DALHOUSIE LAW JOURNAL

Jennifer J. Llewellyn*
Bruce P. Archibald
Donald Clairmont and
Diane Crocker

Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation

Whether restorative justice is "successful," or not, is a complex question. Attempts to answer this question by practitioners, professionals, and scholars have often been bounded by common notions of success in standard criminal justice terms. The authors of this paper suggest that if restorative justice is properly understood in terms of its focus on relationship, success should be measured on new and different dimensions. This paper seeks to bring a relational imagination to the scholarly effort of capturing the essence of restorative justice and figuring out how to assess its successes and failures. The authors offer a foundation and agenda for future research and development of a relational approach to assessment.

Les tentatives par des praticiens, des professionnels et des universitaires de répondre à la question de savoir si la justice réparatrice est une réussite ont été minées par les concepts usuels de réussite qui ont cours dans le système de justice pénale. Les auteurs allèguent que cette approche fait oublier les fondements conceptuels de la justice réparatrice et les différentes façons qu'elle peut offrir pour imaginer et mesurer les réussites. Ils avancent que si la justice réparatrice est bien comprise, d'un point de vue relationnel plutôt que d'une perspective individualiste traditionnelle, le fait d'imaginer comment ses réussites devraient être mesurées prend des dimensions nouvelles et différentes. L'évaluation de la justice réparatrice commence par la question suivante : qu'est-ce que la justice réparatrice? Les auteurs y répondent en présentant la justice réparatrice comme une théorie relationnelle de la justice. Cette réponse devient le point de départ à partir duquel les pratiques et les processus réparateurs peuvent être imaginés, compris et évalués. Les auteurs présentent un point de départ et un programme pour la recherche et les développements futurs d'une approche relationnelle de l'évaluation.

Introduction
I.   *The diversity of restorative justice in time and space: puzzles for measurement*
II. *Starting from the beginning in imagining a relational approach to evaluation*
   1. *Restorative justice as a relational theory*
   2. *A measure of what?*
   3. *Principles of a restorative approach*
      a. *Relationship focused*
      b. *Comprehensive / holistic*
      c. *Contextual / flexible*
      d. *Subsidiarity, inclusion, and participation*
      e. *Dialogical or communicative*
      f. *Democratic / deliberative*
      g. *Forward-focused, solution-focused, and remedial*
III. *The general problem of measuring the success of restorative justice*
   1. *Overview*
   2. *The upshot of research on restorative justice: limitations of evaluation research*
Conclusion

Introduction

Struggling with notions of justice is basic to human existence in its myriad cultural forms.[1] We all carry in our minds various ideas of what is good or bad, right or wrong, fair or unfair. But our conceptions of justice are contested terrain. The emergence of restorative justice as a global phenomenon in the last four decades is, therefore, significant.[2] Proponents and opponents of restorative justice claim to know what it is and make varying assertions about whether it "works." Whether restorative justice is "successful," or not, is a complex question. To answer this question, one must think carefully about what it is one is studying, about what one

---

1.   Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law,* 4th ed (Oxford: Oxford University Press, 2010); Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009).
2.   The United Nations now promotes international standards for restorative justice. For a reasonably comprehensive review of restorative justice in a variety of countries, see Estelle Zinsstag, Marlies Teunkens & Brunilda Pali, *Conferencing: A Way Forward for Restorative Justice in Europe* (Leuven: European Forum for Restorative Justice, 2011).

wishes to achieve, and whether or how it might be measured, about what might serve as indicators of success, and then about ways to collect data.

In the popular imagination, the criteria for success in criminal justice are often thought to be intuitive and obvious. Are people punished? Does it stop them from re-offending or harming others? Do they learn from their mistakes? Are they better or more responsible people for the experience? Are other people deterred by the example of punishment? In "western culture," the popular responses to these questions are mostly steeped in individualistic philosophical,[3] moral,[4] religious,[5] and political[6] traditions which have moulded legal systems centered on the authority of the nation state. Criminal codes, criminal procedures, police, prosecutors, judges, and prisons are iconic institutions and actors whose successes and failures are portrayed in public media and fiction.[7] Our imaginations and reflections on life are constantly fired by tales of crime and punishment involving heroes and villains in atomistic conflict.[8] Although some assert that restorative justice values and institutions have always been with us,[9] recent incarnations of restorative justice have often been a response to and a critique of these popular punitive views and institutions.[10] In other words, the conspicuous failures of the traditional institutions of criminal justice to contain crime or foster a just society have spawned restorative justice.[11] The form restorative justice may take varies with local contexts, but restorative processes are usually community-based, informal, dialogical, participatory, and egalitarian—in many respects the opposite

---

3.   Jeffrie G Murphy, "Does Kant have a Theory of Punishment?" (1987) 87 Columbia L Rev 509; Jeffrie G Murphy & Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1990).

4.   Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, vol 2 (London: MacMillan and Co, 1883) at 81.

5.   T Richard Snyder, *The Protestant Ethic and the Spirit of Punishment* (Grand Rapids, MI: WB Eerdmans, 2001).

6.   John Pratt, *Penal Populism: Key Ideas in Criminology* (New York: Routledge, 2007); Nicola Lacey, *The Prisoner's Dilemma: Political Economy and Punishment in Contemporary Democracies* (New York: Cambridge University Press, 2008).

7.   The mechanisms of civil justice have a far lesser claim on the popular imagination.

8.   Dostoyevsky's focus in *Crime and Punishment* was not an accident. Jack the Ripper has fascinated us for over a century.

9.   John Braithwaite, *Crime Shame and Re-Integration* (Cambridge: Cambridge University Press, 1989); John Braithwaite & Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Oxford: Claredon, 1990); Daniel W Van Ness & Karen Heetderks-Strong, *Restoring Justice: An Introduction to Restorative Justice*, 4th ed (Providence, NJ: Lexis-Nexis, 2010).

10.   Braithwaite, *supra* note 9; Howard Zehr, *Changing Lenses: A New Focus for Criminal Justice* (Waterloo: Herald Press, 1990) [Zehr, *Changing Lenses*]. See also his *Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002) [Zehr, *Little Book of Restorative Justice*].

11.   R Martinson's tragic assertion that "nothing works" in criminal justice, while not entirely accurate, carries a grain of truth which resonates in both popular culture and the scholarly justice community.

of hierarchical and formal traditional criminal justice. Though restorative justice as a process is characteristically low-keyed, it is not without its drama, yet restorative justice is rarely depicted publicly on stage and screen or in fictional literature.[12]

To a considerable degree, restorative justice is a rebellious act of creative imagination which has animated community activists and justice professionals around the world to seek better ways of doing justice. In answer to the question "does restorative justice work," however, the search for answers among practitioners, professionals, and scholars has often been bounded by common notions of what might be seen to be success in standard criminal justice terms. Does restorative justice bring down crime rates? Does restorative justice reduce recidivism? Are compliance rates for restorative agreements higher than for probation orders? Are participants in restorative processes more satisfied in the end than those who have gone through a criminal trial? These are important questions, especially in a time when the potential of restorative justice is being recognized, and functioning restorative justice programs are being institutionalized. Having said that, we think that asking only these questions, or asking them in this way, obscures the conceptual underpinnings of restorative justice and the different orientation it might offer for imagining and measuring success. As we will argue in this paper, if restorative justice is properly understood in terms of its focus on the way in which people relate to one another in their communities, imagining how success should be measured takes on new and different dimensions. Evaluating restorative justice in relational terms goes beyond the individualistic vision of the mainstream justice system as it now stands. Bringing a relational imagination to the scholarly effort of capturing the essence of restorative justice and figuring out how to assess its successes and failures is our ambition for this paper.

Asking questions about the effectiveness of restorative justice illuminates basic conceptual issues about measurement (which underlie all efforts to evaluate justice work) and, perhaps more generally, about evaluation and measurement. For example, the current criminal justice system is often measured or evaluated based on notions of individual responsibility for criminal behaviour and assumptions about a formal criminal justice system. The system, when viewed at least from a utilitarian rather than punitive perspective, is intended to prevent or reduce crime by deterring, rehabilitating, or incapacitating individuals who are considered

---

12.   One exception is David Craig's play, *Tough Case*, based on restorative justice as practiced in Nova Scotia, online: <http://davidscraig.com/tough-case/>. For a novel about restorative justice see Margaret Murray, *Forging Justice: A Restorative Mystery* (Bethlehem, PA: Piper's Press, 2013).

apart from the social relationships and circumstances in which they find themselves. Crime rates, arrest rates, conviction rates, compliance rates, recidivism rates, systemic costs per individual dealt with by official role players (police, prosecutors, judges, correctional officials, and others) are based on the assumption that the system, if working efficiently, ought to prevent or reduce criminal behaviour among individual citizens. In this paradigm, human beings are viewed as atomistic, individual actors making rational calculations about the consequences of their behaviour, including the possibility of getting caught or punished for breaching laws where they are at fault in relation to relevant facts.[13] Restorative justice views criminal behaviour and harms in a relational context, has an explicitly relational understanding of crime causation, and sees effective responses to crime, with attendant crime prevention and reduction, as being relational in nature.[14] One would think, therefore, that measures of effectiveness for restorative justice ought sensibly to differ in many respects, though not necessarily all, from those used in relation to the traditional criminal justice system. In particular, one might anticipate that measurement of "success" or "failure" would consider the impact that the justice system has on the sort of relationships that make for safer and more secure societies than the ones in which we currently live. Those who think about theories and principles which govern measurement are alert to these types of concerns. Those who study the sociology of science and knowledge argue that systems of measurement often mask the normative assumptions on which they are based.[15] Statistics, in particular, have been critiqued for creating social realities rather than measuring them. Some of the critiques arise out of the postmodern turn in sociological research that has tended to

---

13.   The standard rule in western criminal justice systems, of course, is that one is generally guilty in relation to known or knowable facts, although ignorance of the law is no excuse. This vision of humanity bears a striking resemblance to "homo economicus," the hypothetical construct so dear to neo-liberal theorists who wish to make "the market" the ultimate arbiter of social justice. See FA Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (Chicago: University of Chicago Press, 1976).

14.   This is not to suggest that restorative justice is, in our view, limited in its orientation or application to the criminal justice realm. Restorative justice is an approach to justice more broadly and the restorative approach it employs has purchase beyond the bounds of the current justice system.

15.   Alain Desrosières, *The Politics of Large Numbers: A History of Statistical Reasoning*, translated by Camille Naish (Cambridge, MA: Harvard University Press, 1998) as cited by Alain Supiot, *The Spirit of Philadelphia: Social Justice v. the Total Market* (New York: Verso, 2012) at 61 in a chapter entitled "The Mirage of Quantification." See also Joel Best, ed, *Images of Issues: Typifying Contemporary Social Problems* (New York: Aldine de Gruyter, 1989); Aaron Cicourel, *Method and Measurement in Sociology* (New York: The Free Press, 1965); Kevin Haggerty, *Making Crime Count* (Toronto: University of Toronto Press, 2001); Nicolas Rose, "Governing by Numbers: Figuring out Democracy" (1991) 16 Accounting, Organization and Society 573.

reject empiricism in favour of deconstruction.[16] These critiques argue for "preserving a sense of measure" which requires "setting the definition of what *should be* along-side the knowledge of what *is*."[17]

We accept some of the critiques in the literature that explore these problems and acknowledge that an article on measuring success in restorative justice will inevitably look at the current criminal justice system to see "why and how" it measures success and thus may inevitably fall prey to the criticisms discussed above. It is our proposition though that basing measurement in a relational approach will reveal that appropriate alternative measures of success or failure must reflect the "normativity" of restorative justice.

While the focus of this article is to consider critically the understanding of success and its measure at work in restorative justice, we do not mean to suggest that success and notions of success are dependent upon what can be commodified or the subject of empirical measurement. Indeed, a relational orientation, as we elaborate below, reveals the connection of commodification to individualism and objectification consistent with the liberal tradition. In part then, the recognition of restorative justice as a relational theory of justice, advocated in this piece, may issue a deeper challenge to the project of assessing success by inviting a reimagining of success beyond the bounds of the relationship between value and measurement. All that is of value may not be quantifiable or measurable. Thus our imagining of success should not be limited by what can be measured by our tradition, approaches, tools, or, maybe at all. Likewise, the fact that the ambitions and value of a relational 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. Insofar as these might be assessed we ought to try to use or develop appropriate tools and approaches. This article lays a foundation and agenda for that further exploration and development of evaluative approaches and tools appropriate to the relational nature of restorative justice. But as it encourages a larger imagination for what success entails, so too does it require an enlarged perspective on the limits of measurement and other means of reflecting upon and assessing value.

This paper consists of three parts. The first takes a high altitude flight over restorative justice experiences and initiatives in various parts of the

---

16.   For example, Alain Desrosières asserts that "economic and social statistics do not measure a pre-existing reality, unlike statistics in the natural sciences, but construct a new reality by positing equivalence between heterogeneous beings and forces": Supiot, *supra* note 15 at 61.

17.   *Ibid* at 91.

world in order to provide a broad context for thinking about how issues of imagining, evaluating, and measuring success arise in different cultural, political, and legal contexts. Part two suggests an account of restorative justice as a relational theory and identifies the principles which animate its processes and relational outcomes. It then considers what such an account means for imagining and measuring the success of restorative justice. The third part takes a technical look at the main ways the existing evaluation research has assessed restorative justice programs and the limits of its evaluative approach. In this section we draw on practical experiences from the evaluation of the Nova Scotia Restorative Justice Program to illustrate some of the issues associated with measuring success. Only then, in conclusion, do we make the case for the need to develop approaches to measuring the central aspects of restorative justice as understood through a relational lens. Our ambition is to make the case for further attention and efforts to imagine and articulate success in restorative terms and to develop the ways and means to assess whether such ambitions have been met by various restorative interventions, processes, and institutions.

I.   *The diversity of restorative justice in time and space: puzzles for measurement*

Some suggest that in Europe, before the rise of the nation state, there were forms of restorative justice where communities resolved their problems through discussion based on local custom and tradition.[18] Whether this bucolic vision is more accurate than Hobbes' famous dictum that in the state of nature life is "nasty brutish and short"[19] may be a matter of debate. What is clear, however, is that with the separation of Church and State,[20] and with increasing urbanization, social stratification, and functional differentiation in social institutions,[21] the legal system became

---

18.   See Bruce P Archibald, "La justice réparatrice: conditions et fondements d'une transformation démocratique en droit pénal" in M Jaccoud, ed, *La justice réparatrice et la médiation: convergences ou divergences* (Paris: L'Harmattan, 2003) 119.
19.   Thomas Hobbes, *Leviathan*, ed by Noel Malcolm, (Oxford: Clarendon Press, 2012).
20.   H Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).
21.   Talcott Parsons, *The Social System*, 2d ed (London: Routledge, 1991).

more complex as well.[22] Civil and criminal law became separate spheres with different courts and remedies,[23] replacing older and simpler notions of "wrongs" to be righted between families or in the community. As the industrial revolution progressed, state intervention in the regulation of many areas of life led to the rise of administrative and social law which often used criminal procedure for its enforcement.[24] European imperialism exported, to most corners of the world, this increasingly sophisticated, rights-based legal system with its adjudicative court mechanisms.[25] To paraphrase Nils Christie, the state and its institutions had "stolen the conflicts" from its citizens and its communities with a largely alienating and professionalized justice system,[26] a system which was admittedly an improvement over absolutist tyranny. What is clear is that there now appears to be increasing demands for citizen participation in criminal justice, to which restorative justice approaches provide a significant and helpful response.[27]

Restorative justice emerged as an alternative in many parts of the globe in the latter part of the twentieth century. While arguably there were North American precursors to restorative justice in the counter-cultural movements and communes of the 1960s, and the diversion programs based on labelling theories of deviance which led to neighbourhood justice

---

22.   The developmental histories of law in the British Isles as opposed to continental Europe are, of course, very different. Continental systems were heavily influenced by the medieval revival of Greek and Roman legal concepts in Europe (Bologna and Paris being key centres of learning), while English judges developed the common law over the centuries after the Norman conquest with little help from Oxford and Cambridge. Oddly enough, the year 1215 was significant in both contexts. It was not the signing of the Magna Carta at Runnymede, but rather the Lateran Council's injunction against priests being involved in the resolution of "legal" disputes which led to the evolution of the jury system in English law and the judge-centred "inquisitorial" approach on the continent. Albert M Rosenblatt, "The Law's Evolution: Long Night's Journey Into Day" (2003) 58:2 Rec Ass'n Bar City of NY 144 at 162-164.

23.   See SFC Milsom, *A Natural History of the Common Law* (New York: Columbia University Press, 2003); A Esmein, *A History of Continental Criminal Procedure with Special Reference to France*, translated by John Simpson (Boston: Little, 1913).

24.   Administrative law in the common law world takes different forms than in the civilian traditions also exported by continental conquerors, but there are fundamental features, such as "judicial" review of governmental action in both.

25.   Paul Craven & Douglas Hay, *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill: University of North Carolina Press, 2004). Parallels occurred in areas of French, Spanish, and Portuguese colonial domination as well: for an early description of this phenomenon, see JH Wigmore, *A Panorama of the World's Legal Systems* (Saint Paul: West Publishing, 1928), or for a more standard comparative law analysis, see René David & John EC Brierley, *Major Legal Systems in the World Today*, 3d ed (London: Stevens, 1985).

26.   Nils Christie, "Conflicts as Property" (1977) 17 The British Journal of Criminology 1.

27.   Bruce P Archibald, "Citizen Participation in Canadian Criminal Justice: The Emergence of 'Inclusionary Adversarial' and 'Restorative' Models" in Stephen G Coughlan & Dawn Russell, eds, *Citizenship and Participation in the Administration of Justice* (Montreal: Les Éditions Themis, 2001) 147.

and community boards[28] for local justice in the 1970s,[29] more explicit restorative justice initiatives emerged only in the 1980s.[30] Restorative justice pursued through full restorative conferencing models, however, is more widespread in jurisdictions of common law heritage such as Canada, the United States, the United Kingdom, Australia, and New Zealand.[31] Restorative justice initiatives in civilian jurisdictions on continental Europe, in contrast, tend to reflect notions of "penal mediation" or victim-offender mediation, since the notion of community in Europe is often contested and linked to controversies over multiculturalism.[32]

Related to the foregoing analysis is the world-wide resurgence in the last few decades of traditional justice practices among indigenous peoples, that share much with restorative justice. European colonial practices from the time of the sixteenth century, led to the gradual eclipse, if not the eradication, of many chthonic legal traditions.[33] As the social, economic, political, and cultural legacies of colonialism became acutely evident in many countries (through high rates of imprisonment, poverty, alcoholism, and other health, social and economic problems among Aboriginal populations), the revival or reinvigoration of the traditions of First Nations rose on the political agenda as a prevalent corrective strategy. In Canada, Aboriginal "healing circles" were adapted in the criminal context to become "sentencing circles" which influenced parallel efforts in other jurisdictions.[34] Moreover, in Canada traditional justice that resonates with restorative justice in Aboriginal communities, sometimes linked to notions of Aboriginal self-government, is moving beyond narrow criminal justice issues to impact on the resolution of broader

---

28.   Raymond Shonholtz, "Neighbourhood Justice Systems: Work, Structure and Guiding Principles" [1984] 5 Conflict Resolution Quarterly 3.

29.   D Okada, ed, *Special Issue: Essays Celebrating the 35th Anniversary of Restorative Justice* (2011) 14 Contemporary Justice Review, but cf T Barabas, B Fellegi & S Windt, *Responsibility Taking, Relationship Building and Restoration in Prisons* (Budapest: OKRI, 2012).

30.   Zehr, *Changing Lenses, supra* note 10; and Braithwaite, *supra* note 9.

31.   For a useful, if somewhat dated, collection of essays on restorative justice in various common law jurisdictions see, Allison Morris & Gabriel Maxwell, eds, *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Portland: Hart Publishing, 2001); also, Zinsstag, Teunkens & Pali, *supra* note 2.

32.   For an interesting take on this topic, see Johanna Shapland, "Restorative Justice and States' Uneasy Relationship with their Publics" in Adam Crawford, ed, *International and Comparative Criminal Justice and Urban Governance: Convergence and Divergence in Global, National and Local Settings* (Cambridge: Cambridge University Press, 2011) at 39.

33.   Glenn, *supra* note 1.

34.   B Stuart & H Lilles, two former judges from Yukon elaborated two different versions of Aboriginal practices in the criminal sentencing context: B Stuart on circles, H Lilles on panels of elders. See H Lilles, "Circle Sentencing: Part of the Restorative Justice Continuum" in Morris & Maxwell, eds, *supra* note 31 at 40; and B Stuart, "Circle Sentencing in Canada: A Partnership of Community and the Criminal Justice System" (1996) 20 Int J of Comp and Applied Crim J 291.

community problems.[35] In New Zealand, Maori community practices were said by many to have been of significance in the development of family group conferencing as the predominant form of restorative justice in that jurisdiction.[36] These practices have been imitated with variations in other parts of the world.[37] John Braithwaite's influential writing[38] greatly advanced experimentation and the use of restorative justice in Australia[39]; its special value in indigenous communities has been widely discussed and implemented in various ways.[40] There has also been discussion of the link between restorative justice and cultural traditions in the Pacific Islands.[41] Perhaps one of the most dramatic examples of the use of non-European cultural traditions in the elaboration of complex restorative approaches is the South African Truth and Reconciliation Commission. Archbishop Desmond Tutu's celebration of the African philosophy of *ubuntu*[42] has had an important effect on practice and theory, as the notion that "people are people through other people" strikes a broadly resonant chord with feminism and relational theory.[43]

Another strand of exogenous influence on restorative justice has been that of various faith traditions. Christianity is often associated with some of the worst crimes of western imperialism and colonialism, being the

---

35.   M Murphy, "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights" (2001) 44 Can J Pol Sci 6; D Clairmont, "The Development of an Aboriginal Criminal Justice System" (2013) 63 UNBLJ 160-187.

36.   Gabrielle Maxwell & Allison Morris, "Research on Family Group Conferences with Young Offenders in New Zealand" in J Hudson et al, eds, *Family Group Conferences: Perspectives on Policy and Practices* (NSW: Federation Press, 1996) 88.

37.   Family group conferencing has been used in the UK, particularly in social services contexts. It was also adopted in some influential Canadian experiments: see J Pennell & G Burford, *Family Group Decision Making: New Roles for 'Old' Partners in Resolving Family Violence: Implementation Report*, vol 1 (St. John's: Memorial University of Newfoundland, School of Social Work, 2005); and G Burford & J Pennell, *Family group decision making: After the conference—progress in resolving violence and promoting well-being: Outcome Report*, vol 1 (St. John's: Memorial University of Newfoundland, School of Social Work, 2005).

38.   Braithwaite, *supra* note 9.

39.   See the Wagga-Wagga police model in New South Wales (now defunct), and the Re-integrative Shaming Experiment (RISE), and court-centered approaches in the Australian Capital Territory (ACT) (currently being re-examined).

40.   See Kathleen Daly, "Conferencing in New Zealand and Australia: Variations, Research Findings and Prospects" in Morris & Maxwell, eds, *supra* note 31.

41.   Sinclair Dinnen, Anita Jowett & Tess Newton Cain, *A Kind of Mending: Restorative Justice in the Pacific Islands* (Canberra: Pandanus Book, Australian National University (Research School of Pacific and Asian Studies), 2003).

42.   Desmond Tutu (with Douglas Abrams), *God has a Dream: A Vision of Hope for our Time* (London: Rider, 2004).

43.   Jennifer J Llewellyn & Robert Howse, "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission" (1999) 49 UTLJ 355.

conscious hand-maiden of policies oriented toward cultural genocide.[44] On the other hand, Christian commandments concerning forgiveness, love for God above all, and loving one's neighbour as oneself (upon which, adherents are told, "hang all the Law and the Prophets"[45]) has been over generations a constant wellspring for generous action consistent with restorative principles. Certainly one of the most important North American protagonists in the struggle to advance restorative justice has been Howard Zehr[46] whose intellectual roots and first experiments in restorative justice practice grew out of experiences with the Mennonite communities of Southern Ontario. The Mennonite Church is still active in restorative programs such as Circles of Support and Accountability (CoSA) for high-risk sex offenders.[47] The Canadian Church Council on Justice and Corrections has been a stalwart supporter of restorative justice initiatives across Canada and in other countries.[48] Restorative justice has been on the curriculum of some Christian theological colleges for a considerable time.[49] In like measure, it has been said that all major faith traditions have elements of restorative justice or restorative values embodied within their doctrine and practices.[50] Some Christian traditions continue to be associated with punitive moralism,[51] however, and there is empirical work that suggests that many communities do not associate their churches with restorative justice, even where one might expect this connection.[52]

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 of the characteristics of a quasi-messianic social movement. Early experiments in restorative

---

44.   Canada's *Royal Commission on Aboriginal Peoples*, church apologies, and Canada's Truth and Reconciliation Commission on the issue of residential schools: see Jennifer J Llewellyn, "Dealing with the Legacy of Native Residential School Abuse: Litigation, ADR, and Restorative Justice" (2002) 52 UTLJ 253. To say nothing of the Spanish and the Roman Church in South and Central America: see Jared Diamond, *Guns, Germs and Steel: The Fates of Human Societies* (New York: WW Norton, 1997).

45.   Matthew 22:40, *New Revised Standard Version of The Bible* cited in the Anglican Book of Common Prayer, Service of Communion.

46.   Zehr, *Changing Lenses* and *Little Book of Restorative Justice, supra* note 10.

47.   Robin Wilson et al, "Circles of Support and Accountability: Engaging Community Volunteers in the Management of High Risk Sex Offenders" (2007) 46 The Howard Journal 1.

48.   Church Council on Justice and Corrections, *Satisfying Justice: A Compendium of Initiatives, Programs, and Legislative Measures* (Ottawa: Correctional Services of Canada, 1996).

49.   For example, Queen's Theological College, Queen's University in Kingston, Ontario, has offered a diploma and degree specialization in restorative justice since the late 1990s.

50.   Michael L Hadley, ed, *The Spiritual Roots of Restorative Justice* (Albany: State University of New York, 2001).

51.   Snyder, *supra* note 5.

52.   B Archibald & L Muise, *Acadian and Francophone Communities and Restorative Justice in Nova Scotia* (Halifax: NSRJ–CURA, Dalhousie University, 2011), online: <www.nsrj-cura.ca>.

justice were small, local efforts spearheaded by moral entrepreneurs or charitable civil society organizations of one stripe or another.[53] 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 on the part of restorative justice proponents. 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.[54] Of course, this was not to be vigilante justice so cooperation from allies within the state apparatus (or at least tolerance) was essential. Nevertheless, some proponents were wary of co-option by government which could corrupt the purity of the restorative justice effort.[55] Scholarly interest in restorative justice soon led to research which appeared to indicate that restorative practices were effective and could be of value to the criminal justice system.[56] Criminal justice policy makers and other justice stakeholders began to take an interest in restorative justice.[57] Soon the proponents of restorative justice within and outside government began to make common cause to promote the perceived benefits of restorative justice.[58] The preferred schema for thinking about restorative justice now frequently casts the state as an initiator or a full partner in restorative justice programs.[59] Since the

53.   This was particularly true in the United States: for helpful references see Paul McCold, *Restorative Justice: An Annotated Bibliography* (Monsey, NY: Criminal Justice Press, 1997); and Lena Kurki, "Restorative and Community Justice in the United States" in Michael Tonry, ed, *Crime and Justice: A Review of Research* (Chicago: University of Chicago Press, 2000).

54.   See M Umbreit, "Restorative Justice through Victim-Offender Mediation: A Multi-Site Assessment" (1998) 1 Western Criminological Review 1; M Umbreit, *The Handbook of Victim-Offender Mediation: An Essential Guide to Practice and Research* (San Francisco: Jossey-Bass, 2001); Kay Pranis, "Conferencing and the Community" in G Burford & J Hudson, eds, *Family Group Conferences: Perspectives on Policy, Practice and Research* (Hawthorne, NY: Aldine de Gruyter, 2000); Zehr, *Changing Lenses*, *supra* note 10.

55.   In the United States this attitude might be thought of as restorative justice initiatives tapping into a long standing republican tradition of suspicion of big government. One seeks allies where one can for controversial innovation.

56.   John Braithwaite, "Restorative Justice and a Better Future" (1996) 76 Dalhousie Review 7; Burt Galaway & Joe Hudson, *Restorative Justice: International Perspectives* (Monsey, NY: Criminal Justice Press, 1996); Hudson et al, *supra* note 36; Lode Walgrave, ed, *Restorative Justice for Juveniles: Potentialities, Risks and Problems* (Leuven: Leuven University Press, 1998).

57.   Police led restorative justice pilots in Australia (Wagga Wagga, NSW) and the UK (Charles Pollard and Thames Valley).

58.   Governments began to sponsor restorative justice pilot programs: New Zealand, Australia (ACT, Queensland, South Australia), and Canada (Saskatchewan, Nova Scotia).

59.   For example, while the Australian State of New South Wales has moved away from police-led restorative justice, the concept is maintained through correctional services: see Report of the Attorney General and Department of Justice, New South Wales, *Annual Report 2011/12*, online: Corrective Services New South Wales <http://www.correctiveservices.nsw.gov.au/__data/assets/pdf_file/0006/446577/AGJ_AR_ 2012>.

optimal structural elements in restorative justice are where the offender
and his family or supporters, the victim and her family or supporters,
representatives of the community, and government personnel, in a
supervisory or even facilitative role, operate in a coordinated fashion,[60]
governments began to legislate comprehensive institutional arrangements.

In some jurisdictions restorative justice became a permanent feature
of youth and adult criminal justice systems.[61] Moreover, a restorative
approach and its related practices began to expand to the realms of
education, social services, health, labour, human rights commissions, and
other government functions, with some municipalities and states beginning
to envision restorative environments which break down silos among
government departments, and use restorative regulatory approaches across
a broad range of activities.[62] Not surprisingly, government involvement
in restorative justice brought with it more sophisticated research and
evaluation to test the efficacy of restorative justice.[63]

Given the recent history of a globally-based movement towards
restorative justice, the diversity of restorative practices and processes, and
the varying degrees of their institutionalization in different jurisdictions, it
is not surprising to find that the measurement and evaluation of restorative
justice activities is highly heterogeneous. Approaches to evaluation of
restorative justice initiatives have varied with the nature and size of the
project and the resources available to conduct research. The evaluations
have also differed depending on how the program was funded and its
relationship to the state. Culture, politics, and ideology have had varying
impacts on the research mix in multiple contexts. The early literature on
modern restorative justice is replete with stories and anecdotes illustrative
of different restorative processes and practices and their varying degrees
of success. This literature, while often stirring and inspirational, was
certainly not scientific. As restorative justice comes of age as an integral

---

60.   Van Ness & Heetderks-Strong, *supra* note 9.

61.   Lode Walgrave, ed, *Repositioning Restorative Justice* (Collumpton, UK: Willan Publishing.
2003); Ivo Aertsen, Tom Daems & Luc Robert, *Institutionalizing Restorative Justice* (Collumpton,
UK: Willan Publishing, 2006); and Bruce P Archibald & Jennifer J Llewellyn, "The Challenges of
Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia" (2006) 29
Dal LJ 297.

62.   For example see "restorative city" initiatives in Hull, United Kingdom and Wanganui, New
Zealand. Also the cross sector use of a restorative approach in Nova Scotia, Canada and recent work
in Maine, USA to become a "restorative state." Also see: Daniel Van Ness, *Creating a Restorative
System: Update on RJ City* (July 2004), online: Restorative Justice Online <www.restorativejustice.
org/editions/2004/July/rjcity>.

63.   Canada (NS, Federal), Australia (South Australia), UK see J Latimer, C Dowden & D Muise,
"The Effectiveness of Restorative Justice Practices: A Meta-Analysis" (2005) 85 The Prison Journal
127.

aspect of sophisticated legal systems, the range and complexity of the publications on evaluation and measurement of restorative justice has expanded dramatically. The time is ripe for a reassessment of this corpus of research in the light of advances in the theoretical understanding of the relational principles which underpin virtually all of these widely divergent manifestations of restorative justice in various parts of the world.

II.   *Starting from the beginning in imagining a relational approach to evaluation*

1.   *Restorative justice as a relational theory*

Undertaking such a reassessment reveals that the challenge of measuring the success of restorative justice is not simply one of design, or misapprehension of the indicators of success. The focus on particular practices or models and the evaluation of programmatic successes in much of the existing literature has obscured the more fundamental question that we suggest must be the starting point for imagining and assessing success, namely: what is restorative justice?[64] This question has generally invited a descriptive rather than definitional (in the sense of conceptual) response. Thus, restorative justice is identified with certain constitutive elements of its practice—participation (by victim and offender and in most cases community)[65] is perhaps the most familiar, but there are others including a non-punitive focus, and dialogue-based processes. For the most part, the characterization of restorative justice ends at such descriptions and does not go further to ground these elements and commitments in theory. Perhaps, in part, at least, this familiar account results from a widely held view of restorative justice as alternative practice. As such, what becomes notable and relevant to the assessment of its success is the difference restorative processes and practices can make. Restorative justice is, then, on this view, a different *way* of doing justice. We do not seek to dispute that significant attention is warranted to the different *ways* in which restorative justice seeks justice. This understanding of restorative justice as alternative justice practices, is, however, too limited to imagine or capture its success.

    As a starting point for imagining and assessing success we need to do more than describe restorative justice practices, we need to consider not only the way in which restorative justice seeks justice but the justice it seeks. We start with the question: what is restorative justice? The answer

---

64.   See fuller discussion of this literature in Part III of this paper.
65.   Paul McCold, "The Role of Community in Restorative Justice Practice and Theory" in H Zehr & B Toews, eds, *Critical Issues in Restorative Justice* (Monsey, NY: Criminal Justice Press, 2004) 155. Paul McCold, "Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model" (2000) 3:4 Contemp Just Rev 357.

though cannot be found on the face of its practices and processes, but rather in an underlying conceptual or theoretical account of restorative justice. Restorative justice is best understood as a relational theory of justice.[66] From this theory, we suggest, restorative practices and processes can be imagined, understood and assessed.

While much of the energy and attention directed at answering the question of what is restorative justice has been primarily descriptive in its focus and orientation, this does not mean that it has not offered some rich theoretical reflections. Indeed, there has been important theoretical work seeking to explain the operation or successes of restorative justice. Perhaps the most notable example is John Braithwaite's work on reintegrative shaming and republicanism.[67] For the most part though, the attention of such theories has been more upon how or why restorative processes work (or do not work, as the case may be) and not on the idea or theory of justice animating such practices. Interestingly they are, however, consistent with a relational theory account of restorative justice. Indeed, understanding restorative justice as a relational theory of justice opens the door to considering the important insights offered by existing theories (most notably within sociology, psychology, and feminist theory) that at their core resonate with or reflect a relational approach, including, for example, citizenship theories, relational sociology, social rights theory, deliberative democracy, relational autonomy, and attachment theory. Relational theory thus can serve the role of a conceptual or theoretical framework in which many theoretical tools may fit and make a contribution to filling out our imagination for designing and building and even renovating restorative practices and processes.

In identifying the general lack of attention to the theoretical framework of restorative justice we do not mean to suggest that our offering of relational theory is remarkable for its originality. Indeed, the strength of our claim for understanding restorative justice as first and foremost a relational theory of justice is the extent to which it captures and reflects the insights and instincts of many scholars and practitioners of restorative justice. The idea that relationships are a central focus of restorative justice

---

66.   We ground this in the work of Jennifer Llewellyn (one of this paper's authors) who has developed an account of restorative justice as a relational theory of justice. See for an overview and summary of her account: Jennifer J Llewellyn, "Restorative Justice: Thinking Relationally about Justice" in Jocelyn Downie & Jennifer J Llewellyn, eds, *Being Relational: Reflections on Relational Theory & Health Law and Policy* (Vancouver: UBC Press, 2012) [Llewellyn, "Thinking Relationally"].

67.   Braithwaite, *supra* note 9; Braithwaite & Pettit, *supra* note 9. Although of course there have been others including the invocation of Nathanson's Affect Theory, see Donald L Nathanson, *Shame and Pride: Affect, Sex, and the Birth of the Self* (New York: WW Norton, 1992); see also E Weitekamp & H Kerner, *Restorative Justice: Theoretical Foundations* (Cullompton, UK: Willan Publishing, 2002).

is not new. For example, it is central in much of the work in the area including, for example, Howard Zehr's pioneering work. Notably, Zehr points to the different lens restorative justice offers through which crime is viewed as harm to people and their relationships.[68] Zehr is not alone in naming relationships as a central concern of restorative justice. Indeed, the key role of relationships is claimed as well by Braithwaite in his work on reintegrative shaming.[69] These accounts, however, have not explored *why* relationships are so central in the work of restorative justice and the implications of this centrality for our understanding of it. In part, this lack of explicit attention to grounding the significance of relationship may result from the fact that Zehr's work (and other early work in restorative justice) is founded on a Christian faith tradition which orients his notion of "right relations" as an ideal of justice in a way that does not need further defense. But absent such a faith-based conviction, the legitimacy of the focus on relationships is not as obvious and requires justification if it is to frame restorative justice.

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 at the level of practice and leave unexamined the theoretical principles, ideals, and goals of restorative justice. Viewing restorative justice as a relational theory of justice also explains the relevance of restorative processes and practices beyond the criminal realm. Some have sought to focus on the practices and processes that are transportable and applicable to other realms. This focus is reflected in the term "restorative practices" that is often used to differentiate and mark such applications as distinct and separate from restorative justice. This use of the term, however, reflects a narrow procedural focus. The term and its advocates miss the deeper connection between restorative justice and other restorative manifestations. They are connected by more than familiar process, similar arrangements of furniture or the use of the same techniques. Relational theory reveals that the promise restorative justice offers for other social and political institutions, 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

---

68.   Zehr, *Changing Lenses*, *supra* note 10. See also Zehr, *Little Book of Restorative Justice*, *supra* note 10.
69.   Braithwaite, *supra* note 9.

which we can flourish. One of the implications, then, when we start from an understanding of restorative justice as a relational theory of justice, is that a restorative approach is not limited to a theory or idea of justice—but could be applied to other ideas or areas.[70]

Our interest here is on the implications that this conceptual framing has for understanding what constitutes success in restorative justice and how to assess it. The challenge and weakness of previous and current attempts to measure success are, at least in part, born of a lack of clarity about the nature of that which is being measured. Before determining the issue of whether success has been attained, further attention to the vision of success restorative justice offers—as a relational theory of justice—is imperative. To be useful to the enterprise of measuring success, we must probe deeper than description of process or practice and seek to understand the restorative approach to justice involved.[71]

2. *A measure of what?*

As a relational theory of justice, restorative justice challenges individualist-based notions of justice including retributive, corrective, restitutive, and distributive. Restorative justice takes the relational nature of human beings as a conceptual starting point for understanding the meaning and requirements of justice. From this starting point justice must take account of our connectedness to one another. Attention to the multiple and intersecting relationships in which we live makes clear the ways in which wrongdoing causes harm not only to the individuals involved but also to the connections and relationships in and through which individuals live. These include personal or intimate relationships and the social relationships that exist among those involved or both. A relational approach reveals that harms related to wrongdoing extend from the individual victim(s) and wrongdoer(s) to affect those connected with them, including their immediate communities of care and support, broader communities to which they belong, and ultimately the social fabric of their society. This is true, on a restorative account, not only for the wrongs

---

70.   For a recent exploration of relational theory and its practical implications see: Jocelyn Downie & Jennifer J Llewellyn, eds, *supra* note 66. See also: Penny A Weiss & Marilyn Friedman, eds, *Feminism and Community* (Philadelphia: Temple University Press, 1995); Diana Tietjens Meyers, ed, *Feminists Rethink the Self* (Boulder, CO: Westview Press, 1997); Catriona Mackenzie & Natalie Stoljar, eds, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford: Oxford University Press, 2000). Jennifer Nedelsky, "Reconceiving Autonomy: Sources, Thoughts and Possibilities" (1989) 1 Yale JL & Feminism 7; Susan Sherwin, "A Relational Approach to Autonomy in Health Care" in Susan Sherwin et al, eds, *The Politics of Women's Health: Exploring Agency & Autonomy* (Philadelphia: Temple University Press, 1998) 19; Christine M Koggel in *Perspectives on Equality: Constructing a Relational Theory* (Lanham, MD: Rowman & Littlefield, 1998).
71.   Llewellyn, "Thinking Relationally," *supra* note 66.

that we class as criminal in our current systems but also those harms addressed through other regulatory regimes (for example, human rights, or labour relations) and those viewed as "private" wrongs (for example, torts or other matters dealt with through the civil justice system). Indeed, through its focus on harm to relationships, a relational approach to justice challenges the dichotomy of public and private spheres at the core of western legal systems.[72] From this view, the effect of wrongdoing always extends beyond private relationships between two parties and involves a wider set of relationships. In this sense, then, on a restorative account wrongs are always "public." They can be distinguished in terms of the required response not by their public or private nature but by the scope of their effects.

In response to a wrong on a restorative account, justice seeks to secure relationships in which all parties involved enjoy equality in the character and terms of relationship with one another. The equality that is sought is equality in the basic elements required for peaceful and productive human relationships—namely, equality of respect, dignity, and mutual care and concern for one another.[73] The equality sought by justice on this account is thus relational equality. This requires more than an equal measure of treatment or result alone. Rather, as Christine Koggel in her foundational work on the idea explains:

> We need people with all of their encumbrances and in all their embeddedness in social and political contexts engaged in critical thinking about difference and perspective to know what equality requires. Impartiality, in the sense of the ability to treat each person with equal concern and respect, is achieved not through the monological thinking of a solitary and isolated moral reasoner but through a communicative process of an ongoing dialogue among different points of view.[74]

From this process, for Koggel, emerge two principles that mark a relational approach to equality: first that we ought to treat people with equal concern and respect, and second that human diversity and ways of being should be respected. These two principles reflect the formulation of the core commitment of restorative justice to relationships of equality in which parties enjoy equal respect, care/concern and dignity.

In recasting the familiar liberal-inspired commitment to concern and respect as a commitment to equal care/concern, respect, and dignity,

---

72.   Jennifer J Llewellyn & Robert Howse, *Restorative Justice—A Conceptual Framework* (Ottawa: Law Commission of Canada, 1998).
73.   Llewellyn, "Thinking Relationally," *supra* note 66.
74.   Koggel, *supra* note 70 at 5.

this formula does not reject the liberal commitment to equality, but rather attempts to make meaningful, and realize, equality for relational beings. The equality sought by restorative justice shares the fundamental commitment to equal respect and concern that animates liberal notions of equality, but is not similarly abstract in nature. Rather, relational justice takes equality *of relationship* as its goal.[75] It is concerned with equality as it is realized in actual relationships between people. It is contextual and grounded. Achieving this equality requires attention to the particular contexts, the parties involved, and to what will be required to ensure respect, concern, and dignity in the relations between and among parties. A relational approach distinguishes these commitments from the notion of them at work in many liberal accounts. For example, *respect*, on a relational conception, is not based upon disinterest or self-interest but, rather, respect must be reconciled with (and understood in the context of) *concern* for others. The inclusion of care and concern makes knowledge of and interest in others and their wellbeing an animating and motivating factor. The inclusion of care and concern in this formulation of the aim of justice reflects insights gained from care feminists and some communitarian critiques of liberal justice and is incorporated into some liberal accounts.[76] We are not only concerned and care for others because it is in our interests as rational agents (so that others will have similar concern for us or because it is rational to do so). Rather, we have care and concern for others because as relational and connected selves we cannot respect self or others without such concern. Finally, the inclusion of dignity requires attention and respect for the diversity of ways of being that become clear when one approaches individuals in all their embedded and relational complexity. But here again dignity conceived of relationally is different than dignity as reflected in liberal justice accounts. Dignity does not refer to the inherent value of the individual simply as *rational* agent. Dignity does not reside in the individual alone, rather it marks the relationship between and among parties and requires that such connections reflect the value of each party in the relationship.

   This focus on relationship as the central concern of justice, and equality of relationship as the aim and measure of justice, has implications for the

---

75.   Llewellyn, "Thinking Relationally," *supra* note 66.

76.   Some liberal accounts use the formulation of respect and concern without moving substantially from the notion of respect described above. Others see it as requiring some positive actions to support others. See for example, Barbara Herman, "Mutual Aid and Respect for Persons" (1984) 94 Ethics 577. Many of these accounts, however, do not challenge the fundamental assumptions of liberal individualism as they connect concern for others to some version of self-interest, for example, in how we each wish to be treated.

"doing" of justice. From this relational theory framework we can derive and articulate principles for practice. These provide further definition to restorative justice and its practices and processes without reducing or limiting our understanding or definition of restorative justice to particular models or forms of practice. As such, these principles frame what a relational approach to justice entails without prescribing the practices themselves. As a useful analogy one might think of them not as a recipe for restorative justice practice, but rather as an articulation of the principles of cooking upon which good recipes, and their execution, depend.

From the starting point in relational theory then, one can derive the following principles as guides for restorative practices, processes, and policies. They provide a way to answer the question: what does taking a restorative approach entail—how will we know it when we see it? How will we assess a particular example in terms of its "restorativeness?" These principles are at once substantive and procedural. Some in restorative justice have debated whether "restorativeness" should be measured by the nature of the process or by its outcomes.[77] A relational account moves away from the identification of restorative justice with particular processes, thereby rejecting a purely procedural assessment of restorativeness. One cannot, on a relational account, determine restorativeness simply by virtue of the fact that the right elements are reflected in the process. The outcome of the process also matters in measuring success. The ability of a process to be attentive to and affect relationships matters. But a relational approach denies the possibility or desirability of disconnecting outcome (substance) from process. Indeed, it sees the two as fundamentally interconnected and important. The principles should be read in this light as not simply relevant for the procedural elements of a restorative approach, but for its substantive goals and achievements.

The following list of principles does not represent an exhaustive list, but the principles that emerge from a relational theory as a guide for a restorative approach.[78]

---

77.   See for example, Gerry Johnstone & Daniel Van Ness, "The Meaning of Restorative Justice" in G Johnstone & D Van Ness, eds, *Handbook of Restorative Justice* (Portland, OR: Willan Publishing, 2007).

78.   Llewellyn, "Thinking Relationally," *supra* note 66; Kristina R Llewellyn & Jennifer J Llewellyn, "A Restorative Approach to Learning: Relational Theory as Feminist Pedagogy in Universities" in T Penny Light, J Nicholas & R Bondy, eds, *Feminist Pedagogy in Higher Education: Critical Theory and Practice* (Waterloo: Wilfrid Laurier University Press) [forthcoming].

3. *Principles of a restorative approach*

a. *Relationship focused*

A relational approach is focused on relationships and does not focus only at the individual level. This principle poses a challenge to the common descriptions of restorative justice process as "victim-centered." From the perspective of restorative justice as a relational approach, it is not accurate to characterize it as "victim-centered" as an antidote to the "offender-centric" approach of current criminal justice processes. A relational approach directs the focus to the relationships between and among the parties involved. Of course the experiences, needs, and perspectives of the parties matter and are central. They do not matter in contrast to, or in competition with, each other but in relation to one another. Attention to individuals as they are in relation with one another is central to a restorative approach.[79]

This focus on relationships draws attention to the nature or character of the various relationships involved in or affected by a situation. Restorative justice then takes as its aim the establishment of "just" relationships—those reflecting the core commitments of equal respect, care/concern, and dignity. Justice on a restorative account is, therefore, relationship-focused, taking equality of relationship as its goal.

b. *Comprehensive/holistic*

Just as restorative processes are relationship-focused in their orientation to parties, a restorative approach is similarly relational in its understanding of issues and harms. A restorative approach is comprehensive and holistic in its understanding and response. It is insufficient then, on a restorative approach, to focus narrowly on an incident without attention to its causes, contexts, and implications.

c. *Contextual/flexible*

A focus on relationships requires processes and practices that are flexible and responsive to context. It defies cookie-cutter or "add water and stir" models of practice because they cannot take account of the nature of the particular relationships at stake and the parties involved. For example there may be different needs in terms of cultural practices or related to the safety and security concerns or the complexity or breadth of the issues or parties involved. All would need to be considered in crafting a restorative process or practice or policy.

---

79. Llewellyn & Howse, *supra* note 72.

d.   *Subsidiarity, inclusion, and participation*

The concept of *subsidiarity* finds its origins in the social thought of the Catholic Church during the first half of the twentieth century and has made its way into democratic theory and its discourses.[80] For example, the European Commission explains the subsidiarity principle "is intended to ensure that decisions are taken as closely as possible to the citizen.…" In its application this principle limits the European Union's action "unless it is more effective than action taken at the national, regional or local level."[81] It is also a grounding principle of Canadian federalism.[82] This principle also reflects a commitment to contextuality. Framed relationally, it is important that we involve those with intimate knowledge of the contexts and relationships at stake if we are to have the knowledge and capacities needed to address the harms and build a foundation for a new and better future.[83]

The principle of subsidiarity explains the commitment within a restorative approach to inclusion and participation. Subsidiarity demands attention to who should be included within processes so that the process may be well informed and the outcome legitimate for those affected or involved with it. As a relational framework invites a different lens on harms and their effects through the webs of relationships in which people live, it prompts a different way of thinking about how different parties should be connected and involved in a restorative process. Rather than requiring parties and non-parties (for example, by-standers or supporters) or outsiders versus insiders, a relational approach invites more complexity than such binary and adversarial choices. A relational approach seeks to understand different parties' roles and secure their participation according to their roles in the causes and solutions of conflict. It asks: how have these parties contributed to the harms to relationships? How have they been affected by the wrongs? What contribution can they make to the restoration of affected relationships?

These questions point to the importance of the principle of inclusion for restorative processes. It is not enough, however, to simply include all those affected or with a stake in a situation. Their inclusion must be meaningful to the process and its outcome. In other words, it must make a difference that they are included—mere presence is insufficient: participation is what

---

80.   See Pope Pius XI, *Quadregissimo Anno*, encyclical, 1931.
81.   The European Commission offers this definition of subsidiarity in EC, *Treaty on European Union*, [2010] OJ, C83/13 at art 5.
82.   *Reference re Secession of Quebec*, [1998] 2 SCR 217.
83.   Jennifer J Llewellyn & Daniel Philpott, "Restorative Justice and Reconciliation: Twin Frameworks for Peacebuilding" in Jennifer J Llewellyn & Daniel Philpott, eds, *Restorative Justice, Reconciliation and Peacebuilding* (Oxford: Oxford University Press) [forthcoming].

is required within a restorative approach. One of the ways in which this
is sometimes captured is in the commitment to *transcend* the often binary
choice of doing things *for* people or *to* people, but instead striving for
processes that endeavour to create space in which people can accomplish
things with each other—collaboratively.[84] The International Institute for
Restorative Practices (IIRP) offers an instructive example of the problem
of relying too heavily on inclusion alone.[85] It is evident in their reliance
on the idea of "fair process" advanced by W. Chan Kim and Renée
Mauborgne. This idea was introduced as a means of producing effective
outcomes in business organizations. It is an implementation principle seen
as essential for leaders to deal with organizational hurdles that prevent good
strategies from being executed by, among other things, making it difficult
to keep employees committed to implementing them. Kim and Mauborgne
claimed that "individuals are most likely to trust and cooperate freely with
systems—whether they themselves win or lose by those systems—when
fair process is observed."[86] "Fair process" here, as opposed to the claim
we make for inclusion as a principle of a restorative approach, is deployed
essentially for compliance purposes rather than for the difference it might
make to the nature of the outcomes of the relationships at stake. A genuine
restorative approach, grounded in relational theory, we suggest, requires
more than making people *feel* heard, they must actually *be* heard.[87]

e.   Dialogical or communicative
The meaningful inclusion contemplated above through collaborative
process requires communication. This is often expressed within restorative
justice literature as a commitment to dialogical processes. Indeed, dialogue
is a common mechanism for communication and a powerful one that

---

84.   WC Kim & R Mauborgne, "Value Innovation—The Strategic Logic of High Growth" (1997)
Harvard Business Review 75 at 103-112. Now of the Blue Ocean Strategy Institute, online: <http://
www.insead.edu/blueoceanstrategyinstitute/home/index.cfm>.
85.   B Costello, J Wachtel & T Wachtel, *The Restorative Practices Handbook for Teachers,
Disciplinarians and Administrators* (Pennsylvania: International Institute for Restorative Practices,
2012).
86.   Kim & Mauborgne, *supra* note 84.
87.   This strategic deployment of relationships and the use of control and assistance to gain compliance
with those in authority is also reflected in IIRP's use of the "social discipline window" adapted from
Daniel Glasser's typology of parole officers performance. See: Daniel Glaser, *The Effectiveness of a
Prison and Parole System* (New York: Babbs-Merrill Company, 1964).

assures encounter and participation with one another.[88] It is not, however, the only available communicative mode.[89]

f.   *Democratic/deliberative*

The commitment to inclusion and participation through dialogue/ communication in a restorative approach is connected to the principles of democracy and deliberation that orient a restorative approach. Restorative processes connect the legitimacy of decision making to inclusive processes through which deliberation can take place.

g.   *Forward-focused, solution-focused, and remedial*

A restorative approach is oriented towards the future, to understanding what has happened in order to understand what needs to happen to address the past with a view to creating conditions for restored relationships in the future. In this respect it stands in contrast to the backward gaze of retributive justice which seeks to establish blameworthiness in order to "even the score" by ensuring accountability (often through punishment) for past wrongs.[90]

Through these principles restorative justice practice can be grounded in a relational approach. The principles then provide a framework to imagine the elements of successful practice and outcome. Just as relational theory ought to drive restorative justice practice, so too, as we suggest below, should it inform the measurement of its success. Its implications run deeper, though, than simply what is to be measured and what might serve as indicators of success or as successful outcomes. A relational approach could certainly inform and improve the measures used but, perhaps, more significantly it raises significant questions about the way in which we *approach* measurement. The existing evaluation literature, as we discuss next, has acknowledged some of its limits in this respect and even included some efforts to improve upon the measures. These efforts and the insights inspiring them would be significantly enhanced, we claim, if they were oriented by the same relational approach that informs restorative justice. The understanding of restorative justice as a relational theory of justice should then inform our imagining and measurement of its success.

---

88.   For further consideration of the significance of dialogue and deliberation see A Barrett, "The Structure of Dialogue: Exploring Habermas' Discourse Theory to Explain the 'Magic' and Potential of Restorative Justice Processes" (2013) 36 Dal LJ 335.

89.   An instructive example of alternative modes of communication was used in by the Community Justice Society in Cape Breton, Nova Scotia in their program "Children at the Critical Hour (CATCH)." They made use of a range of communicative strategies including art and play to assist young children in communicating their perspectives.

90.   For a fuller discussion of the relationship between restorative and retributive justice see: Llewellyn & Howse, *supra* note 72.

III. *The general problem of measuring the success of restorative justice*

1. *Overview*

The body of research evaluating restorative justice is large, diverse and international. Researchers in Canada, the U.S., the U.K., Australia, and New Zealand have evaluated various programs ranging from small pilot projects to large-scale comprehensive programs. Many evaluations have been small scale and qualitative.[91] Others have been large evaluations of comprehensive programs.[92] Some researchers have used experimental or quasi-experimental designs.[93] Another common method involves matched comparisons, where researchers compare similar types of people who have gone through either a restorative process or a traditional court process.[94] While not strictly speaking evaluation research, meta-analyses, and systemic reviews have also been conducted looking at the body of

---

91.   Judy Paulin & Venezia Kingi, "The Whanganui Community Managed Restorative Justice Programme: An Evaluation" in Crime & Justice Research Centre, ed, *The Whanganui Community-Managed Restorative Justice Program: An Evaluation* (Wellington: New Zealand Ministry of Justice, 2005) [Paulin & Kingi, "Whanganui Community, 2005"]; Judy Paulin & Venezia Kingi, "The Whanganui Community-Managed Restorative Justice Programme: An Evaluation" in Crime & Justice Research Centre, ed, *The Whanganui Community-Managed Restorative Justice Program: An Evaluation* (Wellington: New Zealand Ministry of Justice, 2007); Tania Petrellis, *The Restorative Justice Living Unit at Grande Cache Institution: Exploring the Application of Restorative Justice in a Correctional Environment* (Ottawa: Correctional Services of Canada, 2007).

92.   Donald Clairmont, *The Nova Scotia Restorative Justice Initiative: Year One Evaluation Report* (Halifax: Nova Scotia Department of Justice, 2001); Kathleen Daly, "South Australia Juvenile Justice Research on Conferencing: Technical Report No 2" in Griffith University School of Criminology and Criminal Justice, ed, *South Australia Juvenile Justice Research on Conferencing: Technical Report No. 2* (Queensland: Australian Institute of Criminology, 2001) [Daly, "Technical Report No. 2"]; Carolyn Hoyle, Richard Young & Roderick Hill, *Proceed with Caution: An Evaluation of the Implementation and Effectiveness of an Initiative in Restorative Cautioning* (York: Joseph Rowntree Foundation, 2002); Edmund McGarrell & Natalie Kroovand Hippie, "Family Group Conferencing and Re-Offending Among First-Time Juvenile Offenders: The Indianapolis Experiment" (2007) 24 Justice Quarterly 221; Joanna Shapland et al, *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes* (London: UK Ministry of Justice, 2008) [Shapland et al, *Fourth Report*]; Lawrence Sherman et al, *Experiments in Restorative Policing: Reintegrative Shaming of Violence, Drink Driving, and Property Crime, A Randomised Controlled Trial* (Australia: Australian National University and The Australian Federal Police, 1997); Heather Strang et al, *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE)* (Canberra: Australian National University, 1999).

93.   James Bonta et al, "An Outcome Evaluation of a Restorative Justice Alternative to Incarceration" (2002) 5 Contemp Just Rev 319; Paul McCold & Benjamin Watchel, *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project* (Pipersville, PA: International Institute of Restorative Practices, 1998); Joanna Shapland et al, *Restorative Justice: The Views of Victims and Offenders* (New Zealand: Ministry of Justice, 2007) [Shapland et al, *Views of Victims*]; Shapland et al, *Fourth Report*, *supra* note 92; Sherman et al, *supra* note 92.

94.   Hoyle, Young & Hill, *supra* note 92; David Miers et al, "An Exploratory Evaluation of Restorative Justice Schemes" in *Crime Reduction Research Series* (London: Home Office, 2001); Paulin & Kingi, "Whanganui Community, 2005," *supra* note 91; Tanya Rugge, James Bonta & Suzanne Wallace Capretta, *Evaluation of the Collaborative Justice Project* (Ottawa: Public Safety Canada, 2005).

research as a whole.[95] The vastness of the body of research illustrates the high level of interest in finding out whether restorative justice successfully responds to crime. Nevertheless, the existing research uses measures of success more reflective of the goals of the mainstream justice system than of a different way of doing justice.

Many evaluations include a measure of recidivism, re-contact with the justice system, or other indicators of whether an offender has changed her behaviour. Indeed, some projects and programs identified reducing recidivism and crime reduction as explicit goals.[96] Satisfaction of participants is another outcome central to evaluations of restorative justice programs. Some programs build this variable into their goals and it constitutes a major preoccupation in many evaluations.[97] Interest in participant satisfaction no doubt arises out of concerns that traditional justice system interventions ignore victims' perspectives in particular and focus too heavily on the offenders. Less common but quite significant have been measures of success focusing on how restorative justice might benefit the criminal justice system. Measures of these benefits include case processing time and cost. None of these indicators reflect the relational underpinnings of restorative justice described earlier.

Some evaluations have attempted to look at indicators to capture the "restorativeness" of restorative justice. This research presents several indicators that processes were restorative: forgiveness, reconciliation, repair, remorse, and reintegrative shaming.[98] Researchers assess such features as outcomes that indicate whether a process was restorative. In our view, they may be necessary but are not sufficient indicators of a restorative process. Interestingly, few evaluations look into the community

95.   Latimer, Dowden & Muise, *supra* note 63; Lawrence Sherman & Heather Strang, *Restorative Justice: The Evidence* (London: The Smith Institute, 2007).

96.   Hoyle, Young & Hill, *supra* note 92; McCold & Watchell, *supra* note 93; Edmund McGarrell & Natalie Kroovand Hippie, "Family Group Conferencing and Re-Offending Among First-Time Juvenile Offenders: The Indianapolis Experiment" (2007) 24 Justice Quarterly 221; Miers et al, *supra* note 94; Paulin & Kingi, "Whanganui Community, 2005," *supra* note 91; Shapland et al, *Fourth Report*, *supra* note 92. The Nova Scotia restorative justice program also identifies this as a goal.

97.   Clairmont, *supra* note 92; Hoyle, Young & Hill, *supra* note 92; McGarrell & Kroovand Hippie, *ibid*; Miers et al, *supra* note 94; Shapland et al, *Restorative Justice: The Views of Victims and Offenders* (New Zealand: Ministry of Justice, 2007); Strang et al, *supra* note 92.

98.   H Barwick & A Gray, *Family Mediation—Evaluation of the Pilot—April 2007* (New Zealand: Ministry of Justice, 2007); Kathleen Daly "South Australia Juvenile Justice Research on Conferencing: Technical Report No. 1" in Griffith University School of Criminology and Criminal Justice, ed, *South Australia Juvenile Justice Research on Conferencing: Technical Report No. 1* (Queensland: Australian Institute of Criminology, 1998) [Daly, "Technical Report No. 1"]; Hoyle, Young & Hill, *supra* note 92; Shapland et al, *Fourth Report*, *supra* note 92; Strang et al, *supra* note 92.

dimension of restorative justice including level of community involvement or changes in the community such as community empowerment.[99]

Some researchers who evaluate restorative justice programs do refer generally to restorative justice principles and acknowledge that restorative justice is more than the sum of its outcomes. Evaluating a project in New Zealand, Paulin and Kingi devote a complete chapter to assessing restorative justice principles.[100] These include: voluntary participation, well informed and prepared participants, high level of offender accountability, flexibility, emotional and physical safety, effectively facilitated process, and appropriate cases. McCold and Watchell, while presenting data on recidivism, state clearly that reduced recidivism is not a goal of restorative justice.[101] They argue that reduced recidivism may result from restorative justice but it does not constitute a sufficient measure of its success. They argue that the goal of restorative justice is to "balance the need of victim, offender and communities rather than being solely offender–focussed."[102] These two reports stand out for their acknowledgment of the complexity of a restorative justice intervention.

Other researchers have explored ways to measure "restorativeness" in terms of outcomes of restorative justice sessions. Paulin and Kingi argue that restorative outcomes can only be achieved if the plan was negotiated with community input and if it results in a repair of the harm.[103]   As indicators of these outcomes they noted whether the offender apologized or paid some form of reparation. They also used victim satisfaction with the plan and whether it was completed as indicators of restorativeness. In another notable effort, Kathleen Daly[104] has developed a measure of restorativeness focused on whether the offender felt remorse or shame; how the relationship between victim and offender developed during a conference; and whether the conference demonstrated a level of procedural justice. While these efforts represent a considerable shift away from traditional criminal justice outcomes, these measures focus exclusively on the conference as a process.

The accumulated body of research makes a convincing case that restorative justice is "successful" along many dimensions. Studies have shown reduced recidivism and high levels of participant satisfaction. The process is generally evaluated as being fair, substantively and

---

99.   For exceptions see Paulin & Kingi, "Whanganui Community, 2005," *supra* note 91.
100. *Ibid*.
101. McCold & Watchell, *supra* note 93.
102. *Ibid* at 74.
103. Paulin & Kingi, "Whanganui Community, 2005," *supra* note 91.
104. Daly, "Technical Report No. 2," *supra* note 92.

procedurally. The research suggests success in diverse contexts and with different populations. Restorative justice is increasingly seen as legitimate and the positive evaluations may have contributed, at least in part, to this legitimization.

What also emerges from the review of program evaluations of restorative justice is the sense that restorative justice is primarily concerned with changing perpetrators' patterns of offending and ensuring that participants in the process, victims in particular, have a positive experience. Restorative justice also emerges as a more inclusive process. The outcomes do not, however, suggest that restorative justice involves any conceptual shift away from the underlying theory of justice that underpins the current system. Restorative justice emerges from the evaluations as a preferable *process* that is successful in terms of recidivism and is more satisfying for the participants.

As a body of literature, however, the evaluations fail to provide any insight into the way in which restorative justice is a different theory of justice rather than a different set of practices. If we understand restorative justice as relational, we would expect to see outcomes that better reflect the theory. We might expect to see measures of the impact of restorative justice on social relationships, community-building, and skills that generate enhanced positive social attitudes and behaviours, to name a few.[105] Measures of success could highlight collaborative processes, improvements in skills, understanding, social relations, and the creation of a stronger, positive sense of community.

The lack of attention to these features arises for several reasons. In part, the measures used in the evaluations reflect the fact that restorative justice has been embedded within the mainstream justice system either as a diversion from, or alternative to, the traditional criminal justice system's response to crime, or as a part of a larger crime prevention scheme. The agendas of the criminal justice system or of crime prevention, therefore, drive the goals of many restorative justice programs. The evaluations reflect this context.

Furthermore, many restorative justice advocates have conveyed strongly and consistently that the value of restorative justice for the criminal justice system lies precisely in the outcomes that the dominant system values (e.g., smart sentencing, effectiveness, more participation, and less formal and costly processes). Advocates have usually worked

---

105. We understand the complexity of finding ways to measure these outcomes but we see them as illustrating our point about the need for restorative justice evaluations to include outcomes that more closely relate to the aspirations of a relational approach.

cheek by jowl with the criminal justice system, accepting the latter's definitions of crime, offender and victim and also the individualized nature of offending and victimization.[106] Given this context, it might be surprising if restorative justice had been evaluated on different terms.

That said, those committed to restorative justice as a social movement advocate it as an approach to achieving a better, healthier, less conflict-ridden society rooted in more positive social relations and a stronger communitarian core. Such advocates would identify the criminal justice system measures of success as quite limiting. A strong intellectual position in fact has long maintained that the restorative approach collides with, more than complements, the underlying premises and world view of the criminal justice system as we know it.[107] Indeed, there is a case to be made that some of the principles and values underlying the restorative justice movement should be prominent concerns of a progressive criminal justice system, although, perhaps it may be naive to presume that the formal criminal justice system could develop a concern with improving underlying social relationships and strengthening salient social understandings and skills.

The evaluation research in restorative justice has also been produced in the context of a move toward the development of "evidence-based" policies. Drawing on the modalities of medical research, the goal is to develop policies based on research, rather than ideology or prevailing views about what works best. Evidence-based policies are deemed to be more efficient in so far as they have been proven to be effective. The move toward evidence-based policies is particularly clear in burgeoning efforts toward crime prevention, with restorative justice being increasingly seen as a "tool for crime prevention." In fact, many restorative justice projects are funded through crime prevention or crime reduction programs.

Given this context, it may be that viewing restorative justice as a relational theory not only advances the relevance of restorative processes and practices beyond the criminal realm, but also challenges both the limited success measures used in current restorative justice evaluation and their underlying individualist-based notions of justice.[108]

The conceptualization of restorative justice as relational may offer an avenue to the development of such measures of success. We may, however, still face several barriers to the development of new measures. The

---

106. George Pavlich, "Restorative Justice and Its Paradoxes" (2005) 22 Connections Winter 14; Kelly Richards, "Rewriting and Reclaiming History: An Analysis of the Emergence of Restorative Justice in Western Criminal Justice Systems" (Paper delivered at the International Conference on Conferences and Circles, IIRJ, Vancouver, 2004), online: <http://www.crjs.org>.

107. Christie, *supra* note 26; Shonholtz, *supra* note 28.

108. Llewellyn, "Thinking Relationally," *supra* note 66.

application of innovative measures will require that social policy leaders and activists are sufficiently convinced of their merits to put resources into the research that would need to be done. The research effort would entail observational research, before and after measures of relationships, and "community" studies. In the "bowling alone" modern society where enduring interpersonal relationships and sense of community appear to be increasingly passé, securing interest and resources may be problematic.[109] The absence of a much stronger, fleshed-out theoretical framework only exacerbates this potential problem.[110]

2.   *The upshot of research on restorative justice: limitations of evaluation research*

The Nova Scotia Restorative Justice Program came into being in 1999–2000 as a result of effective moral entrepreneurship, stimulated by restorative justice-related experiences elsewhere—as referred to earlier in this paper—and after almost two years of discussion and planning among leaders in policing, prosecution, the judiciary, and corrections.[111] It is highly and properly regarded as one of the best criminal justice system-initiated restorative justice programs in Canada. The Nova Scotia Restorative Justice Program was set up to be applicable at all levels of the criminal justice system, with restorative justice referrals possible pre-charge, post-charge, post-conviction, and post-sentencing; in some manner, restorative justice could apply to all offences and offenders.[112]

Its strengths organizationally are many: province-wide programming, secure generous long-term governmental funding, collaboration with local non-profit agencies who deliver the service while the provincial Nova Scotia restorative justice management provides coordination, protocols and training, and complete funding for the agencies' full-time staff. It has also partnered with, and contributed significantly to the success of, the province-wide Aboriginal restorative justice program. Nova Scotia is exemplary not only for the scope and support for its restorative justice program but also for the limitations experienced in evaluating its success. Its impact, measured in terms of the conventional criminal justice system evaluation criteria, has been impressive: less recidivism of all kinds

---

109. RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000).

110.   Susan Olsen & Albert Dzur, "Reconstructing Professional Roles in Restorative Justice Programs" (2003) Utah Law Review 1.

111.   Archibald & Llewellyn, *supra* note 61; Clairmont, *supra* note 92.

112. The program was initially piloted and then implemented for youth but contemplated extension to adults from its inception. It has recently piloted adult implementation and the Province seems committed to wider adult implementation in the near future.

than in court processed cases, high levels of satisfaction among all types of participants in the restorative justice sessions (offenders, victims, supporters, police attendees and others), and diversion of roughly one third of all cases of youth arrest from the court processing stream.[113]

Overall, then, by the conventional criminal justice system-based criteria of success, the Nova Scotia Restorative Justice Program has achieved much. The measures of success used, however, have not identified challenging issues and are not driving the program beyond its current level of significance and importance or achievement. We would argue that underlying this situation is both a reluctance to take on the measurement of outcomes not tied to the criminal justice system and the inability to operationalize such measures. Of most relevance to the purpose of this paper is the fact that evaluations fail to look into restorative justice as a different theory of justice. This is related, at least in part, to the nature of program evaluations.

Evaluators in Nova Scotia,[114] like others who endeavour to evaluate restorative justice work, are constrained by the limited approaches to and design of program evaluations. As Chen[115] has argued, a standard program evaluation is not very theory-driven. Evaluators tend to assess whether a program has achieved the outcomes anticipated. They spend little time on assessing the relationship between the activities of the program and the outcomes. In other words, they typically fail to inquire into the theory of change inherent in the program design and whether the outcomes were achieved because this theory is a valid explanation for what happened. Chen refers to these as "black box" evaluations.[116] Increasingly, the practice of program evaluation is becoming standardized and many templates are available to make the process of conducting an evaluation almost routine, exacerbating, in the process, their inability to inquire into the conceptual underpinnings of a program. In this context, evaluations are becoming less likely to be theory-driven.

This approach to evaluation inevitably fails to identify how/that restorative justice is a different way of thinking about justice. In many of the evaluations referenced earlier, the program "goals" are also the program "outcomes." When goals and outcomes are interchangeable the

---

113. Clairmont, *supra* note 92.
114. The experience of one of the authors of this paper, Don Clairmont, has critically informed our reflections on this point.
115. HT Chen, *Theory Driven Evaluations* (California: Sage, 1990) [Chen, *Theory Driven Evaluations*].
116. HT Chen, *Practical Program Evaluation: Assessing and Improving Planning* (California: Sage, 2005) at 231.

evaluation does not need to explore the mechanism of change underlying the relationship between the aspirations of the program and its effects.[117] As a result, the way in which restorative justice has inherently different goals is obscured by the research.[118] We have seen this happen in Nova Scotia where the goals of the program were also the outcomes measured in the evaluation. Indeed, as the evaluator for the Nova Scotia Program, Donald Clairmont (also one of the authors of this article) recounts, he felt constrained by the allowable parameters of the research.

The focus of the Nova Scotia Restorative Justice Program, according to Clairmont, has been essentially on the agenda of the Nova Scotia criminal justice system and its evaluation was preoccupied with conventional criminal justice system success criteria.[119] This was especially so in the early part of the decade, save in two areas: equity issues and research on the impact of restorative justice on roles and relationships within the criminal justice system. Very little attention was given in considering the success of the Nova Scotia Restorative Justice Program to examining the "black box" of restorative justice processes and the dynamics of restorative justice sessions[120] or assessing in any depth the implications of restorative justice processing for relationships between and among those involved (offender, victim, family members, neighbours). Despite the efforts of some non-profit community agency directors, there has been little attention within the Nova Scotia Restorative Justice Program given

---

117. The literature on program design and evaluation makes a clear distinction between goals, objectives and outcomes. Goals provide general statements of a program's purpose or mission. They are long term and overarching, not structured or concrete. A goal offers "[a] broad, high-level statement of a desired outcome, in general terms, to be achieved over an unspecified period of time. A goal should reflect an organization's 'Mission'"; Department of Justice Canada, *Triennial Evaluation Plan, 2007–2010* (Ottawa: Department of Justice Canada), online: <www.justice.gc.ca/eng/pi/eval/plan/07/plan07.pdf>. Objectives, on the other hand, describe the outcomes and are more specific: "[a] statement of specific results to be achieved over a specified period of time. Objectives are generally lower-level and shorter term than a goal": Department of Justice, *ibid* at 2. Program logic models should clearly identify both.

118. As noted earlier, this situation is at its origins caused by the context in which restorative justice programs are designed and implemented

119. Policy Planning and Research Nova Scotia Department of Justice, *A Review of the Nova Scotia Restorative Justice Program* (Halifax: Department of Justice, 2010). It is to be noted that "community development" was one of the original goals of the Nova Scotia Restorative Justice Program, but without a relational foundation for assessing this goal, it seems to have become a curious orphan in any evaluative program oriented to more conventional criminal justice goals/outcomes. See Archibald & Llewellyn, *supra* note 61.

120. Jung Jin Choi & Margaret Severson, "'What? What kind of apology is this?': The nature of apology in victim offender mediation" (2009) 31 Child and Youth Services Review 813; Scott Kenney & Don Clairmont, "Using the Victim Role as Both Sword and Shield: The Interactional Dynamics of Restorative Justice Sessions" (2009) 38:3 Journal of Contemporary Ethnography 279; John Parkinson & Declan Roche, "Restorative Justice: Deliberative Democracy in Action?" (2004) 39 Australian Journal of Political Science 505.

to community awareness and engagement in restorative justice apart from the local criminal justice system stakeholders.

What this discussion reveals is that restorative justice programs are not designed with outcomes that are wholly distinct from traditional justice programs. As such, evaluators are unable to capture the way in which restorative justice differs at its underlying core from mainstream justice. As a result, as noted earlier, restorative justice comes to look only like a different set of practices. Program evaluators are, therefore, constrained by how the subject programs themselves define their goals and objectives and evaluations have thus failed to establish or examine whether restorative justice is or reflects a different way of doing justice. If we looked only at the results of the evaluations of restorative justice, the only thing that appears to need honing or attention is its practices. As a result, restorative justice is developing as a set of practices rather than as a different way of doing justice.

What we need then is an understanding of the theory underlying restorative justice to guide the evaluation of programs and practices. To pursue a "theory-driven" evaluation the evaluators need to understand the theory underlying the change that the program is designed to produce. The current evaluation literature on restorative justice has not been theory-driven, it has not made clear that restorative justice is premised on an underlying theory of justice. In part, this may reflect the lack of attention in the restorative justice literature to restorative justice as a theory of justice. Filling this theoretical gap then—approaching restorative justice as a relational theory of justice as we propose—should have implications and open new possibilities for its evaluation.

Conclusion

Attention to the theory of restorative justice grounded, as we have suggested, as a relational theory would clearly require development of different outcomes from those of the mainstream justice system. Outcomes need to be developed that reflect restorative justice as a different understanding of justice and not simply a different way of doing justice. This would broaden the consideration of restorative justice from simply a set of practices. It is important then, in terms of advancing our efforts to envision and measure the success of restorative justice, that we attend to the development of the different outcomes restorative justice seeks. As our discussion of restorative justice as a relational theory of justice revealed, restorative justice seeks the outcomes that promote, develop and support "equality of relationship," that is, relationships that reflect mutuality of respect, care, concern, and dignity. The principles for practice identified

previously in this article are helpful in elaborating and illuminating these outcomes.

What strategies and themes for measuring success emerge then from rooting restorative justice as a relational theory of justice governed in practice by the seven principles articulated above? The strategies and themes do not neglect individual factors in considering the causal connections between individual and extra-individual measures. The emphasis, in contradistinction to conventional criminal justice system-based individualist success criteria, is, however, on the processes and outcomes related to the individual understood as relationally connected. It is thus upon the development of relationships, subcultures, and communities. Some conventional criminal justice system-based evaluation and research highlight relational strategies in comparing processes and outcomes in restorative sessions where the relationship features vary significantly (e.g., sessions that include professional criminal justice system role players and those that do not).

To the extent that there are some existing relational strategies already in use, the methodological approaches suggested by the objectives of a relational approach to restorative justice may not have to be reinvented but would have to be utilized on a much larger and consistent basis. As they are, one can expect attention to dimensions of relationship to be advanced along lines fundamental to relational theory, dimensions such as the scope of the relationship across social subsystems, degree of commitment, and obligation presumed in the relationship. Measures of shared value-orientations and individual measures, such as development or expressions of empathy, would become more nuanced.

A relational approach to evaluation reveals that measuring the success of restorative justice will require more than the identification and articulation of new goals, outcomes and appropriate indicators. Addressing the weaknesses and gaps in past and current attempts to evaluate the success of restorative justice will require then the development of a relational approach to measurement and assessment. The principles of a restorative approach provide some insight into what is required—an approach that moves beyond variables and data derived at the level of individual units in order to focus on the connections and relationships involved, and capable of reflecting on outcomes in more holistic and interconnected ways.

An evaluation of these principles might apply the model of "theory-driven evaluations" initially developed by Chen.[121] Theory is integrated into the research conducted by an evaluator in such a way as to test

---

121. Chen, *Theory Driven Evaluations*, *supra* note 115.

whether the program achieved its goals and to investigate whether changes occurred because of the theory underlying the activities of the program. The theory referred to in Chens' work is "prescriptive"—it involves a value judgement of what ought to be done. Such an approach would fit well with a relational theory of justice.

The development of a theory-driven evaluation of restorative justice would help establish restorative justice as something in its own right. It would still, however, lack the ability to get at the underlying relational components of restorative justice. It would still draw on an individualistic notion of the self. To accomplish the goal of assessing some of the relational claims underpinning restorative justice we might turn to the field of relational sociology. Proposed first by Mustafa Emirbayer[122] in 1997, this field of relational sociology has similar ontological claims as evidenced in a relational theory of justice. As a result, Emirbayer resists the tradition of measuring characteristics of individuals and then looking at the relationships between them. As an example, Emirbayer would characterise the evaluations of restorative justice that compare recidivism rates of those who participate in restorative justice with those who do not as "substantialist sociology." A relational sociologist would argue that such an analysis of individuals separates them from the "transactional contexts within which they are embedded"[123] because the underlying claim of relational sociology is that social actors are formed through interaction with others. While relational theory has a higher level claim about the formation of the self (not only the social self) than the founding claims of relational sociology,[124] these two approaches have enough in common to lead us to think that the way in which relational sociologists consider the implications for research might offer helpful insights in the development of evaluations of restorative justice that are more sensitive to restorative justice as a relational theory.

The attention we have paid here to the nature of restorative justice as a theory of justice not only reveals the weaknesses and challenges of existing efforts to measure success, but we think establishes a foundation and agenda for future research and development of a relational approach to assessment. At the very least, our argument about relational theory and how it may impact on evaluations of restorative justice should free

---

122. Mustafa Emirbayer, "Manifesto for a Relational Sociology" (1997) 103 American Journal of Sociology 281.

123. *Ibid* at 298.

124. The question of the relational nature of the self itself is starting to receive some attention within relational sociology though. See, for example: Daniel Silver & Monica Lee, "Self-relations in Social Relations" (2012) 30:4 Sociological Theory 207.

us from feeling compelled to measure the success of restorative justice on the terms of the values underlying the existing justice system. While efforts to move to measures of relationality and a relational approach to assessment will be experimental, we feel that as research develops in this direction we will learn both more about restorative justice and more about measurement. We intend and hope by this intervention to provoke and support these future efforts at reflection and reform of how we envision, understand, and assess the success of restorative justice.