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From Retribution to Restoration: Implementing Nationwide Restorative Justice Initiatives - Lessons From Jamaica

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ARTICLE

FROM RETRIBUTION TO RESTORATION:
IMPLEMENTING NATIONWIDE RESTORATIVE
JUSTICE INITIATIVES—LESSONS FROM JAMAICA

*Inga N. Laurent**

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I. INTRODUCTION

The effectiveness of retributive justice, which uses incarceration as the major tool for punishment in response to crime, is currently being questioned.¹ Harsh critiques of the system abound, citing failures to address adequately victim needs and the root causes of the complex social problems underlying crime, such as poverty, racial inequality, unemployment, citizenship, and inadequate mental health service provision.² Critics also highlight the stigmatization that occurs post-

1. See *Criminal Justice Reform*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html> [https://perma.cc/DGT8-JTG8] (last visited Apr. 21, 2017) (stating that “[i]n most countries of the world, detention and imprisonment are the main measures imposed on individuals who are suspected of having breached the criminal law, or have indeed been convicted of a criminal offence. The overuse of prisons leads to a series of mutually reinforcing challenges in responding appropriately to the social reintegration needs of offenders, whilst also violating the rights of those who are innocent.”). The website reports on some key areas of concern: overcrowding, poor conditions, poor physical and mental health services, lack of re-entry programs, proper planning, monitoring, evaluation, resources and an increase number of prisoners, including those with special needs. *Id.*

2. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 13 (2012) (arguing that the criminal justice system, including its larger reach of its laws, policies, and custom has created a new racial caste system: “To put the matter starkly: The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy.”); see also Todd R. Clear et al., *Incarceration and the Community: The Problem of Removing and Returning Offenders*, 47 *NCCD NEWS* 335, 337 (2001); see generally JAMES KILGORE, *UNDERSTANDING MASS INCARCERATION: A PEOPLE’S GUIDE TO THE KEY CIVIL RIGHTS STRUGGLE OF OUR TIME* (2015) (discussing the shift that has allowed criminal justice to move from a system that attempted to provide people with rehabilitative opportunities to one that warehouses human beings).

incarceration, creating problems that have long-lasting effects on ex-offenders that often extend to their families. The National Association for the Advancement of Colored People (“NAACP”) detailed the NAACP’s in-depth report on these serious consequences, *Misplaced Priorities: Over Incarcerate, Under Educate*, concludes, “[s]pending time in prison reduces people’s health quality; makes it more difficult to obtain jobs, higher education, housing, and day care for their children; and in many cases, prevents them from voting when they do return to their communities.”³

“The intergenerational cycle of criminalization continues when parents go to prison.”⁴ In fact, a child with a parent who experiences incarceration may have an increased likelihood of institutionalization, in either foster care or incarceration.⁵ The destabilizing experience of incarceration increases the likelihood of ex-offenders running into issues that may prevent them from living productive lives (i.e. voting, lack of housing, etc.) making the possibility of recidivism a reality.⁶ Our current system’s failures require questioning the foundation and maintenance of retributive justice models and considering potential alternative models with the hope of developing new, integrated systems that produce better outcomes for victims, ex-offenders, and communities.

Growing acknowledgment of systemic limitations provides an opening for deep consideration of our beliefs on crime, punishment, and justice. Many countries are evaluating systems’ purposes and efficacy and implementing reforms.⁷ In Jamaica (“Jamaica” or “the Island”), a country struggling with a dangerously high violent crime rate, efforts are underway to strengthen both the rule of law and the legal system in an effort to reduce crime.⁸

3. NAACP, MISPLACED PRIORITIES: OVER INCARCERATE, UNDER EDUCATE EXCESSIVE SPENDING ON INCARCERATION UNDERMINES EDUCATIONAL OPPORTUNITY AND PUBLIC SAFETY IN COMMUNITIES 11 (2011), available at <http://fliphtml5.com/tjrx/hfzj/basic> [<https://perma.cc/96MX-L9ZX>].

4. *Id.*

5. Clear et al., *supra* note 2, at 341-46.

6. Clear et al., *supra* note 2, at 341-46.

7. *Criminal Justice Reform*, *supra* note 1.

8. ANTHONY D. HARRIOT & MARLYN JONES, CRIME AND VIOLENCE IN JAMAICA: IDB SERIES ON CRIME AND VIOLENCE IN THE CARIBBEAN ix (2016), available at <https://publications.iadb.org/bitstream/handle/11319/7773/Crime-and-Violence-in-Jamaica-IDB-Series-on-Crime-and-Violence-in-the-Caribbean.pdf?sequence=4> [<https://perma.cc/K8DW-ENKL>] (regarding plans for system reform: “Jamaican government

Crime is now the main public safety issue for Jamaicans and a significant threat to the country's human and economic development. Data from the Jamaica Constabulary Force (JCF), public health data, and survey information show high levels of criminality and corruption on the island. Jamaica has homicide rates that are notably higher than both the regional and global averages.⁹

Four key programmes have been designated with the "potential to make a difference," including the Restorative Justice Programme.¹⁰ The Government of Jamaica's ("GOJ") choice to systematically integrate restorative justice seems to signal a desire to eschew the inherited, colonial, retributive model that has not managed to stem problems of violent crime and move toward an ancestrally based, holistic method of conceiving justice.

This Article reflects on these shifts as they occur. It looks backward to investigate how these systems developed and forward to consider the challenges and opportunities that exist with the adoption and integration of restorative justice, as an alternative or complementary model of justice. The remainder of this Part creates some parameters around the subjective notion of "crime." Part II provides a snapshot of restorative justice, attempting to simplify the dense, complex web of information surrounding the theory and practice. Part III briefly introduces the historical and current legal landscape of Jamaica. Part IV weaves the information from the previous sections into practical considerations of present and potential challenges and opportunities for systematic integration of initiatives across the Island. Finally, Part V concludes with some final considerations on how to efficiently and effectively implement restorative justice theories and policy in practice.

policy documents such as the National Security Policy for Jamaica and Vision 2030 acknowledge that security is a public good that citizens expect the State to provide. Central to providing security is reducing violent crimes, preventing increases in crime, strengthening the justice system, and promoting the rule of law.").

9. *Id.* at ix.

10. *Id.* at 56.

A. The Construct of Crime

Howard Zehr, the “grandfather of restorative justice”¹¹ and pioneer of the modern-day movement, poses a helpful question for framing any conversation on justice: “How should societies respond to wrongdoing?”¹² As previously highlighted, the response throughout much of the world is retributive. Clichés such as “you do the crime, you do the time,” “an eye for an eye,” and “just desserts” are colloquialisms that reflect this deeply rooted response to crime and punishment. However innate this response may feel for Westerners, the retributive model of justice is merely one of an infinite range of possibilities.¹³ Embedded within Zehr’s question is the implication that justice is malleable, or a choice that is made based on our shifting individual and collective values, one influenced by context and a sense of identity.¹⁴ In other words, crime is a multi-dimensional construct.¹⁵

Consider just a few of the varied applicable contexts for crime: male versus female (and the inclusion of those who fall somewhere outside this classification on the gender spectrum), urban versus rural versus suburban, and adult versus juvenile, to name a few. Coverage over such broad terrain can create considerable difficulty in setting up the boundaries of “crime,” requiring the use of abstractions¹⁶ or a general theory.¹⁷ John Braithwaite—another prominent theorist in the restorative justice movement—provides a framework, defining “crime” as a circumstantial act that a community regards as poor behavior in relation to most other acts.¹⁸ For example, injecting opioids

11. *Faculty/Staff Directory: Howard Zehr*, E. MENNONITE UNIV. <https://www.emu.edu/personnel/people/show/zehrh> [<https://perma.cc/K9L7-HN2C>] (last visited Dec. 19, 2016).

12. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 3 (2002) [hereinafter ZEHR, *LITTLE BOOK*] (using the term “wrongdoing,” for which this Article will substitute the term “crime,” which can refer to a number of actions, including acts which are merely norm and rule-violations as well as criminal acts).

13. JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1989); *Restitution, CTR. FOR JUST. & RECONCILIATION*, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/> [<https://perma.cc/GTD5-RHWF>] (last visited Jan 4, 2017).

14. See generally Michael Wenzel et al., *Retributive and Restorative Justice*, 32 L. & HUM. BEHAV. 375, 375–89 (2008).

15. BRAITHWAITE, *supra* note 13, at 1.

16. HOWARD ZEHR, *CHANGING LENSES: RESTORATIVE JUSTICE FOR OUR TIMES* 21 (25th anniversary ed. 2015) [hereinafter ZEHR, *CHANGING LENSES*].

17. BRAITHWAITE, *supra* note 13, at 1.

18. BRAITHWAITE, *supra* note 13, at 2.

is not an inherently criminal act in itself; however, it can become criminal depending on societal regard. To help solidify this concept, imagine two different scenarios regarding the opioids—in one, someone is injecting themselves to get high, in the other, a well-trained and qualified nurse is injecting a measured dose of the drug in a medical facility for pain management.¹⁹ An act becomes criminal after a process of institutionalization, where it is funneled through systems sanctioned with the authority to create, enforce, and adjudicate matters of criminality.²⁰ An “overwhelming majority” of society, who have tactically agreed to support and abide within the established proscription, empower these systems with resources and authority.²¹ “The criminal law and criminal justice system are ‘real’ precisely because countless people . . . accept them as real and reproduce them through social action.”²² Once acts are labeled as criminal, the choice to step outside the boundary is deviant, “choices made by the criminal actor in knowledge that he is defying criminal proscription which is mutually intelligible to actors in the society as criminal.”²³ For most of the Western world, the instinctive response is punitive.

Motives for this retributive response have been classically categorized in two groupings: behavior control and justice restoration,²⁴ and each can be achieved through a variety of means. Examples of punitive means of behavior control include incapacitation or the restriction of liberty through confinement and deterrence, both general (societal) and specific (individual).²⁵ Regarding the “justice restoration motive,” a retributive lens implies that once a crime is committed, justice cannot occur without punishment, “the suffering and humiliation it implies for the offender, restores the justice.”²⁶ While accustomed to punitive responses, constructive means of enforcement for these motives exist as well. A constructive response to the justice

19. BRAITHWAITE, *supra* note 13, at 2.

20. BRAITHWAITE, *supra* note 13, at 2-4.

21. BRAITHWAITE, *supra* note 13, at 4 (“If the awareness that an act is criminal fundamentally changes the choices being made, then the key to a general explanation of crime lies in identifying variables that explain the capacity of some individuals and collectivities to resist, ignore, or succumb to the institutionalized disapproval that goes with crime.”).

22. BRAITHWAITE, *supra* note 13, at 3.

23. BRAITHWAITE, *supra* note 13, at 3.

24. Wenzel et al., *supra* note 14, at 378.

25. See Wenzel et al., *supra* note 14, at 378.

26. See Wenzel et al., *supra* note 14, at 378.

restoration motive might include a restorative process, which re-shapes the definition of crime, broadening it to be seen as a conflict between victim, offender, and the community. The conflict should be resolved and repaired by those parties through collaborative problem-solving and consensual agreement (though it is important to correct a common misconception—punishment can and often is part of these agreements—if the parties agree this is a necessary element in response to the particular crime).²⁷ Finally, a constructive means for the behavior control motive could include physical restrictions on liberty as well. However, there would be an expressly rehabilitative purpose for the confinement where “offenders are expected to take steps for their better adjustment to society, they are provided with assistance and support to learn new skills, expand their behavioural repertoire, and change attitudes.”²⁸

Though constructive means exist, our heavy reliance on a punitive response has been shaped over time and is sensibly grounded on psychological and philosophical (including others, such as religious, moral, and political²⁹) reasons. Psychologically, victims of crime often feel as if the act was an affront to their self-worth or an exercise of power over them. This loss of control and violation of autonomy “induces disharmony in the victim’s cognitive structures of the world.”³⁰ Crime can be disorienting and experiencing it can overturn some of the central assumptions that guide and order our lives.³¹ Some typical emotional reactions to this disruption include feelings of anger or helplessness.³² The retributive model of justice directly responds to those emotions, using punishment in the hopes to produce multiple results: to bring the offender’s belief system back into alignment with society’s, to re-empower the victim, and to restore the effects of the demoralization.³³

Philosophically, continuing support for retributive models of justice make sense because they can operate in a fair manner, supported

27. See Wenzel et al., *supra* note 14, at 378.

28. See Wenzel et al., *supra* note 14, at 378.

29. Jennifer Llewellyn et al., *Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation*, 36 DALHOUSIE L. J. 281, 283 (2013).

30. Neil Vidmar, *Retribution and Revenge*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 31, 42 (Joseph Sanders & V. Lee Hamilton eds., 2001).

31. ZEHR, CHANGING LENSES, *supra* note 16, at 29-30.

32. See ZEHR, CHANGING LENSES, *supra* note 16, at 29-30.

33. See generally Vidmar, *supra* note 30.

by foundational principles held in high regard, such as objectivity, consistency, efficiency, and equanimity. Under the model, a case is generally presented to an unbiased fact-finder, who is asked to make a decision of guilt or innocence based on the evidence presented and according to precedent. Once an offender is found guilty, a judge can unilaterally impose punishment regardless of any remorse or contrition, enacting equal application of the law irrespective of context.³⁴

Theoretically, the combination of psychological and philosophical motives and values, that compose retributive systems are laudable. However, if in practice, these cannot be adequately operationalized to produce outcomes that deter crime, decrease recidivism, and provide opportunities for meaningful re-entry to all ex-offenders, almost all of who will need to re-integrate into the communities from which they came, alternative and complementary models must be considered. Additionally, while the foundational values of retributive systems are important for just outcomes, a question remains as to whether these should be the primary values necessary to mete out justice in our evolving societies. Would attempting to integrate systems that support alternative values such as individualization, relationship and harm repair, and communal problem solving prove more adept at producing just results for victims, offenders, and community members? If so, should these systems replace the current models or merely be complementary? How do we effectively evaluate and monitor these new or co-occurring systems as they are integrated? Restorative justice practitioners have been posing and examining these questions since the beginning of the movement nearly forty years ago, calling for a paradigm shift that asks us to challenge “the assumption underlying the existing criminal justice system that punishment of the offender is sufficient, or even necessary to restore justice after criminal offenses.”³⁵

II. UNDERSTANDING RESTORATIVE JUSTICE

At a Delphi process,³⁶ convened to determine if experts could arrive at a “consensual conception of restorative justice,” Tony

34. See generally Vidmar, *supra* note 30.

35. Wenzel et al., *supra* note 14, at 376.

36. JOHN BRAITHWAITE, *RESTORATIVE JUSTICE & RESPONSIVE REGULATION* 11 (2002). Paul McCold called a Delphi process to see if experts could arrive at a “consensual conception

Marshall, one of those experts, offered the “the most acceptable working definition . . . [as] a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of [an] offense and its implications for the future.”³⁷ Deriving consensus around the terminology is complicated due to the vast scope of practices, which a large number of practitioners, including state actors, individuals, and public interest organizations, have modernized and adapted from a range of ancient practices, spanning millennia and continents.³⁸ While drawing from this diverse pool of traditions is useful for developing a practical and responsive model of justice—for in “seeking to understand diversity in the practice of justice, we acquire a richer understanding of how justice becomes real in the lived experiences of its citizens,”³⁹—the voluminous body of current day adaptations complicates the consensus process. The most salient point is that restorative justice “has been the dominant model of criminal justice throughout most of human history for perhaps all the world’s people,”⁴⁰ including Native Americans, Asians, Polynesians, Africans, ancient Arab, Greek, Vedic civilizations, Buddhist, Taoist, and Confucian traditions, among others.⁴¹ This shift in thinking can be difficult, as most of the Western world is now so steeped in a culture of retributive justice, that the dominant approach can seemingly feel innate.

When considering societal evolution, the necessity of the restorative model of justice emerges. Early hominids (think hunter-gatherers) lived a “precarious existence,” were deeply communal, and required interdependence for survival.⁴² Therefore, removing productive members of a tribe, even those who committed a wrongdoing, was not typically a viable method and could only be resorted to in the direst of circumstances. Keeping peace and avoiding inter-tribal

of restorative justice.” *Id.* Though the consensus was not “overwhelming,” this is currently the most accepted definition.

37. *See id.*

38. U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS (2006), available at https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf [<https://perma.cc/A3UY-9WNU>] [hereinafter HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS].

39. BRAITHWAITE, *supra* note 36, at 26.

40. BRAITHWAITE, *supra* note 36, at 5.

41. *See* BRAITHWAITE, *supra* note 36, at 5.

42. SEBASTIAN JUNGER, *TRIBE: ON HOMECOMING AND BELONGING* (2016).

conflict were of the utmost importance, and “for most of human history reconciliation and restitution to victims and their kin took precedence over vengeance.”⁴³ Preserving relationships was of primary importance; restorative practices accounted for this and developed to foster repair for damaged relationships. The process, though it varies, was and continues to be primarily dialogic and concerned with relationship repair.⁴⁴

In essence a restorative approach to offending behaviour is one in which the repair of relationships and of the harm caused takes precedence over assigning blame and applying a sanction. This mindset shift from what is often a deepseated [sic] attachment to punishment as a response to wrongdoing, to a desire for healing and closure, following genuine connection and communication between all those involved, is at once simple and yet profound.⁴⁵

The move away from restorative justice emerged around the rise of the feudal aristocracy and the nation-state.⁴⁶ Over time, the notion of crime slowly shifted from a conflict between people toward a matter that the state subsumed: from “fealty to and felony against the king, instead of a wrong done to another person.”⁴⁷ Christopher Bright, writing on behalf of Prison Fellowship International, provides a succinct look at this shift:

The main purpose of institutionalized restitution was to prevent retaliatory violence for wrongdoing, providing a more “civilized” means of reparation. But, in the West, with the rise of the feudal aristocracy and the nation-state, royal officials began to assess fines, in an effort to increase coffers, for presiding over grievances and protecting offenders from retaliation. Eventually, these fines began to crowd out restitution paid to the victim. Finally, with the rise of the modern state’s assumption of the investigative, prosecutorial and enforcement functions, crime became treated

43. Fania E. Davis, Adjunct Professor, New Coll. Sch. of Law, Ghandi’s Justice and Restorative Justice (Oct. 16, 2005), *available at* <http://restorativejustice.org/10fulltext/davisfania.pdf> [https://perma.cc/LMQ8-3SRK].

44. Llewellyn et al., *supra* note 29.

45. Belinda Hopkins, *From Restorative Justice to Restorative Culture*, 4 *REVISTA DE ASISTENTA SOCIALA* 19, 20 (2015).

46. Christopher Bright, *Restitution*, *CTR. FOR JUSTICE & RECONCILIATION*, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/> [https://perma.cc/MUX7-67QT] (last visited May 16, 2016).

47. *Id.* at 5.

primarily as a disruption of the state's security; no longer were the financial hardships to private individuals of vital importance in criminal courts. Restitution to the victim had fallen out of use.⁴⁸

Today's model streamlines the crime management process for citizens, absolving them of the duties (prosecutorial, etc.) associated with crime and placing the burden on the state.⁴⁹ While this absolution is arguably convenient and allows for a more streamlined administration of justice, the effect also strips citizens of the opportunity and responsibility to be meaningfully involved in the justice process. Restorative justice seeks to correct that imbalance, asserting that crime is not solely a violation of fixed laws, but a conflict, which should be returned to its "rightful owners" for resolution.⁵⁰ Nils Christie, a prolific writer on restorative tradition, theorized on the importance of conflict ownership, surmising that conflicts belong to those directly affected by them: victims, offenders, and the community. With a rather harsh critique of the traditional system, he stated: "Criminal justice institutions and law professionals steal those conflicts from the affected parties and rob them of their opportunity, their right and duty to learn and grow through their conflicts . . . creating a loss in opportunities for norm-clarification."⁵¹ Without these opportunities, victims, offenders, communities, and States can potentially manage crime but addressing underlying causes and creating safer communities is doubtful. The offender is in the best possible position to provide information surrounding the underlying reasons for the commission of a crime, yet in our current systems, very little inducement and process exist to incentivize sharing this information.

Failing to meaningfully gather and assess offender information, means we can never understand and respond to root causes. If offenders are not provided with opportunities to learn about and internalize the harm their actions have caused, expecting them to be fully accountable or provide meaningful restitution is unlikely. If communities are not brought into the conversation, knowing how to best employ resources to successfully address reoccurring problems within their boundaries or how to effectively assist victims is improbable. If victims are not central to the justice process, they will have difficulty healing.

48. *Id.*

49. See Llewellyn et al., *supra* note 29, at 288.

50. Wenzel et al., *supra* note 14, at 376 (citing Nils Christie, *Conflicts as Property*, 17 BRIT. J. OF CRIMINOLOGY 1, 1-15 (1977)).

51. Wenzel et al., *supra* note 14, at 377.

Restorative justice practitioners, ancient and modern-day, have devised dialogic processes, which create the space to bring all relevant parties together for collaborative work on a pathway to repair the relationship and harm. Today “the form restorative justice may take varies within local contexts, but restorative processes are usually community-based, informal, dialogical, participatory, and egalitarian—in many respects the opposite of hierarchical and formal traditional criminal justice.”⁵² Whereas traditional systems are often too cumbersome to be easily adaptive, restorative practices are flexible and seek to shift the domain of crime from states to individuals; it “expands the circle of stakeholders,” addressing needs of all the parties affected, including the victim, the offender, and the community, which retributive system often fail to properly assess.⁵³

A. *Addressing Needs*

*“Justice begins with needs.”*⁵⁴

1. The Needs of the Victim

After a crime occurs, the starting point of response should arguably and primarily be concerned with addressing a victim’s needs. However, while the structure of the current system does respond quite immediately to the need for finding the responsible party, it does little to support victims in obtaining meaningful accountability or healing.⁵⁵ The State, authorized with the responsibility for prosecution, supplants the victim; its goal focuses on assessing guilt and obtaining conviction. Regardless of how institutions carry out this substitution, the act, by its very nature, moves victims from the center to the periphery of the criminal justice process, often resulting in their feeling ignored or unimportant.⁵⁶ In an article on restorative justice, one victim expressed

52. Llewellyn et al., *supra* note 29, at 284.

53. ZEHR, *LITTLE BOOK*, *supra* note 12, at 13.

54. ZEHR, *CHANGING LENSES*, *supra* note 16, at 192.

55. ZEHR, *CHANGING LENSES*, *supra* note 16, at 188. The author cautions that healing does not require minimization of the crime but implies “a degree of resolution or transcendence.” This transcendence may ultimately include forgiveness; however it is not required and cannot be forced and the “experience of justice is a necessary precondition.” *Id.* ZEHR, *CHANGING LENSES*, *supra*, at 193.

56. ZEHR, *LITTLE BOOK*, *supra* note 12, at 14.

frustration: “As a victim you don’t have a voice [in court]. Nobody represents you. You’re not allowed to speak. You’re a non-person.”⁵⁷

In fact, there may be times when a victim’s needs and the state’s needs diverge. For instance, imagine a situation where the victim wants a trial for an opportunity to confront the offender. Would the state have adequate justification to pursue the trial if a plea deal was readily obtainable? Consider the budgetary and time constraints that the state must operate within. Even with advances in Victims’ Rights movements and increases in Victim Services Divisions, the traditional process often results in dissatisfaction.⁵⁸

The need for information. Often victims have an intense desire to know why the wrongdoing occurred; “why did this happen?” is a common question.⁵⁹ Restorative justice, though frequently associated with forgiveness, can be more practical in nature: it provides an opportunity to have an offender answer very specific questions from the victim.⁶⁰ The following two scenarios illustrate this concept. David Rogers, a victim, whose son, Adam, was killed as a result of injuries sustained during a fist fight, explained that he knew, almost immediately, that he wanted to meet with the offender. The offender was the last person to see his son alive and the only person who could describe what happened in those last few minutes.⁶¹ Rogers reported that after meeting, he felt better, though it did not eradicate his loss or

57. Sally Williams, *What happens when victims of crime meet their tormentors?*, THE TELEGRAPH (Mar. 7, 2015, 7:00 AM), <http://www.telegraph.co.uk/news/uknews/law-and-order/11455089/What-happens-when-victims-of-crime-meet-their-tormentors.html> [<https://perma.cc/74FP-C7QQ>].

58. ZEHR, LITTLE BOOK, *supra* note 12, at 14.

59. ZEHR, LITTLE BOOK, *supra* note 12, at 14. Zehr identifies six basic questions that victims often have to answer for themselves in order to heal from the trauma induced by crime; however, he notes that information must be available to enable the victim to formulate the answers to these questions:

- 1) What happened?;
- 2) Why did it happen to me?;
- 3) Why did I act as I did at the time?;
- 4) Why have I acted as I have since that time?;
- 5) What if it happens again?;
- and 6) What does this mean for me and my outlook (my faith, my vision of the world, my future)?

See ZEHR, CHANGING LENSES, *supra* note 16, at 31.

60. Williams, *supra* note 57.

61. See Williams, *supra* note 57.

grief, it did take away some of his anger.⁶² He found this helpful.⁶³ Ann Johnson had her purse stolen from her kitchen table, decided that she wanted to take part in a restorative process over her family's objections.⁶⁴ She insisted that she had questions, which only the offender could answer: "I kept thinking, why did he choose our house? What was it that made him come down my drive? What would he have done if I'd been in the kitchen when he came in?"⁶⁵ Similarly to Mr. Rogers, after the meeting, Ann Johnson reported feeling that "something had been settled. 'Inner peace sounds a bit dramatic, but I feel I've come to the end and can put it to one side.'"⁶⁶ These examples show that obtaining information can improve how victims manage the after-effects of crime.

The need for truth-telling. To heal from crime, victims often need an opportunity to tell their stories—and many will need several opportunities.⁶⁷ Crime creates an imbalance and disempowers victims, upsetting their view of the world.⁶⁸ The ability for victims to tell their stories, especially to the person who caused the harm, can produce a "psychologically positive effect, re-empowering victims and helping them move through the trauma."⁶⁹ Ventilation, the process of allowing a victim to re-tell the story, can often be challenging at first but typically becomes easier over time with repetition.⁷⁰ The process allows the victim to integrate "the experience into [his/her] personal life stories and [he/she] ultimately gains a cognitive sense of control over the incident."⁷¹ Since the restorative process is generally dialogic, more natural and frequent opportunities for re-telling arise. The current system typically cannot support such opportunities, except perhaps at trial. However, going to trial is rare and, even in the event of a trial, the opportunity for a re-telling is often disjointed, coming out in a fragmented delivery on the stand in a direct examination, which also

62. See Williams, *supra* note 57.

63. See Williams, *supra* note 57.

64. See Williams, *supra* note 57.

65. See Williams, *supra* note 57.

66. See Williams, *supra* note 57.

67. See generally HOWARD ZEHR, *TRANSCENDING: REFLECTIONS OF CRIME VICTIMS* (2001) [hereinafter ZEHR, *TRANSCENDING*].

68. ZEHR, *LITTLE BOOK*, *supra* note 12, at 14-15.

69. See ZEHR, *LITTLE BOOK*, *supra* note 12, at 13.

70. BARBARA PERRY, *HATE CRIMES: THE VICTIMS OF HATE CRIMES* 206 (2009).

71. *Id.*

opens victims up to the possibility of re-victimization during an adversarial cross-examination experience.⁷²

The need for empowerment. Many victims will feel a loss of control because experiencing crime can strip away personal autonomy.⁷³ In extreme cases, this can produce debilitating fear, immobilizing victims in a moment. Crime “tethers us to disabling definitions of ourselves. We define ourselves by the pain. We over identify with it, mistaking it for who we truly are. Our attachment to suffering blocks the path to healing.”⁷⁴ To right this, victims should receive multiple opportunities to reclaim or reassert their power. A range of empowering responses should be available, including simple decisive changes, such as changing locks or obtaining new security devices, to more substantial interventions, such as allowing victims to have some control and help make decisions about their cases.⁷⁵ Additionally, victims also have the ultimate say in whether a restorative process will go forward or not, providing some level of control.

The need for restitution. Whether as a response to an actual loss (monetary) or the more “symbolic recognition” (in-kind) that restitution can imply, the act of the offender attempting to make amends and repair harm through repayment is an important element to move victims toward healing after a crime.⁷⁶ Restitution attempts to return the victim to how things were before the crime was committed, and if that is not feasible, to attempt to put them as close to that state as possible.⁷⁷ This commitment brings the offender into the equation, providing a productive opportunity for corrective action. This can prove to be rehabilitative, help to affirm self-worth, and alleviate some guilt.⁷⁸ The design of the restorative process empowers victims to tell their story, to talk about the effects of the crime on their lives and the lives of those around them. In response, all parties join together to create a plan for restitution, looking directly at the harm and determining what steps are necessary for repair and true

72. See generally ZEHR, LITTLE BOOK, *supra* note 12.

73. See ZEHR, LITTLE BOOK, *supra* note 12, at 15.

74. Davis, *supra* note 43, at 12.

75. ZEHR, CHANGING LENSES, *supra* note 16, at 19-33.

76. ZEHR, LITTLE BOOK, *supra* note 12, at 15.

77. ZEHR, LITTLE BOOK, *supra* note 12, at 13-14.

78. Bright, *supra* note 46.

accountability.⁷⁹ Ordinarily, when courts order restitution, it is punishment rather than an opportunity to make things right.⁸⁰ Additionally, because of the non-voluntary nature of the sanction, there can often be a lack of ownership instead of a logical attempt to convince the offender that the act could restore part of the harm done.⁸¹ Some scholars have suggested that restitution should attempt to meet a loftier threshold than merely returning a victim to the status quo, advocating that justice is only attained when it transforms the lives of those involved for the better—victims who are in an improved position, offenders who have broken the cycle of criminal behavior, and higher functioning communities.⁸²

To demonstrate the restorative practices discussed in this Article, the end of each subsection on “needs” will use storytelling to illustrate key concepts. The following story inversely exemplifies the concepts discussed in the previous section. In this story, the victim did not have an opportunity to engage in a restorative process, the lack of which had significant effects on his well-being throughout the course of his life.⁸³ Mary, a promising young educator was murdered in 1978; her husband was the primary suspect but no charges were filed due to a lack of evidence.⁸⁴ Joseph, Mary’s brother, an ex-soldier explains that after her death, he “felt morally obligated to take the life of her killer” and that “if the police failed, the family must intervene,” describing it as “a scene right out of a primitive blood feud. No one said openly that’s what I ought to do, but there were looks and remarks from people that indicated they expected that.”⁸⁵ These feelings were shocking to him, as he came to realize that these emotions put him close to those of a

79. Bright, *supra* note 46. Further discussing dangers associated with traditional restitution: “Instead restitution is often a supplementary sanction to incarceration, probation, fines and other sanctions typically imposed by the criminal justice system. If reparation is not a primary goal of justice, restitution runs the risk of being used to strengthen retributive or rehabilitative motivations; or perhaps worse yet, as “window-dressing” to satisfy political motivations. Politicians may use restitution as a means of placating the victims’ rights movement, when, in reality, restitution has no truly reparative effect within the traditional criminal justice system.” Bright, *supra*.

80. ZEHR, *CHANGING LENSES*, *supra* note 16, at 48.

81. ZEHR, *CHANGING LENSES*, *supra* note 16, at 47-48.

82. ZEHR, *CHANGING LENSES*, *supra* note 16, at 191.

83. ZEHR, *TRANSCENDING*, *supra* note 67, at 78-81.

84. ZEHR, *TRANSCENDING*, *supra* note 67, at 78.

85. ZEHR, *TRANSCENDING*, *supra* note 67, at 78, 80.

murderer.⁸⁶ Part of his enormous grief stemmed from the realization of how close he and Mary were and the awareness of how that loss would never be filled: “I’ve never found that kind of friend since. I think about her every day.”⁸⁷ Joseph felt the law had failed, and he even tried on his own to talk to Mary’s husband, but he refused, leaving Joseph without the ability to move forward.⁸⁸ Joseph talked about the stages of grief, the last of which is acceptance, but he acknowledged that he never had the opportunity to reach it.⁸⁹ The loss of his sister along with the lack of prosecution and lack of answers to his questions, all had profound effects on his life, including morphing his faith; “I have decided that I cannot believe in the good governance of a caring God.”⁹⁰ It was only recently that he began talking about the incident, breaking around twenty years of silence.⁹¹ He explains that until recently, he could barely talk about the incident without crying, that he only speaks if “really pressed,” and that he still fears he “could lose friends” by discussing it.⁹² The story concludes with an expression of gratitude for the opportunity to tell his story: “It’s been a mercy and a help to be able to talk about this after all these years.”⁹³

Imagine the pain that crime victims and their families carry. Imagine the layers of circumstances and bad decisions that may have led offenders to commit crimes. Imagine the fracturing and fear that can occur in communities that experience crime. Now, imagine the many negative ways that pain can manifest without responsive systems in place to offer meaningful outlets for processing and healing. If we want healthier, safer societies, we must work to understand the root causes of crime. While we may never eradicate it, we must do a better job of enabling peoples to constructively deal with the psychological after-effects.

2. The Needs of the Offender

Proponents of restorative justice recognize that failure to provide offenders with productive opportunities for repair can harm the victim

86. ZEHR, *TRANSCENDING*, *supra* note 67, at 78.

87. ZEHR, *TRANSCENDING*, *supra* note 67, at 78.

88. ZEHR, *TRANSCENDING*, *supra* note 67, at 78, 80.

89. ZEHR, *TRANSCENDING*, *supra* note 67, at 80.

90. ZEHR, *TRANSCENDING*, *supra* note 67, at 80.

91. ZEHR, *TRANSCENDING*, *supra* note 67, at 81.

92. ZEHR, *TRANSCENDING*, *supra* note 67, at 81.

93. ZEHR, *TRANSCENDING*, *supra* note 67, at 81.

as well. Victims and offenders both need healing, but this process cannot begin until the offender takes accountability for the wrongdoing. Currently, we do not incentivize an offender to admit guilt; there is even less encouragement for offenders to empathize with the victim and internalize the harm caused. The adversarial system encourages offenders to remain silent and deny responsibility. If an offender is ready to admit guilt, the mechanism for this admission is typically a plea deal where there is no need discuss the causes or conditions leading to a crime nor its effects.⁹⁴ An admission of guilt relies on the statutory definition of crime, eschewing the interconnected reality of the “real human cost” of the act.⁹⁵ These structures provide limited space for real accountability. Admitting guilt and accepting punishment is often far easier than reconciling the ways an action caused someone harm or addressing the crucial responsibilities for repair.⁹⁶

Without sufficient opportunities to process, offenders contemplate their crimes and consequences on their own, if at all. For a few, this solitary process could conceivably lead to transformation but for the majority there is a strong psychological incentive to dissociate from the crime: “the ‘neutralizing strategies’ the stereotypes and rationalizations that offenders often use to distance themselves from the people they hurt are never challenged.”⁹⁷ Offenders can construct these “elaborate rationalizations” to minimize their actions, insulate themselves from the victim, fault the victim, and divert blame.⁹⁸ The combination of these coping mechanisms along with the trauma that often ensues from the incarceration experience, further alienates offenders from society and increases the chance of

94. ZEHR, *LITTLE BOOK*, *supra* note 12, at 16 (“Little in the process encourages offenders to understand the consequences of their actions or to empathize with the victims. On the contrary, the adversarial game requires offenders to look out for themselves. Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways.”); ZEHR, *CHANGING LENSES*, *supra* note 16, at 67.

95. ZEHR, *CHANGING LENSES*, *supra* note 16, at 47.

96. ZEHR, *CHANGING LENSES*, *supra* note 16, at 45-49.

97. ZEHR, *CHANGING LENSES*, *supra* note 16, at 16.

98. ZEHR, *CHANGING LENSES*, *supra* note 16, at 46.

recidivism.⁹⁹ Seeing as virtually everyone who is incarcerated will be released, this disassociation is concerning.¹⁰⁰

Assuming an offender has considered the crime and wishes to take accountability, a new question arises as to capacity. Can we realistically expect offenders to repair damage if they have a host of unmet needs, many of which may have been catalysts for the commission of crimes in the first place?¹⁰¹ Three out of four offenders have substance abuse issues and one in three report some form of physical or mental disability.¹⁰² Many have experienced abuse and use crime as a means to seek power and control, to feel validated. Many also lack proper skills and training for meaningful employment.¹⁰³

Through acknowledging an offender's needs, we begin to unravel the trope of an offender. This deeper understanding is not a cause for absolution, but it provides a richer picture, adding layers of complexity and nuance, moving from the "othering" posture that is sometimes prone to occur with "criminals." In addition, assessing where gaps exist helps provide directly related responses. Offenders may need to learn to be more responsible or they may need employment and interpersonal skills workshops. They may need emotional support to learn to channel anger and frustration properly. They may need to develop a healthy self-image and sense of worth.¹⁰⁴ Further, the disconcerting

99. ZEHR, LITTLE BOOK, *supra* note 12, at 16; *see also Ex-Offender Assistance*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/ex-offender-assistance/#sthash.wGUAcVSj.dpbs> [<https://perma.cc/KKL7-U6RH>] (last visited Mar. 30, 2019) (stating that "incarceration itself can foster antisocial values and an inability to make decisions or plan ahead, the so-called 'institutionalized mentality'. These factors add to the barriers prisoners must overcome to successfully reintegrate into the community.").

100. REPORT OF THE RE-ENTRY POLICY COUNCIL: CHARTING THE SAFE AND SUCCESSFUL RETURN OF PRISONERS TO THE COMMUNITY xviii, *available at* <https://csgjusticecenter.org/wp-content/uploads/2013/04/1694-11.pdf> [<https://perma.cc/2RGN-6KPW>] (last visited May 7, 2017) ("Virtually every person incarcerated in a jail in this country—and approximately 97 percent of those incarcerated in prisons—will eventually be released.") [hereinafter REPORT OF THE RE-ENTRY POLICY COUNCIL] (citing Anne Piehl, *From Cell to Street: A Plan to Supervise Inmates After Release*, MASSINC.ORG (Jan. 2002), https://massinc.org/wp-content/uploads/2002/01/cell_to_street_es.ashx_.pdf [<https://perma.cc/T4QY-874G>]); *see generally* Timothy Hughes & Doris James Wilson, *Reentry Trends in the United States*, BJS.GOV (Aug. 20, 2003), <https://www.bjs.gov/content/pub/pdf/reentry.pdf> [<https://perma.cc/BED2-3C8G>].

101. ZEHR, LITTLE BOOK, *supra* note 12, at 16-17.

102. REPORT OF THE RE-ENTRY POLICY COUNCIL, *supra* note 100, at 3.

103. ZEHR, CHANGING LENSES, *supra* note 16, at 184.

104. ZEHR, CHANGING LENSES, *supra* note 16, at 201.

incarceration experience often creates or exacerbates problems. Zehr states that “The entire prison setting is structured to dehumanize. Prisoners are given numbers, standardized clothing, and little or no personal space. They are denied almost all possibilities for personal decision making and power.”¹⁰⁵ Offenders typically find themselves in trouble due to their inability to be self-governing, incarceration often further deprives them of developing that ability, as very little control or autonomy exist. This makes meaningful re-integration into the community even less likely.¹⁰⁶ If curbing recidivism is a goal of our societies, our current systems are proving inadequate. Zehr also asserts that:

The numbers have simply become too big, the implications for public safety too significant. Indeed, state and local government officials from all perspectives agree that as the number of people released from prison and jail increases steadily, the status quo cannot be maintained. Too many are harmed: People are victimized; families are destroyed; communities are overwhelmed; and the lives of individuals cycling in and out of incarceration are wasted.¹⁰⁷

Only through adequately assessing need, can we even begin to have a constructive conversation about the best way to employ resources.

Interestingly, questions over addressing need often diverge into a political conversation, classically depositing us squarely on the conservative/liberal fault line. Sebastian Junger, in his book *Tribe*, discusses this divide from an evolutionary perspective.¹⁰⁸ He recognizes that conservative thought about addressing needs is laced with concerns about supporting a “non-working underclass,” the legitimate roots of which were based our past where “freeloaders were a direct threat to survival” creating in some ancestors “an exceedingly acute sense of whether they were being taken advantage of.”¹⁰⁹ Similarly, he addresses the rationality of a liberal position, acknowledging “one of the hallmarks of early human society was a culture of compassion that cared for the ill, the elderly, the wounded,

105. ZEHR, CHANGING LENSES, *supra* note 16, at 42.

106. See ZEHR, CHANGING LENSES, *supra* note 16, at 42.

107. ZEHR, CHANGING LENSES, *supra* note 16, at 42; REPORT OF THE RE-ENTRY POLICY COUNCIL, *supra* note 100, at 4.

108. See generally JUNGER, *supra* note 42.

109. JUNGER, *supra* note 42, at 126.

and the unlucky.”¹¹⁰ These “two driving forces have coexisted for hundreds of thousands of years in human society . . . and each side represents an ancient and absolutely essential component of our evolutionary past.”¹¹¹ This divergence has been the cause of consternation and divisiveness; however, the nature of the restorative processes could provide a dialogic space to struggle with questions around this conflict. The process asks all of us—victims, offender and community members—to consider and clarify our roles and responsibilities, including questioning ways to hold ourselves accountable in those roles. Arguably, a restorative process can provide a framework for distilling the esoteric needs question into an active and practical collective problem-solving exercise.

Finally, a story from *Transcending* summarizes these concepts. Thomas Ann Hines’s son, Paul, was murdered.¹¹² She explains that she survived simply by “put[ting] off [her] grief and holding onto [her] anger.”¹¹³ She would write letters to the parole board to ensure that Charles, her son’s murderer, would stay locked up in prison for a long time.¹¹⁴ She took an opportunity to attend a victim impact panel at a local prison.¹¹⁵ She prepared a speech and was ready to tell the prisoners what “scum they were.”¹¹⁶ However, when she got there, there was a young man that resembled her son who looked at her with “hungry eyes—helpless, lonely, [and] filled with pain.”¹¹⁷ Instead of reading her prepared speech, she started talking to the men as if they were her son, and at the end of her talk “[i]n the front row, one man, six-foot tall, stood up, tears streaming down his face, and said, ‘You look just like my mother.’ What he meant was [her] compassion and caring.”¹¹⁸ That moment was a tipping point for Thomas Ann; she started going to prisons and speaking more often, receiving letters from prisoners who told about their pain from childhood. Eventually, she met with Charles, and later described her experience:

110. JUNGER, *supra* note 42, at 126.

111. JUNGER, *supra* note 42, at 126.

112. ZEHR, *TRANSCENDING*, *supra* note 67, at 138.

113. ZEHR, *TRANSCENDING*, *supra* note 67, at 138.

114. ZEHR, *TRANSCENDING*, *supra* note 67, at 138.

115. ZEHR, *TRANSCENDING*, *supra* note 67, at 140.

116. ZEHR, *TRANSCENDING*, *supra* note 67, at 140.

117. ZEHR, *TRANSCENDING*, *supra* note 67, at 140.

118. ZEHR, *TRANSCENDING*, *supra* note 67, at 140.

The lesson I learned with Charles came at the end of our meeting. I had the option to put my hand across the table, knowing he couldn't ever give me anything back. Shaking hands with Charles, putting my hand out, meant that I would accept the hand that held the gun that murdered my son. When I took his hand, I was just going to shake it. But I was overwhelmed. I collapsed on the table with this cry of anguish that took me 13 years to release. I don't believe I ever cried that loud. . . . And he let me see inside his soul. Every time I got a letter from him, every time I write to him, I cry. I'm so connected to him.¹¹⁹

A restorative justice process facilitated a way for Charles to receive forgiveness and for Thomas Ann to work through her own grief, coming to some acceptance around her son's death. The process empowered her with a sense of purpose and connection, and it put them on the path toward healing.

3. The Needs of the Community

The community, which also suffers harm when a crime is committed, is often completely left out of the criminal justice process. Zehr calls attention to their needs stating, “[c]rime undermines a community’s sense of wholeness, and that injury needs to be addressed.”¹²⁰ Community members should have an important role to play in the justice process.¹²¹ Determining “who” is an affected party is a nuanced question, especially for overburdened systems. Since crime arguably injures all members of society, how do you define the parameters of “community” and how far does that circle reasonably extend? As with much of restorative justice, there is no simple route to a definition. “Community” is created according to individualized contexts. Paul McCold, another restorative expert, flexibly defines the word based on a number of factors: the level of harm inflicted, relationship, and aggregation.¹²² He provides a framework, noting the “minimal necessary boundary.”¹²³ He identifies parties that have a

119. ZEHR, *TRANSCENDING*, *supra* note 67, at 141.

120. ZEHR, *CHANGING LENSES*, *supra* note 16, at 190.

121. ZEHR, *LITTLE BOOK*, *supra* note 12, at 16.

122. Paul McCold, *Restorative Justice: The Role of the Community*, INT’L INST. FOR RESTORATIVE PRAC. (Mar. 31, 1995), <https://www.iirp.edu/eforum-archive/restorative-justice-the-role-of-the-community> [<https://perma.cc/J2SB-WNYC>].

123. *Id.*

“direct stake” in the conflict based on “need or responsibility.”¹²⁴ He also issues a cautionary note: do not fall into the trap of simply defining community geographically.¹²⁵ The “consequences of crime extend beyond neighborhoods.”¹²⁶ Aside from the sole question of place (where a victim and offender live), everyone belongs to several “personal communities,” composed of families, friends, schools, churches, etc.¹²⁷

Acknowledgement of the role these personal sub-groups play is useful, as those communities may provide positive interventions or perhaps even create re-enforcement of norms. “[A] primary goal for community justice should be mobilizing informative social control mechanisms by strengthening, creating or restoring healthy interdependencies and by encouraging the development of mature internalized control, or conscience.”¹²⁸ If communities have a meaningful place in the conversation, the existence and structure of these norms is open to investigation. This provides space for a productive conversation on the contributory failures of the State and community responsibilities.¹²⁹ Punishment and constructive behavioral adjustments will only appear fair if the premises relied on are likewise fair.¹³⁰

Once the parameters defining “community” are set, determining its needs can begin. Similar to the victim, the community’s sense of

124. *Id.*

125. *See id.*

126. Paul McCold & Benjamin Wachtel, *Community Is Not a Place: A New Look at Community Justice Initiatives*, INT’L INST. FOR RESTORATIVE PRAC. (June 7, 1997), <https://www.iirp.edu/eforum-archive/community-is-not-a-place-a-new-look-at-community-justice-initiatives> [<https://perma.cc/VX35-HYDB>].

127. McCold, *supra* note 122.

128. McCold & Wachtel, *supra* note 126.

129. McCold, *supra* note 122 (“Instead of compelling compliance with norms, the norms themselves are open to discussion: It is necessary to ask which ethical measures restorative justice uses to differentiate its goals, which standards of normalcy it follows, and how far these standards are generally binding. To the extent that clients are free to speak for themselves and to the extent that one listens to them, opportunities are increased for all participants to understand each other in a contingent world—not only with reference to others but also with reference to oneself. Norm compliance presupposes freedom, that is, in each case the freedom to disagree. Correspondingly, normative morals must also be applied to the process of achieving consensus.”).

130. ZEHR, CHANGING LENSES, *supra* note 16, at 210 (“For punishment to seem fair, outcome and process need to relate to the original wrong. However, the societal context must also be viewed as fair, and this raises larger questions of social, economic, and political justice.”).

safety has been interrupted. Thus, they also need information relating to the crime, including understanding motivation and knowledge about whether interpersonal relationships exist between the victim and the offender.¹³¹ Hearing an offender's narrative can move participants from a flattened view of crime to a more dynamic understanding. The opportunity develops an emotional understanding of the conflict that can be beneficial for all parties, leading to a better chance of possible re-establishment of trust. A restorative approach empowers community members to become actively involved in learning about and responding to the crime instead of merely operating as passive observers in the justice process.¹³² We live "[i]n a society with values emphasizing citizen participation in the affairs of state, [and] increasing citizen participation does not require further justifications: it is a goal sufficient in its own right and does not need to be defended as leading to some more long term benefit."¹³³ Growing acknowledgement exists—states cannot adequately address and do not bear the sole responsibility for crime—yet far too few opportunities for involvement are encouraged. Adoption of an increased use of restorative practices could shift this reality.

Barbara Ayre's story provides insight into the impact of crime on communities. She was the mother of two teenage daughters, who were shot along with two other girls at a local yogurt shop.¹³⁴ She describes how the entire community was "stunned" and seemed to come to a stop; she felt responsible not only for her own grief, but for the community's.¹³⁵ Her family's home became the gathering place, and her family nurtured the community and were nurtured in return.¹³⁶ As she poignantly noted, "[t]he murders were so public, and they hurt people at such a deep level that they came and came and came,"¹³⁷ and sometimes they would even say something that gave her a bit of comfort as well.¹³⁸

Restorative justice attempts to address everyone's needs; a process that provides an individualized, dialogic approach can better assess and respond to those.

131. *See generally* McCold, *supra* note 122.

132. ZHR, CHANGING LENSES, *supra* note 16, at 103; *see also* McCold, *supra* note 122.

133. *See generally* McCold, *supra* note 122.

134. ZHR, TRANSCENDING, *supra* note 67, at 20.

135. ZHR, TRANSCENDING, *supra* note 67, at 20.

136. ZHR, TRANSCENDING, *supra* note 67, at 20.

137. ZHR, TRANSCENDING, *supra* note 67, at 20.

138. ZHR, TRANSCENDING, *supra* note 67, at 22.

B. A Relational Theory and Approach

Relational theory posits that we must evaluate crime and its after-effects from multiple perspectives, including both the personal and social relationships of the victim and offender. Attention is first concentrated on the individual and then extends to those individuals' "immediate communities of care and support, broader communities to which they belong, and ultimately the social fabric of their society."¹³⁹ Once the underlying causes are unearthed, creating a roadmap for repair begins. This generates potential for restoring relational equality. Here, the equality "sought is equality in the basic elements requirements for peaceful and productive human relationships—namely, equality of respect, dignity, and mutual care and concern for one another."¹⁴⁰ Adoption of relational equality as a justice goal would be a dramatic shift, as this type of goal is absent in the traditional system. Successful implementation of restorative programs requires valuing need and relational goals and creating metrics for measuring success in process and outcome.

Best practices for facilitating a relational approach point to processes that include the following elements.¹⁴¹ The process must be *relationship focused*.¹⁴² In our current system, we tend to hyper-focus on individuals, using descriptors, such as "victim-centered" or "offender-centric."¹⁴³ Attaining re-establishment of relational equality certainly requires concern for individual needs; however, the primary focus should rest on the overall relationships as they exist between the parties and on finding ways to understand and improve them.¹⁴⁴ Of course, the reality is that some relationships are irreparable, but the goal of restorative programs should be to move them along the spectrum toward improvement. The process cannot have a narrow focus, it must be *comprehensive/holistic*, taking into account the "causes, context, and implications" of crime.¹⁴⁵ A flexible process that is responsive to parties' complex needs, such as culture, disability, one that takes into account security concerns and the range of nuances present in an

139. Llewellyn et al., *supra* note 29, at 297.

140. Llewellyn et al., *supra* note 29, at 298.

141. Llewellyn et al., *supra* note 29, at 301-04.

142. Llewellyn et al., *supra* note 29, at 301.

143. Llewellyn et al., *supra* note 29, at 301.

144. Llewellyn et al., *supra* note 29, at 300-04.

145. Llewellyn et al., *supra* note 29, at 300-04.

individual's life can be qualified as holistic. This approach may be time consuming but practitioners must recognize, account for, and make the time to uphold these values, as they form the foundation.

Subsidiarity, inclusion, and participation are also important elements that should be present in a restorative process.¹⁴⁶ Subsidiarity is an attempt to ensure that those directly affected by the problem have a stake in defining the solution—recall Christie's theory on conflict ownership.¹⁴⁷ Inclusion and participation need to move beyond the formulaic and should be meaningful. True inclusion requires that sufficient time is spent on designing and implementing processes that really assess who should be involved.¹⁴⁸ For example, imagine a domestic violence incident between siblings. On the surface, the issue may be seen as solely between the two parties (the traditional system typically only has time to view the conflict in this light), but what if the roots of the problem run much deeper—perhaps an on-going feud that extends to other family members who were not directly involved in the immediate conflict. A traditional process will most likely be limited to identifying and punishing one of the parties as the primary aggressor; however, the causes and conditions underlying the tension and violence still exist. An effective restorative process can afford an opportunity to resolve conflict, looking beyond the prescriptive list of those labeled as having a "stake" in the conflict merely through proximity. A thorough, deliberative process investigates who should be involved for potential full resolution. Finally, once a clear picture exists, a facilitator must work to secure meaningful participation by explaining the process, obtaining informed consent, laying out expectations and managing the encounter well.¹⁴⁹

The process should also be *democratic/deliberative*.¹⁵⁰ The principles of inclusion and participation will help with the establishment of this but safeguarding its continuance is important.

146. Llewellyn et al., *supra* note 29, at 302. Subsidiarity originated in Catholic social thought. European and Canadian federalism adopted the notion into democratic theory. The principle acknowledges the importance of involving those with direct or "intimate knowledge" in the process, as they are in the best position to identify the problems and suggest workable solutions. Llewellyn et al., *supra*. A quote from an activist friend of the Author sums this up well: "those closest to the problem are closest to the solution."

147. Llewellyn et al., *supra* note 29, at 288, 302.

148. Llewellyn et al., *supra* note 29, at 288, 302.

149. See Llewellyn et al., *supra* note 29, at 303.

150. Llewellyn et al., *supra* note 29, at 304.

Once facilitators secure agreement, all should have an opportunity to comment on those substantive and procedural decisions open to input. *Forward-focused, solution-focused, and remedial* are characteristics that should also inform the process. There is an emphasis, not only on uncovering the harm resulting from the crime, but also on understanding the decisions and thought-processes leading up to it (remedial), providing multiple perspectives, and a chance for everyone to share their stories.¹⁵¹ This information should be used in creating future-orientated action that can improve relationships.¹⁵²

Finally, the process must be *dialogic or communicative*.¹⁵³ Participants and practitioners report that a well-executed restorative process can lead to “strengthened social relationships, personal transformations, learning, and coming to a common understanding,”¹⁵⁴ attributable to components of the relational and dialogic approaches. Audrey Barrett provides a comprehensive analysis of sociologist and philosopher Jürgen Habermas’ linguist theories on the transformative nature of the dialogic process.¹⁵⁵ In sum, she discusses the general theory of communication—that humans use speech to arrive at a shared understanding and coordinate action—and then comparatively considers this action to the dialogic mechanisms that take place during a restorative process. The expectation is that parties will work together to come to a shared understanding of the crime. The functions of language (or worlds) present in all speech—the objective, subjective, and shared—are observable in the restorative process.¹⁵⁶ Each party is typically asked to discuss what happened (the “objective world”), parties are expected to express their “inner feelings and intentions,” the

151. Llewellyn et al., *supra* note 29, at 304.

152. Llewellyn et al., *supra* note 29, at 304.

153. Llewellyn et al., *supra* note 29, at 303.

154. Audrey L. Barrett, *The Structure of Dialogue: Exploring Habermas’ Discourse Theory to Explain the Magic and Potential of Restorative Justice Processes*, 36:2 DALHOUSIE L.J. 335–58, 336 (2013) (citing DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, *RESTORING JUSTICE* 59-61, 70 (2d ed. 2002)); Barbara Raye & Ann Wamer Roberts, *Restorative Processes*, in *HANDBOOK OF RESTORATIVE JUSTICE* 217 (2007); Mara Schiff, *Satisfying the Needs and Interests of Stakeholders*, in *HANDBOOK OF RESTORATIVE JUSTICE* 230; Gerry Johnstone & Daniel W. Van Ness, *The Meaning of Restorative Justice*, in *HANDBOOK OF RESTORATIVE JUSTICE* 16; Gabrielle Maxwell, *The Defining Features of a Restorative Justice Approach to Conflict*, in GABRIELLE MAXWELL & JAMES H. LIU, *RESTORATIVE JUSTICE AND PRACTICES IN NEW ZEALAND: TOWARDS A RESTORATIVE SOCIETY* 11 (2007).

155. See Barrett, *supra* note 154, at 339.

156. See Barrett, *supra* note 154, at 341-44.

effects of the crime, and what can be done for repair (the “subjective world”).¹⁵⁷

Ultimately, the hope of a restorative process is to reach the final stage where the offender (as well as any other parties that may have shared culpability) acknowledges and accepts responsibility for the harm. This act re-establishes “consensus” and the importance of the violated norm (creating “the shared social world”).¹⁵⁸ Accountability is embedded within the dialogic process, if one party questions the sincerity of a statement or requires more information, the process allows for and expects a party to challenge or seek that information by respectfully challenging an individual.¹⁵⁹ Once a party questions the validity of a claim, it must be justified—grounded in reason—or abandoned. Together, the parties collaborate in the process to achieve *intersubjectivity* or mutual understanding.¹⁶⁰ “Through this learning process of abandoning or modifying unsustainable claims, individuals acquire insight and overcome self-deception and difficulties in comprehension,”¹⁶¹ which can be transformative. Working together in a coordinated process to arrive at a mutually satisfactory understanding of the crime and harm, can build cohesion and even trust, potentially giving rise to improved relationships.¹⁶²

The elements put forward as values important to the relational approach are unique from those in the traditional system, making caution necessary when designing and evaluating restorative programs. There is often a tendency to view success or failure of alternative or complementary justice programs through traditional methods of measurement. Attempting to fit these relational goals into the standard metrics may skew results. As Professor Llewellyn summarizes,

Understanding restorative justice as a relational theory of justice shifts the assessment and evaluation of success from a primary (or sole) focus on practices and processes towards the understanding and approach to justice such practices and processes are intended to reflect. It reveals how incomplete and inadequate our assessment will be if we only focus

157. See Barrett, *supra* note 154, at 343.

158. See Barrett, *supra* note 154, at 343-44.

159. See Barrett, *supra* note 154, at 344.

160. See Barrett, *supra* note 154, at 357.

161. See Barrett, *supra* note 154, at 357.

162. See Barrett, *supra* note 154, at 357.

at the level of practice and leave unexamined the theoretical principles, ideals, and goals of restorative justice.¹⁶³

C. *Operationalizing Need and Relational Theories in Restorative Initiatives*

There are no prescriptive parameters for enacting restorative justice. This emerging field contains a vast amount of programs that developed slowly over the first few decades of inception but have boomed over the last decade, as dissatisfaction with the traditional system has mounted.¹⁶⁴ Processes cover a range of situations, both inside and outside the criminal context, making appearances in settings, such as education, social services, health, human rights commissions, regulatory, private wrongs, and in post-conflict interventions like genocide and trauma resulting from state violence.¹⁶⁵ Additionally, the field encompasses a host of professionals, legal and non-, who receive referrals from prosecutorial, court and correctional staff, the community, and police at all stages of a conflict.¹⁶⁶ Referrals can occur prior to the commencement of any formal legal action, and matters can also be referred pre- and post-charge, pre- and post-sentencing, and can even be referred when an offender is serving a life sentence without the possibility of release if potential for healing is achievable.¹⁶⁷

The range of restorative processes is remarkable; they “can be adapted to various cultural contexts and the needs of different communities.”¹⁶⁸ This flexibility is certainly a strength, but the variety created can produce complexity for categorizing these disparate characteristics into parameters for a best practices process. Although challenging, recognizing the value of this individualization is important, as it can lead to an improved justice application. If

163. Llewellyn et al., *supra* note 29, at 296.

164. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38.

165. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38.

166. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 15 (“A large proportion of restorative justice programmes are operated by public sector organizations. There are court-based programmes, police-based programmes, and programmes that are operated by not-for-profit organizations in the community. While public sector agencies tend to utilize professionals, community-based programmes generally rely on trained volunteers from the community.”).

167. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 15; Llewellyn et al., *supra* note 29, at 310.

168. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 6.

attempting to understand the root causes of crime, what better way than to directly ask offenders, then assess, collect, and create programs actively responsive to this data? If seeking to provide services and support for victims, what better method of assessment do we have than asking them to identify their expectations of the state, offender, and community. If the hope is that community should become involved in crime prevention and service provision for victims and the offender, who will need to re-integrate, inviting them to engage in collaborative problem-solving is imperative.

Returning to the complexity that variety can produce, the restorative justice community acknowledges that little consensus exists around process.¹⁶⁹ The United Nations recognized the potential difficulty for streamlined implementation and drafted the Handbook on Restorative Justice Programmes (“Handbook”) to synthesize processes and provide guidance.¹⁷⁰ The Handbook centers the “discussion in the context of an emerging international normative framework,” but is not prescriptive; instead, a considerable amount of the handbook analyzes the existing similarities in effective restorative programs.¹⁷¹ The starting point for the discussion is the *core definition* of a restorative process as “any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”¹⁷² The key “ingredients” are a participatory and collaborative process that includes a facilitator, a victim, an offender, and other community members (where appropriate).¹⁷³ They note that a restorative process also relies on a few assumptions: repair of the harm suffered is paramount and victims should have an opportunity to express the needs arising from that harm; offenders should internalize and accept responsibility for those harms and understand the act was unacceptable; and finally, the community should be given the opportunity to engage in the process and potentially share in the responsibility for both the crime and the solution.¹⁷⁴ Adherence to process is as important as outcome and, it is

169. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 9.

170. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 9.

171. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 2.

172. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 7.

173. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 8, 70.

174. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 8, 70.

worth noting, the only part of the equation that facilitators truly have control over. The authors again highlight the significance of meaningful participation, collaboration, and flexibility.¹⁷⁵ Ultimately, any process should be one that upholds the dignity and equality of each participant, promotes social harmony through healing of all parties, and marks the importance of the community role in responding to crime.¹⁷⁶

The authors indicate a process can be qualified as restorative if it comports with certain expressed values, goals, and objectives. **Values:** To be qualified as restorative, a process must include four “critical ingredients”: an *identifiable victim* who agrees to *voluntarily participate* in the process and an *offender* who is willing to accept responsibility for the criminal act, and whose participation is also *voluntary*.¹⁷⁷ **Goals:** “To create a non-adversarial, non-threatening environment in which the interests and needs of the victim, the offender, the community and society can be addressed.”¹⁷⁸ The overriding normative value expressed in this report and throughout all restorative literature is respect for all parties, which is produced by meetings these **objectives:**

- (1) *Supporting victims, giving them a voice, encouraging them to express their needs, enabling them to participate in the resolution process and offering them assistance. . . .*
- (2) *Repairing the relationships damaged by the crime, in part by arriving at a consensus on how best to respond to it. . . .*
- (3) *Denouncing criminal behaviour as unacceptable and reaffirming community values. . . .*
- (4) *Encouraging responsibility taking by all concerned parties, particularly by offenders. . . .*
- (5) *Identifying restorative, forward-looking outcomes. . . .*
- (6) *Reducing recidivism by encouraging change in individual offenders and facilitating their reintegration into the community. . . .*
- (7) *Identifying factors that lead to crime and informing authorities responsible for crime reduction strategy. . . .*¹⁷⁹

175. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 1.

176. See HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 7-8.

177. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 8.

178. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 8.

179. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 9-11.

Restorative programs will respond to the theories, guidance, and best practices presented in diverse ways. Programs vary in formality, operation, level of parties' engagement, programmatic objectives and goals, and in relational, scope, and interaction with the system.¹⁸⁰ An extra note of caution exists for programs that occur in the criminal context. Programs must take necessary precautions to safeguard legal protections.¹⁸¹ For example, all parties should have representation, be fully informed and voluntarily consent to the process, participation cannot be used as evidence of guilt, confidentiality needs to be a hallmark, agreements reached need to be reasonable and achievable and where the process could have the same status as a judicial decision, supervision and review should exist.¹⁸² Each jurisdiction—guided by these parameters—should design and implement programs that consider the background under which they operate, balancing circumstances of “the existing legal frame work, limited support from criminal justice officials, cultural obstacles, limited public support, and limited means.”¹⁸³

III. SITUATING RESTORATIVE JUSTICE IN THE JAMAICAN CONTEXT

A. A Brief Primer on the Socio-legal Landscape of Jamaica

Jamaica is a relatively young nation. The country gained independence from the United Kingdom in 1962, and it is now a member of the Commonwealth and a parliamentary democracy.¹⁸⁴ Queen Elizabeth II is the head of state, represented on the Island by a Governor-General.¹⁸⁵ Jamaica is a member of regional and

180. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 15.

181. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 71-72.

182. *See* HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 34.

183. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 14-15. .The Handbook uses charts to show a continuum of processes and considerations regarding how various programs work. They do list five types of programs specifically, perhaps the most commonly recognizable: (a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; and, (e) reparative probation and community boards and panels. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 14-15.

184. *Jamaica: Constitution and politics*, THE COMMONWEALTH, <http://thecommonwealth.org/our-member-countries/jamaica/constitution-politics> [https://perma.cc/M46A-K6Z6] (last visited June 20, 2017).

185. *Id.*

international organizations, including the Caribbean Community and Common Market (“CARICOM”) and the United Nations, subjecting it to the jurisdiction of both the Caribbean Court of Justice and the International Court of Justice, respectively.¹⁸⁶ The English common law system formed the foundation for the legal system.¹⁸⁷ Today, Jamaicans question whether continuing to operate under such a system aligns with the country’s best interest.

Recently, the Minister of Justice publicly commented that many of Jamaica’s laws are outdated and still have “imperial measures, which should have changed decades ago.”¹⁸⁸ One scholar posited:

Jamaica’s colonial history has influenced its post-independence environment and institutions. Indeed, many of the country’s problems have their origins (but not necessarily their continuity) in the colonial era, but very little research has been done to assess the functioning and effectiveness of colonial-era institutions, the difficulties that they posed for the new polities, and the challenges of transforming them so that they are more suitable for a democratic society.¹⁸⁹

In an effort to address Jamaica’s modern reality, its government has been working toward assessing and reforming its systems,

186. See Jeanne Slow & Claudette Solomon, *Update: The Jamaican Legal System and Guide to Legal Research*, HAUSER GLOBAL L. SCH. PROGRAM (May/June), <http://www.nyulawglobal.org/globalex/Jamaica1.html> [<https://perma.cc/6RA4-GJVY>]. The Caribbean Court of Justice (CCJ) settles disputes between Caribbean Community (CARICOM) Member States, and also serves as the highest court of appeals on civil and criminal matters for the national courts of Barbados, Belize and Guyana. The CCJ’s seat is in Port of Spain, Trinidad and Tobago. The Caribbean Court of Justice **does not have competence to hear individual complaints of alleged human rights violations**, except in its capacity as a court of final appeal in civil and criminal matters, which often involve fundamental rights.

Caribbean Court of Justice, INT’L JUST. RES. CTR., <http://www.ijrcenter.org/regional-communities/caribbean-court-of-justice/> [<https://perma.cc/B6KU-6BFB>] (last visited June 23, 2017).

187. *The Legal System*, THE SUP. CT. OF JAM., <http://supremecourt.gov.jm/content/legal-system> [<http://perma.cc/4PRC-PLUF>] (last visited Mar. 29, 2019).

188. Ministry of Justice, *2017/18 Sectoral Debate Presentation by Justice Min. Hon. Delroy Chuck*, JAM. INFO. SERV. (May 3, 2017), <https://jis.gov.jm/media/SectoralXDebateXPresentationXbyXHon.XDelroyXChuck.pdf> [<https://perma.cc/22XK-LRY6>] [hereinafter *Sectoral Debate*].

189. HARRIOT & JONES, *supra* note 8, at 45.

however, this work remains difficult as it takes place alongside the struggles of a society transitioning from a developing nation.¹⁹⁰

Jamaica's criminal justice system shares many similarities with the US system—a defendant is presumed innocent, entitled to counsel, has due process rights, including the right to a trial by jury, and a hierarchical appeals' process.¹⁹¹ Unlike the three-tiered system in the United States, the hierarchy contains five tiers, with the lowest being the Petty Sessions Court where Justices of the Peace (“JPs”—who are community volunteers) preside.¹⁹² A minimum of two JPs must be present to hear a matter, but one Presiding Magistrate may choose to exercise jurisdiction in a matter before the Petty Sessions Court.¹⁹³ An appeal from here would proceed to the Circuit Court, which resides in the Parish where the Petty Sessions Court sits.¹⁹⁴ The Resident Magistrates' Court is next in the hierarchy. This court has the ability to try cases summarily and exercise jurisdiction over the following courts: coroner's, traffic, drug, tax, family, juvenile, and civil.¹⁹⁵ Appeals from the Resident Magistrates' Court would bypass the third tier, the Supreme Court, and proceed directly to the Court of Appeal (the fourth tier).¹⁹⁶ The Supreme Court is the highest court of first instance and appeals from here also proceed to the Court of Appeal, which has the

190. JAM. JUST. SYS. REFORM TASK FORCE, FINAL REPORT 1 (2007) (“The Jamaican Justice System Reform Project (JJSR) was established by the Government of Jamaica to undertake a comprehensive review into the state of the justice system and to develop strategies and mechanisms to facilitate its modernisation so that it is better able to meet the current and future needs of Jamaicans. A modern justice system will be more efficient, accessible, accountable, fair and able to deliver timely results in a cost-effective manner.”).

191. See *Legal System*, *supra* note 187; *Legal Aid for Criminal Matters*, MINISTRY OF JUST., <https://moj.gov.jm/services-and-information/legal-aid> [<https://perma.cc/V6GA-FS5M>] (last visited Mar. 29, 2019).

192. *The Court Structure and Hierarchy*, THE SUP. CT. OF JAM., <http://supremecourt.gov.jm/content/court-structure-and-hierarchy> [<https://perma.cc/WF3H-UEQ5>] (last visited June 20, 2017).

193. *Id.* Under Section 12(a) of the Resident Magistrates Act, “No person shall be appointed a Resident Magistrate unless he is—(a) a member of the Bar of Jamaica or of England or of Northern Ireland or of the Faculty of Advocates of Scotland, or a Writer to the Signet, or a solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland or Northern Ireland, or a Law Agent admitted to practise in Scotland.” Judicature (Resident Magistrates) Act 1928, (RL 34) sch. 3, ¶ 12(a) (Scot.).

194. *The Court Structure and Hierarchy*, *supra* note 192; Judicature (Resident Magistrates) Act 1928, (RL 34) sch. 3, ¶ 12(a) (Scot.).

195. See *The Court Structure and Hierarchy*, *supra* note 192.

196. *The Court Structure and Hierarchy*, *supra* note 192.

power to overturn or adjust judgments.¹⁹⁷ However, this is not the final court, and most cases are subject to one last level of appeal at the Judicial Committee of the Privy Council, based in London, which hears matters of “exceptional importance.”¹⁹⁸

The Ministry of Justice (“MOJ”) is responsible for the administration of justice across the Island.¹⁹⁹ Its budget is fairly minuscule—about JMD\$6 billion or less than two percent of the total budget of Jamaica.²⁰⁰ The MOJ receives a significant dose of foreign development assistance for various justice programs.²⁰¹ But reliance on aid can be problematic, as grant funding typically comes with strict parameters, complex and time-consuming reporting requirements, and often the lack of ability to control how to best organize, evaluate, and implement programs.²⁰² Funding for the legal system is also problematic. During the Sectoral Debate, Delroy Chuck, the current Minister of Justice stated,

[I]et me remind this Honourable House that Justice has been the most neglected sector in this country for decades. We get less than two percent of the Budget. In a society, crying out for peace,

197. *The Court Structure and Hierarchy*, *supra* note 192.

198. *The Court Structure and Hierarchy*, *supra* note 192, at 195; Slow & Solomon, *supra* note 186; see also David Dyck, *Reaching Toward a Structurally Responsive Training and Practice of Restorative Justice*, in HANDBOOK OF RESTORATIVE JUSTICE 527 (2006).

199. *Overview and Role of the Ministry*, MINISTRY OF JUST., <https://moj.gov.jm/overview> [<https://perma.cc/S4NP-HE6T>] (last visited March 10, 2019).

200. Tracy Thompson, *\$579.93 Billion Budget for 2016/17*, JAM. INFO. SERVICE, <http://jis.gov.jm/579-93-billion-budget-201617/> [<https://perma.cc/Z8WR-NRJP>]. The MOJ was formed in October 2001, separated from the Ministry of National Security and Justice. See *Overview of the Role of the Ministry*, MINISTRY OF JUST., <http://moj.gov.jm/overview> [<https://perma.cc/47HX-H57L>].

201. *Shaw Signs Loan Agreements With IDB*, THE GLEANER, <http://jamaica-gleaner.com/power/15315> [<https://perma.cc/GGT4-84SB>] (last visited Mar. 10, 2019).

202. HARRIOT & JONES, *supra* note 8; see also Vaughan Graham, *Balancing Dependence and Sovereignty*, PATIMES, <http://patimes.org/balancing-dependence-sovereignty/> [<https://perma.cc/SW68-2ZQK>]. “Jamaica benefits from security and justice foreign aid multilaterally through the Inter-American Development Bank (IDB), the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF) and the World Bank to a lesser extent. It has been noted that, owing to the fiscal constraints the country faces, security and justice public administration would not survive independent of this level of foreign aid support. Senior public managers in both the ministries of National Security (MNS) and Justice (MOJ) have had to accept that they function in a transnational context and inherently engage in aid management as part of their job descriptions.” *Id.*

security and justice, more resources and support must be provided to the Courts and the justice sector.²⁰³

Rumors of funding increases persist—a newspaper article indicated the budget could double.²⁰⁴ The Prime Minister, Andrew Holness, alluded that funds may need re-allocation to help tackle the “massive crime problem facing the nation”²⁰⁵ (this money would presumably go to the MOJ and the Ministry of National Security (“MNS”)).²⁰⁶

Acknowledging Jamaica’s violent crime problem is important context for any conversation on criminal justice reform. Citizens are living in conditions that make them feel unsafe, signs of security are omnipresent, an “out-of-control” feeling is buzzing on the Island.²⁰⁷ This reality is fueling a renewed “tough on crime narrative,” shaping both citizen and government attitudes towards offenders. There have been several calls to re-institute hangings²⁰⁸ and implementation of “zones of special operation,” which the Prime Minister explains is necessary “to restore law, order, public safety and security to the country.”²⁰⁹

Jamaica currently ranks among the top-five highest homicide rates in the world per capita.²¹⁰ Murders increased in 2016 and the trend continues.²¹¹ Officials label most criminal activity as “gang-related.”²¹² Police are frequently unable to make arrests. Even if they do, courts

203. *Sectoral Debate*, *supra* note 188.

204. Edmond Campbell, *Justice Budget Could Double To Speed Up Cases And Fight Crime*, THE GLEANER (Jan. 14, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170114/justice-budget-could-double-speed-cases-and-fight-crime> [https://perma.cc/RG4T-FQFK].

205. Paul Clarke, *Holness: Expect Diversion of Gov’t Funds To Aid Crime Fight*, THE GLEANER (June 16, 2017, 6:35 AM), <http://jamaica-gleaner.com/article/news/20170616/holness-expect-diversion-govt-funds-aid-crime-fight> [https://perma.cc/3U6U-QDRV].

206. *Id.*

207. *Shaw Signs Loan Agreements With IDB*, *supra* note 201.

208. *Renewed Calls for Hanging*, TELEVISION JAM. (June 15, 2017), <https://www.televisionjamaica.com/component/joomvideos/video/5503-renewed-calls-for-hanging> [https://perma.cc/MYR4-FLF9].

209. *Zone of special operations law will help reduce crime, says PM*, JAM. OBSERVER (July 15, 2017), http://www.jamaicaobserver.com/news/zone-of-special-operations-law-will-help-reduce-crime-says-pm_104918?profile=1373#disqus_thread [https://perma.cc/ENC8-4JLF].

210. U.S. DEP’T OF ST. BUREAU OF DIPLOMATIC SECURITY, JAMAICA 2017 CRIME & SAFETY REPORT (2017).

211. *Id.*

212. *Id.*

only convict in about seven percent of those homicide cases, creating a lack of public confidence in state legitimacy.²¹³ Authors of the Crime and Safety Report note that “[t]he public and police doubt the effectiveness of the criminal justice system, leading to vigilantism, which exacerbates the cycle of violence.”²¹⁴ Establishing an efficient, collaborative justice system is imperative for securing safety and security in any society. In his first press conference, newly installed Police Commissioner, George Quallo, expressed “concern” over “slow justice,” stating that police were not to blame for the escalating murder rate.²¹⁵ He also expressed concerns over the witness tampering that can occur because of court delays.²¹⁶ The public expression of these concerns highlights a fracturing and a lack of cohesion between the systems of government and a further erosion of legitimacy.

Ten years ago, in 2007, the Justice Reform Task Force identified twelve problems that contribute to the Jamaican system’s inefficiencies, including “delays, disrespect of individuals before the court, poor infrastructure, underfunding, outdated and inefficient procedures, unequal treatment, benefits, and protection.”²¹⁷ Public perception reflects these criticisms. The last National Crime Victimization Survey (“NCVS”) indicated that only 15.5 percent of citizens believe the courts are doing a good job helping victims or providing justice quickly.²¹⁸ The International Development Bank (“IDB”) Report on Crime and Violence in Jamaica cautioned that “Citizens’ reluctance to serve as jurors, failure of witnesses to come forward, cases of persons being lost in the system, inadequate indigent representation, and/or delay or dismissal of cases due to lost or destroyed files contribute to this perception.”²¹⁹ From within the MOJ, Minister Chuck acknowledges these issues. He opened his 2017-2018 Sectoral Debate comments with the following condemnation: “There is

213. *Id.*

214. *Id.*

215. Livern Barrett, *Slow Justice – Commish Concerns About Pace of Court System*, THE GLEANER (June 14, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170614/slow-justice-commish-raises-concerns-about-pace-court-system> [<https://perma.cc/W7WY-GU5G>].

216. *Id.*

217. HARRIOT & JONES, *supra* note 8, at 55.

218. HARRIOT & JONES, *supra* note 8, at 55.

219. HARRIOT & JONES, *supra* note 8, at 55.

urgent demand to fix the justice system, especially our court system, which admittedly, is presently dysfunctional.”²²⁰

As long as problems have existed, attempts to implement reform measures have existed as well. Since 2000, the Government has actively pursued an ambitious legislative agenda hoping to address the rise in violent crime.²²¹ They passed thirty-seven pieces of legislation from 2009-2014 which updated procedures within the judicial system and modernized the penal code, increasing punishment for certain crimes and tried to address profits related to criminal and gang activity.²²² Other updates include the establishment of the Court Management Service (“CMS”) to streamline operations in the courts, the utilization of case management software, new and improved court facilities, hiring of additional personnel, augmenting mediation and restorative justice, and the establishment of a special coroner’s office and the Independent Commission of Investigation (“INDECOM”), which investigates complaints against security forces, police, and correctional officers.²²³

While these justice system improvements are impressive, the murders and shootings are still increasing.²²⁴ There is recognition that a new approach is necessary and that no one system alone can bear the sole responsibility for transforming society. A sophisticated and intersectional plan is necessary. Vision 2030, a ten year plan for the reduction of crime and violence, builds on past initiatives and wisely includes “an epidemiological framework for violence intervention” unlike many past government policies, in an attempt to address root causes.²²⁵ Since crime in Jamaica is a result of many factors, including poverty, retribution, drugs, politics, and gangs, this expansion is appropriate.²²⁶

For its part, the MOJ has embarked on an ambitious agenda that includes goals to develop systems that address root causes of crime, restore public trust and confidence, improve access to justice, strengthen the ties of justice entities, improve infrastructure, and embed

220. See *Sectoral Debate*, *supra* note 188.

221. HARRIOT & JONES, *supra* note 8, at 71.

222. HARRIOT & JONES, *supra* note 8, at 771.

223. See HARRIOT & JONES, *supra* note 8, at 56.

224. JAMAICA 2017 CRIME AND SAFETY REPORT, *supra* note 162.

225. HARRIOT & JONES, *supra* note 8.

226. JAMAICA 2017 CRIME AND SAFETY REPORT, *supra* note 162.

social components into justice services.²²⁷ These goals, though created under former Minister of Justice Mark Golding continue under Minister Chuck. Both Ministers express a belief in strengthening the rule of law and providing a modernized, innovative, holistic system of justice. In a surprising but sorely needed attempt to transcend the tribalism rampant in partisan politics, Minister Chuck acknowledged Minister Golding,²²⁸ who now serves as opposition counterpart, recognizing the important groundwork his predecessor laid during his administration.²²⁹ The MOJ achieved noteworthy strides toward these goals over the last few years. The MOJ sensitized more than 2700 community leaders on existing justice services, commissioned 438 new JPs, provided training to 49 citizens in mediation and 140 in restorative justice.²³⁰ The MOJ has also purchased a Jury Management System to automate the selection process, refurbished courthouses, provided new equipment to Parish Courts, and has plans to outfit nineteen courts with new audio/visual and digital technology.²³¹ Its Legal Reform Division has reviewed and repealed 600 pieces of legislation to speed up the reforms, including the Arbitration Act and the Law Reform Act (“Restorative Justice Act”).²³² Other pending bills include the Child Diversion Bill and Plea Negotiations and Agreements Bill,²³³ both aimed at supporting “strategic intervention being pursued by the Ministry . . . to create an infrastructure in alternative dispute resolution (“ADR”) mechanisms that will see a significant percentage of cases diverted from the traditional court system to Restorative Justice, Child

227. See generally HARRIOT & JONES, *supra* note 8.

228. The Restorative Justice Policy was developed under Minister Golding. He continues to advocate for restorative justice on the island. See *Sectoral Debate*, *supra* note 188.

229. *Sectoral Debate*, *supra* note 188.

230. *Sectoral Debate*, *supra* note 188, at 5.

231. *Sectoral Debate*, *supra* note 188, at 11.

232. *Sectoral Debate*, *supra* note 188, at 5.

233. *Sectoral Debate*, *supra* note 188, at 7; see, e.g., Alpheia Saunders, *Senators say yes to restorative justice*, JAMAICA OBSERVER (Nov. 4, 2016), http://www.jamaicaobserver.com/news/Senators-say-yes-to-restorative-justice_79433 [<https://perma.cc/M8LC-HPLL>]; *Plea Bargaining Bill to be Tabled by Month End*, THE GLEANER (Mar. 2, 2017), <http://jamaica-gleaner.com/article/news/20170302/plea-bargaining-bill-be-tabled-month-end> [<https://perma.cc/GZ89-TJWV>]; *Child diversion policy to provide alternative for juvenile offenders – Chuck*, JAMAICA OBSERVER (Apr. 3, 2017), <http://www.jamaicaobserver.com/news/Child-diversion-policy-to-provide-alternative-for-juvenile-offenders---Chuck> [<https://perma.cc/7AJG-X65V>]; Chris Patterson, *Senate Passes Arbitration Bill*, JAMAICA INFORMATION SERVICE (Apr. 25, 2017), <http://jis.gov.jm/senate-passes-arbitration-bill> [<https://perma.cc/KB88-JRKU>].

Diversion, Mediation and Arbitration.”²³⁴ Specifically, the authors of the Crime and Justice Report indicated the Restorative Justice Program has major transformative potential.²³⁵

B. The Origin and Development of Restorative Justice Initiatives

Though restorative justice has been enhanced recently, restorative processes have been in practice for over the last twenty years. The first major substantive appearance was the visit of Howard Zehr, facilitated with the assistance of the Mennonite Church in May of 1998 by the Dispute Resolution Foundation (“DRF”).²³⁶ During that initial nine-day blitz across the Island, Professor Zehr engaged in dialogue with various constituent groups.²³⁷ He presented on CVM TV, and met with Government agencies—the then joint Ministry of Justice and National Security, Corrections and the Courts.²³⁸ He met with educational institutions (Normal Manley Law School and Jamaica Theological Seminary), civil society organizations (DRF, Peace and Love in Schools Initiative), and community members.²³⁹ He trained mediators in Montego Bay and Ocho Rios.²⁴⁰ He facilitated discussion with key justice stakeholders about potential integration of the restorative framework into Jamaican society, including the Chief Justice, President of the Court of Appeals, the Permanent Secretary, the Supreme Court Registrar, representatives of the Jamaican Bar Association, advocates associations, the Prosecutor’s Office, and justice program funding partners.²⁴¹ Zehr also held workshops for police, correctional officers, and religious leaders.²⁴² The spirit of restorative justice seemed to

234. *Sectoral Debate*, *supra* note 188, at 7.

235. HARRIOT & JONES, *supra* note 8, at 56.

236. Dispute Resolution Foundation was registered (incorporated) on July 8, 1994, with a broad range of objectives. Their mission statement reads, “To achieve accommodative and non-violent relationships between citizens, corporations and other organizations within a democratic and restorative justice framework, thereby profiting the citizens, communities and the country by strengthening and expanding the use of mediation and other alternative effective methods of preventing and resolving disputes in Jamaican and the region.” See DRF documents entitled “Memorandum of Association” and “DRF Profile” (on file with author).

237. See DRF documents entitled “Initiating Dialogue on Restorative Justice” (on file with author).

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

resonate, and a four-day intensive workshop in February 1999 quickly followed.²⁴³ Professor Barb Toews and a returning Zehr trained the first small cohort of volunteers on victim/offender conferencing (“VOC”).²⁴⁴ The Honorable Karl Rattray and the President of the Court of Appeal both spoke at the graduation celebration, highlighting the collaborative nature between the courts and restorative practitioners.²⁴⁵ Zehr and Toews continued to be influential and involved—students and community members journeyed to Eastern Mennonite University to continue learning about the subject and additional peacemaking techniques—and in March 2000, Toews conducted a half-day workshop during the 1st Caribbean Conference of Mediators.²⁴⁶ DRF, though primarily concerned with providing mediation services, ensured the growth and sustenance of restorative ideals—integrating them into their work, carving out and dedicating a significant portion of their forty-hour mediator training to the topic. Their “ADR User Guide” contains an entire chapter on restorative justice.²⁴⁷

The Government, though supportive of the work, was not integrally involved in advancing a formal restorative justice agenda until mandated in the early 2000s.²⁴⁸ In 2001, a horrific event put the government on the path to developing a restorative justice policy for the Nation. The “Lest we Forget” monument commemorates those killed during clashes with security forces “who entered Tivoli Gardens—a community in West Kingston—in search of guns and wanted men. The stand-off resulted in the deaths of 25 community members, a soldier and police officer and was regarded as ‘the darkest spot in the history of western Kingston.’”²⁴⁹ In response to the event,

243. *Id.*

244. *See id.*; *see also* Interview with Donna Parchment Brown, initial and former Executive Director, Dispute Resolution Foundation (June 7, 2017) (on file with author).

245. *See* Interview with Donna Parchment Brown, *supra* note 244.

246. Interview with Donna Parchment Brown, *supra* note 244.

247. Interview with Donna Parchment Brown, *supra* note 244.

248. *See Findings, recommendations of the West Kingston Commission*, JAM. OBSERVER (July 2, 2002), <http://www.jamaicaobserver.com/news/28113-Findings--recommendations-of-the-West-Kingston-Commission> [<https://perma.cc/49Z4-9BVK>].

249. *Tivola Gardens Flashback*, THE GLEANER (May 22, 2010), <http://jamaica-gleaner.com/gleaner/20100522/lead/lead6.html> [<https://perma.cc/PS3G-S2SH>]. Though originally dubbed one of the darkest spots, on May 24, 2010 another deadlier incursion occurred where seventy-four people were killed in an operation to arrest Christopher (Dudas) Coke on December 4, 2001. *See* Mattathias Schwartz, *A Massacre In Jamaica*, THE NEW YORKER (Dec. 12, 2011), <https://www.newyorker.com/magazine/2011/12/12/a-massacre-in-jamaica> [<https://perma.cc/8EPS-L65B>].

the West Kingston #1 Commission of Enquiry directed the MOJ to implement restorative policies and programs.²⁵⁰ Since the mandate, the MOJ has had varying degrees of success implementing the recommendation. From 2002 to 2012, the government, along with DRF, undertook steps to keep moving a restorative agenda forward.²⁵¹ This included organizing two study tours, one to the United States and one, led by the current Permanent Secretary, Carol Palmer, to Canada in 2005.²⁵² Leon Dudnas, a Jamaican restorative advocate, obtained a fellowship and used the opportunity to produce a report in 2007 titled *Towards a Restorative Justice Policy for Jamaica*.²⁵³ The Governor General declared the first week of February “Restorative Justice Week.”²⁵⁴ The first one would be the model for subsequent weeks. It included sensitization sessions, a church service, community awareness activities, and a concluding international conference.²⁵⁵ Additionally, the International Institute for Restorative Practices (“IIRP”) conducted several trainings during this time as well and many community sensitization sessions occurred.²⁵⁶

In 2012, under Golding, a more focused and aggressive agenda developed, including the creation of the National Restorative Justice Policy, the opening of the first Restorative Justice Centers in pilot communities—Granville, St. James, Effortsville, Clarendon, Homestead, St. Catherine, Tower Hill, Canaan Heights, May Pen and Ellerslie Pen—and the development of a Restorative Justice Unit within the MOJ.²⁵⁷ Continuing on the work started under the previous administration, Minister Chuck has taken up the mantle with vigor, also fiercely advocating for and pursuing a highly ambitious restorative

250. *Findings, recommendations of the West Kingston Commission*, *supra* note 248.

251. Interview with Donna Parchment Brown, *supra* note 244.

252. Interview with Donna Parchment Brown, *supra* note 244.

253. Interview with Donna Parchment Brown, *supra* note 244.

254. Interview with Donna Parchment Brown, *supra* note 244.

255. Author’s personal records indicate RJ Week and the Conferences were held in February 2007 and 2008 and February 2017. *See also* MINISTRY OF JUSTICE, THE NATIONAL RESTORATIVE JUSTICE POLICY 36-37 (Aug. 13, 2012), available at https://moj.gov.jm/sites/default/files/rj/Restorative%20Justice%20Policy_Revised_%20Final_Policy_March_18.pdf [<https://perma.cc/Q453-MMYT>] [hereinafter THE NATIONAL RESTORATIVE JUSTICE POLICY].

256. *See* “Initiating Dialogue on Restorative Justice,” *supra* note 189.

257. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 255. A transition in Unit and political leadership caused some delays from 2014 through early 2016. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra*.

justice agenda. This continuation is commendable, as work can sometimes dissipate with the transfer of power from one administration to the next due to a political system fraught with tribalism. The first necessary and major move forward under Minister Chuck was the passage of the Law Reform Act Bill, amending the Criminal Justice (Reform) Act, the Child Care and Protection Act, and the Corrections Act and the Parole Rules, which provided the legal framework necessary for wide-scale implementation of the objectives in the National Restorative Justice Policy.²⁵⁸ Other items on the agenda include the opening of fourteen parish justice centers.²⁵⁹ The vision is that these centers will serve as the hub for a host of alternative dispute resolution (“ADR”) services.²⁶⁰ In addition to these centers, two new dedicated restorative justice centers recently opened in Tivoli and Denham Town.²⁶¹ Finally, the MOJ trained many volunteer facilitators and plans to train even larger cohorts.²⁶²

The National Restorative Justice Policy.²⁶³ The IDB Report, which assesses crime, violence, and potential interventions, favorably summarizes the National Restorative Justice Policy (“Policy”) as one that was “developed to demonstrate the government’s commitment to promoting a framework that works transparently, effectively, humanely, and holistically, while employing conflict resolution mechanisms to reduce crime and conflict.”²⁶⁴ The Policy coordinates existing multi-sectorial partnerships for peace building and restoration of relationships in Jamaica.”²⁶⁵

The Restorative Justice Formulation Team (“RJFT”) and the Restorative Justice Policy Working Committee are owed some

258. *Sectoral Debate*, *supra* note 188.

259. *Sectoral Debate*, *supra* note 188, at 8.

260. *Sectoral Debate*, *supra* note 188, at 7.

261. *See Sectoral Debate*, *supra* note 182, at 8. It is worth noting that there have been delays in “opening” these centers due to some questions of safety and security amidst the violence that continues to erupt in these communities; however, they are said to be operational and accepting cases. *See Sectoral Debate*, *supra*.

262. *3,000 School Administrators For Restorative Justice Training*, THE GLEANER (Feb. 11, 2019), <http://jamaica-gleaner.com/article/news/20190211/3000-school-administrators-restorative-justice-training> [https://perma.cc/U3LE-G6HC]; *see also 1500 JPs To Get Mediation Training*, THE GLEANER (Sept. 12, 2017), <http://jamaica-gleaner.com/article/news/20170912/1500-jps-get-mediation-training> [https://perma.cc/LS6A-7LVB].

263. *See generally* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257.

264. HARRIOT & JONES, *supra* note 8, at 80.

265. HARRIOT & JONES, *supra* note 8, at 83.

recognition for the heavy lifting that went into developing this fairly comprehensive policy—the bedrock for restorative programs across the Island. The drafters extensively incorporated a theoretical framework, analyzing the underlying reasons why restorative programs make sense and assessing how they could operate effectively within Jamaica. They also incorporated best practices from the field in considering programmatic design.²⁶⁶ The drafters were dedicated to a collaborative process: they first produced the Policy as a green paper, soliciting feedback from the Working Committee.²⁶⁷ They also synthesized and attempted to incorporate valuable community commentary, collected from over twenty-three nationwide consultations with over 2,100 community members attending.²⁶⁸

The document's preface sets the tone; it is hopeful, indicating the expectation that the restorative model of justice will have broad integration and transformative potential across Jamaican society.²⁶⁹ It straightforwardly acknowledges the climate of declining public trust and rising violent conflict, specifically pointing to the concern regarding reprisals.²⁷⁰ In a collaborative spirit, the drafters extend a nod of thanks to DRF for their work in fostering restorative justice. However, the drafters highlight an important distinction between mediation and restorative practices, suggesting that the aim of this Policy should be a move “beyond the ADR focus on dispute resolution” to hone in on the core of restorative work in “restoring balance and equilibrium to tarnished or harmed relationships.”²⁷¹

The document's executive summary follows and with its first sentences acknowledge the unmet needs of the citizens, highlighting the lack of the public's faith in its institutions and resulting social erosion.²⁷² The Policy shows a belief that restorative justice can directly address this erosion, asserting that a “culture and systematic shift towards local level, person-to-person, group-on-group and community reconciliation, empowering and equipping citizens and communities with peaceful means and structures for resolving conflict

266. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 34-41.

267. *See* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 3.

268. *See* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 35-36.; *see also* Interview with Donna Parchment Brown, *supra* note 244.

269. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 6.

270. *See* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 6.

271. *See* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 7.

272. *See* THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 8.

and experiencing justice” is required.²⁷³ The Summary juxtaposes the values present in retributive models of justice and calls for a shift to one based on a “multi-disciplinary and multi-partnered” restorative approach.²⁷⁴

From here, the Policy separates into chapters that envision of operationalization. The first chapters are the most robust and lay out the introduction, a situational analysis, and policy framework. Chapter 1 cites the need for the Policy, discussing the high rates, causes, and cost of crime.²⁷⁵ It specifically addresses the problems of the Court backlog, re-offending and social erosion, unambiguously highlighting the government’s failure to adequately deal with underlying issues of “family breakdown, absent parents, official neglect and marginalization of underserved communities, unemployment, illiteracy, violence, revenge, gangs, and apparent indifference of state actors, drug addictions, and the presence of a ‘donmanship culture.’”²⁷⁶ Dons step in to provide services that the government is seen as being unable to provide, often putting them in the position to “have a hand (*typically violent*) in all dispute resolutions of significance.”²⁷⁷ This leads to further decline of state legitimacy, “disenchantment with the formal justice system . . . [and] a reduction in use of fair, respectful and constructive conflict resolution processes by individuals, families, schools and communities.”²⁷⁸ This chapter continues, discussing the variety of ADR practices, differentiating restorative justice from mediation and the adversarial system.²⁷⁹

Chapter 2 discusses the international context and success of restorative justice (citing a range of practices from across the globe, including Africa, Asia, Europe, Latin America, North America, and the Pacific) and segues into a conversation on the National context.²⁸⁰ Next, the chapter briefly summarizes the history of restorative initiatives, partnerships and work on the Island to date, including a description of the establishment of centers in pilot communities funded

273. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 8.

274. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 9.

275. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 255, ch. 1.

276. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 10-12.

277. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 10-12.

278. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 12.

279. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 12-13.

280. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 24-34.

by the Citizen Security and Justice Programme (“CSJP”).²⁸¹ The Policy then lays out the ten-module-training that all facilitators must complete,²⁸² which is “geared specifically to build the capacity of facilitators so that they can competently, confidently and safely conduct Restorative Justice processes in Jamaica.”²⁸³ The responsibility for training and national certification rests with the Justice Training Institute (“JTI”) which receives its accreditation from University Council of Jamaica.²⁸⁴

Chapter 3 is short but imperative, as it sets out the “Vision Statement,” “Policy Goals,” “Principles of Restorative Justice in Jamaica,” and “Policy Achievement Strategies.”²⁸⁵ Directly following, Chapter 4 creates a pathway for achieving the objectives listed in the previous chapters.²⁸⁶ The Vision Statement proclaims that “[t]he National Restorative Justice Policy is a pathway for transformation to a more secure, just, cohesive and peaceful Jamaican Society.”²⁸⁷ In sum, the Goals aim to build a “culture of peace,” empower communities to respond productively to crime through relationship development, reduce court backlog through case diversion, augment public confidence by increasing ownership, “reduce recidivism” through addressing root causes of crime, and to “eliminate [] reprisal culture.”²⁸⁸ The “Principles of Restorative Justice in Jamaica” section summarizes the values of restorative justice: setting out to “address harm to relationships,” “hold [] offender[s] accountable,” provide meaningful reintegration, directly address victim needs, and continue development of restorative programs in “communities, churches and schools.”²⁸⁹ Finally, the Objectives (and subsequently laid out

281. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 34-36.

282. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 37-40. The modules listed include: “(1) What is Restorative Justice,” “(2) The National Restorative Justice Programme in Jamaica,” “(3) Introduction to the Criminal Justice System in Jamaica,” “(4) Facilitating the Restorative Justice Process,” “(5) Case Management,” “(6) Working with Victims of Harm,” “(7) Working with Offenders,” “(8) Clientele Diversity – Victims/Offenders,” “(9) Techniques for ensuring Safety and Security,” “(10) Communication and Conflict Management.” See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra*, at 37-40.

283. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 37.

284. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 37.

285. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 42-43.

286. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 44-47.

287. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 42.

288. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 42.

289. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 43.

strategies) capture the intention of the MOJ to develop restorative justice initiatives and “infrastructure and processes,” and to build capacity, utilize “best practices,” attend to all parties’ needs and educate Jamaican society regarding restorative initiatives.²⁹⁰

Chapters 5 and 6 lay out the details for diversion of cases into centers, including information concerning eligibility criteria, protocols, and referral forms, all of which later turned into the content underlying the legislative framework for the Restorative Justice Act.²⁹¹ Details are fleshed out in Chapter 6, indicating how agreements should be drafted, including administrative requirements, who is responsible for supervision of those agreements, information on non-disclosure, records retention, transfers, details about how and what statistical information should be kept, volunteer expectations and responsibilities, supervision, qualifications, screening, training, and potential sanctions should a volunteer fail to meet those expectations.²⁹²

Chapter 7 diagrams the governance structure, which includes the roles and responsibilities of the MOJ, the Director, the National Advisory Board, the Steering Committee (Parish Councils), the Centre Manager, a government employee selected to run each center, and facilitators, volunteers from the community who assist on cases.²⁹³ “Ownership and Implementation” for the Policy are assigned in Chapter 8 to the MOJ.²⁹⁴ “Key stakeholders and [t]heir [r]oles” are identified, including within the GOJ: the MOJ (Victim Support Unit, JTI, RJ Unit), the MNS, (Constabulary Force and Department of Correctional Services), the Ministry of Education, the DRF, civil society, faith-based organizations and the sports and entertainment sectors.²⁹⁵ Chapter 9 discusses the legislative framework necessary to ensure constitutional protections.²⁹⁶ Chapter 10 identifies important strategic links and complementary policy goals across agencies within the GOJ.²⁹⁷ Finally, Chapter 11 concludes with a brief word on the

290. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 43.

291. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 48-66; see generally The Law Reform (Miscellaneous Amendments) (Restorative Justice) Act (No. 20-2016) (Jam.).

292. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 61-66.

293. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 67-69.

294. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 70.

295. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 70-74.

296. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 74-75.

297. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 76.

expectations for monitoring and assessment, reminding all that evaluations should “not assume the standards and objectives of the current justice system and its practices.”²⁹⁸

The Policy created a vision and a plan for execution. It captures an excellent snapshot of the hopeful state of restorative justice in 2012.

IV. REFLECTIONS ON RESTORATIVE JUSTICE IMPLEMENTATION

Restorative justice’s resurgence is unique because, while it comes from a rich tradition, its new iteration makes it an emerging field, a “democratic experiment,”²⁹⁹ one that is highly responsive and amenable to the individual communities it serves. This creates a wide-range of possibilities as to how programs are developed and implemented. The MOJ’s ambitious agenda to transform justice and society through the widespread imbedding of restorative practices is proceeding at an incredibly fast pace. The building of new centers, sensitization of large amounts of community members, and the passing of several acts to assist in implementation, is impressive. The enthusiasm behind these innovative reforms is laudable, especially considering that most countries have yet to adopt wholesale restorative principles on a national level. While restorative justice does provide a revolutionary framework for dealing with underlying issues of criminality, its application is somewhat limited in scope, as a unique set of circumstances is required for its operation. For example, a process needs to have the following ingredients: a willing and well-informed victim; a well-informed offender, who desires to accept responsibility and commits to address their harmful behaviors; and the appropriate mix of invested community members, along with well-resourced programs that have adequate facilities and facilitators to manage the process. Recognition of the scope, parameters, and limitations is paramount; no one program is a panacea to solve all problems within a system, but solely one part of a complementary system of justice.

For Jamaica’s Policy to be most effective, recognition of these limitations is important, as is tailoring programs responsive to community needs. Practices should be uniquely Jamaican, specifically

298. See THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 77.

299. Albert W. Dzur, *Civic Implications of Restorative Justice Theory: Citizen Participation and Criminal Justice Policy*, 36 *POL’Y SCI.* 279, 281 (2003).

attuned to the existing challenges of the landscape and creative about optimizing opportunities present. This type of customization can be difficult to enact, due to over reliance and preference for adopting established models, an exacerbated reality for developing nations that receive external funding incentives for program implementation. There can be a natural pull of strictly adhering to the design of well-known models, best practices, and external expertise, which can lead to a decrease in the ability to garner insight from within. Programs overly saturated in imported goals that are difficult to operationalize, lose their maximum potential for transformation. This occurs regularly within the Country; as one scholar notes, “Jamaica has a fairly sound complement of clearly defined national laws, plans, policies, and strategies for crime and violence reduction. Several were implemented to conform to international processes and/or treaty requirements. Despite gaps, the major difficulty is to translate existing policies into effective programmes, projects, and initiatives that are theoretically and empirically based and routinely evaluated.”³⁰⁰ Success then depends on creating localized, innovative enterprises and metrics to determine positive outcomes, some which may fall outside the traditional indicators relied on to assess success under current models. While many of those measurements are useful, such as recidivism statistics, if there is hope to create a new, complementary system that relies on differing values around new notions of justice, assessments will have to shift. How we study, measure, and collect data on restorative “successes” are complex questions for consideration.³⁰¹

The goals originally drafted into the Policy recognize and attempt to account for these realities. It urges the importance of refinement, expressly stating this intention: “justice must reflect the values and principles as recommended in the Report of the Jamaican Justice System Reform Task Force” and “[c]ontinuous monitoring and evaluation of effectiveness of these initial processes will be undertaken and adjustments made as necessary.”³⁰² Thus, embedded within the Policy are mechanisms for this type of assessment. Two bodies, the National Advisory Board (“NAB”) and the Restorative Justice Committee at the Parish Level (“Parish Councils”), have the task of

300. HARRIOT & JONES, *supra* note 8, at 83.

301. Llewellyn, *supra* note 29, at 283.

302. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 77.

assessment.³⁰³ The NAB is responsible for gathering insights from a broad cross-section of government and community stakeholders.³⁰⁴ Parish Councils have the role of providing oversight regarding fulfilment of the goals of restorative programs and for giving stakeholders a sense of ownership, both necessary for sustainability.³⁰⁵ They also bear the responsibility for coordinating various stakeholders who wish to refer into the programs.³⁰⁶ Moving beyond the Policy's inception into its practical application is a useful exercise for investigating how the movement is unfolding.

A. Restorative Justice's Potential Impact on Quelling the Culture of Violence

This final section explores the initiatives underway, some of the major challenges presented and the opportunities embedded within the creativity and resiliency of the Jamaicans committed to perusing them. The use of storytelling,³⁰⁷ newspaper articles, and observation, will be woven throughout this section as a tool to provide greater depth to the conversation.

Many Jamaicans look on the past longingly, reminiscent of a time when a strong community felt predominant, neighbors helped one another, and shared possessions. Obika Gray captures this picture in his article, *Badness-Honour*, describing a society devoted to religion, civic morality, and one that struggled for “norms of excellence as a means to group uplift.”³⁰⁸ Many lament the loss of those days, especially in light of the feeling of lawlessness that has replaced it, as murder rates across the Island soar. Gangs are seen as causing “mayhem,” creating franchises to expand their reach from urban into rural and suburban

303. *Id.* at 96.

304. *Id.* at 71.

305. *See id.* at 68.

306. *See id.* at 69.

307. Storytelling is an important technique for restorative justice which is highlighted in Part II. *See infra* Part II.

308. Obika Gray, *Badness-Honour*, in UNDERSTANDING CRIME IN JAMAICA: NEW CHALLENGES FOR PUBLIC POLICY 13, 17 (Anthony Harriet ed., 2003) [hereinafter Gray, *Badness-Honour*]; *see also* OBIKA GRAY, Demeaned but Empowered: The Social Power of the Urban Poor in Jamaica (2004) [hereinafter GRAY, Demeaned but Empowered].

areas.³⁰⁹ There are almost 200 active gangs reportedly on the Island and they are primarily responsible for some of the highest homicide rates ever on record.³¹⁰ The chosen response of the State has typically been initiatives that attempt to show might, through the increase of military and police dominance. The creation of Zones of Special Operation (“ZOSO”) is a recent example of this.³¹¹ Gray also captures this cultural interplay, noting that

[B]y 1971 badness-honour as a cultural practice had won moral dominance within the society of the Kingston poor. There a stylized outlawry (“badness” in Jamaican parlance) provoked fear in the larger society, but earned raves in the slums . . . defiance as a new basis for social identity and respect (honour).³¹²

This reach for respect and social identity through gang membership has created vast societal rifts, culminating in a showdown mentality.³¹³

While gang affiliates not valuing human life must be addressed, dehumanization flows both ways. The following story illustrates this concept. On January 16, 2017, police officers killed six members of the community; the Jamaica Observer article reported on the story.³¹⁴ The headline read “6 gangsters killed,” and the opening line stated “six alleged members of the Ski Mask Gang were killed, as a ‘brave and courageous effort’ by the law men.”³¹⁵ The report described the officers’ actions as “a commendable effort,” defending themselves against “people who don’t hesitate to murder people.”³¹⁶ The officers

309. Alpheia Saunders, *266 criminal gangs creating mayhem across island*, JAM. OBSERVER (Nov. 13, 2015), http://www.jamaicaobserver.com/news/266-criminal-gangs-creating-mayhem-across-island_19238301 [https://perma.cc/4PXZ-VS9F].

310. Mimi Yagoub, *Why Jamaica’s Homicide Rate Is Up 20%*, INSIGHT CRIME (June 20, 2017), <https://www.insightcrime.org/news/analysis/why-jamaica-homicide-rate-up-20-percent/> [https://perma.cc/N4LW-42TU]; see also *38 murders in first six days of 2018*, THE GLEANER (Jan. 8, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180108/38-murders-first-six-days-2018> [https://perma.cc/G4ZZ-CVJU].

311. *Zone of special operations law will help reduce crime, says PM*, JAM. OBSERVER (July 15, 2017), http://www.jamaicaobserver.com/news/zone-of-special-operations-law-will-help-reduce-crime-says-pm_104918?profile=1373 [https://perma.cc/5AMW-QURU].

312. Gray, *Badness-Honour*, *supra* note 308, at 18.

313. See generally Gray, *Badness-Honour*, *supra* note 308.

314. Mark Cummings, *6 gangsters killed*, JAM. OBSERVER (Jan. 15, 2017), http://www.jamaicaobserver.com/news/6-gangsters-killed_86671 [https://perma.cc/3LVZ-JNWS].

315. *Id.*

316. *Id.*

showed “bravery and courage of the highest order.”³¹⁷ During the operation, police

strategically positioned [themselves] on a second of the Goodwill main road, signaled the diver . . . to stop . . . were fired upon . . . fire was returned, and when the shooting subsided the six were discovered with gunshot wounds. They were taken to the hospital where they were pronounced dead.³¹⁸

DCP Blake claimed that those killed were responsible for numerous, serious crimes, though the report did not mention any prior arrest records or adjudication of those matters.³¹⁹ Community members reported being in a “state of panic.”³²⁰ One bystander described the gun battle as “one of the most dramatic experiences of my life.”³²¹ Comments on the story range from vehement support to opposition; however, most were in favor of the action. A brief sampling of these comments indicates this action was viewed as a win for the community:

- “Man with a gang name like that thay [sic] deserve it more.”
- “Sorry to say but some are better off dead than alive. They wreak havoc on so many innocent lives!”
- “Yeah, I heard there were celebrations for the elimination of these men.”
- “Good job Mr. Officers . . . The greater force always wins!!”
- “The police should press on with their advantage and not give these cockroaches time to breath.”
- “Sounds like music to mi ear.”
- “Bag dem [sic] and tag dem [sic].”
- “This one sounds justified.”
- “Better them than us. 1 down, 260 more (gangs) to go.”
- “Yes mon, the JDF need to step to dem [sic] militantly like this again and again and again.”
- “What they need to do is cleanse parish by parish.”³²²

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

Dehumanization, whether of, or from, gang members, is problematic, as it can lead to an over-simplistic characterization that makes violence perpetration easier. We ignore the complexity of individual stories at our own peril. Thus, understanding the impediments members of society face and their reasons for opting into gangs is vital if there is hope of stalling their rising membership. Similarly, finding a way to raise awareness of the harm gang members create for themselves, victims, and society is an essential strategy for creation of more peaceable communities. The government has continually sanctioned joint military and police augmentation of force in an attempt to regain control, but these plans have failed and often resulted in further aggrandizement and desensitization of violence among the entire citizenry.³²³ A UNICEF Report underscores the problem; “[t]he issue of violence is a critical one for Jamaica. It could be cogently argued that at this moment it is the most critical social issue confronting Jamaican society. The issue of violence is not an academic issue for us.”³²⁴ Children experience this violence, then internalize and cyclically perpetuate it. In schools, students are experiencing bullying at extremely high rates. Over sixty-five percent of students, report being bullied (compared to about twenty-one percent in the United States³²⁵) and a vast majority of students and staff see this behavior as “very serious.”³²⁶

323. Major Wayne A. Robinson, *Eradicating Organized Criminal Gangs in Jamaica: Can Lessons be Learnt From a Successful Counterinsurgency* (Apr. 17, 2008) (unpublished master's thesis, U.S. Marine Corps Command and Staff College), at 8-10; see also Michael Abrahams | *Jamaica IS an extraordinarily violent country*, THE GLEANER (May 9, 2016), <http://jamaica-gleaner.com/article/commentary/20160509/michael-abrahams-jamaica-extraordinarily-violent-country> [<https://perma.cc/Z78U-Q6K8>] (newspaper editorial discussing the severe levels of violence and cruelty that Jamaicans accept as commonplace: “A good friend of mine was walking with his nine-year-old son to his godfather’s house on the morning of Good Friday a few years ago, on the same road as Vale Royal (the official residence of the prime minister of Jamaica), and was challenged by two thugs, one of whom shot him several times at close range, in front of his child. He succumbed to his injuries. A patient of mine left her husband and went abroad, and on her return, he arranged for her to be doused with acid. She died. Another patient of mine presented herself for her first antenatal visit and did not return. She was reported missing, and her charred body was found in bushes near the Port Royal main road.”).

324. LINCOLN WILLIAMS, “ANYWHERE YUH BE, YU NOT SAFE”: ADOLESCENCE AND VIOLENCE IN JAMAICA 1 (2001), available at https://www.unicef.org/evaldatabase/files/JAM_2001_803.pdf [<https://perma.cc/M4VU-VYWC>].

325. *Fast Facts*, NAT'L CTR. FOR EDUC. STATISTICS, <https://nces.ed.gov/fastfacts/display.asp?id=719> [<https://perma.cc/7RRA-ZKW2>] (last visited Mar. 25, 2009).

326. PSEARCH ASSOC. CO. LIMITED, *INVESTIGATING THE PREVALENCE AND IMPACT OF PEER ABUSE (BULLYING) ON THE DEVELOPMENT OF JAMAICA’S CHILDREN* (2015), available

Aggression is not a new phenomenon in Jamaica; the country's history is marred with conflicts that have reverberated into the current day.³²⁷ From the eradication of an entire indigenous population, to the proud history of Jamaicans being the descendants of the strongest slaves who survived the brutal and bloody Atlantic Slave Trade, to almost all national heroes arising from liberation struggles, violence is a firmly entrenched cultural phenomenon.³²⁸

Historically, this ethos' justification is valid, and, in the end, the Jamaicans of today are the direct recipients of its effects and perpetuation. Violence begets violence. Traditional legal systems, methods of policing, and government policies have been unsuccessful in quelling it. Meaningful change will not occur under the current framework; therefore, a fusing of traditional methods with new interventions is required. Most important, the country must shift the hegemonic narrative that glorifies violence. Consideration of new methodologies and forms of practical implementation, attempting to create this shift, are in various stages, including discussions on community policing, child diversion, re-thinking models of discipline, especially those relying on school sanctioned corporal punishment, and restorative justice initiatives.

As discussed earlier, restorative justice holds great potential because it requires a reshaping of values, enhancing the importance of relationship and determining unmet needs.³²⁹ If the government takes an opportunity to foster conversations that uncover unmet needs, catalogues the data, and formulates effective plans on how to meaningfully address gaps, communities will become stronger. In a restorative process, parties (including the gang member through a process of self-reflection) can come to an improved understanding of the reasons people affiliate with gangs. In his book, *Tattoos on the Heart: The Power of Boundless Compassion*, Father Gregory Boyle emphasizes the importance of reckoning with the needs that drove previous gang members to join, if we have any hope for successful

at https://www.unicef.org/jamaica/bullying_FULL_REPORT_Anti_Bullying_Consultants_Report_Edited_2ac.pdf [<https://perma.cc/FT5P-YCKV>].

327. WILLIAMS, *supra* note 324, at 2-3.

328. WILLIAMS, *supra* note 324, at 2-3.

329. See Llewellyn et al., *supra* note 29.

reintegration.³³⁰ He describes the lack of upward mobility, job skills, social supports, familial ties, and the trauma that often underlie youth choices to join.³³¹ Boyle's anecdotes reinforce the emerging notions of the "insurgent citizenship" concept from anthropology scholars.³³² Rivke Jaffe expounds on this type of outlawry, writing extensively on the causes for gang growth and the development of extra-state rule in Jamaica.³³³ She remarks that "dons" have become community leaders who offer complementary government structures at the neighborhood level to fill the gaps of government inefficiency.³³⁴ They provide welfare, employment, security, and "conflict resolution" (often utilizing violent means) and their authority is viewed, in many ways, as legitimate.³³⁵ She surmises, "[t]o a certain extent, they have taken on the responsibility of managing inner-city populations and spaces, displacing or complementing the activities of formal state actors . . . [these relationships] can be understood as resembling citizenship."³³⁶ Gray also comes to this conclusion. "In the society of the mobilized poor, it therefore became customary to break laws and to flaunt social customs as ways of decrying racial and social injustice . . . Badness-honour among the poor had therefore become a retort to unequal power, class discrimination and ethnic injustice in Jamaica."³³⁷

In response for services, residents "pay" for resources in 'taxes' – actual funds and services.³³⁸ To that end, gangs are fully intertwined in communities and readily able to recruit. Youth become "foot soldiers and socialised into a culture of drugs and violence, fitting very neatly into the already extremely macho culture of the ghetto."³³⁹ If the interruption of gang acculturation is to take place, the GOJ must assess and provide better services. Period. The plan of employing security forces for disruption is a short-range solution and "pointless," as gangs

330. See generally GREG BOYLE, *TATTOOS ON THE HEART: THE POWER OF BOUNDLESS COMPASSION* (2010).

331. See generally *id.*

332. See generally *id.*

333. Rivke Jaffe, *Crime and Insurgent Citizenship: Extra-State Rule and Belonging in Urban Jamaica*, 55 *DEV.* 219, 219 (2012).

334. *Id.*

335. *Id.*

336. *Id.* at 220-21.

337. Gray, *Badness-Honour*, *supra* note 308, at 19.

338. Gray, *Badness-Honour*, *supra* note 308, at 19.

339. WILLIAMS, *supra* note 324, at 17.

will “inevitably replenish themselves over time.”³⁴⁰ Ultimately, the GOJ must reduce reliance on and, therefore, alliance with the dons. If the government can provide the most needed-services, state legitimacy will grow and new alliances may form. As relayed earlier, needs assessment is one of the principal values underlying restorative processes.³⁴¹ Another central benefit is the strengthening of relationships. Relationship is a primary driver for us; recall earlier references on the importance of belonging. Dons capitalize on that human need to belong.³⁴² Affiliation is often an attempt to find family and community that is absent.³⁴³ The Gleaner reports that “gangs are what we call surrogate families.”³⁴⁴ Along with the need to belong, humans want to feel respected, and the potential power that comes along with membership is alluring to someone with little agency, power, and resources. Gray elaborates on this concept: “badness-honour is the oral-kinetic practice in Jamaica that enables claimants, usually from disadvantaged groups, to secure by means of intimidation a modicum of power and respect.”³⁴⁵ Remember, restorative processes are used to restore equality, the kind that encompasses “elements required for peaceful and productive human relationships—namely, equality of respect, dignity, and mutual care and concern for one another.”³⁴⁶ Restorative processes place all participants on equal footing, in a literal circle where power differentials are minimized, almost to the point of eradication. Everyone makes the choice to be involved and come into the circle. The entire process is built around acknowledging the humanity and dignity of all the participants, legitimizing the notion that every person is due respect. As respect and feelings of personal agency are supported, these exercises can open new channels for communication.

340. Corey Robinson, *Wrong On Gangs - International Criminologist Urges Jamaican Police To Rethink Their Approach to Gangster*, THE GLEANER (Feb. 11, 2018), <http://jamaica-gleaner.com/article/lead-stories/20180211/wrong-gangs-international-criminologist-urges-jamaican-police-rethink> [https://perma.cc/9RGR-8287].

341. See generally ZEHR, *CHANGING LENS*, *supra* note 16.

342. See generally BOYLE, *supra* note 350; GRAY, *DEMEANED BUT EMPOWERED*, *supra* note 308; Gray, *Badness-Honour*, *supra* note 308; Robinson, *supra* note 340;

343. Robinson, *supra* note 340.

344. Robinson, *supra* note 340.

345. Gray, *Badness-Honour*, *supra* note 308, at 18.

346. Llewellyn et al., *supra* note 29, at 298.

The story from above is rife with opportunities for interventions. Currently, the main focus of the restorative process is to divert conflicts from courts (in part help relieve their burden), but the Policy did create multiple entry points, including community and police referrals pre-incident.³⁴⁷ The MOJ could expand their approach to be even more inclusive, a proactive strategy, asking facilitators to cultivate relationships with an attitude of having an awareness about potential flashpoints for violence. In post-conflict cases, Centre Managers and facilitators could be extremely useful in assessing the pulse of the community after a flare-up. They are already trained in restorative theory, equipped with peace-making tools, and they are typically already embedded within the communities they serve. They can be the first line in determining an intersectional-governmental approach to address community needs pre- and post-conflict. If appropriate, Centres can hold healing circles for all community members who want an opportunity to process through and heal after a critical event. If officers are involved in a conflict, the Centre Manager can be in communication with them. In the event that the courts or INDICOM finds no wrongdoing after a traumatic, officer-involved incident, an opportunity for healing may arise down the road. Officers may feel a level of guilt and want an opportunity to atone with community members and even potentially with the families of the victims. Centre Managers receive training to help them determine whether a restorative process can be fruitful. As earlier stated, victim-offender circles should not occur unless an offender is willing to take responsibility for an act, including a willingness to engage in a process of developing the components of restitution. Without this set of circumstances, a victim-offender circle would not be productive and could potentially be harmful.

Understandably, these interventions will not proceed without challenges. A more robust discussion of those will be summarized in the conclusion.³⁴⁸ However, in sum, well-staffed and resourced Centres have a multitude of opportunities for interventions to help soothe communities. Their physical positioning and composition can lend toward more nimble and effective approaches than traditional methods. The direct mission to address root causes of crime, using restorative processes, can produce better outcomes if we vigilantly employ them.

347. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 48.

348. *See infra* Part V.

B. Restorative Justice's Potential Impact on Fragmented Systems

Various government agencies and politicians continue to both directly and indirectly blame one another for large-scale systemic problems. These types of acts are part of normative political culture. Some recent examples regarding Justice Sector follow to better illustrate the issue. Director of Public Prosecutions, Paula Llewellyn, sharply criticized the case backlog problem on “neglect,” stating that “we are reaping the benefits of what we have sown because successive governments have treated the justice system like Cinderella without any hope of ever finding a prince.”³⁴⁹ The President of the Appeals Court placed blame externally, stating that the “chief justice and the permanent secretary in the Ministry of Justice have been notified and are supposed to be addressing the issue.”³⁵⁰ Chief Justice McCalla weighed in also

[D]espite our best efforts, however, it must also be noted that the Ministry of Justice and the Ministry of Finance have responsibility to provide adequate physical and human resources to enable the courts to handle the increasingly heavy caseloads. The provision of these resources has historically and continues to be woefully inadequate. This has negatively impacted the court's ability to deal with the vast and increasing number of cases in the system.³⁵¹

In response, Minister Chuck likewise has made several statements casting blame; “[t]he chronic delays and low case-disposal rates in our courts promote a sense of impunity among criminals and incentivise abusive practices among law-enforcement operatives, undermining confidence and hope across our society. A transformational improvement in case-disposal rates is, therefore, fundamental to

349. *Court Backlog Worsening - DPP Blames Same Number of Rooms to Deal with Triple Crime Rate; Increase in Cases*, THE GLEANER (Aug. 11, 2017), <http://jamaica-gleaner.com/article/lead-stories/20170811/court-backlog-worsening-dpp-blames-same-number-rooms-deal-triple-crime> [https://perma.cc/NT6F-BYH9].

350. *Appeal Court President Says Outstanding Transcripts Causing Backlog*, THE GLEANER (Sept. 29, 2017), <http://gleaner-jamaica.com/article/news/20170929/appeal-court-president-says-outstanding-transcripts-causing-backlog> [https://perma.cc/PY7Z-Z9GT].

351. *Chief justice says 'inadequate' resources hampering murder cases*, JAM. OBSERVER (June 16, 2017), http://www.jamaicaobserver.com/news/chief-justice-says-8216-inadequate-8217-resources-hampering-murder-cases_102090?profile=1373 [https://perma.cc/J32C-C7JL].

achieving our national development goals.”³⁵² Additionally, he called out “judges, prosecution, police for slow wheels of justice” and he “pressed the gas further,” by stating “[p]rolonged delays, in my opinion, affect the accuracy and judgment of witnesses’ demeanour and thus, the final decisions.”³⁵³ In his Sectoral Debate comments, Minister Chuck also issued strong critique:

But everyone, including the Judiciary must see the link between economic growth and the performance of the Court system. There is a need to respond to the demands of the citizenry for improved performance. The irony is that I get blamed for the performance of the Court system but some Jamaicans do not know that I have no say in the administration of the Courts. A few weeks ago the report from the Independent Commission for the Judiciary was Tabled in the House. That report enquired into the remuneration for judges and made recommendations on how this should be treated going forwardAt the same time, we must bear in mind Jamaica’s legislative framework on judicial accountability which is primarily concerned with conduct or misbehaviour for which removal of a Judge from office may be required. There is no expressed provision regarding disciplinary concerns in matters which may not rise to the level of potential removal from office. In an era of reform, Jamaica needs to consider the appropriate mechanisms that should be in place to raise the bar of accountability in the judiciary.³⁵⁴

Minister Chuck has also taken many opportunities to discuss the virtues of restorative justice by juxtaposing them against criticisms of the Court.³⁵⁵ He calls for “alternatives” instead of complements to the current system:

The current level of demand is unsustainable, even with additional resourcesAlternative paths to resolve and dispose of existing court cases must be strengthened and more extensively relied on. . . . The strategic intervention being pursued by the Ministry is to

352. Mark Golding, *Case Backlog – Some Thoughts*, THE GLEANER (Jan. 15, 2017), <http://jamaica-gleaner.com/article/focus/20170115/mark-golding-case-backlog-some-thoughts> [<https://perma.cc/8WFY-RV2Y>].

353. *Chuck calls out judges, prosecution, police for slow wheels of justice*, LOOP JAM. (Nov. 19, 2017), <http://www.loopjamaica.com/content/chuck-calls-out-judges-prosecution-police-slow-wheels-justice> [<https://perma.cc/R73Y-UD3S>].

354. *Sectoral Debate*, *supra* note 188.

355. *Sectoral Debate*, *supra* note 188; *Chuck calls out judges, prosecution, police for slow wheels of justice*, *supra* note 353.

create an infrastructure in alternative dispute resolution (ADR) mechanisms that will see a significant percentage of cases diverted.³⁵⁶

Additionally, Minister Chuck sometimes uses hyperbolic wording about ability of alternative programs, the unintended consequences of this can be an inverse implication that slights the traditional system.

That is why we are rolling out the ADR infrastructure – to give people hope and communities a chance to dream againMr. Speaker, the Parish Justice Centres will be the hub of alternative dispute resolution mechanisms and justice services and support. ‘Iconic’ is the word I would use to describe the place that these centres will occupy in the justice system. Mr. Speaker we are changing the face of Justice in this country.³⁵⁷

While the impetus to move toward restorative systems is praiseworthy, in so far as it helps to shift the retributive values societally rooted, it is important not to conflate the movement as an “alternative to” or a solution for all the systemic problems within the legal system. Restorative justice certainly can be iconic and can potentially change the face of justice; however, it is useful only under certain parameters. A recognition of the value and the appropriate role of traditional court systems is imperative for the rule of law to flourish. Cases must rely on diversion from court systems. In addition, many cases will not be suitable for the restorative process; thus, an understanding of the symbiotic nature is critical. For example, if an offender has not been sufficiently conciliatory, then the matter should rest with the courts, so a victim does not face the possibility of re-traumatization. Both systems are imperative, each providing differing and pivotal components. Also, if an offender does not abide by the terms of the contract resulting from a process, the recourse is referral back into the court system for adjudication.³⁵⁸ One cannot exist without the other. There have to be mechanisms of accountability if contracts are unfulfilled. These systems are interdependent.

Criticisms also flow from external sources, such as the MNS. In his very first press conference after appointment as the new Commissioner of the JCF, George Quallo raised “concerns” about “slow” justice system.³⁵⁹ He stated that criminals “may not see the

356. *Sectoral Debate*, *supra* note 188.

357. *Sectoral Debate*, *supra* note 188, at 8.

358. THE NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 257, at 49.

359. Barrett, *supra* note 216.

inside of a prison cell because of the snail's pace at which Jamaica's judicial system operates." He complained "that even after police investigators are successful in getting witnesses to testify in murder trials, the cases still take an average of seven years to be ventilated in court."³⁶⁰ Even within the non-profit sector, there are noticeable partners absent from the table. The Dispute Resolution Foundation, one of the original initiators of restorative practices across the Island, is barely involved in the discussion and decision making regarding restorative practices and policies.³⁶¹ While their primary responsibility is in providing mediation services, they are steeped in, have access to, and have trained a whole constituency of facilitators on conflict resolution and restorative justice techniques.³⁶² To address Jamaica's crime problem, a robust and complementary system of justice is necessary. The violence problem is massive and cannot be tackled without a multi-faceted, collaborative process.

Traditional courts provide state legitimacy, services, and constitutional protections that are absent in the restorative setting. Restorative opportunities go beyond what the Courts have the capacity to provide. One story that highlights an example of this surfaced in an interview with Dispute Resolution Foundation. One employee recounts the story of a meeting where it became evident that a larger family issue was underneath the problem. The employee hosted multiple conferences, gathering over nineteen different family members together, until achieving resolution. Acknowledging the strengths and gaps that exist in both systems is paramount to creating a unified one. With all this blame going around, there is less opportunity to engage constructively in collaborative and creative problem solving. Blame can also be a deterrent to accountability when it can fan the flames of political tribalism, especially if the allocation of an already diminutive pool of resources (recall the MOJ receives only about two percent of the National budget for administration of its programs) creates additional tension within and between government sectors. A dangerous, false dichotomy can arise if programs are pitted against one another.

There are already several improvements and successes in the collaborative approach that should be commended, highlighted, and

360. Barrett, *supra* note 216.

361. Interview with Donna Parchment Brown, *supra* note 244.

362. Interview with Donna Parchment Brown, *supra* note 244.

built upon. For instance, “[t]he Criminal Case Management Steering Committee has brought together stakeholders from across the judiciary who are committed to the implementation of measures to reduce case backlog. Chief Justice, Hon. Zaila McCalla, said “the committee, made up of representatives from a cross section of civil society agencies, including the Jamaica Constabulary Force, the Ministry of Justice, the Office of the Director of Public Prosecutions and the Defence Bar, is working to craft solutions.”³⁶³ Minister Chuck has also been gracious in complimenting and attributing some successes of the current programs to former Minister Golding, crossing political lines, which rarely occurs:

The good news, Mr. Speaker, is that my opposition counterpart is also committed to the reform of the justice system. I wish to acknowledge and express my appreciation for the tremendous work he did, and for the support that he continues to give to the reform programme. Some things, Mr. Speaker, must transcend the boundaries of partisan discourse, and the achievement of justice for all the people of Jamaica must qualify as one of those areas that defy the narrowness of partisan considerations.³⁶⁴

To strengthen and continue capitalizing on this forward momentum, restorative processes should be used among government organizations and key partnerships, such as the DRF. Policy Goals I (“creat[ing] a culture of peace through effective processes”) and III (“reduc[ing] . . . backlog by diverting cases from the formal justice system”), Policy Objectives 1 (“develop[ing] [] support[ive] Restorative Justice principles, processes, practices and programmes”), 2 (“develop[ing] and support[ing] infrastructure and processes to address harms”) and 3 (“support[ing] capacity building and [] development and use of best practices”) and several Strategies underneath those Objectives highlight the importance creating this cohesive and integrated system of justice.³⁶⁵ Restorative processes should be used as a framework, not only for citizens but also among the Government, as “[r]elational theory reveals that the promise restorative justice offers for other social and political institutions,

363. *Measures in place to reduce case backlog*, JAM. OBSERVER (Oct. 29, 2017), http://www.jamaicaobserver.com/news/measures-in-place-to-reduce-case-backlog_115418?profile=1373 [<https://perma.cc/2GBX-WRK3>].

364. *Sectoral Debate*, *supra* note 148.

365. NATIONAL RESTORATIVE JUSTICE POLICY, *supra* note 225, at 42-47.

systems, and work, lies with its relational approach and the understanding it offers about the needs and capacities of human beings and the institutions, systems, practices, processes, and policies in and through which we can flourish.”³⁶⁶ Additionally, utilizing restorative practices within organizations can create better assessment mechanisms and a pathway for identifying essential gaps, and a combined approach to re-deployment of resources. All systems of government need to co-occur and include strong external partnerships. Each offers solutions and supplements what the other cannot provide. In Jamaica, there is real need for cohesive application of all functions of government. If this is achievable, an overall strengthening of the rule of law will occur. All systems should be complementary, highly visible, and cohesive parts of a whole, working in tandem to address the inefficiencies that currently exist.

C. *Restorative Justice’s Potential Impact on Declining State Legitimacy*

One case, widely-known across the Island as the “X6” case, captures the public conversation around issues of legitimacy.³⁶⁷ In 2011, Khajeel Mais, a seventeen-year-old Kingston College student was shot and killed while riding in a taxi cab.³⁶⁸ Though the killing occurred in 2011, the trial did not commence until October 18, 2016.³⁶⁹ During the trial, the prosecution alleged that the taxi cab collided with a BMW X6 and the driver of the BMW got out and fired at the taxi, hitting and killing Khajeel.³⁷⁰ However, the case could not proceed and the judge directed the jury to return a not guilty verdict after the prosecution’s key witness recanted his testimony and there was a lack of other evidence—for example, the suspected firearm was never turned over to or retrieved by the police.³⁷¹ Regarding the licensing of

366. Llewellyn et al., *supra* note 29, at 296-97.

367. See *X6 murder trial Jamaica is writhing in pain*, JAM. OBSERVER (Oct. 25, 2016), http://www.jamaicaobserver.com/editorial/X6-murder-trial-Jamaica-is-writhing-in-pain_78426 [<https://perma.cc/X42D-PFKY>].

368. *Id.*

369. *TIMELINE: #X6Trial ... From Khajeel Mais’ Death To Court Proceedings*, THE GLEANER (Oct. 24, 2016), <http://jamaica-gleaner.com/article/news/20161024/timeline-x6trial-khajeel-mais-death-court-proceedings> [<https://perma.cc/5GKG-4FS7>].

370. *X6 murder trial Jamaica is writhing in pain*, *supra* note 367.

371. *X6 murder trial Jamaica is writhing in pain*, *supra* note 367; Businessman Patrick Powell Sentenced to Nine Months In Prison On Firearms Conviction, THE GLEANER (Aug. 9,

the firearm, “[t]he database at the Firearm Licensing Authority (“FLA”) was checked, but the ballistic signature of Powell’s firearm had not yet been captured. At the time of the incident, the FLA was just implementing the new system and had only reached surnames that began with ‘C’. As such, Powell’s firearm information was not yet in their database. Letters were subsequently, written to the Chairman of FLA requesting that Powell’s firearm license be revoked.”³⁷² There were also allegations that a Deputy Superintendent assisted in hiding the firearm and an investigation was launched.³⁷³ The directed verdict and failure to convict caused a collective countrywide outcry and received a swift response from within the government.³⁷⁴ “Justice Minister Delroy Chuck, the Director of Public Prosecutions (DPP) Paula Llewellyn, and the police high command, in separate statements following the verdict handed down in the Home Circuit Court, expressed their anguish, as did Jamaicans using every medium possible.”³⁷⁵ The case is a veritable perfect storm of legitimacy issues that implicate potential corruption, witness tampering, evidentiary and regulatory issues, and resource and capacity issues. The overriding message is that very few are satisfied with the current system’s ability to address crime. Kimberly Mais, sister of the deceased, aptly summed this, expressing her disappointment, though not her surprise.³⁷⁶ Many similar narratives across the Island have emerged: “The entire country is feeling the pain inflicted by the outcome of the so-called X6 murder trial which ended Monday without determining who murdered [Khajeel] . . . The trial has left a bad taste in the mouth and a dangerous feeling that justice has not been served.”³⁷⁷

As stated earlier, the failure of GOJ to solidify an effective rule of law leads citizens to look for extra-state measures of justice.³⁷⁸ One

2017), <http://jamaica-gleaner.com/article/lead-stories/20170809/businessman-patrick-powell-sentenced-nine-months-prison-firearm> [<https://perma.cc/V699-CC7K>].

372. *Police high command respond to murder acquittal in X6 case*, LOOP JAM. (Oct. 24, 2016), <http://www.loopjamaica.com/content/police-high-command-responds-murder-acquittal-x6-case> [<https://perma.cc/NC4J-VLFK>].

373. *Id.*

374. *X6 murder trial Jamaica is writhing in pain*, *supra* note 367.

375. *X6 murder trial Jamaica is writhing in pain*, *supra* note 367.

376. *Khajeel Mais’ sister disappointed, but not surprised at not-guilty verdict in X6 murder trial*, JAM. OBSERVER (Oct. 24, 2016), http://www.jamaicaobserver.com/news/Khajeel-Mais—sister-disappointed—but-not-surprised-at-not-guilty-verdict-in-X6-murder-trial-_78264 [<https://perma.cc/2BEM-NQEJ>].

377. *X6 murder trial Jamaica is writhing in pain*, *supra* note 367.

378. Jaffe, *supra* note, at 333.

challenge of the MOJ will be to address this lack of trust if they want citizens to turn to state-sponsored restorative programs for dispute resolution. How can the GOJ, increase, acknowledge, and plan for the resistance to a top-down, national implementation of restorative justice programs? This problem, while exacerbated by the realities in Jamaica, plays out widely in restorative justice programs across the world, as they have always occupied a unique, quasi-governmental and community structure.

Any survey of the global practice of restorative justice raises the issue of the relationship between restorative justice initiatives and state authorities. At the outset, restorative justice had some characteristics of quasi-messianic social movements. Early experiments in restorative justice were small, local efforts spearheaded by moral entrepreneurs or charitable civil society organizations . . . Relations with state authorities were often antagonistic or, at least ambiguous. The state and its often punitive orientation to criminal justice, was an object of suspicion . . . Restorative Justice was portrayed as involving offenders, victims, and communities, operating through self-governing organizations devoted largely to mediation, with no formal role for the state or its agencies. . . .The preferred scheme for thinking about restorative justice frequently casts the state as an initiator or a full partner in restorative justice programs.³⁷⁹

While the State certainly has a role to play, the importance of engaging and involving community members in the process is paramount. Tension exists within this allocation of participatory justice. States are responsible for ensuring resource allocation is effective; they are ultimately accountable for the administration of justice. However, States need to cede some of their power to bring citizens back into the fold, to allow communities, offenders, and victims to interpret justice in their own terms. Balancing this tension requires a constant recalibration of roles, the scope, and the focus of lay participation, as the “fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protecting the rights and interests of victims and offenders.”³⁸⁰ Consideration of and

379. Llewellyn et al., *supra* note 29, at 291-92.

380. HANDBOOK ON RESTORATIVE JUSTICE PROGRAMS, *supra* note 38, at 6; *see also* Llewellyn et al., *supra* note 29, at 292; Dzur, *supra* note 299, at 296-97.

the answers to these questions affects the potential impact restorative programs can have. Without a large amount of public participation, “restorative justice forums are likely to have only minimal impact on public opinion of crime and crime control.”³⁸¹

Programs with high degrees of lay participation versus low and large versus narrow scopes of authority will have varying outcomes. Thus, if shifting how the state operates and appears are express goals, the levels of participation is a central question.³⁸² Under the current model, community members facilitate the justice process—the traditional or formal dialogue of the courts is absent while a broader discussion takes place—allowing for the “opportunity for expression of feelings, exchange of information, and recovery of losses.”³⁸³ However, the MOJ continues to “play” a pivotal “role in the background,” ultimately assisting the process, training facilitators, physically housing the program, liaising between the Courts, police, other government entities, following-up on contracts, etc.³⁸⁴ Whether this is a sufficient citizen-government participatory ratio remains to be seen and requires constant assessment.

Integrating participatory justice through restorative processes is a valuable way to shift values, instill a sense of responsibility, and educate the populace, creating improved citizen-government partnerships. Lawrence Powell, writing for *The Gleaner*, describes the importance of citizens feeling they have a “meaningful degree of influence.”³⁸⁵ He explains that people tend to become “fatalistic” and “withdrawn” if they lack positive engagement with social and political institutions.³⁸⁶ He concludes that Jamaicans have a sense of low control, resulting in discouragement, they “feel relatively powerless to affect outcomes, to make a political difference.”³⁸⁷ He also highlights the importance of citizen participation, noting the link between it and

381. Dzur, *supra* note 299, at 295.

382. Dzur, *supra* note 299, at 295.

383. Dzur, *supra* note 299, at 292 (internal citation omitted).

384. *See* Dzur, *supra* note 299, at 292 (noting other “mainstream professionals and officials . . . play a considerable role in the background”).

385. Lawrence Powell, *Feeling Powerless In Jamaica*, THE GLEANER (Dec. 18, 2011), <http://jamaica-gleaner.com/gleaner/20111218/focus/focus5.html> [<https://perma.cc/WP7D-QRCF>].

386. *Id.*

387. *Id.*

trust and confidence of political institutions.³⁸⁸ Similarly, others have re-emphasized this link, such as Toqueville, stating

[g]eneral political education and an education in the competencies needed in those domains. . . . It vests each citizen with a sort of magistracy; it makes all feel that they have duties toward society to fulfill and that they enter into its government. In forcing men to occupy themselves with something other than their own affairs, it combats individual selfishness, which is like the blight of societies.³⁸⁹

Finally, there is a correlation between increasing citizen engagement and escalation of levels of civic accountability and responsibility for criminal justice.³⁹⁰ If restorative programs, designed to bring citizens into the process, re-empowering them, they can transform Jamaican society. The government must foster individuals and communities to respond more actively to their community's needs, giving over some control and shifting them out of powerlessness and into autonomy.

V. CONCLUSION: CONSIDERATIONS AND CHALLENGES

Moving the status quo and undoing the “business as usual” mentality is not an easy shift. The MOJ, Centre Managers, the Unit Director, administrators, and facilitators should be constantly assessing likely resistance to restorative approaches and developing plans to counter them. Every decision made by the MOJ regarding policy should be guided by substantial input from Centre Managers and facilitators; the people who do the daily work. This core group holds the knowledge on how to best deploy resources and what interventions will be effective, as those closest to the problem are closest to the solution. Their input is essential and mechanisms for obtaining their opinions must become a priority. NAB and Parish Councils are a vital piece to this puzzle. As the MOJ continues to make large-scale changes, implementing their ambitious agenda, the importance of transparency and seeking vital feedback and expertise—from those in the trenches, those most directly impacted by this work, and those with deep knowledge and commitment to restorative principles—is imperative.

388. *Id.* (“These feelings of personal control are associated with trust and confidence in a variety of key political institutions, and with the belief that the Government is legitimate and truly benefits its citizens.”).

389. Dzur, *supra* note 299, at 301.

390. *See* Dzur, *supra* note 299, at 302.

Efforts to create and empower these boards are critical and need primary placement in the restorative agenda.

Centre Manager support is also a crucial component of success. Continuous training on a wide-range of topics is necessary and, though expensive, is critical. Centre Managers must be steeped in restorative theory, have excellent managerial and communication skills, and, though not required to be a lawyer, they absolutely need (and have already requested) training on the legal system. To that end, they need to be able to adequately and accurately address questions from victims considering traditional legal options, as well as restorative ones. They should also have training in sociological factors, such as group dynamics, interactions, and psychological factors so they have the proper tools to assess whether offenders are truly remorseful and ready to accept responsibility. They also need autonomy to make decisions without fear of reprisal or losing their jobs. The GOJ must hold Centre Managers accountable, but with an ethos of learning and growth; otherwise they will be reluctant to meaningfully assess any areas of perceived weaknesses.

Centre Managers will also need to rely on an exceptional pool of committed, community volunteers. Those volunteers must be inculcated with a growth mindset, provided with multiple tools for self-assessment and continued self-development opportunities. Many of these volunteers, like most Jamaicans, are struggling financially and this endeavor may require them to take time away from other moneymaking enterprises. To ensure the strongest and most committed pool of applicants, the MOJ should consider at least nominal compensation for volunteers.

Center Managers and the Unit Director must also have autonomy. They cannot be pressured to divert cases into the system solely because of the backlog. Restorative justice programs should not, primarily, be viewed as a means to move cases along more quickly than the traditional system. The MOJ must resist the urge to push numbers up, enabling Centre Managers to make well-reasoned estimations about the appropriateness of each case. There may be cases where a victim's "fear may be too great . . . [and the] [p]ower imbalance between parties may be too pronounced and impossible to overcome. The victim or the offender may be unwilling. The offense may be too heinous or the suffering too severe. One of the parties may be emotionally

unstable.”³⁹¹ Additionally, the Unit Director must have a well-resourced staff, which includes statisticians, PR personnel, and adequate administrative help. This endeavor is a massive undertaking and though expensive, has to be funded properly to ensure that reasonable pacing and decision making can be well-measured and thorough, including run through an analysis of restorative theory.

One final critical component is assessment. What will the metrics for evaluating success reference? Recall that restorative justice operates under the needs and relational theories;³⁹² therefore, determining shifts and measuring successes in those areas is significant. Under a needs theory, questions of whether and how the GOJ has responded to and provided services where gaps existed previously would be a potential way to measure success. Under relationship metrics, how the parties feel about one another before, immediately after, and during a follow-up several months or even years after an incident are meaningful questions. Nuanced evaluations might include measurements around victim satisfaction, levels of empowerment, assessment of improved community input or relations, and citizen engagement. Remember, “all that is of value may not be quantifiable or measurable. Thus our imagining of successes should not be limited by what can be measured by our tradition, approaches, tools . . . the fact that the ambitions and value of a relationship approach to justice is not easily captured by existing measures does not liberate us from articulating and assessing the achievement of such values in practice.”³⁹³ A variety of data, both qualitative and quantitative in scope, and long-ranging studies assessing values and attitudes shifts, will be useful. Considering the context of society is essential to measuring success. For example, literacy rates and reading comprehension are potentially problematic;³⁹⁴ thus having alternative methods for reporting evaluations will help produce higher, accurate results for a wider range of citizens.

Pitfalls likely to arise are resistance and potential sabotage from gang affiliates, who see an increasingly peaceable community as out of alignment with their interests. Another area of concern should be how

391. ZEHR, CHANGING LENSES, *supra* note 16, at 206.

392. *See generally* Llewellyn et al., *supra* note 29.

393. Llewellyn et al., *supra* note 29, at 286.

394. Ines Boumaiza, *Teaching Literacy in Jamaica*, GLOBAL EDUC. MAG., <http://www.globaleducationmagazine.com/teaching-literacy-jamaica/> [<https://perma.cc/KRW6-L8SD>] (indicating that approximately 21% of adult Jamaicans are illiterate).

the administration plans to respond to the criticisms most oft lobbed at those trying to create a shift to the justice paradigm of being “soft-on-crime.” Politics are highly polarized and parties could use this tactic in an attempt to undermine restorative initiatives. These challenges, though many, are not insurmountable and should not deter progression. Finding ways to inculcate restorative values within Jamaican society and conceptualizing on those theories in a practical way is essential. Rastafarians can connect to the indigenous expression of justice and churches can align with the aspects of reconciliation; Jamaicans already love storytelling.³⁹⁵ There are plenty of cultural aspects that already align well with restorative principles,³⁹⁶ but thinking of innovative ways to convey and augment these sentiments will be crucial. To better effectuate justice across Jamaica, an innovative, collaborative, well-coordinated, and practical approach that is well-grounded in restorative theory is necessary. Ultimately, restorative initiatives can and will have a major, positive impact on strengthening the justice system and the rule of law.

It is clear to see the rising tide of restorative justice sweeping Jamaica, as the Author has personally seen at various ceremonies. The MOJ is sensitizing, building capacity, opening Centres, providing on-going training, and trying to recruit the largest class yet of restorative justice volunteers. Watching Minister Chuck commit to the values is inspiring: “I will go into overdrive campaign mode, as we seek to promote reconciliation, mercy, forgiveness and rehabilitation in our criminal justice system.”³⁹⁷ At the graduation ceremony, the newly minted facilitators gathered to celebrate the end of their training. Participants wore varying shades of blue, united together by color. They sang in unison “take your candle, go light your world.” There were smiles, warmth, support, and light filtering through the air. There was a spirit of unity, of togetherness. The new facilitators had worked hard to understand policies, learn methods, practices, and inculcate theory on how to best achieve their mission. Support from the highest levels of the MOJ was present: Minister Chuck, Permanent Secretary

395. Kimberly Small, *Storytelling Is Alive And Well*, THE GLEANER (Aug. 4, 2018), <http://jamaica-gleaner.com/article/entertainment/20180804/storytelling-alive-and-well> [<http://perma.cc/TU6C-9DC8>]; *Storytelling in Jamaican Culture*, PITLANE MAG., <http://www.pitlanemagazine.com/cultures/storytelling-in-jamaican-culture.html> [<https://perma.cc/DN2L-D3FU>] (last visited Mar. 29, 2019).

396. See Small, *supra* note 395; *Storytelling in Jamaican Culture*, *supra* note 395.

397. *Sectoral Debate*, *supra* note 188.

Palmer, all the Centre Managers, Kahilah Whyte, Unit Director, administrators, restorative practitioners, and trainers surrounded the participants, and stood proudly watching. These warriors for peace were prepped and ready to reach out and heal divides, armed with healing techniques to fight the mounting violence. These new facilitators felt a part of something important and they set out to recruit friends, neighbors, and other leaders to join the cause. Everyone could feel that something good was happening, that change was afoot. In this spirit of hope, restorative practices will thrive. In one generation, Jamaica will have significantly strengthened the rule of law and transformed how they do justice.

