Foreword

Many of the authors in this collection are people I have admired for their depth of character for a long time. I like to think they are attracted to this topic because there is also a depth of character, resolve combined with humility about capacity for error, to restorative justice as a movement for the transformation of society. The editors of this volume have done a wonderful job in assembling a distinguished and thoughtful group of writers on the past and future of restorative justice.

Some of the most civilising gems of restorative justice practice and writing do not use the expression restorative justice. A good example is Robert Baruch Bush and Joseph Folger's 1994 book, *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*. I like to read this work as a micro-theory of how to advance the civilisational virtues of what Lode Walgrave in this volume conceives as republican values. Empowerment and recognition are the key micro-foundations for building a democratic civilisation in Bush and Folger. Empowerment gives citizens voice in a democracy; it transforms them from being weak and alienated to becoming strong and contributing. Recognition means acknowledgement and empathy for the struggles of others. A brilliant micro-insight is that it is recognition that helps us move from being self-absorbed to being 'responsive'. At this micro-level, being responsive means being attentive and open to others so citizens can become part of the project of transforming relationships. Responsiveness means for Bush and Folger being attentive and open to others, prepared to see their point of view and responding to their good faith with trust.

Those who have read Shadd Maruna's great book, *Making Good: How Ex-Convicts Reform and Rebuild their Lives*, will see some common threads with all of this, though Bush and Folger contribute their helpful language of empowerment, recognition, responsiveness. Responsiveness born of recognition and strength born of empowerment are mutually reinforcing, enabling 'compassionate strength'. Relationships can be transformed on a foundation of compassionate strength from being destructive and demonising to constructive, connecting and humanising. We can conceive of connecting with one another's humanity as the micro-foundation in civility of a democratic

republic. Conversely, alienation and demonisation are the micro-foundations of totalitarianism and authoritarianism. One civilising way of seeing restorative justice is as a method and a value frame for promoting the exit from alienation to compassionately strong citizenship. The path is via recognition and empowerment.

Civilising criminal justice is a great theme, but a tall order. Of all the great institutions passed down to western civilisation by the Enlightenment, none has been a greater failure than the criminal justice system. As Fred McElrea's chapter explains, one reason is that it has been less adaptive than other institutions, less responsive to transformations to the environment in which it operates. The practice of medicine of a century ago would be unrecognisable to a doctor training in the 21st century. As recently as a century ago, an encounter with a doctor was just as likely to leave a patient worse as better off. Medicine has been evidence-based in a way law has not. Encounters with the courts and prisons not only accelerate rather than decelerate criminal careers in a large proportion of cases, they also usually leave victims and affected family members feeling more damaged as a result of either the process or the outcome of the trial, or both. Restorative justice is of course not the only reform that would grow were our law to become more responsive and evidence-based.

When one reflects on a chapter such as Ann Skelton's in this book, one has to ask oneself how the institutionalised stupidity of British law could have run so deep that it learned nothing from centuries of colonialism in Africa, New Zealand and beyond. Of course some credit must be given to post-colonial South African, New Zealand or Canadian law to have drawn some quite potent lessons from indigenous law in recent decades. But was there anything one can identify in metropolitan British law that was learnt from the indigenous legal traditions of its colonies during the colonial era? Again, British medicine did learn a lot from indigenous medicine; British law did not. It was not a learning tradition. One reason is that the practice of law was a state-sanctioned cartel to a degree that the practice of health care was not. Some contestation to medicine came from competing professions such as pharmacy, physiotherapy, psychology and from 'traditional medicine' imported by immigrants that included technologies such as massage, meditation and acupuncture. Much of the western learning from indigenous

medicine was actually mediated by the research of private pharmaceutical corporations running randomised controlled trials with indigenous therapies.

To be fair, British law since the mid-1990s has begun to learn from ubuntu, from mana, from healing circles, if not in the language of their creators. It is thanks to the assertiveness of British characters communicating in very British ways, such as Martin Wright and Sir Charles Pollard, that these lessons were put to good use in Britain during the past two decades. Likewise, one might say that The Netherlands has learnt more from the restorative communications of a John Blad than from the insights of generations of scholars of adat traditions from Indonesia. In my view there is also a great deal that western law could learn from Sharia law such as its much stronger commitment to the right of victims to forgive, with the state waiving punishment. Scratch the average westerner and you find underneath a person for whom learning from the superior wisdom of Sharia law on some issue is quite a strange or offensive idea. Even allowing Sharia law the space to operate in their society for Muslims who choose to believe in it is something westerners approach with profound reluctance or disdain. In some respects reluctance is justified, of course, because there are specific ways that Sharia law is a threat to rights even more dangerous than western law. Westerners are people who believe in the civilisational superiority of western law, deeply. Fictional narratives of the glorious contest between defence and prosecution to discover the truth are promulgated by the western media in collaboration with a legal profession who like to promote this fictional distortion of the production-line injustice system they in fact administer. Again there are exceptional media products that show the way the law puts the poor in prison and white bankers in the House of Lords, but these are not the standard fare.

So it does fall to social movement politics to offer an alternative narrative, to show new paths that pick up the evidence of superior ways of doing justice from other cultures, while preserving strengths of western law that the evidence shows to be real. None of this is to deny that many of those strengths of western law, like the idea of various separations of powers, and limits on abuse of power, are profound. Moreover, this volume shows through its contributions from some exceptionally distinguished western lawyers, that reformers from within western law can be exceptional in their wisdom.

Lode Walgrave points out in his chapter that 'Civilising Criminal Justice' to some could mean abolishing criminal law and replacing it with civil law, to others it could mean bringing greater civility to criminal justice. Elements of both options get some sophisticated attention in the scholarship of this volume. Robust critique of restorative interpretations of civility also provide some of the high points of the book.

It is early days in the grafting of restorative justice into western justice. Many mistakes have been made. Many more are yet to be discovered by probing research designs. Recent criminological re-framings of the limits and the effectiveness of Peelian policing, that has been with us for almost 200 years, are instructive. These re-framings have transcended the nihilism of just a couple of decades ago that investment in policing was irrelevant to crime control. Now we know that smart policing that is evidence-based can make a major contribution to crime prevention; dumb policing can waste taxpayers' money and even make crime worse.

It will take many decades of better science than we have now to know what is smart and dumb restorative justice, what is smart judicial justice and dumb judicial injustice (and prosecutorial injustice). This is because evidence-based policing (like correctional rehabilitation) is a big step ahead of evidence-based adjudication. The great thing about the leadership of David Cornwell, John Blad and Martin Wright in putting this collection together is that it makes some wonderful strides in refining an agenda of contests to be explored in that future empirical and normative work. This volume is a fine start to a project of civilising criminal justice that will challenge our grandchildren and theirs.

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Sir Louis Blom-Cooper QC (United Kingdom) taught criminology and penology at Bedford College, University of London (1961–1981), and as a barrister practised in both criminal and civil cases. He was Chair of the Mental Health Act Commission (1987–1994), and Judge in the Court of Appeal of Jersey and of Guernsey (1988–1996). A former Chair of the Press Council (UK), he was also the first Independent Commissioner for the Holding Centres in Northern Ireland. He was also Chair (and later Vice-President) of the Howard League for Penal Reform, and of Victim Support, and has published many books on criminology and penology, including *Fine Lines*