harmed or the person responsible is unable or unwilling to participate in a dialogue of any kind, or they cannot be identified. It nevertheless remains possible for the remaining participant(s) to engage in a process that embodies restorative values and objectives. This might involve enabling a person who has committed an offence to take responsibility by carrying out a reparative task in the community or meeting with victims who have suffered from the same type of crime. However, this should not be regarded as the norm. Processes that do not involve any dialogue between the person responsible and the person harmed are used only when at least one participant has already committed to taking part in a restorative justice process and a dialogue turns out to be unfeasible. Rather than end a process that could still enable them to engage in whatever measure of moral repair is possible for them as an individual, the participant may choose to hold the same kind of dialogue – covering the facts, consequences and future – with only the facilitator and relevant others attending. But if no such commitment has been made, it is best to refer the case to other services and programmes that are not specifically designed to facilitate this kind of dialogue, such as specialised victim support, reparative schemes or programmes that focus on behavioural change.

Either way, these alternatives should not, in my view, be labelled as 'restorative justice' processes, since they do not involve any dialogue between the person responsible and a person who was (directly or indirectly) harmed. When either one or the other has made a

13 For more detail on restorative justice theory and practice as I understand it, *see* Brookes (2019a).

commitment to participate but a dialogue proves unfeasible, then a restorative justice service may be best placed to work with them as an individual. But the service should carefully distinguish such activities from its core business of facilitating restorative justice processes, especially when communicating with funders, evaluators, participants and other stakeholders.

This account of restorative justice does not, therefore, include processes such as conflict resolution, mediation, problem-solving, stand-alone victim awareness programmes, family group decision-making (where no offence has been committed), trauma counselling, cognitive behavioural therapy, rehabilitation schemes, mentoring, coaching, participatory democracy, active listening and so on. Any restorative justice process may, where relevant, draw upon the techniques and methods of these other processes. And most of these processes will share values and principles in common with restorative justice. But each of them also has its own distinctive focus and set of primary objectives. So it is unhelpfully confusing and unnecessary to rebrand them as 'restorative justice'. As Wood and Suzuki put it:

> [T]he future of RJ as we see it depends significantly on whether a focus on *interactions* between parties who have caused harm and those who have been harmed remain central to such a definition, or whether RJ continues to expand into piecemeal programs and outcomes where the difference between 'restorative' and other types of programs becomes increasingly blurred. (2016: 154)

The same is true of programmes or movements that are focused primarily on political or social-structural changes. As I will argue later (§4.8), restorative justice participants can, as they are addressing the personal harm that was caused, also confront wider social issues that were relevant to the behaviour in question. They might, for instance, want to discuss and challenge the discriminatory attitudes, cultural prejudices or historical injustices that help to explain or contextualise the wrongdoing, without thereby excusing or rationalising it.[14] They could also choose to supplement the restorative justice dialogue with extended conversations and activities that involve collaborating with other grassroots social justice organisations or movements. But it does not follow that *these* organisations and movements should be reclassified as 'restorative justice'. It is possible to collaborate, form alliances and

14 Restorative justice differs from purely welfarist responses to crime insofar as it can acknowledge and address the often profound impact of an offender's disadvantaged circumstances without thereby denying them any moral agency. As Hans Boutellier puts it, 'Offenders themselves also often disapprove of their own conduct … [and so] they are surprised when their evil acts are simply explained away … [as if] they [had] no say in what they did' (Boutellier, 2006: 40).

identify overlapping values, methods and objectives without muddying important distinctions.

In sum, restorative justice is not the solution to every conceivable social, relational or psychological problem. As Margarita Zernova writes:

> No doubt the application of restorative values may lead to positive results in some – perhaps even many – situations. Yet, endorsing restorative justice as a universal response to all conflicts, problematic situations and injustices will not help identify, let alone prevent, undesirable consequences. In dealing with some problems and situations restorative values and methods may not be the best ones or may even be inappropriate. (2016: 142)

To suggest otherwise by liberally spraying the term 'restorative justice' over anything to which it bears the slightest resemblance will soon render the term meaningless. To give an example, Shannon Sliva and Carolyn Lambert discovered a Missouri statute which stated that 'community-based restorative justice projects' include the following:

> [P]reventive or diversionary programs, community-based intensive probation and parole services, community-based treatment centers, day reporting centers, and the operation of facilities for the detention, confinement, care and treatment of adults. (2015: 90)

As the researchers then noted, it is unclear whether the state intended to offer restorative justice within each of these settings or whether it regarded them as restorative justice processes in their own right.

The problem here is not merely the lack of taxonomic restraint. As the term 'restorative' is increasingly prefixed to instruments of state power – prisons, police, parole and so on – there is the danger, as John Platt argues,

> that RJ might simply become one element of a much stronger, coercive body designed to more efficiently control deviant youth. The very imprecise nature of what RJ actually is lends itself to such possibilities. (2006: 63)

Yet much of this imprecision could be easily avoided by observing that, while certain features – for instance, an informal dialogue or the opportunity to process emotions – might be *necessary* for restorative justice, they are not, on their own, *sufficient*. The benefits

of clarity and consensus for all concerned – researchers, advocates, practitioners, policy-makers, legislators and participants – would far outweigh the analytical effort.[15]

It might be argued that setting clear boundaries around the concept of restorative justice will lead to a stultifying conformity, inflexibility and standardisation. Granted, this could easily occur. But there is no reason why this should be the only possible outcome or even the most prevalent one. We can all agree on a basic definition of what will count as an 'automobile' – for instance, 'a wheeled motor vehicle used for transportation'[16] – without thereby blocking human ingenuity or limiting our creative freedom. On the contrary, setting clear boundaries can be a powerful stimulus for the imagination. Think of the bewildering variety of objects that now fall under the conceptual rubric of 'automobile'.

Likewise, the account of restorative justice suggested above is sufficiently general to allow for a myriad of diverse and innovative forms that such a process could take. For instance, many First Nations communities use processes that are consonant with this characterisation of restorative justice, but they employ a range of distinctive procedures, conceptual categories and terminologies, as well as a wider set of goals (see §4.9). And there is a constant stream of new potential applications of restorative justice that advocates are exploring, such as addressing the harms caused by the climate crisis or reparations for African American descendants.[17] Even so, we cannot even begin to assess the comparative quality and effectiveness of any such application unless we can agree on the essential features of restorative justice.

1.2.3 Methodology

Suppose we intend to evaluate whether one form of implementing restorative justice (call it '*A*') might be more optimal than another ('*B*'). Then suppose that we could, for instance, show that *A* will, by design, ensure that the decision to participate in a restorative justice process will be voluntary for the participants, whereas this guarantee is not possible under *B*. Suppose we also agree that the voluntariness of such a decision is an essential feature of restorative justice, and so it is one of the factors that determines whether or not a restorative justice process can reach its full potential. In that case, we can infer that *A* is more likely to result in a higher quality of restorative justice than *B*. Hence, *A* is *in this respect* the optimal

15 Alessandra Cuppini provides a useful case study of this kind of analysis. She demonstrates how, contrary to the claim of many scholars, the International Criminal Court does not exemplify the core elements of restorative justice practice and, thus, argues 'for a much greater degree of caution to be used when employing the restorative label in relation to the justice approach of the ICC' (Cuppini, 2021: 341).

16 Source: https://wiki2.org/en/Car.

17 For examples of these two initiatives, *see* Robinson and Carlson (2021) and Jones and McElderry (2021), respectively.

approach to implementing restorative justice.[18] And this inference will be legitimate even if a range of other non-restorative benefits might result from *B* that are absent from *A*.

Throughout this book, I will be presenting a series of comparative arguments of precisely this kind. The intention is thus to build a cumulative case, showing that there are good ethical, institutional, psychological, legal and political reasons for thinking that, when compared to the alternatives, Parallelism is, on balance, likely to be the optimal model. This view has not yet been confirmed by an empirical study comparing the quality and effectiveness of each model. Nor have I been able to draw upon any statistically meaningful studies of this kind, since, to my knowledge, they do not yet exist. My aim, instead, has been to produce a testable theory which has sufficient plausibility to warrant further empirical investigation. As I later suggest (§3.2.4), such a study might, in the first instance, involve an existing Integrationist scheme continuing as usual, but with one or more Parallelist options being made available as an *additional* approach, and then comparing the outcomes.

This is not to say that there is no empirical support for the comparative advantages of Parallelism. Indeed, I frequently draw on qualitative research and case studies where relevant. But in doing so, my focus is limited to the question at hand. It might, for instance, be thought that I would want to draw extensively on the evidence that is now available for the benefits of post-sentence restorative justice. However, such evidence, on its own, would not serve to establish the advantages of Parallelism *as compared* to Integrationism. This would require a side-by-side trial involving the two models in operation. In the meantime, however, I can draw upon existing evaluations in order to show that Integrationism is beset with a number of problems. If, as I argue, Parallelism is very likely to solve such problems, then it will follow that there is indirect empirical support for its optimality.

1.2.4 Structure

To make this work as user-friendly as possible, I have tried to create chapters and sections that can be read more or less independently, depending on the starting point or interests of the reader. In Chapter 2, I present key theoretical reasons for preferring Parallelism, namely, its capacity to address, in equal measure, both the public and private dimensions of crime, the acquittal of both active and passive responsibility, and the public and private denunciation of wrongdoing. In Chapter 3, I present a set of Guiding Principles that are

18 Such an argument will not, of course, persuade those who think that the voluntariness of this decision is not essential to restorative justice. Thus, as with all arguments, the persuasiveness of this case for Parallelism will depend on the extent to which its basic premises are shared, and this includes its views on the essential features of restorative justice.

designed to show what would be required to implement a Parallelist model. I then address logistical questions, such as how a Parallelist approach would organise referrals, source funding and plan for its implementation and evaluation. I conclude by suggesting that Parallelism offers a more viable vision for how restorative justice could become a mainstream response to crime.

In Chapter 4, I present the key advantages of Parallelism as compared to Integrationism, which is currently the majority position. This chapter is thus mostly devoted to showing how Parallelism avoids the detrimental impact that Integrationism is having on both criminal justice and restorative justice – although I do, on occasion, address the various ways in which Maximalism might be thought to offer a solution to the problems created by Integrationism. In the first four sections of Chapter 4, I argue that, since Parallelism is detached from the legal system, it is immune from the way that Integrationism invariably undermines the core principles of equality before the law, proportionality, consistency and due process, as well as Integrationism's tendency to expand the state's coercive powers in ways that are unjustifiable. In the next four sections, I argue that Parallelism is more likely to optimise the quality and effectiveness of restorative justice, since, unlike Integrationism, it avoids the unethical and potentially revictimising impact of enforcing the offender's participation; it does not subject the process to criminal justice priorities (such as timescales and caseloads); and it is less likely to be contaminated by the discriminatory practices that currently infect many criminal justice institutions.[19] In the final section, I argue that, since Parallelism entails that restorative justice services would not be governed or regulated by the state's legal system, it offers a framework whereby, in settler-colonialist countries, First Nations peoples could operate their own independent 'restorative justice' services. This alone would achieve a significant measure of self-determination and sovereignty in relation to criminal justice matters. But such an outcome would be even more likely, I suggest, if, at some point, First Nations peoples were to operate these services in parallel with their own separate legal system.

In Chapter 5, I present a series of key challenges to the Parallelist model that were not addressed in previous chapters. I focus on a range of concerns that could be raised in relation to the needs and interests of victims, offenders and the criminal justice system. I suggest that these challenges, while not insignificant, are, on balance, not as severe or intractable as the problems faced by Integrationism.

The overall structure of the book, then, is designed to set out the case for Parallelism in a way that makes it more amenable to assessment. In presenting the underlying theory of Parallelism and how it might be implemented in Chapters 2 and 3, my aim is to ensure

19 Whilst sections 4.1 to 4.4 are *focused* on criminal justice priorities and 4.5 to 4.9 on restorative justice priorities, the 'tug of war' between the two means that there will inevitably be a number of overlaps in the discussion.

that the reader is in a better position to evaluate whether this model does indeed have the advantage of solving the problems faced by Integrationism, which I identify in Chapter 4; and whether it can respond adequately to the challenges that are presented in Chapter 5.