

JUSTICE PERFORMED: THE NORMATIVE, TRANSFORMATIVE, AND
PROLEPTIC DIMENSIONS OF THE RESTORATIVE JUSTICE RITUAL

BY

LINDSEY CAROL POINTER

A thesis

submitted to the Victoria University of Wellington
in fulfillment of the requirements for the degree of
Doctor of Philosophy

Victoria University of Wellington

2019

Acknowledgements

It could easily have been an intimidating experience to move to the other side of the world to undertake this project, but instead it felt in many ways like a homecoming. This is thanks to the community and shared mission that has built up around the Diana Unwin Chair in Restorative Justice, and particularly to my doctoral supervisors, Christopher Marshall and Thomas Noakes-Duncan. Chris, I cannot thank you enough for all the ways you have supported me during my time here. You were so quick to welcome me into your work, your family, and your dream to spread restorative practices to all areas of life. You have inspired me and helped me to grow and learn so much during my time here. Thank you for making this place feel like home. Tom, thank you for all the ways you pushed me to grow as an academic. I have learned so much from your careful and thorough approach.

This project would not have been possible without financial support from the Fulbright Program and Rotary International. Receiving the Fulbright Graduate Award launched me on this journey and gave me the support needed to dive more deeply into the world of restorative practices. It truly changed my life, and I am eternally grateful. When I decided to stay beyond the culmination of my Fulbright year to pursue a PhD, receiving a Rotary Global Grant made it possible. I would like to thank Rotary District 5440 for their confidence in me, their enthusiastic support of restorative practices, and for the intellectually stimulating and inspiring friendships I have developed with club members through the co-creation of the monthly Peacebuilder Newsletter. I would also like to thank the Rotary Club of Wellington for their warm welcome.

My passion for and commitment to restorative practices is grounded first and foremost in my experience as a facilitator and my relationships with other practitioners. Little did I know when I entered the world of restorative justice, that I would be gaining not just colleagues, but life-long friendships with incredibly gifted peacemakers. Thank you first to the restorative practitioners in Colorado who have supported and inspired me, especially Lynn and Pete Lee, who first brought me into the fold, and Kathleen McGoe, who lives and breathes restorative values and has helped me to grow in so many ways. It has been a gift to get to continue working and laughing together, even from afar. Thank

you to Haley Farrar and Sarah Roth-Shank for your friendship, support, and encouragement throughout this journey. Working and growing with each of you has kept me balanced and focused on what is truly important. Thank you also to the practitioners and participants who gave their time and reflections in interviews, and whose insights shaped this study.

My family has been an amazing source of support throughout this journey. Thank you especially to Lauri Pointer, Jon Pointer, and Eli Pointer for always encouraging me in my passions, even when they have taken me far away from home. To Sam Seiniger, my partner, thank you for taking the risk to move to New Zealand with me and for your support and encouragement at every step. You have an incredible ability to make everything you touch more amazing, fun, and life-giving than I could ever have imagined, and you have done just that to our life here. And finally, I am grateful to our sweet, growing baby, whose impending arrival has helped motivate me to power through the final stages of writing and revising, and who inspires me to work to build a more compassionate world.

Abstract

As William Everett notes, “Symbols and rituals are indispensable for our efforts to contain, transform, and resolve conflicts.”¹ For this reason, the performance of justice is highly ritualized. Two contemporary examples of this performance are the mainstream criminal trial and the restorative justice conference, each of which has a distinct ritual structure. This thesis explores these two ritual structures and how they fulfill, or fail to fulfill, the multifaceted human need for justice. By employing ritual theory in respect to these two justice performances, an analytical framework will be developed that describes how each ritual’s process affects its function.

Theories of ritual are specifically concerned with the functions that rituals have in society. This thesis proffers three dominant ritual functions related to the performance of justice: the normative, the transformative, and the proleptic. Rituals have a *normative* function when they provide a sense of safety and security through establishing a set way of doing things and reaffirming communal values. *Transformative* rituals offer a means of attaining significant and sustainable change at personal and relational levels. *Proleptic* rituals are capable of envisioning and temporarily creating a different possible societal future by generating social and power relationships that can challenge the status quo. Not every ritual performance is oriented to achieving these various functions, yet it will be argued that the nature of justice demands attention to all three.

This thesis applies this analytical framework of the various functions of rituals to two justice performances: the criminal trial and restorative justice. It proposes that while the criminal trial fulfills the normative function through upholding laws and associated values, it commonly falls short of creating the conditions for personal or relational transformation, nor does it anticipate a future where a greater measure of justice is achieved. By contrast, it is common for restorative justice conferences to result in transformative outcomes for participants and to provide a foretaste of a more just social order, inasmuch as they subvert hegemonic power arrangements.

¹ William Johnson Everett, "Ritual Wisdom and Restorative Justice," *Hamline Journal of Public Law and Policy* 25, no. 2 (2004): 348.

By advancing our understanding of the ritualistic features of justice, this thesis can help to answer three prominent questions that have beleaguered the restorative justice field. First, how is the personal and relational transformation apparent in the restorative justice process achieved? This will be addressed through an application of the theories of ritual put forth by Victor Turner and Émile Durkheim to the restorative justice process in order to better understand and describe its transformative function. Second, can restorative justice have a normative impact that satisfies the wider public, particularly in comparison to the criminal trial? This criticism will be considered in light of a normative ritual framework along with the alternative structures that have been suggested to remedy this issue. Finally, given its primary focus on making amends at an interpersonal level, does restorative justice routinely fail to address larger, structural injustices? By examining the expansion of restorative justice from a justice reform mechanism to a wider social movement, I will argue that the proleptic function of the restorative justice ritual has played a key role in this expansion by temporarily creating a “restorative society in miniature” that participants often emerge with a desire to experience again and extend to others, thereby enlarging the original scope of the restorative justice intervention.

Table of Contents

Acknowledgements.....	i
Abstract.....	iii
Chapter 1: Introduction.....	1
What is Restorative Justice?.....	5
Why Restorative Justice and Ritual?.....	12
Resistance to the Identification of Restorative Justice as a Ritual.....	16
Researching Restoratively: Approach and Rationale.....	18
Thesis Overview.....	22
Chapter 2: The Nature and Function of Ritual.....	24
Normative Function of Rituals.....	26
Transformative Function of Rituals.....	31
Proleptic Function of Rituals.....	41
Summary.....	44
Chapter 3: The Criminal Trial as Ritual.....	46
The Normative Function of the Criminal Trial.....	47
Transformative Shortcomings of the Criminal Trial.....	57
Proleptic Shortcomings of the Criminal Trial.....	61
Summary.....	63
Chapter 4: The Transformative Function of the Restorative Justice Ritual.....	66
Theories of Restorative Justice's Transformative Capacity.....	68
Separation Phase.....	76
Liminality and Communitas/Collective Effervescence.....	85
Reincorporation Phase.....	96
Summary.....	102
Chapter 5: The Normative Function of the Restorative Justice Ritual.....	104
Normative Impact for Participants.....	105
Normative Impact for the Wider Public.....	113
Summary.....	133
Chapter 6: The Proleptic Function of the Restorative Justice Ritual.....	136
Structural Blindness in Restorative Justice?.....	136
Emergence of the Restorative Justice Social Movement.....	143
Restorative Justice as a Proleptic Ritual.....	145
Summary.....	164
Chapter 7: Conclusion.....	166

Implications for Our Understanding and Practice of Restorative Justice	168
Areas for Further Research	174
Appendices.....	177
Appendix 1: Information Sheet for Research Participants.....	177
Appendix 2: Consent Form to Participate in Research	178
Appendix 3: Qualitative Interview Guide for Facilitator Interviews	179
Appendix 4: Qualitative Interview Guide for Participant Interviews	181
Bibliography	183

Chapter 1:

Introduction

During the trial of the so-called “Urewera Four” in 2012, Māori activist Tame Iti stood in the dock with three other defendants, looking out at a packed courtroom. Iti and his co-defendants were facing charges for illegal possession of firearms and belonging to a criminal group. Over the course of a year, police had gathered evidence of what the prosecution claimed was a criminal group in the mountainous Te Urewera region, carrying out weapons training for the purpose of mounting an armed struggle against the state. Iti and the other Tūhoe¹ people involved claimed the camps were a place to learn *tikanga*² and to prepare people for employment in the security industry. They denied any criminal intent to their activities.

Throughout the trial, defense counsel Russell Fairbrother repeatedly spoke of “two worlds.” He stressed how different the Ruatoki region in the remote Ureweras is from the rest of New Zealand, explaining that the unlicensed guns, camouflage, and balaclavas seen in the surveillance videos are all very common there and necessary for hunting food in the forest, which is widely practiced due to both cultural tradition and poverty. Actions and words that appeared threatening from the *Pākehā*³ worldview are not threatening within the Tūhoe world.

The jury ultimately found Iti guilty of illegal possession of firearms and he was sentenced to two-and-a-half years in prison. When Justice Rodney Hansen summed up the case for the jury, he harkened back to the argument of two worlds stating, “There may be two worlds, but there is only one law. That is the law which binds us all and according to which you must make your verdict.”⁴ This assertion of the normative and universal

¹ Ngāi Tūhoe is a Māori Iwi (tribe) in New Zealand. Tame Iti is a member of the Tūhoe Iwi.

² *Tikanga* is the Māori way of doing things, culture, or customs, it is the “correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol – the customary system of values and practices that have developed over time and are deeply embedded in the social context,” John Moorfield, “Te Aka Māori-English, English-Māori Dictionary and Index,” <https://maoridictionary.co.nz/>.

³ *Pākehā* refers to a “New Zealander of European descent – probably originally applied to English-speaking Europeans living in Aotearoa/New Zealand,” *ibid*.

⁴ Kim Webby, “The Price of Peace,” (Conbrio Media Ltd., 2015).

role of law in the state's response to Iti's activity in Te Urewera speaks directly to the function of the criminal trial. The criminal trial is a ritual system oriented around and aimed at producing a normative concept of legal justice.⁵ In the documentary *The Price of Peace*, Iti refers to the criminal trial as a sort of performance, stating, "We participate in the show, the theatre."⁶ In this performance of justice, laws are upheld and the social values communicated by those laws are reaffirmed.

While the performance of the criminal trial of the Urewera Four enacted the normative dimension of justice by upholding the laws that had been violated, other justice concerns were not addressed. Foremost among these was the harm suffered by Tūhoe at the hands of the New Zealand Police. After a year of gathering evidence through covert surveillance, the police executed a major raid in 2007, leading to the arrest of 17 people on charges of illegal possession of firearms. The raid was carried out during the night and involved an excessive display of force and hostility, causing severe trauma for the family members of those arrested.⁷ These harms and the resulting justice needs were not addressed through the criminal trial. Furthermore, Tūhoe saw the raids, surveillance, and the trial as a continuation of the violence and discrimination they have suffered at the hands of the Crown for over 150 years.⁸ The justice performed through the trial and sentencing of Iti offered no movement towards better relations between the "two worlds."

Iti was released from prison after nine months due to good behavior and he returned home to Te Urewera. In August 2014, another sort of justice ritual was performed. Representatives of the New Zealand Police travelled to Te Urewera to offer a formal apology for their actions during the raids of 2007. Iti and the children in his family greeted the Police Commissioner, Mike Bush, and other senior members of the police when they arrived in the community. Each child stepped forward and placed a *rautapu*

⁵ This assertion will be explored in detail in Chapter Three.

⁶ Webby, "The Price of Peace."

⁷ Ibid.

⁸ There is a long and painful history of the colonization of Tūhoe people under the Crown. One particularly violent episode that was harkened back to during the raids was the colonial troops' invasion of the Urewera in 1869. This attack was intended to punish Tūhoe for sheltering a "rebel" force and to communicate that there was no sanctuary for disaffected Māori. People were killed and settlements, crops, and food supplies were destroyed over several days. This invasion was followed by another attack in 1870, Ministry for Culture and Heritage New Zealand, "New Zealand History: Colonial Troops Invade the Urewera, 6 May 1869," <https://nzhistory.govt.nz/page/colonial-troops-invade-urewera>.

(leaf) on the ground, a symbol used in the traditional *pōwhiri*⁹ ceremony to ascertain the intentions of the visiting party, whether or not they come in peace. By picking up the leaf, the police communicated their peaceful intention and placed themselves in the care and hospitality of Iti's *whānau*.¹⁰ Following the welcome ceremony, police officials met individually with five of the families most affected by the raids.

While not acknowledged as such, this meeting between Tūhoe and the New Zealand Police contained many of the hallmarks witnessed in a restorative justice process. The entire process was couched in restorative dialogue as each person had a chance to speak of how he or she had been impacted by the police raids, to which the Police Commissioner, Mike Bush, responded with acknowledgement and apology. The meeting with Iti's family ended with a handshake and the exchange of a *hongi*.¹¹ After meeting with the families, the police were invited to share a meal at the *marae*,¹² cementing the commitment to a new beginning in the relationship between the police and Tūhoe. Viewed from the perspective of ritual theory, this encounter was a carefully managed and symbolically rich process aimed at resolving animosity and strengthening a commitment to better future relationships.

The handling of Iti's case through the criminal trial and the restorative justice encounter that took place in Te Urewera illustrate two distinct modalities for performing justice. The structural components of each modality make them uniquely suited to fulfilling particular justice needs. After the completion of the trial and the sentencing of the Urewera Four, justice had been done in the eyes of the state: law and order had been protected and wrongdoers punished. However, for those subjected to the raids and subsequent prosecution, along with the Tūhoe people who had long suffered oppression at the hands of police and governmental agencies, the need for justice remained unmet. The subsequent restorative encounter allowed for a more holistic response to the needs resulting from the raids, thus opening the possibility for greater reconciliation to emerge.

⁹ The *pōwhiri* is the "welcome ceremony on a *marae*," Moorfield, "Te Aka Māori-English".

¹⁰ *Whānau* is "extended family, family group," *ibid*.

¹¹ A *hongi* is a greeting in which two people press their noses together, *ibid*.

¹² A *marae* is a Māori meeting place where formal greetings and discussions take place, *ibid*.

Regardless of the form it takes, the performance of justice is always a highly ritualized affair. As William Everett notes, “Symbols and rituals are indispensable for our efforts to contain, transform, and resolve conflicts. Without them, our conflicts are reduced to the exercise of brute force and the loss of all values of cooperation and mutuality that make life in community possible.”¹³ Rituals create a social space that is extraordinary, a space that is set apart as essentially different from normal life. Rituals are deliberate and symbolically rich social activities that help to organize human activity in the pursuit of particular goals. Different ritual structures articulate different dimensions of justice to varying degrees, inclining people to different ways of understanding and experiencing justice making.¹⁴ This thesis explores the ritual structures of the criminal trial and restorative justice and how they fulfill, or fail to fulfill, the multifaceted human need for justice. By employing ritual theory in respect to these two justice performances, an analytical framework will be developed that describes how each ritual’s process affects its function.

The social functions of rituals are not always readily inferred from the activities contained in the ritual. To take the above example, it is not immediately obvious what the function of picking up a leaf is. Hence, there exists different analytical frameworks for understanding the functions of rituals in society.¹⁵ This thesis proffers three dominant ritual functions related to the performance of justice, which I will call the normative, the transformative, and the proleptic. Rituals have a *normative* function when they provide a sense of safety and security through establishing a set way of doing things and reaffirming communal values. *Transformative* rituals offer a means of attaining significant and sustainable change at personal and relational levels. *Proleptic* rituals are capable of envisioning and temporarily creating a different possible societal future by generating social and power relationships that can challenge the status quo. Not every ritual performance is oriented to achieving these various functions, yet I will argue that the nature of justice demands attention to all three.

This thesis applies this analytical framework of the various functions of rituals to two justice performances: the criminal trial and restorative justice. It proposes that while

¹³ Everett, "Ritual Wisdom and Restorative Justice," 348.

¹⁴ Ibid., 352.

¹⁵ These different theories will be explored in Chapter Two.

the criminal trial fulfills the normative function through upholding laws and associated values, it commonly falls short of creating the conditions for personal or relational transformation, nor does it anticipate a future where a greater measure of justice is achieved. By comparison, it is common for restorative justice conferences to result in transformative outcomes for participants and to provide a foretaste of a more just social order, inasmuch as they subvert hegemonic power arrangements.

By advancing our understanding of the ritualistic features of justice, this thesis can help to answer three prominent questions that have beleaguered the restorative justice field. First, how is the personal and relational transformation apparent in the restorative justice process achieved? This will be addressed through an application of the theories of ritual put forth by Victor Turner and Émile Durkheim to the restorative justice process in order to better understand and describe its transformative function. Second, can restorative justice have a normative impact that satisfies the wider public, particularly in comparison to the criminal trial? This criticism will be considered in light of a normative ritual framework along with the alternative structures that have been suggested to remedy this issue. Finally, given its primary focus on making amends at an interpersonal level, does restorative justice routinely fail to address larger, structural injustices? By examining the expansion of restorative justice from a justice reform mechanism to a wider social movement, I will argue that the proleptic function of the restorative justice ritual has played a key role in this expansion by temporarily creating a “restorative society in miniature” that participants often emerge with a desire to experience again and extend to others, thereby enlarging the original scope of the restorative justice intervention.

What is Restorative Justice?

The restorative justice movement arose out of a growing awareness that the mainstream criminal justice system often does not meet the needs of either the harmed party or the responsible party, or the surrounding community.¹⁶ Through focusing on

¹⁶ Throughout this thesis, I have opted to use the terms “responsible party” and “harmed party” in lieu of “offender” and “victim.” The terms that ought to be used to describe the parties involved in a restorative justice encounter has been a topic of great debate within the field. I have chosen not to use the terms “victim” and “offender” because of the stigmatizing impact often experienced when those labels are applied to people, in part because of the strong association they have with the criminal court system. As Pavlich has

violations of law and what punishment the responsible party deserves, the justice system often increases harm and deepens conflict rather than creating an opportunity for healing.¹⁷ One of the earliest formulations of restorative justice came from Howard Zehr who argued that, in contrast to criminal justice, restorative justice focuses specifically on the needs of the harmed party, the responsible party, and the community and sees crime as a violation of people and interpersonal relationships.¹⁸ This violation of relationships results in obligations.¹⁹ Following a crime or incident of harm, the responsible party has a responsibility to put things right and repair the harm caused.

observed, restorative justice “is presented as a separate and autonomous entity; yet its foundational concepts derive from the very system it claims to substitute,” George Pavlich, *Governing Paradoxes of Restorative Justice* (London: GlassHouse Press, 2005), 14. Gavrielides has asserted that in order for restorative justice to fulfill its transformative promise, we must move away from these stigmatizing labels. He explains, “Restorative justice practices promise an alternative and more personalized vision of ‘the other.’ And yet, how is it possible to provide this personalised vision of justice and individual treatment of each individual’s circumstances, if we continue viewing parties in conflict through the labels of the wrong paradigm?” Theo Gavrielides, “Collapsing the Labels ‘Victim’ and ‘Offender’ in the Victims’ Directive and the Paradox of Restorative Justice,” *Restorative Justice* 5, no. 3 (2017): 375. I share Gavrielides’ concern that adherence to these labels limits one’s ability to separate the harmful act from the person, suggesting instead that “offender” or “victim” is who the person is in broader terms rather than a description of their role in a specific, limited incident.

Nelund has similarly argued that much of the potential for restorative justice to provide something truly transformative is in its complication and refusal of the pervasive victim/offender binary. She notes that currently the literature sees victims and offenders as belonging to entirely separate categories. She complicates this binary by highlighting the ways in which “offenders” are oppressed and victimised by a variety of social structures in complex ways, Amanda Nelund “The Marginalised Woman: Thinking Beyond Victim/Offender in Restorative Justice,” *Restorative Justice* 5, no. 3 (2017): 408-19.

One scholar who has argued for the retention of the “victim” and “offender” labels in restorative justice work is Annalise Acorn. She argues that if we replace “victim” and “offender” with categories of those who cause and those who suffer harm, we will miss the crucial distinction between wrongful and faultless harm. She asks, “Can a restorative process, shorn of the categories of victim and offender, retain a normative purpose of repudiating the culpable harm-causing actions and affirming the sufferer as one who was wrongfully injured?” Annalise Acorn, “Reclaiming a Restorative Understanding of the Victim–Offender Dichotomy,” *Restorative Justice* 5, no. 3 (2017): 473. I agree with Acorn that there does still need to be a way to clearly distinguish the roles played by each party in the incident discussed with an emphasis on accountability. That is why I have opted for the term “responsible party,” which still indicates clear accountability, but without the stigma of the “offender” label. Additionally, “responsible party” indicates a focus on the specific incident or crime being discussed and their role in that one event, rather than assigning a label to who they are as a person, as the label “offender” does.

I have not modified the use of the “victim” and “offender” labels when they appear in direct quotes and have also continued to use those terms when discussing matters related to the criminal court system.

¹⁷ Howard Zehr, *The Little Book of Restorative Justice, Revised and Updated* (New York: Good Books, 2015), 6.

¹⁸ *Ibid.*, 20-21.

¹⁹ *Ibid.*, 28.

Since the 1970s, restorative justice programs and practices have emerged around the world. These programs operate either within, as an alternative to, or alongside the conventional criminal justice system. Restorative justice has also been implemented in schools, workplaces, and other community organizations. The specifics of these programs vary, but central to most restorative processes is an encounter between the harmed party and the responsible party. Indeed, some theorists, like Van Ness and Strong, claim that without such encounter – whether direct or indirect – the process does not qualify as “restorative justice.”²⁰ During this encounter, the participants discuss the impacts of the wrongdoing and what needs to be done to repair the resulting harm, with a focus on righting the relationships as much as possible.

The rapid expansion of restorative justice is due in large part to its success in reducing the likelihood of re-offending and increasing victim satisfaction. Studies have found that responsible parties who participate in restorative justice commit statistically significantly fewer offences in subsequent years than responsible parties that did not go through a restorative justice process.²¹ This effect is seen across demographic variables including age, ethnicity, gender, and offence type.²² For harmed parties, those who took part in a restorative justice process express higher levels of satisfaction with the handling of their cases, are more likely to receive an apology from the responsible party and rate these apologies as sincere, are less inclined to want to seek revenge, and suffer less from post-traumatic stress symptoms.²³

In the New Zealand context specifically, a study conducted by the Ministry of Justice found that the reoffending rate for responsible parties who participated in restorative justice was 15 percent lower over the following 12-month period than

²⁰ Daniel Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (Waltham: Anderson Publishing, 2015), 81.

²¹ Joanna Shapland et al. "Does Restorative Justice Affect Reconviction?: The Fourth Report from the Evaluation of Three Schemes" (Ministry of Justice UK, 2008). Heather Strang et al. "Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects of Offender Recidivism and Victim Satisfaction. A Systematic Review" *Campbell Systematic Reviews* 12 (2013).

²² Shapland et al., "Does Restorative Justice Affect Reconviction?"

²³ Strang et al., "Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims."

comparable offenders and 7.5 percent lower over three years.²⁴ For Māori who participated in restorative justice, the reoffending rate was 16 percent lower over the following 12-month period than comparable Māori offenders and 6.9 percent lower over three years. There was an even greater impact on young responsible parties (aged 17 to 19) who participated in restorative justice with a reoffending rate 17 percent lower than comparable young offenders over the following 12-month period and 8.9 percent lower over three years. A high level of participant satisfaction has also been demonstrated in the New Zealand context. A 2016 study done by the Ministry of Justice found that 80 percent of harmed parties were satisfied with the restorative justice process, including the procedure before, during, and after the conference meeting.²⁵ Responsible parties also indicate a high level of satisfaction. A 2005 study of New Zealand court-referred restorative justice reported that 93 percent of responsible parties were satisfied with the restorative justice conference and felt that it was fair compared to 57 percent who were satisfied with the court process.²⁶

While the success of restorative justice has led to increasing support and an expansion of practice, defining restorative justice and its parameters has proven to be a challenge. The exact definition of restorative justice has been a source of great debate and remains contentious within the restorative justice field. Broadly speaking, two general conceptions of restorative justice have been put forth: a process conception and a values conception.²⁷

The process conception sees restorative justice as, “a process that brings together all stakeholders affected by some harm that has been done... These stakeholders meet in a circle to discuss how they have been affected by the harm and come to some agreement as to what should be done to right any wrongs suffered.”²⁸ Some scholars have

²⁴ Ministry of Justice New Zealand, "Reoffending Analysis for Restorative Justice Cases 2008-2013: Summary Results," <https://www.justice.govt.nz/assets/Documents/Publications/rj-Reoffending-Analysis-for-Restorative-Justice-Cases-2008-2013-Summary-Results.pdf>.

²⁵ Ministry of Justice, "Restorative Justice Victim Satisfaction Survey Research Report," (Wellington: Ministry of Justice, 2016).

²⁶ Sue Triggs, "New Zealand Court-Referred Restorative Justice Pilot: Evaluation," (Wellington: Ministry of Justice, 2005), 214-15.

²⁷ John Braithwaite and Heather Strang, "Introduction: Restorative Justice and Civil Society," in *Restorative Justice and Civil Society*, ed. John Braithwaite and Heather Strang (Cambridge: Cambridge University Press, 2001), 1.

²⁸ *Ibid.*

maintained that this process can take place in a range of contexts, including schools, workplaces, and other areas of civil society, while others see restorative justice strictly and solely as an alternative process for addressing crime. The most notable of these scholars is Kathleen Daly, who has asserted that restorative justice is a “justice mechanism.”

Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process – prearrest, diversion from court, presentence, and postsentence – as well as for offending or conflicts not reported to police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute or bounded conflict.²⁹

In her analysis, Daly seeks to strip away the values and philosophical claims to look only at the process, a process that can be empirically studied and compared to other justice mechanisms.³⁰

Proponents of the values conception argue that restorative justice represents a greater paradigm shift than that, a new way of thinking about our response to crime and conflict, with common principles and values as the unifying factor between different restorative justice modalities. Following that line of reasoning, Zehr has offered the following definition of restorative justice: “Restorative justice is an approach to achieving justice that involves, to the extent possible, those who have stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”³¹ Rather than defining restorative justice as a specific process or procedure, this conception sees restorative justice as better defined by the approach to justice the process takes and the principles and values underlying this approach.

Gerry Johnstone and Daniel Van Ness refer to this as the “reparative conception” of restorative justice. In this view, restorative justice is defined by its assertion that the

²⁹ Kathleen Daly, “What Is Restorative Justice? Fresh Answers to a Vexed Question,” *Victims & Offenders* (2015): 13.

³⁰ *Ibid.*, 14-15.

³¹ Zehr, *The Little Book of Restorative Justice*, 48.

response to crime or conflict must seek to repair the harms resulting from the incident or bring about healing.³² It is not solely the process or encounter, but rather this new way of understanding and approaching crime and conflict that is the defining feature of restorative justice.

Others take an even wider approach to the values definition of restorative justice, understanding it as a fundamentally different way of seeing the community as a whole, founded on common beliefs and a vision of a more ideal possible societal future. Johnstone and Van Ness refer to this definition of restorative justice as the “transformative conception.” In the transformative conception, humans are seen as fundamentally relational beings, connected to one another and to our environment.³³ It is the mission of the restorative movement to transform individuals and social structures to be in alignment with this more relational and connected worldview. Kay Pranis similarly identifies underlying beliefs or assumptions about the nature of the universe and its operation that she argues are at the base of restorative justice work. These beliefs include that there is a core human need to be in good relationships, that all humans are connected and interdependent, that wisdom resides in each person, and that justice is healing.³⁴ Johnstone asserts that, grounded in these beliefs, restorative justice operates as a wider social movement. This social movement seeks not only to transform the community’s response to crime, but also other aspects of contemporary society.³⁵

As will be demonstrated later, from the perspective of ritual theory, both the process and the values conceptions of restorative justice are important and mutually reinforcing. Braithwaite and Strang note, “It is best to see restorative justice as involving a commitment to both restorative processes and restorative values.”³⁶ Restorative justice cannot be understood solely as a process or a “justice mechanism;” the greater social aspirations and distinct value system the movement has birthed plainly indicate the need for a more expansive understanding. Nor can the restorative social movement be

³² Gerry Johnstone and Daniel Van Ness, "The Meaning of Restorative Justice," in *Handbook of Restorative Justice*, ed. Gerry Johnstone and Daniel Van Ness (Portland: Willan Publishing, 2007), 17.

³³ Ibid.

³⁴ Kay Pranis, "Restorative Values," *ibid.*, 65-66.

³⁵ Gerry Johnstone, "The Agendas of the Restorative Justice Movement," in *Restorative Justice: From Theory to Practice (Sociology of Crime, Law and Deviance, Volume 11)*, ed. Holly Ventura Miller (Bingley: Emerald Group Publishing Limited, 2008) 59.

³⁶ Braithwaite and Strang, "Introduction: Restorative Justice and Civil Society," 2.

adequately understood when separated from the processes by which the values are experienced.

Restorative Justice in New Zealand

The confusion that surrounds different conceptions of restorative justice is partly related to the different modalities by which restorative justice is delivered. In the New Zealand adult criminal justice system, for example, restorative justice is predominantly implemented at the pre-sentence stage of a court proceeding. The passage of the Sentencing Act 2002, Parole Act 2002, and the Victims' Rights Act 2002 provided statutory recognition of restorative justice in the criminal justice system. Together they encouraged the use of restorative justice whenever appropriate and required that participation in the restorative justice process be taken into account in the sentencing and parole of offenders.³⁷ A 2014 amendment to the Sentencing Act provided further support for the use of restorative justice by requiring that all cases that meet certain criteria be assessed prior to sentencing for whether restorative justice is appropriate.³⁸

To qualify for restorative justice, the responsible party must enter an admission of guilt, after which the court will refer the case to a restorative justice coordinator to determine whether it is a good fit for restorative justice to be explored further. In this process, there must be an identifiable harmed party who is interested and willing to participate and the entire process must take place before the responsible party's sentencing date in court. The New Zealand model of pre-sentence restorative justice will be the primary example used in this study. It is generally the most familiar model to the participants interviewed for this study, as will be discussed shortly.

Once a decision has been made about the suitability of the referral, the case is assigned to two restorative justice facilitators who contact the responsible party and harmed party and their support people to arrange times for initial enquiry meetings (typically called "pre-conferences"). During those meetings, the facilitators, who belong to one of over 30 community-based provider groups, explain the restorative justice

³⁷ Ministry of Justice New Zealand, "Restorative Justice Best Practice Framework," (Wellington: Justice Centre, 2017), 4.

³⁸ Ibid.

process in greater detail, hear the stories of all involved, assess whether adequate responsibility is being taken, and determine whether it is safe and beneficial to move forward with the restorative justice meeting.

Following the pre-conferences, if all the parties decide to proceed with the restorative justice conference, a time and place for the conference is arranged. Trained and certified facilitators coordinate the conference. They lead the parties in a discussion about the event, its impacts, and what mutually agreed actions should follow to help repair the harm and make things as right as possible.

Following the restorative justice conference, the facilitators write a brief report about the conference, which is submitted to the sentencing judge. This report is approximately two pages and includes a general account of what took place and the agreed outcomes. The judge is required to take this report into account when sentencing. It often results in a discounted sentence or, in some cases, a discharge without conviction. This blending of the restorative justice ritual with the court context and process is of particular interest to this study due to its focus on understanding the impact of ritual form and symbolism on function. The strengths and limitations of this blended approach will be explored in Chapter Five.

Why Restorative Justice and Ritual?

Like the criminal trial, restorative justice conferences are highly ritualized affairs. Trained facilitators manage the process, almost as ritual directors. It is a carefully managed and symbolically rich process. The participants meet in a designated space, apart from normal daily life, and usually sit in a circle, which is meant to symbolize the equality and connection of all present.³⁹ The facilitators then use verbal cues to signal to participants that they are moving into a distinct social space with a different mode of interaction. The procedure generally begins with a round of introductions (sometimes involving a *karakia*⁴⁰), agreement to ground rules, and an explanation of the process. The

³⁹ Kay Pranis, Barry Stuart, and Mark Wedge, *Peacemaking Circles: From Crime to Community* (St. Paul: Living Justice Press, 2003), 68.

⁴⁰ A *karakia* is a Māori blessing, “a set form of words to state or make effective a ritual activity” like a prayer or a chant, Moorfield, “Te Aka Māori-English”. Traditionally, a *karakia* is “offered so that the gods may intercede in the affairs of mortal men by providing comfort, guidance, direction, and blessings for

facilitators then ask questions designed to generate greater understanding and connection between those involved. At the end of the conference, the facilitator summarizes agreements achieved through the process and formally closes the conference, which begins the transition back into normal life and a normal way of interacting. Sometimes this may be followed by a less formal activity, such as sharing tea or food, that helps to mark the transition back into normal life.

In his seminal book, *Changing Lenses: A New Focus for Crime and Justice*, Zehr briefly mentions the centrality of ritual in the justice process. In a section titled “Justice Involves Rituals,” he writes:

Our legal system makes much of ritual. Indeed, trials are to a large extent ritual, drama, theatre. But we usually ignore the most important needs for ritual. One of these points of need is when an offense has occurred. This is where the ritual of lament, stated so eloquently in the Psalms, is appropriate.⁴¹

Zehr goes on to mention the need for rituals of closure after justice is done.⁴² Yet despite this perceptive observation, little has been written on the ritual dimension of restorative justice until quite recently. As scholars in the field have increasingly turned their attention from *whether* the restorative justice process works to heal harmed parties, transform responsible parties, and promote safe communities to *how* the process achieves these positive outcomes, the ritual structure of the restorative justice conference has become a significant area of inquiry. Some of the leading proponents of this new line of inquiry will be explored in Chapter Four.

There is also value in returning to the theological insights that helped birth the restorative justice process. Theological understandings served as the foundation for *Changing Lenses*, yet, in the years since it was published, mainstream criminological theory and research has largely used secular language to discuss the process and outcomes. Christopher Marshall has argued that engaging with the spiritual side of

them in their various activities and pursuits.” Cleve Barlow, *Tikanga Whakaaro: Key Concepts in Māori Culture* (Auckland: Oxford University Press, 1991), 37.

⁴¹ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale: Herald Press, 1990), 208.

⁴² Ibid.

justice-making will aid in understanding and protecting the transformative impact of the process. He explains,

Some observers have noted that as restorative justice has moved into the mainstream of criminological theory, the language of repentance, forgiveness, grace, reconciliation, mercy, peace and love, peppered throughout *Changing lenses*, has become increasingly rare, partly because of the difficulties of transposing such virtues into public policy. Yet it is these qualities and commitments that contribute to the oft-called “magic” of restorative justice, without which it risks being reduced to just another programme or procedure for crime control. This magic is easier to understand and sustain if we consciously give place to the spirituality of justice-making, as *Changing lenses* does, and to the capacity of religious and indigenous traditions to illuminate and energise such spirituality.⁴³

In undertaking an application of a theoretical understanding of ritual to restorative justice, this thesis aims in part to harness the possibility of spiritual frameworks to enrich our understanding of the restorative justice process.

Even when separated entirely from religious or spiritual contexts, ritual is still key to understanding how humans perform important social functions and mark an event or occurrence as somehow special or out of the ordinary.⁴⁴ Human life is saturated in rituals. They are an essential part of how human societies function.⁴⁵ As Geertz notes, “The drive to make sense out of experience, to give it form and order, is evidently as real and pressing as the more familiar biological needs.”⁴⁶ We seem to have an innate need to ritualize life events; it is an “essential emotional and social component of human life.”⁴⁷

This need to make symbolic meaning is particularly pronounced with respect to social categories that are supremely important, but often unclear, such as goodness, duty, love, peace, and justice.⁴⁸ Recently, scholars have increasingly argued for the importance

⁴³ Christopher Marshall, "A Gracious Legacy: Changing Lenses in New Zealand," *Restorative Justice* 3, no. 3 (2015): 444.

⁴⁴ Jeltje Gordon-Lennox, *Crafting Secular Ritual: A Practical Guide* (London: Jessica Kingsley Publishers, 2016), 23. Ellen Dissanayake, "The Art of Ritual and the Ritual of Art," in *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, ed. Jeltje Gordon-Lennox (London: Jessica Kingsley Publishers, 2017), 24.

⁴⁵ Matthieu Smyth, "Human Rituals and Ethology: A Scholar's Journey," *ibid.*, 40.

⁴⁶ Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (London: Fontana, 1993), 140.

⁴⁷ Jeltje Gordon-Lennox, "Introduction: Opening the Conversation," in *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, ed. Jeltje Gordon-Lennox (London: Jessica Kingsley Publishers, 2017), 14-15.

⁴⁸ Anthony P. Cohen, *The Symbolic Construction of Community* (London: Routledge, 1989), 15.

of secular rituals in improving the lives of those who do not belong to a specific religious tradition. Jelte Gordon-Lennox notes, "I have seen the power of authentic forms of secular ritual reveal people's profound values and enhance their lives, making them feel happier, stronger and more connected to each other."⁴⁹

Beyond this general, innate human need for ritual, ritual is particularly important in the wake of significant harm, including the harm caused by crime. Rituals are instrumental in communicating beliefs and values, and therefore form the likely response to behaviors that violates those values, such as crime.⁵⁰ Rituals employ symbolic action to achieve real social change.⁵¹ In a criminal trial, for example, a person may undergo a social change from a law-abiding citizen to a criminal, despite being the same person in all physical respects. By contrast, a relationship marked by enmity may be disposed towards reconciliation after a restorative justice encounter.

Ritual may also play a key role in healing the trauma experienced by the harmed party, family and friends, and, in many cases, the responsible party. In his examination of the neurobiological impact of ritual, Robert Scaer has argued that ritual may actually be essential in the resolution and healing of trauma.⁵² Chapter Four will discuss more fully the healing impact of the restorative justice ritual for participants. Ritual may also facilitate personal transformation following a wrongdoing. Michael Picucci argues that ritual is an important human technology that is uniquely suited for personal transformation.⁵³ This transformative impact of ritual will also be a major topic of Chapter Four.

Like all rituals, the criminal trial and restorative justice each employ symbolic actions to generate real social change, navigating or creating meaning in the contested

⁴⁹ Jeltje Gordon-Lennox, "Introduction: Opening the Conversation," 12.

⁵⁰ Daniela Bolivar, Ivo Aertsen, and Inge Vanfraechem, "The Ritual of Apology and Restorative Justice: Exploring the Victim's Perspective," in *Public Apology between Ritual and Regret: Symbolic Excuses on False Pretenses or True Reconciliation out of Sincere Regret?*, ed. Barbara Segaert (New York: Editions Rodopi, 2013), 124.

⁵¹ Jack Santino, "The Carnavalesque and the Ritualesque," *The Journal of American Folklore* 124, no. 491 (2011): 63.

⁵² Robert Scaer, "The Neurophysiology of Ritual and Trauma: Cultural Implications," in *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, ed. Jeltje Gordon-Lennox (London: Jessica Kingsley Publishers, 2017).

⁵³ Michael Picucci, "Ritual as Resource: Health and Transformation in the Twenty-First Century," *ibid.*

terrain of justice making. Judith Leest argues that the emergence of mediation and restorative justice processes in the criminal justice system demonstrates the demand for new, contemporary rituals in the criminal justice sphere that can contribute to the social legitimacy of justice itself.⁵⁴ By viewing restorative justice as a ritual, we can attain a deeper theoretical analysis of the social functions achieved through this alternative process of doing justice.

Resistance to the Identification of Restorative Justice as a Ritual

Some observers may experience an aversion or resistance to talking about restorative justice as a ritual. This antipathy was evident in some of the interviews I completed with restorative justice facilitators. There was an apparent concern that using the conceptual framework or language of ritual would somehow delegitimize the restorative justice process or alienate participants. As one facilitator explained,

I think New Zealanders are a bit uneasy about that explicit ritual. There is a bit of me that is unsure if too much travel in that direction is going to help the reputation of restorative justice. It will work in some circumstances, but I think we need to proceed with caution. To me, the things that really matter are the restorative justice principles and the process wrapped around those principles. If there is an awkwardness through ritual or totems or through whatever, I would want to be careful about that if it is going to get in the way of extending the process to other settings. We have to be careful to not stretch New Zealanders' comfort... If we put too much kind of ritual specific to restorative justice people might start feeling like this is a bit weird, hippie, like this is our thing, not theirs. We have to be careful that people aren't feeling like they are entering a world that isn't their own (Facilitator 2).

Here there is clear resistance to the "ritual" language, stemming from a concern that it may alienate people who are uncomfortable with what the terminology may imply. While this is an understandable concern with regards to advancing public support for restorative justice, the conceptual richness of ritual theory still allows for a better understanding to emerge of the social functions fulfilled by restorative justice. It is also consistent with the well-established tradition of analyzing and evaluating justice processes as distinct rituals, particularly in relation to the performance of the criminal trial.⁵⁵

⁵⁴ Judith Leest, "A Deliberative Ritual: Mediating between the Criminal Justice System and the Lifeworld" (PhD diss., Utrecht University, 2007).

⁵⁵ Paul Rock, "Rules, Boundaries and the Courts: Some Problems in the Neo-Durkheimian Sociology of Deviance," *British Journal of Sociology* 49, no. 4 (1998): 588.

A reluctance to view the restorative justice process as a ritual arguably stems from the identification of ritual with religion, and from a particularly modernist and Western worldview that compartmentalizes and denigrates religious insight, seeing it as inferior to rational, scientific inquiry.⁵⁶ The modern era, stemming from the 18th century Enlightenment, has been characterized above all by the diminishing influence of religious ideas on the political and intellectual spheres.⁵⁷ Given this environment, it is perhaps no surprise that the term “ritual” and an understanding of the ritual experience are often viewed with suspicion, as a remnant bequeathed from religious thought and holding no place in serious intellectual inquiry.

But the environment has changed again in the postmodern era. In his book, *The Passion of the Western Mind*, Richard Tarnas traces the history of Western thought from Socrates and Plato through to the postmodern era. He notes that towards the end of the modern era, as the limitations of the scientific method became apparent, Western scholars moved from confidence in their capacity for certain knowledge, mastery over nature, and social progress to a state of uncertainty and insecurity.⁵⁸ What emerged was the postmodern conviction that “all human understanding is interpretation, and no interpretation is final.”⁵⁹ This awareness of the limited validity of any single authoritative interpretation brought with it the possibility of a new intellectual vision that could transcend the division between the “religious” and the “scientific.” As Tarnas notes,

No perspective — religious, scientific, or philosophical — has the upper hand, yet that situation has encouraged an almost unprecedented intellectual flexibility and cross-fertilization, reflected in the widespread call for, and practice of, open “conversation” between different understandings, different vocabularies, different cultural paradigms.⁶⁰

Similarly, Jürgen Habermas has identified the present moment in post-secular terms, referring to the diminishing validity of modernist ideas. Instead of separation, a dialogue between faith and reason is now seen as productive, possibly necessary. As Habermas

⁵⁶ Richard Tarnas, *The Passion of the Western Mind: Understanding the Ideas That Have Shaped Our World View* (London: Pimlico, 1996), 302.

⁵⁷ *Ibid.*, 314.

⁵⁸ *Ibid.*, 393-94.

⁵⁹ *Ibid.*, 397.

⁶⁰ *Ibid.*, 402.

explains, post-secular society involves “the assimilation and the reflexive transformation of both religious and secular mentalities.”⁶¹ Ritual analysis is one line of inquiry that is receiving renewed interest in this post-secular age, and it is not limited to religious settings.⁶² The classification of restorative justice as a ritual and the examination of the process through the lens of ritual theory aligns with the postmodern and post-secular emphasis on cross-fertilization between different disciplines, vocabularies, and understandings.

Researching Restoratively: Approach and Rationale

In undertaking this study, I have endeavored to align my research approach and theoretical analysis with restorative values and principles. As Zehr and Toews note, research, like the restorative justice process itself, is about the creation of meaning.⁶³ Just as the criminal justice system often serves to reinforce dominant ideologies and hegemonic narratives, traditional research runs a similar risk.⁶⁴ In order to contend with this risk, Zehr and Toews outline guidelines for what they call “transformative inquiry,” a mode of research that aligns with a restorative ethos. Throughout this study, I have followed these guidelines to the best of my ability.

Central to transformative inquiry is the notion of *researcher as learner, working in collaboration with research participants*. In order to research restoratively, it is necessary to move away from the notion of the researcher as a distant, unaffected expert, examining the topic and the people involved in a detached way. Instead, research participants should be invited into relationship and dialogue with the researcher in recognition of the way that meaning is co-constructed.⁶⁵ The researcher’s role is to

⁶¹ Joseph Ratzinger and Jürgen Habermas, *Dialectics of Secularization: On Reason and Religion* (San Francisco: Ignatius Press, 2006), 46-47.

⁶² For example, Jonathan Haidt’s *The Righteous Mind: Why Good People are Divided by Politics and Religion*, refers to the emergence of collective effervescence, which often takes place in ritual, as the “hive switch” and considers its applicability for nurturing healthy communities and implications for public policy. Haidt’s theory will be further discussed in Chapter Two, Jonathan Haidt, *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (New York: Pantheon Books, 2012). Jonathan Haidt, J. Patrick Seder, and Selin Kesebir, “Hive Psychology, Happiness, and Public Policy,” *The Journal of Legal Studies* 37, no. S2 (2008).

⁶³ Barb Toews and Howard Zehr, “Ways of Knowing for a Restorative Worldview,” in *Restorative Justice in Context: International Practice and Directions*, ed. Elmar Weitekamp and Hans-Jurgen Kerner (Portland: Willan Publishing, 2003), 266.

⁶⁴ *Ibid.*, 269.

⁶⁵ *Ibid.*, 267.

facilitate a process in which participants present themselves in their own voice, co-creating meaning rather than independently interpreting participants' experiences.⁶⁶ To this end, I have chosen to incorporate findings from interviews with facilitators and participants, so as to include the voices and viewpoints of those experiencing the process.

I completed 21 interviews with 17 facilitators and four participants. In order to recruit facilitator interviewees, I visited Wellington Community Law, the restorative justice provider group in Wellington, and gave a brief presentation on my research topic and main research questions. I gathered contact information from those interested in being interviewed and set up individual times to talk. The majority of the facilitators I interviewed were most familiar with the pre-sentence New Zealand restorative justice process, but several had facilitated in multiple contexts (both within the criminal justice system and beyond) and several in multiple countries. Four of the facilitators I spoke with were from a program in Colorado that offers restorative justice as a diversion program for both youth and adult responsible parties. These facilitators were recruited through my own professional network and offered an interesting point of comparison in their descriptions of a restorative justice process being used as a full diversion, rather than in the pre-sentence space. The four participants I interviewed were also recruited through Wellington Community Law. The agency provided me with a short list of recent participants who had indicated on their feedback form following the restorative justice conference that they would be willing to be interviewed about their experience.

At the point of undertaking these interviews, I had already developed the theoretical framework of the three ritual functions related to justice-making put forth in this thesis, though it was still in its infancy. Interviewing facilitators and participants allowed me to explore and test the applicability of the theoretical model with facilitators. It also provided me with real-world stories and specifics about the practice of restorative justice that are not available in the literature alone, but which help to ground my theoretical model and make the insights of this study more usable and accessible. These interviews were conducted in a semi-structured manner, allowing the participants to take the conversation where they wanted it to go and to highlight what they see as most

⁶⁶ Ibid.

important in the process. I was completely transparent about my larger research questions, asking for their big picture opinions and views. In reviewing interview transcripts, I looked for insights from practice that would deepen and provide real-world applications for the theory that had been developed through engaging with the literature. The interviews I conducted with facilitators and participants did not change the basic structure of my theoretical model. They did lead to refinements, however, and greatly influenced the development of my own thinking on the subject of this study. Their voices are interwoven throughout this thesis.

The incorporation of the voices of facilitators and participants is particularly important in the field of restorative justice. The restorative justice movement has largely been a participant- and practitioner-led movement. As Kay Pranis and Carolyn Boyes-Watson note,

The vision, values, and practices of the modern restorative justice movement have emerged from efforts by victims, offenders and those working with them to develop alternate ways to achieve a sense of justice, peace, and personal transformation in the aftermath of crime. Scholarship on the theory and empirical research on the effectiveness of practices by academics has followed in the footsteps of these developments. Social science methods can help assess the impact of these interventions and refine the theory and methods to support and promote them. But these innovations do not tend to emerge solely from within the academy.⁶⁷

If we only rely on the voices of academic experts, we sacrifice the immense wisdom and insight held by those who are regularly engaged in the restorative justice ritual and are at the frontline of innovation.

In recognition that I am not an objective and unaffected researcher, it is appropriate to share a bit about my background and context in the restorative justice field to show how my own experiences have undoubtedly shaped this study. I am a white, cisgender woman, originally from Colorado, undertaking this research while living in Wellington, New Zealand. I have a background as a restorative justice facilitator. I have been continually involved in facilitating restorative justice processes for six years, both in Colorado and in Wellington, including during the time that I was undertaking this

⁶⁷ Carolyn Boyes-Watson and Kay Pranis, "Science Cannot Fix This: The Limitations of Evidence-Based Practice," *Contemporary Justice Review* 15, no. 3 (2012): 269-70.

research. My experience as a practitioner has deepened my understanding of restorative justice and has fueled my motivation to make the insights of this study relevant to the facilitator community in the pursuit of not just understanding, but also improving practice.

This personal conviction is in alignment with another guideline of transformative inquiry, that *research should go beyond the pure quest for knowledge and should instead aim to support social action and return the knowledge to the research participants in a way that benefits them*.⁶⁸ To this end, I have at points suggested modifications or safeguards to real-world practice in light of the insights developed through this study. This is an attempt to make this study of greater benefit to the practitioners who have generously given their time and voices.

A further guideline of transformative inquiry that has guided this study is the *humble acceptance that all findings are complex and limited*. There are multiple “truths” and each of those truths can only be partial and contextual.⁶⁹ In restorative justice, we see that the best outcomes come from the amalgamation of multiple “truths.” Therefore, whereas a more traditional research endeavor would select, for example, one theoretical understanding of ritual and argue for the “truth” of that model above all others, in this study I have instead attempted to develop a synthetic analytical framework that draws on the insights from a range of theoretical frameworks. Animating this notion is the idea that each theory carries a component of truth within its own context or parameters, but that greater understanding can often be reached through bringing together several different theoretical truths. In doing this, I recognize that even the synthetic theory and understanding of restorative justice developed in this study will still only be limited and partial. However, I hope that the interdisciplinary nature of the methodology will offer a helpful new way of understanding the restorative justice process through the ritual lens and will achieve alignment with restorative values and processes.

⁶⁸ Toews and Zehr, "Ways of Knowing for a Restorative Worldview," 266-67.

⁶⁹ Ibid., 267.

Thesis Overview

Following this Introduction, Chapter Two examines the definition of ritual that this study will engage with and identifies three main functions of rituals in society that relate to the pursuit of justice: the normative, the transformative, and the proleptic. Each of these functions is elaborated in turn, drawing on relevant theorists from a range of social sciences.

Chapter Three examines the ritual of the standard criminal trial, demonstrating how it fulfills a largely normative function for wider society. That is to say, it responds to societal concerns for predictability and trustworthiness, it establishes and reaffirms social values, and it maintains social stability and cohesion. It does not, however, generally facilitate a transformative function for its participants. Several aspects of the process that contribute to its normative effectiveness – such as its formality, hierarchical character, and emphasis on civility – may actually detract from its ability to invoke personal or relational transformation in a positive direction. Furthermore, the criminal trial actively eschews a proleptic end by relinquishing positive societal transformation as a goal of the process. The emphasis on preserving social order and correct procedure above all else can, at worst, result in this ritual perpetuating or causing further harm and injustice in wider society.

Chapter Four examines the transformative capacity of the restorative justice ritual and endeavors to understand how that transformation is achieved. While there is widespread agreement that a significant personal and relational transformation often takes place during the process, restorative practitioners and researchers are still looking for how to best explain and evaluate it. This chapter demonstrates the effectiveness of ritual language and theory in understanding and articulating the transformative function of restorative justice. Specifically, it applies a synthesis of the insights of Turner and Durkheim to the restorative justice process in order to demonstrate the effectiveness of the transformative ritual framework in understanding and describing the oft-cited “magic” of the process.

Chapter Five examines the normative function of the restorative justice ritual, both for participants in the process and for the wider public. It argues that for the participants in a restorative justice conference, the ritual does indeed have a normative

function, which is accomplished in part through its transformative impact. It then considers the criticisms made of restorative justice's limited normative capacity for the wider public and the alternative mechanisms that have been suggested to remedy the issue. It concludes with suggestions for enhancing the normative impact of the restorative justice ritual for the wider public.

Chapter Six examines the proleptic function of the restorative justice ritual and considers another prominent critique of restorative justice, namely, that the process focuses on making amends at an interpersonal level, but fails to address larger, structural injustices that are the driving forces behind criminal activity. This chapter challenges this criticism through an examination of the recent expansion of restorative justice thinking and application. From its earliest efforts at criminal justice reform, restorative justice has grown into a wider social justice movement fueled, in part, by the proleptic ritual experience of the restorative justice conference itself. Viewed in light of its proleptic function, restorative justice ritual can be seen as subverting established hegemonies in criminal justice by providing an experience of a more desirable form of societal justice. The revelation of *communitas*/collective effervescence in the restorative justice process creates a "restorative society in miniature" and participants often emerge with a desire to experience that connection and way of being again *and* to extend it to others through working for social change.

Chapter Seven summarizes the preceding chapters and elaborates on the contribution made by this thesis to the academic understanding of restorative justice. It further considers the implications of a greater understanding of the transformative, normative, and proleptic functions of the restorative justice ritual for best practice.

Chapter 2:

The Nature and Function of Ritual

Rituals are present in all known human societies and appear to be central to human social life. As Stanley Tambiah notes, “Human beings anywhere and everywhere commonly structure certain events which they consider important in a similar way, events which we can recognize as *ritual*.”¹ Scholars in a wide range of disciplines, including religious studies, anthropology, sociology, psychology, performing arts, and more, have examined the question of what rituals are and how they operate. Many definitions of ritual exist, but the one that is particularly appropriate for this study is articulated most clearly by Jonathan Z. Smith who argues, “Ritual is, above all, an assertion of difference.”² Smith asserts that ritual signals significance by marking a certain social activity, place, or time as deserving of our interest, attention, and respect.³

Ritual creates a social space that is extraordinary, that is set apart as essentially different from normal life.⁴ That space is made different by symbolic acts and spatial configurations and by bringing people together for a deliberate social activity. Not every deliberate social activity ought to be considered a ritual; there are distinct features of ritualization. As Barry Stephenson notes, ordinary actions are made special in several ways in rituals, including “through stylization and formalization; by repeating an action; by performing acts in a set-aside space; by endowing acts with symbolic meaning, say, linking them to tradition, ancestors, and narratives.”⁵ For example, the Christian ritual of the Eucharist employs the ordinary acts of eating bread and drinking wine, but these acts are made extraordinary, or their difference is asserted, through endowing those acts with a symbolic meaning, repeating them, and generally performing them in a set-aside space. This ritualization takes place upon a continuum. As Ronald Grimes notes, “Events cannot

¹ Stanley Jeyaraja Tambiah, *A Performative Approach to Ritual* (Oxford: Oxford University Press, 1979), 115-16.

² Jonathan Z. Smith, *To Take Place: Toward Theory in Ritual* (Chicago: University of Chicago Press, 1987), 109.

³ *Ibid.*, 103-08.

⁴ Lisa Schirch, *Ritual and Symbol in Peacebuilding* (Boulder: Kumarian Press, 2005), 68.

⁵ Barry Stephenson, “Ritualization and Ritual Invention,” in *The Oxford Handbook of Early Christian Ritual*, ed. Risto Uro, et al. (Oxford: Oxford University Press, 2019), 33.

be usefully understood using only two options: ‘ritual’ or ‘not ritual.’ Rather, actions display *degrees* of ritualization... there is a continuum, and events are more or less ritualized, depending on the qualities that appear in them.”⁶ Rituals generally fulfill important social functions, but those functions often are not immediately apparent at first glance. Rituals have a mysterious nature, and their meanings and outcomes are not always instantly discernible from the simple actions they contain.

An understanding of ritual is especially important to undertaking peace-building work, including restorative justice. As Lisa Schirch notes,

Peacebuilders face a continual challenge to find ways to break through the perceptual defense mechanisms all people use to bring order and meaning to their experiences. It is challenging to help people see each other and their conflict in new ways because the process of perception works against change and seeks to reconfirm old ideas or old ways of seeing and naming the world. If the old ideas or ways of thinking happen to be the dehumanizing of some “other,” then there will be great resistance to seeing the “other” as human... *Ritual and other symbolic acts afford people the safety to explore new information and new experiences that may penetrate the perceptual defenses resistant to new, more peaceful worldviews.*⁷

The use of ritual in peace work creates a space for participants to see each other as human and to experience different ways of relating to each other and communicating. Rituals not only help to facilitate peace-building, they are in themselves an act of peace-making precisely by penetrating “perceptual defenses” and through inducting people into a more peaceable way of being. Considering the advantages of the use of ritual in other areas of peace-building, it makes sense that the restorative justice process has developed distinct ritual characteristics that deserve further inquiry.

Within and beyond their usefulness in peace-building processes, rituals fulfill varying social functions that are elaborated in the extensive literature on the topic. Each interpretation offers valuable insights into the multifaceted way rituals interact with and influence human behavior. To undertake a thorough analysis of the ritualistic features of the criminal trial and restorative justice conferencing, this project will draw on the theories of ritual that have been developed in a range of social sciences. What follows is a

⁶ Ronald Grimes, *The Craft of Ritual Studies* (New York: Oxford University Press, 2014), 193.

⁷ Schirch, *Ritual and Symbol in Peacebuilding*, 42. (Italics mine)

review of theoretical concepts that attempt to make sense of the social functions of ritual, with a particular focus on those concepts most pertinent to the pursuit of justice. Given that the primary focus of this study is on understanding the various social functions of justice rituals, I have chosen to not limit the analysis to only one theory of ritual. Rather, I will seek to glean insights from a range of different theories in order to better understand the multifaceted way justice is performed, whether in the criminal trial or in restorative justice.

Explanations of the various social functions of rituals fall into three main categories, which I will call the normative, the transformative, and the proleptic. I have established this threefold typology as the analytical framework through which to examine justice rituals. It should be clear that while this typology emerges from scholarly discussion on rituals, it is in some ways an artificial construct. Specific rituals may fulfill one, two, or all three functions at the same time. Successful rituals, at least in regards to justice concerns, will contain elements of all three social functions and the boundaries between these functions will not always be clear cut. The explanatory power of any typology depends on how well it illuminates the range of theoretical contributions on a topic, to which we now turn.

Normative Function of Rituals

Rituals often fulfill a normative function in society, providing participants with a sense of order and purposefulness, and establishing how things ought to be. Rituals are commonly observed in response to societal concerns; they establish and reaffirm social values, maintain stability and cohesion, and imbue actions with legitimacy and authority. They are, in other words, intentional structures that help to regulate human activity and responses to particular events. I have chosen to use the word “normative” to describe this ritual function because it is concerned with establishing and upholding shared norms of behavior and social order.

In *The Elementary Forms of the Religious Life*, Émile Durkheim identifies the complex collective system we call “society” as the source of ritual practices.⁸ The content

⁸ Émile Durkheim, *The Elementary Forms of the Religious Life* (London: George Allen & Unwin Ltd, 1915), 47.

and character of rituals respond to the social context and social needs in which they arise.⁹ In the context of the aftermath of crime, for example, there arises a need for safety, security, and predictability. The community feels a need for assurance that the unwelcome intrusion of criminal behavior is being handled and not ignored, and that normal social order will soon return. This creates a demand for a predictable and trustworthy ritual response to criminal activity that can fulfill these needs.

Tom Driver identifies three “social gifts” imparted by rituals,¹⁰ the first of which is the establishment and maintenance of social order.¹¹ Ritual establishes order, maintains it, and restores it after it is breached.¹² Richard Schechner likens rituals to bridges, carrying people across the dangerous waters of uncertain social interactions. “In both animals and humans, rituals arise or are devised around disruptive, turbulent, and ambivalent interactions where faulty communication can lead to violent or even fatal encounters.”¹³ Justice rituals are implemented in the midst of the uncertainty and fear resulting from the aftermath of a crime. In the turbulence that follows a crime being committed, rituals are swiftly implemented in order to give a sense of direction, order and to guide future human interactions.

The physiological impact of such rituals should not be underestimated. Extending the description of rituals as a response to turbulent interactions or crises, Schechner states,

But human ritual, too, might be said to short-circuit thinking, providing ready-made answers to deal with crisis. Individuals and collective anxieties are relieved by rituals whose qualities of repetition, rhythmicity, exaggeration, condensation, and simplification stimulate the brain into releasing endorphins directly into the bloodstream, yielding ritual’s second benefit, a relief from pain, a surfeit of pleasure. In saying that religion was the opium of the people, Marx may have been right biochemically speaking.¹⁴

⁹ Ibid., 4.

¹⁰ The remaining two social gifts are community and transformation.

¹¹ Tom Driver, *Liberating Rights: Understanding the Transformative Power of Ritual* (Boulder: Westview Press, 1998), 131.

¹² Ibid., 137.

¹³ Richard Schechner, *The Future of Ritual: Writings on Culture and Performance* (London: Routledge, 1993), 230.

¹⁴ Ibid., 233.

In a post-crisis situation, ritual provides relief through its order, repetition, and relative simplicity. However, the need for order satisfied by rituals presents a problem when the ritual itself becomes harmful. Driver notes, “Ritual order is a blazed trail. It is a people's friend inasmuch as they (we) need to know a path to follow. There may be something wrong about a particular path, even though it is well trodden, in which case the rituals themselves are in need of transformation.”¹⁵ Driver gives the example of Jewish ritual law assigning an inferior status to women, which may have once provided a sense of order reflective of the Jewish community's worldview, but has not always been experienced as a liberative order for women themselves.

The same might be said of the rituals that make up the criminal justice system. They restore social order following a crime, but some rituals, like the criminal trial, may themselves in the process serve to stigmatize or otherwise harm those party to them. These rituals are now synonymous with the maintenance and authority of the social order, making them extremely resistant to change. Ritual, therefore, may perpetuate the status quo in society, and not always for the better.¹⁶

Ritual also establishes and reaffirms social values through creating a space for the repeated enactment of a group's culture, values, and identity.¹⁷ This can be especially crucial following an incident of wrongdoing in the community. When a crime is committed, social values are challenged, and the community has a need for those values to be reaffirmed and upheld. One of the ways a group reaffirms social values is through the denunciation of the wrongful action by the court and the assignment of punishment. The verdict clarifies and upholds the social value that has been violated and the punishment expresses the outrage a community feels when a person violates the values of the society.¹⁸ In this way, the ritual of the trial reaffirms core social values, though, as we will see, it is not the only justice ritual that can fulfill this function.

¹⁵ Driver, *Liberating Rights*, 140.

¹⁶ Schirch, *Ritual and Symbol in Peacebuilding*, 23.

¹⁷ *Ibid.*, 100.

¹⁸ Émile Durkheim, *The Division of Labor in Society* (London: Macmillan Education, 1989 (1893)), 52.

Albert Bergesen also notes ritual's ability to establish collective social values. He describes ritual as a social mechanism that unifies individual sentiments and transforms them into a distinctive collective reality or collective sentiment.¹⁹ When individuals are assembled in ritual, their individual sentiments are concentrated and become a distinctive shared reality or shared sentiment. The collective sentiment in turn acts back upon the individual, strengthening and affirming his or her individual sentiment as a portion of the assembled whole.²⁰ Through this mechanism, the individual's values are aligned with the collective values established through the ritual.

These collective values indicate how members of a community are *supposed* to behave. As Roy Rappaport notes, "It is a primary function of liturgical performances to establish conventional understandings, rules and norms in accordance with which everyday behaviour is supposed to proceed, not to control that behaviour directly."²¹ Though a community may subscribe to these social values, individual members will not always behave accordingly. When that occurs, ritual provides criteria by which the event may be judged. "We judge the state of affairs by the degree to which it conforms to the stipulations of the performative ritual."²² To the extent that a person's actions do not align with the collective values established through community rituals, a responsive or corrective ritual will be deemed necessary in order to reaffirm those collective values.

By pulling people away from their daily individual routines and immersing them in a designated context that elicits societal concerns, ritual promotes social cohesion. Common beliefs, traditions, and collective ideas are foremost in peoples' minds, influencing their conduct.²³ The preoccupations of everyday life are put aside in favor of the concerns facing the group.

Rituals are also characterized by a legitimacy that contributes to their normative impact. Rapport argues that the formality of ritual bolsters this legitimacy. The formality of ritual makes the "performatives" (words and actions that are declared to be true) that

¹⁹ Albert J. Bergesen, "The Ritual Order," *Humboldt Journal of Social Relations* 25, no. 1 (1999): 161.

²⁰ *Ibid.*, 158.

²¹ Roy Rappaport, "Obvious Aspects of Ritual," *Cambridge Anthropology* 2, no. 1 (1974): 35.

²² *Ibid.*, 39-40.

²³ Durkheim, *The Elementary Forms of the Religious Life*, 348.

rituals incorporate seem legitimate, explicit and weighty.²⁴ When something is stated through ritual, it holds more weight than when it is said outside of ritual. For example, if during the ritual of a criminal trial, the jury determines that a law was violated, this performative statement holds more weight because of its situation within the ritual.

Sally Moore and Barbara Myerhoff have applied this understanding of the normative function of ritual to secular rituals. "Ceremony and ritual are used in the secular affairs of modern life to lend authority and legitimacy to the positions of particular persons, organizations, occasions, moral values, view of the world, and the like."²⁵ They argue that specific properties of ritual aid this legitimizing function. These properties include repetition, special behavior or stylization, order, and an evocative presentation style. Through these properties, rituals imply permanence and legitimacy and convey a message in a way that authenticates it.²⁶

Interestingly, rituals are most often used to legitimize a process when there is doubt about the correct way to proceed.

Since ritual is a good form for conveying a message as if it were unquestionable, it often is used to communicate those very things which are most in doubt. Thus, where there is conflict, or danger, or political opposition, where there is made-upness and cultural invention, ritual may carry the opposite message in form as well as content.²⁷

This dynamic is clear during the aftermath of a crime and the accompanying insecurity and fear. The ritual structure of a criminal trial legitimizes itself as a response and may conceal doubts about the best way to proceed following an incident of harm.

After a crime occurs, justice rituals provide an ordering and legitimating response to the community's need for security and certainty. They bring members of a social group together and promote social cohesion through reaffirming the group's status as a moral community and upholding the shared values that have been violated. In this way, ritual

²⁴ Rappaport, "Obvious Aspects of Ritual," 28.

²⁵ Sally Moore and Barbara Myerhoff, "Secular Ritual: Forms and Meanings," in *Secular Ritual*, ed. Sally Moore and Barbara Myerhoff (Amsterdam: Van Gorcum, 1977), 3-4.

²⁶ *Ibid.*, 7-8.

²⁷ *Ibid.*, 24.

fulfills a normative function through communicating order and meaning to the social group.

Transformative Function of Rituals

Less visible is the capacity of ritual to create a space for personal and relational transformation. The properties of ritual activity allow participants to be brought together in a new way, apart from the limitations of normal life, and to facilitate a deeper connection that can create a change in opinion and behavior.

In *The Ritual Process*, Victor Turner identifies the common ritual properties of “liminality” and “communitas,” which are central to an understanding of ritual as a transformational space. Liminality is an ambiguous space created by ritual that is subversive of normal social order. It is characterized by radical equality as ritual participants go through a “limbo of statuslessness” where rules and roles are suspended.²⁸ Turner outlines the difference between the properties of liminality and those of the normal status system through a series of binary oppositions or discriminations, including transition/state, equality/inequality, unselfishness/selfishness, acceptance of pain and suffering/avoidance of pain and suffering, and heteronomy/degrees of autonomy.²⁹

Communitas emerges out of this liminal state. Communitas is the revelation that all people are connected in one equal, undifferentiated community.³⁰ It is a state of equality and common humanity transcending normal social distinctions, roles, and hierarchies and capable of transforming ritual participants. In emphasizing the depth of the impact of this transformation, Turner explains,

This kind of communitas desired by tribesmen in their rites and by hippies in their “happenings” is not the pleasurable and effortless comradeship that can arise between friends, coworkers, or professional colleagues any day. What they seek is a transformative experience that goes to the root of each person’s being and finds in that root something profoundly communal and shared.³¹

²⁸ Victor Turner, *The Ritual Process: Structure and Anti-Structure* (Chicago: Aldine Publishing Company, 1969), 97.

²⁹ Ibid., 106-07.

³⁰ Ibid., 95-97.

³¹ Ibid., 138.

The emergence of *communitas* in liminality is a powerful revelation and carries with it a moral imperative. When *communitas* emerges, the resulting sentiment is human kindness. This is because the recognition of this deep connection leads to endorsement by the ritual group of behaviors that express interconnectedness.

The pedagogics of liminality, therefore, represent a condemnation of two kinds of separation from the generic bond of *communitas*. The first kind is to act only in terms of the rights conferred on one by the incumbency of office in the social structure. The second is to follow one's psychobiological urges at the expense of one's fellows. A mystical character is assigned to the sentiment of human kindness in most types of liminality.³²

The emergence of liminality and *communitas* in ritual has a genuine transformational effect on the will of ritual participants towards human kindness. "The notion that there is a generic bond between men, and its related sentiment of 'human kindness,' are not epiphenomena of some kind of herd instinct but are products of men in their wholeness wholly attending."³³

This assertion of a transformation of will towards human kindness is backed by empirical evidence from a study undertaken by Ronald Fischer, Rohan Callander, Paul Reddish, and Joseph Bulbulia. This study looked at the impact of nine different collective rituals on participants' cooperation and prosociality. The study found that participation in ritual increases perception of oneness with others, which ultimately evokes and amplifies prosocial judgements and behaviors.³⁴

Drawing on Arnold van Gennep, Turner describes three phases of the ritual process, which support the emergence of liminality and *communitas*. The first is *separation*, in which the group engaged in ritual is detached from everyday activities, social structures, and cultural conditions. Through this separation, the group enters the *liminal* phase (the second phase) during which *communitas* may emerge. The third phase is *reincorporation* or reaggregation during which ritual participants re-enter societal

³² Ibid., 105.

³³ Ibid., 128.

³⁴ Ronald Fischer et al., "How Do Rituals Affect Cooperation?," *An Interdisciplinary Biosocial Perspective* 24, no. 2 (2013): 115.

structures in a transformed way. They emerge with new rights and responsibilities after the transformative impact of the liminal state.³⁵

Similar to Turner's concept of *communitas* is Durkheim's notion of collective effervescence. This is a state of social existence characterized by intense passions and emotions that arises because of the communal, collective nature of ritual.

The very fact of the congregation acts as an exceptionally powerful stimulant. When they are once come together, a sort of electricity is formed from their collecting which quickly transports them to an extraordinary degree of exaltation. Every sentiment expressed finds a place without resistance in all the minds, which are very open to outside impressions; each re-echoes the others, and is re-echoed by the others.³⁶

This sense of connection is experienced emotionally rather than being deduced from critical thought. As David Cheal notes, "Rituals may be the most effective means for generating unity via feelings of identification that are detached from critical reasoning."³⁷ This intensified state is characterized by shared actions, awareness, and emotions. The result is the emergence of collective conscience (or intersubjectivity). As Randall Collins explains,

Movements carried out in common operate to focus attention, to make participants aware of each other as doing the same thing and thus thinking the same thing. Collective movements are signals by which intersubjectivity is created. Collective attention enhances the expression of shared emotion; and in turn the shared emotion acts further to intensify collective movements and the sense of intersubjectivity.³⁸

According to Durkheim, rituals are the source of a group's morality. It is the heightened experience of collective effervescence and the resulting collective conscience that generate an idea of what is good and a sense of moral obligation to it.³⁹ Collective effervescence is capable of reaffirming the collective conscience of the group or generating a new collective conscience and new symbols of group membership. Through this ritual mechanism, the community may either re-enact moral codes and social norms it

³⁵ Turner, *The Ritual Process*, 94-95.

³⁶ Durkheim, *The Elementary Forms of the Religious Life*, 215-16.

³⁷ David Cheal, "Ritual: Communication in Action," *Sociological Analysis* 53, no. 4 (1992): 371.

³⁸ Randall Collins, *Interaction Ritual Chains* (Princeton: Princeton University Press, 2004), 35.

³⁹ Durkheim, *The Elementary Forms of the Religious Life*, 211.

has already embraced (fulfilling a normative function) or it may generate a new set of moral codes (fulfilling a transformative function), thus producing moral and social change.

The feelings of collective effervescence are fleeting and can only be represented and carried forth through being embodied in a symbolic object. Durkheim explains that sentiments from ritual are ultimately prolonged through symbols or emblems.

Without symbols, social sentiments could have only a precarious existence. Though very strong as long as men are together and influence each other reciprocally, they exist only in the form of recollections after the assembly has ended, and when left to themselves, these become feebler and feebler; for since the group is no longer present and active, individual temperaments easily regain the upper hand...But if the movements by which these sentiments are expressed are connected with something that endures, the sentiments themselves become more durable. These other things are constantly bringing them to mind and arousing them; it is as though the cause which excited them in the first place continued to act. Thus, these systems of emblems, which are necessary if society is to become conscious of itself, are no less indispensable for assuring the continuation of this consciousness.⁴⁰

The experience of collective effervescence is momentary in nature and cannot exist in a permanent state. Symbols serve to prolong the sentiment after the culmination of the ritual, but humans also look for opportunities for the experience of collective effervescence to be regularly repeated. Groups hold periodic assemblies to revivify this feeling through repetition of rituals that allow participants to recharge their experience of collective effervescence.⁴¹

There are marked similarities between Durkheim's collective effervescence and Turner's *communitas*. Both involve an equalizing experience separate from normal social existence. Both describe a powerful experience that cannot last indefinitely. Both serve either to renew the moral character of a society or to create new ideas, values, norms, or ways of interacting. Finally, both have a transformational capacity for ritual participants.⁴²

⁴⁰ Ibid., 231.

⁴¹ Collins, *Interaction Ritual Chains*, 40.

⁴² Tim Olaveson, "Collective Effervescence and Communitas: Processual Models of Ritual and Society in Emile Durkheim and Victor Turner," *Dialectical Anthropology* 26, no. 2 (2001): 107.

Recently, the ideas put forth by Turner and Durkheim have re-emerged in a more modern, secularized form through the work of Jonathan Haidt. Haidt refers to the emergence of collective effervescence as a “hive switch” that generally makes people less selfish and more loving.⁴³ The hive switch shuts down the “I” and merges participants into a giant “we.”⁴⁴ This loss of self can be a boon to the individual’s happiness and sense of wellbeing. “Self can be an obstacle to happiness, so people need to lose their selves occasionally by becoming part of an emergent social organism in order to reach the highest levels of human flourishing.”⁴⁵ Ritual, of course, is not the only experience that can “flip the switch.” Haidt also highlights feelings of awe in nature, hallucinogens, and raves.⁴⁶

Haidt further argues that healthy communities will offer repeated opportunities to experience the hive switch. “The most effective communities (from a well-being perspective) are those that offer occasional experiences in which self-consciousness is greatly reduced and one feels merged with or part of something greater than the self.”⁴⁷ This is in alignment with Durkheim’s emphasis on repeated ritual experiences in order to revivify feelings of collective effervescence.

Later in this thesis, I will analyze the restorative justice process using the theoretical framework of Turner’s phases of ritual, liminality and *communitas*, and Durkheim’s collective effervescence. I will argue that the ritual structure of restorative justice and the emergence of *communitas*/collective effervescence are essential to explaining the prosocial transformation of participants, for which the process is noted.

Turner and Durkheim have provided useful insights into the way ritual generates an experience of interconnectedness and may produce a change in the will of participants towards human kindness. Other theories of ritual offer additional insight into what is taking place during this transformation. One such explanation is that during ritual, a restorative discharging of emotions occurs. Thomas Scheff argues that rituals can provide

⁴³ Haidt, *The Righteous Mind*, 227.

⁴⁴ *Ibid.*, 232.

⁴⁵ Haidt, Patrick Seder, and Kesebir, "Hive Psychology, Happiness, and Public Policy," S136.

⁴⁶ Haidt, *The Righteous Mind*, 227-32.

⁴⁷ Haidt, Patrick Seder, and Kesebir, "Hive Psychology, Happiness, and Public Policy," S136.

a “restorative catharsis.”⁴⁸ Scheff defines catharsis as the discharging of one or more of four distressful emotions: grief, fear, embarrassment, and anger.⁴⁹ There are three necessary elements for the successful ritual management of distress: (1) the evocation of the distress, (2) the distancing device, and (3) the discharging of distress.⁵⁰ Scheff draws on Freud’s and Breuer’s theory of catharsis, which states that catharsis takes place when the memory of a traumatic event and the accompanying effect are recalled and put into words. Scheff asserts that this verbal description is only a means to an end. The trauma is described in order to evoke a re-experience of the distressful emotions so that they can be discharged.⁵¹ This sort of “restorative catharsis” is often apparent in the restorative justice process as both harmed party and responsible party tell the story of what happened. Through describing the crime and its impact, the grief, fear, embarrassment or anger of that time are often re-experienced and ideally distanced and discharged, paving the way for healing.

Another explanation for the transformative impact of rituals is that they function as a space for a shift in identity perception and re-humanization to occur. Following a conflict or an incident of wrongdoing, the harmed party and responsible party often have a narrow perception of the other’s identity. Generally, their focus is on one particular aspect of the other person’s identity, generally tied to the other’s role in the conflict or crime. Appropriate peacemaking rituals can potentially transform “the focus of identity and locus of conflict from one identity, such as ethnicity, to a more inclusive, complex, and varied set of identities.”⁵² Through the ritual, participants are able to identify common identities and recognize the complex identities each person holds.⁵³ In this way, ritual “[h]umanizes people who have been dehumanized through perceptual processes fueled by conflict.”⁵⁴ Ritual can provide a “humanizing space” that transforms identity and the relationships between interacting identities.⁵⁵

⁴⁸ Thomas J. Scheff, “The Distancing of Emotion in Ritual,” *Current Anthropology* 18, no. 3 (1977): 490.

⁴⁹ *Ibid.*, 485.

⁵⁰ *Ibid.*, 484.

⁵¹ *Ibid.*, 485.

⁵² Schirch, *Ritual and Symbol in Peacebuilding*, 127.

⁵³ *Ibid.*, 126.

⁵⁴ *Ibid.*, 61.

⁵⁵ *Ibid.*, 126.

This revelation of oneness and the merging of self with an interconnected whole, combined with the shifting and release of painful emotions and harmful identity constructs, can contribute to the transformational capacity seen in some justice performances, including the restorative justice ritual, as will be explored in Chapter Four.

Theories of transformative ritual have also looked more closely at specific interactions between people. Erving Goffman and Randall Collins have proposed the theory of “interaction rituals.”⁵⁶ Their work forms the theoretical framework for Meredith Rossner’s ritual analysis of the interactions that take place during a restorative justice conference, which will be engaged with later in this study. Therefore, even though the rituals described in this category do not fit all the criteria of ritual established for this project – being neither collective nor separate from normal daily life – they nevertheless warrant inclusion in this theoretical overview.

Goffman has applied Durkheim’s notion of ritual to micro-sociology, examining how rituals function in interpersonal interactions. Goffman uses the term interaction “ritual” because “this activity, however informal and secular, represents a way in which the individual must guard and design the symbolic implications of his acts while in the immediate presence of an object that has a special value for him.”⁵⁷ According to Goffman, ritual takes place in a condition of situational co-presence, meaning simply that people are in a shared space, interacting in some way. That situational co-presence becomes an encounter when the participants’ mutual attention creates a focused interaction. In that focused interaction, one is compelled to keep up social solidarity through the symbolic implications of one’s acts. There is pressure to conform to the ritual and thereby demonstrate membership of the social group. Goffman highlights the importance of the presence of an object of special value, a sacred object which rituals honor. In modern society, Goffman claims, this sacred object is the individual self.⁵⁸

In describing the sacred object of the individual self, Goffman discusses the role of “face” and the need for corrective ritual interactions when there is a “loss of face”.

⁵⁶ Erving Goffman, *Interaction Ritual* (Middlesex: Penguin Books, 1967). Collins, *Interaction Ritual Chains*.

⁵⁷ Goffman, *Interaction Ritual*, 57.

⁵⁸ *Ibid.*, 47.

“The term *face* may be defined as the positive social value a person effectively claims for himself by the line others assume he has taken during a particular contact.”⁵⁹ The line Goffman refers to is a pattern of verbal and nonverbal acts by which a person expresses his or her view of a situation through his evaluation of participants, especially himself. Occasionally, an interaction does not uphold the positive social value a participant claims for himself, and the participant experiences a loss of face.

When a person is in wrong face or out of face, expressive events are being contributed to the encounter which cannot be readily woven into the expressive fabric of the occasion. Should he sense that he is in wrong face or out of face, he is likely to feel ashamed and inferior because of what has happened to the activity on his account and because of what may happen to his reputation as a participant. Further, he may feel bad because he had relied upon the encounter to support an image of self to which he has become emotionally attached and which he now finds threatened... he may become shamefaced.⁶⁰

As well as being a negative experience for the person who has lost face, it is also unpleasant for the person who has caused the loss of face.

Just as the member of any group is expected to have self-respect, so also he is expected to sustain a standard of considerateness; he is expected to go to certain lengths to save the feelings and the face of others present, and he is expected to do this willingly and spontaneously because of emotional identification with the others and with their feelings. In consequence, he is disinclined to witness the defacement of others. The person who can witness another's humiliation and unfeelingly retain a cool countenance himself is said in our society to be “heartless,” just as he who can unfeelingly participate in his own defacement is thought to be “shameless.”⁶¹

When the ritual of social interaction results in a loss of face, participants experience uneasiness. That uneasiness creates the necessity for a corrective interchange. Goffman's description of the corrective action that must take place after a loss of face relates directly to what is needed after wrongdoing occurs. Both the harmed party and the responsible party have the potential to become “shamefaced” and a corrective mechanism is required that allows all participants to regain face.

⁵⁹ Ibid., 5.

⁶⁰ Ibid., 8.

⁶¹ Ibid., 10-11.

Goffman describes four ritual moves that are involved in a corrective interchange. The first step relates to the misconduct in question. “Participants take on the responsibility of calling attention to the misconduct; by implication they suggest that the threatened claims are to stand firm and that the threatening event itself will have to be brought back into line.”⁶² In this way, the misconduct is identified as wrong.

The second step is an offering. “A participant, typically the offender, is given a chance to correct for the offense and re-establish the expressive order.”⁶³ This can be done through (1) showing it was a meaningless joke, an unintentional act, or an understandable product of extenuating circumstances; (2) showing that the responsible party (offender) was under the influence of something and not himself or under the control of someone else and therefore not acting for himself; (3) providing compensation to the injured person; or (4) providing punishment, penance, or a means of repairing harms for himself to undertake. After making one of these offerings, the responsible party (offender) has suggested through the corrective ritual that he is a renewed person who can once more be trusted.

The suspected person thus shows that he is thoroughly capable of taking the role of the others towards his own activity, that he can still be used as a responsible participant in the ritual process, and that the rules of conduct which he appears to have broken are still sacred, real and unweakened. An offensive act may arouse anxiety about the ritual code; the offender allays this anxiety by showing that both the code and he as an upholder of it are still in working order.⁶⁴

The third ritual move in the corrective interchange is for the person to whom the offering is made to accept it as a satisfactory means of reestablishing the order and face that have been challenged by the incident. In the final ritual move, the responsible party (offender) conveys a sign of gratitude to the other ritual participants who have given him forgiveness.⁶⁵

In *Interaction Ritual Chains*, Collins builds on Durkheim’s theory of collective effervescence and Goffman’s understanding of interaction rituals to form a theory of how

⁶² Ibid., 20.

⁶³ Ibid.

⁶⁴ Ibid., 21-22.

⁶⁵ Ibid., 22.

interaction rituals contribute to an individual's future behavior. Collins identifies the pursuit of emotional energy and the formation of personal symbols as two factors that influence behavior. A successful interaction ritual results in emotional energy, whereas a failed interaction ritual drains energy. The experience of emotional energy drives individuals to seek out situations where they will gain more emotional energy. "Emotional energy is what individuals seek; situations are attractive or unattractive to them to the extent that the interaction ritual is successful in providing emotional energy."⁶⁶

A positive experience of emotional energy can lead a person to seek out subsequent experiences of emotional energy through pro-social interactions and can therefore influence future behavior. Ritual moments that have a high degree of focused awareness and shared emotion can also result in the formation of personal symbols. Those symbols can become a formative experience capable of shaping the individual and the direction of their life.⁶⁷ Collins claims that these interaction rituals are constantly shaping individuals throughout their lives.

Durkheim held that the individual consciousness is a portion of the collective consciousness. This is tantamount to saying that the individual is socialized from the outside, by social experience carried within. This is surely true, as most social scientists would agree, as far as early childhood socialization is concerned. The argument of IR [Interaction Ritual] theory carries this further: we are constantly being socialized by our interactional experiences throughout our lives. But not in a unidirectional and homogeneous way; it is intense interaction rituals that generate the most powerful emotional energy and the most vivid symbols, and it is these that are internalized. Contrary to an implication of Freudian theory and others that stress early childhood experience, socialization once laid down does not endure forever; emotional energies and symbolic meanings fade if they are not renewed.⁶⁸

Because individuals are constantly being formed through the experience of emotional energy and the creation of symbols in interaction rituals, there is always a possibility of individual transformation. This change can be sudden and abrupt and a result purely of the experience of a successful interaction ritual.⁶⁹

⁶⁶ Collins, *Interaction Ritual Chains*, 44.

⁶⁷ Ibid., 43.

⁶⁸ Ibid., 44.

⁶⁹ Ibid., 42-43.

Proleptic Function of Rituals

The third social function of ritual in the analytical framework developed for this study is the proleptic function. Merriam-Webster Dictionary defines prolepsis as “the representation or assumption of a future act or development as if presently existing or accomplished.”⁷⁰ Accordingly, a proleptic ritual realizes a possible future in the present. A coming change is anticipated and rehearsed through the ritual itself.

In *Ritual Theory, Ritual Practice*, Catherine Bell offers a new framework for understanding ritual. She argues that rituals are not just mechanisms to regulate, control, or reflect the systems of social relations. Rather, they *are* the systems of social relations. Rituals are constantly producing, establishing, and subverting hierarchical social relationships and power dynamics and thereby may anticipate a different kind of arrangement than currently exists. “In ritualization, power is not external to its workings; it exists only insofar as it is constituted with and through the lived body, which is both the body of society and the social body. Ritualization is a strategic play of power, of domination and resistance, within the arena of the social body”⁷¹ Ritualization is the production of arrangements that structure an environment in such a way that the environment itself appears to be the source of the arrangements and the values they reflect. Bell’s theory of the subversive capacity of ritual illuminates a way in which ritual is capable of envisioning and temporarily creating a possible future social structure.

Bell highlights the way ritualization is used in secular social organizations. She gives the examples of courtroom procedures, public-school graduation ceremonies, congressional hearings, and AA meetings, noting that each of these activities “ritualize to a strategic degree.”⁷² This deployment of ritualization, whether conscious or unconscious, creates particular power relationships. It can work to echo, invert, allude to, or deny other ways of acting, thus creating new relationships of power in the ritual transaction.⁷³

It is evident that the mainstream justice system – particularly the courtroom process – is highly ritualized. In light of Bell’s framework, the question is what kind of

⁷⁰ Merriam-Webster, “Prolepsis,” <https://www.merriam-webster.com/dictionary/prolepsis>.

⁷¹ Catherine Bell, *Ritual Theory, Ritual Practice* (New York: Oxford University Press, 1992), 204.

⁷² *Ibid.*, 205.

⁷³ *Ibid.*, 220.

power relations are being produced and repeatedly reaffirmed by the rituals of the criminal justice system? In what way may this often serve to prevent greater social change? These questions will be explored in the following chapter. Bell's framework also prompts the question of how the ritual of restorative justice relates to the context of the mainstream justice system. How is the structure of power evident in the criminal trial replicated or subverted in restorative justice? This question will be explored in Chapter Six.

Bobby Alexander has also offered a definition of ritual that helps to illuminate its proleptic function. He defines ritual as a "planned or improvised performance that effects a transition from everyday life to an alternative framework within which the everyday is transformed."⁷⁴ Through generating an alternative framework, ritual has the capacity to innovate alternative relationships, as well as to transform existing social structures.⁷⁵ This transformation of social structures may contradict existing power relationships. As Cheal notes, "Rituals help to define alternative realities that lie outside the totalizing world views of modern elites and the institutions they control."⁷⁶ Because of these characteristics, ritual can play a crucial role in creating social change.

Driver has argued that more than having a role to play in social change, ritual is actually necessary in order to bring about transformation of society.

Rational political methods alone cannot bring about transformation of society from a less to a more just condition, because they cannot fuse the visionary with the actual (the absent with the present) as rituals do, thus profoundly affecting the moral life. Nor can ideas alone do this, for in order to bear fruit, ideas require flesh-and-blood performance. Ritualization is required.⁷⁷

Driver traces the importance of this proleptic role of ritual in major social movements.

Without such ritualization, the Civil Rights Movement in the United States could not have occurred, nor could any other liberation movement in the world. It was the genius of Martin Luther King, Jr., inspired by Mahatma Gandhi, Jesus, and others, to recognize this. At certain stages of their struggle, ritual magic is the principal

⁷⁴ Bobby Alexander, "Pentecostal Possession and Grotowski's Ritual Projects as Social Protest: A Critical Assessment of Victor Turner's Theory of 'Ritual Anti-Structure' as an Interpretive Tool" (PhD diss., Columbia University, 1985), 21.

⁷⁵ Ibid., 22.

⁷⁶ Cheal, "Ritual: Communication in Action," 371.

⁷⁷ Driver, *Liberating Rights*, 184.

technique available to oppressed people for the transformation of their historical situation.⁷⁸

When members of a movement march in the streets together, sing together, and form a collective vision of a possible future through their actions together, they are drawing on the power of ritual.

Major changes in society are often assisted by rituals. In his analysis of the American Revolution, Peter Shaw notes the proleptic function of rituals in anticipating and rehearsing the change that was coming. He explains,

The rituals were what might be termed prospective or prophetic rites of transition. That is, they predicted, anticipated, and even encouraged revolution – were “rehearsals” of revolution – without being the thing itself. Carrying with them all the ambiguities attendant on the process of dawning revolutionary consciousness, the rituals celebrated a passage from one state of being to another: from the reign of the king to that of the American people.⁷⁹

These proleptic rituals are capable of simultaneously predicting, anticipating, encouraging, and temporarily creating a revolution or major social movement.

After a social movement has begun, rituals also play an important role in keeping the movement alive and well.⁸⁰ The performance of rituals in social movements develops member solidarity through enacting deep-shared moral values together.⁸¹ In this way, these collective rituals can help to revivify a subculture.⁸² Ritual also lends more power to the vision of the movement. “Moral visions are more satisfying when we can express them, embodied in rituals with clear meanings.”⁸³ These ritualistic collective activities create a strong sense of movement identity and ongoing internal movement practices that yield solidarity.⁸⁴

⁷⁸ Ibid., 183.

⁷⁹ Peter Shaw, *American Patriots and the Rituals of Revolution* (Cambridge: Harvard University Press, 1981), 231.

⁸⁰ James Jasper, *The Art of Moral Protest: Culture, Biography, and Creativity in Social Movements* (Chicago: University of Chicago Press, 1999), 184.

⁸¹ Ibid., 191.

⁸² Ibid., 207.

⁸³ Ibid., 207-08.

⁸⁴ Ibid., 209.

At this historical moment, many participants in the criminal justice system find themselves in a position of oppression through the sometimes-harmful impact of the criminal court system and resulting punishments. As Schirch notes, “In times where worldviews are severely tested or crumbling, ritual can actually create new ways of thinking that dramatically alter the ways humans envision the world.”⁸⁵ This thesis will argue that the ritual of restorative justice is subversive of the hegemony represented by the mainstream system and constitutes a visionary form of justice, an anticipation of a more desirable kind of future society. Arguably it is this proleptic aspect that has fueled the emergence of a wider social movement out of the restorative justice process.

Summary

This chapter has introduced three ritual functions that are relevant to justice making. It has examined key theories and features of ritual that elaborate the normative, transformative, and proleptic functions that will be used as the analytical framework for discussing justice rituals. Normative ritual practices communicate order and meaning within a group. They bring members of a social group together and promote social cohesion through reaffirming the group’s status as a moral community and upholding the shared values that have been violated. Transformative rituals create a space for personal and relational transformation through bringing participants together in a new way, apart from the limitations of normal life, to facilitate a deeper connection that can create a change in opinion and behavior. Proleptic rituals envision and temporarily create a possible future social structure, fueling and sustaining social movements. In the chapters that follow, this theoretical understanding will be applied to the mainstream criminal trial and restorative justice rituals in order to understand how each process fulfills, or fails to fulfill, each ritual function.

⁸⁵ Schirch, *Ritual and Symbol in Peacebuilding*, 101.

Chapter 3:

The Criminal Trial as Ritual

The video recording of Tame Iti's trial, conviction, and sentencing mentioned in Chapter One presents a familiar scene. The physical arrangement of the courtroom, the placement of the people involved based on their specified roles, the procedure, and order of events that occur are all very familiar features. It is the same process seen in countless television legal dramas or news broadcasts on almost a daily basis. This consistency of process and the familiarity with it by a watching public are due in large measure to the high level of ritualization that surrounds the criminal trial. Whether as spectators or participants, we are made to understand the significance and durability of this ritual.

"Trials are steeped in ritual,"¹ writes Elaine Craig. "The rituals of the trial involve acts and procedures exercised in accordance with prescribed rules or customs regarding attire, physical setting, manner of address, mode of communication, and observance of what might be described as micro-ceremonies (such as swearing an oath or rising from one's seat when an adjudicator enters the room)."² This ritualization of proceedings creates a trial and sentencing experience that is remarkably consistent and recognizable across different jurisdictions.³

These same ritual indicators are apparent in the criminal court located across the street from my office. Entering the Wellington District Courtroom, there are obvious symbolic indicators that establish it as a space set apart from normal daily life. Those attending court are not permitted to have their cell phones in the courtroom or to consume

¹ Elaine Craig, "The Inhospitable Court," *University of Toronto Law Journal* 66, no. 2 (2016): 207.

² Ibid.

³ It is worth noting that in common law countries, like New Zealand and the United States, the ritual of the criminal trial and the adversarial character of the justice system are primarily a product of Britain's colonial legacy, not of top-down planning or evidence-based science. As John Langbein explains, "The saga of the emergence of the adversary criminal trial in England is a topic of legal history much more than of legal theory, because it is the story of how we came to live under a criminal procedure for which we have no adequate theory," John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2005), 9. McElrea and Thompson note that the adversarial system is better described as the "Western, specifically Anglo-derived, criminal justice system of Britain and its former colonies," Fred McElrea and David Thompson, "Our Traditional Criminal Justice System: A View through History," (Unpublished, 2018), 1.

food or water. The wood paneling and ornate Coat of Arms of New Zealand displayed above the judge's chair communicate the gravitas of the space. Once inside, attendees are expected to follow certain protocols of behavior, including being quiet and respectful. Each of the participants in the process, including the defendant, victim, judge, lawyers, jury, and public spectators, has a designated spot in the room. The process proceeds according to a highly controlled and consistent order. Each symbol and protocol adds to the ritual nature of the process.

The question guiding this chapter is what main *function* does this specific ritual fulfill? If the criminal trial is a justice performance, then what understanding or function of justice is being enacted? I will argue that the criminal trial largely fulfills what I have termed the normative function of justice, particularly for the state and the citizens it governs. That is to say, the criminal trial responds to societal concerns for predictability and trustworthiness in the aftermath of a criminal event by establishing and reaffirming the social norms and values that are deemed necessary to maintain stability and cohesion. As Durkheim and other scholars have long argued, the modern penal justice system is not primarily intended to have an effect on the criminal (whether to reform them or deter future crime); rather, its chief purpose is to benefit society through reaffirming social structures and values.⁴ This insight is echoed by Paul Rock who notes, "The prime function of court is to define rules, trace boundaries and express public abhorrence of deviation. That function explains the attentiveness to ritual, solemnity and display."⁵

The Normative Function of the Criminal Trial

As previously mentioned, perhaps the most striking feature of the criminal trial, notwithstanding local cultural variations of expression, is its essential consistency across different jurisdictions and its widespread application to any number of crimes. This consistency is a crucial feature of the normative function, as it bolsters widespread assent to the legitimacy and trustworthiness of the process. As Everett notes,

The display of symbols and the regular repetition of certain words, actions, and patterns of interaction give people a sense that they are participating in something deeper, more permanent and therefore "true." Ritual relates our actions of the

⁴ Durkheim, *The Division of Labor in Society*.

⁵ Rock, "Rules, Boundaries and the Courts," 589.

moment to a timeless drama that gives meaning and therefore authority to what we do.⁶

Both participants and spectators are impressed by the familiarity of the process or the “timeless” nature of the ritual, which leads to the process being perceived as legitimate. The criminal trial is a justice performance that works to inspire trust and fulfills the community’s need for clear action after a crime occurs.

This need for a clear and trustworthy process is in part fulfilled by a commitment to uphold important judicial principles, including due process, consistency, transparency, fairness, universality, and proportionality, though it is worth noting that these principles are not always discharged in practice. Ideally, these principles are evident at each stage of the criminal justice process, including charging, prosecuting, trying, and sentencing. These principles are so engrained that they have become almost synonymous with the trial ritual itself. Tellingly, the public perception of the performance of justice is the trial process, even though only a minority of cases go through the whole adjudicative process. As McElrea and Thompson note, in the vast majority of cases, the defendant pleads guilty and the case skips straight to sentencing.⁷ The full trial process is reserved for cases of contested or mitigated guilt and is meant to guarantee that the trial is fair, open to the public and follows predictable and consistent rules. Because this ritual is purportedly enacted in the same way for every case and every time, regardless of the people involved or the crime committed, the public often considers it trustworthy and reliable.

In addition to this consistency of process, the physical space of the courtroom is also remarkably consistent. An online search of the term “courtroom” will yield minimal variation. Each ritual participant – defendant, victim, lawyers, judge, jury, spectators – has a specific place to occupy. As Linda Mulcahy notes, “Courtrooms are seen as having authentic, fixed and unproblematic identities in which the placing of bodies in particular

⁶ Everett, “Ritual Wisdom and Restorative Justice,” 348.

⁷ McElrea and Thompson, “Our Traditional Criminal Justice System,” 5. McElrea and Thompson’s article discusses the number of pleas in the New Zealand system, but the same trend holds true in the United States. In the United States, 97 percent of felony convictions at the federal level are the result of plea bargains. The statistic is similar for felony convictions at the state level (94 percent) and estimates for misdemeanor convictions by plea are even higher, Emily Yoffee, “Innocence Is Irrelevant,” *The Atlantic* 2017.

ways is no longer contestable.”⁸ This physical consistency, in regards to the physical layout, the placement of participants, and the activity conducted, lends to the normative impact of the criminal trial.

Significant economic resources are devoted to upholding the consistency and symbolism of court spaces. As Paul Rock notes, “In societies increasingly bereft of civic ritual, the criminal court is one of the rare secular institutions quite unambiguously intended to appear symbolically strong. Money is lavished on the buildings of courthouses which would never normally be spent on more utilitarian structures.”⁹ The symbolism of courthouse design and the proliferation of icons set this space apart from ordinary public spaces. The buildings and rooms, one could say, are consecrated and sacred, which reinforces the authority and legitimacy of the activities carried out in these spaces.¹⁰

The predictable structure and use of space within the courtroom are value laden, communicating an ideology and set of power relationships at play in the criminal justice process.¹¹ The structure of the courtroom is premised on an adversarial contest between prosecution, representing the state, and the defendant, and conveys the relative power of the judge and jury in adjudicating on this contest. Participants in the criminal trial process often see both advantages and disadvantages in the tone and power structure communicated through the physical space of the courtroom. Alex Jeffrey completed a report summarizing three workshops discussing the court space with inmates, academics, policy makers, legal professionals, and representatives from NGOs. He notes that, “The gravitas of the court room was recognized throughout the workshops as an ambiguous trait: both lauded for creating the appropriate atmosphere for the judgment of serious crimes while simultaneously being seen to contribute to individuals feeling ill at ease.”¹² While lending legitimacy to the process, the court structure was also often experienced as intimidating.

⁸ Linda Mulcahy, "Architects of Justice: The Politics of Courtroom Design," *Social & Legal Studies* 16, no. 3 (2007): 390.

⁹ Rock, "Rules, Boundaries and the Courts," 588.

¹⁰ Ibid., 588-89.

¹¹ Mulcahy, "Architects of Justice," 398.

¹² Alex Jeffrey, *Court Space: Report on an Impact Acceleration Project*, (Cambridge: Economic and Social Research Council, University of Cambridge, 2017), 10.

The tone of the criminal court, characterized by a strong emphasis on solemnity and civility, further contributes to its normative effectiveness. As Craig notes, “All participants in a trial are expected to perform their role with propriety, decorum, orderliness, and politeness.”¹³ Each aspect of the ritual reinforces this civility.

The pace of events is measured and dignified; there is a set, mannered form to words and procedures; counsel and judges are wigged and robed; physical movement is firmly disciplined; turn-taking in speech is carefully regulated; and a judge may refuse to hear advocates if they are deemed to be dressed improperly, if they keep their hands in their pockets, or speak offensively, declaring, in the special language of the courtroom, that “I cannot hear you . . .”¹⁴

Some scholars, including Judge Steven Rau, have argued that this civility is necessary for an effective court process. “Ultimately, the rules of civility and decorum and the rituals of the law help each of us sublimate our individual personality to function; they assist in creating an atmosphere of detachment, objectivity, respect, order, and justice.”¹⁵ We might add that it also creates an atmosphere of deference, where each person understands their subjectivity in relation to the supreme authority of the law and those who wield it. This expectation of orderliness and civility on the part of participants does indeed strengthen the normative function of the process, but, as we will explore shortly, it may also hinder any transformative or proleptic functions.

Many scholars argue that the primary normative function of the penal justice system is to benefit society through reaffirming social structures and values.¹⁶ In the view of Durkheim and others, crime and other forms of deviation, as well as the community’s response, perform a needed service of uniting people in their indignation. “The deviant individual violates the rules of conduct which the rest of the community holds in high respect; and when these people come together to express their outrage over the offense

¹³ Craig, “The Inhospitable Court,” 208.

¹⁴ Rock, “Rules, Boundaries and the Courts,” 589.

¹⁵ Steven E. Rau, “Civility, Decorum, and Ritual in the Judiciary,” *William Mitchell Law Review* 37, no. 4 (2011): 2100.

¹⁶ Durkheim, *The Division of Labor in Society*.

and to bear witness against the offender, they develop a tighter bond of solidarity than existed earlier.”¹⁷

The criminal trial plays an important role in defining and upholding these public values. As Anthony Duff notes, “We do, as a polity, need a formal institution with this central feature of criminal law: an institution that defines, and by implication condemns, a range of public wrongs.”¹⁸ The trial calls the offender to account for the wrongdoing and acknowledges that it is a public matter because it involves a violation of community-shared values, expressed in the law. Interestingly, Duff asserts that the restorative justice ritual is incapable of fulfilling this public function, a claim to which I will return in Chapter Five.

While purportedly upholding the community’s values with respect to the actions of the offender, the criminal trial condemns not only his deeds but also his person. In other words, the trial casts the offender as inferior to the rest of the community, at least in regards to moral status. Harold Garfinkel describes the criminal trial as a “degradation ceremony,” designed to ritually demean the offender. Through the degradation ceremony, the identity of the offender is transformed into a lesser social type through the moral indignation of the group and resulting public denunciation of the offender. Garfinkel explains the seriousness of this identity shift noting,

In the statement that moral indignation brings about the ritual destruction of the person being denounced, destruction is intended literally. The transformation of identities is the destruction of one social object and the constitution of another... The other person becomes in the eyes of his condemners literally a different and new person.¹⁹

As a result of this degradation, who the person was before the crime becomes somehow less real than the new “criminal” self. “The former identity stands as accidental; the new identity is the ‘basic reality.’ What he is now is what, ‘after all,’ he was all along.”²⁰

¹⁷ Kai Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: Wiley, 1966), 4.

¹⁸ R. A. Duff, “Responsibility, Restoration, and Retribution,” in *Retributivism Has a Past: Has It a Future?*, ed. Michael Tonry (Oxford: Oxford University Press, 2011), 14.

¹⁹ Harold Garfinkel, “Conditions of Successful Degradation Ceremonies,” *American Journal of Sociology* 61, no. 5 (1956): 421.

²⁰ *Ibid.*, 422.

Erikson notes that degradation ceremonies generally have a number of related phases, all of which are evident in the criminal court ritual.²¹

They supply a formal stage on which the deviant and his community can confront one another (as in the criminal trial); they make an announcement about the nature of his deviancy (a verdict or diagnosis, for example); and they place him in a particular role which is thought to neutralize the harmful effects of his misconduct (like the role of prisoner or patient). These commitment ceremonies tend to be occasions of wide public interest and ordinarily take place in a highly dramatic setting. Perhaps the most obvious example of a commitment ceremony is the criminal trial, with its elaborate formality and exaggerated ritual.²²

The public interest in these procedures is reflected in the considerable portion of time devoted in the news media to reports about deviant behavior and its consequences. As Erikson notes, the media functions as one of the main sources of information about “the normative outlines of society.”²³

Garfinkel outlines some key requirements for a justice process to be successful as a degradation ceremony. First, the perpetrator and the crime must be symbolically removed from the realm of the everyday or the ordinary. “[The offender] must be ritually separated from a place in the legitimate order, i.e., he must be defined as standing at a place opposed to it. He must be placed ‘outside,’ he must be made ‘strange.’”²⁴ This “strangeness” or “outside-ness” of the offender is often made clear through handcuffs, specific clothing, or limited opportunity to speak in the criminal court process.

The separation of the offender is also communicated through the physical layout of the courtroom and the place of the offender in the room. In stark contrast to the power and elevation of the judge, the offender stands in a box called the “dock” and is accompanied by a uniformed guard. In the Wellington District Court, the dock has glass panels extending upward, almost to the ceiling, so that the offender is walled off from the rest of the courtroom. There is a glass door that the judge may permit the defense attorney

²¹ Erikson uses the term “commitment ceremony,” but his description of the process closely mirrors Garfinkel’s degradation ceremonies. Erikson’s description of a “commitment ceremony” is “an intricate rite of transition, at once moving the individual out of his ordinary place in society and transferring him into a special deviant position,” Erikson, *Wayward Puritans*, 15.

²² Erikson, *Wayward Puritans*, 15-16.

²³ Ibid., 12.

²⁴ Garfinkel, “Conditions of Successful Degradation Ceremonies,” 423.

to open in order to consult with his or her client. Inside the dock, there is a door that leads to the cells. If the defendant is found guilty and sentenced to prison, they are taken immediately to the cells. These two doors communicate two possible outcomes facing the defendant: either to re-enter society through the door to the courtroom or to be separated from society through the door to the cells. While standing in the dock, the uncertainty of the offender's future is symbolically present through these two doors.

Another required feature of degradation ceremonies is the importance of the symbolism surrounding the denouncer (in the case of criminal court, a role filled initially by the prosecution and subsequently by the judge). The denouncer must be invested with the right and authority to speak in the name of the values of the community. In the courtroom, the architecture and protocols communicate and continually reaffirm the authority of the judge. There is an elevated platform with a large desk where the judge sits, dressed in a black robe. Whenever the judge enters or leaves the room, everyone else is required to stand in deference to their authority. If someone is to address the judge, they must stand to speak. In reply to a judge's direction, legal counsel responds with, "As your honor pleases." Schirch notes how judges have a gavel on their desk, which they use to bring order to the court. "The gavel symbolizes their authority to control what happens in the courtroom. The courtroom becomes a ritual space that aims to do justice and prevent violence in the community."²⁵

A third requirement for degradation follows the trial and verdict. Punishment furthers degrades the offender by giving him the status of an inferior.²⁶ Erving Goffman notes that daily life in prison is characterized by degradation; the prisoner's "self is systematically, if often unintentionally, mortified."²⁷

The degradation ceremonies of the trial, sentencing, and punishment are almost irreversible. There is no comparable ceremony that marks the individual's restoration once the punishment is complete, no manner in which their deviant role is terminated. As Erikson notes,

²⁵ Schirch, *Ritual and Symbol in Peacebuilding*, 71.

²⁶ James Q. Whitman, *Degradation, Harshness, and Mercy* (Oxford: Oxford University Press, 2005), 21.

²⁷ Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Anchor Books, 1961), 14.

[The offender] is ushered into the deviant position by a decisive and often dramatic ceremony, yet is retired from it with scarcely a word of public notice. And as a result, the deviant often returns home with no proper license to resume a normal social life in the community. Nothing has happened to cancel out the stigmas imposed upon him by earlier commitment ceremonies.²⁸

The permanence of the new identity bestowed on the offender may seem harsh, and indeed many argue that the degradation ceremony of the criminal court often leads to additional, possibly unnecessary, harm on the part of the offender and his community of care. Nevertheless, the degradation ceremony is notably effective as a normative ritual because of its ability to draw clear community boundaries and reinforce solidarity among law-abiding citizens. “Ritual confirms and strengthens social identity and people’s sense of social location: it is an important means through which people experience community.”²⁹ Part of this normative function includes an assertion of difference.³⁰ A boundary is drawn around the law-abiding community, establishing the criminal as “other” and outside. The trial “demonstrates to whatever audience is concerned where the line is drawn between behavior that belongs in the special universe of the group and behavior that does not.”³¹ The offender is quite literally made to be an out-cast.

As a boundary-drawing device, the trial makes several contributions to social systems. The first is clarification of rules and values, resolving any possible areas of uncertainty or lack of clarity. As Cohen explains, “By providing the occasion for the clarification or reaffirmation of a rule, the deviant may render an important service to the other members of the group: they come to know more clearly than before what they may and may not legitimately do.”³²

A second contribution is to increase solidarity within the group. Nothing unites the members of a group like a common foe, whether external or internal. Cohen explains, “The deviant may, in short, function as a ‘built-in’ out-group, and contribute to the integration of the group in much the same way as do witches, devils, and hostile foreign

²⁸ Erikson, *Wayward Puritans*, 16.

²⁹ Cohen, *The Symbolic Construction of Community*, 50.

³⁰ *Ibid.*, 53.

³¹ Erikson, *Wayward Puritans*, 11.

³² Albert K. Cohen, *Deviance and Control* (Englewood Cliffs: Prentice-Hall, 1966), 8.

powers.”³³ Ironically, deviance serves to impact positively on the solidarity of the group by separating out one of its own as enemy.

A third contribution is the potential of the criminal trial to deter future crime, both by the offender (special deterrence) and by the community as a whole (general deterrence). Foucault explains that prior to the eighteenth century, ceremonial punishments were rituals used to re-establish the authority of the king. The presence of an audience was important at both trial and punishment. In Foucault’s words, “A secret punishment is a punishment half wasted.”³⁴ The spectacle of trial and punishment were directed not principally at the criminal, but at the watching community, who are made to experience the terrifying consequences of deviancy. As Mitchel Roth notes, in this context, the meaning of “reform” applied to those who witnessed the punishment, not those who suffered it.³⁵

Today, the mainstream justice system continues to try to prevent deviant behavior through threats of negative sanctions.³⁶ While deterrence is often lauded as a consequence of the normative function of justice rituals, there is little evidence to back up its effectiveness. As Rock notes, “Legal theorists and practitioners themselves frequently confess that they do not know (and cannot propound a strategy for learning) about the wider effects of sentencing. There is little understanding of the impact of deterrence on individual offenders and would-be offenders.”³⁷ The ability to threaten and deliver sanctions may be effective in reinforcing people’s law-related attitudes; however, its impact on deterring criminal behavior is relatively small in magnitude.³⁸ This is not to say that sentencing has no impact on offenders. As Rock explains,

There is limited, almost casual evidence about one of those immediate audiences of sentencing – the offenders – and it would appear that they are not always impressed by the ceremonial work of the courts. Naive offenders may be too numbed, detached or ill at ease at the point of sentencing to respond appropriately

³³ Ibid., 9.

³⁴ Michael Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977), 111.

³⁵ Mitchel Roth, *An Eye for an Eye: A Global History of Crime and Punishment* (London: Reaktion Books, 2014), 106.

³⁶ Tom Tyler, “Restorative Justice and Procedural Justice: Dealing with Rule Breaking,” *Journal of Social Issues* 62, no. 2 (2006): 309.

³⁷ Rock, “Rules, Boundaries and the Courts,” 595.

³⁸ Ibid., 310.

(Ericson and Baranek 1982). Persistent offenders may be too cynical, too alert to the game-like, negotiated character of the underlife of criminal justice, to be impressed by what they see and hear. Theirs is a propensity, argued Coffey and Eldefonso (1975), to regard trials not so much as authoritative rituals but as contests to win or lose. Those offenders who eventually decide to desist from crime may have been struck less by an onslaught of moral doubt than by the personal belief that, with ageing, the costs and benefits of offending have begun to change to their disadvantage (Shover 1996: 142).³⁹

It appears that the positive impact of reaffirming community norms and values does not always extend to the offender. The reverse is sometimes the case, where the reassertion of the moral community and associated solidarity occurs at the expense of the offender.

A fourth contribution the normative function of the trial makes to the social system is that of maintaining institutional and political stability. In an article titled "Legal Ritual," Peter Winn observes how "ritual remains important in industrial societies in the creation and maintenance of social institutions, and to orient and relate people to one another in the context of these institutions"⁴⁰ Legal ritual further maintains the control of the state. "Society cannot be governed only by legislation enforced by the physical power of the state. Legal ritual makes uniform structure and order possible with minimum exercise of force."⁴¹ Crime presents a challenge to social order. The criminal trial reaffirms that order and establishes a clear relationship between the values held by people and the order of existence we live in, under the guidance of the state.⁴² The imposition of punishment further upholds the state's control, as Rock notes. "It is evident that punishment itself works to proclaim the State's right and capacity to control its subjects, not only asserting its claim to authority but pointing dramatically to the exemplary consequences of those who resist it."⁴³ In this way, the status quo of political power is maintained through the rituals that make up the criminal trial and subsequent punishment.

It is clear that the criminal trial performs a critical normative function that ensures a trustworthy and predictable response to crime, upholds community values and boundaries, and reaffirms societal systems of power and control. In these respects, it is

³⁹ Rock, "Rules, Boundaries and the Courts," 596.

⁴⁰ Peter Winn, "Legal Ritual," *Law and Critique* 2, no. 2 (1991): 210.

⁴¹ *Ibid.*, 227.

⁴² *Ibid.*, 229.

⁴³ Rock, "Rules, Boundaries and the Courts," 590-91.

largely effective in the normative function it intends to fulfill. However, as Hüsken notes, “A ritual can fail and be successful at the same time, depending on which kind of efficacy is focused on.”⁴⁴ In the following section, I argue that the criminal trial largely fails to function as a positively transformative or proleptic ritual. Furthermore, given its primary focus on upholding norms, the criminal trial can inadvertently transform the offender in profoundly negative ways, contributing to a continuation of criminal behavior by subjecting them to irredeemable shame and denigration.

Transformative Shortcomings of the Criminal Trial

Though often successful as a normative ritual, the criminal trial does not usually function as a positively transformative space for the primary parties involved. Indeed, several aspects of the process that contribute to its normative effectiveness – such as its formality, hierarchical character, and emphasis on civility – may actually detract from its ability to invoke personal or relational transformation in a positive direction.

The hierarchy inherent in the criminal trial is most evident in the absence of equal voice. The communication during the trial is highly scripted, with lawyers and judges asking questions and the laity answering those questions, never the other way around. This hierarchy of communication provides little opportunity for the people involved in the crime to voice their own stories, needs, and perspectives.

The physical layout of the court further communicates a strict hierarchy, in which the offender is symbolically established as inferior to the judge and jury sitting in judgment of her. As Mulcahy writes, “Each time a partition is created or bar installed in a court it has the effect of creating an inside and outside; an ‘opposition’ or other which can serve to signal segregation, place or inequality. Each time a floor is raised it has the potential to become the physical manifestation of hierarchy and power.”⁴⁵ Craig also draws attention to the stark inequality of power displayed.

The courtroom itself is a space of ritualized hierarchy. The spatial design of a courtroom establishes particular lines of sight, rendering some participants more visible or more audible than others and facilitating certain hierarchical lines of

⁴⁴ Ute Hüsken, *When Rituals Go Wrong: Mistakes, Failure and the Dynamics of Ritual* (Leiden: Brill, 2007), 353.

⁴⁵ Mulcahy, “Architects of Justice,” 385.

engagement that distinguish between the learned legal profession and the laity. Judges, for example, typically sit behind an elevated bench at the front and centre of the courtroom. They have the best view of the courtroom and are positioned so as to be heard above others. This design assists in their ability to maintain control over the proceedings.⁴⁶

The use of the dock as a place for the offender to stand during court processes further exaggerates the inequality communicated by the space. In Alex Jeffrey's report on a series of workshops discussing court space, an inmate participant noted, "The experience of the defendant in the dock is lonely and isolating."⁴⁷ In addition to communicating a lack of power on the part of the offender, it also serves to physically separate them from the wider public, as if they were a contagion that needs to be contained.

The inequality communicated by the courtroom space and procedure affects both the defendant and the harmed party. Neither is given the opportunity to tell their story in the way they would like to tell it. Even when a victim impact statement is shared, it is a constricted personal account, given a specific and controlled time in the overall ritual that is controlled by the judge and, to a lesser extent, the lawyers. One of my restorative justice facilitator interviewees used to work in a courtroom. She explained, "Sitting in court, there is so much power imbalance going around. The offender has no power and neither does victim in that court space" (Facilitator 3).

For our purposes, it is important to note that the top down nature of both the judicial procedure and the physical configuration of court obviates the equality necessary to invoke the liminal state present in transformative rituals. In both Turner's and Durkheim's understanding of transformative rituals, equality is a prerequisite for the positive transformation towards human kindness that results from the emergence of *communitas*/collective effervescence. The inequality of the criminal court ritual actually mitigates against the possibility of this change occurring.

The requirement of civility in the courtroom may also deter transformation because it may limit the level of emotional expression deemed acceptable.⁴⁸ According to

⁴⁶ Craig, "The Inhospitable Court," 218.

⁴⁷ Jeffrey, *Court Space*, 7.

⁴⁸ Craig, "The Inhospitable Court," 209.

Thomas Scheff's ritual theory, a limiting of emotional expression also limits the capacity for "restorative catharsis" through the discharging of emotion.⁴⁹

Transformation is also deterred through the evocation of extreme shame and stigmatization in the criminal justice process. In the workshops discussing court space, inmates repeatedly spoke of the feeling of shame that came from being in court.⁵⁰ The stigmatizing impact of the criminal justice process has been widely commented on. John Braithwaite claims that through their interaction with the criminal justice system, offenders are often vilified and face "stigmatizing shame."⁵¹ This shame is often deeply internalized. As Craig notes, "The performance of the ritual causes individuals to identify with their assigned roles...the rituals of the trial can be identity forming for trial participants."⁵² The defendant may begin to identify with the role of "criminal" and take that label and the associated shame on as their primary identity. He becomes conscious of himself as a different human being than he was before his arrest; he becomes the thing he is described as being.⁵³ As Maruna explains, "You become an 'offender.' Wonderfully, that name is ambiguous in regards to whether it refers to something you did in the past or something you are likely to do in the future; the implication is that it is about who you are."⁵⁴

When a person is degraded through shame, it poses a threat to their identity and sense of value. One way to handle that threat, Braithwaite explains, is to reject the rejecter (mainstream society) and the rules valued by the rejecter (the law).⁵⁵ This often leads offenders to turn to criminal subcultures, which offer a sense of community and pride in delinquency, as well as practical resources. Tannenbaum has also noted the way in which the dramatization of the criminal behavior through the court and ensuing stigmatization leads to gang membership and further criminal acts.

⁴⁹ Scheff, "The Distancing of Emotion in Ritual."

⁵⁰ Jeffrey, *Court Space*, 5.

⁵¹ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989).

⁵² Craig, "The Inhospitable Court," 222.

⁵³ Frank Tannenbaum, *Crime and the Community* (New York: Columbia University Press, 1938), 20.

⁵⁴ Shadd Maruna, "Can the Criminal Justice System Promote Desistance from Crime? Learning from Labelling," in *Re-Imagining Imprisonment in Europe: Effects, Failures and the Future*, ed. Eoin Carroll and Kevin Warner (Dublin: The Liffey Press Ltd, 2014), 94.

⁵⁵ John Braithwaite, "Repentance Rituals and Restorative Justice," *Journal of Political Philosophy* 8, no. 1 (2000): 287.

The dramatization of the evil therefore tends to precipitate the conflict situation which was first created through some innocent maladjustment. The child's isolation forces him into companionship with other children similarly defined, and the gang becomes his means of escape, his security. The life of the gang gives it special mores, and the attack by the community upon these mores merely overemphasizes the conflict already in existence, and makes it the source of a new series of experiences that lead directly to a criminal career.⁵⁶

Cultures that strongly emphasize “law and order,” along with being highly stigmatizing, tend to nurture criminal subcultures: they create a market for an oppositional identity. Once those who are rejected by the stigmatizing culture are in the clutches of the criminal subculture, it allows them to take pride in what the stigmatizers take to be a matter of shame. The criminal subculture also provides practical resources, such as knowledge, for example, about how to disarm an alarm system, how to sell drugs, or how to evade tax.⁵⁷ In this way, the stigmatizing symbolism of the justice system can lead to the continuation of criminal behavior. In fact, one study of 95,919 men and women in Florida found that those who were formally labeled offenders through the criminal court process are significantly more likely to recidivate within two years than those in similar circumstances who were not.⁵⁸

According to SpearIt, this stigmatization takes place through the ritual construction of “otherness” present in the justice system.

It is worth noting that the underlying connection between ritual and legal punishment depends on constructions of “otherness” for the victim of punishment. In the earliest Christian criminal codes, the ultimate face of the other was seen in heresy, blasphemy, and apostasy. Similar attitudes held sway in the United States in colonial legislation, in the “witch” trials of the Puritan era and in the Communist “red scares.” Today's politicized discourse on crime likewise tends to portray crime as amoral behavior of dangerous people who typically belong to racial and cultural groups. The “criminal” is a baseline from which all sorts of provocative labels derive, including “monster,” “animal,” “predator,” and even “super-predator,” words which will likely sound tomorrow the way “witch” sounds today.⁵⁹

⁵⁶ Tannenbaum, *Crime and the Community*, 20.

⁵⁷ Braithwaite, “Repentance Rituals and Restorative Justice,” 288.

⁵⁸ Ted Chiricos et al., “The Labeling of Convicted Felons and Its Consequences for Recidivism,” *Criminology* 45, no. 3 (2007).

⁵⁹ SpearIt, “Legal Punishment as Civil Ritual: Making Cultural Sense of Harsh Punishment,” *Mississippi Law Journal* 82, no. 1 (2013): 15.

Both the language used in the criminal justice system and the structure and ritual at play during trial and punishment exacerbate this stigmatizing impact and ultimately contribute to the criminal court's ineffectiveness as a transformative ritual.

As explained earlier in this chapter, the criminal justice process draws a boundary excluding the offender and the offending behavior from the social identity of the group. This may have a positive impact on the solidarity of the in-group, though at the expense of the offender who is ritualistically excluded. However, this exclusion of the offender is not essential for the positive impacts of solidarity to occur. Albert Cohen notes that the community may be united by acting on behalf of the deviant person. Solidarity is enhanced when members subordinate their divergent interests to pursue some common task, such as protecting or supporting the deviant as a demonstration of the group's patience and kindness in the face of the offending behavior.⁶⁰ The solidarity that occurs in a criminal trial often involves an *exclusionary* transformation of emotions. By contrast, as will be seen in the next chapter, restorative justice aims for the *inclusionary* transformation of emotions.⁶¹ Restorative justice conferences encourage emotional engagement by all participants, including the offender, and often result in feelings of solidarity among all involved parties. The non-hierarchical setting of restorative justice, which gives equal voice and standing to all participants and seeks to include and validate the person who committed an offense as a valuable community member, is an important contributing factor in this ability to transform emotions and relationships.⁶²

Proleptic Shortcomings of the Criminal Trial

As well as being generally unable to create a space for personal and relational transformation, the ritual of the criminal trial often fails to promote positive societal transformation. In order to uphold important judicial principles such as fairness and consistency, the justice system places primary emphasis on procedure over outcome. Because this procedure is fixed through ritualization, it is difficult to question or change it. As Craig explains,

⁶⁰ Cohen, *Deviance and Control*, 9.

⁶¹ Susanne Karstedt, "Emotions, Crime, and Justice: Exploring Durkheimian Themes," in *Sociological Theory and Criminological Research: Views from Europe and the United States*, ed. Mathieu Deflem (Oxford: Elsevier, 2006), 230.

⁶² Ibid.

Rituals, because they are routinized, formal, supportive of *status quo* power differentials, premised on tradition, and susceptible to invariant application, do not lend themselves to critique. In this sense, ritual might be described as meaning without requiring thought. The function or utility of maintaining a particular ritual is not necessarily questioned, nor are the adverse impacts of continuing to perform most rituals.⁶³

This emphasis on preserving social order and correct procedure may mean that the criminal trial causes or perpetuates further harm and injustice. As Noakes-Duncan explains,

Due to this emphasis on procedure over outcome, transfixed in the image of a blindfolded goddess balancing the scales of justice by applying the impartial rule of law, the criminal justice system actually perpetuates inequality and injustice by ignoring the important social and political outcomes of such a system. An “impartial” justice system aimed at preserving order ends up serving the current order of things, the status quo, however unjust it may be.⁶⁴

The legislature may change laws in order to redress larger social injustices, but it is the task of the criminal court to enforce extant law, which means it is restrained from providing societal transformation to address social inequalities.

This is especially important to note because crime is often a symptom of a social malaise that needs correction. Individual deviance may be a warning signal that something is wrong in the organization, community, or society.⁶⁵ In psychological terms, behavior is partly a function of unmet needs. The decision to commit a crime is often evidence of a need the person is attempting to fulfill, though the way of doing it is harmful to others. Therefore, a process that allows for the exploration of the needs behind behavior can lead to important societal change. For example, if a person resorts to stealing because of a lack of money for food or clothing, it is important to identify and address the underlying need in a prosocial way. Because the criminal trial is constricted by evidentiary rules that relate only to the offending behavior, it often fails to unearth the

⁶³ Craig, "The Inhospitable Court," 232.

⁶⁴ Thomas Noakes-Duncan, "The Emergence of Restorative Justice in Ecclesial Practice," *Journal of Moral Theology* 5, no. 2 (2016): 9.

⁶⁵ Cohen, *Deviance and Control*, 10.

wider story behind people's lives and choices or, even when that occurs, to be a catalyst for social change.

Often this serves to reinforce existing societal hierarchies. The trial process requires victims and offenders to perform subordinate roles that may mirror pre-existing societal hierarchies based on gender, race, and socio-economics.⁶⁶ While diversity among professionals in the justice system is improving, an affluent white male often fills the role of the judge, while women, minority groups and those of a lower socio-economic status fill the roles of offender and victim, reflecting and reinforcing wider power differentials in society. This limits the trial's potential as a proleptic ritual. In so far as it reinforces the existing hegemony of the social order, it is unable to envision or temporarily create a society that transcends the order and organization of power that is being acted out in the ritual process.

Summary

This chapter has argued that the ritual of the mainstream criminal trial principally fulfills a normative function for wider society. It responds to societal concerns for predictability and trustworthiness, establishes and reaffirms social values, and maintains stability and cohesion. While effective in these normative respects, the trial ritual does not generally function as a transformative space for participants. Several aspects of the process that contribute positively to its normative effectiveness may actually detract from its ability to evoke personal, relational, or societal transformation. Its emphasis on preserving social order and correct procedure may indeed mean that the criminal trial perpetuates or causes further harm and injustice.

In the following chapters, we will turn our attention to the ritual of restorative justice and will seek to understand the degree to which it fulfills transformative, normative, and proleptic functions for individual participants and for wider society. Restorative justice does not attempt to replace all aspects of the traditional system, preferring to emphasize resolution rather than determining criminal liability.⁶⁷ This may, at first glance, weaken its ability to function as a normative ritual. Yet, through closer

⁶⁶ Craig, "The Inhospitable Court," 199.

⁶⁷ McElrea and Thompson, "Our Traditional Criminal Justice System," 8.

examination of the ritual's impacts on participants, we will see that restorative justice contains many of the elements needed to fulfill a greater measure of justice than promised through the criminal trial.

Chapter 4:

The Transformative Function of the Restorative Justice Ritual

As Jane Bolitho notes, “RJ has long been associated with emotional ‘transformation’...Yet, very little is known about exactly why or how the RJ process shifts emotion.”¹ During my interviews with restorative justice facilitators and participants, this moment of transformation was referred to in a number of different ways. At times it was related to some transitional moment – the “shift” or a “change in tone” – while at other times it had a more mysterious quality – “grace” or that “magical restorative justice thing.” Regardless of what it is called, the restorative justice process often evokes significant change in and for participants. Relationships shift from being fractured to becoming reconciled; emotions shift from a state of enmity to goodwill for others.² This transformative impact of the process is arguably what has fueled the growth of the restorative justice movement as an increasingly supported alternative for or complement to the criminal justice system.

The transformative function of the restorative justice encounter has also attracted numerous practitioners and advocates, giving the movement an almost evangelical flavor.³ When interviewing facilitators during the course of this research, they were first asked to recount their best facilitation experience and what made it so.⁴ All of the stories shared were about emotional and relational transformation and the attraction they felt to being party to this experience. For example, one facilitator shared the story of her first-ever restorative justice conference.

It had really quite a transformative effect on the people in the room and created the opportunity for a solution that hadn’t been visible beforehand. Completely addictive! I think the reason I’m still a facilitator years later is partly down to that

¹ Jane Bolitho, "Inside the Restorative Justice Black Box," *International Review of Victimology* 23, no. 3 (2017): 234.

² Johnstone, "The Agendas of the Restorative Justice Movement," 63.

³ John Pratt, "Beyond Evangelical Criminology: The Meaning and Significance of Restorative Justice," in *Institutionalizing Restorative Justice*, ed. Ivo Aertsen, Tom Daems, and Luc Robert (Cullompton: Willan Publishing, 2006).

⁴ This question is borrowed from Meredith Rossner. Particularly because restorative justice is grounded in the practice of storytelling, I found that starting the interview with a question that invites a story to be very effective for sparking further reflection and insight.

experience, which was not perfect, but was one of those experiences where you sit down and say, “Wow! Look what this can do!” I would never have thought that they could get to this point at the end. I would never have thought that these outcomes were possible. And really all those kind of magic bits of restorative justice, some of those magic bits I saw in that conference. I felt so privileged to be there and so satisfied with the offering we had been able to bring to people who had been so hurt and stuck in that point in their lives (Facilitator 6).

Importantly, when facilitators talked about the transformation they had witnessed in cases, they attributed it not primarily to their own skill, but to the structure and impact of the process itself. As several facilitators explained, you have to “trust the process” (Facilitators 5, 9, 14). This attribution of success to the process was echoed in interviews with restorative justice participants, whether as harmed parties or responsible parties. Their responses indicated that there is something in the flow of the restorative justice conference itself that contributed to the transformation of emotions they experienced. One prior harmed party explained the shift he experienced during the course of the conference:

It is a positive environment, but the way you feel about that person is from a negative point of view. So, until you get to the end of your meeting, you are still a victim from what they’ve done. So, you still feel a little apprehensive. It shifts by the end of the meeting, so the outcomes are really positive at the end (Participant 3).

The structure – or what I am referring to as the ritual – of the restorative justice process seems to play a crucial role in the emotional and relational shift experienced by participants.

This chapter endeavors to understand how the transformative capacity of the restorative justice ritual is achieved. When scholars and practitioners discuss the inner workings of restorative justice, they often use vague terms, such as “magic.”⁵ While there is widespread agreement that a significant personal and relational transformation often occurs, practitioners and researchers are still looking for how best to explain and evaluate this phenomenon. As Paul McCold notes,

⁵ Audrey Barrett, “Restorative Justice: The Structure of Dialogue: Exploring Habermas’ Discourse Theory to Explain the ‘Magic’ and Potential of Restorative Justice Processes,” *Dalhousie Law Journal* 36 (2013): 337.

Today we struggle to understand what it is we see, although those observing the transformations that can occur in restorative processes would agree, we “know it when we see it.” A “shared language” will eventually develop from how we interpret what we see and how we express those visions to others.⁶

I will argue that ritual theory provides such a “shared language.” Specifically, I will propose that a synthesis of the ritual theories of Turner and Durkheim provides a framework for understanding and describing the oft-cited “magic” of the process. Despite the significant attention given to the transformative impact of restorative justice, to date relatively few scholars have investigated *how* the inner workings of the restorative process actually facilitate this transformation. The theories that have been put forth will be reviewed in the following section. A few have engaged directly with the ritual characteristics of restorative justice, though primarily in a way that focuses on the micro-interactions present in the process. The time is ripe for a more comprehensive analysis of the ritual structure of the restorative justice conference as a whole.

Theories of Restorative Justice’s Transformative Capacity

The majority of available scholarship on the transformative function of restorative justice focuses on the dynamic of shame. This line of inquiry was made famous by John Braithwaite, whose seminal work *Crime, Shame and Reintegration* provided one of the first theoretical frameworks for understanding the inner workings of restorative justice.⁷ Braithwaite distinguishes between two ways of communicating shame to a responsible party: stigmatizing and reintegrative. Stigmatizing shame is disrespectful shaming. The responsible party is treated as a bad person and left with a permanent stigma.⁸ Stigmatizing shame often leads to further criminal behavior. As Braithwaite explains, “When people shame us in a degrading way, this poses a threat to our identity. One way we can deal with threat is to reject our rejectors.”⁹ This rejection by the law-abiding society, as noted in the previous chapter, increases the attractiveness of criminal subcultures. As Braithwaite explains, “Disrespect begets disrespect. Because you don’t respect me, I won’t respect you or the rules you value. I have no hope of seeking out a

⁶ Paul McCold, “Toward a Mid-Range Theory of Restorative Criminal Justice: A Reply to the Maximalist Model,” *Contemporary Justice Review* 3, no. 4 (2000): 363.

⁷ Braithwaite, *Crime, Shame and Reintegration*.

⁸ *Ibid.*, 55.

⁹ John Braithwaite, “Shame and Criminal Justice,” *Canadian Journal of Criminology* 42, no. 3 (2000): 287.

respected identity under your values; delinquent subcultures look more promising to me as a basis for respect.”¹⁰

The second way of communicating shame to a responsible party is by “reintegrative shaming.” This is where disapproval for the action is communicated while maintaining respect for the responsible party, who is treated as a good person who has done a bad deed.¹¹ This way of communicating shame strives to maintain bonds of love and respect throughout. As a result, criminal subcultures appear less attractive to the responsibly party.¹² Reintegrative shaming instead contributes to a learned conscience in responsible parties, to ideas of right and wrong, and to the development of sympathy for others.¹³

Braithwaite subsequently expanded on his earlier work by examining how the restorative justice process functions as a repentance or reintegrative shaming ritual, facilitating the shift from stigmatizing or unacknowledged shame to restorative or reintegrative shame.¹⁴ He identifies three essential strategies for restorative justice to be successful as a repentance ritual: establishing ground rules that ensure participants speak respectfully to one another, allowing everyone who has been affected by the wrong to speak about their emotions and the impacts, and enabling conference participants to make appeals to the responsible party to relieve the burden that they have placed on family and loved ones.¹⁵ This relief can be accomplished through the responsible party taking steps to repair the harms they have caused.

Vernon C. Kelly and Margaret Thorsborne have also addressed the transformation of shame in the restorative justice process in a volume they co-edited titled, *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*. In this work, they draw on Silvan Tomkins’ biologically-based theory of emotion, which has grown into a system known as Affect

¹⁰ Ibid., 287-88.

¹¹ Braithwaite, *Crime, Shame and Reintegration*, 55.

¹² Ibid., 14.

¹³ Ibid., 37.

¹⁴ Braithwaite, "Repentance Rituals and Restorative Justice," 117.

¹⁵ Ibid., 125.

Script Psychology.¹⁶ This system is premised on the simple claim that people understand each other because of their shared biological inheritance. An “affect” is “a biological program, wired into the central nervous system of all newborn infants.”¹⁷ There are two positive affects (interest-excitement and enjoyment-joy), one neutral affect (surprise-startle), and six negative affects (distress-anguish, fear-terror, anger-rage, shame-humiliation, disgust, and dissmell).¹⁸ Each affect is triggered by a set of stimulus conditions and is an automatic process, not requiring thought.¹⁹ The affect takes place outside of our conscious awareness, but it does trigger our awareness, focusing our attention on the most important thing happening at the moment. “In other words, we only become consciously aware of something if it first triggers an affect.”²⁰ The term “feeling” describes what takes place once we become consciously aware that an affect has been triggered.²¹

According to Kelly, the affect system is a vital feature of how and why we care. All humans share the nine affects and also a “Central Blueprint,” which determines our actions. “We are continually motivated by our inborn biological systems to maximize positive affect; minimize negative affect; minimize the inhibition of affect; and maximize the power to maximize positive affect, minimize negative affect, and minimize the inhibition of affect.”²² Kelly argues that it is these aspects of our shared biology that make restorative justice effective as an emotionally transformative process. He asks, “How can we ever understand each other? The answer is found in the universality of our biological inheritance. We all know what it is to feel fear, joy, anger, shame, interest, distress, disgust and dissmell.”²³

Emotional harm happens when “circumstances inhibit one’s freedom to respond to and eliminate negative affect.”²⁴ Shame is the most common outcome of these events

¹⁶ Vernon C. Kelly, “Caring, Restorative Practice and the Biology of Emotion,” in *In the Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*, ed. Vernon C. Kelly and Margaret Thorsborne (London: Jessica Kingsley Publishers, 2014), 27.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 28.

²⁰ *Ibid.*

²¹ *Ibid.*, 29.

²² *Ibid.*, 30.

²³ *Ibid.*, 35.

²⁴ *Ibid.*, 50.

that cause harm because the events are “impediments to one’s interest in being competent to control one’s life and wellbeing.”²⁵ Shame is the affect that signals the need for and motivates behaviors of reconnection and reconciliation. “It is critical for the balanced functioning of the Central Blueprint in relationships because its presence always means there is desire for positive emotional connections with others.”²⁶

The restorative justice process creates an ideal place for this positive emotional connection to occur. As Kelly explains,

The question posed to each person in the circle about how the incident(s) that created the harm affected them will increase the intensity of negative emotion in the room – even if the level of emotion was high to begin with. This is inevitable given the biology of the human affect system... because each affect is an activator of itself, both in the person experiencing it and in others around that person, when one person expresses anger or fear or joy, those around him will begin to feel angry or fearful or joyful. This affective resonance is the biologically directed reason why everyone in a circle or at a conference experiences intensification of their emotions and is forced to “get in touch” with their real feelings about how the incident affected them.²⁷

This affective resonance can open the door for empathy because of the shared nature of our innate affects. Because everyone knows fear, anger, distress, shame, disgust, dissmell, surprise, interest, and enjoyment, participants can understand and connect emotionally with everyone in the room.²⁸ According to Kelly and Thorsborne, this emergence of empathy through affective resonance is thus responsible for the emotionally transformative impact of the restorative justice process.

Most recently, parallels have been drawn between restorative justice and the sequence outlined in Memory Reconsolidation, “a powerful and adaptive neurobiological mechanism that rewrites emotional memories.”²⁹ Jane Bolitho notes that the sequential markers of Memory Reconsolidation are very similar to what takes place in the

²⁵ Ibid., 51.

²⁶ Ibid., 40.

²⁷ Vernon C. Kelly, "Interpersonal Caring, Social Discipline and a Blueprint for Restorative Healing," in *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*, ed. Vernon C. Kelly and Margaret Thorsborne (London: Jessica Kingsley Publishers, 2014), 68.

²⁸ Ibid., 69.

²⁹ Bolitho, "Inside the Restorative Justice Black Box," 233.

restorative justice process. These sequential markers are (1) a significant event is attached to a strong emotional reaction, (2) the memory is reactivated (through describing it in detail), and (3) the memory is disrupted through the presentation of new information that challenges or is incongruent with the belief attached to the memory.³⁰

Bolitho notes that this parallel is especially apparent in the restorative justice process for harmed parties that present with an intensely negative emotional memory.³¹ Through the restorative process, the emotional memory is reactivated as participants retell their experience of the crime, which also contains their own interpretation of the event and what significance ought to be attached to it. This memory can then be disrupted through the presentation of new information that challenges or is incongruent with the beliefs attached to the memory. This new information arrives through having the opportunity to hear the responsible party's story, replete with their own interpretation. This exchanging of information leads to emotional learning, where the memory either becomes more entrenched or is reconsolidated in a different form. The process can thereby facilitate the re-writing of the damaging emotional memory attached to the crime and its aftermath.³²

Meredith Rossner's work speaks to the ritual aspect of restorative justice most directly. She pursues a micro-level view of restorative justice interactions, asserting that "the emotional and ritual dynamics within a restorative justice conference hold the key to understanding, monitoring and measuring its success."³³ Drawing on Randall Collins' theory of interaction ritual chains, Rossner argues that a successful restorative justice conference is built through successful interaction ritual chains resulting in feelings of togetherness. Collins' theory builds on Durkheim's theory of collective effervescence and Goffman's understanding of interaction rituals to form an explanation of how interaction rituals contribute to an individual's future behavior. A successful interaction ritual results in emotional energy, whereas a failed interaction ritual drains energy. The experience of

³⁰ Ibid., 237.

³¹ Ibid., 238.

³² Ibid.

³³ Meredith Rossner, *Just Emotions: Rituals of Restorative Justice* (Oxford: Oxford University Press, 2013), 11.

emotional energy drives individuals to seek out situations where they will gain more emotional energy, thus motivating pro-social behavior.³⁴

Rossner proposes that in the restorative justice process, successful interaction ritual chains, characterized by rhythmic and entrained interactions, lead to the emergence of collective effervescence and group solidarity, or a feeling of group membership and closeness.³⁵ When group solidarity arises, there is a short-term outcome of shared morality and a rise in emotional energy or a generalized state of well-being.

“Success” is in the ability of the conference to take on elements of a successful interaction ritual, carefully guided by the facilitator to produce rhythmic dialogue, emotional entrainment, a balance of power and status, and identifiable emotional “turning points.” This leads to group solidarity in the short-term, and perhaps emotional energy and reduced offending in the long-term.³⁶

Rossner’s study confirmed this hypothesis. Participants in conferences with a higher degree of solidarity, resulting from successful interaction rituals, were less likely to re-offend after the restorative justice process than those who did not experience such solidarity.³⁷ Having a taste of emotional energy leaves the individual hungry for more positive interactions, thus motivating pro-social behavior in the future.³⁸ Rossner notes that symbols of group membership or solidarity also emerge out of collective effervescence. This symbolic representation can take material form, as in the case of a signed agreement, or non-material form, as in the expression of shame or remorse by the responsible party and a sign of forgiveness from the harmed party.³⁹

Rossner’s identification of the emergence of collective effervescence and group solidarity and the transformative impact of that experience on participants is perceptive and a significant contribution to understanding how the restorative justice process functions. She has provided a keen insight into the micro-level interaction rituals that take place between participants. However, there is more to be gleaned through examining the

³⁴ Collins, *Interaction Ritual Chains*, 44.

³⁵ Rossner, *Just Emotions*, 67.

³⁶ *Ibid.*, 71.

³⁷ *Ibid.*, 140.

³⁸ *Ibid.*

³⁹ Meredith Rossner, "Why Emotions Work: Restorative Justice, Interaction Ritual and the Micro Potential for Emotional Transformation" (University of Pennsylvania, 2008), 30.

ritual structure of the process as a whole and the context in which it occurs, drawing on the insights of additional ritual theorists, specifically Turner and Durkheim.⁴⁰ As one facilitator explained to me, “The whole thing is a ritual, the flow of the meeting, how we protect that, how we move people from one phase to another, how we ready people, how we seat people, the circle” (Facilitator 5).

Each of these explanations – investigating the dynamics of shame, neurobiological mechanisms, and interaction ritual chains – has contributed significantly to gaining a deeper understanding of the transformative impact of restorative justice. Rather than attempting to negate the validity of these explanations, the theoretical approach adopted in this thesis seeks to understand the broader *social space* created by the restorative justice ritual that opens up the possibility of transformation. In other words, a distinction needs to be made between the person-to-person interactions and the social context in which those interactions take place. As Bolitho notes, a “particular kind of space” is created through restorative justice and “in this space a series of trauma-reducing therapeutic techniques come into play.”⁴¹ However, the successful employment of those transformational techniques and experiences depends on the prior establishment of a transformative social space. I argue that a broader exposition of the ritual dynamics at work in restorative justice enables greater understanding of this social space.

The term “social space” was first coined by Durkheim in the 1890s and refers to how the structure of a physical space has a reciprocal relationship with the social relations of the group.⁴² In ritual, both the setup of the physical space and the structure of the process have an impact on the social interactions of the group. This same dynamic is apparent in the restorative justice ritual. A social space is established which is distinct from normal life and that makes possible a group experience of interconnectedness that fuels more positive social interactions.

⁴⁰ This study will draw on Durkheim’s theory of ritual in its original form, prior to the application of his theory to “interaction rituals” between individuals that was made by Goffman and Collins, and later employed by Rossner in her analysis of restorative justice.

⁴¹ Jane Bolitho, “Putting Justice Needs First: A Case Study of Best Practice in Restorative Justice,” *Restorative Justice* 3, no. 2 (2015): 272.

⁴² Anne Buttimer and Mary Annette, “Social Space in Interdisciplinary Perspective,” *Geographical Review* 59, no. 3 (1969): 418.

Interviews with those involved in restorative justice confirmed that the process creates a different type of social space. One facilitator explained, “Energetically it is totally different, it feels like a sacred space to me, and I think most people see it that way. They enter with a demure attitude...they sit down like it is a church pew. There is just a different feeling when you are dealing with these heavy real issues; it demands reverence” (Facilitator 1). The social space created feels markedly different from normal life. “There is a structure and a different way of operating in the room that allows people to be different and act differently” (Facilitator 3). This distinct social space generated by the ritual may create the possibility of positive transformation.

The theoretical understandings of transformative rituals put forth by Turner and Durkheim hold a wealth of insight for understanding how the restorative justice ritual functions to create a transformative space for participants and where, at points, it may fall short. To summarize the discussion in Chapter Two, Turner identifies the common ritual properties of “liminality” and “communitas.” Liminality refers to an ambiguous space created by ritual that is subversive of the normal social order, characterized as it is by radical equality. In liminality, the assumed rules and roles that structure society are momentarily suspended.⁴³ Communitas emerges out of this liminal state, as people experience themselves as connected in one equal, undifferentiated community.⁴⁴ This is a powerful revelation that carries with it a moral imperative. The emergence of communitas in ritual has a transformational effect on the will of participants, generating human kindness as a behavior that aptly expresses and respects the innate interconnectedness of the group.⁴⁵ Complementary to this notion of communitas is Durkheim’s notion of collective effervescence, a state of social existence characterized by intense emotions and the experience of connection.⁴⁶ Durkheim notes that an equalizing experience separate from normal social existence is necessary in order for collective effervescence to arise. This results in the emergence of collective conscience, generating an idea of what is good and a sense of moral obligation to it.⁴⁷

⁴³ Turner, *The Ritual Process*, 97.

⁴⁴ Ibid., 95-97.

⁴⁵ Ibid., 105.

⁴⁶ Durkheim, *The Elementary Forms of the Religious Life*, 215-16.

⁴⁷ Ibid., 211.

Both scholars also chart the specific ritual structure required in order for these essential transformative ritual properties to emerge and for the transformation to be sustained after the culmination of the ritual. Turner describes the three phases of separation, liminality (in which *communitas* may emerge), and reincorporation. Durkheim's theory describes how the transformation and sentiments that arise in ritual are prolonged through symbols and through the repetition of rituals that allow participants to recharge their experience of collective effervescence/*communitas*. The following sections will investigate the presence in the restorative justice ritual of the three distinct phases identified by Turner and will consider the presence of the transformation-prolonging ritual components discussed by Durkheim.

Separation Phase

The first phase is separation, during which the ritual participants are detached from everyday activities, social structures, and cultural conditions in order to enter the designated social space of the ritual.⁴⁸ Separation is aided both by the physical space in which the ritual takes place and the values and way of interacting the space communicates and reinforces, and also by the clear establishment of a different way of being together, characterized by respect and calm.

Anthropological accounts of rituals of reconciliation offer an interesting comparison to the restorative justice ritual. Rituals of reconciliation are rites of transition during which the participants undergo social and relational change.⁴⁹ This is done in order to maintain and repair the web of relationships that make up a community when those relationships have been damaged by wrongdoing.⁵⁰ Anthropologist Nolte-Schamm offers a description of a Southern African ritual known as *Cleansing the Chest of Grudges* used to reconcile hostile parties and employs Victor Turner's three stages of the ritual process to analyze it.

In *Cleansing the Chest of Grudges*, the two hostile parties are taken away from their normal living areas and brought to a predetermined place sanctified by community

⁴⁸ Turner, *The Ritual Process*, 94.

⁴⁹ Claudia Nolte-Schamm, "The African Traditional Ritual of Cleansing the Chest of Grudges as a Ritual of Reconciliation," *Religion and Theology* 13, no. 1 (2006): 93.

⁵⁰ *Ibid.*, 94.

elders through prayers and the sprinkling of holy water. For the ritual, the elders sit in a circle to witness the case. The disputing parties are brought to the circle and each tells their story. They are encouraged to be open and honest and to express their guilt or innocence and hope for peace with one another.⁵¹ They are then asked to shake hands, signifying their renewed oneness.⁵² The elders then instruct the parties to lick ash from each other's right hand and spit it onto the ground, symbolizing the emptying of bad feelings and evil spirits. Their hands are then washed in sanctified water to cleanse them and they shake hands again, while the Elders and community on-lookers cheer.⁵³ Their reintegration into the community is cemented by a shared meal at the culmination of the ritual.⁵⁴ This ritual contains many parallels to the restorative justice process and offers an example of a transformative ritual that has already been analyzed through the lens of Turner's ritual stages. I will return several times in what follows to this parallel example as a means of illustrating the relevance of the transformative ritual lens to processes of reconciliation.

In the *Cleansing the Chest of Grudges* ritual, the separation phase is achieved through taking the ritual participants out of their normal living space to a place sanctified by elders who preside over the ritual.⁵⁵ Similarly, in a restorative justice conference, the process begins by taking participants into a physical space that is different from their normal lives and that is arranged and established by facilitators who preside over the ritual process. This separation is first achieved through physical markers, most notably the arrangement of chairs in a circle. One facilitator explained, "We set up the chairs to elicit comfort and openness, they are in a circle to see and hear each other and to create a space where equal voice can happen" (Facilitator 1). This simple seating arrangement serves to reinforce a primary value of the dialogue that is to follow, communicating the equal value of all participants.⁵⁶ Many facilitators are meticulous in ensuring that mutual equality is communicated by the physical set up of the space. One facilitator explained,

⁵¹ Ibid., 91.

⁵² Ibid., 92.

⁵³ Ibid.

⁵⁴ Ibid., 103.

⁵⁵ Ibid., 95.

⁵⁶ Zehr, *The Little Book of Restorative Justice*.

I feel really uncomfortable if someone's nametag is a different color or if there's not all the same type of chairs. I make sure there is an equality of physical space to whatever degree possible. Also making sure everyone is comfortable and their physical needs are met. I'm here to equally support all of you and also to support equality (Facilitator 10).

The larger physical space in which the process takes place can also contribute to separation and setting the tone for the process. In the same way that a courtroom influences the process and values inherent to the criminal trial, the physical space where restorative justice occurs can likewise affect the process. In Schirch's analysis of the role of ritual in peace-building, she argues that facilitators should pay as much attention to the *context* as to the *content* of peace-building interventions.⁵⁷ In the same way that function follows form, the physical context in which a peace-building process takes place is symbolic of the values and intended outcomes of the process. If restorative justice is to serve the function of inducing transformation, then the physical form surrounding this process should symbolically support the pursuit of peace. For example, it is important that the setting does not favor one party over another, a space "that is not owned or considered home turf by any of the involved parties."⁵⁸

Barb Toews and Deanna Van Buren have undertaken the first attempt to understand what sort of physical space is conducive to the restorative justice ritual. Operating from the understanding that architecture and design can influence behavior, they have investigated how to better design justice spaces that reinforce, rather than contradict, the values of the restorative justice paradigm. "A new type of justice orientation," Toews writes, "requires a new orientation toward inclusion and relationship, and away from separation and isolation."⁵⁹

Toews coins the term "restorative space," which refers to a type of physical space that uses design features conducive to restorative justice values and aims. She identifies several defining features of a restorative space, including an orientation toward respect, care, trust, and humility, an ability to be in relationship, safety, meaningful opportunities

⁵⁷ Schirch, *Ritual and Symbol in Peacebuilding*, 164.

⁵⁸ *Ibid.*, 68.

⁵⁹ Barb Toews, "This Backyard Is My Serenity Place: Learning from Incarcerated Women About the Architecture and Design of Restorative Justice," *Restorative Justice* 4, no. 2 (2016): 233.

for accountability, connection to nature and spirituality, and honesty and openness.⁶⁰ Following a design study done with female inmates, Toews highlights the incorporation of nature and home-like spaces as central to the construction of restorative space in the carceral environment.⁶¹

I spoke with two facilitators who had been involved in decorating and arranging a space that would be used specifically (though not solely) for restorative justice conferences. One facilitator spoke about wanting to create a room that was “comforting and colorful, but not distracting” (Facilitator 13). She went on to explain the specific strategies she employed in creating such a space.

I try to have art that is pleasing to a broad range of tastes and that is calming. Plants are an essential part of a comfortable space, having something that is alive energetically brings something to the space and also brings color and vibrancy to the room. And I did really get a circle rug, because the space was an office. It was a pretty typical fluorescent lights office space like from the movie. That could have been the feel of the room, with the grey industrial carpet. And so, one of the first things I thought to buy was a colorful circular rug, so it would give the room sort of a central focus... Something about having a colorful rug on the floor also feels warm to me, there is something that makes it feel more like a community space. Maybe it is kind of a hippie perspective, but it is true, and it works (Facilitator 13).

Often, restorative justice processes take place in “borrowed spaces,” in community center rooms, library meeting spaces, or church basements. As one facilitator described, “We are often operating in sub-optimal conditions, in a borrowed space, after work, dark, cold winter night” (Facilitator 4). Therefore, the responsibility often falls to the facilitator to create an environment out of the limited resources available that will be conducive to dialogue. While there are advantages to being able to design a room specifically for the purpose of holding restorative justice conferences, there is also symbolic significance to using spaces that have other uses. As one facilitator explained,

The space having other uses too can alleviate some of the intensity. When you show up in a courtroom and only court happens there it is like “Ah this is only where bad things happen!” Conscious or unconscious, everyone is acknowledging life happens, other life human actions happen in this room in addition to this one. I’ve never facilitated in a room where only that happens there, ever, period. But it is

⁶⁰ Ibid., 217.

⁶¹ Ibid.

really nice because tomorrow someone will show up and sit at that desk and your life will go on too (Facilitator 10).

Within the confines of borrowed spaces, facilitators spoke about little things that could be done to make the space feel more welcoming. One facilitator mentioned,

I have a sort of survival bag I take along... some cups, some tea bags, so all you really need is a kettle and hot water, usually there are some biscuits there. Depending on the case will impact the level of detail. Sometimes we've brought flowers into the room and a tablecloth, so that even in a crappy space, it is again conveying that respect. People can see the reality of the space, but also the effort. A crappy table is still a crappy table, but has a nice tablecloth and flowers, fresh tea and biscuits...I think that hospitality notion is symbolic of care, to offer someone something like that (Facilitator 4).

Having some basic supplies including tea or something small to offer participants to eat on hand were some of the primary ways facilitators spoke about creating a space that, in Toews' terms, reinforces an "orientation toward inclusion and relationship."⁶²

This emphasis on the importance of a hospitable welcoming of participants is in alignment with George Pavlich's focus on hospitality as the guiding ethical concept in the restorative justice process. The care shown by the facilitators and the hospitable space created stand in direct contrast to the often inhospitable experience of the criminal trial. As Pavlich explains,

At base, restorative justice aspires to a justice hospitable and meaningful to those involved in a harmful event (individual and collective). This stands in contrast to the variously described inhospitality, even hostility, of the adversarial courtroom's version of criminal justice and its attempts to prove guilt against general laws, its coercive consequences, etc.⁶³

By intentionally creating a hospitable environment for the conversation, facilitators open up the opportunity for a way of being together that is radically different from the adversarial and hostile interactions often present in criminal court. Establishing a hospitable ethic at the point of welcome sets up a collective expectation of how all participants ought to be treated. This will often be reinforced verbally through

⁶² Ibid., 233.

⁶³ George Pavlich, "Towards an Ethic of Restorative Justice," in *Restorative Justice and the Law*, ed. Lode Walgrave (New York: Willian Publishing, 2002), 8-9.

explanation of the procedural rules of the process.⁶⁴ From the perspective of ritual theory, these actions of hospitality can be seen as contributing to a successful separation phase for the ritual group. Because the normal state of social interaction between restorative justice participants (particularly the responsible party and harmed party) is often marked by tension and anger, they are separated from that normal state of social existence through entering an intentionally hospitable space.

Space considerations also include more basic sensory concerns, such as light, the absence of distractions, confidentiality, a comfortable temperature, and noise. During interviews, facilitators were asked to describe what they considered the worst conference they had been part of and what made it so. One facilitator's response in particular highlighted the importance of sensory components in the physical space. She said,

The environment we were in, it was one of those crazy stormy night and we were in a room like this. At points we had to stop because we couldn't hear what people were saying. And it was freezing, and we couldn't get the heater working. So, everyone was doing their best, but by the end everyone was a little fed up (Facilitator 5).

When a facilitator is unable to create the sensation of entering a physical space that is separate from normal life with adequate comfort in order to engage with the process, there can be negative follow-on effects. Specifically, when some of the more basic physical space needs are not met, it can negatively impact the separation phase and, as a result, may impact upon the transformative capacity of the restorative justice ritual as a whole.

As the above example highlights, the physical space in which a restorative justice process takes place cannot always be entirely controlled. Schirch recommends that people ask themselves a few questions as they prepare to work with people in conflict. Among these are, "What kinds of space will help people set apart their meeting space from everyday life where the conflict is experienced?" and "What is the best way to set the stage for good communication and construct a context conducive to emphasizing peaceful values of shared humanity among the participants?"⁶⁵ While recognizing that great efforts

⁶⁴ Ibid., 9.

⁶⁵ Schirch, *Ritual and Symbol in Peacebuilding*, 76-77.

may not always be possible in the borrowed spaces, these questions and appropriate modifications to the physical space may be a helpful tool as facilitators direct the ritual phase of separation.

In addition to the symbolic separation of the physical space, facilitators' verbal cues also signal separation. In some conferences, a *karakia*⁶⁶ or a meaningful reading is shared in order to assist in transitioning people into the ritual space. In traditional Māori society, a *karakia* is "offered so that the gods may intercede in the affairs of mortal men by providing comfort, guidance, direction, and blessings for them in their various activities and pursuits."⁶⁷ In contemporary usage, *karakia* is not always used in an explicitly religious framework, but can still be a way of inviting higher guidance into the process. When a *karakia* isn't appropriate for the specific participants present, another sort of meaningful reading may be used to signal to participants that they are entering a different type of social space. One facilitator shared that he likes to try to find a short reading that helps explain the purpose of the process remarking,

I think it sets a tone of sensitivity, which you don't normally get in court proceedings. I think there is real importance around it...I think it puts us in a different type of space than what people are expecting... It can be quite good to alert them that this is not the normal kind of conversation you might be having (Facilitator 4).

While several facilitators mentioned the benefit they see in beginning (and ending) the process with a *karakia* or other sort of reading or blessing, its inclusion is not necessary in order to enter a different type of space. As one facilitator explained,

Whether or not *karakia* is said, you are still entering a space of spiritual healing... guess what I'm saying is even if you're not Māori, or two people say they are not spiritual at all, my view would be if they enter into that process, whether they name it or not, whether they open up the door with those kinds of words or that kind of prayer, I think that still happens anyways (Facilitator 8).

Even when the separation and induction into the restorative justice ritual is not made explicit through a *karakia* or reading, there are other ways for the facilitators to

⁶⁶ A *karakia* is a "a set form of words to state or make effective a ritual activity" like a prayer or a chant, Moorfield, "Te Aka Māori-English".

⁶⁷ Barlow, *Tikanga Whakaaro*, 37.

signal this transition. One way is through the clarification of ground rules. In outlining strategies for repentance rituals, Braithwaite highlights the importance of establishing ground rules as a way to ensure that participants speak respectfully to each other. “The requirement of respectful speech does nurture repentance, just as abusive speech inhibits it.”⁶⁸ The sharing of ground rules is also a key part of a hospitable welcome to the process, signaling how participants will interact with each other.⁶⁹ In addition to ensuring respectful speech, sharing ground rules also sets the space apart from normal life. Prior to their encounter in the restorative justice process, the interaction between the harmed party and the responsible party can be markedly negative, characterized by violence, disrespect, or control. Setting the ground rules with participants affirms a distinctly different way of interacting, and as such, forms part of the separation phase.

The tone of the facilitators also contributes to a successful separation phase. Ideally, it is warm, respectful, and calm. Modeling that tone helps to set the stage for a different way of interacting. One facilitator explained, “I am aware of how my manner can impact the process. It is important to come with an aura of gentleness, humility, and wisdom to hold that guided process” (Facilitator 15).

In order to achieve a calm and assuring tone, facilitators first need to go through an experience of separation themselves. One facilitator explained, “I think I have to shift me first and part of that is slowing down my pace. It is about being really calm...I leave everything of my other life; I consciously shift out of one and into the other. It is about being really present” (Facilitator 9). Other facilitators spoke of this dynamic using the Māori word *whakatau*, which is to settle or come down to land (Facilitator 5). “As a facilitator, you are trying to make sure that you can *whakatau*, that you can settle yourself and the people you are with for the task at hand. Be really present for yourself and with the work that you’re doing and the people you are with” (Facilitator 6). When the facilitator can *whakatau*, she is more able to help participants settle into the process as well.

⁶⁸ Braithwaite, “Repentance Rituals and Restorative Justice,” 124.

⁶⁹ Pavlich, “Towards an Ethic of Restorative Justice,” 9.

The need for a personal settling in order to work effectively with others has been observed in other professions that similarly seek to help bring about personal and relational transformation. Carl Rogers has identified three conditions which, when they occur in a therapist and are to some degree perceived by the client, allow the client to learn, grow, and transform.⁷⁰ The first of these conditions is congruence. This refers to the ability of the therapist to be genuine with her client, to be who she is without a “front” or façade, to be present and aware of the feelings and attitudes she is experiencing at each moment.⁷¹ This state of congruence is a very difficult condition to achieve, and it is not necessary that the therapist experiences this degree of congruence in every area of her life. Rather, it is important that within the confines of the therapeutic relationship, she is a present, genuine, and integrated person to the greatest degree possible.⁷² For many of the facilitators I interviewed, achieving such congruence requires an intentional internal phase of separation, shifting into a more fully aware and integrated self to guide the process.

The separation phase is completed during the first steps of the conference process itself. Once everyone is seated, generally the lead facilitator talks for a little while, restating why they are there, what will happen in the process, and outlining the ground rules and any housekeeping matters. This allows participants to further settle into the space. “It is all part of being aware of where they are and fully arriving” (Facilitator 11). The beginning of the process also generally includes a round of introductions, giving each person in the circle a chance to speak and further establishing that the conference will be a space of equal voice and respectful communication.

⁷⁰ Carl Rogers, *On Becoming a Person: A Therapist's View of Psychotherapy* (London: Constable & Company Ltd., 1961), 63. The remaining two conditions are not relevant to the separation phase of the restorative justice process, which is the focus of this section, but are nonetheless both applicable to the ideal conditions of the restorative justice facilitator in order to support transformative outcomes for participants, so are worth mentioning here. The second condition is that the therapist (or facilitator) experience “unconditional positive regard” for the client (or participants). This involves a willingness to care for the client and accept the client no matter how he behaves. It is “an outgoing positive feeling without reservation, without evaluation”, *Ibid.*, 62. The third condition is empathetic understanding, which is when the therapist (or facilitator) senses the feelings and personal meaning of the client (or participant) and can communicate that understanding. All three of these conditions can be directly applied to restorative justice facilitators and the work they do in supporting participants’ learning and transformation.

⁷¹ *Ibid.*, 61.

⁷² Carl Rogers, “The Necessary and Sufficient Conditions of Therapeutic Personality Change,” *Journal of Consulting and Clinical Psychology* 60, no. 6 (1992): 828.

Though it takes place days, weeks, or even months before the restorative justice conference, the pre-conference meeting with the individual parties and their supporters may also function as part of the separation phase. During the pre-conferences, the facilitators explain the purpose and procedure of the restorative justice process, answer questions, and ask the participants to tell their stories, name impacts, and start thinking about what could happen to make things right. This meeting begins the process of shifting participants into a restorative mindset, as well as a way of interacting with each other that will be conducive to the transformative success of the conference.

Through these measures, participants are taken out of their normal lives and brought into a dedicated space and way of interacting with each other. Successful completion of the separation phase sets the scene for emotional and relational transformation in the restorative justice ritual.

Liminality and Communitas/Collective Effervescence

The second ritual phase outlined by Turner is liminality, which paves the way for the emergence of communitas, or in Durkheim's terminology, collective effervescence. The radical equality of liminality and the type of communication it allows, along with the revelation of connection and resulting sentiment of human kindness found in communitas/collective effervescence, are arguably at the heart of the transformative capacity of the restorative justice ritual.⁷³

In discussing *Cleansing the Chest of Grudges*, Nolte-Schamm stresses the importance of equality to the success of the liminal phase and the emergence of communitas. "In liminal ritual space, this 'just order' is created symbolically, so that the ones who seek to be reconciled do so on a level playing field. Perhaps the 'equality' of ritual participants is one of the most ingenious characteristics of ritual reconciliation."⁷⁴ It is through this equality that participants experience communitas, a heightened sense of togetherness and community, which is instrumental in bringing about social

⁷³ Lindsey Pointer, "Understanding Transformational Space: An Analysis of Restorative Justice Conferences through Religious Studies Theoretical Lenses," *Restorative Justice* 4, no. 2 (2016): 159-61.

⁷⁴ Nolte-Schamm, "The African Traditional Ritual of Cleansing the Chest of Grudges as a Ritual of Reconciliation," 102.

reconciliation.⁷⁵ In this experience of *communitas*, participants are free and comfortable to tell their stories and take responsibility through confession.⁷⁶ Storytelling is crucial to reconciliation because it allows the feuding parties to understand each other.⁷⁷ This results in a transformation of the relationship between the participants from enmity to concord.

These same phases are apparent in the restorative justice ritual. In order for liminality to be created, as we have already established, there must be equality between participants in the process. Turner was particularly focused on a social concept of equality, established through ritual participants having no status, property, or clothing that indicated rank and no role that would reveal their social identity and associated power in wider society, while within the ritual space.⁷⁸ Within the restorative justice ritual, however, there is a need to establish what Jennifer Llewellyn describes as an “equality of relationship.” This refers to relationships marked by equal respect, concern and dignity, which are essential for human well-being and flourishing.⁷⁹

In her work, Llewellyn draws on feminist relational theory to challenge the notion of the individualistic self that animates liberal theories of justice. She argues that connection and relationship with others are essential to understanding the self and how it is made and re-made.⁸⁰ “Relationship is an unavoidable fact about how we live, who we are and how we are formed, informed and reformed.”⁸¹ Llewellyn maintains that restorative justice is best understood when grounded in relational theory.⁸² Injustice reflects the existence of inequality in relationships.⁸³ Retributive justice has generally sought to remedy this inequality through “an evening of the score between wrongdoer and victims by inflicting harm against the wrongdoer (typically exercised through

⁷⁵ Ibid., 103.

⁷⁶ Ibid., 96.

⁷⁷ Ibid., 97.

⁷⁸ Turner, *The Ritual Process*, 95.

⁷⁹ Jennifer J. Llewellyn, "Integrating Peace, Justice and Development in a Relational Approach to Peacebuilding," *Ethics and Social Welfare* 6, no. 3 (2012): 294.

⁸⁰ Jennifer Llewellyn, "Restorative Justice: Thinking Relationally About Justice," in *Being Relational: Reflections on Relational Theory and Health Law*, ed. Jocelyn Downie and Jennifer Llewellyn (Vancouver: UBC Press, 2012), 90.

⁸¹ Llewellyn, "Integrating Peace, Justice and Development in a Relational Approach to Peacebuilding," 294.

⁸² Ibid., 293.

⁸³ Llewellyn, "Restorative Justice," 95.

isolating punishment).”⁸⁴ In contrast, justice understood relationally aims for equality of relationship, meaning that each person receives the basic respect, concern and dignity required for well-being and flourishing.⁸⁵ As Llewellyn explains, “Rooting restorative justice in feminist relational theory helps to explain the sense in which ‘restoration’ of relationships is sought. It is not restoration to some prior state, but rather, to the ideal of equality of relationship that justice seeks.”⁸⁶

Almost every facilitator I spoke with stressed the importance of establishing this equality of relationship. It seems that many facilitators know either intuitively or by experience the central importance of equality for the transformative effectiveness of the process. In particular, facilitators highlighted the importance of equal voice, or an equal opportunity for all participants to speak truthfully as a manifestation of the equal respect and dignity they are given through the process. One facilitator highlighted the importance of creating that equalizing space and what happens when equality is not upheld.

The facilitator is making possible conversations and communication where people have equal value and input, and don’t need to feel competitive or like eventually there will be a stamp of your input is valuable and yours is not. The facilitator is a part of that successful dynamic in that they give everyone’s voice equal support and space. If a facilitator is not doing that, there ends up being a break down, or I call it a “chilling effect.” One participant ends up going to that checked out physically unbearable space of I’m only going to sit here because that is all I can manage, I don’t feel safe, respected or like I have self-determination (Facilitator 10).

This equality of relationship does not equate to equality of experience. Restorative justice is often referred to as being “victim-focused” or “victim-centered.” On one hand, it is essential that this special care for the harmed party (victim) does not supersede the equality of respect, concern, and dignity that is due to all participants. At the same time, it must be recognized that the harmed party and the responsible party fill different roles in the restorative justice process and will, therefore, experience the process in different ways. As one facilitator explained,

The parties do have different roles in the process, so in the pre-meeting you are establishing and defining and reinforcing what those different roles are, at the same

⁸⁴ Ibid., 92.

⁸⁵ Ibid., 92-93.

⁸⁶ Ibid., 101.

time that you're giving them the strong understanding that both will be equally valued. But equally valued doesn't mean that you're going to do the same thing, or it will feel the same. You will be equally respected and hopefully it will be beneficial to both. But your way of getting to there is like this and your way of getting there is through this. Your way is mostly through humbling yourself and your way is through opening yourself up and being vulnerable. The roles they play in the process are clearly differentiated (Facilitator 15).

Several facilitators saw bringing participants together in equal relationship as enhancing or affirming of the participants' *mana*. As Khylee Quince and Alison Cleland explain, "*Mana* is a fluid concept, representing a person's reputation, charisma and influence and can be either inherited or achieved... Positive actions will enhance individual and collective *mana*, while immoral or unlawful behaviour will affect the position of both the individual and their associated familial groups."⁸⁷ Māori principles and processes of dispute resolution "focus on acknowledgement of harm, hearing from the parties affected and attempting to forge an outcome that restores their *mana*."⁸⁸ In this respect, these processes closely resemble restorative justice.

Facilitators noted that the restoration of *mana* is in part achieved through moving beyond labels to embrace and acknowledge the dignity of all parties. One facilitator explained, "When they meet, it is not like you are the bad guy and you are the good guy, what does the good guy want to say to the bad guy and what do you want to get out of them. It is hearing both the stories, allowing them to come together on an equal footing and agree together on the outcome... Things like that just enhance their *mana*" (Facilitator 15).

While the equality of relationship established by the restorative justice process enhances the *mana* of both parties, it is perhaps especially important for the responsible party. Whereas the ritual of the criminal trial serves to diminish or stigmatize the responsible party, the restorative justice process seeks to affirm their inherent dignity throughout. One facilitator explained how the responsible party's *mana* is restored and upheld at each point in the process.

⁸⁷ Alison Cleland and Khylee Quince, *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique* (Wellington: LexisNexis NZ Limited, 2014), 42.

⁸⁸ *Ibid.*, 43.

I think we really strongly affirm the individual, and their integrity, and their *mana*. That is a really crucial part, at no stage is the offender judged, or put down, or minimized. At all times they are given equal value in the process...If you want practical things, it is the way we meet with them individually personally in their own time and their own space, it is the way we listen to their story and encourage them to tell as much or as little as they want, it is the way we relate to them on a personal level using first names, it is the way they connect with us and form a personal bond, it is a multitude of little things we do that enhance their *mana*. It runs right through (Facilitator 15).

A few facilitators mentioned using tools, such as a talking piece, to ensure all participants had equal opportunity to speak. As one facilitator explained, "I think it is a great leveler, for getting away from being a facilitator-led conversation...I've found that helpful both for managing my own presence and also managing the presence of others in the room" (Facilitator 4). Kay Pranis also noted that the talking piece fulfills this function. Using the language of "circle keeper" rather than facilitator, she explains,

The talking piece is a powerful equalizer. It allows every participant an equal opportunity to speak and carries an implicit assumption that every participant has something important to offer the group. As it passes physically from hand to hand, the talking piece weaves a connecting thread among the members of the Circle. The talking piece reduces the control of the keeper and consequently shares control of the process with all participants.⁸⁹

While facilitators have a distinctive role in directing the conversation, it is important in order for liminality to occur that they also are seen to have equal standing. Unlike the judge in a courtroom, facilitators sit at the same level as other participants in the process and do not have any authority to make decisions regarding outcomes; this is left to those most impacted by the event. The equality of the facilitator must be carefully cultivated through the design of the process and requires facilitators to have a high level of self-awareness about their own exercise of power. While it is a natural human reaction in the face of uncertainty and nervousness to seek control, facilitators must resist the urge to impose or wield their power in a way that would threaten the equality established in the process. A clear understanding of the importance of equality in generating liminal space may be helpful in this endeavor.

⁸⁹ Kay Pranis, "Essential Elements for Constructing the Circle," Living Justice Press, livingjusticepress.org.

Participant interviews also indicated the importance of equality of relationship in the process. One harmed party specifically mentioned the importance of equal voice, drawing a contrast to his experience in court. He said of the restorative justice process, “It is a real neutral setting. Having the ability to have conversation about what happened, it gives both parties a chance to talk. Throughout the whole court process, you can’t speak to each other and this gives you a chance to do that. It is brilliant” (Participant 2).

The equal respect, care, and dignity experienced in liminality allow participants to feel receptive to hearing each other’s stories. One facilitator explained how the act of open, respectful storytelling further enhances the feeling of being in a social space that is markedly different from normal life.

So much is happening on a spiritual or energetic level. I think there is something that happens just from the simple act of people hearing their own voice telling their own story, internally. I think people have a different relationship to self when they are asked to tell their story, they are asked to speak authentically and truthfully about what is real for them and then they are met without judgment, or criticism, or opposition. They are met by a group of strangers who are hearing them name something that they may feel ashamed of or scared by or guilt, a negative action or decision they have taken, and yet they are able to just put it out there in the room and not be judged or assessed for it. Simultaneously, that happens for each person as they speak and as they hear each other speak. So, there is this whole invitation to enter into a human interaction that is different from almost any other way that we interact with each other, except for when we do things like connection circles⁹⁰ (Facilitator 13).

The genuine, open storytelling enabled by liminality may also be paving the way for Memory Reconsolidation. As explained earlier, this involves the reactivation of an emotional memory through retelling the story, which is then disrupted through the presentation of new information that challenges existing beliefs and leads to an updating or reconsolidating of the memory.⁹¹ While they did not use the term “memory reconsolidation,” the facilitators I interviewed similarly noted how storytelling can begin to shift the way participants perceive the harm they experienced. It usually helps to uncover why the offence first took place, which is often a key need. As one harmed party put it, “I want to know why you did that to me, why was I a target? In court you don’t get

⁹⁰ Connection circle refers to the restorative circle process for building relationships often used in schools and other communities.

⁹¹ Bolitho, "Inside the Restorative Justice Black Box."

that, you get the aftermath of the action, but you don't understand why they did what they did and so you can't make an assessment on how to stop it" (Participant 3). In this case, the conference was able to identify that drinking and drug use were a catalyst for the offending and agreed to a contract that involved treatment to address the root issue that led to the offence. The harmed party found this was helpful to him because it was fixing the problem that led to the criminal behavior in the first place. It also challenged previous beliefs he held about the harmed party, including that he had been in some way targeting him.

The fourth facilitator I interviewed told the story of a responsible party who met with the mother of the man he had murdered. During the conference, she asked him questions about what happened and then said, "I want to know who you are." He shared his life story, about his prostitute drug-addicted mother, how he didn't know his father, was abandoned at the age of three, and sexually abused in foster homes. The facilitator stressed how insistent the mother was to know about his background. "For her, it was so important. She could suddenly understand how this big man in front of her had killed her son. She could see the three-year-old boy being abandoned by his mum...she could see where this had come from. So, there was the power of the process" (Facilitator 4). Another harmed party also expressed the compassion she felt for the person who had offended against her as a result of hearing about his life and situation. She remarked, "What tugged at our heartstrings with him is we had family support, but he didn't" (Participant 1).

Hearing the story of the responsible parties can also help to humanize them. As Asmussen notes, "The victim cannot move on until he understands that the offender is not a monster, but a human being."⁹² Several facilitators commented on this transformation of perception, as the harmed party forms a new mental image of the responsible party, from being a monster to a human being sitting alongside them. One facilitator noted that in the adversarial system, where the harmed party and the responsible party are separated, the monster is allowed to grow. Bringing the harmed party and the responsible party together and creating a safe space for their stories to be told helps to avoid this. He explained,

⁹² Ida Helene Asmussen, "Performing Absolution Narratives in Restorative Justice," *Restorative Justice* 3, no. 1 (2015): 42.

There are times for me where the justice system, or even without the justice system, when people have conflict with each other, they go to what in Māori what we might call *taniwha*⁹³ with the other person, or just that other person being some kind of monster. If we keep separate from them and we know that they harmed us, then we draw different parts and add to what that monster looks like. That happens with the offender as well, they draw a picture of what the other person is like...When you bring them together, there is that human contact that can break down really quickly that kind of monster that they thought that they would coming face to face with. I think that is part of what we are doing with the storytelling too (Facilitator 8).

This humanization is a common feature in transformative ritual processes, which can function, in Schirch's words, to "rehumanize people who have been dehumanized through perceptual processes fueled by conflict."⁹⁴

The liminal phase of the restorative justice ritual is also conducive to the transformation of shame. As Braithwaite explains, the experience of being seen and heard as a whole person, and not solely defined by their offense, helps to release the responsible party from feelings of stigmatizing shame that can contribute to a downward spiral of offending.⁹⁵ In Stephen Pattison's work on ritual's role in dissipating shame, he notes that an experience of being adequately respected and honored, both as an individual and also as a valued member of a community, is necessary to combat the experience of shame.⁹⁶ The restorative justice ritual can help to provide this experience. As one facilitator explained, "People are given a lot of *mana*, their personhood is intact, even if they are being accused of things and having anger directed at them. Because they can respond and speak for themselves and talk back and try to do something about it, there is something really honoring to the person in the whole process" (Facilitator 3).

The responsible party telling their own story and publicly taking responsibility for their wrongdoing and hearing the harmed party's story and how they have been affected are the interactions that led Asmussen to describe restorative justice as a "confession ritual," a process that gives the responsible party space to "confess to a present, engaged

⁹³ A *taniwha* is a monster or a dangerous, powerful creature, Moorfield, "Te Aka Māori-English".

⁹⁴ Schirch, *Ritual and Symbol in Peacebuilding*, 61.

⁹⁵ Braithwaite, *Crime, Shame and Reintegration*, 55.

⁹⁶ Stephen Pattison, *Shame: Theory, Therapy, Theology* (Cambridge: Cambridge University Press, 2000), 155.

victim who wields the power to absolve the perpetrator of his sins.”⁹⁷ The experience of publicly acknowledging one’s shameful actions is a profoundly vulnerable act, but it is done in the hope that one’s value might be reaffirmed through forgiveness or the simple generosity of those harmed listening to their story. As one facilitator explained,

There is a real sense of gratitude, I think, that they have been given something that they didn’t expect to be given, almost like a sense of grace, which is a word I don’t use often. A sense of being, not forgiven exactly, but having expressed their shame for what occurred and still being respected. They feel bad about the harm, but also feel a bit more worthwhile because of the generosity of people who have been harmed. Offenders don’t come into the process expecting that outcome because they are used to a much more judgmental, punitive experience in the courts. This is quite a different sort of experience (Facilitator 2).

Through creating a space conducive to open, honest storytelling, the liminal phase may also be paving the way for affective resonance. The equality of relationship makes it safe for all participants to speak truthfully about the emotions they have experienced. According to Kelly, this intensity of emotion is amplified through affective resonance, which allows each person to connect emotionally with everyone else in the room, due to shared innate affects.⁹⁸

The liminal phase may also be creating the necessary conditions for the interaction ritual chains identified by Rossner that result in the emergence of collective effervescence and group solidarity, a shared morality, and a generalized state of well-being.⁹⁹ Turner’s work suggests that in order for those micro-level interaction rituals to occur between the harmed party and the responsible party, a liminal space must first be established.

According to Turner and Durkheim, being brought into a separate space and social configuration characterized by radical equality and a different way of interacting leads to *communitas*/collective effervescence. Facilitators described this experience as “connection,” “magic,” “unity,” “oneness,” and “a sharing of spirits.” As one facilitator explained,

⁹⁷ Asmussen, “Performing Absolution Narratives in Restorative Justice,” 40.

⁹⁸ Kelly, “Interpersonal Caring, Social Discipline and a Blueprint for Restorative Healing,” 69.

⁹⁹ Rossner, *Just Emotions*.

Where there is a kind of magic, or if that is not a good word, where there is a kind of connection between human people from wherever they are from, whatever their culture looks like, as we know, outstanding stuff can happen. It is because they have been given a space for them to connect with each other and our role is to help provide that space. And what happens, and the value we see all the time, is just because in a way that traditional justice doesn't do, restorative justice allows them to connect at that human level (Facilitator 8).

Turner notes that this profound human connection carries with it a moral imperative to act with kindness towards each other. One facilitator referred to this response using the Māori term *aroha* for love, clarifying that he did not mean a soft sort of love, but rather a love that “can hold people accountable and hold people together” (Facilitator 8). Many scholars speak of the emergence of feelings of empathy and compassion after hearing about the suffering of another. For example, Harris, Walgrave and Braithwaite write,

Confronted with the victim's suffering and the suffering of their own loved ones, offenders often, but not always, will be touched by compassion. Almost all humans, including offenders, feel a deeply rooted sense of empathy for other humans, and especially compassion for other humans who are suffering. Empathy is the emotional root of solidarity, which is in turn a socio-ethical attitude.¹⁰⁰

Here compassion and empathy are considered natural responses when exposed to the suffering of another human being. Yet empathy and compassionate action are not always the response given. As moral philosophers routinely point out, empathy can be absent or short-lived when we are exposed to suffering that is distantly related to us or where the suffering is self-inflicted.¹⁰¹ The level of empathy and resulting solidarity is affected by the degree of connection that is felt. In her exploration of the role of emotions in morality, Martha Nussbaum draws heavily on Aristotle and Rousseau to explain the moral logic of emotional reasoning. She writes,

The pain of another will be an object of my concern, a part of my sense of my own well-being, only if I acknowledge some sort of community between myself and the other, understanding what it might be for me to face such pain. Without that sense of commonness, both Aristotle and Rousseau claim, I will react with sublime

¹⁰⁰ Nathan Harris, Lode Walgrave, and John Braithwaite, "Emotional Dynamics in Restorative Conferences," *Theoretical Criminology* 8, no. 2 (2004): 201.

¹⁰¹ Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001), 317.

indifference or mere intellectual curiosity, like an obtuse alien from another world; and I will not care what I do to augment or relieve the suffering.¹⁰²

This empathetic concern for the other in restorative justice, or what I am calling emotional transformation, rests on the ability of the ritual process to foster connection or commonality between the harmed and responsible parties. *Communitas* is thus essential to the transformative functioning of the process.

Communitas in the restorative justice ritual also mirrors the essential components in other life experiences that are often transformational for those who have committed crimes. Paula Hamilton's work examines narratives of desistance from males previously convicted of a crime, looking at what she calls "corrective emotional experiences" that serve as a significant turning point in leaving a life of crime.¹⁰³ Both positive experiences, such as the birth of a child or a new relationship, and negative experiences, such as a death or a breakdown, are possible corrective emotional experiences.¹⁰⁴ In each case, a strong emotional response and feelings of vulnerability and connectedness with others are at the root of this personal transformation. The examples listed by Hamilton are experiences that occur as part of the responsible party's life journey, but a corrective emotional experience leading to personal transformation can also be facilitated. The key features of a corrective emotional experience are a platform for connection, the arousal of strong emotions, and the experience of acknowledging and confronting those emotions.¹⁰⁵ The restorative justice ritual similarly offers an experience that contains each of these key features.

When facilitators discussed what they considered to be unsuccessful or less successful conferences, they talked about being unable to "break through the barrier" between participants. Their descriptions pointed to a failure to facilitate the emergence of a feeling of connection or *communitas*. Sometimes this was due to inequality in the process, for example, one participant's voice overriding others and the facilitators failing to uphold the ground rules. At other points, it was due to insufficient preparation, which

¹⁰² Ibid.

¹⁰³ Paula Hamilton, "Emotions and Identity Transformation," in *Moving on from Crime and Substance Abuse: Transforming Identities*, ed. Anne Robinson and Paula Hamilton (Bristol: Policy Press, 2016), 34.

¹⁰⁴ Ibid., 35.

¹⁰⁵ Ibid.

led to participants not yet being ready to engage in a respectful manner. Without creating a liminal space, *communitas* does not emerge and the process is unlikely to be transformative for participants.

Reincorporation Phase

The third phase of transformative rituals is reincorporation, during which ritual participants re-enter societal structures in a transformed way. This phase serves to transition participants out of the ritual space and back into their normal lives. Reincorporation also includes measures to help make the transformation sustainable or to carry forward lessons learned.

The liminality created by the restorative justice ritual is temporary. Participants must be guided back into the wider social order, while still retaining a sense of their transformed selves. There are various mechanisms to facilitate this transition. Almost all of the facilitators interviewed said that to end a conference, they invite each person to make a final statement or share a closing sentiment. Participants often use this opportunity to affirm the generosity of the others in the process or the newfound perspective gained from the experience, which in turn reinforces the transformation that has occurred. One facilitator mentioned the importance of this closing ceremony in making the shift from *tapu* to *noa*. *Tapu* means sacred or set apart,¹⁰⁶ while *noa* means profane or not off-limits.¹⁰⁷ She explained, “The meeting is a *tapu* space, it is sacred, there is an energy in the room, there is protocol. Making things *noa* is making them normal and lifting the *tapu*, lifting the sacredness” (Facilitator 5).

Facilitators also reported employing communication devices to help transition participants back into normal life. When requested by those participating, this may involve a closing *karakia* or another blessing or reading. It may also be a simple congratulations and thanking each participant for their presence and contribution.

Physical gestures are a common feature of the reincorporation phase of transformative rituals and can help to signify the achievement of reconciliation. In

¹⁰⁶ Barlow, *Tikanga Whakaaro*, 128.

¹⁰⁷ Cleland and Quince, *Youth Justice in Aotearoa New Zealand*, 42.

Cleansing the Chest of Grudges, reincorporation is achieved through a physical gesture of forgiveness. As Nolte-Schamm explains, “The shaking of hands signifies that the conflicting parties are now fused into ‘ONENESS’ which is the symbolic return from ‘Separateness’ to ‘Communal’ state of life.”¹⁰⁸ Similarly, in many urban Arab societies, there is a ritual of reconciliation used between female friends. The culmination of the ritual meeting includes an exchange of kisses, which signifies the success of the reconciliation and the return to normalcy.¹⁰⁹

Shadd Maruna notes that in the restorative justice process, a physical gesture, such as a handshake, can help to cement the transformation that has taken place and is an effective solidarity gesture to signify reintegration.¹¹⁰ Several facilitators similarly explained that physical gestures of reconciliation, such as handshakes or hugs, often occur naturally at the end of a conference, though participants are not directed to do so. One facilitator observed, “People generally stand, shake hands, look at each other and say good to meet you or thank you. There is a conventional human finality to it” (Facilitator 2).

After shaking hands, participants in the ritual of *Cleansing the Chest of Grudges* usually share a meal together. Eating together signifies trust and connection. “By eating together, the participants demonstrate that they have entirely changed their social status concerning one another (i.e., that the transformation phase has indeed been successful, that they are now no longer enemies, but friends) and that they are fully integrated back into society.”¹¹¹ This practice of sharing a meal together is also evident in other rituals of reconciliation. For example, the ritual used by the Jalé people of New Guinea to reconcile men in conflict culminates with a shared meal to eat the pig given as a gift during the ritual.¹¹²

¹⁰⁸ Nolte-Schamm, "The African Traditional Ritual of Cleansing the Chest of Grudges as a Ritual of Reconciliation," 99.

¹⁰⁹ Klaus-Friedrich Koch et al., "Ritual Reconciliation and the Obviation of Grievances: A Comparative Study in the Ethnography of Law," *Ethnology* 16, no. 3 (1977): 277.

¹¹⁰ Shadd Maruna, "Reentry as a Rite of Passage," *Punishment and Society* 13, no. 1 (2011): 14-15.

¹¹¹ Nolte-Schamm, "The African Traditional Ritual of Cleansing the Chest of Grudges as a Ritual of Reconciliation," 103.

¹¹² Koch et al., "Ritual Reconciliation and the Obviation of Grievances," 272.

Eating together similarly aids in the reincorporation phase of the restorative justice ritual. Albeit not at the scale of a meal, many facilitators have tea or snacks available for participants to eat together after the formal closing. One Māori facilitator explained, “Water and food makes things *noa* again” (Facilitator 5). Another facilitator mentioned that she saw the importance of eating together as a means of bringing participants back into their bodies. “Food after is super grounding for people, people have been so above the shoulders for the last however many hours and then you have something in your hand that goes in your mouth and goes down your throat and suddenly you’re in your body again” (Facilitator 10). As in other rituals of reconciliation, eating together symbolizes and cements the change in relationship that has occurred. The parties no longer hold enmity towards each other and are reconciled to the point of being able to eat side by side.

The exchange or use of symbolic objects is another mechanism often situated in the reincorporation phase of transformative rituals. Rituals can imbue ordinary objects with symbolic or sacred value.¹¹³ For example, a piece of paper takes on great symbolic value when presented as a marriage certificate or diploma at the end of a transformative ritual through which the status of the participant has changed.¹¹⁴ Durkheim makes a crucial observation that the emotions, realizations, and transformation attained through *communitas*/collective effervescence are often fleeting. It is often necessary for the sentiments obtained through the transformative experience to be prolonged through symbols or emblems that can be carried forward.¹¹⁵

In the restorative justice process, symbolic representations of the solidarity achieved may take material form through a signed agreement.¹¹⁶ The facilitators I interviewed highlighted the role of agreements outlining what the responsible party will do to repair the harms and make things right. This contract is imbued with symbolic value through the ritual process and can help to carry the transformative experience into normal life. One facilitator commented specifically on the greater symbolic value that a written agreement has for participants.

¹¹³ Maruna, “Reentry as a Rite of Passage,” 21.

¹¹⁴ Ibid.

¹¹⁵ Durkheim, *The Elementary Forms of the Religious Life*, 231.

¹¹⁶ Rossner, *Just Emotions*.

[The contract] also serves the purpose of giving him the opportunity to step up and follow through on a commitment he may not initially think he is capable of. I followed through on my word. That is one of the intangible experiences that can really plant seeds for following through at school, following through at work, following through on other goals. I broke the mold, I broke my own expectation of myself, broke the assumption that other people were making about me, so it is breaking through stigma and stereotyping (Facilitator 13).

However, problems can also arise from the use of signed agreements. Rossner and Bruce have noted that when too much time is devoted to agreeing on a specific signed agreement, it can result in participants feeling “bored and restless” and can ultimately undermine the solidarity and emotional energy that has been built up.¹¹⁷ While a written agreement can be an effective symbol, it can also detract from the experience of *communitas*/collective effervescence if too much energy is invested in it.

Facilitators and participants reported that the lack of assurance that the agreement will be carried out can result in more uncertainty than assurance on the part of participants. A harmed party noted the leap of faith required in the final phase of his own conference experience.

The outcomes are a difficult area because you're not given any hard and fast rules on how to continue, you have to take their [the offender's] word that they will limit their alcohol consumption and stop taking drugs. You have to have their word, their honor and integrity. There is no form or no bail conditions or so to speak that says you must not do x, y and z, you just have to take it on yourself to trust the person who has assaulted you that they are going to do what they say. It is very trusting especially considering it is only the second time you have met that person (Participant 3).

Facilitators also mentioned feelings of uncertainty about how what has been accomplished during the conference will be carried forward. As one facilitator explained,

It can be a significant two hours, but it is a limited time to be able to say you have facilitated real meaningful long-term change. You hope and pray that the outcomes agreed upon were heartfelt and real and there are some practical tangible steps identified and agreed on that can take it outside of the meeting and into the future.

¹¹⁷ Meredith Rossner and Jasmine Bruce, "Trajectories and Typologies of Pre-Sentence Restorative Justice Rituals," *Australian & New Zealand Journal of Criminology* 51, no. 4 (2018): 512.

After that, there is no guarantee. I have no assurance that that feeling will survive and last and be sustained (Facilitator 15).

A failure to honor the agreement reached through the process would clearly weaken its symbolic strength as a reincorporation mechanism. In describing her worst case, one facilitator explained the way in which the symbolic outcome of the agreement was negated by the subsequent court process.

Why it went badly was there was a really good agreement reached at the conference around reparation. The employer had lost a lot of money and the guy, the offender, committed to paying back a large portion of that, because he did have access to funds, so they agreed on this. Then it went to court and the judge must have heard a plea of mitigations that led him to believe that wasn't appropriate and awarded a really small reparation. Perhaps it was back when there wasn't as good of a judicial understanding of RJ. It was absolutely gutting for the employer (Facilitator 14).

In order for the agreement to be meaningful and effective as a symbolic outcome, the processes, procedures, and other justice rituals surrounding the restorative justice process must honor it. Without that respect paid to the agreement, it may do more harm than good.

Providing harmed parties with an update or follow-up about whether or not the agreement has been completed strengthens its symbolic power. Several harmed parties I interviewed noted the lack of follow-up as a frustration. As one participant explained,

Part of my wish list of reparations was that he would make a positive change to his lifestyle, so I suggested that he do volunteer work at a conservation park. I thought that might address what his issues are, which are no work. I have no idea if that happened or not, I haven't received much feedback from the sentencing and follow up (Participant 4).

This experience of frustration matches the findings of other evaluations of restorative justice that have identified a desire on the part of harmed parties to have evidence that the responsible party had completed the agreement.¹¹⁸

¹¹⁸ Judy Paulin et al., "The Rotorua Second Chance Community-Managed Restorative Justice Programme: An Evaluation," (Wellington: Ministry of Justice, 2005), 49.

Stories of other symbolic objects being incorporated into the restorative justice conference emerged during my research. One facilitator told the following story of a mother who gave an important object to the man who had killed her son.

At one point she said, “I want you to have something and promise you will keep it.” Her son had been a champion bowler and she said, “I want you to have his balls and I want you to keep them with you.” You could almost feel the burden of accountability in accepting that gift.... She just said, “I want you to have something of his.” It is interesting that it is the victim providing a totem instead of the other way around, but it seemed to have real symbolic value (Facilitator 4).

This gift was not only emotionally meaningful for both participants, but will also help sustain the memory of the encounter as represented by the physical gift itself. It will help the responsible party to recall the emotions and realizations obtained through the experience of *communitas*/collective effervescence in the restorative justice ritual.

Another facilitator I interviewed, who is also an artist, intentionally incorporates the creation of an art piece into her facilitation. She works with the responsible party for an extended period of time before the conference and has devised creative exercises that go with each of the restorative questions typically asked in a conference (What happened? Who was affected and how? What is needed to repair the harm and make things right?). The exercises culminate in the creation of an art piece that is then offered as a gift to the harmed party at the conference. She explained, “[Before the conference] I check with the victim to see if they want to receive it, they are under no obligation, but they mostly do receive it” (Facilitator 17). She described one case in which a son (in his early 20s) stole money from his foster parents. As part of the process, he made a bench for his foster parents’ garden, with design features that he knew would resonate with them. He gifted them the bench in the conference and today it still sits in their garden and serves as a symbol of the repaired relationship. The facilitator explained that she does not think the incorporation of an artistic project is appropriate for everyone and she would never force someone to be creative, but that it can be highly effective as a lasting symbol of the process.

Another way of strengthening reincorporation is through additional meetings or rituals that allow participants to recharge the experience of *communitas*/collective

effervescence.¹¹⁹ This desire for a repeated experience was evident in responses from participants. Describing previous research she had done with conference participants in the restorative justice program she facilitates for, one interviewee reported, “The people involved felt like it stopped at the end of the meeting... We are learning how to finesse a sort of follow up” (Facilitator 2). As one harmed party commented, “I can imagine for some people that a second and maybe even a third appearance might have a better effect” (Participant 3). This repeated experience of the ritual space need not necessarily take the form of another restorative justice conference. The chance to revivify the experience may be accomplished through a circle process, like those used in schools and other communities to build relationships, in which the particular type of social space created by restorative encounters is replicated in some way.

Summary

This chapter has examined the transformative capacity of the restorative justice ritual and endeavored to understand how that transformation is achieved through the application of ritual language and theory to the process as a whole. Specifically, it has applied a synthesis of the theories of ritual developed by Turner and Durkheim to the process in order to demonstrate the effectiveness of the transformative ritual framework in understanding and describing the oft-cited “magic” of the process.

The transformative impact of the restorative justice conference is one of the most notable features of the process and has driven proponents to advocate for its wider adoption. I have argued that the personal and relational transformation achieved is best understood as a product of the process’ ritual nature. This does not negate the other explanations put forth by Rossner, Braithwaite, Kelly, Thorsborne, and Bolitho. Instead, it complements them by explaining how the necessary social space for the transformative mechanisms they have identified is established and how that transformation may be carried forward after the culmination of the ritual.

Highlighting the importance of overtly ritual-like mechanisms, such as the use of talking pieces, *karakias*, symbols, or shared meals, may be uncomfortable for some people. Several of the facilitators I spoke with mentioned the need to be wary of the

¹¹⁹ Collins, *Interaction Ritual Chains*, 40.

“woo-woo.” As one facilitator explained, “People might start feeling like this is a bit weird, hippie, like this is our thing, not theirs. We have to be careful that people aren’t feeling like they are entering a world that isn’t their own” (Facilitator 2). Yet it is possible to incorporate ritual elements in a way that feels authentic and significant to those present. Several facilitators talked about needing to include things that feel real to the participants, such as choosing as a talking piece an object that is significant to those present. One facilitator explained,

I have used it [a talking piece] in quite macho environments. If you take something that is of significance to them, people get it. I’m imaging sitting down with the All Blacks and actually saying this is the cap that one of the great All Blacks wore, it is part of our legacy and we are going to use that. If we get to the heart of what a talking piece is about and make it significant and right for them, I don’t think we have a problem (Facilitator 4).

In the end, the incorporation of small ritual-like elements such as a talking piece or a *karakia* is less important than ensuring the integrity of the ritual structure of the restorative justice process as a whole. As restorative justice is increasingly adapted to fit new contexts, a greater understanding of how the process works to achieve these transformative outcomes is necessary. But what about the normative function of justice rituals? To what extent does restorative justice fulfill or fail to fulfill a normative role? That is the subject of the next chapter.

Chapter 5: The Normative Function of the Restorative Justice Ritual

We have seen that a key outcome of an effective justice ritual is the reaffirmation of shared values and social trust. Many scholars have argued that the reaffirmation of norms is the chief purpose of the modern penal justice system. After the community has experienced the harm and uncertainty of crime, the criminal trial responds by clarifying and reaffirming social values in a predictable and trustworthy way, thereby maintaining stability and cohesion in the community. However, as previously noted, this is often accomplished at the expense of the offender, who is labeled as “other” and positioned in stark opposition to the community and its norms.

The normative impact of justice rituals operates at two levels: for the direct participants in the ritual process and for the wider public. In the ritual of the criminal trial, the social norms encoded in the law are upheld through an act of declaring the offender guilty and then punishing them for the violation. For the wider public, this serves to reinforce the normative standards of the law and the principles of natural justice. For the guilty party, however, it often generates a stigmatizing shame that encourages them to reject both the message communicated by the ritual and the norms it is designed to uphold. The ritual thereby functions both to preserve and to undermine the normative values it claims to uphold. In the restorative justice ritual, arguably the reverse is true. Restorative justice is more communicatively effective for the individuals directly involved than it is for the wider public, partly because of its private setting. This has led many to question its effectiveness as a normative justice process.

This chapter will argue that for the participants in a restorative justice conference, the ritual does have a normative impact. For the direct participants, the restorative justice process fulfills the key features of normative rituals explained in Chapter Two. It provides a degree of consistency and predictability by following a set structure, it responds to societal needs through directly involving all key stakeholders, it fosters social stability and cohesion through the reparation of relationships, and it reaffirms the shared values that have been violated in a way that is inclusive of the responsible party.

This chapter will then discuss the criticism that restorative justice fails to fulfill a normative capacity for the wider public and will consider the alternative structures that have been suggested to remedy this issue. It is generally assumed that the criminal trial satisfies this normative function by enacting a public performance that can be scrutinized against public norms. Restorative justice, on the other hand, generally operates in a confidential space that is closed off from the watching public. According to its critics, this violates one of the core principles of natural justice, that justice must be seen to be done. While there is merit in this critique, there are mechanisms by which the normative impact of restorative justice for the wider public can be enhanced.

Normative Impact for Participants

The restorative justice ritual fulfills a normative role for participants by fulfilling the four key features of normative rituals outlined in Chapter Two.

(i) The first of these is having a *set structure that provides consistency and predictability*. Durkheim notes that rituals respond to the social context and social needs in which they arise.¹ This applies especially to justice rituals. Crime generates concerns and needs in the community. The criminal trial responds ritually to those needs by providing a consistent and predictable way of condemning and suppressing crime.²

At first glance, restorative justice may seem ill-suited to provide the consistency and predictability needed, given the informality and flexibility entailed. However, in practice, it too follows a more or less routine structure. As Rossner and Tait explain, “While to a first-time observer, a restorative justice conference might seem to be more unpredictable and less structured than a jury trial, in fact they tend to follow well-established routines.”³ The key difference between the two procedures relates to the public display of their structures – one is predictable and can be observed to be so by the wider community, while the other, which is no less predictable, can only be observed by the participants themselves.

¹ Durkheim, *The Elementary Forms of the Religious Life*, 4.

² It is worth noting that though criminal justice procedures are generally consistent, outcomes (the punishments imposed) are often not.

³ Meredith Rossner and David Tait, “Contested Emotions: Adversarial Rituals in Non-Adversarial Justice Procedures,” *Monash University Law Review* 37, no. 1 (2011): 242..

The routine of the restorative justice ritual begins with introductions, an explanation of the process, and establishment of ground rules. This is followed by a discussion of the three central restorative questions – “What happened?”, “Who was affected?”, and “What can be done to repair the harms and make things right?”⁴ This discussion concludes with a clarification of the agreement reached and a closing of some kind. This consistent ritual structure of the conference provides a predictable and trustworthy experience for participants, which is crucial to its normative function.

Building familiarity with the restorative justice ritual begins in the pre-conference meetings with the participants. During the pre-conference, the facilitators explain the structure and sequence of the restorative justice conference, which my interviewees reported greatly enhanced their comfort in the process. One harmed party explained,

It was good because they do really tell you what is going on ahead of time and stick to that script. I think if you went in not knowing what was expected of you, even as a victim, that would be quite stressful...Letting you know roughly what was going to come ahead definitely made it a lot easier (Participant 4).

Participants in Jane Bolitho’s study similarly noted that it was reassuring to know in advance the sequence of the conference.⁵ It is also helpful to know the ground rules that will be established and the questions that will be asked to move from storytelling, to discussing impacts, to generating ideas for repair. This contributes to the trustworthiness of the process and helps to generate a safe space so that participants can fully engage.

One facilitator noted that the established structure and order is part of what differentiates the restorative justice conversation from other forms of communication about the conflict. “The ritual offers the safety and structure, which distinguishes it from just two people in a corridor having an argument. The ritual provides safety; you know what is going on, it is that familiarity that makes it OK” (Facilitator 4). Another facilitator noted that this structure is particularly important when the harmed party is especially vulnerable. “The more vulnerable a victim is, the more the structure is important because it is about providing the emotional safety” (Facilitator 12).

⁴ Rossner and Bruce, “Trajectories and Typologies of Pre-Sentence Restorative Justice Rituals,” 505.

⁵ Bolitho, “Putting Justice Needs First,” 272.

The procedural justice involved is also important for the normative impact of the ritual. As Tom Tyler explains, restorative justice exhibits a high degree of procedural justice, meaning that the majority of participants in restorative justice experience the process as fair and just. When people are treated with procedural justice, they are more likely to perceive the justice process as legitimate and become self-regulating, taking on a personal responsibility for following social rules.⁶

Perceptions of procedural fairness in the restorative justice process are evident in the consistently high rates of satisfaction with the process. For example, a 2016 study done by the New Zealand Ministry of Justice found that 80 percent of victims were satisfied with the restorative justice process, including the procedure before, during, and after the conference meeting.⁷ Offenders also indicate a high level of satisfaction. A 2005 study of New Zealand court-referred restorative justice reported that 93 percent of offenders were satisfied with the restorative justice conference and felt that it was fair compared to 57 percent of offenders who were satisfied with the court process.⁸ This experience of procedural fairness is important for responsible parties because, as Tyler notes, people are more likely to obey laws without the threat of sanctions when they experience the criminal justice system and the actors within that system as acting justly.⁹

In alignment with these findings, the participants I interviewed also expressed their appreciation of the procedural justice present in the process. One participant commented, "It is good if you can trust the justice process to be quite fair and reasonable like this" (Participant 4). Another remarked,

[Offenders] don't want to be looked down on by the people that they look up to. You can send them to court time and time again, but if they don't believe in the system, they are not going to abide by it. They need to know that this is going to work, and this is a good system before they want to partake in it (Participant 3).

⁶ Tom R. Tyler, "Restorative Justice and Procedural Justice: Dealing with Rule Breaking," *Journal of Social Issues* 62, no. 2 (2006): 308.

⁷ Ministry of Justice, "Restorative Justice Victim Satisfaction Survey Research Report," (Wellington: Ministry of Justice, 2016).

⁸ Sue Triggs, "New Zealand Court-Referred Restorative Justice Pilot: Evaluation," (Wellington: Ministry of Justice, 2005), 214-15.

⁹ Tyler, "Restorative Justice and Procedural Justice," 309.

When both parties perceive the justice ritual as just and reasonable, that perception bolsters its normative impact for participants.

So far, I have highlighted the importance of a set structure in the restorative justice process for achieving a normative impact. However, it is also important that the process is somewhat flexible and adaptable to meet the specific needs of participants. One facilitator explained this need for adaptability, giving the example of speaking order, “The structure is important and there is a general flow and also needs to be adaptive too. 98 percent of the time I would say that the person taking responsibility needs to tell their story first, but I could also be swayed to a victim telling their story first. There is a definite need to customize the process to participant needs and requests” (Facilitator 10). Facilitators also mentioned the importance of occasional cultural adaptations to meet the needs of participants.

In addition to a trustworthy, predictable, and procedurally fair justice response, several other factors are needed to achieve a normative impact. (ii) A second requirement of normative rituals is that they *respond to societal needs*. Restorative justice does this by involving all the key players. Gordon Bazemore argues that the most effective way to identify what the community needs in the wake of crime is by including harmed parties and community members as active participants in the justice process and giving them the opportunity to voice their perspectives and concerns and decide together what needs to be done as an adequate response to their needs.¹⁰ This occurs in the restorative justice conference. The harmed parties I interviewed expressed a particular awareness of how the process was able to be responsive to their needs and concerns. One commented on the contrast between her experience in restorative justice and her experience in court.

It is knowing that they are there for you instead of going, “Victim one, victim two, victim three, you need to be at court at 9 o’clock on Thursday and we will have a list and then at 1 o’clock we will have a meeting, it might happen in the morning or the afternoon, it all revolves around the judge.” It’s like I’m just a piece in a cog that is already moving. I want to be in the middle, I want to move the cog. I’m the 100 percent reason why we are all here. Because if it didn’t happen against me, someone else would be in the middle, wouldn’t they? The victim needs to be at the middle of that (Participant 3).

¹⁰ Gordon Bazemore, “Young People, Trouble, and Crime,” *Youth & Society* 33, no. 2 (2001): 210.

One need often expressed by harmed parties is the need to understand why the crime took place. What contributed to the harmful behavior and how can it be avoided in the future? For my interviewees, hearing the answer to these questions was a primary benefit of the process. As one harmed party explained,

It was good to see why the crime took place because you have this idea that people are just doing something and having a laugh, acting incredibly callous, but in this situation, there was a narcotic and gambling issue driving the action. In a way, you can become sympathetic, you kind of see why a crime took place and they are seeing what has happened to you (Participant 4).

When a community understands what issues or needs led to the criminal behavior, they are able to support action to address the root of the issue and prevent recurrence.

Another need often expressed by harmed parties is the need for “closure,” and to not have enduring fear from the experience of the crime. One harmed party explained to me, “The main thing is it has given closure that I wouldn’t have gotten otherwise. Seeing someone is better than just hearing from court or not at all that he got in trouble by the court... It makes them into a person rather than this shady villain over the hill somewhere” (Participant 4).

(iii) A third key feature of normative rituals is they *foster stability and cohesion in the community*. Whereas the criminal trial ritual contributes to community solidarity by uniting the group against a common enemy, the restorative justice ritual fulfills this function through seeking to repair the damaged relationships. The fabric of any community is made up of interconnected relationships. Crime harms those relationships and thus weakens community.¹¹ As Bazemore explains,

Crime is both a cause of breakdowns in individual and community relationships and the result of these breakdowns. To break the well-known cycle of crime, fear, withdrawal, weakened connections, and more crime, restorative justice interventions seek to reweave community fabric by rebuilding and strengthening relationships to increase collective efficacy in addressing harm and conflict that may lead to future crime.¹²

¹¹ Zehr, *The Little Book of Restorative Justice*, 29.

¹² Bazemore, “Young People, Trouble, and Crime,” 214.

Through its ritualized encounter, restorative justice actively seeks to re-build harmed relationships and strengthen the community fabric as a whole. The result is a more stable and cohesive community less inclined toward scapegoating one of its own.

(iv) Perhaps most obviously, the restorative justice ritual fulfills the normative function for participants of *reaffirming the social values that have been violated by the crime*.¹³ Whereas the criminal trial upholds these values by condemning and sometimes excluding the offender from the moral community, restorative justice establishes and reaffirms social values by holding the responsible party accountable and including them in the process of repairing the damage done.

Accountability is central to restorative justice.¹⁴ The person who caused harm is encouraged to take responsibility for their actions as a way of respecting the values they have compromised. Luzon identifies three stages in this responsibility-taking. The first involves recognizing the harms that resulted from the behavior and developing empathy for those hurt by it. The second stage involves personal change on the part of the responsible party, correcting the conduct and any contributing factors in his or her life. The third stage involves following through on agreements made during the restorative justice process as a mark of commitment to their responsibilities.¹⁵ Through each of these steps, the responsible party is acknowledging the misalignment of their behavior with community values and committing to abide by those values through changes in behavior. What emerges is an expression of renewed respect for the community values that were compromised.¹⁶

Through this process of active accountability, the responsible party comes to understand that their action was wrong, not because it broke the law, but because it caused harm. As Harris, Walgrave, and Braithwaite note,

The wrongfulness of the behaviour does not appear based on abstract moral or legal categories, but based on the emotional understanding of the harm caused. Moral wrongfulness discussed in emotional terms in the conference setting is a much more adequate ground for deliberation on possible solutions than abstract moralizing on

¹³ Pointer, "Understanding Transformational Space," 163.

¹⁴ Zehr, *The Little Book of Restorative Justice*, 25.

¹⁵ Golan Luzon, "Restorative Justice and Normative Responsibility," *Restorative Justice* 4, no. 1 (2016): 34.

¹⁶ *Ibid.*, 37.

legalism and social ethics. This is one of the major pluses of conferences in comparison to court sessions.¹⁷

In the criminal trial, social values are reaffirmed in a way that often ritualistically excludes the offender from their belonging in the moral community. The trial serves to demarcate the law-abiding community, establishing the criminal as “other.”¹⁸ In restorative justice, social norms are established in a way that includes the responsible party and holds them accountable to repair the harm they have caused.

This inclusive establishment of social norms is achieved in part through demonstrating the social values and norms expected within the restorative justice process itself. Kay Pranis distinguishes between process values and individual values. Process values address the qualities of the restorative process itself, while individual values are the qualities that should be nurtured within participating individuals.¹⁹ As Pranis explains, “The process values of respect, maintaining individual dignity, inclusion and non-domination create a space in which participants are more likely to access the best within themselves. That best self is characterized by values such as respect, honesty, taking responsibility, compassion, and patience.”²⁰

My interviewees also highlighted the connection between process values and individual values. As one facilitator explained, “The standard structure of the facilitation continues at each step to reinforce a sense of responsibility, accountability, and putting things right” (Facilitator 2). One value that several facilitators highlighted is the value of respect. “It is fundamentally about respect for everyone in the process. It is not a place of judgment; it is about treating people with respect, whatever role they happen to be playing in the conference” (Facilitator 4). That value of respect is reinforced at each stage of the restorative justice process and forms the basis upon which the responsible party can accept accountability without fear of being stigmatized.

¹⁷ Harris, Walgrave, and Braithwaite, “Emotional Dynamics in Restorative Conferences,” 202.

¹⁸ Cohen, *The Symbolic Construction of Community*, 50.

¹⁹ Pranis, “Restorative Values,” 60.

²⁰ *Ibid.*, 63.

The physical set-up of the restorative justice conference and the language used contribute to a reaffirmation of core values. As one facilitator explained, “Even the way we set up the arrangement, we are sitting in an open circle with nothing between us and we call it a conversation. Those things, which are quite little in a sense, are quite meaningful and powerful symbols of what the process is setting out to achieve” (Facilitator 15). The equality and respect communicated by the physical space reinforces the values of equality and respect that the process seeks to uphold.

When community members are involved in the restorative justice process, they also play a role in reaffirming normative standards. A study conducted by David Karp of the community reparative boards in Vermont tracked what community members feel compelled to say when they confront norm violators. It was common for them to reassert the normative standards of the community and to make the case that membership in the community entails a responsibility to conform to those standards.²¹ Community members communicated this after first establishing a connection with the responsible party, demonstrating that they all belonged to the same community.²²

While each of these components of the process aid in its normative effectiveness, it may be restorative justice’s transformative effect that most contributes to reaffirming shared values. As described in the previous chapter, restorative justice aims to bring about personal and relational transformation for those involved, which is achieved through an experience of liminality and *communitas*/collective effervescence and a resulting commitment to behaviors and social values that respect human interconnectedness. Restorative justice establishes norms through providing a transformative experience. As Ida Asmussen explains,

Restorative Justice advocacy, despite essentially different means, works toward the same end as the traditional legal system: to efficiently avoid disruptive individuals who deviate from the order of society... The difference is where the legal state proves guilt, metes out punishment and confines, restorative justice does not work through formal, external force. Instead, it works through careful, persistent

²¹ David Karp, "The Offender/Community Encounter: Stakeholder Involvement in the Vermont Reparative Boards," in *What Is Community Justice?: Case Studies of Restorative Justice and Community Supervision*, ed. David Karp and Todd Clear (Thousand Oaks: SAGE Publications, Inc., 2002), 72.

²² *Ibid.*, 71.

encouragement of the installment of an inner, mental panopticon, in which the conscience bids the individual act in accordance with the law.²³

The experience of personal transformation is often more effective than punishment in promoting positive behavior in the future. As Tom Tyler's work demonstrates, encouraging the development of people's internal values and thus motivating them to engage in self-regulatory behaviors is more effective than when behavior is motivated by either incentives or sanctions.²⁴

A common feature of the restorative justice ritual is an apology made by the responsible party. The apology is morally significant for its function in reaffirming the values that have been violated and in expressing remorse and regret for the harm caused. Daniela Bolivar notes that because restorative justice encourages expressions of remorse and apology in a formal procedural or ritualistic manner, it can be difficult to ascertain whether the apology is genuine.²⁵ On the other hand, the face-to-face nature of the encounter offers harmed parties more information about the apologizer's attitude that can help determine the meaningfulness of the apology.²⁶ The face-to-face interaction certainly offers the harmed party important additional information, but the meaningfulness of the apology – and hence its normative weight – is perhaps best assessed through an analysis of how the process functions as a transformative ritual. If the phases of separation and liminality, resulting in a revelation of *communitas* and the associated moral conviction have been achieved, participants will recognize the apology as genuine.

Normative Impact for the Wider Public

While the restorative justice ritual can clearly serve a normative function for its direct participants, it is often criticized for being unable to fulfill the same function for the wider public. Critics claim that restorative justice does not adequately satisfy the wider community's need for consistency and predictability in performing justice, nor does it clarify the wrong or the violation of communal values and social trust that has occurred through the crime. Restorative justice, it is said, is a private therapeutic transaction that fails to address the public interests at stake in dealing with crime. It fails to do so for two

²³ Asmussen, "Performing Absolution Narratives in Restorative Justice," 44.

²⁴ Tyler, "Restorative Justice and Procedural Justice," 309.

²⁵ Bolivar, Aertsen, and Vanfraechem, "The Ritual of Apology and Restorative Justice," 126.

²⁶ *Ibid.*, 132.

main reasons: first, it weakens or excludes the state from the role as arbiter and guarantor of publicly agreed values, and, second, it leads to unequal outcomes when dealing with similar offences. Let us consider each of these claims separately.

(i) Critics worry that by treating crime purely as a matter of personal harm between individuals *without the involvement of the state* restorative justice fails to safeguard the broader interests of society. Ross London, for example, raises concerns about the ability of restorative justice to bridge the gap between the informal justice of personal encounters and the formal justice of the public system. In private implementation, restorative justice may ride roughshod over crucial judicial principles, such as due process rights, equality in treatment, and the protection of minorities.²⁷ Given this tendency, London argues that the state must play a role in ensuring a fair, consistent, and reliable restorative justice process.

London accepts that restorative justice has a positive contribution to make to the way in which society responds to criminal wrongdoing. Its greatest innovation, he claims, is in identifying a new criminal justice goal: that of *repairing* the harm of crime.²⁸ By focusing on this overarching goal, restorative justice provides a powerful tool to examine and reform the criminal justice system. London conceptualizes the *harm* that restorative justice seeks to redress as harm to the social trust that society needs and the state has a duty to sustain.²⁹ That trust is the basic trust that fellow members of society will not victimize one another and that the state will act to rectify violations of that trust.³⁰

London distinguishes two dimensions of trust: personal and social.³¹ There needs to be a restoration of personal trust in the individual responsible party, assuring that he will not violate social values by victimizing others again. The core mission of restorative justice is to provide the means by which that individual trust can be restored. However, there also needs to be a restoration of social trust that the state will act to uphold

²⁷ Ross London, *Crime, Punishment, and Restorative Justice: From the Margins to the Mainstream* (London: First Forum Press, 2011), 20.

²⁸ *Ibid.*, 25.

²⁹ Ross London, "The Restoration of Trust: Bringing Restorative Justice from the Margins to the Mainstream," *Criminal Justice Studies* 16, no. 3 (2003): 179.

³⁰ *Crime, Punishment, and Restorative Justice*, 26.

³¹ *Ibid.*, 49.

communally shared values. London explains, “Restorative objective trust means restoring trust in the society that failed to protect the victim’s security. In addition to restoring trust in a particular offender, members of a society need to believe it has enforceable standards of behavior that can be relied on.”³² When the state fails to carry out its duty to enforce these standards, it compromises its legitimacy.³³

Because crime is not just a violation of personal trust, but also a violation of social trust, London argues that the state must play a central role in the justice process. He explains,

Recognition that trust operates on both an interpersonal and a societal level requires restorative justice theory to recognize the validity of values associated with both private justice and public justice. Rather than ignore or reject societal demands for equality of treatment, assurance of public safety, and the uniform application of the law as being somehow outside the restorative justice paradigm, the dual-level conception of trust compels us to fully integrate the values of both private and public justice.³⁴

(ii) London also raises concerns about the *inequality of outcomes* that can result from private restorative justice processes. He notes that when sanctions are determined by the mutual agreement of parties rather than by objective standards, factors such as an overly forgiving harmed party, a selfish harmed party, a fearful harmed party, a positively or negatively biased harmed party, or a vindictive harmed party could greatly impact the outcome. “Given the enormous amount of individual variability among victims regarding their requirements for regaining trust and their willingness to forgive, leaving sentencing decisions to the unlimited discretion of victims would likely result in great disparities and neglect the community’s right to safety.”³⁵

Lisa Radzik also raises concerns about unequal outcomes. She notes that in restorative justice, it is possible for similar crimes to result in very different outcomes.³⁶ This potentially violates liberal commitments to equality of treatment. She notes that

³² Ibid.

³³ Ibid.

³⁴ Ibid., 50.

³⁵ Ibid., 42.

³⁶ Linda Radzik, *Making Amends: Atonement in Morality, Law, and Politics* (Oxford: Oxford University Press, 2009), 170.

restorative justice advocates may counter that sentences that appear unequal might reflect sensitivity to individual context. Different outcomes can entail comparable degrees of condemnation of the crime, reparation for those affected, and reformation of the responsible party.³⁷ However, since prejudices persist in our society, Radzik argues that steps are still needed to prevent the impact of prejudice on criminal justice outcomes by ensuring equality in sentencing.³⁸ The state cannot simply endorse the outcome that those involved in the crime decide upon irrespective of considerations of equality.³⁹

In their concern about inequality of outcomes in the restorative justice process, London and Radzik overlook two key issues. First, they overestimate the equality of sentencing outcomes issued by the court. Particularly when the sentence involves punishment which causes significant hardship to the offender (as is generally the case in the traditional court process), ensuring equal sentences for the same crime is an important principle of judicial equity. However, countless studies have shown that minority race offenders receive, on average, harsher sentences than white offenders who committed equivalent crimes.⁴⁰ Other negative or positive biases likely also consciously or subconsciously influence judges' sentencing decisions or how a prosecutor decides to charge a case, which ultimately influences the sentence. The work of police officers and juries may also be influenced by bias. This inequality of sentencing outcomes is most problematic when those outcomes are severely punitive, that is, when they cause harm or hardship to the offender, as in the case of a fine, jail time, or mandatory community service.

³⁷ Ibid.

³⁸ Ibid., 171.

³⁹ Similar to Ross London and Lisa Radzik, Tony Foley raises an issue related to the outcomes in the restorative justice process. However, rather than being concerned about inequality, Foley is concerned that the restorative justice process does not impose negative burdens on the offender. Foley sees justice as "concerned with the allocation of social benefits and burdens in both social welfare and correctional terms," Tony Foley, *Developing Restorative Justice Jurisprudence: Rethinking Responses to Criminal Wrongdoing* (Farnham: Ashgate Publishing Ltd, 2014), 37. He argues that in deliberately stepping away from the role of imposing negative burdens through punishment, restorative justice fails to give offenders their full deserts. However, Foley does not explain *why* wrongdoing ought to necessitate negative desert (punishment). His argument contrasts with the restorative commitment to not cause further harm (through negative deserts) as a response to harm.

⁴⁰ Paul Butler, "Research Finds Racial Disparities in Prison Sentences," interview by Scott Simon, *NPR* (2017).

On the other hand, if outcomes are intended to repair the harm caused without inflicting additional harm on the responsible party (in other words, without *punishing* the responsible party), then there is less reason for concern about inequality. Restorative justice agreements endeavor to repair the harm of crime to the greatest degree possible, without causing further harm to anyone, including the responsible party. Furthermore, the outcome of a restorative justice process is not a *sentence* and should not be compared to sentencing practices in the court. Rather, it is an *agreement*, which the harmed party, responsible party and all other participants in the process have arrived at by consensus, following an open discussion of the impacts of the crime and what is needed to make things right. Because a restorative justice outcome is not intended to be punitive – in the sense of an imposed penalty that represents “just deserts” – and is put in place only with the consensus of the group, including the willing acceptance of the responsible party, there is significantly less reason for concern over inequality of outcomes than there is in the traditional court system.

Nevertheless, London makes a couple of suggestions to address the possibility of inequality of outcomes in restorative justice. The first is that a judge sets upper and lower limits of sentence severity that a restorative justice conference must work within.⁴¹ This suggestion that a judge maintains power over sentencing is similar to what currently takes place in the adult restorative justice system in New Zealand. A case is referred to restorative justice after a responsible party pleads guilty. After the restorative justice process takes place, a summary of the process and suggested outcomes are submitted to the judge who ultimately determines the sentence and is required to take any agreements reached at the conference into account.⁴² The standard punitive sentence is still enacted, often with a “discount” or with some of the agreements included.

A judge determining the ultimate sentence or London’s suggestion of upper and lower sentencing limits may address the issue of inequality of outcomes; however, from the perspective of ritual theory, these arrangements may present several additional difficulties. Giving the judge primary say in determining the sentence may hinder the

⁴¹ London, *Crime, Punishment, and Restorative Justice*, 52.

⁴² Ministry of Justice New Zealand, “How Restorative Justice Works,” <https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works/>.

transformative impact of restorative justice in two key ways. First, the responsible party and harmed party are still required to take part in the ritual of court in order to receive the sentence. As discussed in Chapter Three, the hierarchical and stigmatizing structure of the court process may mitigate against the transformative experience of restorative justice. When the responsible party and harmed party are brought back into the adversarial and hierarchical structure of court procedures at the point of sentencing, it may impede the transformation achieved through restorative justice being carried forward. In my interviews with participants and facilitators, this stage of returning to court after the restorative justice process for sentencing was often spoken of negatively. While it did not entirely negate the positively transformative experience of the conference, it did often result in an unsatisfactory ending to the process.

Second, London's proposal may limit the creativity that occurs in the agreement phase of restorative justice and the multitude of individualized outcomes that may emerge to address harms that are specific to the individuals involved. As discussed in the previous chapter, symbols help to carry the transformative experience forward into everyday life after the culmination of the conference. Particularly creative and individualized agreement items contribute to this goal. For example, in one sexual harassment conference, one of the agreed outcomes was that the responsible party would read a book about feminism and write a book report that he would submit to the case coordinator by a set date. That book report would then be shared with the harmed party. This assured the harmed party that the learning and positive transformation would continue following the conference and provided the responsible party with a tangible reminder of the experience. While the judge may decide to incorporate some of these individualized outcomes, it is possible that they will not be included in the final sentence.

The possible exclusion of individualized outcomes from the final court sentence means that there is no formal assurance that they will be completed. This can have a negative impact on harmed parties. As explained in Chapter Four, one harmed party I interviewed stated that his primary complaint about the restorative justice process was that he did not know if what he had asked for in the way of reparation would be reinforced by the judge and ultimately carried out by the responsible party. He explained,

Part of my wish list of reparations was that he would make a positive change to his lifestyle, so I suggested that he do volunteer work at a conservation park. I thought that might address what his issues are, which were partly that he had no work during the day. I have no idea if that happened or not, I haven't received much feedback from the sentencing and follow up (Participant 4).

For this harmed party, it would have been meaningful for the group engaged in the restorative justice process to have greater agency over determining the outcomes and to receive notification when the agreement was completed.

A ritual understanding of this interaction between the two justice rituals of the court and restorative justice raises the question of whether this final stage could be done in a way that honors, reinforces, and supports the transformation that has taken place during the restorative justice process. This might include a less adversarial and stigmatizing placement of people in the court room when they return for sentencing following the restorative justice process, for example, foregoing the use of the dock and ending the separation of participants into two sides (prosecution versus defense). It may also include a more deliberate honoring of the agreement made during the restorative justice process by the judge and a system for providing feedback to participants, letting them know when the agreement has been completed. Or, as Fred McElrea has proposed, it may involve a full diversion of eligible cases (in which the person who committed the crime takes responsibility and all parties are willing to participate) to restorative justice, with the court process serving as a backstop for cases in which the agreement was not honored.⁴³ From the perspective of ritual theory, what is important is that the interaction of these two justice rituals is supportive of the transformative impact of restorative justice being carried forward.

Declan Roche has expressed a different concern regarding the disparity of outcomes in the restorative justice process. Unlike London and Radzik, Roche is not concerned with whether a given outcome is too harsh or too lenient, but how the decision was reached in the process. He argues,

⁴³ Fred McElrea, "Updated Proposal for Pilot Community Justice Centres in New Zealand," (2006), <https://www.napierlibrary.co.nz/assets/mcelrea/Community-Justice-Centres-proposal-New-Zealand-200604.pdf>.

An agreement's ultimate acceptability should not turn on its severity or consistency with other agreements and sentences, but on the quality of the decision-making process. Because restorative justice is premised upon deliberations between those affected by a crime, those reviewing the procedures should satisfy themselves that meetings honour this ideal, that people invited to a restorative justice meeting are able to participate effectively, and that their deliberations reflect the range of affected interests.⁴⁴

Roche claims that there is a lack of public accountability in restorative justice and asserts that this is due in part of the “almost blind faith” of restorative justice proponents in believing that the meeting will always bring out people’s better selves.⁴⁵ He explains that in a restorative justice conference, people can express some of the best human qualities (the ability to empathize, to reconcile, to apologize, and to forgive), but because of the informality of the process, they can also express some of the worst (they can scold, stigmatize, humiliate, dominate, and demoralize). This negative side of human nature emerges when participants are able to dominate each other. He explains, “While participants should be able to exert pressure on each other to account for their opinions and claims, no participant should be able to dominate any other as excessive pressure destroys deliberative accountability.”⁴⁶

In order to avoid this domination, Roche suggests that judges should gauge not the agreed upon outcomes themselves, but instead “the quality of the deliberative process used to decide outcomes.”⁴⁷ I agree with Roche that ensuring the quality of the process is the best way to safeguard fair outcomes. The analysis of restorative justice as ritual undertaken in this thesis would suggest that the best way to ensure process quality is to develop our understanding of what factors contribute to an effective transformative ritual. When liminality is achieved and *communitas* is experienced in the restorative justice process, the resulting impulse towards human kindness will ensure outcomes that do not stigmatize, humiliate, dominate, or demoralize. Similar to Roche’s point that domination must be avoided in order for the process to be successful, the ritual framework would suggest that the establishment of relational equality in the process is crucial to transformative success. This, of course, involves further education of facilitators,

⁴⁴ Declan Roche, *Accountability in Restorative Justice* (Oxford: Oxford University Press, 2003), 4.

⁴⁵ *Ibid.*, 19.

⁴⁶ *Ibid.*, 82.

⁴⁷ *Ibid.*, 224-25.

providing them with the necessary understanding of the restorative justice ritual and follow-on support to ensure its success as a transformative process.

Another response to the normative shortcomings of restorative justice has been to suggest a fusion of restorative ideals with the process of sentencing in the court ritual. For example, London sees a place for a restorative framework within the confines of the consistent and predictable court system. He suggests that judges should be guided at sentencing by the questions: “Why don’t I trust this person to re-enter society right now?” “What must he or she do, and over what period of time, to demonstrate trustworthiness?” “And what evidence do I have to help me answer these questions?”⁴⁸ The responsible party’s participation in a restorative justice process could be used as such evidence. This suggestion has the same drawback as London’s suggestion of upper and lower sentencing limits, which is that when the primary justice ritual is the court process, the possibility of positive personal and relational transformation may be deterred through the adversarial and stigmatizing aspects of the court ritual. Even with these more restoratively-framed questions guiding sentencing, the surrounding structure, procedure, and power differentials of the criminal trial counter the possibility of transformative outcomes, as explained in Chapter Three.

The overarching goal in London’s proposed alternative structures is the reinstatement of social trust. London is right to raise this concern, as the restorative justice ritual alone often does not explicitly seek to address the concerns of those who have not been directly impacted by the harmful event. However, because of the potential negative impact on the transformative functioning of restorative justice as a result of the court maintaining control of determining a sentence, it is advantageous to consider alternative ways in which the restorative justice process itself could repair both personal and social trust. A fundamental question here is, what can be done to rebuild trust in the individual who committed the crime as well as in the state that has failed to uphold social trust through protecting its citizens from crime?

⁴⁸ London, *Crime, Punishment, and Restorative Justice*, 55.

As previously mentioned, a central concept of restorative justice is that criminal behavior indicates an unmet need on the part of the responsible party. This could be a basic need for food or shelter (consider someone in poverty who is hungry and stole food or a homeless person who trespasses in an abandoned house for a place to sleep), a need for social acceptance (consider a teenager who drinks and drives following pressure from his peers), a need for treatment or medical assistance (consider crimes arising from drug addiction or mental illness), or any number of other unmet basic human needs. This could also be a need to better understand how one's actions impact others. Society has a responsibility to support the wellbeing of its citizens and to help meet their basic needs. Therefore, the restoration of both personal and social trust following a crime may involve actions on the part of the community or state to help the responsible party meet the need that led to the crime in a pro-social way that does not victimize others.

David Karp identifies three common causes of criminal behavior, which each represent an unmet need on the part of the responsible party. He also identifies the type of restorative outcome that would effectively rebuild trust for each cause.⁴⁹ The first cause is a lack of awareness. For example, a teenage drug user may not know the negative impacts of drugs on the developing brain. The way to rebuild trust in a case of lack of awareness is an agreement that requires research and reflection on the part of the responsible party. She may be asked to research the impact of a certain drug on brain development and other aspects of health and wellbeing and to produce a written report (or video or podcast or some other creative product) on her findings.

The second common cause of criminal behavior identified by Karp is personal problems. This could include mental illness, drug addiction, poverty, or trauma among others. The way to rebuild trust in this case is treatment or rehabilitation. The agreement may include, among other things, the responsible party seeing a therapist or entering treatment for an addiction.

The third common cause of criminal behavior is interpersonal problems. This could include a responsible party being socially isolated, bullied, or the victim of

⁴⁹ David Karp, "Keynote: Restorative University" (lecture, Restorative University Roundtable, Victoria University of Wellington, New Zealand, 2018).

domestic abuse among others. The way to rebuild trust in this case is finding ways for the responsible party to experience more positive connections with others. This might include finding a mentor, greater community involvement, assistance leaving an abusive relationship, or joining a support group among other things.⁵⁰

There may be an initial resistance to some of these suggestions because they involve satisfying the needs of the very person who has caused significant harm to others in the community. However, if the ultimate goal is the restoration of the social trust that has been violated and assurance that the crime will not happen again, the best way to achieve that may be to understand the underlying cause or unmet need that drove the criminal behavior and to seek to address it in the agreed upon outcome.

R.A. Duff raises another significant critique of restorative justice's normative function. Duff asserts that crime must be understood not only as harm, but also as a moral wrong. More specifically, "crimes are 'public' wrongs, which is to say that they are wrongs that properly concern 'the public' – all citizens, simply by virtue of their shared membership of the polity."⁵¹ Because crime is a moral wrong that concerns the public, we owe it to ourselves collectively, as a polity that defines itself by a shared commitment to values that guide how we treat one another, to take note of the wrong and publicly define and declare it as wrong.⁵² Duff further asserts that we owe this public declaration of the wrong not only to the victim and the wider public, but also to the offender himself. Offenders have a right to be held to account for their moral wrongs. To do so is to respect the offender as a member of the community that lives according to the shared values that have been violated. Duff argues that the privatization of crime and conflict in the restorative justice process fails to treat the crime as a public matter, part of our collective business, and furthermore fails to communicate the categorical condemnation of the wrong that is required.

⁵⁰ In addition to these three causes of criminal behavior described by Karp, another common cause of criminal behavior is larger social problems including inequalities in society due to discrimination, intergenerational trauma, or other factors. These indicate a need to address larger structural issues in society that have contributed to the behavior and are generally much more difficult to meaningfully address in the restorative justice process. This issue and related limitations of the process will be further discussed in Chapter Six.

⁵¹ Duff, "Responsibility, Restoration, and Retribution," 70.

⁵² *Ibid.*, 72.

The distinction that Duff establishes between a “harm” and a “wrong” is arguably less clear-cut than he claims. How do we, as a community, determine what is wrong and deserving of public condemnation? Duff argues that what is “wrong” is that which violates shared values or, more specifically, the shared concept of how we should behave toward each other and the constraints we should observe in our dealings with each other.⁵³ The logical question that follows is, on what basis are these shared concepts of how we ought to behave towards each other established? It would seem that we have these concepts in place in order to avoid harming one another. Therefore, when a value or way of behaving towards others in the community is violated, harm occurs. This is harm not only to the victim, but also to the wider community, which will likely experience a decreased sense of community trust and safety. This is akin to the harm of “social trust” highlighted by London. Therefore, what a community considers “wrong” is logically based on what will cause harm and a desire to avoid harm.

Nevertheless, Duff raises an important point that in the private nature of restorative justice, the harm to the wider community, or as he would call it, the “wrong,” is often not fully addressed. Duff argues that criminal law is the best way to define public wrongs that are our collective business and require a public response, and that the public trial is the best way to determine that response.⁵⁴ He describes the criminal trial as “a formal process through which an alleged wrongdoer is called to answer to his fellow citizens by the court that speaks in their name.”⁵⁵ The offender is called initially to plead “guilty” or “not guilty.” After guilt is either admitted or established by the trial process, the court issues a formal condemnation and imposes a sentence. The resulting punishment, Duff claims, serves to communicate to the offender and all citizens the censure that the crime deserves.⁵⁶

It is in the nature of the punishment imposed that Duff finds a place for a restorative influence. Duff claims that an apology is needed as moral reparation for the wrong that was done. However, it needs to be more than a verbal apology; it needs to be

⁵³ Ibid.

⁵⁴ Ibid., 74-76.

⁵⁵ Ibid., 76.

⁵⁶ Ibid., 78.

burdensome.⁵⁷ This burdensomeness gives material form to the repentance. In this way, criminal punishment is a sort of mandatory apology, requiring the offender to go through the motions of apology, even if he does not mean it.

Christopher Bennett makes a very similar suggestion of an “apology ritual” as an effective and appropriate model for integrating restorative values into the court system. The apology ritual involves making an offender act as he would if he were genuinely sorry.⁵⁸ The offender still goes through the judicial system, but instead of receiving a punitive sentence, he is sentenced to complete the actions that a person would complete if he felt remorse and wanted to make things right.

This “apology ritual” is symbolically adequate, regardless of the spirit in which the action is done. As Duff explains, “What punishment requires of the offender is not actual repentance, but that he undergo the ritual of apology and moral reparation. It is still up to him to make, or refuse to make, that apology a genuine one.”⁵⁹ Duff expresses a hope that undergoing the burdensome sanctions that “constitute appropriate reparation for his wrong”⁶⁰ will bring the offender “to recognize the need for that reparation himself, and to make it his own, but that is up to him.”⁶¹

Duff acknowledges that the apology ritual the offender is required to undertake or undergo is not adequate to restore personal relationships. However, he argues that such relationships are not the concern of criminal law. He explains,

The criminal law’s proper concern is with our relationship as fellow citizens, a relationship that is, as far as the law is concerned, somewhat distant and formal. It is that relationship that crime, as a breach of our civic values, damages. It is that relationship that can be repaired by the punishment that the offender undertakes or undergoes, if his fellow citizens play their proper part in the ritual. They will play that part if they accept the completion of the ritual as adequate moral reparation for the wrong without inquiring into the sincerity of the apology that is thus offered. For while, in our more intimate relationships, apologies, and the rituals through

⁵⁷ Ibid., 79.

⁵⁸ Christopher Bennett, *The Apology Ritual: A Philosophical Theory of Punishment* (Cambridge: Cambridge University Press, 2008), 146.

⁵⁹ Duff, “Responsibility, Restoration, and Retribution,” 79-80.

⁶⁰ Ibid.

⁶¹ Ibid.

which they may be expressed, are only of value if they are sincere, in the civic life of a liberal polity that takes privacy seriously, what matters is that the ritual is undertaken.⁶²

Criminal law is responsible for responding to fractures in civil relationships and, according to Duff, the “apology ritual” is sufficient to repair those civil relationships. It may lead to sincere feelings of apology in the offender, but not necessarily. The hope is that through undergoing this burden of punishment, the offender will come to understand the crime and repent. “Punishment is, on this view, a kind of secular penance.”⁶³ However, the apologetic action alone is all the state can legitimately require; it cannot seek to influence the opinion, emotion, or spirit of the offender.

Duff’s assertion that an offender’s burdensome punishment will help “keep his attention focused on his wrongdoing and its implications, with a view to inducing and strengthening a properly repentant understanding of what he has done,”⁶⁴ requires a particularly reflective offender. Even more so when considering he has likely not been given an opportunity in the court process to hear first-hand about the harm experienced by the victim and wider community. It is equally, if not more, likely that the offender will respond to the imposition of a burdensome punishment with indignation and the feeling that he himself has been made a victim by the criminal justice process. He may feel that he had little voice in the process, minimal opportunity to share his story, and will have engaged in a primarily adversarial manner with the victim. All of these factors mitigate against a genuine understanding of the “wrong” committed or “harm” caused and resulting feelings of repentance.

Duff’s argument disregards, beyond a slight hope, the attainability of actual transformation of the opinion, emotion, or will of the offender. He acknowledges that a spirit of genuine apology is an ideal outcome, but does not see this as the proper mandate of the criminal justice system in a liberal polity. In the “apology ritual” model of sentencing that Duff proposes, the possibility of a genuine transformation occurring must arise from the participants, but it does not come as a result of the ritual structure itself.

⁶² Ibid., 80.

⁶³ Ibid.

⁶⁴ Ibid., 78.

However, the restorative justice process does provide a space for such a genuine transformation to occur, as explored in detail in Chapter Four. Therefore, if a spirit of genuine apology is the hoped-for outcome, it is sensible to endeavor to find a way to modify the restorative justice process so that it can serve both the transformative function and the necessary normative function for the wider public that London and Duff rightfully raise as an issue.

It is worth pausing to highlight that restorative justice cannot fully replace the standard criminal justice process because it does not have a mechanism for determining guilt. In cases of contested guilt, the trial process is necessary in order to evaluate evidence and draw conclusions in a way that upholds important judicial principles. However, that is a minority of cases. The vast majority of cases never get as far as a trial because the defendant pleads guilty.⁶⁵ The number of people taking responsibility for their crime would also likely increase with greater implementation of processes like restorative justice that do not carry weighty punishments. Additionally, harmed parties and responsible parties only participate in restorative justice on a voluntary basis and can always choose to go through the traditional system.

In cases where the responsible party accepts responsibility for the wrongdoing and there is no need to determine guilt or innocence and all involved parties are willing to participate, it is beneficial to pursue the transformative outcomes of restorative justice, so long as the need for a publicly normative ritual process can be fulfilled. In order to do this, normative ritual theory would suggest that there must be greater visibility of the process for the wider public.

Currently, efforts to involve the public are limited to the inclusion of community member representatives in some restorative justice processes and in select programs. This may involve community volunteers convening reparation boards, acting as neutral third

⁶⁵ McElrea and Thompson, "Our Traditional Criminal Justice System," 5. McElrea and Thompson's article discusses the number of pleas in the New Zealand system, but the same trend holds true in the United States. In the United States, 97 percent of felony convictions at the federal level are the result of plea bargains. The statistic is similar for felony convictions at the state level (94 percent) and estimates for misdemeanor convictions by plea are even higher, Yoffee, "Innocence Is Irrelevant." It is also worth noting that in the current system, many people who are actually innocent take a plea bargain because of fear of more serious charges and a harsher sentence if they take their case to trial and are convicted, *ibid*.

parties helping to direct the process, or community may be conceptualized as the “micro-community” of the family and friends of the harmed party and responsible party, who are directly involved in the process.⁶⁶ It may also mean the inclusion of the “macro-community,” often volunteers who are meant to participate in the conference and represent community interests.⁶⁷ This inclusion of community members in the restorative justice process can have many benefits. Rossner and Bruce note that community members can improve the dynamic of the justice ritual. “Lay people are often better placed to bring emotions to such encounters, such as through the communication of sympathy for victims or reintegrative shaming of offenders.”⁶⁸ This contributes to the emergence of social solidarity in the ritual process.

The inclusion of community members also adds legitimacy to the proceedings. There is a great historical and symbolic significance to lay participation in the justice system and having community members there can increase confidence in the justice process.⁶⁹ However, while community member participation may aid the normative impact of the restorative justice process for those present, including participating community members, it rarely has a major impact on the wider public.

Perhaps the greatest aspect hindering public awareness of the process, as well as a wider understanding of how justice is achieved in the restorative justice ritual, is the ground rule of confidentiality. Unlike a criminal trial, which is open to public viewing, a restorative justice process is limited to a select circle of people. At the outset, the facilitators establish confidentiality as a ground rule, asking participants to not share what is said in the process with others outside the circle. This is meant to contribute to establishing a safe space where everyone can feel comfortable saying what they need to say.⁷⁰ However, the result is that for non-participants, the restorative justice ritual is shrouded in mystery. There may be little trust on the part of the wider public that the crime and resulting harm has been handled in a trustworthy way and that the communal

⁶⁶ Meredith Rossner and Jasmine Bruce, "Community Participation in Restorative Justice: Rituals, Reintegration, and Quasi-Professionalization," *Victims & Offenders* 11, no. 1 (2016): 108.

⁶⁷ Ibid.

⁶⁸ Ibid., 109.

⁶⁹ Ibid.

⁷⁰ Vicky De Mesmaecker, "Victim-Offender Mediation Participants' Opinions on the Restorative Justice Values of Confidentiality, Impartiality and Voluntariness," *Restorative Justice* 1, no. 3 (2013): 339.

values that were violated have been upheld. As Vicky De Mesmaecker observes, “The public has little familiarity with the concept of restorative justice; it is not generally known for it is not generally seen.”⁷¹

Confidentiality is one of a few principles commonly regarded as indispensable to high-quality restorative justice, but it has been challenged. De Mesmaecker conducted a study examining participant (harmed party and responsible party) support for three of these supposedly indispensable principles: voluntary participation, the impartiality of the facilitator, and the confidentiality of the restorative process. She found that while participants unequivocally supported the principles of voluntariness and impartiality, the confidentiality of the process caused dissatisfaction and frustration at times.⁷² Many participants indicated a desire for others outside of the process, especially the judge, to know what took place during the process.

Others have also challenged the supposed indispensability of complete confidentiality to the restorative justice process. In describing the Māori approach to justice in contrast to restorative justice, Khylee Quince explains, “Justice must not only be done, but must be seen to be done. So, it needs to be open and needs to be public.”⁷³ A degree of public visibility seems to be essential to the normative impact of a justice ritual on the wider community. Even from a restorative perspective, it could be argued that the community has a need following crime to understand the story behind the offence and the reasons for its occurrence and to know that the responsible party has understood the impact of their crime and is committed to not repeating the behavior in the future.

In order to account for this public need, one possibility would be to begin by establishing confidentiality at the outset of the restorative justice process in order to create a safe space for open, honest dialogue, but to revisit the question of confidentiality at the end of the conference. The facilitators could pose the question, “Who needs to be told about what happened here today and how will they be told?” In this way, the

⁷¹ “Building Social Support for Restorative Justice through the Media: Is Taking the Victim Perspective the Most Appropriate Strategy?,” *Contemporary Justice Review* 13, no. 3 (2010): 243.

⁷² “Victim-Offender Mediation Participants’ Opinions on the Restorative Justice Values of Confidentiality, Impartiality and Voluntariness.”

⁷³ Khylee Quince, “Restorative Justice and Indigenous Justice,” in *Edx Course: Restorative Justice and Practice: Emergence of a Social Movement*, interview by Haley Farrar (2018).

participants would be responsible for deciding how to share the process and outcomes with the wider public and it would form part of the agreement. This could remove some of the mystery from the restorative justice process and strengthen the normative impact of the restorative justice ritual for the wider public.

This modification may help to resolve a common concern about public knowledge of the outcomes of the process. In a 2012 study on restorative justice in England, survey respondents reported thinking that the general public should be aware of outcomes in the same way they are kept informed of criminal justice sentencing via the media.⁷⁴ The general public would also have the opportunity to hear more about the process as a whole, rather than just a list of outcomes. Often, because of the transformative impact of restorative justice, the resulting agreement is far less significant for those involved than the process of participating in the restorative justice ritual itself. An adaptation to the principle of confidentiality in the process would allow the public to hear about the dialogue and the resulting outcomes in a way that felt appropriate to the participants.

Efforts to heighten general public awareness of restorative justice may also enhance the normative impact of the process. In De Mesmaecker's study, she found that most of her respondents had never heard of restorative justice before it had been offered to them in their own case.⁷⁵ A theme in my interviews with restorative justice participants was the skepticism or uncertainty they felt about the process prior to participating (generally prior to the pre-conference). As one participant explained, "I didn't quite have a full understanding of what it was, so it was almost stepping into the unknown. I was apprehensive at the beginning and then when it was explained further to me, I had a better feeling of going into it, and more of a positive reaction to what I encountered" (Participant 3). This theme of participants' lack of prior awareness and understanding suggests that the general public will only perceive restorative justice as a trustworthy and legitimate justice process when they know more about what it is and how it works.

⁷⁴ Duckfoot, "The General Public's Response to Restorative Justice, Community Resolution: Research Conducted on Behalf of Her Majesty's Inspector of Constabulary," (Somerset: Duckfoot, 2012), 8.

⁷⁵ De Mesmaecker, "Victim-Offender Mediation Participants' Opinions on the Restorative Justice Values of Confidentiality, Impartiality and Voluntariness," 348.

Generally, surveys of public opinion indicate a high level of support for restorative justice principles. In a 2011 study in New South Wales, researchers found that 87.3 percent of survey participants agreed that victims should be given the opportunity to inform offenders of the harm caused and 73.8 percent endorsed allowing victims to have a say in how the offender can make amends for the harm caused.⁷⁶ Public support of restorative justice is generally high, but only when people are explicitly made aware of restorative justice as a possibility.⁷⁷ People need to be provided with a choice between a punitive and a restorative way of handling crime. In other words, in order to strengthen its normative impact, restorative justice needs a public relations strategy.⁷⁸

One way that justice processes are generally made known to the wider public is through the media. As De Mesmaecker explains, “Even if the media can distort as much as it can inform, it remains a crucial partner in educating the public on crime and criminal justice.”⁷⁹ Restorative justice advocates have attempted to address the lack of public knowledge of restorative justice through media stories, particularly focusing on the voices and stories of harmed parties. This strategy has stemmed from the belief that the most appealing aspect of restorative justice to the public is its thoughtfulness towards crime victims.⁸⁰ De Mesmaecker identifies several problems with this focus on harmed parties in media portrayals, including the sensationalist characteristics of media reporting on harmed parties and the risk of increasing punitive attitudes in the general public. She concludes by suggesting that further research be conducted on how restorative justice should proceed in “selling” itself to the general public.⁸¹

One obstacle to greater public awareness is the lack of effective images of restorative justice that can communicate the process’ distinct approach to justice. Brunilda Pali explains that symbolic images help us as a society to communicate complex ideas. The most prominent image of “justice,” Lady Justice with her scales, sword and blindfold, does not adequately represent the type of justice sought in the restorative

⁷⁶ Elizabeth Moore, "Restorative Justice Initiatives: Public Opinion and Support in Nsw," *NSW Bureau of Crime Statistics and Research*, no. 77 (2012): 10.

⁷⁷ De Mesmaecker, "Building Social Support for Restorative Justice through the Media," 242.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 244.

⁸⁰ *Ibid.*, 243.

⁸¹ *Ibid.*, 260.

justice process, nor how it is achieved. As Pali explains, “From a restorative justice perspective, the sword, the scales, and the blindfold mainly represent the limitations of formal justice, where justice is seen as harsh, rigid, and unable to see the injuries imposed in her name.”⁸² Restorative justice challenges the image of Lady Justice in almost all of its elements, but still there is no competing perfect image of restorative justice that can challenge the image of Lady Justice.⁸³ The best image currently in use is the image of a circle of people talking, but this does not adequately differentiate restorative justice from other processes or meetings where a circle of chairs may be arranged for a dialogue. This distinct lack of images is an ongoing issue in the field. As Pali explains,

Restorative justice scholars in particular have been latecomers to both grasping the power of art, media, and images and producing counter images or other forms of visual practices. Although this is slowly changing as films, documentaries, series, photography, digital storytelling, and new media projects have encountered restorative justice, it is too early and difficult to analyze the power or effect of these productions, and unfortunately, they remain limited to smaller audiences.⁸⁴

In order for the restorative justice process to fulfill a normative function for the wider public effectively, public understanding of the process must be increased through effective storytelling, symbolic images, and the media.

Another possible solution to restorative justice’s lack of normative impact for the general public is increasing the number of people who have the opportunity to experience a restorative process. Many interviewees (both facilitators and participants) spoke about how participating in a restorative justice process was key to their understanding of the process and to becoming an advocate. One participant remarked, “After the meeting I was like, ‘Whoa that was actually really good.’ I think it needs a lot more promotion out there that people can do this, and it is really good, it really helps” (Participant 2). For many people, experiencing the process is a key step to greater support of restorative justice.

One benefit to a greater number of people experiencing the restorative justice process would be a decrease in the social distance between responsible parties and those members of the general public who tend to hold a negative opinion of restorative justice.

⁸² Brunilda Pali, “Images of Alternative Justice: The Alternative of Restorative Justice,” *Oxford Research Encyclopedia of Criminology: Crime, Media, and Popular Culture* (2017): 5.

⁸³ Ibid.

⁸⁴ Ibid., 2.

In the 2012 study in England, the survey participants who were more opposed to restorative justice tended to see themselves as culturally and socially distant from those who commit crimes and were cynical about a responsible party's inclination to reform and the likelihood of responsible parties trying to exploit the restorative justice system.⁸⁵ Having the opportunity to be involved in a process with a responsible party and experience the transformation first hand could shift this perception. Greater incorporation of volunteer community members would be one way for more people to experience the restorative justice process. Additionally, as restorative approaches to wrongdoing spread to schools, workplaces, and other communities, it is becoming increasingly likely that individuals will have the opportunity to participate in a restorative justice process.

Having a larger percentage of the population participating in restorative justice processes would also help the public to perceive the process as more trustworthy and predictable. In the 2012 study in England, all participants considered a nationally adhered to set of guidelines and a defined structure to the restorative justice process to be important.⁸⁶ I have already discussed how the set structure and semi-scripted nature of the restorative justice ritual helps ensure a degree of consistency in practice between facilitators and across different programs.⁸⁷ Ideally, this consistency in implementation will, over time, bolster the perceived legitimacy of the restorative justice ritual in the public eye.

Summary

This chapter has examined the normative function of the restorative justice ritual. It has argued that the process does fulfill a normative function for participants by providing consistency and predictability as a way of handling injustices through following a set structure; responding to societal needs through the practice of involving harmed parties and community members, not just responsible parties; fostering social stability and cohesion through the reparation of relationships; and reaffirming shared values that have been violated in a way that is inclusive of the responsible party. This

⁸⁵ Duckfoot, "The General Public's Response to Restorative Justice, Community Resolution," 7.

⁸⁶ Ibid.

⁸⁷ Bolitho, "Putting Justice Needs First," 272.

reaffirmation of values is accomplished in part through the transformative function of the restorative justice ritual.

However, in its current form, the restorative justice ritual does not have an adequate normative impact for the wider public largely because of its private and confidential nature. Modifications to the principle of absolute confidentiality in the restorative justice process and methods to increase public awareness of the process could begin to mitigate this limitation. In order for the use of restorative justice to continue to expand, it will need to be perceived as carrying out a normative function that is equally effective to the traditional court system. Therefore, it is essential for policy-makers, practitioners, and advocates to have a framework for discussing these normative issues.

Chapter 6:

The Proleptic Function of the Restorative Justice Ritual

The previous two chapters explored why the restorative justice conference can be viewed as a particular type of justice ritual that fulfills both a transformative and a normative function for its participants. In response to criticisms that the informal and publicly inaccessible nature of restorative justice cannot possibly satisfy the normative demands of justice, I argued that from the perspective of the direct participants in restorative justice, there does in fact emerge the kind of norm clarification essential to any justice ritual. There also exist opportunities to expand the public dimensions of restorative justice encounters to enhance its normative functioning for wider society.

This chapter will explore how the restorative justice conference fulfills the third identified function of rituals, that of anticipating or foreshadowing a future ideal state of affairs. To uncover the proleptic features of restorative justice, I will engage in discussion with a prominent critique of restorative justice, namely, that in its focus on making amends at an interpersonal level, it fails to address larger structural injustices or promote social change. I will argue to the contrary that it has been the ritual experience of the restorative justice conference that has driven many restorative practitioners to pursue a wider social justice agenda and that has given rise to a larger social movement. Viewed through a ritual lens, the ritual of restorative justice may be seen as subversive of the way the mainstream system reinforces the hegemony of powerful groups in society and as constituting a form of justice that foreshadows a more desirable kind of society towards which to strive.

Structural Blindness in Restorative Justice?

In his survey on restorative justice training and practice, David Dyck observes,

One of the most persistent critiques of the field of restorative justice as it is manifested in the practical activities of community programs around the world is that it still fundamentally fails to address the structural dimensions of criminal conflict. Its critics argue that current restorative programming focuses too much

energy on the interpersonal dimensions of crime and ignores the deeper roots of the trouble as found in class, race/ethnicity, and gender-based systemic conflict.¹

If this observation is correct, it challenges the degree to which restorative justice can truly be said to accomplish transformative justice goals, let alone represent a new paradigm of justice-making. Transformative justice is concerned with getting to the root cause of an issue, inquiring beyond the immediate situation into “what are often unrecognized and unchallenged assumptions and paradigms underlying current economic, political, criminal justice and social arrangements.”² A key feature of transformative processes is their capacity to empower communities to address the underlying causes of crime, including poverty, abuse, unemployment, discrimination, and other social problems.³

Some critics argue that the failure of restorative justice to combat social injustice is a result of its practical rather than philosophical concerns. George Pavlich claims that social reform and change were part of the initial philosophy and promise of restorative justice, but these have been “curtailed by the sheer weight of programmatic struggles for survival” in state-legitimated areas of control.⁴ Restorative justice has sacrificed its greater transformative potential by choosing instead to complement traditional criminal justice processes, thereby rendering itself incapable of addressing the complex social and economic systems that feed structural injustice.⁵

As a consequence of becoming institutionalized within the criminal justice system, restorative justice has accepted many of the penological characteristics that it once protested against. Rather than targeting the socio-political structures that produce crime and responses to it, restorative justice focusses on the individuals that are the objects of social control. As Giuseppe Maglione notes,

¹ David Dyck, "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice," in *Handbook of Restorative Justice: A Global Perspective*, ed. Dennis Sullivan and Larry Tift (London: Routledge, 2008), 527.

² M. Kay Harris, "Transformative Justice: The Transformation of Restorative Justice," *ibid.*, 559.

³ Ruth Morris, *Stories of Transformative Justice* (Toronto: Canadian Scholars' Press and Women's Press, 2000), 254.

⁴ George Pavlich, "Transforming Powers and Restorative Justice," in *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2018), 463.

⁵ *Ibid.*, 467.

These rapid institutional developments have outstripped restorative justice's radical theoretical aspirations (encapsulated in the original 'decentralising-conflict management' discourse), letting more conservative elements, indebted with 'conventional' criminal justice, lead its development (Gavrielides, 2013). Restorative justice appears today as a 'positive' reform of criminal justice, an alternative justification of the penal consequence for a crime (Christie, 2013; Mathiesen, 2015; Pavlich, 2005) which lacks any 'attitude to say no' (Mathiesen, 2015) to 'conventional' understandings of crime and punishment, and to develop a 'non-penal real utopia' (Scott, 2013).⁶

According to Maglione, rather than striving for larger scale transformation in the way crime and conflict are handled, restorative justice has remained locked in the basic constructs of the mainstream system.

Furthermore, restorative justice has tended to "pathologize" particular individuals, usually the responsible party, as the problem that needs to be fixed.⁷ As Kerry Clamp explains, "The transformative value of restorative justice within the conventional literature has often been limited to an inner change that occurs within stakeholders as a result of participating in the process."⁸ This individualized conception of responsibility and harm replicates the narrow, penological focus of criminal justice, which views crime as occurring between individuals rather than as symptomatic of underlying social causes.⁹

Gerry Johnstone sees this focus on individual shortcomings in restorative justice as part of a larger therapeutic trend in the criminal justice field and asserts that restorative justice has contributed to the "professional theft" of conflicts by professionals from the ordinary people to whom they really belong.¹⁰ "Restorative justice – in its discourse and practice – has adopted much of the language and many of the assumptions and objectives of the therapeutic tradition in penal systems."¹¹ This therapeutic tradition is informed by a

⁶ Giuseppe Maglione, "Pushing the Theoretical Boundaries of Restorative Justice: Non-Sovereign Justice in Radical Political and Social Theories," *ibid.*, 23-24.

⁷ Dyck, "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice," 530.

⁸ Kerry Clamp, *Restorative Justice in Transition* (New York: Routledge, 2014), 43.

⁹ Pavlich, "Transforming Powers and Restorative Justice," 468.; Bonnie Lofton, "Does Restorative Justice Challenge Systemic Injustices?," in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey: Criminal Justice Press, 2004), 337.

¹⁰ Gerry Johnstone, "Restorative Justice and the Therapeutic Tradition: Looking into the Future," in *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2018), 398.

¹¹ *Ibid.*, 405.

few key assumptions, in particular that offenders behave as they do because they are in some sense “damaged.”

For instance, some are lacking in the ability to exercise normal levels of control over their conduct. Some seem to lack an appropriate grasp of the distinction between what is morally right and wrong; whilst they are capable of understanding this distinction at a cognitive level, they don’t quite appreciate – at an emotional level – what is wrong about certain ways of behaving. Many seem to have a deeply rooted lack of a normal sense of self-responsibility; indeed, their offending conduct is just one part of a wider lifestyle characterised by irresponsibility.¹²

Another key assumption is that the best response to this situation is a therapeutic one, which endeavors to help offenders “strengthen their self-control, develop their ‘moral sense,’ and instil a capacity for responsibility.”¹³ As a result of this individualistic and therapeutic conception, restorative justice often misses the way in which “problem people” reflect larger systemic problems.¹⁴ As Stauffer and Turner explain,

By enshrining RJ as a therapeutic, social service model, the field focused on the pathologies of individual behavior and failed to sufficiently name and deconstruct the structural injustices that drive people to harm others and institutional violence that represses many communities, and especially formerly colonized communities of color (e.g. through the use of critical theory and intersectional analysis of race, gender, class, sexuality and beyond).¹⁵

Often these structural injustices function to reinforce racism and classism¹⁶ or contribute to the socio-economic roots of crime.¹⁷

Clamp further asserts that restorative justice in its current form is unable to respond to abuses perpetrated by the state, whether as violence, intimidation, or oppression of people.¹⁸ She notes that this is especially problematic in transitional contexts, where the abuse experienced may have been technically lawful or initiated by the state.

¹² Ibid., 403.

¹³ Ibid.

¹⁴ Dyck, "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice," 530.

¹⁵ Carl Stauffer and Johonna Turner, "The New Generation of Restorative Justice," in *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2018), 444.

¹⁶ Morris, *Stories of Transformative Justice*, 19.

¹⁷ Lofton, "Does Restorative Justice Challenge Systemic Injustices?."

¹⁸ Clamp, *Restorative Justice in Transition*, 6.

Some scholars have argued that not only does restorative justice generally fail to transform the systems that contribute to crime and larger scale injustices, it can actually contribute to sustaining those systems. Dyck asserts that restorative justice practice is dominated by white, middle-to-upper class professionals, with “destructive, simplistic notions of neutrality that continue to serve the interests of the powerful and undergird the status quo.”¹⁹ Similarly, Hofrichter argues that informal justice processes, such as restorative justice, can actually deter transformative possibilities. As an extension of the state’s apparatus for social control, they may stifle potentially revolutionary, community self-determination in resolving conflict and its many sources.²⁰

These critics propose that in order to be a transformative justice, restorative justice needs to move beyond just the immediate crisis and response to also consider prevention and the root causes of conflict, whether in each instance or in society at large.²¹ Gavrielides and Courakis argue that the new goal for restorative justice policy and practice should be social justice, embracing new target areas, including a fairer distribution of wealth and a greater solidarity with marginalized members of society.²² This more radical vision of restorative justice would address the broader, macro-level causes of conflict.²³ This expansion in focus need not be at the expense of individual healing and relational transformation; rather it would simultaneously seek to affect social-structural arrangements while helping those whose lives have been affected by interpersonal harm.²⁴

A number of measures would be required to meet this broader aim. In addition to a theoretical expansion of the goals of restorative justice to include social-structural change, improved training and preparation of practitioners would be essential. As Dyck notes, restorative justice facilitators rarely are trained to think of their work within

¹⁹ Dyck, "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice," 527.

²⁰ Richard Hofrichter, *Neighborhood Justice in Capitalist Society: The Expansion of the Informal State* (New York: Greenwood Press, 1987).

²¹ Dyck, "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice," 535.

²² Nestor Courakis and Theo Gavrielides, "Beyond Restorative Justice: Social Justice as a New Objective for Criminal Justice," in *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2018), 53.

²³ Clamp, *Restorative Justice in Transition*, 42.

²⁴ Dennis Sullivan and Larry Tifft, *Restorative Justice: Healing the Foundations of Our Everyday Lives* (Monsey: Willow Tree Press, 2001), ix-x.

systemic or structural frames of reference, focusing instead primarily on the development of interpersonal communication skills and techniques.²⁵ This failure to give equal attention to understanding the systemic roots of crime “dramatically increases the chance that practitioners will use their skills in ways that ignore and therefore reinforce structural inequalities.”²⁶ Dyck therefore recommends that practitioners be given conceptual tools to help them think critically about larger structural issues.²⁷

These critics highlight the need for an important and necessary shift in restorative justice thinking beyond a narrow focus on the individuals involved in an incident to include the systemic and structural context of their lives. Yet, restorative justice itself has helped birthed an organic social change movement marked by a concern to address the social issues mentioned above. Indeed, as we will see below, restorative justice has become a popular forum for social activists for dialogue on the social ills plaguing society and the contribution of restorative methods for addressing them. The criticism that restorative justice forestalls socially transformative outcomes depends on the definition of restorative justice with which one engages. As discussed in Chapter One, there is a tension in the restorative justice field between those who understand restorative justice solely as a limited process or a “justice mechanism”²⁸ and those who understand it as a larger paradigm for human relationships and a movement for a more inclusive and democratic society.²⁹

If restorative justice is limited to a process or program to address the needs of those directly affected by a crime, its larger structural impact will be limited. As William Wood rightly notes, restorative justice conferencing at a micro-level has a limited capacity to generate the macro-level social and political changes needed to reduce mass incarceration.³⁰ Braithwaite concurs that restorative justice as a discrete process can only have modest ambitions. First, it can aim to not make structural injustices any worse and

²⁵ Dyck, 527.

²⁶ Dyck, 531.

²⁷ Dyck, 532-534.

²⁸ Daly, "What Is Restorative Justice?," 13.

²⁹ Johnstone, "The Agendas of the Restorative Justice Movement," 59.

³⁰ William Wood, "Why Restorative Justice Will Not Reduce Incarceration," *British Journal of Criminology* 55, no. 5 (2015).

to “provide micro measures that ameliorate macro injustices where this is possible.”³¹ Second, it can aim to restore harmony through a dialogue that actively takes into account the underlying injustices that are relevant to the case, though the outcomes will likely not impact those larger injustices.³²

However, if restorative justice is viewed as a broader social change movement, there are ways in which it can be seen as contributing to macro-level change. Scholarship is increasingly referring to social movement theory to understand the current state of the field.³³ Restorative justice practitioners are also speaking about how to affect change in a range of social justice issues, including mass incarceration, the school-to-prison pipeline, racial disproportionality in suspension and expulsion rates, police violence, and, in the United States, transforming the historical harms of slavery and Native American genocide through truth-telling, reparations, and healing, all under the umbrella of restorative justice.³⁴

Significantly, this social movement conception of restorative justice has emerged out of the experience of the transformative impact of the restorative justice process for individuals. That experience has inspired many participants to work for larger scale change. As Stauffer and Turner note, “Social movements and social practice have a symbiotic relationship.”³⁵ The one necessarily feeds the other and expands the scope of both.

This chapter will argue that viewing restorative justice conferencing through the proleptic ritual lens can help us understand why restorative practitioners have increasingly moved in the direction of pursuing a restorative social movement. They experience the conference as a form of justice that subverts the hegemony of the mainstream system and foreshadows a more desirable kind of society towards which to strive. Often, they experience a depth of connection, healing, and peace – a

³¹ John Braithwaite, “Restorative Justice,” in *The Handbook of Crime and Punishment*, ed. Michael Tonry (Oxford: Oxford University Press, 1998), 329.

³² Ibid.

³³ Johnstone, “The Agendas of the Restorative Justice Movement.” Stauffer and Turner, “The New Generation of Restorative Justice,” 445.

³⁴ “The New Generation of Restorative Justice,” 445-46.

³⁵ Ibid., 445.

communitas/collective effervescence – that is evocative of something transcendent or supramundane. It gives a glimpse of a way the world at large could function if it were grounded in equality, understanding, and mutual respect. In a sense, the restorative justice encounter creates a restorative society in miniature. Participants emerge with a desire to experience that connection and way of being again and to extend it to others. This inspires them to work towards a greater actualization of the restorative society that has been temporarily created or anticipated through the ritual process.

Emergence of the Restorative Justice Social Movement

As restorative justice scholars and practitioners have increasingly expanded their focus beyond the criminal justice system, some proponents have begun to speak of the quest for a “restorative society.” They claim that restorative justice is about more than changing the way the state deals with crime; instead, “restorative justice must be perceived as a social movement dedicated to making restorative practices integral to everyday life.”³⁶ In this view, the implementation of restorative justice within the criminal justice system is only one part of a larger story. As Marshall notes,

Restorative justice is more than just a novel approach to crime control or a new set of victim-sensitive justice practices; it is the tip of a very large iceberg, a project aimed at the creation of interpersonal relationships and societal institutions that foster human dignity, equality, freedom, mutual respect, democratic engagement and collaborative governance.³⁷

Restorative principles may be extended beyond the criminal justice system to move families, schools, and communities towards more peaceable ways of interacting.³⁸ This social movement provides a meta-concept that emphasizes restoring and building positive relationships.³⁹

A central indicator of the emergence of this broader social movement has been the coining of the terms “restorative practices” or “restorative approaches” in addition to

³⁶ Ted Wachtel and Paul McCold, "Restorative Justice in Everyday Life," in *Restorative Justice and Civil Society*, ed. Heather Strang and John Braithwaite (Cambridge: Cambridge University Press, 2001), 129.

³⁷ Christopher Marshall, "The Evolution and Meaning of the Restorative City Ideal: An Introductory Essay," (Unpublished: Victoria University of Wellington, 2016).

³⁸ Braithwaite and Strang, "Introduction: Restorative Justice and Civil Society," 6.

³⁹ Jonathan Boston, "Towards a Restorative Society," in *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*, ed. Gabrielle Maxwell and James H Liu (Wellington: Institute of Policy Studies, 2007), 321.

“restorative justice.”⁴⁰ This occurred when the principles of restorative justice began to be applied in schools in the 1990s. In the context of schools, designations such as “victim” and “offender” were considered inappropriate and were replaced with labels such as “the person harmed” and “the person who caused the harm” or “the responsible party.” This corresponded with the move from restorative *justice* to restorative *practices* as a more appropriate term for dealing with young people.⁴¹ The use of restorative practices quickly expanded. As Marshall comments,

Schools have extended the range of restorative practices beyond disciplinary measures to include relationship-building and conflict-resolution skills and efforts to achieve institutional climate change. In so doing, restorative schools have provided a model for how other organisations in civil society, and civil society as a whole can aspire to function in a more relational, restorative way.⁴²

Since gaining traction in schools, restorative principles have also been extended to other areas of society, such as workplaces and organizations. Recently, several cities around the globe, including Whanganui in New Zealand, have announced the goal to become “restorative cities,” as microcosms of a restorative society.⁴³ The vision of a restorative city or society involves the regular and widespread use of restorative practices that build relationships, provide a sense of fairness and justice, and facilitate healing.

Central to the restorative vision of society is the facilitation of human connection. This striving for connection is at the root of what it means to be human. As Marshall observes, “Deeply encoded in our DNA as social beings is the need to belong in responsible and joyful community with others, to participate in relationships of mutual care and responsibility, from which we acquire our sense of individual identity, self-worth and meaning. We are hardwired to connect.”⁴⁴ The notion of a restorative society resonates with the universal human desire for wholeness, healing, reconciliation, and peace.⁴⁵

⁴⁰ Simon Green, Gerry Johnstone, and Craig Lambert, “What Harm, Whose Justice?: Excavating the Restorative Movement,” *Contemporary Justice Review* (2013): 453.

⁴¹ Marshall, “The Evolution and Meaning of the Restorative City Ideal.”

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Boston, “Towards a Restorative Society,” 322.

A social movement can be roughly defined as the coming together of a group of people who share a common outlook on society in support of a social goal, generally related to a change in society's structure or values.⁴⁶ The restorative social movement contains both of these key components. The members of the movement hold a shared vision of a better possible future. Driven by this vision, participants in the movement seek to bring about a transformation in the way things are done through concrete changes in the justice system and other aspects of civil life. The motivation to pursue these changes, I propose, is grounded in the desire for greater actualization of what has been temporarily created through the ritual process.

Restorative Justice as a Proleptic Ritual

In Chapter Two, we saw how proleptic rituals envision and temporarily create a possible future social structure. Through giving a taste of what is possible, a proleptic ritual can generate and encourage a shared concern to work towards the wider realization of the reality experienced in the ritual. For example, Thomas Noakes-Duncan has observed how the ritual of the Eucharist ought and can inspire members of the congregation to work for a greater actualization of the restoring justice received in Christ.⁴⁷ He argues that through participating in the liturgical acts of confession, the declaration of forgiveness, passing of the peace, and the sharing of the bread and wine, the church experiences peace and reconciliation with each other and with God, which they are then inspired to extend to the wider community. As Noakes-Duncan explains,

The final liturgical act is the commissioning of the congregation. Having enacted the work of restorative justice through the liturgical event that culminated in the Eucharist, Christians have also become practiced in the work of restorative justice, which they are now to proclaim and embody in the world. Just as the Eucharistic life of the church does not end at the altar, so too the church must take its performance of restorative justice beyond the confines of the congregation in order to invite others to participate in the restoring justice of God.⁴⁸

⁴⁶ Chris Marshall, "The Restorative Social Movement" (lecture, Critical Issues in Restorative Justice Practice, Victoria University of Wellington, New Zealand, 2017).

⁴⁷ Thomas Noakes-Duncan, *Communities of Restoration: Ecclesial Ethics and Restorative Justice* (London: Bloomsbury T&T Clark, 2017).

⁴⁸ *Ibid.*, 224.

Noakes-Duncan names the Sycamore Tree Project, a restorative justice initiative in prisons, as an example of how the church community works to extend the reconciled reality temporarily experienced during ritual to the wider world.⁴⁹

Similarly, the experience of *communitas*/collective effervescence in the restorative justice conference may inspire participants to work to extend that way of being together beyond the confines of the conference. Importantly, it is the ritual character of the process that makes it so conducive to inspiring societal transformation. Initiating change is a common feature of rituals. "It is what they are designed to do."⁵⁰ This often involves both a change to the people participating⁵¹ and to society more broadly.⁵² As Woolford notes, the restorative justice process creates ideal conditions for pursuing social change by fostering "opportunities for individuals and collectives to evaluate their lives and their worlds, and to initiate attempts to bring change into these arenas" to address injustices.⁵³

Facilitator interviewees described restorative justice as fulfilling a similar proleptic function to that outlined in Noakes-Duncan's analysis of the ritual of the Eucharist. One facilitator described restorative practices as a new source of "goodness," somewhat like a modern, unifying religion. He remarked,

Particularly in the western world and in a New Zealand context where there is a demise of formalized religion, in some ways there is a vacuum there. In some ways, whether one is religious or not, what those [restorative practices] do provide is a framework of right and wrong and a place to go and think about those things, or talk about them, or have your goodness quotient restored. I see that gap that is there in society, which is, "So, what do we believe in?" Particularly when we have multiple faiths, ethnicities, genders, all of this stuff. If everything is so open and up in the air, what do we actually believe in? What does articulate right and wrong and how we relate to each other and what is important in life? I think a restorative approach has that offering. It does it in a way that can appeal across humanity (Facilitator 4).

⁴⁹ Ibid.

⁵⁰ Santino, "The Carnavalesque and the Rituaesque," 61.

⁵¹ As described in Chapter Four.

⁵² Santino, "The Carnavalesque and the Rituaesque," 61.

⁵³ Andrew Woolford, *The Politics of Restorative Justice: A Critical Introduction* (Winnipeg: Fernwood Publishing, 2009), 17.

Interestingly, this observation that restorative practices can reacquaint participants with their innate connection and goodness in a way that is accessible to everyone, regardless of background, resembles the suggestion put forth by His Holiness the Dalai Lama in *Ethics for a New Millennium*.

My call for a spiritual revolution is thus not a call for a religious revolution. Nor is it a reference to a way of life that is somehow otherworldly, still less to something magical or mysterious. Rather, it is a call for a radical reorientation away from our habitual preoccupation with self. It is a call to turn toward the wider community of beings with whom we are connected, and for conduct which recognizes others' interests alongside our own.⁵⁴

The rituals of restorative practices may be seen as providing a concrete tool for experiencing a repeated reorientation towards a view of the world that sees all people as profoundly interconnected and worthy of respect.

There are four features of restorative justice that help illuminate its proleptic impact and role in spawning a larger change:

- Its ability to subvert the dominant worldview and power structures of wider society.
- Its capacity to evoke a shared vision and worldview among its participants.
- The power of *communitas*/collective effervescence to generate a commitment to both inward and outward change.
- Its role in sustaining the social movement.

(i) *Subverting Dominant Worldviews and Power Relationships*

The proleptic function is accomplished in part through the ability of rituals to upend commonplace ways of thinking and create new relationships of power.⁵⁵ In the case of the justice system, one dominant assumption restorative justice challenges is that punishment, or the imposition of suffering on the responsible party, is a natural or necessary remedy to wrongdoing.⁵⁶ This assumption lies at the heart of the retributive understanding of justice that is deeply entrenched in society.

⁵⁴ His Holiness the Dalai Lama, *Ethics for a New Millennium* (New York: Riverhead Books, 1999), 23-24.

⁵⁵ Bell, *Ritual Theory, Ritual Practice*, 220.

⁵⁶ Woolford, *The Politics of Restorative Justice*, 23.

The restorative justice ritual subverts this justice-as-punishment assumption and offers instead the idea that justice is about recovering relationships of rightness where harm is repaired rather than enacting punishment on those responsible for it.⁵⁷ This change in thinking was clearly evident in my interviews. One person explained that participating in the restorative justice process changed his view of crime and punishment and made him believe that speaking with the person who caused harm would produce “a better outcome for everyone than just throwing them in jail” (Participant 4). He added, “I think it has given me a bit more hope that there are different, completely different, sorts of ways of approaching something that has been done for a while. The old way wasn’t necessarily working” (Participant 4). This expression of hopefulness was common in the participants and facilitators I interviewed. They often felt inspired to imagine how the mode of interaction they experienced during the process could be replicated and produce similar positive outcomes in other conflict contexts.

Another participant (a harmed party) explained, “I think it is where we should be going as a country, as a people, to deal with offending and ‘criminals.’ I don’t like that word, but dealing with ‘criminals’ to put a label on things. It needs to be dealt with in a different way” (Participant 3). Here, there is an evident awareness of key restorative principles such as the need to move away from stigmatizing labels and to separate the person from the behavior as well as a concern to scale things up to a national level. The same participant elaborated, “I think what I got out of it was very positive and I felt like this could actually bring a positive change to offending in our judicial system” (Participant 3).

In addition to offering a new way of thinking about justice, the restorative justice ritual also subverts the power construct of the mainstream justice system and offers a new way of conceiving power relationships. William Everett notes that the enactment of justice systems shape legitimate authority.⁵⁸ The ritual of the criminal court trial communicates truth as something that is determined and passed down through a hierarchical system from a higher authority, namely the judge, not by the individuals

⁵⁷ Zehr, *The Little Book of Restorative Justice*, 30.

⁵⁸ Everett, 350.

involved in the conflict. As mentioned in Chapter Three, this inequality in the court room often mirrors pre-existing societal hierarchies based on gender, race, and socio-economics, with affluent white males often filling the roles of judge and lawyers.⁵⁹ In contrast, restorative justice places the authority to determine truth in the circle of participants. It communicates that truth is something reached through deliberation among the group in which each voice has equal value, symbolized in the construct of the circle.⁶⁰ As one facilitator explained, the circle “kind of holds in check people who might be more overbearing in personality or power differences; there are a lot of things it can even out” (Facilitator 3). In this way, the ritual is subversive of the authority communicated by the court system and social hierarchies outside the ritual space and offers an alternative power structure characterized by equality.

(ii) A Shared Vision and Worldview

It is a defining feature of all social movements that they articulate a new way of thinking about the world at large or at least what are perceived to be the key issues.⁶¹ In the restorative justice movement, this shift is not only concerned with a different vision of justice and what justice entails, it also includes a fundamentally different way of understanding ourselves, others, and our place in the world.⁶²

Such a shift in outlook was evident in many of the facilitators I interviewed. One explained, “You hear a lot of people talking about changing the culture. That is ok, but what are we going to replace it with? That is the power of the restorative thing is that has been articulated; we can offer an alternative view of how the world might be” (Facilitator 4). She went on to explain that the offering of an alternative worldview is what makes restorative justice a social movement.

Dyck draws on the connection Zehr makes between the beliefs and practices of restorative justice and the biblical concept of *shalom* to explain the movement’s worldview. Typically translated as peace, *shalom* in fact implies a broader vision that emphasizes “‘right relationships’ between individuals, between groups of people,

⁵⁹ Craig, "The Inhospitable Court," 199.

⁶⁰ Ibid.

⁶¹ Marshall, "The Restorative Social Movement."

⁶² Johnstone, "The Agendas of the Restorative Justice Movement," 76.

between people and the earth, and between people and the divine,” and encourages respect for life in all its forms.⁶³ The premise of shalom emphasizes the connectedness of all things and “encourages us to see the nurturing of this sacred relational web as our ultimate calling.”⁶⁴

This concept of shalom provides a helpful philosophical basis for the expansion of restorative aims into other areas of social life. As Dyck explains, “Shalom... represents one example of a cohesive worldview in which to anchor the practice of restorative justice. It takes the restorative justice practitioner beyond a mere consideration of what she or he hopes for in relation to the two individuals or groups in a session, to a consideration of her or his hopes for the human race and the world as a whole.”⁶⁵

Similarly, Sullivan, Tifft, and Cordella claim “the restorative justice ethic is based in a spiritual sense that sees us all connected to each other at a fundamental level.”⁶⁶ The emergence of *communitas*/collective effervescence in the restorative justice process gives participants an experience of the deep connectedness at the root of the shalom. That visceral experience and the resulting sentiment of human kindness are capable of influencing their future beliefs and actions.

In alignment with the concept of shalom, a defining characteristic of the worldview held by the people I interviewed was an emphasis on equality and connection between people. As one facilitator explained, “I’m hoping it is part of a broader willingness to look for fundamental connection in the face of a culture here that is promoting divisiveness, that encourages divisiveness” (Facilitator 16). This awareness of the innate connection between people involves a radical reevaluation of our views of self and other. Sullivan and Tifft assert that those who seek to create restorative relationships must begin with social arrangements that are structurally inclusive. This requires confronting the self that hierarchically ranks the worth of some over that of others and rejecting the notion of an entirely autonomous self in favor of a view of self as

⁶³ Dyck, “Reaching toward a Structurally Responsive Training and Practice of Restorative Justice,” 536.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Dennis Sullivan, Larry Tifft, and Peter Cordella, “The Phenomenon of Restorative Justice: Some Introductory Remarks,” *Contemporary Justice Review* 1, no. 1 (1998): 16.

inextricably connected and equal to others.⁶⁷ This does not mean the distinct needs and experiences of the individual are overlooked. Pranis and Boyes-Watson argue that restorative processes are especially capable of maintaining the balance between connectedness and autonomy.

Restorative justice is a practice that helps us to live together in way that accepts two key basic realities – everyone belongs and everyone matters. This is the paradox of the human condition. Each human being is essentially connected and dependent on others: our biology is one of the tribe or pack. Our healthy development and basic survival depends on our interdependence with other humans as we engage with the natural world from infancy through death. Yet as a species we need to develop as individuals. We need to have the freedom to use our will to develop our essential autonomy. Justice is the constant struggle to find balance between our essential connectedness and our essential autonomy.⁶⁸

Elsewhere, Pranis has noted that the restorative practice of the circle is also capable of acknowledging both the individual and the connected whole. “The circle fulfills that basic community function: it holds a healthy balance between individual needs and group needs.”⁶⁹ One facilitator made a similarly perceptive observation: “It is about notions of things like collaborating and working together up against some of these more individualistic notions. It is re-balancing the power of the collective. We are still individuals and deserve to be treated and respected as individuals, but being clear about our responsibilities” (Facilitator 4).

Restorative justice’s ability to balance the recognition of the individual self and the interconnected whole helps to explain its often positive impact on the wellbeing of participants. Pattison explains that a balance between being seen as distinct and being seen as belonging is ideal for avoiding shame.

Within present understandings of self and society in the West, what might be required for optimal well-being is a situation where individuals and groups are recognized and respected by themselves as *distinct*, but also as *belonging* within the community (Thrane 1979:336). When individuals experience the “too-littleness” of isolation they may experience shame. But they may also experience it if their individuality and its boundaries are overwhelmed by social incursion, as in the

⁶⁷ Sullivan and Tifft, *Restorative Justice*, 163-65.

⁶⁸ Kay Pranis and Carolyn Boyes-Watson, "The Promise of Circle: Circle as Foundation for Restorative Justice" (lecture, 6th National Conference on Community and Restorative Justice, Oakland, California, 2017).

⁶⁹ *Circle Forward: Building a Restorative School Community* (St. Paul: Living Justice Press., 2015), 23.

surveillance societies of the former Communist East... The end that is sought, then, appears to be that of persons in society who have been adequately respected and honoured as individuals and valued as members of some kind of community by those around them.⁷⁰

Another common aspect in the worldview shared by facilitator interviewees can be summarized in three propositions: there is good in all people, hurt people hurt people, and people can change. This understanding of human nature either originated in or was reaffirmed by their participation in restorative justice and contributed to their ongoing advocacy for restorative processes.

Facilitators often asserted that there is good in all people. Many commented that while the offender often sounds cruel in the case description, when you take time to hear their story, that view shifts. “It is human nature to be scared of people who committed violent crimes, until you hear their stories” (Facilitator 1). Another facilitator explained,

If you just talk to someone and understand where they are coming from, most people really don’t mean to do bad things or didn’t mean to cause the harm they caused. There is something in everyone you can relate to. Everyone has a story, if you just take the time to listen to it, which normally you don’t get the opportunity to do in the normal world because a) they wouldn’t tell you or b) you wouldn’t ask, which is why people are so amazed when they get the opportunity (Facilitator 3).

Several facilitators explained that this is a view they had before becoming involved in restorative justice, but that it has been reconfirmed by their participation in the process. One facilitator explained, “I think it has confirmed a lot of my views about the world that people are inherently good and that there is always a bigger story behind behavior that we think is abhorrent. Just always” (Facilitator 1).

The second proposition is that hurt people hurt people, that people who have experienced harm themselves are more likely to cause harm to others. As one facilitator explained,

In terms of the work I had done previously around supporting survivors of sexual assault, my work was solely with those who had been harmed. So, working with perpetrators and getting to understand their worldview and their needs was a big change for me. And having that realization that people can be good people who do

⁷⁰ Pattison, *Shame: Theory, Therapy, Theology*, 155.

bad things. It sounds corny, but getting to see people's depth. And yea, thinking a lot about how shame entrenches some people's poor choices, so looking more broadly at what is driving harm, rather than a really shallow individual choice lens. It has confirmed my thing that people ultimately want to do well in the world, want to do right by others, given the opportunity that is what people will choose most of the time. It has confirmed for me that kind of idealistic thing about people going towards kindness as a natural state. Because a lot of people who don't do this line of work are like "Oh, you must see some stuff that really makes you horrified at humans" or stuff like that. And it is so the opposite because of people's capacity for relating to one another, people's capacity for generosity (Facilitator 5).

Sometimes the hurt is there because offenders have themselves first been victims. Several facilitators mentioned that this is very common.

In my experience, pretty much every offender, pretty much 99 percent of offenders, are victims. I take that to every single meeting I have with every single person I see in RJ, that understanding or that place of lack of judgment, not making assumptions. You see a lot of good in people in this process. It is such a positive process to be involved in, which is so different from what you would hear someone say about the court system (Facilitator 14).

The third component in this view of human nature shared by facilitators is that people are capable of change, of shifting their understanding and changing their behavior. One facilitator commented on how being involved in restorative justice has reminded him of this capacity to change.

It has probably softened me a little bit. I've been working with challenging people and circumstances for 30 years or so. Sometimes you can get hardened by it or a little cynical. You can start to believe that some people are just like that forever and there is no way of changing them. This has reminded me and brought me back to that place of people can totally be changed, every situation needs to be honored and treated on its own merits and not on your history of experiences (Facilitator 15).

Taken together, the unifying vision of shalom and an optimistic view of human nature have served as the launching point and compass for attempts to reform society at large. Woolford speaks of how the emergence of a "critical consciousness" in a movement allows participants not simply to reproduce normative relations in the social

and political world, but instead to look towards alternative possibilities.⁷¹ Participants are encouraged to become “critical agents capable of challenging unfair norms and practices within their everyday lives.”⁷²

(iii) *Bringing about Change*

In the interviews I conducted, participants and facilitators frequently reported emerging from the restorative justice process with a desire to experience again the connection and way of being they felt in the conference. As one facilitator explained,

I hear from people who have the experience, but are not people who do restorative practices, they talk about “Wow, being in that space was just amazing!” And how much they would like to find a space where they could get to that regularly and don’t see where that is anywhere else (Facilitator 7).

Another facilitator explained that one of the biggest impacts she sees on participants is the awareness that it is possible to create a social space and way of communicating like that created by the restorative justice process. She said,

One impact is just to know that it is possible. That is pretty profound. The big win version of that impact is someone says, “What was that? What did I experience? I want to do that more.” And pursues it and tries to create that space, that unique space where they were able to see and hear with a different perspective (Facilitator 13).

Participants also often emerge with a wish to extend the experience to others. As explained in Chapter Five, every participant I interviewed talked about being concerned about the lack of awareness among neighbors, friends, and family about restorative justice and the desire for more people to know about the process, so that more cases could be handled that way.

Beyond advocacy for greater use and awareness of restorative justice in the criminal justice system, participants also expressed a desire to extend the approach to other areas of their personal and civic lives. Other scholars have observed this outcome as well. Gerry Johnstone notes that even if initially skeptical, those who experience the

⁷¹ Woolford, *The Politics of Restorative Justice*, 157.

⁷² Ibid.

restorative justice process are often moved by the experience to be part of a movement for change.⁷³ Barb Toews has similarly observed how the transformation of individuals through the restorative justice process inspires people to work for greater societal transformation.

The restorative justice process and its potential for individual transformation may further inspire people to engage at the community and societal level. For instance, understanding the unique experiences and perspectives of a victimized person may lead an offending individual to be curious about the lives of others around him and build relationships that would not have existed otherwise. The ability to understand the full picture of a crime may encourage an individual to re-analyze, or analyze for the first time, a conflict in his life or social systems in which he is involved. Recognizing that people can change may instill a belief that unjust community, social structures, and institutions can also change. This new way of interacting and thinking may move people to social action themselves.⁷⁴

This inspiration that participants experience to work towards greater social change may be due to the emergence of *communitas*/collective effervescence in the transformational space created by the ritual. In a sense, the restorative justice ritual creates a restorative society in miniature. The ritual is a kind of “rehearsal” of a revolution.⁷⁵ Endeavors for societal transformation emerge out of it. For example, Gerry Johnstone identifies five distinct but overlapping agendas for the current restorative justice movement: (1) promote the use of restorative processes within the social response to crime; (2) encourage a new way of construing crime and related problems and new conceptions of what constitutes a good solution to such problems; (3) promote the use of restorative processes and principles in a variety of institutional settings (to handle behaviour, conflict, under-performance); (4) promote restorative justice as part of solution for achieving political reconciliation in aftermath of mass violence and oppression; and (5) create a just society, defined as a society in which all human needs are met.⁷⁶

⁷³ Johnstone, "The Agendas of the Restorative Justice Movement," 64.

⁷⁴ Barb Toews, "Toward a Restorative Justice Pedagogy: Reflections on Teaching Restorative Justice in Correctional Facilities," *Issues in Criminal, Social, and Restorative Justice* 16, no. 1 (2013): 10.

⁷⁵ Shaw, *American Patriots and the Rituals of Revolution*, 231. Shaw speaks about the rituals of the American Revolution as “prospective or prophetic rites of transition. That is, they predicted, anticipated, and even encouraged revolution — were ‘rehearsals’ of revolution — without being the thing itself,” *ibid.*

⁷⁶ Johnstone, "The Agendas of the Restorative Justice Movement."

Similar to the agendas identified by Johnstone, my interviewees spoke about three broad agendas for social change beyond reformation of the criminal justice system. Those agendas were: (1) change how conflict is understood and resolved across contexts, (2) work to create a more just society that better meets the needs of citizens, and (3) proactively use restorative practices to build positive relationships in communities.

Johnstone argues that restorative justice should not only be concerned with changing our procedure for dealing with crime and other social problems, but also bringing about “fundamental changes in the way we construe these problems and in our conceptions of what constitutes a good solution.”⁷⁷ Facilitator interviewees concurred. As one facilitator explained, “It is kind of a more general approach. It is not about right and wrong and black and white; it is about where is the harm and how can it can be repaired. It is a shift in thinking that can be applied to pretty much any scenario where there has been someone harmed or something broken” (Facilitator 3).

Part of this shift involves viewing conflict as normal and as an opportunity to gain greater understanding of ourselves and others.⁷⁸ As Wachtel explains, “Conflict is part of being human. However, we can learn to manage our conflicts better. Restorative processes offer people proactive opportunities to understand one another and build relationships, to collaborate in decisions, to prevent conflicts or, when conflicts do occur, to provide safe settings for their resolution.”⁷⁹ In *Dreaming of a New Reality*, Wachtel identifies a wide range of areas where restorative practices have shown great promise, including workplaces, higher education, and public and private schools.⁸⁰ My interviewees also mentioned schools and workplaces as places where restorative practices are especially applicable. As one facilitator explained, “I have seen restorative practices in my children’s schools and I also do restorative practices in the workplace. I think it is entirely a different way of thinking and a different way of being with each other in a community and in a society...It has such a wider application outside the criminal justice

⁷⁷ Ibid., 60.

⁷⁸ John Paul Lederach, *The Little Book of Conflict Transformation: Clear Articulation of the Guiding Principles by a Pioneer in the Field* (Intercourse: Good Books, 2003), 18.

⁷⁹ Ted Wachtel, “Restorative Practices and the Life-World Implications of a New Social Science,” *Revista de Asistencia Social* 4 (2015): 16.

⁸⁰ *Dreaming of a New Reality: How Restorative Practices Reduce Crime and Violence, Improve Relationships and Strengthen Civil Society* (Pipersville: The Piper's Press, 2013).

system” (Facilitator 14). A harmed party participant, who works as a police officer, saw the applicability of the restorative approach to conflict in police work. Another participant, who had previously served in the army, wondered if international conflict could be resolved in the same way.

I’ve been in the army and overseas peacekeeping and the stuff you see, it is like, why can’t we just sit down and talk things over?... I was stationed in Jordan. You have like Jordan, Palestine, and Israel, and there is the border crossing. You have these three soldiers looking at each other and their governments are arguing about everything under the sun, but the soldiers are there throwing cards into the middle because they are playing poker and they don’t want to fight. They can’t be bothered fighting, but then they have to fight because they get told to fight (Participant 2).

Interviewees also talked about applications to resolving conflict in their own personal lives. As one facilitator explained, “It is a way of life. Period. End of story. It is a way of life” (Facilitator 10). Belinda Hopkins makes the same point: “Restorative Justice has become a philosophy, a way to be, and not just something to do.”⁸¹ One aspect of this is the use of the key restorative questions in personal life situations, particularly questions that help to get the story from the other person’s perspective. As one facilitator explained,

My son one night, just as a small example, was supposed to be home at 10:00 pm and didn’t get home until 10:30 or 11:00, with all his mates. We just sat there, just me and him and I said, “What happened? What’s the story man?” And he said this and this and this and I was just listening to the whole lot until he finished. I think silence is an underused tool. Then I just said, “What might you have done differently man?” And he said, “I probably could have given you a text.” And that was it, not a lot of “Didn’t I tell you to be home at 10:00?” Didn’t need it (Facilitator 8).

Some facilitators reported that having the opportunity to hear other people’s stories in the restorative justice process had helped them cultivate a spirit of curiosity about other people’s lives. One facilitator explained,

I think it has reformed how I deal with conflict because naturally I am really assertive, and really entitled to my feelings, so I can quite easily express if I feel someone has wronged me. It has brought a dual awareness of self and others, and a

⁸¹ Belinda Hopkins, “Restorative Justice as Social Justice,” *Nottingham Law Journal* 21 (2012): 131.

curiosity around what has been happening for someone that I have been offended by, rather than just this narrow thing of what my experience has been. Assuming the best is the biggest way it has changed me (Facilitator 5).

Other facilitators described how they had learned to take the time to pause and find out what was happening for the other person before reacting. Others spoke about experiencing a greater willingness to take responsibility in conflict, whether in their domestic or professional lives.

I've seen myself changing from wanting to defend myself or explain what has happened. Now I feel, having watched so many people take responsibility and having coached people taking responsibility, it helps me do that. If I make a mistake, rather than "How am I going to cover this up, cover my butt?" Or, "How am I going to pretend this never happened?" Instead of all of those thoughts, I just think, "What do I need to take responsibility for here?" Then I'm not worried about the outcome because I know that I can get there with people; I know that an outcome will happen. I know that a step I should take is taking responsibility and then everything else will come from that (Facilitator 7).

This experience of personal change has wider ramifications. One facilitator explained, "There is hopefulness that the more restorative practices sort of permeate society, the more hope there is that we will all be better human beings, more skilled to handle conflict" (Facilitator 11). According to Belinda Hopkins, the place to begin addressing social justice is with oneself and one's own family, friends, work colleagues, and clients. She refers to these relationships as the "home bases" in the quest to address injustice. She argues that, "The philosophy, values, principles, skills and structures of restorative justice are part of what is needed to promote social justice in the world, not only in the field of criminal justice but in every aspect of daily life."⁸² Martin Wright expresses a similar hope. "Children will grow up to become restorative parents, employers and politicians. Then we shall be on the way to seeing restorative communities, cities, counties... and even countries."⁸³

The second agenda of social change mentioned by interviewees was using a restorative framework to create a more just society that better meets the needs of citizens. If behavior classified as crime is itself ultimately caused by structural arrangements that

⁸² Ibid., 132.

⁸³ Martin Wright, "Extending the Reach of Restorative Justice," in *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London: Routledge, 2018), 486.

interfere with the fulfillment of human need,⁸⁴ it is necessary to transform those arrangements so that the needs of all are met.⁸⁵ One facilitator talked about how her participation in restorative justice has strengthened her understanding of how systemic harm begets criminal offending. “It is about recognizing that there is a whole bunch of systemic stuff. A lot of people do shit, but it is a result of where they are at from systemic stuff” (Facilitator 9). She gave the example of one incarcerated man she had met. “This guy in prison, no one had visited him, the person he cared about had died. What was 0-3 like? Well, his dad was dead, his mom has mental health issues; he was a guy who had no support. It is no shit Sherlock that he was acting like this” (Facilitator 9). This understanding led her to focus on improving the lives of children under three as a way to prevent such harm.

I’m trying to do a feasibility study and get more resources for mothers and babies in Kapiti. How can we better support the people caring for our babies? What is her experience and is she being really cared for, reassured, given confidence to mother that baby? To respond to that baby in a timely way? Is she capable personally of attachment? It is so much easier to get it right at the start (Facilitator 9).

These actions speak of an awareness arising out of restorative justice that an effective response to crime requires changing social conditions and structures.⁸⁶ Scholarly advocates of restorative justice repeatedly make the same point. Crime does not occur in isolation, it occurs within the context of structural injustices. Therefore, as Toews puts it, responding to crime restoratively necessitates responding to the “unjust social context in which it occurs and that often gives it life.”⁸⁷ Woolford similarly argues,

Restorative justice must be able to address structured inequalities that entail great levels of social harm. The continuing disparity between men's and women's wages, as well as the increasing feminization of poverty though the neoliberal rollbacks of social assistance, have left many mothers struggling to make ends meet and to support their children. When dealing with cases of fraud or other crimes committed by these desperately poor mothers, should restorative justice simply focus on the criminal act and ignore gendered disadvantages? Or, more ambitiously, can restorative justice not provide a space of discussion of and activism for state

⁸⁴ Johnstone, "The Agendas of the Restorative Justice Movement," 73.

⁸⁵ Ibid., 73-74.

⁸⁶ Lederach, *The Little Book of Conflict Transformation*, 69.

⁸⁷ Toews, "Toward a Restorative Justice Pedagogy," 10.

subsidized childcare, minimum incomes, and other policies that would assist lone parent families?⁸⁸

Pavlich highlights the potential of restorative practices to enable diverse voices to participate in communal deliberations about complex social justice issues.⁸⁹ Efforts have been made to use restorative circles in this way in several settings. For example, Restorative Justice for Oakland Youth (RJOY) – which has the tagline “Changing our world – one circle at a time”⁹⁰ – hosts a “Black Male Circle” twice per month that endeavors to create “a space for black males, ages 16 and up for now, to grow, heal, connect, and movement build.”⁹¹

A similar effort to use the restorative circle process to create larger social change was piloted at Victoria University of Wellington in 2018. The process was called a “Sustained Restorative Dialogue” and was described as a “proactive restorative process to hold difficult conversations about important community issues.”⁹² The aim of the dialogue was to explore the broader climate that gives rise to sexual harm in the campus setting and beyond and to explore possible solutions.

These endeavors to apply restorative processes to address broader social justice issues illustrate the concern of the contemporary restorative justice movement to achieve transformative justice outcomes, an urge that arguably is rooted in the proleptic experience of the restorative justice ritual.

The third agenda of social change mentioned by interviewees was the use of restorative practices to build positive relationships in communities. Here restorative practices are not only used reactively as a response to past harm, but also proactively to build relationships and connection between individuals based on trust, mutual understanding, and shared values.⁹³ The formation of these positive relationships and

⁸⁸ Woolford, *The Politics of Restorative Justice*, 143.

⁸⁹ Pavlich, “Transforming Powers and Restorative Justice,” 468.

⁹⁰ Restorative Justice for Oakland Youth, “Restorative Justice for Oakland Youth,” <http://rjoyoakland.org/>.

⁹¹ “Black Male Circle,” Twitter, <https://twitter.com/RJOYOakland/status/1040396295804870656/photo/1>.

⁹² Lindsey Pointer, “Sustained Restorative Dialogue: Understanding and Preventing Sexual Harm on Campus,” <https://lindseypointer.com/2018/08/25/sustained-restorative-dialogue-understanding-and-preventing-sexual-harm-on-campus/>.

⁹³ Wachtel, “Restorative Practices and the Life-World Implications of a New Social Science,” 8.

patterns of interaction that take into account the needs of all from the outset has positive implications for communities and society at large.⁹⁴ One facilitator spoke about how he has attempted to facilitate spaces with a restorative ethos in his neighborhood.

Just bringing people together in neighborhoods, that is part of what my family and I do here. People are disconnected these days, we are often trying to facilitate space where people can connect and share their lives and their stories. When you do that, a lot of our fears and anxieties erode and fade away... My take is life has become a lot more insular, privatized in the last hundred years and that is a bad thing. If we can find anything that would reconnect people, give people a greater sense of belonging, enabling them to work through the hurts they have. Any time we do that, we are creating space where there is more life, better life (Facilitator 15).

Another facilitator remarked that providing a greater number of opportunities for people to meet and get to know each other as humans would counter prejudice. "There is so much opportunity to prevent bias entrenchment and further stereotyping" (Facilitator 7). Drawing on the example of restorative schools, Hopkins notes how restorative circles can be used as "a proactive tool for building community, a sense of belonging and connectedness, empathy, self-confidence and the ability to both find common ground and value diversity of viewpoints and opinions."⁹⁵

One facilitator explained how this emphasis on the intentional building of positive relationships and creating opportunities for multiple voices to be heard has ramifications for how leaders ought to operate.

My lofty goal is it has the potential to change the way people who make big decisions, who hold a lot of power, make those decisions, or how they choose to lead, if they hold onto their power because they have to be right or if they are introduced to the power of allowing many voices to be heard and admitting that one person is not always right and there is collective intelligence (Facilitator 13).

This desire for more democratic and restorative forms of leadership mirrors findings from recent studies on effective leadership techniques. A report in the *Harvard Business Review* by Boris Groysberg and Michael Slind advocates a version of leadership that incorporates restorative principles.

⁹⁴ Sullivan and Tifft, *Restorative Justice*, 116-17.

⁹⁵ Hopkins, "Restorative Justice as Social Justice," 124-25.

Smart leaders today, we have found, engage with employees in a way that resembles an ordinary person-to-person conversation more than it does a series of commands from on high. Furthermore, they initiate practices and foster cultural norms that instill a conversational sensibility throughout their organization.⁹⁶

Similarly, a study conducted by Google called Project Aristotle, which endeavored to understand what makes teams successful, found the two most important behaviors in effective teams are that all team members speak for roughly the same proportion of time (or have an equal opportunity for voice) and exhibit an average degree of social sensitivity (or are capable of empathizing with each other).⁹⁷ Both of these behaviors are directly fostered through proactive implementation of restorative practices.

(iv) *Sustaining the Restorative Social Movement*

All social movements require ongoing efforts to maintain and reaffirm identity and sustain motivation. In the restorative movement, one way that enthusiasm and dedication are sustained is through the telling and retelling of stories of successful restorative processes. These can take on an almost legendary status and help renew a sense of commitment to restorative values and goals.⁹⁸

Another way of sustaining the movement is through the repetition of restorative rituals, which revivify the movement's subculture and reaffirm the experience of equality, connection, empathy, and mutual care.⁹⁹ The impact of any ritual fades over time and the ritual needs to be repeated periodically in order to sustain the emergent solidarity¹⁰⁰ and the internal motivation of participants.¹⁰¹

One means of providing a subsequent restorative ritual experience that is not tied to responding to a specific harm is through use of the circle process. Circles are widely used in schools and increasingly in universities, workplaces, and other institutions as a

⁹⁶ Boris Groysberg and Michael Slind, "Leadership Is a Conversation," *Harvard Business Review* 90, no. 6 (2012): 78.

⁹⁷ Charles Duhigg, "What Google Learned from Its Quest to Build the Perfect Team," *The New York Times Magazine* (2016).

⁹⁸ Rossner and Bruce, "Trajectories and Typologies of Pre-Sentence Restorative Justice Rituals," 510.

⁹⁹ Jasper, *The Art of Moral Protest*, 207.

¹⁰⁰ Maruna, "Reentry as a Rite of Passage," 16. Durkheim, *The Elementary Forms of the Religious Life*.

¹⁰¹ Jasper, *The Art of Moral Protest*, 209.

way to build connection, make decisions, support or reintegrate community members, and heal after trauma or hardship.¹⁰² The circle process shares many of the ritual properties of the restorative justice conference and is capable of generating the same kind of experience of connection, solidarity, and *communitas*. As one facilitator explained, “I think that the feeling of the ritual of a connection circle and a conference are very, very similar and I just want for people to have access to rituals like that” (Facilitator 7).

The ritual of the circle produces the same radical equality as the restorative justice process. As Pranis, Stuart, and Wedge explain, “Sitting in the round says that everyone is included equally without regard to rank, status, or hierarchy. Shedding titles give a further message of equality and of looking beyond outer roles to who we are in our hearts.”¹⁰³ It also creates the experience for participants of being in a space that is essentially different from normal life and normal ways of interacting, a ritual space. As Pranis and Boyes-Watson explain,

Circles use openings and closings to mark the Circle as a sacred space. From the time of the opening ceremony until the closing ceremony, participants learn that they can be present with themselves and one another in a way that is different from an ordinary meeting or group... The Circle invites participants to drop the ordinary masks and protections they may wear that create distance from their core self and the core self of others.¹⁰⁴

Pranis and Boyes-Watson argue that because of the transformational power of the circle, and participants’ opportunity to experience that transformation, circle practice must be the foundation of the restorative social movement.¹⁰⁵ “We will need collective wisdom and engagement to transform our culture to one that operates on an understanding of profound interconnectedness and equality of human dignity.”¹⁰⁶ This is best accomplished through the ritual of the circle, which allows us “to create together the conditions of the beloved community – right now, from right where we are.”¹⁰⁷ Like a restorative justice conference, the circle provides a proleptic experience of a possible

¹⁰² Marshall, “The Evolution and Meaning of the Restorative City Ideal.”

¹⁰³ Pranis, Stuart, and Wedge, *Peacemaking Circles*, 119.

¹⁰⁴ Pranis and Boyes-Watson, *Circle Forward*, 29.

¹⁰⁵ “The Promise of Circle.”

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

future, yet temporarily existent, social structure. “It is about creating a new and different future; it is about creating what does not yet exist but begins to emerge in the shared vision of the circle.”¹⁰⁸ As well as enacting the movement’s principles of equality and connectedness, circles help to protect them. Pranis and Boyes-Watson explain,

We believe Circle is our best protection against co-optation in the restorative justice movement. Circle is a practice of radical equality. As long as the group abides by the structure of the talking piece, no individual, no matter how powerful outside of Circle, can control the process or the outcome. Circle is also a space of a radically different understanding of the nature of the universe and human nature. Everyone is seen as “wise, good and powerful” at their core. The universe is understood to be so profoundly interconnected that no one can ever benefit at the expense of someone else.¹⁰⁹

The repeated practice of restorative rituals has been compared to a process of habit forming. As Woolford observes, even when someone agrees that restorative justice seems like a good idea, there are still many deeply habituated and institutionalized practices that must be addressed.¹¹⁰ “Restorative justice must, therefore, strive to change not only thoughts but also deeply embedded habits. Efforts should therefore be made to encourage participatory and deliberative practices in day-to-day life.”¹¹¹ Woolford identifies town hall meetings and public forums as avenues for such democratic engagement, as well as more radical interventions such as protests and civil disobedience. However, the consistent use of restorative practices such as the circle could serve this same purpose. One facilitator also spoke about the use of restorative practices as an act of building new habits. He explained, “The habits or the rituals are how you build a different culture. Look on those as building blocks to something bigger. If we can identify keystone rituals or habits in different contexts, I think we are on our way to building a different culture” (Facilitator 4).

Summary

This chapter has responded to an important criticism of restorative justice, namely, that in the process’ focus on making amends at an interpersonal level, it fails to

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Woolford, *The Politics of Restorative Justice*, 159.

¹¹¹ Ibid.

address larger, structural injustices. There is certainly some validity to this criticism, and multiple steps are required to broaden the popular scope of the concept and improve the training of facilitators. However, this chapter has endeavored to demonstrate that the proleptic function of the restorative justice ritual often leads participants to seek to make an impact on larger, structural injustices, or at least to support larger political efforts to do so.

In the span of just a few decades, restorative justice has grown from an effort at criminal justice reform to a wider social movement, with a unifying worldview and concrete efforts to integrate restorative practices and approaches into many aspects of society. What has inspired restorative practitioners ever more in the direction of pursuing a restorative society, I have argued, has been the experience of the restorative justice ritual itself.

Viewed through the ritual lens, restorative justice may be seen as subversive of the hegemony of the mainstream system and as foreshadowing a more desirable kind of society towards which to strive. In a sense, the restorative justice conference creates a restorative society in miniature. Participants may emerge with a desire to experience that connection and way of being again and to extend it to others. In this way, the ritual experience of the conference generates a new paradigm for social life and inspires participants to work towards a greater actualization of the restorative society that has been temporarily created or anticipated through the ritual process.

Chapter 7:

Conclusion

In his 1990 publication *Changing Lenses*, Howard Zehr provided us with a new “lens” through which to view crime. Drawing on his experience as a photographer, he suggested that we must change the camera lens, or the framework of thought, through which we view crime and justice. Viewed through the retributive lens, crime is a violation of law, deserving of punishment. Through the restorative lens, crime is seen as a violation of people and relationships that creates a need for reparation and healing.¹ This simple and eloquent metaphor provided a clear understanding of what differentiates restorative justice from conventional approaches to justice and helped to spark the emergence of a restorative social movement, a movement that has been further shaped by the insight and ingenuity of many scholars, practitioners, and participants over subsequent decades.

This thesis has endeavored to demonstrate the value of applying another lens to viewing the restorative justice process itself: a ritual lens. Viewing the restorative justice process through a ritual lens has enabled a theoretical analysis of the social functions this alternative justice process may fulfill. Building on the work of scholars who have previously identified the ritualistic nature of restorative justice, it has sought to expand the understanding of restorative justice as ritual and its transformative, normative, and proleptic functions.

The identification of these three ritual functions pertinent to justice-making has also provided a different lens through which to view the mainstream criminal trial. The ritual of the trial has long been lauded for its ability to fulfill a normative function through maintaining order and upholding social values that have been violated. However, as many scholars have remarked, the trial process often does not fulfill other needs of victims, offenders, and the community following a crime. In Chapter Three, the theoretical lens of ritual allowed for the elaboration of an explanation for why the

¹ Zehr, *Changing Lenses*.

criminal trial process often does not fulfill individuals' needs for personal and relational transformation and rarely promotes greater social or structural change.

The bulk of this thesis has been devoted to viewing the restorative justice process through a ritual framework. The ritual framework provided a way to engage with both the process and the values conceptions of restorative justice, demonstrating their interdependence. Restorative justice cannot be understood solely as a process or "justice mechanism," as Daly and others have asserted. Following the expansion from restorative justice to restorative practices and the emergence of a holistic model for building, maintaining, and repairing relationships in schools, and the subsequent expansion of these efforts to universities, workplaces, community groups, and even entire cities, it is clear that a more expansive definition is needed. We require a conception of restorative justice that accounts for its greater social aspirations and distinct value system.

However, the restorative social movement also cannot be adequately understood if separated from the process at its basis. The values and paradigm shift evident in the restorative social movement are themselves grounded in the transformative and proleptic experience made possible by the restorative ritual. Viewed in these terms, restorative justice, along with other restorative circle processes, can be seen as sharing a distinct ritual structure and generating a certain type of social space in which, to use Turner and Durkheim's language, liminality and *communitas*/collective effervescence may emerge. This experience of connection may have a profoundly transformative and inspiring impact on participants.

The application of a ritual theory lens has also allowed us to address three prominent questions and critiques about restorative justice. (1) How is the personal and relational transformation often apparent in the restorative justice process achieved? (2) Does the restorative justice process have an adequate normative impact for the general public in comparison to the standard court process? (3) Through its focus on making amends at an interpersonal level, does restorative justice fail to address larger, structural harms and injustices? In this concluding chapter, each of these questions will be revisited in turn and the implications of the ritual lens employed in this thesis for the academic understanding of restorative justice as well as for practice will be elaborated.

Implications for Our Understanding and Practice of Restorative Justice

In recent years, scholars in the restorative justice field have increasingly turned their attention from *whether* the restorative justice process works to *how* it works to achieve personal and relational transformation. Chapter Four contributed to the discussion of this question through an application of the theories of ritual put forth by Turner and Durkheim to the restorative justice conference as a whole in order to better understand and describe its transformative function.

Turner and Durkheim's theories chart the specific ritual structure required in order for liminality and communitas/collective effervescence and the resulting impulse towards human kindness to emerge, as well as factors that contribute to sustaining the transformation after the culmination of the ritual. Chapter Four considered the degree to which this transformative ritual structure, specifically the three distinct phases outlined by Turner and the factors that contribute to sustaining the transformation, could help us to understand the transformative function of the restorative justice process and also, ideally, enhance it.

Rossner and Bruce have noted that truly transformative restorative justice conferences – those involving emotional energy and solidarity, not just civility – are becoming more rare as the process is increasingly integrated into the mainstream justice system.² They note,

The normative assumptions that participants have about what a criminal justice encounter is “supposed” to be like (Shapland et al., 2006) can impact the ritual and emotional dynamics of a conference, particularly when discussing outcomes. This is a challenge to the mainstreaming of restorative justice, as the potential for a powerful ritual of redemption and restoration is one of its key strengths.³

They assert that the core sequence of the conference ritual is vital in order for it to be a transformative process and that if we understand that sequence better, we can help it to occur more often.⁴ Understanding and having language to describe the ritual structure that contributes to restorative justice's transformative function is therefore key to protecting,

² Rossner and Bruce, "Trajectories and Typologies of Pre-Sentence Restorative Justice Rituals," 511.

³ Ibid., 503.

⁴ Ibid., 514.

and perhaps even enhancing, that function as the process is increasingly adapted to fit new contexts and to work within or alongside the mainstream justice system. The analytical framework put forth in this thesis provides that language.

The first phase of separation is where the ritual group is detached from everyday activities, social structures, and cultural conditions in order to enter the ritual process. Understanding this process yields some key recommendations for practitioners about how to effectively generate this phase of a transformative ritual. Transformative ritual theory tells us that the physical space sets the tone for the process. Toews and Van Buren's work investigating how to better design justice spaces that reinforce the values of the restorative justice paradigm is particularly helpful for ensuring a successful separation phase. My research confirms that facilitators should find a comfortable, welcoming, and hospitable space to hold conferences. Attending to basic sensory concerns, including light, temperature, the absence of distractions, and noise levels will also likely contribute to the transformative effectiveness of the process. Also helpful is the use of verbal cues to signal the separation, whether that is a *karakia*, a meaningful reading, or just a warm welcome to the process and sharing the ground rules in a peaceful tone that helps participants to settle at the beginning of the ritual.

The second phase is liminality and *communitas*/collective effervescence. The radical equality and type of communication enabled by the liminal space, as well as the revelation of a deep human connection and the resulting sentiment of human kindness, are arguably at the heart of the transformative capacity of the restorative justice ritual. Understanding this also yields some key recommendations for practitioners. Facilitators should remember the crucial role of "equality of relationship" (Llewellyn) as they arrange chairs, being wary of any factors that may inadvertently place one participant on a different level to others, or somehow set one person apart from the rest. This equality also applies to creating equal opportunity for voice for all participants. This can be established early on by opening with an introduction round in the circle. A talking piece can also be used to ensure equality of voice when desired.

In some adaptations of restorative justice, including panel processes and modifications meant to counter-balance power differentials in sexual assault cases, there

is a risk of losing this essential equality. It is important to maintain the radical equality of liminality, in which all participants are equally valued and respected, because this makes it possible for other transformative mechanisms, such as memory reconsolidation, interaction rituals, reintegrative shame, and affective resonance to take place.

The third ritual phase is reincorporation, during which ritual participants re-enter societal structures in a transformed way. It includes measures to help sustain the transformation achieved. For practitioners, this means recognizing the importance of a closing circle round, giving each participant a chance for a final word, followed by intentional closing language, whether that is a *karakia*, a blessing or reading, or a simple congratulations and thank you. Physical gestures, such as handshakes and hugs, can also help cement the transformation of relationships that has occurred. While the facilitator should not direct or demand this physical contact, it can be modeled and certainly accepted when it occurs naturally between participants.

Another common reincorporation mechanism is eating together, which signals trust and connection. Facilitators can incorporate this by offering tea and snacks at the end of the conference. This also creates a natural time for the harmed party and responsible party to speak more informally with each other, transitioning out of the ritual mode of communication and cementing the change in relationship that has occurred.

Ritual theory also offers valuable insights for how facilitators can help participants to sustain the transformation that has occurred. One impactful way is through the use of symbols. Drawing on her investigation of interaction rituals in the restorative justice process, Rossner recommends that participants should be encouraged to “develop collective symbols representing the interaction.”⁵ This could take the form a signed agreement that is taken seriously by the justice process surrounding the conference and followed-up on. Gifts and art can also serve as symbols of the transformation achieved.

Another way to sustain the transformation is through the repetition of rituals, which can recharge the experience of *communitas*/collective effervescence. Rossner recommends that facilitators repeat the interaction through providing “follow-up

⁵ Rossner, "Why Emotions Work," 199.

conferences to recharge participants with emotional energy.”⁶ I have suggested this need not take the form of another restorative justice conference with the same participants, but could be achieved through wider use of the circle process, which may yield a similar experience of *communitas*/collective effervescence.

Viewing restorative justice through the transformative ritual lens has the potential to enhance the overall quality of restorative justice processes. In describing the recommendations that emerged from the Zehr Institute’s three-year *Next Generation Project*, Carl Stauffer and Johonna Turner note, “Many communities exhorted the RJ movement to teach and practice RJ values using a bottom-up ‘Pillars of Wisdom’ frame rather than a top-down prescriptive, ‘Best Practices’ frame.”⁷ Increasingly, there is a hesitancy in the field to be too prescriptive in talking about what the restorative justice process ought to look like, opting instead to focus on key values and principles, while allowing for cultural and context-specific adaptations to emerge. There are certainly benefits to this flexibility and the allowance for restorative justice to look different in different contexts. However, transformative ritual theory suggests that there are key features that ought to be protected, not in prescriptive way, but through increasing facilitators’ and policy makers’ understanding of ritual dynamics.

For example, the 2017 New Zealand Ministry of Justice’s *Restorative Justice Best Practice Framework* opens with two lists: one of key values and the other of principles. These lists include relationship, respect, self-determination, safety, accountability, and voluntariness among others.⁸ The ensuing framework asserts that these values and principles are the basis of best practice. This is followed by a brief description of each general stage of the process including referral, initial contact, pre-conference, conference, and post-conference. The Ministry of Justice’s decision to lead with the values and principles of restorative approaches is in alignment with the predominant current thinking in the field that key restorative values should be the basis and unifying feature of restorative practices. While an emphasis on values and principles has many benefits, it runs the risk of a loss of emphasis on the key features of the restorative justice ritual itself

⁶ Ibid., 200.

⁷ Stauffer and Turner, “The New Generation of Restorative Justice,” 450.

⁸ New Zealand, “Restorative Justice Best Practice Framework.”

that contribute to its effectiveness. The framework does not mention specific phases or considerations during the restorative justice process itself, which provide the necessary conditions for a transformative ritual experience. The understanding of restorative justice through a ritual lens put forth in this thesis suggests that it may be of benefit to the field in ensuring quality of practice to include some basic guidelines on ritual phases and components that contribute to transformative effectiveness.

Turning to the second question of whether the restorative justice process has adequate normative impact for the wider public, Chapter Five reviewed this critique and some suggested remedies for the issue. It endeavored to illustrate the normative impact of the restorative justice ritual for participants in the process and offered suggestions based in normative ritual theory to extend this impact to the wider public. This understanding of the restorative justice ritual's normative impact carries major implication for the movement. In order for restorative justice to continue to expand, it will need to be perceived as fulfilling a normative function that is equally effective to the criminal court system. Therefore, it is essential for policy-makers, practitioners, and advocates to have a framework for discussing these normative issues.

The analysis undertaken in Chapter Five resulted in a few recommendations of adaptations to practice. I proposed that there may be a need to modify the strict adherence to confidentiality in the process, something that may be met with push back from restorative justice practitioners, scholars, and advocates. Specifically, I suggested that facilitators could pose the question at the end of the conference, "Who needs to be told about what happened here today and how will they be told?" In this way, the participants would have agency in deciding how to share the process and outcomes with those outside the process and it would form part of the agreement. This could remove some of the mystery from the restorative justice process and strengthen the normative impact of the restorative justice ritual for the wider public.

A lack of public awareness of restorative justice has also been identified as a key factor inhibiting the normative impact of the ritual. Because a large part of the population does not know what restorative justice is or how it works, it is less likely to be perceived as a trustworthy and legitimate alternative justice ritual. For this reason, I proposed further efforts to increase public understanding of the process through effective

storytelling, symbolic images, and the media, thereby increasing its normative legitimacy. Increasing the number of people having the chance to experience the process first-hand would also help in this regard, such as through expanding volunteer community member roles. Additionally, as the use of restorative justice increasingly spreads to schools, universities, workplaces, and other community groups, more people will have a chance to be part of a restorative justice process in those contexts.

The third major question is whether a focus on making amends at an interpersonal level means restorative justice fails to address larger, structural injustices. Chapter Six examined the expansion of restorative justice from a justice reform mechanism to a wider social movement and argued that the proleptic function of the restorative justice ritual has played a key role in this expansion through temporarily creating a “restorative society in miniature.” Participants often emerge with a desire to work towards greater social change and a greater actualization of the equality, connection, and human kindness experienced in the conference in other areas of life. Understanding restorative justice as a proleptic ritual yields recommendations for how movement members could further work to address larger structural injustices. We know, for example, that the feeling of *communitas*/collective effervescence needs to be periodically recharged. This suggests that circles ought to be used often and proactively to build community whenever possible. This would also help protect the message, vision, and worldview of the restorative movement through continually reaffirming the principles of equality and connectedness.⁹

The analytical framework of the three functions of ritual related to justice-making put forth in this thesis has provided a helpful lens through which to view the restorative justice process. Through applying this theoretical lens, this thesis has been able to address three major questions in the restorative justice field, providing a new framework for understanding these issues and specific recommendations for facilitators and policy makers in ensuring the success of restorative justice as a transformative, normative, and proleptic process.

⁹ Pranis and Boyes-Watson, "The Promise of Circle."

Areas for Further Research

There are numerous ways in which to further investigate and build on the understanding of restorative justice as ritual. There are certainly implications for quality assurance and policy efforts, including how to best integrate restorative justice with the conventional criminal justice system. As discussed in Chapters Three and Five, maintaining the court's role in determining sentencing outcomes may hinder the transformative impact of restorative justice. When the responsible party and harmed party are brought back into the adversarial and hierarchical structure of court procedures at the point of sentencing, it may impede the transformation achieved through restorative justice being sustained.

Fred McElrea has argued for the provision of a full community-based alternative to the courts, using restorative justice for criminal matters.¹⁰ The proposal involves establishing Community Justice Centers that would operate in partnership with government, the police, and other community agencies. Cases in which the person who committed the crime took responsibility and all parties were willing to participate would go directly to two restorative justice facilitators. Most referrals would come directly from the police, though referrals could come from any source. An agreement would be reached by consensus of all parties present, and, in most cases, would not involve charges being laid in court (provided the agreement was completed). Only if the agreement were not honored would the case be taken to court in the usual way. As McElrea explains, "The courts would therefore act as backstop for consent cases and first stop for cases where there is no consent to the mediation or diversion process."¹¹

This model for integrating restorative justice as a diversion rather than a pre-sentence add-on is potentially a better model, given the insights gleaned from applying a ritual lens. The physical space, ritual procedure, and formal labeling (when charges are laid) that occur in court are all often experienced as stigmatizing and can inhibit the potential for personal and relational transformation. When parties who have gone through the restorative justice ritual are subsequently plugged back into the court process and receive a punitive sentence (which may or may not acknowledge and include the

¹⁰ McElrea, "Updated Proposal for Pilot Community Justice Centres in New Zealand."

¹¹ Ibid.

agreement made during the restorative justice process), it may counteract the positive transformation achieved during the restorative justice ritual. Further research is needed in order to understand how these two ritual processes interact and the most ideal integration of the two systems.

Another area for future research is investigating the presence of a similar ritual structure and ritual functions in other restorative practices, particularly the circle process. This thesis has, at several points, mentioned a need for additional opportunities for people to participate in restorative rituals, without it necessarily being in the wake of a crime. In Chapter Four, the availability of a repeated restorative ritual experience such as the circle was mentioned as one way that the transformation achieved during liminality and *communitas*/collective effervescence could be more effectively sustained after the culmination of the ritual. In Chapter Five, more citizens having the opportunity to experience either restorative justice or a restorative circle process was named as a way to potentially bolster the normative impact of the restorative justice ritual for the wider public. In Chapter Six, it was noted that circles could play an important role in sustaining the restorative social movement through providing an opportunity to revivify the movement subculture.

An in-depth application of the ritual lens to the circle process has the potential to increase our understanding of the important social functions the circle may fulfill. If the circle process is capable of generating the same experience of *communitas*/collective effervescence as the restorative justice ritual, then further research could show how circles may be an effective means to counter important social issues such as loneliness, isolation, and the tendency to dehumanize those we consider “other.” Brené Brown has argued that humans are currently in a “collective spiritual crisis.”¹² “Spirituality is recognizing and celebrating that we are all inextricably connected to each other by a power greater than all of us, and that our connection to that power and to one another is grounded in love and compassion.”¹³ Brown argues that people today are rarely experiencing that inextricable connection. The result is that many people are experiencing

¹² Brené Brown, *Braving the Wilderness: The Quest for True Belonging and the Courage to Stand Alone* (New York: Random House, 2017), 45.

¹³ *The Gifts of Imperfection: Let Go of Who You Think You're Supposed to Be and Embrace Who You Are* (Center City: Hazelden Publishing, 2010), 64.

loneliness. Loneliness, “a condition in which an individual perceives himself or herself to be socially isolated even when among other people”¹⁴ has been called a major public health problem.¹⁵ The experience of loneliness has a significant negative impact on health and well-being.¹⁶ Brown asserts that the key to navigating this “spiritual crisis” is to renew our belief in and experience of the innate human connection through collective effervescence.¹⁷ She lists church meetings, concerts, football games, and funerals as examples of where this reminder of inextricable human connection may be found.

Psychological researchers Shira Gabriel, Jennifer Valenti, Kristin Naragon-Gainey, and Adriana Young also draw on Durkheim’s notion of collective effervescence and demonstrate that experiences of collective effervescence have a positive correlation with psychological well-being and a sense of social connection, decreasing experiences of loneliness.¹⁸ Viewed through the ritual lens, the restorative circle process can also be seen as a space in which there is a reminder of human connection through the experience of *communitas*/collective effervescence and through which participants may experience inspiration to work for greater social change. Further research into the potential of greater use of restorative circles in schools, universities, workplaces, spiritual communities, neighborhoods, cities, and anywhere else people gather could ultimately contribute to building a more peaceful world.

¹⁴ John Cacioppo and Stephanie Cacioppo, “The Growing Problem of Loneliness,” *The Lancet* 391, no. 10119 (2018): 426.

¹⁵ Vivek H. Murthy, interview by Jena McGregor, 2017.

¹⁶ Stephanie Cacioppo, John P. Capitanio, and John T. Cacioppo, “Toward a Neurology of Loneliness,” *Psychological Bulletin* 140, no. 6 (2014).

¹⁷ Brown, *Braving the Wilderness*, 117.

¹⁸ Shira Gabriel et al., “The Psychological Importance of Collective Assembly: Development and Validation of the Tendency for Effervescent Assembly Measure (Team),” *Psychological Assessment* 29, no. 11 (2017).

Appendices

Appendix 1: Information Sheet for Research Participants

Researcher: Lindsey Pointer, School of Government, Victoria University of Wellington

I am a Visiting Scholar with the Diana Unwin Chair in Restorative Justice at Victoria University of Wellington. I am currently undertaking a research project with the goal of increasing the understanding of the restorative justice ritual. The project I am undertaking examines the way in which the ritual of the restorative justice process fulfills a post-crime need for order and legitimacy while also creating a space for personal, relational, and societal transformation.

This research project has received approval from the Victoria University Human Ethics Committee (Ethics Approval Number: 0000022793).

I am inviting participants in restorative justice processes to participate in this study. I am inviting you to participate in an interview that will take approximately one hour and will occur in a place that is convenient for you. Afterwards, I will send you a written summary of our interview.

Should any participants feel the need to withdraw from the project, they may do so without question at any time before July 1, 2018. Just let me know at the time.

Responses will form the basis of my research project and will be put into a written thesis on a confidential basis. It will not be possible for you to be identified personally. Only grouped responses will be presented in this report. All data collected will be stored in a locked filing cabinet and all electronic information will be password protected. Only my supervisors, Chris Marshall and Tom Noakes-Duncan, and I will see the responses. It is intended that one or more articles will be submitted for publication in scholarly journals. Information may also be shared through blog entries and conference presentations. Interview responses and notes will be destroyed two years after the end of the project.

If you would like feedback on the findings of the research, you can request a copy of the final report or a summary document on the consent sheet attached.

If you have any further questions or would like to receive further information about the project, please contact me (0204 108 3779, Lindsey.Pointer@myvuw.ac.nz) or my supervisor Chris Marshall, at the School of Government at Victoria University (04 463 7421, Chris.Marshall@vuw.ac.nz).

If at any time you have any ethical questions or concerns about this study, contact Dr. Susan Corbett, Chair of the Victoria University of Wellington Human Ethics Committee (+64 4 463 5480, susan.corbett@vuw.ac.nz).

Appendix 2: Consent Form to Participate in Research

Restorative Justice

I consent to taking part in a semi-structured interview on the topic of restorative justice and my personal experience in relation to the topic. I understand that I will not be asked about the specifics of my case, but rather about my experience of the process. I understand that the interview will be audio recorded and transcribed and that I will have an opportunity to review a summary of my interview. I consent to this information being used by the researcher for academic purposes. I have been given and have understood an explanation of this research project. I have had an opportunity to ask questions and have them answered to my satisfaction. I understand that I may withdraw myself (or any information I have provided) from this project before July 1, 2018 without having to give reasons.

I understand that any information I provide will be kept confidential to the researcher and the supervisor. I understand the published results will not use my name, and that no opinions will be attributed to me in any way that will identify me. I understand that the tape recording of interviews will be wiped at the end of the project unless I indicate that I would like them returned to me. I understand that all other data will be wiped two years after the end of the project and will be kept in a password-protected digital file until that time.

Signed: _____

Name of participant: _____

Date: _____

Place: _____

Contact phone number: _____

Email address: _____

☐ I would like to receive a copy of the final report when the project is complete.

☐ I would like to receive a summary document of findings when the project is complete.

If you have any further questions, please contact me (0204 108 3779, Lindsey.Pointer@myvuw.ac.nz) or my supervisor Chris Marshall, at the School of Government at Victoria University (04 463 7421, Chris.Marshall@vuw.ac.nz).

Appendix 3: Qualitative Interview Guide for Facilitator Interviews

Note: These questions were used as a guide for semi-structured interviews. Following the guidelines of Transformative Inquiry, a mode of research in alignment with restorative values and practices, I asked questions and then allowed interviewees to take the conversation where they wanted it to go and to highlight what they see as most important in the process. I often asked un-planned, follow-up questions in order to better understand their responses and spark further reflection. I was transparent about my research questions, asking for their big-picture opinions and views.

Interview Questions

Demographics

1. How long have you been facilitating?
2. Where do you facilitate (geographically and in what contexts)?

Introduction

3. What was your best conference? Please describe what made it the best. Please describe the flow of the meeting, how did it begin and end?
4. What was your worst conference? Please describe what made it the worst. Please describe the flow of the meeting, how did it begin and end?

Normative Ritual

5. In your experience, what values guide the restorative justice conference? How are these apparent?
6. Does the restorative justice conference reinforce a sense of right and wrong? How so?
7. What is the impact of the structure of the restorative justice conference?

Transformative Ritual

8. How do you bring participants into the space where the conference will occur, both physically and mentally? How do you open the conference?
9. How do you close the conference? What happens afterwards?
10. Have you seen relationships between participant change during the conference or as a result of the conference? How so?
11. Please describe a shift in opinions or feelings that you've seen during a conference.
12. What do you think makes this transformation of relationships/feelings/opinions take place?

Proleptic Ritual

13. Has the experience of being part of a restorative justice conference confirmed or changed any of your views about the world?
14. Is there anything you do differently in your personal life since participating in a restorative justice conference? Has it affected the way you deal with other people?
15. How is a restorative justice conference different from your normal daily life?
16. Do you see restorative practices as part of a larger social movement? If so, please explain why.

Conclusion

17. What is your understanding of the role ritual plays in the restorative justice process?

Appendix 4: Qualitative Interview Guide for Participant Interviews

Note: These questions were used as a guide for semi-structured interviews. Following the guidelines of Transformative Inquiry, a mode of research in alignment with restorative values and practices, I asked questions and then allowed interviewees to take the conversation where they wanted it to go and to highlight what they see as most important in the process. I often asked un-planned, follow-up questions in order to better understand their responses and spark further reflection. I was transparent about my research questions, asking for their big-picture opinions and views.

Interview Questions

Demographics

1. Was your role in the restorative justice conference harmed party, responsible party, support person or other?
2. Where did your restorative justice conference take place? When?

Introduction

3. Overall, how was your experience in the restorative justice process? Was it helpful? Why or why not?

Normative Ritual

4. What values are communicated and upheld by the restorative justice conference?
5. Does the restorative justice conference reinforce a sense of right and wrong? How so?
6. How did the structure of the restorative justice conference feel to you? Did you trust the process?

Transformative Ritual

7. Please describe any shifts in your opinions or feelings that occurred during the conference.
8. Did your opinion or impression of others in the conference change during the conference or as a result of the conference? How so?
9. Did your relationship with any other participant change during the conference or as a result of the conference? How so?
10. Did the conference have an effect on your personal wellbeing? How so?

Proleptic Ritual

11. How was the restorative justice conference different from your normal daily life?
12. Has the experience of being part of a restorative justice conference confirmed or changed any of your views about the world?

13. Is there anything you do differently (in your personal life) since participating in a restorative justice conference? Has it affected the way you deal with other people?

Conclusion

14. Why do you think restorative justice works?

Bibliography

- Abeliovich, Ruthie. "Reconsidering Arnold Van Gennep's *Les Rites De Passage* from the Perspective of 'Performance Studies'." *Journal of Classical Sociology* 18, no. 4 (2018): 283-98.
- Acorn, Annalise. "Reclaiming a Restorative Understanding of the Victim-Offender Dichotomy." *Restorative Justice* 5, no. 3 (2017): 468-80.
- Alexander, Bobby. "Pentecostal Possession and Grotowski's Ritual Projects as Social Protest: A Critical Assessment of Victor Turner's Theory of 'Ritual Anti-Structure' as an Interpretive Tool." PhD diss., Columbia University, 1985.
- Anthony, Thalia. *Indigenous People, Crime and Punishment*. New York: Routledge, 2013.
- Armour, Marilyn. "Real-World Assignments for Restorative Justice Education." *Contemporary Justice Review* 16, no. 1 (2013): 115-36.
- Asmussen, Ida Helene. "Performing Absolution Narratives in Restorative Justice." *Restorative Justice* 3, no. 1 (2015): 28-48.
- Bain, Ken. *What the Best College Teachers Do*. Cambridge: Harvard University Press, 2004.
- Baldwin, Christina. *Calling the Circle: The First and Future Culture*. New York: Bantam Books, 1994.
- Ball, Jennifer, Wayne Caldwell, and Kay Pranis. *Doing Democracy with Circles: Engaging Communities in Public Planning*. St. Paul: Living Justice Press, 2010.
- Barlow, Cleve. *Tikanga Whakaaro: Key Concepts in Māori Culture*. Auckland: Oxford University Press, 1991.
- Barrett, Audrey. "Restorative Justice: The Structure of Dialogue: Exploring Habermas' Discourse Theory to Explain the 'Magic' and Potential of Restorative Justice Processes." *Dalhousie Law Journal* 36 (2013): 335-581.
- Bazemore, Gordon. "Whom and How Do We Reintegrate? Finding Community in Restorative Justice." *Criminology & Public Policy* 4, no. 1 (2005): 131-48.
- . "Young People, Trouble, and Crime." *Youth & Society* 33, no. 2 (2001): 199-226.
- Bazemore, Gordon, and Shadd Maruna. "Restorative Justice in the Reentry Context: Building New Theory and Expanding the Evidence Base." *Victims & Offenders* 4, no. 4 (2009): 375-84.
- Behrend, Christine. "Interview with Ritual Artist Ida Van Der Lee." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 232-45. London: Jessica Kingsley Publishers, 2017.
- Bell, Catherine. *Ritual Theory, Ritual Practice*. New York: Oxford University Press, 1992.

- Bennett, Christopher. *The Apology Ritual: A Philosophical Theory of Punishment*. Cambridge: Cambridge University Press, 2008.
- . "Taking the Sincerity out of Saying Sorry: Restorative Justice as Ritual." *Journal of Applied Philosophy* 23, no. 2 (2006): 127-43.
- Ben-Yehuda, Nachman. "The Politics and Morality of Deviance: Moral Panics, Drug Abuse, Deviant Science, and Reversed Stigmatization." Albany: State University of New York Press, 1990.
- Bergesen, Albert J. "The Ritual Order." *Humboldt Journal of Social Relations* 25, no. 1 (1999): 157-97.
- Berman, Harold. *Impact of the Protestant Reformations on the Western Legal Tradition*. Cambridge: Harvard University Press, 2006.
- Bird, Greta. *The 'Civilizing Mission': Race and the Construction of Crime*. Clayton: Faculty of Law Monash University, 1987.
- Bluehouse, Philmer, and James Zion. "Hozhooji Naat'aanii: The Navajo Justice and Harmony Ceremony." *Mediation Quarterly* 10, no. 4 (1993): 327-37.
- Bolitho, Jane. "Inside the Restorative Justice Black Box." *International Review of Victimology* 23, no. 3 (2017): 233-55.
- . "Putting Justice Needs First: A Case Study of Best Practice in Restorative Justice." *Restorative Justice* 3, no. 2 (2015): 256-81.
- . "Restorative Justice: The Ideals and Realities of Conferencing for Young People." *Critical Criminology* 20, no. 1 (2012): 61-78.
- Bolitho, Jane, and Jasmine Bruce. "Science, Art and Alchemy: Best Practice in Facilitating Restorative Justice." *Contemporary Justice Review* 20, no. 3 (2017): 336-62.
- Bolivar, Daniela, Ivo Aertsen, and Inge Vanfraechem. "The Ritual of Apology and Restorative Justice: Exploring the Victim's Perspective." In *Public Apology between Ritual and Regret: Symbolic Excuses on False Pretenses or True Reconciliation out of Sincere Regret?*, edited by Barbara Segaert, 123-44. New York: Editions Rodopi, 2013.
- Boston, Jonathan. "Towards a Restorative Society." In *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*, edited by Gabrielle Maxwell and James H Liu, 321-26. Wellington: Institute of Policy Studies, 2007.
- Boyes-Watson, Carolyn, and Kay Pranis. "Science Cannot Fix This: The Limitations of Evidence-Based Practice." *Contemporary Justice Review* 15, no. 3 (2012): 265-75.
- Braithwaite, John. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press, 1989.
- . "Repentance Rituals and Restorative Justice." *Journal of Political Philosophy* 8, no. 1 (2000): 115-31.
- . "Restorative Justice." In *The Handbook of Crime and Punishment*, edited by Michael Tonry, 323-44. Oxford: Oxford University Press, 1998.

- . "Shame and Criminal Justice." *Canadian Journal of Criminology* 42, no. 3 (2000): 281-98.
- Braithwaite, John, and Heather Strang. "Introduction: Restorative Justice and Civil Society." In *Restorative Justice and Civil Society*, edited by John Braithwaite and Heather Strang, 1-13. Cambridge: Cambridge University Press, 2001.
- Brown, Brené. *Braving the Wilderness: The Quest for True Belonging and the Courage to Stand Alone*. New York: Random House, 2017.
- . *The Gifts of Imperfection: Let Go of Who You Think You're Supposed to Be and Embrace Who You Are*. Center City: Hazelden Publishing, 2010.
- Brown, Howard L. "The Navajo Nation's Peacemaker Division: An Integrated, Community-Based Dispute Resolution Forum." *American Indian Law Review* 24, no. 2 (1999): 297-308.
- Bruce, Jasmine. "Facilitating Restorative Justice: A Study of Conference Convenors." PhD diss., University of New South Wales, 2008.
- Buchanan, Julia. "Indigenous Leadership: A Talking-Circle Dialogue with Cree Leaders." PhD diss., University of San Diego, 2010.
- Burnett, Ross, and Shadd Maruna. "The Kindness of Prisoners: Strengths-Based Resettlement in Theory and in Action." *Criminology and Criminal Justice* 6, no. 1 (2006): 83-106.
- Butler, Paul. Interview by Scott Simon. "Research Finds Racial Disparities in Prison Sentences." *NPR* November 25, 2017.
<https://www.npr.org/2017/11/25/566438860/research-finds-racial-disparities-in-prison-sentences>
- Buttimer, Anne, and Mary Annette. "Social Space in Interdisciplinary Perspective." *Geographical Review* 59, no. 3 (1969): 417-26.
- Cacioppo, John T., and Stephanie Cacioppo. "The Growing Problem of Loneliness." *The Lancet* 391, no. 10119 (2018).
- Cacioppo, Stephanie, John P. Capitanio, and John T. Cacioppo. "Toward a Neurology of Loneliness." *Psychological Bulletin* 140, no. 6 (2014): 1464-504.
- Carson, Barbara A., and Darrol Bussler. "Teaching Restorative Justice to Education and Criminal Justice Majors." *Contemporary Justice Review* 16, no. 1 (2013): 137-49.
- Cheal, David. "Ritual: Communication in Action." *Sociological Analysis* 53, no. 4 (1992): 363-74.
- Chiricos, Ted, Kelle Barrick, William Bales, and Stephanie Bontrager. "The Labeling of Convicted Felons and Its Consequences for Recidivism." *Criminology* 45, no. 3 (2007): 547-81.
- Chiste, Katherine. "The Origins of Modern Restorative Justice: Five Examples from the English-Speaking World." *University of British Columbia Law Review* 46, no. 1 (2013): 33-80.

- Christiansen, Jonathan. "Four Stages of Social Movements." In *EBSCO Research Starters Academic Topic Overviews*. Ipswich: EBSCO Publishing Inc., 2009.
- Clamp, Kerry. *Restorative Justice in Transition*. New York: Routledge, 2014.
- Clark, Karen L. "A Call for Restorative Justice in Higher Education Judicial Affairs." *College Student Journal* 48, no. 4 (2014): 707-15.
- Claxton, David, Dan Crube, and Jane Young. "Using Initiative Games to Build Community, Cooperation and Trust." *Strategies* 15, no. 1 (2001): 35-37.
- Cleland, Alison, and Khylee Quince. *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique*. Wellington: LexisNexis NZ Limited, 2014.
- Cloke, Kenneth. "Revenge, Forgiveness, and the Magic of Mediation." *Mediation Quarterly* 11, no. 1 (1993): 67-78.
- Cohen, Albert K. *Deviance and Control*. Englewood Cliffs: Prentice-Hall, 1966.
- Cohen, Anthony P. *The Symbolic Construction of Community*. London: Routledge, 1989.
- Collins, Randall. *Interaction Ritual Chains*. Princeton: Princeton University Press, 2004.
- Collins, Victoria, and Molly Dunn. "The Invisible/Visible Claims to Justice: Sexual Violence and the University Camp(Us)." *Contemporary Justice Review* 21, no. 4 (2018): 371-95.
- Courakis, Nestor, and Theo Gavrielides. "Beyond Restorative Justice: Social Justice as a New Objective for Criminal Justice." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 43-55. London: Routledge, 2018.
- Craig, Elaine. "The Inhospitable Court." *University of Toronto Law Journal* 66, no. 2 (2016): 197-243.
- Crain, Mary, and Felicia Hughes-Freeland. *Recasting Ritual: Performance, Media, Identity*. New York: Routledge, 1998.
- Crawford, Adam. "Involving Lay People in Criminal Justice." *Criminology & Public Policy* 3, no. 4 (2006).
- Crist, Walter, Alex Voogt, and Anne-Elizabeth Dunn-Vaturi. "Facilitating Interaction: Board Games as Social Lubricants in the Ancient near East." *Oxford Journal of Archaeology* 35, no. 2 (2016): 179-96.
- Cunneen, Chris. "Reviving Restorative Justice Traditions?". In *Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel W. Van Ness, 113-31. London: Willan Publishing, 2007.
- Cunneen, Chris, and Juan Tauri. *Indigenous Criminology*. Bristol: Policy Press, 2016.
- Daly, Kathleen. "Restorative Justice: The Real Story." *Punishment and Society* 4, no. 1 (2002): 55-79.
- . "Seeking Justice in the 21st Century: Towards an Intersectional Politics of Justice." *Sociology of Crime Law and Deviance* 11 (2008): 3-30.
- . "What Is Restorative Justice? Fresh Answers to a Vexed Question." *Victims & Offenders* (2015): 1-21.

- Daly, Kathleen, and Gitana Proietti-Scifoni. "The Elders Know ... The White Man Don't Know': Offenders' Views of the Nowra Circle Court." *Indigenous Law Bulletin* 7, no. 24 (2011): 17-21.
- De Mesmaecker, Vicky. "Building Social Support for Restorative Justice through the Media: Is Taking the Victim Perspective the Most Appropriate Strategy?" *Contemporary Justice Review* 13, no. 3 (2010): 239-67.
- . "Victim-Offender Mediation Participants' Opinions on the Restorative Justice Values of Confidentiality, Impartiality and Voluntariness." *Restorative Justice* 1, no. 3 (2013): 334-61.
- Deckert, Antje, and William R. Wood. "Socrates in Aotearoa: Teaching Restorative Justice in New Zealand." *Contemporary Justice Review* 16, no. 1 (2013): 70-90.
- Dietrich, Wolfgang. "A Brief Introduction into Transrational Peace Research and Elicitive Conflict Transformation." *Journal of Conflictology* 5, no. 2 (2014): 48-57.
- Dissanayake, Ellen. "The Art of Ritual and the Ritual of Art." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 22-39. London: Jessica Kingsley Publishers, 2017.
- Driver, Tom. *Liberating Rights: Understanding the Transformative Power of Ritual*. Boulder: Westview Press, 1998.
- Duckfoot. "The General Public's Response to Restorative Justice, Community Resolution: Research Conducted on Behalf of Her Majesty's Inspector of Constabulary." Somerset: Duckfoot, 2012.
- Duff, R. A. "Responsibility, Restoration, and Retribution." In *Retributivism Has a Past: Has It a Future?*, edited by Michael Tonry, 63-85. Oxford: Oxford University Press, 2011.
- Duhigg, Charles. "What Google Learned from Its Quest to Build the Perfect Team." *The New York Times Magazine*, 2016.
- Durkheim, Émile. *The Division of Labor in Society*. London: Macmillan Education, 1989 (1893).
- . *The Elementary Forms of the Religious Life*. London: George Allen & Unwin Ltd, 1915.
- Dyck, David. "Reaching toward a Structurally Responsive Training and Practice of Restorative Justice." In *Handbook of Restorative Justice: A Global Perspective*, edited by Dennis Sullivan and Larry Tifft, 527-45. London: Routledge, 2008.
- Echavarría Alvarez, Josefina. "Elicitive Conflict Mapping: A Practical Tool for Peacework." *Journal of Conflictology* 5, no. 2 (2014): 58-71.
- Engen, Rodney L., and Sara Steen. "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs." *American Journal of Sociology* 105, no. 5 (2000): 1357-95.
- Erikson, Kai. *Wayward Puritans: A Study in the Sociology of Deviance*. New York: Wiley, 1966.

- Evans, Katherine, and Dorothy Vaandering. *The Little Book of Restorative Justice in Education: Fostering Responsibility, Healing, and Hope in Schools*. New York: Good Books, 2016.
- Everett, William Johnson. "Ritual Wisdom and Restorative Justice." *Hamline Journal of Public Law and Policy* 25, no. 2 (2004): 347-54.
- Farrall, Stephen, and Adam Calverly. *Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation*. Milton Keynes: Open University Press, 2006.
- Fischer, Ronald, Rohan Callander, Paul Reddish, and Joseph Bulbulia. "How Do Rituals Affect Cooperation?". *An Interdisciplinary Biosocial Perspective* 24, no. 2 (2013): 115-25.
- Foley, Tony. *Developing Restorative Justice Jurisprudence: Rethinking Responses to Criminal Wrongdoing*. Farnham: Ashgate Publishing Ltd, 2014.
- Foucault, Michael. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books, 1977.
- Fox, Kathryn. "Redeeming Communities: Restorative Offender Reentry in a Risk-Centric Society." *Victims & Offenders* 7, no. 1 (2012): 97-120.
- Fox, Kathryn. "Restoring the Social: Offender Reintegration in a Risky World." *International Journal of Comparative and Applied Criminal Justice* 38, no. 3 (2014): 235-56.
- Freire, Paulo. *Pedagogy of the Oppressed*. New York: Continuum, 1993 (1970).
- Gabriel, Shira, Jennifer Valenti, Kristin Naragon-Gainey, and Ariana F. Young. "The Psychological Importance of Collective Assembly: Development and Validation of the Tendency for Effervescent Assembly Measure (Team)." *Psychological Assessment* 29, no. 11 (2017): 1349-62.
- Galaway, Burt, and Joe Hudson. *Restorative Justice: International Perspectives*. Monsey: Criminal Justice Press, 1996.
- Gallagher Dahl, Meghan, Peter Meagher, and Stacy Vander Velde. "Motivation and Outcomes for University Students in a Restorative Justice Program." *Journal of Student Affairs Research and Practice* 51, no. 4 (2014): 364-79.
- Garfinkel, Harold. "Conditions of Successful Degradation Ceremonies." *American Journal of Sociology* 61, no. 5 (1956): 420-24.
- Garland, David. *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press, 2001.
- Gavrielides, Theo. "Collapsing the Labels 'Victim' and 'Offender' in the Victims' Directive and the Paradox of Restorative Justice." *Restorative Justice* 5, no. 3 (2017): 368-81.
- Geertz, Clifford. *The Interpretation of Cultures: Selected Essays*. London: Fontana, 1993.
- Gilbert, Michael, Mara Schiff, and Rachel Cunliffe. "Teaching Restorative Justice: Developing a Restorative Andragogy for Face-to-Face, Online and Hybrid Course Modalities." *Contemporary Justice Review* 16, no. 1 (2013): 43-69.

- Goffman, Erving. *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. New York: Anchor Books, 1961.
- . *Interaction Ritual*. Middlesex: Penguin Books, 1967.
- . *Interaction Ritual: Essays on Face-to-Face Behaviour*. London: Allen Lane, 1972.
- Gordon-Lennox, Jeltje. *Crafting Secular Ritual: A Practical Guide*. London: Jessica Kingsley Publishers, 2016.
- . "Introduction: Opening the Conversation." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 11-21. London: Jessica Kingsley Publishers, 2017.
- . "The Rhyme and Reason of Ritualmaking." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 70-86. London: Jessica Kingsley Publishers, 2017.
- Gould, Larry A. "The Impact of Working in Two Worlds and Its Effect on Navajo Police Officers." *The Journal of Legal Pluralism and Unofficial Law* 31, no. 44 (1999): 53-71.
- Green, Simon, Gerry Johnstone, and Craig Lambert. "What Harm, Whose Justice?: Excavating the Restorative Movement." *Contemporary Justice Review* (2013): 1-16.
- Grimes, Ronald. *The Craft of Ritual Studies*. New York: Oxford University Press, 2014.
- Groysberg, Boris, and Michael Slind. "Leadership Is a Conversation." *Harvard Business Review* 90, no. 6 (2012): 76-84.
- Haidt, Jonathan. *The Righteous Mind: Why Good People Are Divided by Politics and Religion*. New York: Pantheon Books, 2012.
- Haidt, Jonathan, J. Patrick Seder, and Selin Kesebir. "Hive Psychology, Happiness, and Public Policy." *The Journal of Legal Studies* 37, no. S2 (2008): S133-S56.
- Haley, Aimee. "Through a Social Space Lens – Interpreting Migration of the Tertiary Educated." *European Educational Research Journal* 15, no. 4 (2016): 480-90.
- Hamilton, Paula. "Emotions and Identity Transformation." In *Moving on from Crime and Substance Abuse: Transforming Identities*, edited by Anne Robinson and Paula Hamilton, 19-42. Bristol: Policy Press, 2016.
- Harris, M. Kay. "Transformative Justice: The Transformation of Restorative Justice." In *Handbook of Restorative Justice: A Global Perspective*, edited by Dennis Sullivan and Larry Tifft, 555-66. London: Routledge, 2008.
- Harris, Nathan, Lode Walgrave, and John Braithwaite. "Emotional Dynamics in Restorative Conferences." *Theoretical Criminology* 8, no. 2 (2004): 191-210.
- Harviainen, J. Tuomas. "Ritualistic Games, Boundary Control, and Information Uncertainty." *Simulation & Gaming* 43, no. 4 (2012): 506-27.
- Harviainen, J. Tuomas, and Andreas Lieberoth. "Similarity of Social Information Processes in Games and Rituals." *Simulation & Gaming* 43, no. 4 (2012): 528-49.

- Hicks, Donna. *Dignity: The Essential Role It Plays in Resolving Conflict*. New Haven: Yale University Press, 2011.
- His Holiness the Dalai Lama. *Ethics for a New Millennium*. New York: Riverhead Books, 1999.
- Hochner, Nicole. "On Social Rhythm: A Renewed Assessment of Van Gennep's Rites of Passage." *Journal of Classical Sociology* 18, no. 4 (2018): 299-312.
- Hoffer, Eric. *The True Believer: Thoughts on the Nature of Mass Movements*. New York: Harper, 1951.
- Hofrichter, Richard. *Neighborhood Justice in Capitalist Society: The Expansion of the Informal State*. New York: Greenwood Press, 1987.
- Holly, Marilyn. "Navajo Criminal Justice: A Jungian Perspective." In *Native Americans and the Criminal Justice System*, edited by Jeffrey Ross and Larry Gould. Boulder: Paradigm Publishers, 2006.
- Holsinger, Kristi. *Teaching Justice: Solving Social Justice Problems through University Education*. Farnham: Ashgate Publishing Limited, 2012.
- . "Teaching to Make a Difference." *Feminist Criminology* 3, no. 4 (2008): 319-35.
- Holsinger, Kristi, and Andrew Crowther. "College Course Participation for Incarcerated Youth: Bringing Restorative Justice to Life." *Journal of Criminal Justice Education* 16, no. 2 (2005): 328-39.
- hooks, bell. *All About Love: New Visions*. London: Harper & Row, 2000.
- . *Teaching Community: A Pedagogy of Hope*. London: Routledge, 2003.
- . *Teaching to Transgress: Education as the Practice of Freedom*. New York: Routledge, 1994.
- Hopkins, Belinda. "From Restorative Justice to Restorative Culture." *Revista de Asistentă Socială* 14, no. 4 (2015): 19-34.
- . "Just Schools a Whole School Approach to Restorative Justice." London: Jessica Kingsley Publishers, 2004.
- . "Restorative Justice as Social Justice." *Nottingham Law Journal* 21 (2012).
- Huizinga, Johan. *Homo Ludens; a Study of the Play-Element in Culture*. Boston: Beacon Press, 1980.
- Hüsken, Ute. *When Rituals Go Wrong: Mistakes, Failure and the Dynamics of Ritual*. Leiden: Brill, 2007.
- Hüsken, Ute, and Frank Neubert. *Negotiating Rites*. New York: Oxford University Press, 2011.
- Imber-Black, Evan, and Janine Roberts. *Rituals for Our Times: Celebrating, Healing, and Changing Our Lives and Our Relationships*. Lanham: Littlefield Publishers, Inc., 2004.
- Isaacs, William. *Dialogue and the Art of Thinking Together: A Pioneering Approach to Communicating in Business and in Life*. New York: Doubleday Currency, 1999.

- Jasper, James. *The Art of Moral Protest: Culture, Biography, and Creativity in Social Movements*. Chicago: University of Chicago Press, 1999.
- Jeffrey, Alex. *Court Space: Report on an Impact Acceleration Project*. Cambridge: Economic and Social Research Council, University of Cambridge, 2017.
- Johnson, Fenton. "Burning Man, Desire, and the Culture Empire." *Tikkun* 27, no. 3 (2012): 20-63.
- Johnstone, Gerry. "The Agendas of the Restorative Justice Movement." In *Restorative Justice: From Theory to Practice (Sociology of Crime, Law and Deviance, Volume 11)*, edited by Holly Ventura Miller, 59-79. Bingley: Emerald Group Publishing Limited, 2008.
- . *Restorative Justice: Ideas, Values, Debates*. London: Routledge, 2011.
- . "Restorative Justice and the Therapeutic Tradition: Looking into the Future." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 395-408. London: Routledge, 2018.
- Johnstone, Gerry, and Daniel Van Ness. "The Meaning of Restorative Justice." In *Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel Van Ness, 5-23. Portland: Willan Publishing, 2007.
- Karp, David. "Harm and Repair: Observing Restorative Justice in Vermont." *Justice Quarterly* 18, no. 4 (2001): 727-57.
- . "Keynote: Restorative University." Lecture, Restorative University Roundtable, Victoria University of Wellington, New Zealand, 2018.
- . *The Little Book of Restorative Justice for Colleges and Universities: Repairing Harm and Rebuilding Trust in Response to Student Misconduct*. Intercourse: Good Books, 2013.
- . "The Offender/Community Encounter: Stakeholder Involvement in the Vermont Reparative Boards." In *What Is Community Justice?: Case Studies of Restorative Justice and Community Supervision*, edited by David Karp and Todd Clear, 61-86. Thousand Oaks: SAGE Publications, Inc., 2002.
- Karp, David, and Beau Breslin. "Restorative Justice in School Communities." *Youth & Society* 33, no. 2 (2001): 249-72.
- Karp, David, and Olivia Frank. "Anxiously Awaiting the Future of Restorative Justice in the United States." *Victims & Offenders* 11, no. 1 (2015): 1-21.
- Karp, David, and Casey Sacks. "Student Conduct, Restorative Justice, and Student Development." *Contemporary Justice Review* 17, no. 2 (2014): 1-19.
- Karp, David, and Megan Schachter. "Restorative Justice in Universities: Case Studies of What Works with Restorative Responses to Student Misconduct." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 247-63. London: Routledge, 2018.
- Karstedt, Susanne. "Emotions, Crime, and Justice: Exploring Durkheimian Themes." In *Sociological Theory and Criminological Research: Views from Europe and the United States*, edited by Mathieu Deflem. Oxford: Elsevier, 2006.

- Kelly, Vernon C. "Caring, Restorative Practice and the Biology of Emotion." In *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*, edited by Vernon C. Kelly and Margaret Thorsborne, 26-53. London: Jessica Kingsley Publishers, 2014.
- . "Interpersonal Caring, Social Discipline and a Blueprint for Restorative Healing." In *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*, edited by Vernon C. Kelly and Margaret Thorsborne, 54-83. London: Jessica Kingsley Publishers, 2014.
- Killian, Lewis, Neil Smelser, and Ralph Turner. "Social Movement." In *Encyclopaedia Britannica Online*. Encyclopaedia Britannica Inc., 2013. Accessed February 20, 2019. <https://www.britannica.com/topic/social-movement>.
- Kim, Mimi E. "From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration." *Journal of Ethnic & Cultural Diversity in Social Work* 27, no. 3 (2018): 219-33.
- King, Sam. "Early Desistance Narratives: A Qualitative Analysis of Probationers' Transitions Towards Desistance." *Punishment and Society* 15, no. 2 (2013): 147-65.
- Koch, Klaus-Friedrich, Soraya Altorki, Andrew Arno, and Letitia Hickson. "Ritual Reconciliation and the Obviation of Grievances: A Comparative Study in the Ethnography of Law." *Ethnology* 16, no. 3 (1977): 269-83.
- Kraybill, Ron, and Evelyn Wright. *The Little Book of Cool Tools for Hot Topics: Group Tools to Facilitate Meetings When Things Are Hot*. Intercourse: Good Books, 2006.
- Kreinath, Jens, Joannes Augustinus Maria Snoek, and Michael Stausberg. *Theorizing Rituals: Issues, Topics, Approaches, Concepts*. Leiden: Brill, 2006.
- Kristi, Holsinger. *Teaching Justice: Solving Social Justice Problems through University Education (Solving Social Problems)*. Farnham: Ashgate Publishing Ltd., 2012.
- Lake, Peter F. "Student Discipline: The Case against Legalistic Approaches." *Chronicle of Higher Education* 55, no. 32 (2009): A31-A32.
- Langbein, John H. *The Origins of Adversary Criminal Trial*. Oxford: Oxford University Press, 2005.
- Lederach, John Paul. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington: United States Institute of Peace Press, 1997.
- . *The Little Book of Conflict Transformation: Clear Articulation of the Guiding Principles by a Pioneer in the Field*. Intercourse: Good Books, 2003.
- Leest, Judith. "A Deliberative Ritual: Mediating between the Criminal Justice System and the Lifeworld." PhD diss., Utrecht University, 2007.
- Leverton, W. Reed. "The Case for Best Practice Standards in Restorative Justice Processes." *American Journal of Trial Advocacy* 31, no. 3 (2008): 501-29.

- Light, Tracy Penny, Jane Nicholas, and Renée Bondy. *Feminist Pedagogy in Higher Education: Critical Theory and Practice*. Waterloo: Wilfrid Laurier UP, 2015.
- Liu, James, and Gabrielle Maxwell. *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*. Wellington: Institute of Policy Studies, 2007.
- Llewellyn, Jennifer. "Restorative Justice: Thinking Relationally About Justice." In *Being Relational: Reflections on Relational Theory and Health Law*, edited by Jocelyn Downie and Jennifer Llewellyn. Vancouver: UBC Press, 2012.
- . "An Unfamiliar Justice Story: Restorative Justice and Education: Reflections on Dalhousie Facebook Incident 2015." *Our Schools, Our Selves* 25, no. 1 (2015): 43-56.
- . "Integrating Peace, Justice and Development in a Relational Approach to Peacebuilding." *Ethics and Social Welfare* 6, no. 3 (2012): 290-302.
- Llewellyn, Jennifer J., and Brenda Morrison. "Deepening the Relational Ecology of Restorative Justice." *The International Journal of Restorative Justice* 1, no. 3 (2018): 343-55.
- Llewellyn, Kristina, and Jennifer Llewellyn. "A Restorative Approach to Learning: Relational Theory as Feminist Pedagogy in Universities." In *Feminist Pedagogy in Higher Education: Critical Theory and Practice*, edited by Tracy Penny Light, Jane Nicholas and Renee Bondy, 11-32. Waterloo: Wilfrid Laurier University Press, 2015.
- Llewellyn, Kristina, and Christina Parker. "Asking the 'Who': A Restorative Purpose for Education Based on Relational Pedagogy and Conflict Dialogue." *The International Journal of Restorative Justice* 1, no. 3 (2018): 399-412.
- Lofton, Bonnie. "Does Restorative Justice Challenge Systemic Injustices?." In *Critical Issues in Restorative Justice*, edited by Howard Zehr and Barb Toews, 377-85. Monsey: Criminal Justice Press, 2004.
- London, Ross. *Crime, Punishment, and Restorative Justice: From the Margins to the Mainstream*. London: First Forum Press, 2011.
- . "The Restoration of Trust: Bringing Restorative Justice from the Margins to the Mainstream." *Criminal Justice Studies* 16, no. 3 (2003): 175-95.
- Luckner, John, and Reldan Nadler. *Processing the Experience: Strategies to Enhance and Generalize Learning*. Dubuque: Kendall/Hunt Publishing Company, 1992.
- Luzon, Golan. "Restorative Justice and Normative Responsibility." *Restorative Justice* 4, no. 1 (2016): 27-40.
- Maglione, Giuseppe. "Pushing the Theoretical Boundaries of Restorative Justice: Non-Sovereign Justice in Radical Political and Social Theories." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 21-31. London: Routledge, 2018.
- Marchetti, Elena, and Kathleen Daly. "Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model." *Sydney Law Review* 29, no. 3 (2007): 415-43.

- Margrain, Valerie, and Vijaya Dharan. "Connecting Curriculum." In *Responsive Pedagogy: Engaging Restoratively with Challenging Behaviour*, edited by Angus Macfarlane and Valerie Margrain, 64-82. Wellington: NZCER Press, 2011.
- Marshall, Christopher. *All Things Reconciled: Essays in Restorative Justice, Religious Violence, and the Interpretation of Scripture*. Eugene: Cascade Books, 2018.
- . *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment*. Grand Rapids: William B. Eerdmans., 2001.
- . *Compassionate Justice: An Interdisciplinary Dialogue with Two Gospel Parables on Law, Crime, and Restorative Justice*. Eugene: Cascade Books, 2012.
- . "The Evolution and Meaning of the Restorative City Ideal: An Introductory Essay." Unpublished: Victoria University of Wellington, 2016.
- . "A Gracious Legacy: Changing Lenses in New Zealand." *Restorative Justice* 3, no. 3 (2015): 439-44.
- . "The Restorative Social Movement." Lecture, Critical Issues in Restorative Justice Practice, Victoria University of Wellington, New Zealand, 2017.
- . "Reflections on the Spirit of Justice." In *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*, edited by Gabrielle M. Maxwell and James H. Liu. Wellington: Institute of Policy Studies, 2007.
- . "Restoring What? The Practice, Promise and Perils of Restorative Justice in New Zealand." *Policy Quarterly* 10, no. 2 (2014): 3-11.
- Maruna, Shadd. "Can the Criminal Justice System Promote Desistance from Crime? Learning from Labelling." In *Re-Imagining Imprisonment in Europe: Effects, Failures and the Future*, edited by Eoin Carroll and Kevin Warner, 90-108. Dublin: The Liffey Press Ltd, 2014.
- . "Desistance as a Social Movement." *Irish Probation Journal* 14 (2017): 5-20.
- . *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington: American Psychological Association, 2001.
- . "Reentry as a Rite of Passage." *Punishment and Society* 13, no. 1 (2011): 3-28.
- Maxwell, Gabrielle, and Hennessey Hayes. "Restorative Justice Developments in the Pacific Region: A Comprehensive Survey." *Contemporary Justice Review* 9, no. 2 (2006): 127-54.
- McCold, Paul. "Toward a Mid-Range Theory of Restorative Criminal Justice: A Reply to the Maximalist Model." *Contemporary Justice Review* 3, no. 4 (2000): 357-414.
- McElrea, Fred. "Updated Proposal for Pilot Community Justice Centres in New Zealand." 2006. <https://www.napierlibrary.co.nz/assets/mcelrea/Community-Justice-Centres-proposal-New-Zealand-200604.pdf>.
- McElrea, Fred, and David Thompson. "Our Traditional Criminal Justice System: A View through History." Unpublished: 2018.
- McGoey, Kathleen. *Harmonizing Heavens and Earth: A Daoist Shamanic Approach to Peacework*. Zurich: Lit Verlag, 2013.

- McMahon, Sheila M., David R. Karp, and Hayley Mulhern. "Addressing Individual and Community Needs in the Aftermath of Campus Sexual Misconduct: Restorative Justice as a Way Forward in the Re-Entry Process." *Journal of Sexual Aggression* 25, no. 1 (2018): 1-11.
- Mégret, Frédéric. "The Strange Case of the Victim Who Did Not Want Justice." *International Journal of Transitional Justice* 12, no. 3 (2018): 444-63.
- Merriam-Webster. "Prolepsis." <https://www.merriam-webster.com/dictionary/prolepsis>.
- Metge, Joan. *Kōrero Tahi: Talking Together*. Auckland: Auckland University Press, 2001.
- Moore, Elizabeth. "Restorative Justice Initiatives: Public Opinion and Support in NSW." *NSW Bureau of Crime Statistics and Research*, no. 77 (2012): 1-12.
- Moorfield, John. "Te Aka Māori-English, English-Māori Dictionary and Index." <https://maoridictionary.co.nz/>.
- Morris, Ruth. *Stories of Transformative Justice*. Toronto: Canadian Scholars' Press and Women's Press, 2000.
- Mulcahy, Linda. "Architects of Justice: The Politics of Courtroom Design." *Social & Legal Studies* 16, no. 3 (2007): 383-403.
- Murthy, Vivek H. "Former Surgeon General Decries 'Loneliness Epidemic,' Saying Work Is Partly to Blame." Interview by Jena McGregor. *The Washington Post* (2017).
- Myerhoff, Sally Moore and Barbara. "Secular Ritual: Forms and Meanings." In *Secular Ritual*, edited by Sally Moore and Barbara Myerhoff, 3-24. Amsterdam: Van Gorcum, 1977.
- Nelund, Amanda. "The Marginalised Woman: Thinking Beyond Victim/Offender in Restorative Justice." *Restorative Justice* 5, no. 3 (2017): 408-19.
- New Zealand, Department of Justice. "Public Attitudes Towards Restorative Justice." Wellington: Department of Justice, 1995.
- New Zealand, Ministry for Culture and Heritage "New Zealand History: Colonial Troops Invade the Urewera, 6 May 1869." <https://nzhistory.govt.nz/page/colonial-troops-invade-urewera>.
- New Zealand, Ministry of Justice. "Reoffending Analysis for Restorative Justice Cases 2008-2013: Summary Results." <https://www.justice.govt.nz/assets/Documents/Publications/rj-Reoffending-Analysis-for-Restorative-Justice-Cases-2008-2013-Summary-Results.pdf>.
- . "Restorative Justice Best Practice Framework." Wellington: Justice Centre, 2017.
- . "Restorative Justice Victim Satisfaction Survey Research Report." Wellington: Ministry of Justice, 2016.
- . "How Restorative Justice Works." <https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works/>.

- Noakes-Duncan, Thomas. *Communities of Restoration: Ecclesial Ethics and Restorative Justice*. London: Bloomsbury T&T Clark, 2017.
- . "The Emergence of Restorative Justice in Ecclesial Practice." *Journal of Moral Theology* 5, no. 2 (2016): 1-21.
- Nolte-Schamm, Claudia. "The African Traditional Ritual of Cleansing the Chest of Grudges as a Ritual of Reconciliation." *Religion and Theology* 13, no. 1 (2006): 90-106.
- Nussbaum, Martha C. *Upheavals of Thought: The Intelligence of Emotions*. Cambridge: Cambridge University Press, 2001.
- Olaveson, Tim. "Collective Effervescence and Communitas: Processual Models of Ritual and Society in Emile Durkheim and Victor Turner." *Dialectical Anthropology* 26, no. 2 (2001): 89-124.
- Opie, Anne. *From Outlaw to Citizen: Making the Transition from Prison in New Zealand*. Wellington: Dunmore Publishing, 2012.
- O'Shaughnessy, Annie. "Transforming Teaching and Learning through Mindfulness-Based Restorative Practices." In *Getting More out of Restorative Practices in Schools*, edited by Margaret Thorsborne, Nancy Riestenberg and Gillean McCluskey, 136-50. London: Jessica Kingsley Publisher, 2018.
- Pali, Brunilda. "Images of Alternative Justice: The Alternative of Restorative Justice." *Oxford Research Encyclopedia of Criminology: Crime, Media, and Popular Culture* (2017): 1-17.
- Parker, Priya Narayan. "Sustained Dialogue: How Students Are Changing Their Own Racial Climate." *About Campus: Enriching the Student Learning Experience* 2, no. 1 (2006): 17-23.
- Pattison, Stephen. *Shame: Theory, Therapy, Theology*. Cambridge: Cambridge University Press, 2000.
- Paul, Gregory D. "Justice Perceptions and Practices of Restorative Justice Facilitators and the Public." *Contemporary Justice Review* (2015): 1-22.
- Paulin, Judy, Tautari Huirama, Venezia Marlene Kingi, and Barb Lash. "The Rotorua Second Chance Community-Managed Restorative Justice Programme: An Evaluation." Wellington: Ministry of Justice, 2005.
- Pavlich, George. *Governing Paradoxes of Restorative Justice*. London: GlassHouse Press, 2005.
- . "Towards an Ethic of Restorative Justice." In *Restorative Justice and the Law*, edited by Lode Walgrave, 1-18. New York: Willian Publishing, 2002.
- . "Transforming Powers and Restorative Justice." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 462-75. London: Routledge, 2018.
- Perry, Diana. "Talking Circle: A Culturally Appropriate Approach to Healing Intergenerational Trauma within an Evidence-Based Paradigm." PhD diss., California Institute of Integral Studies, 2013.

- Picucci, Michael. "Ritual as Resource: Health and Transformation in the Twenty-First Century." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 140-57. London: Jessica Kingsley Publishers, 2017.
- Pinto, Jeanmarie. "Peacemaking as Ceremony: The Mediation Model of the Navajo Nation." *International Journal of Conflict Management* 11, no. 3 (2000): 267-86.
- Pointer, Lindsey. "Sustained Restorative Dialogue: Understanding and Preventing Sexual Harm on Campus." <https://lindseypointer.com/2018/08/25/sustained-restorative-dialogue-understanding-and-preventing-sexual-harm-on-campus/>.
- . "Understanding Transformational Space: An Analysis of Restorative Justice Conferences through Religious Studies Theoretical Lenses." *Restorative Justice* 4, no. 2 (2016): 148-67.
- Porter, Thomas. *The Spirit and Art of Conflict Transformation: Creating a Culture of Justpeace*. Nashville: Upper Room Books, 2010.
- Pranis, Kay. "Essential Elements for Constructing the Circle." Living Justice Press, livingjusticepress.org.
- . "Healing and Accountability in the Criminal Justice System: Applying Restorative Justice Processes in the Workplace." *Cardozo Journal of Conflict Resolution* 8, no. 2 (2007): 659-76.
- . *The Little Book of Circle Processes: A New/Old Approach to Peacemaking*. Intercourse: Good Books, 2015.
- . "Peacemaking Circles." *Corrections Today* 59, no. 7 (1997): 72-76.
- . "The Practice and Efficacy of Restorative Justice." *Journal of Religion & Spirituality in Social Work: Social Thought* 23, no. 1-2 (2004): 133-57.
- . "The Restorative Impulse." *Tikkun* 27, no. 1 (2012): 33-34.
- . "Restorative Values." In *Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel Van Ness, 59-74. Portland: Willan Publishing, 2007.
- . "Returning to the Source." *Restorative Justice* 3, no. 3 (2015): 425-28.
- Pranis, Kay, and Carolyn Boyes-Watson. *Circle Forward: Building a Restorative School Community*. St. Paul: Living Justice Press., 2015.
- . "The Promise of Circle: Circle as Foundation for Restorative Justice." Lecture, 6th National Conference on Community and Restorative Justice, Oakland, California, 2017.
- Pranis, Kay, Barry Stuart, and Mark Wedge. *Peacemaking Circles: From Crime to Community*. St. Paul: Living Justice Press, 2003.
- Pratt, John. "Beyond Evangelical Criminology: The Meaning and Significance of Restorative Justice." In *Institutionalizing Restorative Justice*, edited by Ivo Aertsen, Tom Daems and Luc Robert, 44-67. Cullompton: Willan Publishing, 2006.

- Quince, Khylee. "Restorative Justice and Indigenous Justice." In *Edx Course: Restorative Justice and Practice: Emergence of a Social Movement*. Interview by Haley Farrar, 2018.
- Radzik, Linda. *Making Amends: Atonement in Morality, Law, and Politics*. Oxford: Oxford University Press, 2009.
- Rappaport, Roy. "Obvious Aspects of Ritual." *Cambridge Anthropology* 2, no. 1 (1974): 3-69.
- Ratzinger, Joseph, and Jürgen Habermas. *Dialectics of Secularization: On Reason and Religion*. San Francisco: Ignatius Press, 2006.
- Rau, Steven E. "Civility, Decorum, and Ritual in the Judiciary." *William Mitchell Law Review* 37, no. 4 (2011): 2097-100.
- Restorative Justice for Oakland Youth. "Black Male Circle." Twitter, <https://twitter.com/RJOYOakland/status/1040396295804870656/photo/1>.
- . "Restorative Justice for Oakland Youth." <http://rjoyoakland.org/>.
- Retzinger, Suzanne, and Thomas Scheff. "Strategy for Community Conferences: Emotions and Social Bonds." In *Restorative Justice: International Perspectives*, edited by Burt Galaway and Joe Hudson, 315-36. Monsey: Criminal Justice Press, 1996.
- Rinker, Jeremy A., and Chelsey Jonason. "Restorative Justice as Reflective Practice and Applied Pedagogy on College Campuses." *Journal of Peace Education* 11, no. 2 (2014): 162-80.
- Roche, Declan. *Accountability in Restorative Justice*. Oxford: Oxford University Press, 2003.
- Rock, Paul. "Rules, Boundaries and the Courts: Some Problems in the Neo-Durkheimian Sociology of Deviance." *British Journal of Sociology* 49, no. 4 (1998): 586-601.
- Rogers, Carl. "The Necessary and Sufficient Conditions of Therapeutic Personality Change." *Journal of Consulting and Clinical Psychology* 60, no. 6 (1992): 827-32.
- . *On Becoming a Person: A Therapist's View of Psychotherapy*. London: Constable & Company Ltd., 1961.
- Rosenblatt, Fernanda Fonseca. *Role of Community in Restorative Justice*. London: Routledge, 2015.
- Ross, Jeffrey, and Larry Gould. "Native Americans, Criminal Justice, Criminological Theory, and Policy Development." In *Native Americans and the Criminal Justice System*, edited by Jeffrey Ross and Larry Gould, 3-14. Boulder: Paradigm Publishers, 2006.
- Ross, Rupert. *Returning to the Teachings: Exploring Aboriginal Justice*. Toronto: Penguin, 2006.
- Rossner, Meredith. *Just Emotions: Rituals of Restorative Justice*. Oxford: Oxford University Press, 2013.

- . "Why Emotions Work: Restorative Justice, Interaction Ritual and the Micro Potential for Emotional Transformation." University of Pennsylvania, 2008.
- Rossner, Meredith, and Jasmine Bruce. "Community Participation in Restorative Justice: Rituals, Reintegration, and Quasi-Professionalization." *Victims & Offenders* 11, no. 1 (2016): 1-19.
- . "Trajectories and Typologies of Pre-Sentence Restorative Justice Rituals." *Australian & New Zealand Journal of Criminology* 51, no. 4 (2018): 502-18.
- Rossner, Meredith, and David Tait. "Contested Emotions: Adversarial Rituals in Non-Adversarial Justice Procedures." *Monash University Law Review* 37, no. 1 (2011): 241-58.
- Roth, Mitchel. *An Eye for an Eye: A Global History of Crime and Punishment*. London: Reaktion Books, 2014.
- Rothman, Jay. "Reflexive Pedagogy: Teaching and Learning in Peace and Conflict Studies." *Conflict Resolution Quarterly* 32, no. 2 (2014): 109-28.
- Santino, Jack. "The Carnavalesque and the Ritualesque." *The Journal of American Folklore* 124, no. 491 (2011): 61–73.
- Scaer, Robert. "The Neurophysiology of Ritual and Trauma: Cultural Implications." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 55-69. London: Jessica Kingsley Publishers, 2017.
- Schechner, Richard. *The Future of Ritual: Writings on Culture and Performance*. London: Routledge, 1993.
- . "Performers and Spectators Transported and Transformed." *The Kenyon Review* 3, no. 4 (1981): 83-113.
- Scheff, Thomas J. "The Distancing of Emotion in Ritual." *Current Anthropology* 18, no. 3 (1977): 483-505.
- Schirch, Lisa. *Ritual and Symbol in Peacebuilding*. Boulder: Kumarian Press, 2005.
- Schrage, Jennifer Meyer, and Nancy Geist Giacomini. *Reframing Campus Conflict: Student Conduct Practice through a Social Justice Lens*. Bloomfield: Stylus Publishing, 2011.
- Segaert, Barbara. *Public Apology between Ritual and Regret: Symbolic Excuses on False Pretenses or True Reconciliation out of Sincere Regret?* New York: Editions Rodopi, 2013.
- Settles, Tanya. "Restorative Reentry: A Strategy to Improve Reentry Outcomes by Enhancing Social Capital." *Victims & Offenders* 4, no. 3 (2009): 285-302.
- Shapland, Joanna, Anne Atkinson, Helen Atkinson, James Dignan, Lucy Edwards, Jeremy Hibbert, Marie Howes, Jennifer Johnstone, Gwen Robinson, and Angela Sorsby. *Does Restorative Justice Affect Reconviction?: The Fourth Report from the Evaluation of Three Schemes*. Ministry of Justice UK, 2008.
- Shaw, Peter. *American Patriots and the Rituals of Revolution*. Cambridge: Harvard University Press, 1981.

- Sherman, Lawrence, Heather Strang, Caroline Angel, Daniel Woods, Geoffrey Barnes, Sarah Bennett, and Nova Inkpen. "Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials." *Journal of Experimental Criminology* 1, no. 3 (2005): 367-95.
- Sherman, Lawrence, Heather Strang, Geoffrey Barnes, Daniel Woods, Sarah Bennett, Nova Inkpen, Dorothy Newbury-Birch, *et al.* "Twelve Experiments in Restorative Justice: The Jerry Lee Program of Randomized Trials of Restorative Justice Conferences." *Journal of Experimental Criminology* 11, no. 4 (2015): 501-40.
- Sliva, Shannon. "Finally 'Changing Lenses'? State-Level Determinants of Restorative Justice Laws." *The Prison Journal* 98, no. 5 (2018): 519-43.
- Smit, Peter-Ben. "In Search of Real Circumcision: Ritual Failure and Circumcision in Paul." *Journal for the Study of the New Testament* 40, no. 1 (2017): 73-100.
- Smith, Jean. *Tapu Removal in Māori Religion*. Wellington: Polynesian Society, 1976.
- Smith, Jonathan Z. *To Take Place: Toward Theory in Ritual*. Chicago: University of Chicago Press, 1987.
- Smyth, Matthieu. "Human Rituals and Ethology: A Scholar's Journey." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 40-54. London: Jessica Kingsley Publishers, 2017.
- Son, Timothy D. *Ritual Practices in Congregational Identity Formation*. Lanham: The Rowman & Littlefield Publishing Group, 2014.
- Spearlt. "Legal Punishment as Civil Ritual: Making Cultural Sense of Harsh Punishment." *Mississippi Law Journal* 82, no. 1 (2013): 1-44.
- Stauffer, Carl, and Johonna Turner. "The New Generation of Restorative Justice." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 442-61. London: Routledge, 2018.
- Stengs, Irene. "Commemorative Ritual and the Power of Place." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 188-202. London: Jessica Kingsley Publishers, 2017.
- Stephenson, Barry. "Ritualization and Ritual Invention." In *The Oxford Handbook of Early Christian Ritual*, edited by Risto Uro, Juliette Day, Richard DeMaris and Rikard Roitto, 18-37. Oxford: Oxford University Press, 2019.
- Stewart, Philip, and Nissa Shamsi. "Transformative Experience, Conflict Resolution and Sustained Dialogue." *International Journal of Conflict Engagement and Resolution* 3, no. 2 (2015): 158-79.
- Strang, Heather, Lawrence W Sherman, Evan Mayo-Wilson, Daniel Woods, and Barak Ariel. "Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects of Offender Recidivism and Victim Satisfaction. A Systematic Review." *Campbell Systematic Reviews* 12 (2013): 1-59.
- Sullivan, Dennis, and Larry Tifft. *Restorative Justice: Healing the Foundations of Our Everyday Lives*. Monsey: Willow Tree Press, 2001.

- Sullivan, Dennis, Larry Tifft, and Peter Cordella. "The Phenomenon of Restorative Justice: Some Introductory Remarks." *Contemporary Justice Review* 1, no. 1 (1998): 7-20.
- Tambiah, Stanley Jeyaraja. *A Performative Approach to Ritual*. Oxford: Oxford University Press, 1979.
- Tannenbaum, Frank. *Crime and the Community*. New York: Columbia University Press, 1938.
- Tarnas, Richard. *The Passion of the Western Mind: Understanding the Ideas That Have Shaped Our World View*. London: Pimlico, 1996.
- Taylor, Charles. *A Secular Age*. Cambridge: Belknap Press of Harvard University Press, 2007.
- Title, Beverly, Meir Carasso, and Mark Seidler. "The Longmont Community Justice Partnership: Restorative Justice Practice as Collaboration." *Contemporary Justice Review* 5, no. 3 (2002): 273-84.
- Toews, Barb. "'It's a Dead Place': A Qualitative Exploration of Violence Survivors' Perceptions of Justice Architecture." *Contemporary Justice Review* 21, no. 2 (2018): 208-22.
- . *Little Book of Restorative Justice for People in Prison: Rebuilding the Web of Relationships*. New York: Good Books, 2006.
- . "This Backyard Is My Serenity Place: Learning from Incarcerated Women About the Architecture and Design of Restorative Justice." *Restorative Justice* 4, no. 2 (2016): 214-36.
- . "Toward a Restorative Justice Pedagogy: Reflections on Teaching Restorative Justice in Correctional Facilities." *Issues in Criminal, Social, and Restorative Justice* 16, no. 1 (2013): 6-27.
- Toews, Barb, and M. Kay Harris. "Restorative Justice in Prisons." In *Social Work and Restorative Justice: Skills for Dialogue, Peacemaking, and Reconciliation*, edited by Elizabeth Beck, Nancy Kropf and Pamela Blume Leonard, 118-48. Oxford: Oxford University Press, 2010.
- Toews, Barb, Amy Wagenfield, and Julie Stevens. "Impact of Nature-Based Intervention on Incarcerated Women." *International Journal of Prisoner Health* 14, no. 4 (2018): 232-43.
- Toews, Barb, and Howard Zehr. "Ways of Knowing for a Restorative Worldview." In *Restorative Justice in Context: International Practice and Directions*, edited by Elmar Weitekamp and Hans-Jurgen Kerner, 257-71. Portland: Willan Publishing, 2003.
- Tomas, Nin, and Khylee Quince. "Māori Disputes and Their Resolution." In *Dispute Resolution in New Zealand*, edited by Peter Spiller, 205-34. Auckland: Oxford University Press, 1990.
- Triggs, Sue. "New Zealand Court-Referred Restorative Justice Pilot: Evaluation." Wellington: Ministry of Justice, 2005.

- Tuagalu, I'Uogafa. "Heuristics of the Vā." *AlterNative: An International Journal of Indigenous Peoples* 4, no. 1 (2008): 107-26.
- Turner, Victor. *From Ritual to Theatre: The Human Seriousness of Play*. New York: Performing Arts Journal Publications, 1982.
- . *The Ritual Process: Structure and Anti-Structure*. Chicago: Aldine Publishing Company, 1969.
- Tyler, Tom R. "Restorative Justice and Procedural Justice: Dealing with Rule Breaking." *Journal of Social Issues* 62, no. 2 (2006): 307-26.
- Vaandering, Dorothy. "The Significance of Critical Theory for Restorative Justice in Education." *Review of Education/Pedagogy/Cultural Studies* 32, no. 2 (2010): 145-76.
- van Gennep, Arnold. *The Rites of Passage*. Translated by Monika Vizedom and Gabrielle Caffee. London: Routledge and Kegan Paul, 1960 (1909).
- Van Ness, Daniel, and Karen Heetderks Strong. *Restoring Justice: An Introduction to Restorative Justice*. Waltham: Anderson Publishing, 2015.
- Van Rensburg, Jim. "The Dawn of Circles of Support and Accountability in New Zealand." *Sexual Abuse in Australia and New Zealand* 4, no. 2 (2012): 30-35.
- . "Preparing Core Members for Circles of Support and Accountability in New Zealand." *Practice- The New Zealand Corrections Journal* 2, no. 1 (2014): 35-38.
- Vaughan, Barry. "The Internal Narrative of Desistance." *The British Journal of Criminology* 47, no. 3 (2006): 390-404.
- Vincenzo, Gianpiero. "New Ritual Society: Consumerist Revolution and the Rediscovery of Ritual." In *Emerging Ritual in Secular Societies: A Transdisciplinary Conversation*, edited by Jeltje Gordon-Lennox, 203-16. London: Jessica Kingsley Publishers, 2017.
- Wachtel, Joshua, Ted Wachtel, and Stacey Miller. *Building Campus Community: Restorative Practices in Residential Life*. Bethlehem: International Institute for Restorative Practices, 2012.
- Wachtel, Ted. *Dreaming of a New Reality: How Restorative Practices Reduce Crime and Violence, Improve Relationships and Strengthen Civil Society*. Pipersville: The Piper's Press, 2013.
- . "Restorative Practices and the Life-World Implications of a New Social Science." *Revista de Asistentă Socială* 4 (2015): 7-18.
- Wachtel, Ted, and Paul McCold. "Restorative Justice in Everyday Life." In *Restorative Justice and Civil Society*, edited by Heather Strang and John Braithwaite, 114-29. Cambridge: Cambridge University Press, 2001.
- Wadhwa, Anita. *Restorative Justice in Urban Schools: Disrupting the School-to-Prison Pipeline*. Florence: Taylor and Francis, 2015.
- Walker, Lorenn. "Huikahi Restorative Circles: Group Process for Self-Directed Reentry Planning and Family Healing." *European Journal of Probation* 2, no. 2 (2010): 76-95.

- . "Modified Restorative Circles: A Reintegration Group Planning Process That Promotes Desistance." *Contemporary Justice Review* 12, no. 4 (2009): 419-31.
- . "Restorative Celebrations for Parolee and Probationer Completion: The Importance of Ritual for Reentry." In *Restorative Justice Today: Practical Applications*, edited by Katherine Van Wormer and Lorenn Walker, 185-92. Los Angeles: Sage Publications, 2013.
- Walker, Lorenn, and Rebecca Greening. "Huikahi Restorative Circles: A Public Health Approach to Reentry Planning." In *Restorative Justice Today: Practical Applications*, edited by Katherine Van Wormer and Lorenn Walker, 173-83. Los Angeles: Sage Publications, 2013.
- Walker, Lorenn, Cheri Tarutani, and Ben Furman. "The Power of Restorative Apologies (Real and Imagined) for Victims and Offenders." *Temida* 20, no. 3 (2017): 435-58.
- Walker, Polly. "Creating a New Story: Ritual, Ceremony, and Conflict Transformation between Indigenous and Settler People." In *Acting Together: Performance and the Creative Transformation of Conflict*, edited by Cynthia Cohen, Roberto Gutiérrez Varea and Polly Walker, 225-51. Oakland: New Village Press, 2011.
- Ward, Tony, and Robyn Langlands. "Repairing the Rupture: Restorative Justice and the Rehabilitation of Offenders." *Aggression and Violent Behavior* 14, no. 3 (2009): 205-14.
- Ward, Tony, and Shadd Maruna. *Rehabilitation: Beyond the Risk Paradigm*. London: Routledge, 2007.
- Webby, Kim. "The Price of Peace." Conbrio Media Ltd., 2015.
- Whitman, James Q. "The Comparative Study of Criminal Punishment." *Annual Review of Law and Social Science* 1 (2005): 17-34.
- . *Degradation, Harshness, and Mercy*. Oxford: Oxford University Press, 2005.
- . "Harsh Justice Criminal Punishment and the Widening Divide between America and Europe." Oxford: Oxford University Press, 2005.
- Wicks, Emma. "Secondary Sexting: A Restorative Framework for Understanding and Addressing the Harms of Sexting Behaviour among Secondary School Students." Master's thesis, Victoria University of Wellington, 2017.
- Willis, Roxana. "'Let's Talk About It': Why Social Class Matters to Restorative Justice." *Criminology & Criminal Justice* 18, no. 5 (2018): 1-20.
- Winn, Peter. "Legal Ritual." *Law and Critique* 2, no. 2 (1991): 207-32.
- Wood, William. "Why Restorative Justice Will Not Reduce Incarceration." *British Journal of Criminology* 55, no. 5 (2015): 883-900.
- Wood, William, and Masahiro Suzuki. "Four Challenges in the Future of Restorative Justice." *Victims & Offenders* 11, no. 1 (2016): 149-72.
- Woolford, Andrew. *The Politics of Restorative Justice: A Critical Introduction*. Winnipeg: Fernwood Publishing, 2009.

- Workman, Kim. "Back to Churchill: an Old Vision for Prisoner Reintegration." *Policy Quarterly* 5, no. 2 (2009): 24-31.
- Wright, Martin. "Extending the Reach of Restorative Justice." In *Routledge International Handbook of Restorative Justice*, edited by Theo Gavrielides, 476-87. London: Routledge, 2018.
- Yazzie, Robert. "'Life Comes from It': Navajo Justice Concepts." *New Mexico Law Review* 24, no. 2 (1994): 175-90.
- Yoffee, Emily. "Innocence Is Irrelevant." *The Atlantic*, 2017.
<https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>
- Zehr, Howard. "The Art of Justice: A Reply to Brunilda Pali." *Restorative Justice* 2, no. 1 (2014): 95-102.
- . *Changing Lenses: A New Focus for Crime and Justice*. Scottdale: Herald Press, 1990.
- . *The Little Book of Restorative Justice, Revised and Updated*. New York: Good Books, 2015.
- . "Reflections on Lenses." *Restorative Justice* 3, no. 3 (2015): 460-67.
- Zion, James. "Justice as Phoenix: Traditional Indigenous Law, Restorative Justice, and the Collapse of the State." In *Native Americans and the Criminal Justice System*, edited by Jeffrey Ross and Larry Gould, 51-66. Boulder: Paradigm Publishers, 2006.