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Trauma-Informed Approaches to Law:
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Becoming trauma informed entails becoming more astutely aware of the ways in which people who are traumatized have their life trajectories shaped by the experience and its effects, and developing policies and practices which reflect this understanding. The idea that law and, in particular, the criminal justice system, should be trauma informed is novel, and, as a result, quite underdeveloped. In this paper we advance the general argument that more effective, fair, intelligent, and just legal responses must work from a perspective which is trauma informed. We specifically apply this argument to legal work being carried out and developed under the rubric of restorative justice as this way of thinking about law focuses on acknowledging and repairing the harms to individuals and relationships which result from conflict, crime or other wrongdoing.

L'acquisition d'informations et de renseignements sur les traumatismes exige une grande sensibilité aux façons dont les victimes de traumatismes voient leur parcours de vie orienté par l'expérience et par ses effets; elle exige aussi que soient élaborées des politiques et des pratiques qui reflètent cette sensibilité. L'idée que les lois, plus particulièrement le système de justice pénale, doivent prendre les traumatismes en considération est relativement récente et, par conséquent, encore peu développée. Dans cet article, nous avançons la thèse générale que des réponses juridiques plus efficaces, plus équitables, plus intelligentes et plus justes doivent s'articuler autour d'une perspective éclairée quant aux traumatismes. Nous appliquons cette thèse spécifiquement au travail de nature juridique effectué et perfectionné au nom de la justice réparatrice puisque cette manière de concevoir la loi repose sur la reconnaissance et la réparation des préjudices causés aux personnes et aux relations par un différend, un crime ou tout autre acte répréhensible.

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Introduction

A cross-section of a tree reveals its story, as told by the pattern of growth rings, reflecting the climatic conditions in which the tree grew year by year; and documenting injuries sustained throughout its life. Much in the same way, humans experience periods of trauma and resilience over the course of our lifespans. A trauma-informed approach seeks to understand the ways in which these experiences shape us.¹

1. National Online Resource Center on Violence Against Women, “Trauma-Informed Domestic Violence Services: Understanding the Framework and Approach,” online: <http://www.vawnet.org/special-collections/DVTraumaInformed-Overview?utm_source=VAWnet+eNewsletter&utm_campaign=3f4b7dcfee-Special+Announcement%3A+Trauma-Informed+Services&utm_medium=email>.

Out of all human events, it is tragedy alone that brings people out of their own petty desires and into awareness of other humans' suffering.

—CS Lewis

Traumatic life experiences are widespread and damaging, exacting a huge cost in human suffering and the associated social, economic, and legal consequences of untreated and unresolved trauma in people's lives.² Traumatic life experiences require the expenditure of considerable social and economic resources in the health care and child welfare systems, mental health and addiction programs, social programs, homelessness and housing services, and, too often, in family law, the criminal justice system, and other legal areas. Trauma and law, therefore, are interconnected.

The impacts of trauma are widespread, affecting many people's lives, far more than most people recognize. For example, findings from community based surveys indicate that somewhere between fifty-five per cent and ninety per cent of people have experienced at least one traumatic event in their lifetime.³ Approximately one quarter of these people experienced traumatizing events when they were children.⁴ Trauma experiences in childhood, particularly ongoing traumatic experiences, have substantial developmental impacts across various facets of a person's

2. See, for example, Nancy Poole & Lorraine Greaves, eds, *Becoming Trauma-Informed* (Toronto: CAMH Publications, 2012); Laura Prescott et al, *A Long Journey Home: A Guide for Creating Trauma-Informed Services for Mothers and Children Experiencing Homelessness* (Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2008), online: Substance Abuse and Mental Health Services Administration <<http://www.homeless.samhsa.gov>>; Kathleen Guarino et al, *Trauma-Informed Organizational Toolkit* (Rockville, MD: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2008), online: Family Homelessness <<http://www.familyhomelessness.org/media/90.pdf>>; Sandra L Bloom, *Creating Sanctuary: Toward the Evolution of Sane Societies* (New York: Routledge, 1997); M Harris & Roger D Falot, *New Directions for Mental Health Services: Using Trauma Theory to Design Service Systems* (San Francisco: Jossey-Bass, 2001); Healthcare for the Homeless Clinicians' Network, *Healing Hands: Delivering Trauma-Informed Care* (Nashville: National Health Care for the Homeless Council, 2010).

3. Steven Wiland, "'What happened to you?' Addressing Trauma with Community Mental Health Populations: A Toolkit for Providers" (Washtenaw, MI: National Clearing House for Trauma-Informed Care, 2010), online: Integrated Recovery <http://integratedrecovery.org/wp-content/uploads/2010/08/What_Happened_to_You_-_Addressing_Trauma_with_Community_Mental_Health_Populations-A_Toolkit_for_Providers5.pdf>.

4. E Jane Costello et al, "The prevalence of traumatic events in childhood and adolescence" (2002) 15:2 J Trauma Stress 99.

psychological capacities, self-awareness, self-integration, and, as research is now showing, even on aspects of the physical and bodily self.⁵

Complex trauma, or developmental trauma, are relatively new conceptualizations which capture the multiple and interconnected effects of experiences of ongoing exposure to traumatic events, most typically abuse, violence, and neglect, among others, in interpersonal and family relationships.⁶ Although not recognized in the recently released DSM-V—whose definitions, inclusions, and exclusions are the subject of fierce controversy amongst mental health professionals—the concept of developmental trauma is becoming very widely used by leading mental health experts, and is a recognized global public health concern.⁷

Given the massive shifts and new knowledge generated in the fields of trauma, the brain, and neuroscience, there is an expanding recognition in a variety of contexts that a trauma-informed approach to working with people is an essential part of effective policy, practice, and institutional

5. For a small sampling of an extensive literature, see, for example, Wendy D'Andrea et al, "Physical Health Problems After Single Trauma Exposure: When Stress Takes Root in the Body" (2011) 17:6 J American Psych Nurses Association 378; A Karl et al, "A meta-analysis of structural brain abnormalities in PTSD" (2006) 30 Neuroscience & Biobehavioral Rev 1004; D Lauterbach, R Vora & M Rakow, "The relationship between posttraumatic stress disorder and self-reported health problems" (2005) 67 Psychosomatic Medicine 939; Casey Lawler, Paige Ouimette & Drew Dahlstedt, "Posttraumatic stress symptoms, coping, and physical health status among university students seeking health care" (2005) 18 J Traumatic Stress 741.

6. See, for example, Bessel A van der Kolk, "Developmental trauma disorder: Towards a rational diagnosis for children with complex trauma histories" (2005) *Psychiatric Annals* 401, online: The Trauma Centre <http://www.traumacenter.org/products/pdf_files/preprint_dev_trauma_disorder.pdf>; Laurance Heller & Aline Lapiere, *Healing Developmental Trauma: How Early Trauma Affects Self-Regulation, Self-Image, and the Capacity for Relationship* (Berkeley, CA: North Atlantic Books, 2012); Joseph Spinazzola et al, "The Heart of the Matter: Complex Trauma in Child Welfare" (2013) CW360 Trauma-Informed Child Welfare Practice 8 at 9, 37; Wendy D'Andrea et al, "Understanding Interpersonal Trauma in Children: Why We Need a Developmentally Appropriate Trauma Diagnosis" (2012) 82:2 *Am J Orthopsychiatry* 187; Bradley Stolbach, "Developmental Trauma Disorder: A New Diagnosis for Children Affected by Complex Trauma," (2007) 25:6 *Int Soc'y Study of Trauma & Dissociation News* 4; Marylene Cloitre et al, "A Developmental Approach to Complex PTSD: Childhood and Adult Cumulative Trauma as Predictors of Symptom Complexity" (2009) *J Traumatic Stress* 1; Mark Moran, "Developmental Trauma Merits DSM Diagnosis, Experts Say" (2007) 42:3 *Psychiatry News* 20; Tori DeAngelis, "A New Diagnosis for Childhood Trauma" (2007) 38:3 *Monitor on Psych* 32.

7. Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror* (New York: Basic Books, 1997); Margaret E Blaustein, "A New Take on Childhood Trauma: Expanding the diagnostic frame for childhood trauma," *Psychology Today* (6 January 2011), online: <<http://www.psychologytoday.com/blog/trauma-and-stress-in-childhood/201101/new-take-childhood-trauma>>; Bessel A van der Kolk, "Developmental trauma disorder: Towards a rational diagnosis for children with complex trauma histories," online: The Trauma Centre <http://www.traumacenter.org/products/pdf_files/preprint_dev_trauma_disorder.pdf>; Bessel A van der Kolk, *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (New York: Guilford Press, 1996); NJ Burke et al, "The impact of adverse childhood experiences on an urban pediatric population" (2011) 35:6 *Child Abuse & Neglect: The International Journal* 408; World Health Organization, *World Report on Violence and Health* (Geneva: WHO, 2002).

organization.⁸ A trauma-informed approach to programs and services begins from an acknowledgment of the extent of traumatic experiences in the human population and an understanding of the ways in which trauma responses affect people's lives, capacities, and abilities to cope with life's challenges. It recognizes that effective interventions with people require both the avoidance of re-traumatization and the presence of respectful and supportive interventions that help people rebuild their lives. While this recognition is most strongly taking hold in the mental health and social service contexts, why would it not also apply to interventions which are legal?

As Howard Zehr observes, "an experience of victimization and even trauma is involved in most situations of conflict and wrongdoing."⁹ Crimes and wrongdoings generally cause lasting, damaging, and often traumatic impacts in people's lives. This is obviously the case for crimes involving violence and abuse. It is well documented in academic research and in the clinical literature, that the traumatic effects following experiences of violence can ripple deeply through people's lives for many years, often to the point that life is never experienced in the same way it had been. It is not only the immediate victims who are deeply, if differently, affected by traumatizing events but also many other people connected to the event and connected to its direct victim(s) in a variety of ways.

This is another potential strength of legal responses that recognize the harms and the parties in broader and more holistic ways, as they can involve more of those affected and thus better attend to the fullness of the diffused effects of a traumatic incident.¹⁰ Recognizing this makes it obvious that legal responses to crimes and other human problems, whether these responses be traditional or new and innovative, can only benefit by being organized around more informed understandings of human behavior, psychology, the impacts of trauma, and how healing from trauma can occur. Put differently, the law too should strive to become trauma informed.

In terms of law, the idea that legal responses and, in particular, the criminal justice system, should be trauma informed is quite new and, as a result, underdeveloped. In this paper we advance the general argument that more effective, fair, intelligent, and just legal responses must work from a perspective which is trauma informed. Specifically, we apply this

8. See, generally, *supra* note 2; Healthcare for the Homeless Clinicians' Network, *Healing Hands: Delivering Trauma-Informed Care* (Nashville: National Health Care for the Homeless Council, 2010).

9. Howard Zehr, "The Intersection of Restorative Justice with Trauma Healing, Conflict Transformation and Peacebuilding" (2009) 18:1.5 *J Peace & Just Studies* 23 [Zehr, "Intersection"].

10. We owe this point to Jennifer Llewellyn.

argument to legal work being carried out and developed under the rubric of restorative justice as this way of thinking about law expressly values the repair and restoration (even if this means the initial establishing) of healthy relationships among people.¹¹

Restorative justice is an approach to dealing with crimes and wrongdoing which takes seriously the need for repair of relationships harmed by these events. A restorative approach to law envisions justice in more expansive terms than is conceived of in the more traditional punitive and retributive models of criminal law. A restorative model of justice requires not only offender accountability but also victim participation and community engagement in the process of identifying and rectifying the wrongs which have been committed.

These foundational elements of restorative justice at the level of practice express the commitment of restorative justice at the level of theory and values, to a view of justice which has been described as “relational.”¹² Because restorative justice sees the task of repair of relationships as central to the project of justice, a trauma-informed approach is not only profoundly compatible, but as we argue, absolutely essential to its theory and, especially, its practice.

This analysis is conceptual. It is intended to outline the reasons why restorative justice approaches to crime can only be refined, improved, and enhanced by fully engaging with the insights and knowledge generated within the dynamic and expanding fields of trauma and mental health.

To develop the arguments in this paper, we begin in Part I by briefly defining trauma, and explaining what is meant by the terms trauma informed and restorative justice in order to sketch out the arguments about why there is such a complementarity between these approaches. In Part II we provide an overview of some of the recent significant developments in the understanding of trauma and its impacts on human development. In Part III of the paper we articulate some initial thoughts about what a trauma-informed approach offers to the constitutive elements of a restorative justice approach by outlining its relevance to victims, offenders, and the community. We conclude the paper by pointing out that the values guiding both trauma-informed and restorative approaches are an excellent fit with

11. Restorative justice, despite the apparent backward looking association which the term “restore” might be taken to imply, does not presume the existence of healthy or equal relationships which require restoration, but seeks to establish them (as much as possible).

12. 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”]; Llewellyn et al, “Imagining Success” (2013) 36 Dal LJ 281.

one another. Given this normative consonance, and in light of what the depth and explosion of knowledge about trauma responses and impacts can offer to restorative justice models for dealing with legal problems and, particularly, crime, more effective and skilled restorative justice approaches must become explicitly trauma informed. This can only lead to more humane, sophisticated, and effective justice interventions into people's lives.

I. Identifying and understanding trauma and its impacts

1. What does the term "trauma" describe?

There have been dramatic developments in understanding the nature and impact of trauma. Among these is the refinement of the categories of trauma responses to distinguish between simple and complex trauma, and developmental trauma. In recent years the fields of psychology, psychiatry, and neuroscience have witnessed an explosion of knowledge, research, and clinical insights into the nature of the development of the human mind, psychological life, neuroplasticity, and, more specifically, in the ways in which normal or typical development is affected by traumatic events and traumatic responses.

While almost everyone experiences distressing events over the course of a lifetime, not everyone experiences events that are traumatic. Unlike a stressful encounter or situation, a traumatic event is one which is so overwhelming that it diminishes a person's capacities to cope, as it elicits intense feelings of fear, terror, helplessness, hopelessness, and despair often subjectively experienced as a threat to the person's survival. Traumatic events are not necessarily violent, though they always entail the violation of a person's sense of self and security.¹³

It is important to note that potentially trauma-inducing events are mediated by a range of factors, including a person's previous experiences, psychological makeup, and capacities. This means that an event which may be traumatic to one person might not necessarily be so to another. Trauma is measured and assessed not only in relation to the severity and nature of the triggering event(s), but also, and perhaps most crucially, in relation to the person's perception and experience of these events.

Trauma can be acute (a single traumatic event limited in time), chronic (multiple traumatic events), or complex (a mix of events).¹⁴ It

13. Nina Kammerer & Ruta Mazelis, "After the Crisis Initiative: Healing from Trauma after Disasters" (Paper presented at the After the Crisis: Healing from Trauma after Disasters Expert Panel Meeting in Bethesda, MD, 24–25 April 2006), online: Substance Abuse and Mental Health Services Administration <http://gainscenter.samhsa.gov/atc/text/papers/trauma_paper.htm>.

14. *Ibid.*

can include a wide range of events, both human-driven and not. These include: emotional, physical, and sexual abuse; neglect; physical assaults; witnessing violence in the family, school, or community; war; racism; bullying; acts of terrorism; fires; serious accidents; natural catastrophes, serious injuries; intrusive or painful medical procedures; loss of loved ones; abandonment; and separation.¹⁵

Trauma affects people from all socioeconomic backgrounds, levels of educational attainment, areas of geographical residence, ages, and racial or ethnic affiliation.¹⁶ Research suggests, however, that the more marginalized and most vulnerable members of society are at greater risk for trauma responses.¹⁷ It is more common for youth, the impoverished, and minority groups to experience trauma, demonstrating the importance of social context in understanding trauma.¹⁸ Women are more likely to experience higher rates of trauma responses, indicating that gender is also important and relevant in understanding trauma, its causes, and its effects.¹⁹

Traumatic experiences shape many aspects of a person's life, particularly early in life. Traumatic experiences early in life have developmental impacts, which can sculpt and shape neurological responses. The changes or alterations in abuse survivors' cognitions and emotional regulation are often complicated and varied. When not seen through a trauma lens, these alterations or changes are often and inappropriately labeled as pathological, when they should instead be viewed as adaptations a person has had to make, in order to cope with life's circumstances.²⁰

Recognizing and understanding trauma necessarily involves focusing on harms, and the ways in which traumatic events and responses

15. Kristine Buffington, Carly Dierkhising & Shawn Marsh, "Ten things every juvenile court judge should know about trauma and delinquency" (National Council of Juvenile and Family Court Judges, 2010), online: National Council of Juvenile and Family Court Judges <http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf>.

16. Kammerer & Mazelis, *supra* note 13.

17. *Ibid.*

18. *Ibid.*

19. See, for example, National Council on Crime and Delinquency, Center for Girls and Young Women, "Understanding Trauma through a Gender Lens" (2010) online: National Council on Crime and Delinquency <<http://www.nccdglobal.org/node/441>>; TL Holbrook et al., "Gender differences in long-term posttraumatic stress disorder outcomes after major trauma: women are at higher risk of adverse outcomes than men" (2002) 535 J Trauma 882; Rosario B Hidalgo & Jonathan RT Davidson, "Posttraumatic stress disorder: epidemiology and health-related considerations" (2000) 61 J Clin Psychiatry 5 at 7; David F Tolin & Edna B Foa, "Sex differences in trauma and posttraumatic stress disorder: a quantitative review of 25 years of research" (2006) 132:6 Psychol Bull 959; Naomi Breslau et al., "Sex differences in posttraumatic stress disorder" (1997) 54:11 Arch Gen Psychiatry 1044.

20. Lori Haskell, *First Stage Trauma Treatment for Women* (Toronto: Centre for Addiction and Mental Health, 2003).

interfere with and can compromise both early development (for traumas in childhood) and very often affect everyday functioning in adult life, sometimes even in ways that are not necessarily evident to the traumatized person. Recognition of trauma and its effects on a person's life, however, does not preclude a simultaneous focus on their resilience and strengths. Indeed it would be a mistake to fail to acknowledge these. In fact, "as important as it is to study and understand the effects of trauma, it is equally imperative to study and understand the conditions of wellness and resilience, and how these are achieved."²¹

Resilience describes a person's capacity to deal with adversity. Psychological resilience refers to the ability to integrate and process overwhelming experiences so as not to become caught in them, destabilized or dysregulated by them in an ongoing way. Resilient responses allow us to learn from, better cope with, and even draw strength from adverse life experiences.

It is well recognized by experts in the field, that the most effective and best trauma treatments and approaches to healing trauma take a strengths-based approach to working with traumatized people, an approach which expressly draws out, identifies, and builds on people's abilities and positive attributes.²² Recognizing resilience, therefore, is a crucial aspect of a complete appreciation of a person's life and capacities and attention to this quality is now a focus of a significant body of psychological development and trauma literature.²³ Recognizing and promoting resilience, therefore, is also a fundamental component of effective trauma-informed work.

21. Lori Haskell & Melanie Randall, "Disrupted Attachments: A Social Context Complex Trauma Framework and the Lives of Aboriginal Peoples in Canada" (2009) 5:3 J Aboriginal Health 48.

22. Haskell, *supra* note 20; Fredrike P Bannink, "Posttraumatic Success: Solution-Focused Brief Therapy" (2008) 8:3 Brief Treat Crisis Interv 215. See also programs such as: kidsLink, "Understanding trauma can help build wellness and resilience," online: <<http://kidslinkcares.com>>; The Stress, Trauma and Resilience Treatment (START) clinical service, online: <http://www.aboutourkids.org/families/care_at_the_csc/START>. See also organizations such as: Resilience Research Centre, online: <<http://resilienceresearch.org>>.

23. See, for example, Virginia Hughes & Nature Magazine, "Roots of Post-Trauma Resilience Sought in Genetics and Brain Changes," *Scientific American* (11 October 2012), online: Scientific American <<http://www.scientificamerican.com/article.cfm?id=roots-post-trauma-resilience-sought-genetics-brain-changes>>; Tuppert M Yates, Byron Egeland & L Alan Sroufe, "Rethinking Resilience: A Developmental Process Perspective" in Suniya S Luther, ed, *Resilience and Vulnerability Adaptation in the Context of Childhood Adversities* (Cambridge; Cambridge University Press, 2003) 243; Pratyusha Tummala-Narra, "Conceptualizing Trauma and Resilience Across Diverse Contexts: A Multicultural Perspective" (2007) 14:1-2 Journal of Aggression Maltreatment & Trauma 33; Mary R Harvey, "Towards an Ecological Understanding of Resilience in Trauma Survivors Implications for Theory, Research, and Practice" (2007) 14:1-2 Journal of Aggression, Maltreatment & Trauma, Volume 9; Robert J Johnson et al, "Posttraumatic Growth: Action and Reaction" (2007) 56:3 Applied Psychology 428; Maren Westphal & George A Bonanno, "Posttraumatic Growth and Resilience to Trauma: Different Sides of the Same Coin or Different Coins?" (2007) 56:3 Applied Psychology 417.

2. *An expanded framework: understanding trauma through a bio-psycho-social lens*²⁴

...we will never be able to understand such human ability as moral judgment or empathy without studying the brain, its development, and evolutionary history.

—Jean Decety

Irving B. Harris Professor in Psychology and Psychiatry
University of Chicago²⁵

People working within the legal and other systems which respond to crimes, wrongdoing, conflict, and other interpersonal harms, must have a clear conceptual framework to understand what the people involved in these systems are experiencing, as well as an understanding of why in the contexts of their lives they are having those experiences and responses. It is also imperative that legal actors have enhanced understandings of what motivates human behaviour (or how else can we hope to understand the causes of crime?) and perhaps more importantly, what animates and makes possible psychological and behavioural change (or else how can we hope to make meaningful efforts at rehabilitation, repair and improvement of human lives?). Although the law is deeply involved with regulating and responding to human behaviour, legal professionals are virtually never exposed to formal or informed psychological literature, research, or professional knowledge about human behaviour in their legal education or ongoing professional training.

Adequately understanding trauma and its effects requires a coherent and integrative framework that takes into account the nature of traumatic experiences and helps legal professionals, community members and service providers better understand, accept, and relate to people who have been severely psychologically harmed. The most influential way to shift and expand the thinking of people working within legal or other related systems is through the provision of clear and comprehensive information that explains the underlying psychological processes that drive complex traumatic responses. This is best achieved by understanding trauma through a “bio-psycho-social” lens and understanding trauma responses in terms of their biological and physiological, psychological, and social impacts.

Understanding trauma is best accomplished within a developmental framework anchored in attachment theory so as to make sense of the

24. Some of these overview sections are adapted from Haskell & Randall, *supra* note 21.

25. William Harms, “Forging a New Field of Neuroscience” (22 April 2013), online: University of Chicago <http://www.uchicago.edu/features/forging_a_new_field_of_social_neuroscience/>.

complex adaptations people make in order to survive ongoing abuse, violence, or neglect. Such an approach looks at how self-formation is disorganized and shaped by ongoing abuse and trauma. This includes an assessment of the neurobiological, cognitive, and emotional aspects of development. A comprehensive framework must also take into account the physiological and psychological levels on which trauma is experienced, as well as the social context in which the trauma occurs.²⁶

3. *Types of post-traumatic stress: simple and complex or developmental trauma*

“Simple” and “complex” post-traumatic stresses are related but distinct concepts (or diagnoses) used to describe responses to differing traumatic events. What is described as “simple post-traumatic stress” (simple PTSD) results from a one-time traumatic event such as an accident (for example, a car crash), or an assault (for example, a stranger attack). “Complex post-traumatic stress” (complex PTSD), on the other hand, is a form of a traumatic stress response flowing from more chronic and protracted traumatic experiences.

It has become clear that simple post-traumatic stress resulting from a one-time incident is markedly different from the complex set of responses that follows chronic, multiple, or ongoing traumatic events. Such events include chronic childhood abuse or prolonged experiences of assault and violence in an intimate relationship, as, for example, violence perpetrated by a spouse or caregiver. Complex post-traumatic stress is multidimensional and pervasive because it is often the result of ongoing damaging and neglectful experiences, which are sometimes compounded by childhoods that lack consistent, predictable, and attuned parenting.

Individuals who have experienced multiple severe and frightening events as either children or adults may have complex post-traumatic stress and yet not have simple post-traumatic stress. It is not uncommon, however, to experience both kinds of post-traumatic stress.²⁷

Simple PTSD is primarily a neurophysiological response to an isolated or single traumatic event. It is distinguished and defined by three symptom clusters. These are: re-experiencing phenomena, avoiding or numbing responses, and hyper-arousal responses.

Re-experiencing phenomena can take the form of intrusive thoughts and ruminations about the traumatic event, often experienced in the mind as a constant replay of the most terrifying moments. This first element

26. See Haskell & Randall, *supra* note 21 for an elaboration of this idea.

27. Toni Luxenberg, Joseph Spinazzola & Bessel A van der Kolk, “Complex Trauma and Disorders of Extreme Stress (DESNOS) Diagnosis, Part I: Assessment” (2001) 21 *Directions in Psychiatry* 373.

of post-traumatic stress includes nightmares and flashbacks, as well as sudden intrusive and vivid traumatic memories, all of which suddenly surface in a traumatized person's consciousness and often leave the person feeling out of control.

Avoiding and numbing responses refer to a person's attempt to avoid reminders of the traumatic event, including places (like the location where an assault took place), people, actions (like driving if the traumatic event was a car accident), thoughts, or feelings associated with the traumatic event. People who experience these responses often report becoming emotionally numb, withdrawing from friends and family, and losing interest in everyday activities.

Hyper-arousal describes a state of being overly alert to danger and rarely relaxed or at ease. Hyper-arousal responses include a sense of being chronically on guard at all times, irritability or sudden anger, difficulty sleeping, lack of concentration, being overly alert, or easily startled.

These three symptom clusters form a coherent syndrome defining the normal psychic reaction to an abnormal and threatening one-time event. These are the key characteristics of what is described as "simple" post-traumatic stress. The symptom clusters for "complex" and "developmental" post-traumatic stress are more extensive, as discussed below.

Prolonged early childhood abuse changes life developmentally in several domains of functioning, though of course the nature and severity of these changes are contingent upon a range of external and internal factors in a child's life. Prolonged childhood abuse affects brain development, attachment patterns, and the development of self-capacities, most especially affecting regulation skills which are essential to coping with life's challenges and stresses.

Whereas simple post-traumatic stress is defined in relation to three symptom clusters, complex and developmental trauma is defined in relation to six categories or domains of core functioning. These are: affect dysregulation; changes in consciousness, such as dissociation, altered self-perception; alterations in relations with others, somatization, and alterations in systems of meaning (a sense of hopelessness).

In basic terms, affect dysregulation describes difficulties in modulating emotion and impulses. Changes in consciousness refers to the ways in which traumatized people can, at times, drift away, detaching from immediate reality by "dissociation." Alterations in self-perception are very often expressed as feelings of deep shame, guilt, or, conversely, an exaggerated sense of responsibility. The alterations in relationships with others refer to difficulties in establishing and maintaining intimate emotional connections with others, often associated with an inability to

trust others. Somatization refers to the manifestation of psychic pain in the body and in physical illness. This is sometimes expressed as diffuse physical pain, sometimes as particular conditions. Alterations in systems of meaning describes a lost sense of purpose in life, which can be experienced as overwhelming hopelessness.

4. *Understanding trauma contextually: social context and justice*

The term “trauma” describes the range of possible and typical responses people may have to an extreme and overwhelming event or series of events. While many people are not aware of the kinds of psychological impacts of traumatizing experiences, it is important to recognize that these trauma responses are normal.

Many traditional approaches, particularly in the mainstream disciplines of psychiatry and psychology, tend to view the issue of trauma, and how people experience trauma, at the micro level, in highly individualized and decontextualized ways, stripped of broader social contexts, structures and relationships which shape people’s lives, ideologies, choices, and opportunities.

While it is important to understand how a particular individual’s life experience and psychological functioning might be affected by the impact of trauma, the traditional individualized approach to trauma disengages from a broader awareness of the ways in which people’s experiences are inextricably connected to their broader social contexts. In other words, mainstream and traditional psychiatric and psychological approaches to the study of trauma often tend to ignore or minimize the relevant and broader social contexts and social relationships in which people’s experiences are produced, shaped and lived.

A traditional trauma framework which fails to take note of social context and injustice has significant limitations. As one set of researchers note about trauma,

like any partial truth, the metaphor of trauma also has limitations and unwanted connotations.... Current [traditional] trauma theory and therapy tend to focus on the psychiatric disorder of post-traumatic stress disorder and give insufficient attention to the other dimensions of experience that may be profoundly transformed by massive trauma and abrogation of human rights. These include issues of secure attachment and trust, belief in a just world, a sense of connectedness to others, and a stable personal and collective identity.²⁸

28. Laurence J Kirmayer, Caroline L Tait & Cori Simpson, “The Mental Health of Aboriginal Peoples in Canada: Transformations of Identity and Community” in Laurence J Kirmayer & Gail Guthrie Valaskakis, eds, *Healing Traditions: The Mental Health of Aboriginal Peoples of Canada* (Vancouver: UBC Press, 2009) 27.

The loss of belief in a just world and an inability to enjoy connectedness to others are among the first and possibly the most deeply harmful legacies of traumatic experience. Put differently, the loss of trust and hope associated with trauma means that traumatized people are often unable to create or sustain deep connections to others and, intimately related to this, have difficulty believing that justice and fairness are possible in life and in relationships. Clearly the experience of being violated, neglected, or abused by people who are entrusted to caring for and keeping a child safe is profoundly disorienting, can make relationships seem insecure and unpredictable, and a sense of fairness virtually impossible. The same losses in hope and trust apply to children living in other traumatizing circumstances such as situations of war, political conflicts, or institutional abuse. This loss of hope and trust is a crucial and often underappreciated harmful effect of a traumatic life experience or series of experiences.

Attention to and integration of an analysis of the social and the individual levels on which trauma and its effects are lived are essential elements of more expansive and useful approaches to grasping the nature of trauma in people's lives. As we have observed elsewhere:

An exclusively individualized approach fails to account for the ways in which social injustice, discrimination, and colonialism have systematic and far-reaching effects on entire communities. A more adequate and complete framework for understanding trauma and its impact, then, needs to focus on the ways in which traumatic stress is experienced by individuals, while also attending to the relevance of the social contexts which shape this very experience.²⁹

Both the individual and the social levels are important in understanding the origins and alleviation of traumatic responses. Furthermore, individualized experiences of trauma are typically shaped or even partially caused by the impact of social problems on the lives of particular individuals but also communities. An obvious example is found in the generations of state sanctioned decimation of various First Nation communities through colonial policies of assimilation, Aboriginal language destruction, the forced removal of children from their families at residential schools and the so-called 60s sweep, among others.³⁰

Speaking about the fields of conflict transformation and restorative justice, Howard Zehr comments on the need to pay attention to broader

29. Haskell & Randall, *supra* note 21.

30. See for example René Dussault & Georges Erasmus (chairs), *Report of the Royal Commission on Aboriginal Peoples* (1996), online: Aboriginal Affairs and Northern Development Canada <<http://www.aadnc-aandc.gc.ca/eng/1307458586498/1307458751962>>.

social problems and patterns of inequality in relation to trauma healing. As he observes,

Structural injustices and problems play a role in many crimes, conflicts and traumas. Both fields are in danger of overlooking or even perpetuating such conflicts by individualizing conflicts and harms. Both fields need to apply their perspectives and approaches to addressing root causes.³¹

There is also an important social justice element to responses to traumas which are rooted not in natural disasters or catastrophes but in human inflicted harms. Disproportionate numbers of marginalized and disempowered individuals deal with trauma in their lives. Marginalized and disempowered people are more often involved with the criminal justice system, both as offenders and victims, than are people from more affluent and secure socio-economic backgrounds. These social realities must be taken into account in developing more sensitive, effective and responsive trauma-informed justice intervention into the harms caused by crime and wrongdoing.

II. *Trauma, harms, and justice*

1. *Why is understanding trauma relevant to law?*

Why is understanding trauma so important for people working within law, and in particular, the criminal justice system? Given the widespread problems of childhood abuse, violence and neglect, large numbers of people are dealing with trauma responses, which often (not always) lead to substance abuse problems and conflict with the law. Studies show that between seventy-five per cent and ninety-three per cent of those entering the juvenile justice system have experienced trauma.³² The Adverse Childhood Experiences study, one of the largest epidemiological investigations ever conducted in North America to assess associations between childhood maltreatment and health and well-being later in life,³³ found that the economic costs of untreated trauma-related alcohol and drug abuse were estimated at \$161 billion in 2000.³⁴

How and why people are capable of insight and behaviour change is a complex area which is both seriously under-theorized and under-attended

31. Zehr, "Intersection," *supra* note 9 at 25.

32. Justice Policy Institute, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense* (2010), online: <http://www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf>.

33. Centre for Disease Control, "Adverse Childhood Experiences," online: <<http://www.cdc.gov/ace/>>.

34. National Council for Community Behavioral Healthcare, *Trauma-Informed Care: A Call to Arms*, online: <http://www.thenationalcouncil.org/cs/traumainformed_care_a_call_to_arms>.

to in law in general, as well as in restorative justice approaches to law. Most areas of law are organized around simplistic assumptions about humans as rational maximizers of their own self-interest, undertaking cost benefit assessments of their actions and the possible reactions to them. Criminal law, in particular, operates on the assumption that deterrence dissuades people from engaging in criminal behaviour by imposing penalties (such as a criminal record and imprisonment) that they will want to avoid. In this view, however, people's choices to commit crimes must be either based on information deficits or miscalculations of the risks associated with criminal conduct.

Research has demonstrated the interconnection between histories of violence and abuse, traumatic experiences, and criminal behaviour.³⁵ This does not mean that violence and abuse in life creates or causes criminality in a simplistic or linear way, or that those who commit crime can merely "blame it on" their previous experiences of violence, abuse, or neglect. Still, it does mean that there are complex interconnections between people's life experiences, opportunities, choices and chances, and their personal histories, including trauma histories. As one researcher observes: "child abuse and neglect, poverty, sexual molestation, and witnessing violence are, among others, the most common risk factors for post-traumatic reactions, aggression, and antisocial behaviour."³⁶

Research demonstrates that the vast majority of female offenders have been physically or sexually abused both as children and adults.³⁷ Of juvenile girls identified by the courts as delinquent, more than seventy-five per cent have been sexually abused.³⁸ A new report documents the extremely high prevalence of trauma backgrounds of "detained youth," and the co-occurrence of post-traumatic stress and psychiatric disorders in this population. In this report, the researchers found that of the research sample, "92.5% of youth had experienced at least one trauma, 84% had experienced more than one trauma, and 56.8% were exposed to trauma

35. It is important to note that what counts as "criminal conduct" differs vastly and requires critical interrogation, as the term encompasses diverse and distinctly different kinds of behaviours ranging from self-harm and addictions, to petty crimes of property which may arise from circumstances of deprivation and poverty, to crimes of aggravated sexual assault and domestic violence, to manslaughter, or premeditated homicide.

36. Vittoria Ardino, "Offending Behaviour: The Role of Trauma and PTSD" (2012) 3:10 *Eur J Psychotraumatol* 1.

37. Barbara Bloom & Stephanie Covington, "Gender Specific Programming for Female Offenders: What is it and Why is it Important?" (1998), online: The Center for Gender and Justice <<http://www.stephaniecovington.com/pdfs/13.pdf>>.

38. Ann Jennings, "Models for Developing Trauma-Informed Behavioural Health Systems and Trauma-Specific Services: An Update of the 2004 Report" (2008), online: The Anna Institute <<http://www.theannainstitute.org/MDT2.pdf>>.

six or more times.”³⁹ The researchers further discovered that, “among participants with PTSD, ninety-three per cent had at least one comorbid psychiatric disorder. Among males, having any psychiatric diagnosis significantly increased the odds of having comorbid PTSD.” This study suggests, as do others, the high interrelationship between being in conflict with the law, mental health issues, and trauma backgrounds in the lives of young offenders. As the authors of this study conclude, the “nation’s delinquent children are among its most traumatized. The resources used to punish them must be balanced with the resources needed to treat them.”⁴⁰

2. *What does “trauma-informed” mean?*

In a trauma-informed system, trauma is viewed not as a single, discrete event, but rather as a defining and organizing experience that forms the core of an individual’s identity. The far-reaching impact, and the attempts to cope with the aftermath of the traumatic experience, come to define who the trauma survivor is.⁴¹

The term “trauma-informed” is relatively new and can be used to describe a commitment to providing human services and the institutional contexts which recognize and understand the extent and impact of trauma in people’s lives, aim to uncover and understand the complex root causes of violence and abuse, and strive to provide programs and services which avoid retraumatizing people while supporting their movement towards resilience, recovery and wellness.⁴² The philosophical orientation embodied in a trauma-informed approach can apply to work with victims, offenders, and all those affected by traumatic events, including the broader communities in which victims and offenders live.

What does it mean to be trauma-informed? Trauma-informed approaches require that we reconsider, evaluate, and integrate an understanding

39. The Northwestern Juvenile Project through the US Department of Justice is a longitudinal study of youth detained at the Cook County Juvenile Temporary Detention Center in Chicago, IL: see, Karen M Abram et al, “PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth” (2013), online: Office of Juvenile Justice and Delinquency Prevention <<http://www.ojjdp.gov/pubs/239603.pdf>>.

40. *Ibid* at 10.

41. Harris & Fallot, *supra* note 2.

42. See, for example, the materials developed by the National Center on Domestic Violence, Trauma & Mental Health (NCDVTMH), advocating a trauma-informed approach to specialized domestic violence programs: “Trauma-Informed Domestic Violence Services: Understanding the Framework and Approach,” online: <<http://www.vawnet.org/special-collections/DVTraumaInformed-Overview>>. See also, National Center on Domestic Violence, Trauma & Mental Health (NCDVTMH), “Thinking about Trauma in the Context of DV Advocacy: An Integrated Approach,” online: National Online Resource Center on Violence Against Women <http://www.vawnet.org/Assoc_Files_VAWnet/ThinkingAboutTrauma.pdf>.

of the role that violence and abuse plays in people's lives, whether as victims or offenders (and this does not suggest that there is no meaningful distinction between these categories). A trauma-informed perspective recognizes and understands the complexities of trauma responses and, when these occur early in life, grasps their broad developmental impacts. Finally, a trauma-informed perspective uses that understanding to develop responses and processes that take into consideration the vulnerabilities and needs of survivors of traumatic events. A trauma-informed approach strives to deliver services and interventions in a way that avoids inadvertently retraumatizing people and doing further harm. Given the criminal justice system's dismal record regarding its treatment of victim-witnesses and offenders, this trauma-informed approach applied to processing crime can only be a step forward which offers at least the opening for more creative, and hopefully more transformative, interventions into the lives of people affected by crime.

Because the study of traumatic stress remains an emerging field, psychiatrists, social workers, and psychologists trained in the traditional frameworks may underestimate the role that abuse and neglect play both in respect to mental health and substance abuse. We now know, however, that early abuse and neglect can have diverse and far-reaching effects on attachment, brain development, emotion regulation, and cognition, and that early abuse can disrupt development at different stages, even when the abuse has stopped. In fact, the term "developmental trauma," also sometimes referred to as "complex trauma," was constructed precisely to better capture and describe the range of ways in which chronic traumatic experiences shape psychological and neurological development and functioning.⁴³

It is often the case that people who have endured childhood abuse and neglect develop an array of problems throughout their lives. These difficulties can appear to be incomprehensible to those who do not understand how abuse and trauma can shape and impair a person's capacities and, in turn, limit his or her life opportunities. Many professionals, and in many cases the survivors themselves, misunderstand these difficulties as self-inflicted because they do not understand how abuse, trauma, and their effects shape development and reverberate throughout a person's life. If we are to hope for more effective legal and social interventions, particularly in areas of law which deal with interpersonal and family relationships (such as family law), as well as crime, it is critically important to understand

43. See, for example, Bessel A van der Kolk et al, "Disorders of Extreme Stress: The Empirical Foundation of a Complex Adaptation to Trauma" (2005) 18:5 *J Traumatic Stress* 389.

the dynamic interplay between the traumatic stressors and the complex and often diverse adaptations that traumatized people develop in order to survive. Trauma-informed approaches assist in exactly this and thereby allow for service delivery and interventions which are more attuned, more effective and even more humane.

3. *Restorative justice, harms, and relationships*

Restorative justice is a term which has been applied to a wide range of practices and principles, all of which are in some way concerned to respond to wrongs (or conflicts) by restoring those harmed and, to the extent that it is possible, restoring and repairing damaged relationships. One of the distinguishing features of restorative justice is its explicit insistence that harms associated with wrongdoing or crimes extend beyond the individual and immediate victims to the circle of people in the victims' lives, as well as to the broader community. In addition to articulating a theory of justice, restorative justice is an approach, or set of approaches, to making reparations following crimes (or other wrongdoing) "that focuses on healing the harm done, promoting accountability and personal responsibility, and encouraging the active participation of the victim, offender and other concerned parties."⁴⁴

Restorative justice has been described in many ways as: "peacebuilding," a method of responding to crimes and other wrongdoing, a method of "conflict transformation," a view of justice,⁴⁵ a philosophy, a practice, and an approach. In terms that capture the connection between restorative justice practices, and broader social justice, Braithwaite sweepingly describes it as "a social movement about the politics of reconciliation in contexts that vary from the care and protection of children in families, to education, to race relations, and, more importantly, peace building."⁴⁶ This approach emphasizes restitution and restoration in the relationships between the offender, the victim(s) and the broader community. As Howard Zehr explains, "[w]ith its focus on interpersonal relationships, on human need and on collaborative, problem-solving processes, restorative justice might be viewed as a peacemaking or conflict-resolution approach to justice."⁴⁷ In order to understand its distinguishing features and norms, restorative justice is often contrasted with retributive justice, which emphasizes the

44. Barton Poulson, "A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice" (2003) 1 Utah L Rev 167.

45. Zehr, "Intersection," *supra* note 9.

46. John Braithwaite, "Narrative and 'Compulsory Compassion'" (2006) 31:2 Law & Social Inquiry 425 at 429.

47. Zehr, "Intersection," *supra* note 9 at 23.

importance of punishment and the idea that wrongdoers should face their “just deserts.”⁴⁸

In contrast to the more top-down criminal justice system, which focusses on imposing punishment as an expression of retributive justice, restorative justice is reparative, and, in some more robust articulations, transformative in its view of justice. In developing a conceptual framework to describe and explain a restorative model of justice, Jennifer Llewellyn and Robert Howse explicitly define restorative justice as organized around a distinct theory of justice.⁴⁹

In contrast to the retributive model of justice organizing the traditional criminal justice system, and the idea of corrective justice which is often claimed to be foundational to private law,⁵⁰ restorative justice conceives of justice as “restoration.” Contrary to the idea that restorative justice is backward looking, which is a common misapprehension based on an overemphasis on the word “restore,” Llewellyn and Howse clarify that “while the beginning point of restorative justice is a state of wrong that has disturbed the relationship between the wrongdoer and the sufferer of wrongdoing, its endpoint may be quite different than the status quo ante.”⁵¹

Instead, the idea of restoration in restorative justice is what is required to restore relationships which have been disrupted or harmed by wrongdoing or conflict to a state of social equality. In their words, “restorative justice claims that what is required to satisfy this moral intuition, that ‘something’ that must be done is the establishment or re-establishment of equality.”⁵² Put differently, restorative justice is, in some articulations, premised on a relational theory of justice.⁵³ Relationships between people are at the centre of restorative justice, “such that each party has their rights to dignity, equality, concern, and respect satisfied.”⁵⁴

In terms of responding to crime, restorative justice “comprises the idea that because crime hurts, justice should heal, and especially heal relationships.”⁵⁵ This is clearly compatible with a trauma-informed

48. See, for example, Michael T Cahill, “Retributive Justice in the Real World” (2007) 85 Wash U L Rev 815.

49. See Jennifer J Llewellyn & Robert L Howse, *Restorative Justice: A Conceptual Framework* (Ottawa: Law Commission of Canada, Ottawa, 1999); See also Llewellyn, “Thinking Relationally,” *supra* note 12.

50. Ernest Weinrib is among the most well-known proponents of this view, see *The Idea of Private Law*, revised ed (Oxford: Oxford University Press, 2012) and *Corrective Justice* (Oxford: Oxford University Press, 2012).

51. Llewellyn & Howse, *supra* note 49 at 2.

52. *Ibid* at 38.

53. See Llewellyn on this issue, in particular her article, “Thinking Relationally,” *supra* note 12.

54. Llewellyn & Howse, *supra* note 49 at 39.

55. John Braithwaite, “Encourage Restorative Justice” (2007) 6:4 Crim & Public Policy 689.

perspective on understanding harms, which seek to respond to people in ways that both recognize and take account of traumatic responses and their developmental consequences, and which avoids harming or retraumatizing them in delivering a service or implementing a policy. The values which inform restorative justice, therefore, are highly consonant with the principles of a trauma-informed approach.

4. *Why must a restorative approach to doing justice be trauma-informed?*

As a form of legal intervention, though with applications and interventions significantly beyond the legal arena, restorative justice seeks to right wrongs between people. While we are arguing in this paper that all legal institutions and processes can offer a more robust expression of justice by being trauma-informed, restorative justice in particular is an approach to justice which, in order to realize its own express ambitions, must work from a trauma-informed perspective. Furthermore, as an approach to law, wrongdoing, conflict resolution and, in some articulations, to inequalities, restorative justice is perhaps best situated among legal approaches, to engaging a trauma-informed perspective and demonstrating its relevance and significance to solving human problems.

Restorative justice is fundamentally concerned with understanding justice, just results, and just processes from a perspective animated by a concern to restore and establish peaceful, respectful and equal relationships. Being trauma-informed means being psychologically literate in a sophisticated way, one which is cognizant of the trajectories and complexities of human development and the ways in which abuse, neglect, violence, and other traumatic experiences interfere with and constrict human relational capacities and human neurobiology. The limits and challenges faced by traumatized people in establishing peaceful, respectful, and equal relationships are best grasped through a trauma-informed perspective, which also allows for the development of interventions and strategies that rebuild damaged capacities.

The move towards adopting trauma-informed principles, institutional practices and interventions into people's lives is becoming increasingly widespread in many fields, including mental health, social services, and the prison system. As an institution of enormous power and significance in contemporary society, law should also begin to be conceived of and practiced from a perspective which is trauma-informed. As an approach to law and conflict resolution which is profoundly concerned with repairing relationships, and indeed which places relationships at the centre of its theory and processes, restorative justice in its legal expression is most

obviously receptive to work which avoids retraumatizing people and grasps the role of trauma. Restorative justice and trauma-informed work, therefore, are a natural fit.

III. *How trauma-informed approaches enhance justice system responses to crime*

1. *The role of justice in resolving trauma*

*Most if not all, situations of conflict and harm involve questions of justice and injustice, and situations of injustice frequently involve trauma.*⁵⁶

If the loss of belief in a just world is an effect of trauma, resolving trauma responses must entail, to some extent at least, the ability to see justice done. This does not entail conceiving of justice in terms of the reductive idea that inflicting harm on an offender avenges a victim, such as the “an eye for an eye” philosophy espouses. Instead, it is a perspective that sees justice in more expansive and complex terms.

These expanded terms for what counts as justice include an adequate identification and recognition of the harms caused, including recognition of the harms suffered beyond those inflicted upon an immediate victim—including the victim’s friends, family, and broader community. These terms also include a requirement that the offender grapple with the harms caused by the wrongdoing, acknowledge them, and aim to make repair. Indeed, this is precisely where a fundamental consonance between trauma-informed approaches and restorative justice resides.

The core focus of restorative justice is more specific than problem solving or conflict resolution. Its ultimate concern is some kind of injustice that must be dealt with.⁵⁷ Appreciating the causes and impacts of the injustice is enhanced by working from a trauma-informed perspective. In broad strokes, the potential advantages of engaging a trauma-informed restorative justice approach to wrongdoing are highlighted in the following sections.

2. *Trauma-informed approaches and victims*

The relevance and importance of taking a trauma-informed approach to those who are victims of crimes and harmed by wrongdoing is perhaps most evident and easy to understand. Indeed, one of the important and persistent critiques of the criminal justice system, most sharply acute and well documented in cases of sexual and domestic violence, is the

56. Zehr, “Intersection,” *supra* note 9 at 24.

57. John Braithwaite, “Doing Justice Intelligently in Civil Society” (2006) 62:2 *Journal of Social Issues* 393 at 397.

revictimization of victim-witnesses, a process which is sometimes also aptly described as retraumatization.⁵⁸

The aftereffects of violence and abuse on traumatized people's behaviour and coping strategies can be difficult to understand. The defenses that many people develop after being repeatedly hurt in relationships (which may include addictions and substance abuse), can make the task of connecting extremely difficult. These issues are particularly acute for women whose lives have been harmed by experiences of sexual or physical abuse in childhood and in intimate relationships.

As Haskell emphasizes in her work in this area, victims often are not equipped to explain their own psychological responses and coping.⁵⁹ They may not recognize the role of abuse-related trauma in the development of some of their own severe responses or ways of managing.⁶⁰ What might appear as "inconsistencies" in the way a victim reacts or tells her story in a service context or a legal proceeding is actually very often a typical, predictable, and normal way of responding to life threatening events and coping with and remembering traumatic experiences.

Understanding these complexities of victim responses to traumatization, which are often counterintuitive to popular beliefs about how "real" victims should behave, is one of the fundamental challenges the crimes of child sexual abuse, sexual assault, and domestic violence pose for the criminal justice system.⁶¹ As Haskell argues elsewhere, the onus is and should be on the service provider to be trained to screen for abuse and violence in women's lives and grasp the complex effects and dynamics this most likely entails.⁶²

Assaulted women's "victim" responses are often perceived as counterintuitive and this affects their credibility in legal proceedings, as well as how they are responded to within legal and other systems, phenomena

58. See, for example, Judith Lewis Herman, "The Mental Health of Crime Victims: Impact of Legal Intervention" (2003) 16:2 *Journal of Traumatic Stress* 159; Judith Daylen, Wendy van Tongeren Harvey & Dennis O'Toole, *Trauma, Trials, and Transformation* (Toronto: Irwin Law, 2006).

59. See, Lori Haskell, *First Stage Trauma Treatment* (Toronto: CAMH, University of Toronto, 2003).

60. See, Lori Haskell, "Violence, Victimization & Trauma: The Complexity of Trauma Responses" (Invited Presentation to Provincial Crown Attorneys, Vancouver, BC, 24 April 2013).

61. See Jennifer Gentile Long, "Explaining Counterintuitive Victim Behavior in Domestic Violence and Sexual Assault Cases" (2006) 1:4 *The Voice*, online: National Center for the Prosecution of Violence Against Women <http://www.ndaa-apri.org/publications/newsletters/the_voice_contents.html>; Melanie Randall, "Sexual Assault Law, Credibility, and 'Ideal Victims': Consent, Resistance, and Victim Blaming" (2010) 22 *Can J Women & Law* 3970.

62. Lori Haskell, "Violence, Victimization & Trauma: The Complexity of Trauma Responses" (Invited Presentation to Abbotsford Police Services, Abbotsford, BC, 23 April 2013).

which are well documented in the research and legal literature.⁶³ With its express focus on repairing relationships and taking the needs of victims seriously, restorative approaches to justice necessarily need to be equipped to facilitate processes which incorporate a deep acknowledgement of these effects and are organized and led by people with adequate expertise and training.

A trauma-informed approach requires educating legal actors and service providers about these dynamics, allowing for better understanding of the psychological impacts of crimes upon victims, and facilitating more sensitive and appropriate interventions, responses, and accommodations in the process of dealing with these crimes.

Many people whose lives have been affected by traumatic events have difficulty naming their own experience and identifying the ways in which the impacts reverberate across various domains, including affective, sexual, and psychological coping. Restorative justice practitioners, by inviting victims to participate in a process which requires preparing them to be able to articulate both the harms they have experienced as well as their associated needs, may be a challenge. A trauma-informed framework assists in understanding why this process may be difficult for victims and what they might need by way of support to move through it. Through a trauma-informed approach to working with those harmed by crimes of abuse and violence, victims can be assisted with developing a meaningful narrative about the events, are validated and better understood, and are provided a safe and respectful context in which to process the event, its consequences, and to find a possible resolution and repair.

3. *Trauma-informed approaches and offenders*

The benefits of a trauma-informed approach to working with victims of crime and the associated enhanced understanding of the effects of victimization may be readily apparent, but a trauma-informed approach to working with offenders is also arguably more efficacious and appropriate than those traditional approaches which are not trauma-informed. If we are to take the ideas of accountability and rehabilitation seriously, we need more sophisticated appreciations of what causes offending, as well as what allows for assisting people develop meaningful appreciation of the harms they have inflicted as part of the process of their ultimate taking of responsibility and rehabilitation.

63. See, for example, Daylen, van Tongeren Harvey & O'Toole, *supra* note 58; Gentile Long, *supra* note 61; James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Boston: Northeastern UP, 1999).

A trauma-informed approach provides “a more holistic framework for understanding the ways in which the biological, emotional, cognitive and interpersonal effects of abuse can lead to future difficulties in a person’s life,”⁶⁴ difficulties which might involve conduct which is harmful to the self and others, including conduct which is criminal. This kind of approach is obviously pertinent to the treatment of offenders both in general and in prison contexts, where a nascent move towards this kind of perspective is beginning to take hold in some jurisdictions. As one set of researchers on corrections observes:

good correctional practice requires environments that are highly structured and safe, with predictable and consistent limits, incentives and boundaries, as well as swift and certain consequences such that inmates are treated fairly and equally. These same practices can provide the type of stability trauma survivors need to learn new information and skills that promote trauma recovery.⁶⁵

Without threat of traditional criminal punishment and loss of connection to others, perpetrators of crime have a better chance of developing empathy and the capacity to mentalize, which describes the ability to grasp one’s own thoughts and mental processes (further discussed below). This is most emphatically not the same as suggesting that offenders should escape accountability for their actions through this approach; to the contrary, a trauma-informed restorative justice approach has the potential to impose much greater and more personal and intimate forms of accountability for offenders who must publically grapple with the harms they have inflicted and participate in constructing their own sanctions.

Trauma-informed restorative justice processes undoubtedly have particular relevance for dealing with cases of gendered violence, which typically significantly traumatizes its victims.⁶⁶ In terms of dealing with the specific crimes of violence against women, a trauma-informed restorative justice approach builds on sanctions which abusive men reported they most fear. For example, research on domestic violence offenders shows that only a minority of batterers feared criminal punishment or job loss (thirty-six and twenty-seven per cent, respectively), whereas they believed

64. National Center on Domestic Violence, Trauma & Mental Health, “Thinking about Trauma in the Context of DV Advocacy: An Integrated Approach,” online: Women’s UN Report Network <www.wunrn.com/news/2013/04_13/04_29/042913_trauma.htm> at 1.

65. Niki Miller & Lisa Najavits, “Creating Trauma-Informed Correctional Care: A Balance of Goals and Environment” (2012) 3:10 *Eur J Psychotraumatol*.

66. See Melanie Randall, “Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law” (2013) 36 *Dal LJ* 461.

that the major cost of a domestic violence arrest would be self-stigma, family stigma, and broad social disapproval.⁶⁷

When under intense threat, that is when being criminally prosecuted, the focus for most offenders is on self and self-preservation, not on gaining an understanding of other. A trauma-informed restorative process lends itself to a greater chance of what is called mentalization.⁶⁸

Mentalization describes the capacity to reflect upon and grasp one's own mind and mental processes and to have insight into one's interior emotional world, understanding the what and why of one's feelings.⁶⁹ A crucial aspect of mentalization is that connected to one's ability to grasp one's own mental processes, one is also able to grasp the mind of another, to appreciate and reflect upon the mental and emotional world of another person. Mentalization is a crucial capacity for emotional and self regulation.

This is a skill which most, perhaps all, offenders sorely lack. To the extent that violating and harming another person requires disconnection and objectification of the other, the ability to mentalize the other is necessarily obliterated. Yet mentalization—which is something more than empathy—is a necessary part of understanding the experience of others. Clearly this is an essential skill if offenders are to begin to appreciate and deeply acknowledge the effect of their wrongdoing on others, and understand the nature of the harms they have caused.

Instead of a “one size fits all” treatment model, a trauma-informed model of restorative justice allows specific attention to whatever risks are present for that particular offender, which may include, for example, substance abuse or unresolved child abuse, leading to disconnection and re-enacting. Rather than uniformity, and standardization of responses to all offenders (which has not been shown to reduce recidivism or facilitate rehabilitation), a trauma-informed restorative justice approach can allow for greater tailoring and nuance in responding to what offenders need in order to take responsibility and make change.

67. Kirk R Williams & Richard Hawkins, “The Meaning of Arrest for Wife Assault” (1989) 27:1 *Criminology* 163.

68. See, Jon G Allen, Peter Fonagy & Anthony Bateman, *Mentalizing in Clinical Practice* (Arlington, VA: American Psychiatric Publishing, 2008).

69. See Jon G Allen & Peter Fonagy, eds, *Handbook of Mentalization-Based Treatment* (Chichester: John Wiley, 2006).

4. *How a trauma-informed approach to restorative justice benefits the community: from isolation to social connection*

In a trauma-informed system, practitioners assume that when a trauma has occurred, it changes the rules of the game. An individual constructs a sense of self, a sense of others and a belief about the world that incorporates, and is in many cases based on, the horrific event or events. This then informs other life choices and guides the development of particular coping strategies. The impact of trauma is thus felt throughout an individual's life in areas of functioning that may seem quite far removed from the trauma, as well as in areas that are more obviously connected to the trauma.⁷⁰

Information and education about trauma, particularly complex trauma and the newly developed category of “developmental trauma,” must be central components of effective approaches to helping individuals and communities heal from traumatic events, including crimes and interpersonal wrongdoing. A trauma-informed approach to restorative justice practices and processes, therefore, should necessarily undertake psycho-educational programs to make community members more aware of the nature of trauma responses, the complexities of people's coping styles, and the possible constitutive elements of healing and resolution in the face of trauma. This clearly enhances the likelihood of more effective and informed community participation.

This kind of information, and the consciousness-raising and enhanced understanding provided by a trauma-informed approach can assist community members in both appreciating the harms of victimization and traumatic responses and in better understanding how to respond to offenders. As Braithwaite notes, “the existence of a wider plurality of voices in the conference circle...means that there are better prospects for creative problem-solving ideas to emerge,”⁷¹ and if the voices are more educated about trauma, victimization, and its impacts, they will necessarily have more informed contributions to this process. A trauma-informed approach, therefore, is also relevant to thinking about what more psychologically sensitive accountability and rehabilitative efforts might look like for offenders. Furthermore, a trauma-informed restorative justice approach enhances the chances for greater and more meaningful accountability through community and family engagement, supervision and oversight of offenders.

70. Maxine Harris & Roger D Fallot, “Envisioning a Trauma-Informed Service System: A Vital Paradigm Shift” (2001) 89 *New Directions for Mental Health Services* 3.

71. Braithwaite, *supra* note 57 at 396.

5. *Community, attachments, and relationships: contexts for repair and resolution*

One of the most enduring, difficult, and profound harms of traumatic experiences associated with human wrongdoing is the damage to the capacities to trust and maintain relationships. In psychological terms, attachment refers to the capacity to form and maintain healthy emotional relationships with others. The traumatic harms which reverberate through people's ability to form and maintain relationships can be understood as "disrupted attachments."⁷²

These attachments can be understood at both the micro, or individual levels, and the macro, or community and social levels. As Zehr astutely observes, "the social as well as the individual dimensions of trauma must be addressed as part of...restorative justice processes."⁷³

In analyzing the specific traumatic impacts associated with policies of colonialism and its reverberations through the lives of Aboriginal peoples at the community and individual levels, as we argue elsewhere,

A more expansive, nuanced and dynamic view of healing from trauma is necessary. This view recognizes that healing is not a static state which is achieved, but instead is better understood as a dynamic and sometimes lifelong process. *This view recognizes that given that the most profound harms of trauma are relational, and revolve around attachments, the nature of healing from trauma must also be relational.*⁷⁴

What we have described as "disrupted attachments" are fundamental elements of trauma responses. These disruptions to attachment capacities are foundational components of the definition of complex trauma. These problems with attachment profoundly affect a traumatized individual's relationship to her or his self, as well as to others. The damage to attachment capacities in traumatized people can be thought of as relational harms.

At the broader social and community levels, disrupted attachments can also describe the experiential disconnect between traumatized peoples and their sense of belonging to a larger social group, that of being connected to a broader community. More attention to this level of analysis is needed in the broader trauma literature to expand our understanding of the social and collective dimensions of traumatic harms.

72. The term "disrupted attachments" is the title of an article we wrote to analyse the individual and community level trauma responses experienced by the colonization of the First Nations peoples of Canada. See Haskell & Randall, *supra* note 21.

73. Zehr, "Intersections," *supra* note 9 at 25.

74. Haskell & Randall, *supra* note 21.

If one of the core harms of trauma is disruption to attachments, then restoration of secure and healthy attachments and relationships is the context for resolving traumatic damage.

Healing from trauma takes place through connection, through developing and experiencing healthy attachments. These attachments can be individual but must also be fostered at the level of the community. To the extent that disrupted attachments are a core harm of complex trauma, restored and healthy attachments, to self, to others and to community, are fundamental parts of healing from trauma.⁷⁵

The resolution of trauma for an individual and for traumatized communities requires restoration of connection, to self and to others. One of the important and innovative components of restorative justice approaches to justice is the insistence on active community involvement, on identifying the community as a stakeholder in the process.

A trauma-informed community response and engagement with restorative processes to deal with crimes and wrongdoing, therefore, represents a significant advance on the more limited capacities of the criminal justice system, which is more punitive than rehabilitative and focuses on the offender in relation to the state. As Braithwaite observes,

There can be no justice in a world without connectedness and empathy; at the same time, social capital cannot flourish in a world without an infrastructure of security around human relationships that can only be guaranteed by institutions of justice.⁷⁶

6. *Creating shared narratives about crime, harms, and restoration: narrative repair and justice*

Narratives are the stories we tell to make sense of ourselves, our lives and the situations we encounter and confront. In law, narratives tell the story of a case, marshaling the relevant facts, explaining their significance, identifying the pertinent legal categories, and framing the legal issue in need of a remedy. In resolving crimes or other forms of wrongdoing amongst people, an essential part of achieving resolution is the development of shared narratives about what happened, why it did and what needs to be done to rectify the situation and the harms inflicted. It is indeed an essential component of justice.

The connection between understanding, deliberative democracy, narratives, and justice has been explored in the important work of Iris

75. *Ibid* at 89.

76. Braithwaite, *supra* note 57 at 402.

Young, notably in her book *Inclusion and Democracy*.⁷⁷ Young describes narratives and storytelling as devices for “giving voice to the kinds of experience which often go unheard in legal discussions and courtroom settings.”⁷⁸ In line with the scholarship which explores storytelling for social change,⁷⁹ Young explains that narratives “can be an important bridge between the mute experience of being wronged and political arguments about justice.”⁸⁰ Tying in restorative justice, Braithwaite points out that “just as psychotherapy can be a form of narrative repair when people cannot construct an adaptive story about their worries, restorative justice can be about restorying lives in disarray because of a crime.”⁸¹

Repair to relationships and remedies of the harm caused by conflict and crime requires a shared narrative about what happened, and, if possible, why it happened. This indeed, is the biggest and perhaps most essential piece of healing and resolution; it is the foundation upon which meaningful and useful remedies can be built.

Howard Zehr explains the significance for victims of crime and other wrongdoing of developing meaningful narratives, which he describes as “truth-telling,” as:

An important element in healing or transcending the experience of crime is an opportunity to tell their story of what happened. Indeed, it is often important to retell this many times. There are good therapeutic reasons for this: part of the trauma of crime is the way it upsets our views of ourselves and our world, our life-stories. Transcendence of this experience means “re-storying” one’s life by telling the story in significant settings, often where it can receive public acknowledgment. Often too it is important for them to tell this story to the ones who caused this harm and to have them understand the impact of their actions.⁸²

A restorative justice approach to responding to crime and wrongdoing allows for the construction of narratives which move beyond those that can be produced in the confines of the traditional criminal justice system, because they include the voices and analysis of the victim, the community,

77. Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002).

78. *Ibid* at c 2.

79. See, for example, Lee Anne Bell, *Storytelling for Social Justice: Connecting Narrative and The Arts in Antiracist Teaching* (New York: Routledge, 2010); Marie-Claire Picher, “Democratic Process and the Theater of the Oppressed” (2007) 116 *New Directions for Adult & Continuing Education* 79; Joseph E Davis, ed, *Stories of Change: Narrative and Social Movements* (Albany: SUNY Press, 2002).

80. Young, *supra* note 77 at 72.

81. John Braithwaite, “Building Legitimacy through Restorative Justice” in Tom R Tyler, ed, *Legitimacy and Criminal Justice: International Perspectives* (New York: Russell Sage Foundation, 2009) 146 at 152-153.

82. Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2001) at 13.

and the offender about the what and why of what happened. This approach allows for the construction of a more expansive and complete narrative about both the wrong and the remedy. Given restorative justice's insistence on involvement of all parties affected by wrongdoing, victims, offenders, and their immediate and broader communities, it is an approach to constructing richer, more complete, and expansive narratives about the creation, causes and impacts of wrongdoing and the associated harms, as well as about the possibilities for repair and resolution. A deeper recognition of trauma responses, and insights from the now significantly expanded and refined knowledge in this area, can only assist in the construction of richer narratives about traumatic events, their effects and their resolution.

A trauma-informed approach to justice in relation to crimes and wrongdoing, therefore, allows for the creation of more psychologically literate and nuanced accounts of what happened and why, the nature of the harms, the nature of trauma and resolving the traumatic impacts. A trauma-informed restorative justice approach yields the possibility of the creation of richer, more multi-vocal accounts of the harms associated with wrongdoing, the causes and impact of it, and what is required to remedy it.

Conclusion

Trauma is a fact of life. It does not, however, have to be a life sentence. Not only can trauma be healed, but with appropriate guidance and support, it can be transformative. Trauma has the potential to be one of the most significant forces for psychological, social, and spiritual awakening and evolution. How we handle trauma (as individuals, communities and societies) greatly influences the quality of our lives. It ultimately affects how or even whether we will survive as a species.⁸³

Legal responses to social problems can only be improved and strengthened when guided by an enhanced appreciation of the complexities of human psychology. Becoming trauma-informed entails becoming more astutely aware of the ways in which people who are traumatized have their life trajectories shaped by the experience and its effects. It means opening up questions which have previously not been posed within the confines of traditional retributivist approaches to crime and justice.

There is a profound consonance between the values and principles which animate trauma-informed approaches to working with people, and the foundational goals of legal approaches described as restorative justice. The term "trauma-informed" describes a commitment to providing services

83. Peter Levine, *Waking the Tiger: The Innate Capacity to Transform Overwhelming Experiences* (Berkeley, CA: North Atlantic Books, 1997) at 2.

and organizing institutions and policies which reflect a recognition of the impact of trauma in people's lives. Trauma-informed services expressly aim to deliver services and interventions which avoid retraumatizing, all the while supporting movement towards recovery and wellness in self and in relation to others. Restorative justice is concerned with what is sometimes described as "right relations,"⁸⁴ a concept which speaks to the need to repair relationships harmed by wrongdoing. As one restorative justice scholar puts it, "until right-relation has been restored, through some reparative act, justice has not transpired."⁸⁵

Restorative justice is centrally concerned with restoring and repairing relationships which have been harmed or damaged by conflict, crime, or some other disruption. Trauma-informed work recognizes that healing from traumatic events can only occur in relationships. Trauma-informed work also recognizes that healthy relationships are essential to the development and expression of human capacities. Traumatic responses are deeply organized around disruption and disconnection.⁸⁶ While each person must mobilize internal resources for their own recovery from traumatic experiences, the process cannot be undertaken in isolation. If trauma is a "disconnective disorder,"⁸⁷ then its resolution cannot happen without reconnection to and with others. This speaks to relationships, both personal and intimate, and more broadly, at the level of our various micro and macro communities.

While trauma-informed principles and practices are most often applied in mental health and social service settings, there is an increasing and important recognition that this approach is also highly suited to work in diverse institutional contexts such as prisons and correction services,⁸⁸ public health, child welfare systems, and workplaces.⁸⁹ As a powerful

84. While this idea in some iterations of restorative justice has Christian origins, it can be understood in secular terms and, in our view, should be.

85. Gerry Johnstone, Inaugural Lecture (Delivered at The Middleton Hall, University of Hull, 11 October 2004), online: University of Hull <<http://www2.hull.ac.uk/fass/docs/Law-inauguraljohnstone.doc>> at 14.

86. For an analysis of trauma in relationship to Aboriginal peoples, see Haskell & Randall, *supra* note 21.

87. See Ellen McGrath, "Recovering from Trauma," *Psychology Today* (1 November 2001), online: Psychology Today <<http://www.psychologytoday.com/articles/200308/recovering-trauma>>.

88. Miller & Najavits, *supra* note 65; Tina Maschi et al, "Trauma and Life Event Stressors among Young and Older Adult Prisoners" (2011) 17:2 J Correct Health Care 160.

89. See, for example, Susan J Ko et al, "Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice" (August 2008) 39:4 Professional Psychology: Research & Practice 396; Sandra L Bloom, "The Sanctuary Model: A Operating System for Living Organizations" in Noreen Tehrani, ed, *Managing Trauma in the Workplace: Supporting Workers and Organizations* (London: Routledge, 2010) at 235-251; Sandra L Bloom, "Trauma-organized Systems and Parallel Process" in Noreen Tehrani, ed, *ibid* at 139-153.

institution in society, law regularly encounters and deals with people, both as victims and offenders, whose lives have been shaped and harmed by traumatic events. While it may not be the role of law to “heal” those harmed by crime, law does represent itself as playing a crucial role in creating the parameters around acceptable human conduct, and creating the conditions for a just and law-abiding society in which people can expect to have their rights and freedoms respected. If law in general, and the criminal law in specific, is to play such a fundamental role in human life, clearly its practices and processes should begin from an enhanced appreciation of human psychology, human capacities, and how traumatic events shape and disrupt these. A trauma-informed approach to a restorative approach to law provides precisely this necessary starting point.