THE ART OF CARING:
WOMAN AND RESTORATIVE JUSTICE

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Dedication

For Robert,

for who you are,

for all you do,

for others.

Acknowledgements

When I first started at Antioch, I thought I knew what I wanted to study. I was interested in environmental justice and conflict mediation, and I wanted to research the various issues involved in correcting the injustices perpetrated against the poor and marginalized populations. However, the traditional justice system seemed inadequate with its retributive policies and its refusal to acknowledge victims' needs. I diverted several times on my journey, looking for deeper meaning and searching for some way to do something meaningful. When I doubted my ability, and lost faith in my own journey, Dr. Carolyn Kenny, my Ph.D. advisor, did not. She continued to support and encourage me to finish the path I had started. Her compassion and her research on the power of women to heal are what motivated me to continue to find my own direction and brought me to care theory and restorative justice. Carolyn exemplifies the true art of caring.

I would also like to thank my good friend, mentor, and colleague, Debbie Halbert. Her personal and professional accomplishments, as well as her depth of knowledge have been a constant source of inspiration for me. Debbie is always willing to listen and offer suggestions when I am trying to explore new research directions or resolve convoluted dilemmas. She is the epitome of a good friend.

My sincere appreciation is extended to Dr. Laurien Alexander and Dr. Brenda Morrison for their expertise and intellectual guidance during the development and subsequent writing of this dissertation. Their insightful comments challenged me to be methodical and discern sound, theoretical connections.

And finally, I want to acknowledge the genuine support of my children, who walked with me on the path of knowledge and uncertainty. The confidence my children

have in me sustained me throughout my doctorate program. My youngest daughter, Annie has a beautiful and creative spirit, and her spirit has renewed mine in many difficult moments.

My children are like the branches of a magnificent tree, swaying with the winds of challenge, but held strong by their roots of commitment, supporting each other in their personal development. Milton Mayeroff (1971), writing on the concept of caring, eloquently stated "a [person] who is not needed by someone or something does not belong and lives like a leaf blown about in the wind" (p. 85). Mollye, Mark, Sean, and Annie—may you always know how deeply you are loved and needed in the lives of those around you, especially mine.

Abstract

The process of restorative justice involves the caring compassion of others by providing

support for the peaceful resolution of the conflict. The term *restorative justice* is used to

describe a justice practice that has been in existence for hundreds of years in many

indigenous communities. Recently, it is emerging in modern criminal justice systems as

a way to obtain fair reparation for the victim and to offer an opportunity for the victim

and the offender to mediate and reconcile after the offense to restore balance and peace to

the community. The process involves the participation of the victim, offender, and

selected community members in all phases of the process. Restorative justice requires

community involvement, thus encouraging community building, empowerment, and

capacity enhancement. It can be adopted as a proactive method for preventing

wrongdoings and misbehavior. Care theory supports the ethic that all individuals are

responsible for meeting the basic needs of others. Its premise is based on the fact that we

are all interconnected, and therefore, obligated to ensure all humanity has the basic

necessities and the capacity to live a meaningful life. Care theory supports the tenets of

restorative justice. The obligation to care involves ensuring the well being of all

individuals including the fair treatment and the rehabilitation of those who have been

victimized. The focus moves from punishment of the offender to restitution and

reparation of harm for the victim. Restorative justice can be the modern model for

conflict resolution. In this theoretical dissertation, I will present documentation to

support my thesis that adopting the tenets of care ethics and restorative justice and

recognizing the value of women's voices (specifically in matters of social and global

justice) will provide a holistic and reconciliatory process for justice, a recognition for the

need to be concerned for all of humanity, and a renewed commitment to establishing a

sustainable world. The electronic version of this dissertation is at OhioLink ETD Center,

www.ohiolink.edu/etd.

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Preface

In 2004, I wrote a Master's thesis on peaceful sustainability and its viability in the modern world. My research focused on a document titled "Our Common Future," presented in 1987 by the United Nation's World Commission on Environment and Development. The purpose of the commission was to formulate strategies to address the issues of environmental responsibility and sustainable development. It was also to develop a cooperative means for countries to achieve "common and mutually supportive objectives that take account of the interrelationships between people, resources, environment, and development" (WCED, 1991, p. ix). The Commission determined poverty and conflict were two significant issues that needed to be addressed before global sustainability could be achieved. According to the authors of the report, "the reduction of poverty itself is a precondition for environmentally sustainable development and resources [from external sources] . . . are a precondition for the eradication of poverty" (WCED, 1991, p. 69). Members of the committee further stated nations "must face the common challenge of providing for sustainable development and act in concert to remove the growing environmental sources of conflict" (WCED, 1991, p. 304).

The Secretary General of the United Nations chose Gro Harlem Brundtland as the Chairperson of the Commission. Her outstanding achievements in politics, both nationally and internationally, in health research and reform, and in environmental ministry made her the optimal choice for leadership for this ambitious task. Harlem Brundtland was the youngest person and the first woman to hold the position of Prime Minister in her country of Norway. She is a physician, a researcher, a social activist, an advocate for women's issues, and a progressive visionary. Her work on "Our Common

Future," or the Brundtland report as it was later called, led to the 1992 Earth Summit in Rio De Janeiro. Harlem Brundtland went on to become the Director General of the World Health Organization in 1998, the first time a woman had been selected for a top United Nations organization.

When I presented at the Fourth Global Conference on Environmental Justice and Global Citizenship in Oxford, England in 2005, the Brundtland report was still being argued and included in presentations and discussions. More recently, at the University Continuing Education Association (UCEA) conference in Boston, Massachusetts in 2009, the first session I attended also incorporated the tenets of the Brundtland report. This speaks volumes to the visionary prowess of Harlem Brundtland. It is because of her work that I continued to research poverty and conflict and their relationship with sustainability. Though my work has taken a decidedly different approach, I do believe the journey to sustainability begins by establishing a firm foundation of communication, compassion, and caring, as well as a dedication to justice, fairness, and reconciliation.

In this theoretical dissertation, I intend to present a sustained discussion for adopting the tenets of care theory as foundational for initiating and instituting the practice of restorative justice. The literature to date on care theory and restorative justice does not include this interconnection. I acknowledge those scholars who have written on the value of care ethics have made subtle correlations with justice; however, most have viewed care ethics as a pathway to moral development and education (Baier, 1995; Elliott, 2007; Gilligan, 1993; Held, 1995; Noddings, 1989; Ruddick, 1989; Strike & Soltis, 2009; Tronto, 1995; Waithe, 1989).

The theory of care ethics developed from the ecofeminist literature. Though I do not espouse to be an ecofeminist, the ethics of care and the concept of restorative justice do interconnect with my philosophical perspectives. I consider myself a humanist and an environmentalist, as well as a social advocate, especially in issues relating to women and children. I also believe strongly in the inherent capacity of the human species to treat others fairly and to express and provide compassion, care and respect to others, both human and non-human. It is this belief that sustains my work.

Chapter I: Introduction

While an ethic of justice proceeds from the premise of equality,
  that everyone should be treated the same
  An ethic of care rests on the premise of nonviolence,
  that no one should be hurt.
In the representation of maturity, both perspectives converge
   in the realization that just as inequality adversely affects
   both parties in an unequal relationship,
   so too violence is destructive for everyone involved.
(Carol Gilligan, In a Different Voice, 1993)

In this chapter, I will introduce the conceptual idea of care theory and restorative justice. I will discuss the interconnections upon which care theory bases its tenets. I will also introduce several studies that address the issues of forgiveness, gender, leadership, and caring. The chapter includes an explanation of the purpose of this dissertation, the direction of the research, and the content of each subsequent chapter. I conclude the chapter with a personal reflection that identifies for the reader my position, perspective, and motivating influences for my work.

Many individuals associate caring with an expression of concern focused on providing for the well-being of someone or something familiar and in need of assistance. Caring involves a relationship and a commitment on the part of the caregiver to the one receiving the assistance (Tronto, 1995). Caring for another is a natural, innate instinct, and is influenced by heredity and personality predispositions (Oliner, 1988). The psychological aspect that influences the intensity of caring is connected to the concept of self, and, though significant in its relationship, a discussion of the self (especially in correlation to moral reasoning) is beyond the scope of this paper (Chodorow, 1999; Gilligan, 1993; Ryan, David, & Reynolds, 2004; Taylor, 2007). Caring can also be described as an action aimed at providing comfort and support for another human being.

The Oxford dictionary defined caring as "the provision of what is necessary for the welfare and protection of someone or something; a feeling of or occasion for anxiety" (Oxford, 2010). The physical actions of caring and the mental and emotional ideas of caring convey subtly different meanings. The cause for this may lie in the way Western societies associate caring with women, especially in their choice of careers.

I believe it is important to note here that one of the intentions of this paper is to advocate for the inclusion of women's voices in decisions and policies involving care ethics because women internationally constitute the highest group of those victimized in society. They possess a significant amount of learned experience and this experience is important to acknowledge and utilize, especially within the justice system. Nonetheless, I equally emphasize that caring does not have an exclusive association with women. When speaking of caring, it is vital that it is seen as a characteristic in all human beings. Historically and geographically, caring has been associated with women; however, the point to emphasize is the lived experience of women, and consequently, their knowledge is important to recognize, and in many cases, emulate.

Ferguson (1993) cautioned against making general categorical assessments and generalizations, especially when it comes to women. Avoiding the accusation of essentialism and universalism requires a careful analysis of discourse and a deliberate avoidance of generalizing gender group association. Ferguson's perspective concerning praxis feminism is especially appropriate in this discussion:

> The subjectivity thematized by praxis feminism focuses on affirmative intersubjective connections between persons rather than on autonomous or combative selves, stresses human need more strongly than rights, and privileges women's traditional activities as a source of self-understanding and social change. From this perspective women's experiences, their daily, practical, detailed activities

in production and reproduction, as daughters, mothers, and workers, generate a psychology of connection with others and a relational morality. (p. 69)

Ferguson's description of praxis feminism helps to position the discussion of caring, emphasizing the lived experience of women, and providing acknowledgement for their efforts in relationship development, without privileging and objectifying that knowledge. In Ferguson's words, "the possibilities for political change that it [praxis feminism] are generated out of women's words and women's worlds" (p. 69).

According to Chodorow (1999), many Western societies adopt what is referred to as the object-relation theory, which defines women's roles as those of domestic maintenance and reproduction. This role is not decided by natural, biological determinants, but rather, by the social constructs that ascribe women "generalized relational capacities and needs [and thus] make it likely that women will remain in the domestic sphere" (Robinson, 1999, p. 14).

The object-relation theory is, according to Robinson (1999), problematic because it focuses on the overlap of terminology and meaning, such as the overlap of the words "women and mother ignoring the link in particular cultures between the category of woman and certain attributes of motherhood such as maternal love, nurturance, fertility, and so on" (p. 15). Robinson continued by stating "thinking about morality must start from experience of the way that people actually behave, and it must explore how that behavior is socially constructed, asking how attitudes and practices manifest themselves at the level of social relations" (p. 15).

Tronto (1995) agreed with the object-relation theory and addresses the distinction between caring for and caring about. Caring for involves the "particular, concrete, physical, spiritual, intellectual, psychic, and emotional needs of others," whereas caring

about implies a neutral, "more general form of commitment" (Tronto, 1995, p. 103).

Writing on the social roles that women and men have, Tronto claimed:

> Caring is engendered in both the market and private life. Women's occupations
> are the caring occupations, and women do the disproportionate amount of
> caretaking in the private household. To put the point simply, traditional gender
> roles in our society imply that men care about but women care for. (p. 103)

Noddings, in her essay "Educating Moral People," (1989) wrote with a direct and

assertive perspective of the historical notion of caring as illustrated in the conflicting

roles of the feminine and masculine persona. Noddings described the woman as being

exemplified as the faithful wife and the man as being depicted as the warrior. Her point

was that historically, the feminine perspective is against violence and this creates tensions

with her male counterpart, who must abandon his desire for intimate relationships in

order to honor his social responsibility, as well as his natural passion for conquest and his

"warrior code of honor" (p. 217). The faithful wife is seen as failing in her social duties

of supporting her husband because she challenges this masculine desire for violence. Her

request for loyalty to the family is seen as being contemptuous, as she is no longer

honoring her role as subordinate and is requesting that her husband disregard his loyalty

to the state and refocus it on his family. Noddings explained:

> Perhaps the most damaging effect of the warrior code on women has
> been the universal devaluation of virtues thought to be peculiarly
> feminine. The "law of kindness," for example, is assessed as virtuous
> so long as it is confined to home and immediate community but is
> considered evil if it opposes the warrior code. (p. 217)

This conflict of perspective, between the feminine and the masculine, accounts for the

inferior view prescribed to the virtuous attributes of compassion and caring.

Taylor (2003) studied the biological and psychological phenomenon of the

sympathetic/parasympathetic response, or *fight or flight*, in women and men. She

concluded women are more inclined to follow the concept of *tend and befriend* (Taylor,

2003). Commenting on Taylor's work on "tend and befriend," Dess (2000) stated:

> Compared to males, females' physical aggression and fear-related behaviors are less intense and more "cerebral"—they are displayed in response to specific circumstances and are less tied to physiological arousal. So while both sexes share the capacity for fight or flight, females seem to use it less. Instead, Taylor's team found that, during tough times, stressed females spend significantly more time tending to vulnerable offspring than males. . . . Taylor's team concludes that befriending is "the primary gender difference in adult human behavioral responses to stress" . . . . "So while stress can spark a rampage, a kinder, gentler response to adversity is also in our nature." (para. 5)

Anderson, Cissna, and Arnett (1994) claimed one's predisposition for caring and

compassion is modeled by one's life experiences. "People grow and prosper in an

environment of care, and those that want relationships to be nourished are naturally called

to facilitate care" (p. 262). Women have held positions of caring in society throughout

history. Not only are women responsible because of biology for childbearing, they are

also accorded the responsibility of child rearing, administering to the elderly and the

disabled, maintenance of the home, food gathering, and meal preparation. Women have

also consistently occupied positions in caring professions, such as nursing, education, and

childcare.

 Gilligan (1993), in speaking of the paradox in moral reasoning, wrote "the very

traits that traditionally have defined the 'goodness' of woman, their care for and

sensitivity to the needs of others, are those that mark them as deficient in moral

development" (p. 18). Robinson (1999) commented on the moral dilemmas Gilligan

encountered in her research when women were trying to describe their relationship

between the other and self: "the disparity between women's experience and the

representation of human development, rather than signifying a problem in women's

development, may in fact signify a problem in the representation [of women's experience]" (p. 16).

Ryan et al., in their 2004 research study on care and gender, commented:

Commensurate with traditional measures of moral reasoning, a justice orientation highlights inequality and oppression, and dilemmas are resolved in terms of equality, reciprocity, and the application of universal rules. In contrast, the care orientation emphasizes well-being and the maintenance of relationships and dilemmas are resolved in terms of attentiveness, responsiveness, and engagement. The most interesting and controversial of Gilligan's findings is the association between moral orientation and gender. Although women were found to focus on both care and justice orientations, men tended to focus exclusively on the justice approach. (p. 246)

Ryan et al. (2004) concluded the self-other relationships are influenced by the individual's early child-rearing experiences; however, social context, as opposed to gender, has a greater influence on decision-making in situations requiring a choice between caring or justice. Their research did not find gender was as significant as Gilligan's (1993) research suggested. This is a significant finding as Gilligan's work has been the foundation of many feminist theories, including care theory.

Noddings (1989) has a different opinion concerning caring relationships. Women, according to Noddings, have historically been depicted as the passive, obedient servant who is ignorant of the ways of the world. It is this way of thinking men have viewed as weak and inferior, so men have distanced themselves from anything considered feminine, such as caring. "The longstanding fear of being like a woman or being captured by a women has led men—even bright, open-minded men—to suppose that male experience must somehow be defined in opposition to female experience" (Noddings, 1989, p. 222). Noddings believed by evaluating the experiences shared by both women and men: "men and women may be reconciled in appreciation of their differing experiences and

commitments; but they may also transcend the differences by a heroic effort to uncover what lies shared beneath the surface conflicts" (p. 221).

Even though women have been portrayed as being against violence, they have been the predominant victims of this violence. Ruddick (1989) wrote "military speech is imbued with masculinist heterosexual metaphor" and women who are captured are "tortured in specifically sexual ways . . . conquered women are predictably raped, and women from all quarters are hired, seduced, or forced into subservient sex" (p. 201). "Women continue to be the victims and the people most affected by various conflicts around the world" (Mugenga, 2008, p. 181). Sexual torture and rape against women and girls "constituted a well-documented and tragically widespread component of the [Rwandan] genocide and war strategy in 1994" (Amnesty International, 2004, p. 2). Wars and conflicts have left many women alone to care for their families. In many cultures, women who are the sole providers for their families are ostracized from the community and stigmatized. "Female heads realize that they are not only often regarded with caution but also with a combination of fear, disrespect and/or disdain" (Mugenga, 2008, pp. 186-187).

These injustices suffered by women, especially in areas of conflict cannot be allowed to continue unacknowledged and unaided. "Peacemaking must be democratized," wrote Braithwaite (2002, p. 185). "It must heal whole peoples, preparing the soil of popular sentiment for peace and democracy rather than for demagogues who would despoil their freedom and plunder their prosperity" (p. 185). Braithwaite claimed most people prefer to live without conflict and would opt for solutions that bring "prosperity and peace" (p. 185) rather than conspire for retribution. "The Dalai Lama, at

the Vancouver Peace Summit, called for 'a global promotion of compassion and an increased emphasis on the promotion of women to positions of influence'" (O'Brien, 2009).

> Some people may call me a feminist [claimed the Dalai Lama]. . . . But we need more effort to promote basic human values—human compassion, human affection. And in that respect, females have more sensitivity for others' pain and suffering. (Dalai Lama, 2009)

The people of the world cannot be complacent to the injustices others suffer, especially those of woman and children. Nor can they continue to satisfy their needs at the expense of others.

Interconnections

An ethic of care is necessary for addressing the disparities of needs between the peoples of the world. Care theory recognizes all people are interdependent, and this interconnectedness obligates others to proactively assist those who are in need. Because everyone is dependent (at various times in their lives) on others for their care and survival, all people are obligated (if they are capable) to provide for the basic needs of others. Engster (2007) wrote "we all depend upon the caring of others to reproduce society and to make civic life possible . . . we are all unavoidably and deeply dependent upon the care of others" (pp. 42-43). Though caring has traditionally been associated with feminine traits, it is necessary to recognize this is a social construct and not a biological one. Robinson (1999) cautioned "that a society based on caring might reinforce structures and norms which oppress and exclude women" (p. 19); therefore, it is important to emphasize all individuals have the ability and obligation to care for others. Wrote Robinson, "clearly the importance of the ethics of care, and its transformatory potential, does not, and indeed must not, rest on its association with women" (p. 23).

The warrior archetype is still acutely visible in the conventional justice system. Based on a retributive system, this justice system focuses on conviction and punishment. Punishment is justified because the crimes are seen as being committed against the state, and, therefore, are in violation of established rules and policies. A person who attempts, by their own choice, to obtain more from the state than he or she is rightfully entitled, is, in the eyes of the state, deserving of punishment. It is a formal, seemingly uncaring, institution of legal language and due process (Braithwaite, 2002; Rawls, 1999).

In comparison, the process of restorative justice involves the caring compassion of others by providing support for the peaceful resolution of the conflict so the victim is provided the necessary means for healing, the offender is provided the necessary means for accountability, and rehabilitation (if needed), and both victim and offender and the community are provided the tools to be able to progress towards peaceful and successful negotiations (Braithwaite, 2002). Restorative justice encourages communities to take responsibility for how best to work together and restore trust after an offence has been committed. It encourages communication, dialogue, and informed membership.

Studies on Forgiveness and Gender

Ryan et al. (2004) examined what the determinants are that influence how individuals make moral decisions in situations requiring a choice between justice or caring. The authors discussed the established research on the influence of gender on decision-making in situations requiring a caring perspective.

Ryan et al. (2004) concluded the "nature of the self-other relationship" (p. 246) with the participant was predictive of how caring their choices were concerning other's needs. In contrast to past research, gender was not a significant influence. The

familiarity of the person involved in the situation had a significantly greater impact on the decision-making, then gender identification. "It was hypothesized that in the absence of information about the identity of the other, men and women would look to their own identity (being female or male) to determine the appropriate behavior" (Ryan et al., 2004, p. 250). The authors conducted a second study, which resulted in similar findings. The second study concluded people are more inclined to provide care to those familiar to them and within their social and/or professional group. Moral reasoning for in-group members consisted of a more caring approach and gender was only a factor when it was purposefully made a prominent component.

My one question not addressed in the study is: what was the perspective of each of the participants concerning a caring relationship? If the student participants were already conscious of how gender influences behavior, they may have been on guard for questions concerning moral choices.

Karremans and Van Lange (2004) conducted a study titled "Back to Caring After Being Hurt: The Role of Forgiveness." They evaluated the long term benefits of forgiving. Basing their hypothesis on literature that claimed forgiveness is determined by personality factors, the authors wanted to determine if forgiving an offense in the past predicts pro-relational responses in the present.

Karremans and Van Lange (2004) concluded a person who does not forgive an offender has less prosocial, consequently, less pro-relational motivation. According to the authors, "forgiving is related to smoother [social] interactions . . . and a lack of forgiving instigates negative or destructive patterns of motivations and behaviors" (p. 223). The importance of Karremans and Van Lange's study to care theory and

restorative justice are the implications that caring and forgiveness have for social behavior. Forgiveness is not a requirement of a restorative justice; it is a hoped for value (Braithwaite, 2002).

> Many of us believe that if we can create spaces that give victims an opportunity to discover how they might bring themselves to forgive, this is the most important thing we can do to promote the healing of both the victims themselves and of those who hurt them. (p. 15)

The social constructs of *gender* and *the other* are still visible and challenging in the emerging theories of care and restorative justice. These incidences speak to the fact that social constructs are difficult to eliminate, even in situations that attempt to balance and equitably address the injustices of conventional processes. Biases, prejudices, and stereotyping are not completely eliminated. They are restrained through the educational process of restorative practice and by the participation of a diversity of community members (Braithwaite, 2002).

Cook's (2006) study focused on the concepts of gendering and privilege in restorative justice. For some advocates of restorative justice, the goal is forgiveness, reconciliation, and community building. Cook challenged the ideals of restorative justice as being potentially gender biased and privileged. "Restorative justice is a venue for 'doing difference' where, for the most part, the socially constructed categories of difference are not eliminated, but instead are used as subtle devices of domination" (p. 120). Eliminating the idea that caring is a gender characteristic of women, may allow for the moral development of all people.

Simola, Barling, and Turner (2010) conducted a study entitled "Transformational Leadership and Leader Moral Orientation: Contrasting an Ethic of Justice and an Ethic of Care." The purpose of their study was to try to determine which characteristics were

more prevalent in a transformational leader: those related to an ethic of justice or those related to an ethic of care. Using Burn's (2003) definition of transformational leadership and Bass' (1985) and Bass and Riggio's (2006) four behavioral dimensions, the authors hypothesized that leaders, identified by their followers as possessing the four dimensional behaviors, would have a predisposition for an ethic of care. The four dimensional behaviors referred to in the study included "idealized influence, inspirational motivation, intellectual stimulation, and individualized consideration" (Simola et al., 2010, p. 180). Each of these characteristics, according to the authors, implied an interconnection with, and a sense of responsibility to personal moral growth, and reflected a collaborative relationship between leader and follower.

The study concluded a predisposition to an ethic of care does predict transformational leadership. "This characteristic of interconnection, seen as ethically central to transformational leadership, is also central to an ethic of care, as opposed to an ethic of justice, in which notions of separation and autonomy would be critical" (Simola et al., 2010, p. 181).

If a theory of caring is adopted, where individuals have a responsibility to provide for the basic needs of others, encourage the personal growth of others, and cultivate the sentiments of compassion and forgiveness, then it may be possible for prosocial behavior to develop. Some philosophers, such as John Rawls (2003) and Amartya Sen (2009), claimed it is necessary to ensure that all members of society have their needs provided for. "It seems wrong that some or much of society should be amply provided for, while many or even a few suffer hardship, not to mention hunger and treatable illness" (Rawls, 2003, p. 130).

Zehr (2005) wrote that historically in communities, wrongs were viewed as being a personal action directed towards another individual, and not a violation against the state. The wrongdoer had an obligation to make amends. Obligations were met through "negotiation, restitution, and reconciliation. Victim and offender as well as kin and community played vital roles in the process" (Zehr, 2005, p. 99).

Purpose of Research

My intention in this dissertation is to present a sustained argument for embedding care theory via restorative justice into the justice system. I will include the perspective of women in issues of justice and care, as women have been obligated to perform the majority of the caring responsibilities in society; however, they have not been recognized for their efforts (Chodorow, 1999; Gilligan, 1993; Noddings, 2003). Women's voice is vital to the development of a theory of caring and their experience is necessary in establishing the definition of basic needs.

Acknowledging the role that women have in society and recognizing their experiences as virtuous and morally good, will foster an obligation of caring that is not compromised by gender constructs. Furthermore, all people are obligated to care for others because of the interconnectedness and co-dependency they have to each other. Caring is therefore, a necessary component for the establishment of a strong community. Subsequently, a restorative justice system that focuses on the needs of the victim and the rehabilitation of the offender and empowers the community is a logical and constructive development of a caring society.

Summary of Chapters

In the following chapters, I formulate a sustained and substantive discussion on the attributes of care theory and restorative justice. Chapter 1 introduces the theories of care ethics and restorative justice. It discusses the foundational work of theorists concerning the ethics of care and the importance of relationships and interconnections. Studies on forgiveness, gender, and leadership are presented for the purpose of informing the reader of the current research being conducted on restorative justice and caring. Included in this chapter is an auto-ethnographic account of my experiences in Rwanda, including my observance of an indigenous justice proceeding, the Gacaca. I will also include a reflection of my friendship with a Tibetan woman and her views on her life and her country's struggle against injustice, forgiveness, and reconciliation.

In Chapter 2, I describe care theory as it has developed from the earlier philosophy of ecofeminism. I expand upon the original ideas with contributions from other academic areas, including the philosophies of Mikhail Bakhtin, Martin Buber, Sarah Ruddick, and Charles Taylor. The chapter also addresses the issues of violence against women, gender identification, obligations to the other, and caring relationships. Barbara Houston's work on the moral dilemmas women confront when redefining their role in caretaking is also presented. How to fulfill our obligation to others is a challenging task, especially when determining how to meet the basic needs of those we do not know. The chapter concludes with a list of Caring Rights suggested by Daniel Engster (2007) in an effort to define the obligation each of us has to others.

In chapter 3, I present an overview of the theories on which the current justice system has been modeled. Early justice philosophies vacillated between elitism,

communalism, retribution, and individualism. The modern theorists included here shifted the focus to a more collectivist perspective, recognizing the importance of community in issues of justice. For instance, John Rawls (1999) suggested that social influences be considered when deciding appropriate actions in criminal behavior. Many early societies had dispute mediation procedures aimed at rapid resolution so as to restore harmony and order to the community. In chapter 3, I also provide a brief overview of several indigenous justice systems and the influence these systems have had on the development of the modern restorative justice movement.

In chapter 4, I discuss restorative justice practice. Community is a significant component to the success of restorative justice, and the process of developing a supportive foundation that is engaged and committed is challenging. I discuss the differences between retributive and restorative justice, including where the locus of justice is focused in each process. In restorative justice practice, significant emphasis is placed on the victim. The current Western justice system has focused on rules and processes instead of the actual victim of criminal behavior. Restorative justice aims to refocus justice onto the victim, as well as provide support to the offender to rehabilitate and once again become a contributing member of the community. The proposals of Braithwaite (2002) on how to implement restorative justice tenets along side the current legal system are discussed, as well as potential outcomes and future trends. In chapter 5, I present several communities that have adopted restorative justice practices. I also provide an account of Braithwaite's (2002) reasons why restorative justice deters crime and prevents recidivism. The community justice systems discussed incorporate a caring

perspective, with many of them including additional services, such as health, counseling, and education.

In chapter 6, I conclude my sustained discussion of why the tenets of care theory support the adoption of the practice of restorative justice. I restate my reasoning, discuss the positive correlation between the two theories, and present a sustained discourse on why adopting restorative justice practices and incorporating the learned perspective of women is of value for all humanity. Leadership in advancing the practice of restorative justice is challenging, as many obstacles that resonate with a traditional punitive system of justice are vigorously in force. Overcoming these impasses with a transformative perspective and a vision of restoring justice and harmony will be of benefit to all members of society.

A Reflection of My Own

I have had the honor of meeting many extraordinary women in my life. They have been intelligent, insightful, and extremely resilient individuals, and though I knew some only for a brief time, their wisdom and tenacious spirit have left a lasting impression on me. Most of these women have suffered significant injustices in their life. One suffered brutal abuse by her husband, several women were ostracized by their families, and others experienced political oppression, violence, and genocide. The reason I admire these women is because each one believed herself to be a survivor, in a system that did not care about her well being or survival. Nonetheless, these women looked beyond the system, looked beyond the injustices, and each cared for others, children, family members, and other oppressed individuals. The physical, emotional, and spiritual

mistreatment of these women, and their heroic resilience has inspired my passion for the principle of care and its relevance for a just society.

I believe that caring is an inherent human trait shared by women, children, and men. Why we do not feel at liberty to demonstrate this characteristic without restraint is a social norm that must be remedied and transformed. Caring for another reveals characteristics about oneself—selflessness, compassion, hopefulness, as well as a vision for the future.

"Knowing just one word of wisdom is like knowing a hundred ordinary words" (Old Tibetan Proverb). I met a Tibetan woman. She was working at a Fair Trade Gallery at which I was volunteering. Her demeanor was shy, youthful, and mysterious, but her eyes revealed that she possessed an old soul. As we got to know each other, she told me about the Dalai Lama and his teachings, her daily rituals, and the traditional foods she prepared. The Dalai Lama was very important in her life. She also told me about her life in the United States. She was working two jobs to supplement her family. Her husband was blind, her daughter was finishing a business degree at a local college, and her son was attempting to live on his own. She seemed sad about her son—I would learn why later. When I asked her about her life before coming to the United States, she responded by asking me what I knew about the Tibetan struggle with China. She told me she would tell me about her life in Tibet if I first learned about Tibet, its history, and the legacy of the Dalai Lamas.

I read the XIV Dalai Lama's online website in its entirety. I purchased and read books on Tibetan art and culture, Tibetan history, the Tibetan natural environment, Buddhism, and books on the teachings of the XIV Dalai Lama. There was even an

elementary book written about her family. It was minimally informative, it left a lot of

questions unanswered, but I purchased it and asked her to autograph it. This embarrassed

her, I remorsefully realized later. When she felt I had educated myself adequately, she

told me her story.

As a child, she lived in the Himalayan Mountains with her parents and five

siblings. She was the daughter of nomadic parents in the northern region of Tibet. The

family raised yaks, horses, ponies, sheep, and goats. The family moved frequently in

search of better grazing lands. In 1959, her family was advised to leave Tibet as the

Chinese army was invading the region. She was four years old and had to cross the frigid

Himalayan Mountains on foot. One of her siblings died on route, and this was still

painful for her. She told me her spirit was still alive. The family entered Nepal two years

later, and had to take up residence in a refugee camp. Later, the family was admitted into

India, but was separated—the parents went to labour camps, building roads in India, and

the four children were divided between four different Tibetan schools. Foster parents

raised the children in the schools, often as many as 25 per school. She never saw her

parents again.

She met her husband while working at a children's home. He had been a monk

studying at a monastery in Tibet when he was forced to leave. When he first arrived in

India, he, too, had to work on the roads, but was he blinded by some of the chemicals.

They were married in 1978 and had their daughter in 1985. The Chinese government

refused to allow any communication with Tibet, so it was not until 21 years after leaving

Tibet that she learned of the death of her husband's father. They moved to the United

States in 1989 to be close to her husband's brother. Her own brother later moved to Canada.

She told me that, even though she was a highly skilled and educated administrative assistant in India, she was only able to find employment in retail in the United States. Though she possessed an extremely high work ethic, she was discriminated against at her full-time job and was consistently passed over for promotions and pay increases.

She cared for her husband and her children. She told me her son was adopted while in India from distant cousins. They wanted their son to grow up in a country that offered him opportunities for the future. She assisted people who secretly made items in Nepal for sale in the United States. It was dangerous for women in Nepal, and there was no consistent way for a woman to make an income. Selling handmade jewelry and clothing in the United States was the only means of subsistence many women had.

She was lonely she told me. She had no Tibetan friends here and missed her involvements in India. She had been active in the Tibetan Women's Associations in India, an organization dedicated to preserving the Tibetan culture. She felt isolated here, but her dedication to preserving her cultural heritage was even stronger. She was affiliated with several cultural centers throughout the United States and Canada, but it was difficult to travel to these under the circumstances.

I was impressed by her peaceful acceptance, her resolute commitment to her life, and her understanding of missed opportunity. She was devoted to His Holiness, the XIV Dalai Lama. She followed his teachings of forgiveness. The Dalai Lama said, "My first commitment is the promotion of human values such as compassion, forgiveness,

tolerance, contentment, and self-discipline. All human beings are the same. We all want happiness and do not want suffering" (Dalai Lama, n.d.).

She was saddened for her country and the Tibetans who still lived there, but she held no malice for the Chinese. That was what the Dalai Lama had taught her and continues to teach—forgiveness and hope. She believed the words of the Dalai Lama:

> Future Tibet will be a peace-loving nation. I [Dalai Lama] remain optimistic that [we] will be able to return to Tibet. I am not seeking separation from China. We Tibetans will be able to develop Tibet with China's assistance, while at the same time preserving our own unique culture, including spirituality, and our delicate environment. By amicably resolving the Tibetan issue, China will be able to contribute to her own unity and stability. (Dalai Lama, n.d.)

Her belief in forgiveness and reconciliation was admirable—beyond admirable, actually. Without using the term, her commitment to harmony and balance was a restorative and deeply caring and compassionate one. Hers was a peaceful perspective.

She said the role of women in the Tibetan culture was one of equality; however, there were still clearly defined gender roles. Domestic chores were a primary responsibility for Tibetan women. Tibetan monks received more attentive guidance than did Tibetan nuns. The Dalai Lama recently addressed the issue of women in society. In a March 17, 2010 news posting, the Dalai Lama "advocat[ed] strongly the need for women to play an active role in the society, [and] said that biologically women had greater proclivities towards compassion. 'In my case also, the seeds for compassion were sown by my mother. Buddhism enhanced it'" (Dalai Lama, n.d.).

In her isolated sadness, she was my teacher. She had inspired in me compassion, a desire to forgive, and a hope for the future. If she has inspired me, she has inspired many, many others.

"When you bear a grudge, your child will also bear a grudge" (Old Rwandan Proverb). I met several women during my travel to Rwanda, in different roles, yet all women, all trying to survive. There was the devote nun who was attending nursing school to serve the needs of the women in her community. There was the wife of the Methodist preacher who cared for 13 children, most of them orphans from the genocide. There was the seamstress who survived the genocide, in hiding and hiding others. There were the hundreds of women, walking along the road, children strapped to their backs, carrying a seemingly impossible bundle of bananas, potatoes, or dried stalks on their heads, in baskets. But, the woman who left the most enduring impression was the one who was a judge, in a precept listening to the stories of hundreds of people and trying to bring justice and restitution to those harmed, and accountability to those who offended.

Her leadership qualities were undeniable. She was beautiful, a woman with composure and confidence, and one who obviously possessed the respect of those around her. She was a judge in the Gacaca courts. She explained the Gacaca to me, though I had read numerous volumes about it. I listened appreciatively.

The *Gacaca* is an ancient, indigenous system of justice. The literal meaning is "justice on the grass," but the underlining message is resolution and reconciliation. The elders of the clan would meet on the side of a hill and discuss and settle disputes that arose within the tribal community. The victim, offender, other affected individuals, and the general community was invited to speak and offer suggestions for solutions.

Post-genocide Rwanda was afflicted with an overburdened prison system, no manpower, and a starving population. The government recognized the ineffectiveness of the state court system and instituted the Gacaca as the national justice system. If a

prisoner confessed his or her crime, demonstrated remorse, and agreed to participate in the Gacaca, he or she was released after serving a partial sentence. The prisoner was required to perform community service work, as well as offer reparations to the victim. The intention was to focus on the needs of the victim and the community. By showing care and compassion, the hope was the country would heal from its wounds and recover its integrity.

I asked: "Why release prisoners who attacked and killed so violently?" The judge replied, "Rwanda's *only* resource is its people" (anonymous, personal communication, December 4, 2008). I asked her about the thousands of women who were horribly tortured. She bowed her head and said, "we are trying."

The Gacaca that was to be in her court that day was canceled, so she took me to one situated in a very small village. She interrupted the proceedings, but it was obvious she was well-respected, so no one in the room objected. She nodded in my direction, conversed with the panel, and then walked over to me. "It is okay that you are here." These sessions, especially the ones in isolated areas were usually restricted for anyone outside of the community. This woman performed a significant act of kindness and good will towards an outsider—me. Her request was simple, "I care about my country. Tell the story of Rwanda, of its women and its attempt to recover, to heal, and to forgive" (anonymous, personal communication, December 4, 2008).

The country has tried to recover. The streets held old, battered buildings and newer constructions. The streets were filled with people, always moving, always working—especially the women. There were always women and children at the water wells (there was very limited indoor plumbing), in the fields, at the produce stands and

market stalls, selling their goods. These were the same women who were raped and beaten during the genocide. They bore the scars.

Sexual torture and rape against women and girls "constituted a well-documented and tragically widespread component of the genocide and war strategy in 1994" (Amnesty International, 2004, p. 2). Even though Rwanda was signatory to the International Covenant on Civil and Political Rights and the Geneva Convention (1949), and the Convention on the Elimination of All Forms of Discrimination Against Women (1981), these crimes were allowed to be committed, even encouraged by the then hegemony in office. Rwanda signed the International Covenant and Political Rights (1976) and more recently, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003). Yet, few cases of rape or sexual torture have been tried in the court systems. And, even more tragic, the women are still stigmatized. "Rapes bring problems such as shame, unwanted pregnancies, and HIV infection. Great social stigma exists against rape in Rwanda, such that a woman who reveals that she has been raped faces the likelihood of being shunned" (Merry, 2009, p. 170). Poverty was rampant and the health care system could not meet the needs of people, especially the women and children suffering from AIDS as a result of the genocidal rapes. Rwanda was caught between what it should do, what it wanted to do, and what it could actually accomplish.

When I asked the judge if the Gacaca system was working, she replied, "It is what we have" (anonymous, personal communication, December 4, 2008). People were trying to forgive and to recover. However, looking into the eyes of the women I passed on the streets or spoke to at the market, there was still a deep mistrust, a fear and sadness. It was

the sadness that was overwhelming. However, there was also a knowing, a learned experience well beyond what was written in the books or documented in journals.

During the Gacaca, I looked at the prisoners. One in particular was frightening, even now. His eyes were dark and void of emotion. Perhaps forgiveness will work for some, but it was clear, he was not asking for forgiveness. It was made clear during the proceedings, poignantly clear. However, the person asking forgiveness, after a long discourse with the victim and other community members, did receive forgiveness from the victim, her family, and the community. And it was genuine.

Visiting Rwanda, you could not help but see how fervently the women were trying to survive. Merry (2009) wrote, "the sexual violence against Rwandan women was chillingly systematic" (p.167). However, she added "while vast numbers of Rwandan women were subjected to terrible atrocities during the genocide, it is important that we do not cast Rwandan women in the singular role of victim" (p. 169). The women did not all experience the genocide in the same way. Most were victims; however, there were significant numbers of women who participated in the violence, and others yet who had the monetary means to escape the country, while the poor stayed behind and hid. Claimed Merry, "the sexual violence of the genocide was facilitated by the social structure in Rwanda" (p. 169). Women had little access to education, economic resources, or politics. They were assigned the task of child bearing, caretaking, and domestic help. Post-genocide Rwanda recognized the value of women's voice and now women hold significant positions in the government, the community and political organizations.

These women are a testament that caring for others, caring for an idea of justice, caring about forgiveness, and caring about reconciliation can facilitate change and transform society. Their stories are a personal tribute to the tenets of care theory and restorative justice.

> When the women heal, the family will heal.
>   And when the family heals, the nation will heal.
>   Women are at the foundation of social change.
>   And when the women are able to build on their strengths,
>   continue to improve the quality of their lives, and obtain
>   position in society, the nations will heal.
> (Kenny, "When the Women Heal," 2006)

Chapter II: Care Ethics

This chapter discusses the foundation of care theory. Caring has been historically associated with the work of women, and I will deconstruct this social gender impression. Caring is an intrinsic characteristic of the human species (Chodorow, 1999; Clement, 1996; Engster, 2007; Mayeroff, 1971; Noddings, 2003; Nussbaum, 1997; Robinson, 1999). The degree to which one practices the virtue of caring is dependant on social constructs (Chodorow, 1999; Clement,1996; Engster, 2007; Held, 1995; Mayeroff, 1971; Noddings, 2003; Nussbaum, 1997; Robinson, 1999). The responsibility to care for others is fostered by our own interdependence. Developing caring relationships is important for our own moral development and for the well-being of others. This chapter concludes with a summary of caring rights to which all individuals are entitled.

Care ethics is a theory developed out of ecofeminist theory, predominantly from the works of Carol Gilligan (1993) and Nel Noddings (1989). It is based on the premise that every individual is dependent at some point in her or his life on the caring of others for her or his "survival, development, and social functioning" (Engster, 2007, p. 7). From birth, all individuals are dependent on the caring capabilities of the mother or her surrogate to provide basic care and nurturing in order to develop into a functioning adult. Ill, disabled, and elderly individuals rely on the care of others for their basic needs. For Mayeroff (1971), caring involves the experience of belonging that stems from "devotion, trust, hope, and courage" that have been instilled in an individual by an "evolved pattern of caring" (p. 76). This pattern is constantly being renewed and regenerated. If the experience of belonging develops in the person, and if the person feels it has relevance and meaning to their life, that it has helped them "find their place" (p. 91) they then,

according to Mayeroff (1971), extend this feeling outward and allow themselves to be needed by others. Faith in oneself develops from the experience of being cared for and caring for another; caring for another is a way of expressing gratitude for care received (Mayeroff, 1971, pp. 100-103).

Care theory emphasizes the interconnectedness and the interrelationship each of us have to the other and defines our responsibilities accordingly. Its aim is to "ensure a basic threshold of adequate care for all individuals" (Engster, 2007, p. 10). The question to ask is, what is a "basic threshold of adequate care?" According to Engster, this means providing food supplies sufficient to avoid malnutrition, alleviate illness, and protect against physical harm. "Caring may be defined as everything we do directly to help individuals meet their vital biological needs, develop or maintain their basic capabilities, and avoid or alleviate unnecessary pain and suffering" (pp. 28-29). Care theory defines the practice and communicates the moral obligation we have to others.

> Caring is historically associated with the feminine gender:
>
> Women participate in most of the unpaid and paid caregiving, and these caring feelings and actions are naturally associated with women . . . however, we have to realize that caregiving can be skilled work, learned through practice and formed by cultural values and economic incentives, no matter what gender the person is. (Kang, 2008, p. 127)

Care ethics challenges the idea that caring must be a feminine construct; however, it does recognize caring activities are best if modeled after the nurturing relationship established by the mother/child bond. It is a fine distinction. According to Houston (1989), "traditionally women have been charged with the responsibility for nurturing and

caring for others, especially the young, the old, the ill, and those in intimate relation with

them. Unhappily this labor, like housework, seems invisible if done well" (p. 85).

Caring is an action, directed towards someone in need and performed out of a

human obligation. If there is an emotional bond, this is an added benefit, but certainly

not a requirement of caring. Kang (2008) wrote:

> If people do not take care theory seriously and disregard the importance of
> developing and maintaining caring relationships, it will not only affect each
> individual negatively but it can actually harm the individual in many ways,
> including education, health, and human relationships. This can, in turn lead
> people to poverty. (p. 129)

According to Mayeroff (1971), "to care for another person, in the most significant

sense, is to help [them] grow and actualize [them]self" (p. 1). Caring, for Mayeroff,

requires some type of relationship and trust between individuals and it "has a way of

ordering other values and activities around it" (p. 2). Caring involves a commitment to

the other. Unlike a friendship, caring for someone else does not demand devotion;

however, it does require an obligation. Mayeroff claimed the act of caring needs to be

directed towards a specific someone or something, whether that is a person, a community

or an idea. Caring, for Mayeroff, has the significant primary function of providing a

holistic perspective to a person's life and ordering the knowledge that one has acquired to

aid in "helping the other grow" (p. 21).

The Dalai Lama described the importance of expressing care and compassion to

others:

> The more we care for the happiness of others, the greater our own sense of well-
> being becomes. Cultivating a close, warm-hearted feeling for others puts the
> mind at ease. This gives us the strength to cope with any obstacles we encounter.
> It is the ultimate source of success in life. We can strive gradually to become
> more compassionate, we can develop both genuine sympathy for others' suffering
> and the will to help remove their pain. (Dalai Lama, 2009).

Caring is a responsibility each of us carries for other human beings. Caring offers hope to others and provides a means for those who are disempowered to find value and worth. In many countries, women have been the victims of this disempowerment and it is their knowledge and voice that needs to heard in order to restore justice (United Nations, 2009)**.**

Caring and Women

Women and children constitute the majority of the population living in poverty. Additionally, women have the highest rates of illiteracy worldwide, and yet contribute significantly to the economic stability of the family, and subsequently to society in general. "In many countries, the transition to market economy is contributing to the feminization of poverty, denying hundreds of millions of girls and women basic education, public voice and access to economic resources" (UNICEF, 2003).

Women and girls are frequently the victims of sexual and domestic violence. The United Nations Development Fund for Women (UNIFEM) claimed "violence against women and girls has far-reaching consequences, harming families and communities. For women and girls 16 to 44 years old, violence is a major cause of death and disability" (UNIFEM, 2009). It is reprehensible that the gender population that provides the majority of the caring duties, including food production in the world, is targeted and suffers the most from violence. To add to this tragic disparity, and "despite women's critical role in agriculture, their access to education, and their representation in research, extension, and other support services is woefully inadequate" (WCED, 1991, p. 140). Noddings (1989) wrote, "because women's work, attitudes, and ways of thinking have been despised, men have avoided the sort of experience common to women" (p. 221).

Caring has become associated with something women do and not considered a universal obligation. Care theory tasks women to re-evaluate their role in society and their obligations of shouldering all of the responsibility for caring for others. According to Houston (1989), women face a fourfold struggle:

1. A struggle to determine the worthiness both of society's expectations that we as woman care for others, and of society's views about how we as women should care for others;
2. A struggle to solve as yet unresolved moral problems concerning conflicting responsibilities to oneself (as a woman) and to others, a conflict concerning the boundary between what is morally required and what is supererogatory;
3. A struggle to articulate responsibilities, values, and ways of thinking that have not been articulated in influential ethical theories and are not publicly confirmed; and it is finally, and most poignantly; and
4. A struggle to know our own moral worth in a society that systematically denies it. (p. 97)

These struggles, carefully articulated, but difficult to change, are the same struggles described by Gilligan (1993), Noddings (2003), and Seigfried (1989). Women's association with caring has been intertwined with an assumed obligation to provide care. Recognizing care as a human characteristic and compassion as a human virtue strengthens the potential for stronger interconnections with others. Women have devalued their abilities, unintentionally allowing themselves to be oppressed and then internalizing that oppression. Challenging the barriers, self-imposed or imposed by patriarchy, will, amongst other things, allow care to be viewed as a humanistic and holistic responsibility for both women and men. Our humanity, not our gender, requires that we care for all individuals.

Care and Gender

Gender is a social construct. The male gender has historically been equated with the concept of righteousness and what is considered the morally good. Women, on the

hand, have been associated with evil, with evil being defined as "disobedience of the patriarch" (Noddings, 1989, p. 228). This puts women in a unique, analytical position. "The experience of subordination can produce wisdom," where women have accepted this role and, at the same time, "are in a peculiarly advantageous position to examine evil because they have been treated as 'the other'" (de Beauvoir as cited in Noddings, 1989, p. 228). Gilligan (1993) addressed this dichotomy in her research on women's moral reasoning:

> Thus women's psychology reflects both sides of relationships of interdependence and the range of moral possibilities to which such relationships give rise. Women, therefore, are ideally situated to observe the potential in human connection both for care and for oppression. (p. 168)

Developing a feminine perspective for the human morality of good through the examination of the morality of evil that has been unfairly projected upon women would highlight the manipulation of "leaders and governments [who] project evil onto other human beings called enemies" (Noddings, 1989, p. 230). Care theory seeks to dismantle the artificial blockades we attach to groups that can lead to conflict and violence. "Thus, an ethic of care must, in the context of social and political relations, seek to uncover the relationships which exist among and within groups, while, at the same time, maintaining a critical stance towards those relations" (Robinson, 1999, p. 30). Clement wrote "the fact that we do not know the individual particularities of the members of a group, [should] not prevent us from focusing on the group's special needs in making public policy" (Clement, 1996, p. 80).

In her essay entitled "Caring," Noddings (1989) posited that women approach morality as being inherent in the act of sentiment. Furthermore, she claimed there are two sentiments, one of natural caring and one of ethical caring. Natural caring is

biological and occurs naturally; we care because we want to, such as in the caretaking of a child or a loved one. Ethical care occurs because of our remembrances from when we were naturally cared for, and therefore, we feel inclined to care for others. Taylor (2007), in his seminal writings on secularism, wrote that individuals have an innate tendency to make decisions that ultimately affect others according to feelings for the common good: "Our innate feelings of sympathy ensure that we will not be actuated here merely by our own happiness, but rather by general utility" (p. 581). We are moral beings and are naturally inclined towards doing good for others. Though there is also the "propensity to violence," that violence originates from a primal impulse to satisfy basic, biological needs. When we attain a higher level of existence, our actions have a more deliberate objective and become more "meaningful" (Taylor, 2007, p. 658) in their intention. According to Noddings (1995), "the source of ethical behavior is, then, in twin sentiments—one that feels directly for the other and one that feels for and with that best self, who may accept and sustain the initial feeling rather than reject it" (p. 10).

Waithe (1989) wrote the divide between justice and caring has historically been gendered. Women philosophers have attempted to develop a "gendered undifferentiated view that holds 'care' and 'justice' as mutually dependent constructs at the level of theory" (p. 4). She noted, however, that "at the level of social practice, acts of 'caring' are attributed to women, and acts of 'justice' are attributed to men" (Waithe, 1989, p. 4). Certain caring activities have been gender dictated by society. And, often this distinction is motivated by the biological differences, and the subsequent activities, between women and men. Women are responsible for childbearing. However, this does not make them ill-equipped for decision-making in issues of justice and moral reasoning. Nor does it

imply that men are incapable of caring actions. "An ethic of care is not grounded in 'women's nature,' nor is an ethnic of justice grounded in 'man's nature.' Rather, care and justice are equally grounded in 'human nature'" (Waithe,1989, p. 7).

Gilligan saws the dichotomy between the way women and men envision care as an interpretation of the obligation within relationships.

> For men, the moral imperative appears rather as an injunction to respect the rights of others and thus protect from interference the rights to life and self-fulfillment . . . men initially conceive obligation to others negatively in terms of non-interference. For women, the integration of rights and responsibilities takes place through an understanding of the psychological logic of relationships.
> (Gilligan, 1993, p. 100)

Seigfried (1989) believed the discourse on caring and justice needs to move beyond the realm of gender and focus on social situations. By focusing on gender and gender roles, the stereotyping of women in positions of service and subordination are reinforced. How women and men are socialized reflects on their access to power. In a world in which women are exploited and dominated precisely through socializing them to unilaterally care for and service men and men's interests, it is not enough to try to educate men to also care. Women have to reconsider and re-evaluate their commitment to caring and learn to develop a strong sense of self and be motivated "to correct injustices they suffer" (Seigfried, 1989, p. 78).

Caring for the Other

Care theory clearly and distinctively describes why caring for others, especially those we do not know and probably will never meet, is important and vital to the establishment of policy and the resolution of new and evolving social issues. Taylor (2007) wrote:

The alleged extension of sympathy with civilizational development and wider contact is just a fact about us; what it doesn't account for is our sense that there is something higher, nobler, more fully human about universal sympathy. It is this sense of universal solidarity as higher, which can operate as a moral source; helping us set aside extraneous motivations, and inspiring us to act. (p. 694)

The essential needs of all people are not the same. Different levels of care and different types of need exist, and those in need of assistance are generally the foremost authority to adequately communicate and evaluate these. Wrote Robinson (1999), "it should not be taken for granted that we know how to care for others; care ethics involves learning how to listen and be attentive and responsive to the needs and suffering of others" (p. 30). To do otherwise could risk cultivating an agenda outside of the original intention of providing assistance. Seigfried (1989) wrote:

We often misjudge the significance of lives different from our own . . . this congenital blindness toward feelings of people and creatures different than ourselves is the greatest obstacle to the ethical life. Without this basic sympathy we would have no motive for attributing an ideality to a way of life alien to our own. (pp. 80-81)

Care ethics requires an understanding of an individual's cultural heritage and the unique needs of a person, so as to fully understand the reasoning and motivation behind the behaviors and corresponding actions of an individual and the community within whih she or he lives. However, Engster (2007) maintained "whatever people do to help individuals satisfy their vital biological and developmental needs, and however they do it, may be defined as caring" (p. 34). There does appear to be some conflict between Engster's "doing whatever" to satisfy need and being culturally respectful and diligent in assessing actual need. "The ethic of care and responsibility" according to Eisenberg, Fabes, and Shea (1989) "develops from the individual's feelings of interconnectedness with others" (p. 127). Socializing individuals to focus and care for others requires a re-

evaluation of how caring and caring relationships are developed and experienced. As it

exists now, "females, in comparison to males, would be expected to be more other-

oriented in their moral judgments and more sympathetic to the plight or concerns of

others" (p. 127). Ruddick (1989) claimed women have a maternal way of thinking that

incorporates "control, vulnerability, 'nature', storytelling, and attentive love; [this

thinking develops from] distinctive ways of knowing and criteria of truth [that] arise out

of practices" (pp. 12-13). Robinson (as cited in Engster, 2007) suggested two principles

as guidelines for caring for distant others:

1. The goal of caring should be to enable individuals and families as much as
   possible to care for themselves or to return as quickly as possible to a
   condition where they can care for themselves without outside support. No
   policy or program should function to promote the long-term dependency of
   individuals on foreign aid or undermine the stability and safety of a region.
2. Local peoples and governments should be involved as much as possible in the
   formulation and implementation of programs intended to help them. Donor
   governments and aid organizations should form partnering relationships with
   local peoples and governments that allow the latter wide scope in determinine
   the programs and policies best suited to meet their needs. (p. 182)

Caring is a vital ethic to both the survival of individuals and the well-being of

community. Wrote Robinson (1999):

Given the scope and intensity of injustice and human suffering in the global
context today, no serious approach to international ethic can ignore injustice . . .
we must consider seriously how all moral agents can learn to care about the needs
of real others and how healthy social relations, both within and between
communities, might best be maintained and promoted. (p. 127)

One of the most serious problems many people face, both in the developed and

the developing world, is poverty. There are many reasons why poverty and disparity

exists, nonetheless, providing for the basic needs of others is a responsibility we all share.

Harlem Brundtland (2002) expressed concern over the global poverty crisis when she

stated "poverty persists and its victims multiply . . . such inequalities [between societies]

represent great difference not merely in the quality of life today, but also in the capacity of societies to improve their quality of life in the future" (p. 29). Poverty is a significant and serious problem for societies as it is a relational problem that links individual, community, and the global world. Young Kang (2008) maintained poverty is "interrelated with other issues such as economics, politics, social status, health, education, and human relationships" (p. 125) and trying to leave poverty involves more than just stable financial resources. The support of the community and relationships with others assists in the "survival, development, and social functioning" (Engster, 2007, p. 7) of an individual. There are, according to Engster, universal activities all people need for their survival—and these are the needs Engster maintained we are obligated to meet.

Harlem Brundtland described essential universal needs as those of "food, clothing, shelter, jobs . . . and an improved quality of life" (WCED, 1991, p. 43) and to obtain these required significant cooperation and commitment on the part of all governments of the world. This would involve countries offering to assist other countries with appropriate services and supplies, not just excess commodities, outdated technology, and unwanted materials. It would require a deliberate and sincere act of caring.

Caring often negotiates an ambiguous space between asking what is needed, qualifying and quantify what is needed through expertise, availability and personal experience, and finally, offering something in between. Gilligan (1993) wrote that sometimes an individual must make a difficult choice in deciding how to meet the needs of the other. Caring does not mean that someone is not going to be prevented from being hurt. Sometimes it is necessary to make a determination on whose need is greater and

whether the risk for future harm is greater than the present action. It would make little

sense to give away one's own rent money to someone in need, if it creates a hardship for

one's own family. "Responsibility for care then includes both self and other, and the

injunction not to hurt, freed from conventional constraints, sustains the ideal of care

while focusing the reality of choice" (Gilligan, 1993, p. 95).

Mayeroff (1971) also wrote of the seemingly duplicitous view of caring and non-

action:

> I cannot care by sheer habit; I must be able to learn from my past. . . . In caring
> for a person, for instance, there are times when I do not inject myself into the
> situation, I do not take a stand one way or the other, I do "nothing." And when I
> undergo this "inactivity," I see what resulted from it and may change my behavior
> accordingly. (p. 22)

Mayeroff qualified his philosophy even further by explaining that caring implies that

one's relationship with the other must be exempt from a biased opinion of need and of

assumptions of what the other requires for personal and intellectual growth. It also

requires a genuine authenticity and trust. "Pretending to be what I am not interferes with

being able to relate to the other as an individual in its own right" (Mayeroff, 1971, p. 26)

and trust that their knowledge of what they need to grow is accurate and true. Mayeroff

continued by stating, "preoccupation with whether my actions are correct indicates lack

of trust in myself and, in focusing attention on myself, makes for further indifference to

the needs of the other" (p. 29).

Buber (1958) expanded on this idea in his work. Buber believed that "life is

meeting" (p. 60) and that one must be willing to accept the other just as they are without

expectation. He saw dependency in terms of polarities and the influence that one can have on the other is to strengthen "or help strengthen, the one positive pole . . . make a decisive difference in his [her] potentiality" (Buber, 1958, pp. 60-61).

Expressing concern for others is a valuable virtue (Oliner & Oliner, 1988). Fostering the growth and development of another human being shows compassion and caring and consequently allows for relationships to become established. "How are individuals in the real world to be persuaded or made to act in the common interest?" asks Harlem Brundtland (as cited in WCED, 1991, p. 46). Providing assistance in times of need, including educational opportunities and fairness in justice decreases the disparity and strengthens community (Braithwaite, 2002; WCED, 1991).

Caring and Justice

Elliott (2007) offered an insightful essay on the prison system and the concept of caring. Her conclusion was that restorative practices are not compatible with prison systems and caring is only applicable in the education process. According to Elliott:

> Restorative justice is predicated on values of care and attachment while the values of correctional systems are predicated on detachment and separation. They are first and foremost concerned with security, detachment, and separation—that is, no-care. . . . Our conclusion, then, must be that the prison is an unlikely venue for the cultivation of restorative justice values and principles. (p. 203)

Elliott's stark assessment of the prison system is disturbing. However, she makes one very significant point when she quotes an excerpt from Rupert Ross. In commenting about the western system of justice, an indigenous individual admonished the 100-year history of the prison system as being nonproductive. The individual stated that it would be appropriate to offer caring assistance (restorative justice) instead of prison as the offender will still need intervention once released, only the task will be even more

difficult because of the environment the offender has been subjected to for an extended period of time (Ross as cited in Elliott, 2007).

Strike and Soltis (1999) described one of the conflicts that the educational system confronts between justice and caring. It is markedly relevant to the philosophical ideals in other institutions and organizations. "Justice is seen too often shouldering care aside, as treating it as an irrelevance, of preferring civic life to family life and personal relationships" (p. 171). Strike and Soltis's views differ from many of their contemporary scholars. They posited:

> The essential direction of the feminist critique has considerable force, and we owe the scholars who have developed it a debt for reminding us that human life is not lived exclusively in the public sphere and that no view which excludes relationships, family, nurturance, or children can be adequate. When justice is construed so as to shoulder these values aside, it is more vice than virtue.
> (p. 168)

It seems prudent that an additional attribute be added to care ethics and that is the concept of justice. "Justice is the enemy of poverty and alienation, and the friend of community, solidarity, and relationship. Justice is caring's handmaiden and compatriot" (Strike & Soltis, 1999, p. 169). Caring is often an implied concept in justice theory. Being fairly treated within society and by society certainly impacts one's "survival, development, and social functioning" (Engster, 2007, p. 7). How can justice be carried out fairly if there is no caring concern for others? "In thinking about the difference between justice and care, perhaps we would do well to remember that theorizing about justice, is in fact, a response to the existence of injustice in the world" (Robinson, 1999, p. 26). Furthermore, "to prevent conflict, crime, injustice, we need an ethic of care and its recognition of the importance of human connection in helping avoid injustice" (Robinson, 1999, p. 29).

Traditionally, the concept of care in a justice tradition equates to mercy and leniency in retribution. Decisions concerning the other's life must have a moral element to the reasoning. Arbitrary decision-making, which ignores moral reasoning is damaging to both the individual and the community. Waithe (1989) wrote:

> Moral philosophy in general, and the virtue tradition in particular has consistently held that although we can speak about care as something different from justice, we cannot speak about virtuous or morally right action unless we are speaking about action, which is both, motivated by care and concern, and which is just. (p. 5)

Ruddick (1989), in her theory of care ethics, includes the renunciation of violence and a resistance to governmental policies that oppress and encourage tyranny and bigotry. She supported policies of peace, understanding, and reconciliation and caring governments that support these practices.

Gilligan's (1993) research centered moral development in a situational framework. For Gilligan:

> The moral problem arises from conflicting responsibilities rather than from competing rights and requires for its resolution a mode of thinking that is contextual and narrative rather than formal and abstract. This conception of morality as concerned with care centers moral development around understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules. (p. 19)

The emphasis women place on relationships, and their perception of how those relationships are constructed, is determined by the distribution of power and the perceived hierarchy and inequalities observed. "Since relationships, when cast in the image of hierarchy, appear inherently unstable and morally problematic, their transposition into the image of web changes an order of inequality into a structure of interconnection" (p. 62).

Engster (2007) avoided the issue of moral development in his definition of care theory. His focus centered on biological needs. I understand Engster's desire to be minimal in his definition, especially when attempting to generalize a theory that has as its core human behavior and motivation; however, the absence of specific language concerning education and justice as basic needs in modern society is problematic, as this also ignores the issue of power inequality. It is possible that the term *development* in the definition that Engster provided for caring implies education for those individuals living in societies that value it for its citizenry. In societies that consider illiteracy a reason for oppressive actions, especially towards women, it seems appropriate to include literacy as a basic need. Engster alluded to security as a basic need, however he failed to include fairness and reconciliation in judicial proceedings as a basic need for social functioning.

Trust within a community is an important aspect of social functioning. Respectful discourse, inclusive governance, and just decision-making allow for community cohesion and capacity building. In societies where significant wealth disparities exist, the poor are often the victims of unjust actions (WCED, 1991). Unfair legal treatment has repercussions beyond the individual. It affects families and the community as well. Families of imprisoned or confined individuals may become impoverished and unable to obtain the vital and basic necessities for "survival, development, and social functioning" (Engster, 2007, p. 7). Communities become the provider and, in most cases, the community is at a deficit for resources as well. Providing education and adopting restorative justice practices, especially for women, may help maintain the stability of families, as well as enable communities to become stronger advocacy and informational sources.

Care and Action

According to research conducted by Engster (2007), there are three core virtues to care ethics: "attentiveness, responsiveness, and respect" (p. 31). In addition, Braithwaite (2002) claimed restorative justice has similar values: "restoring security, dignity, democracy, harmony, and empowerment, both in a personal and a social capacity" (p. 12). I found from reading articles in the subject area of restorative justice, each of these tenets is also necessary for the fair and just implementation of a restorative justice system. To determine if an action is caring or not, Engster suggested the act be evaluated on its intention and its ability to satisfy a biological need. In the industrialized world, many of the caring activities are provided through paid workers; nonetheless, this does not negate the intention behind the action. If someone is in need of attention for malnutrition or illness, whether the individual receives care directly from a concerned individual or through the services of a paid agency, the need is still being met. Engster's second tenet of responsiveness involves the attentiveness of the caregiver in making sure the care being provided to an individual or individuals is appropriate and effective. If a country devastated by a natural disaster receives donations of clothing, when, instead, it needs fresh water and medical supplies, then the care is misguided and not responsive to the caring needs of the individuals. Engster identified respect as the final tenet of caring and defined it as:

> Simply the recognition that others are worthy of our attention and responsiveness, are presumed capable of understanding and expressing their needs and are not lesser beings just because they have needs they cannot meet on their own.
> (p. 31)

How does one fulfill their obligation to care? Noddings (2003) described both a natural and ethical sentiment for caring, one that involves caring for those in one's own immediate realm of relationships and one that involves the other, individuals not familiar to the caregiver. "Personal care is the paradigmatic case of caring, and may also include supervising and financially supporting an individual's personal care" (p. 35). Care may involve providing the necessary resources for other caregivers to care for an individual. This way of providing care supports both the caregiver and the carereceiver. Though this lacks personal involvement, the needs of the other are still being provided for. Lastly, supporting organizations and agencies that provide appropriate aid to individuals in need is a way, albeit distant, to fulfill one's obligation to care. Per Engster (2007), "in collective caring, our contribution is smaller and more diffuse, but still counts as caring insofar as the direct aim remains helping individuals to meet their biological and developmental needs in attentive, responsive, and respectful ways" (p. 36).

Those individuals, who personally lack the motivation to care for others, can fulfill their obligation by supporting agencies that provide care. This obligation to care justifies the establishment of caring agencies and the development of social and governmental policies of social practice. There are some basic needs that require the involvement of governmental agencies, for example in situations of security and safety. Nonetheless, an obligation of care encourages moral reasoning and prosocial and ethical behavior. Cultivating compassion and empathy for the other, a lesson begun by the nurturing activities of the maternal bond, encourages a greater awareness of need and of our impact on the lives of others and establishes a "duty of care for others" (Baier as cited in Engster, 2007, p. 39). In the 2010 Charter for Compassion, the authors stated:

Compassion impels us to work tirelessly to alleviate the suffering of our fellow creatures, to dethrone ourselves from the centre of our world and put another there, and to honour the inviolable sanctity of every single human being, treating everybody, without exception, with absolute justice, equity and respect. It is also necessary in both public and private life to refrain consistently and empathically from inflicting pain. To act or speak violently out of spite, chauvinism, or self-interest, to impoverish, exploit or deny basic rights to anybody, and to incite hatred by denigrating others—even our enemies—is a denial of our common humanity.

Care theorists believe sympathy and compassion are innate characteristics of all individuals; however, these qualities must be modeled and cultivated in the young to influence behavior. Research conducted by Oliner and Oliner (1988) suggested certain individuals possess personality traits that make them more inclined to practice caring activities. These traits, according to Oliner and Oliner, are nurtured during a child's upbringing. Researchers have confirmed the findings of Oliner and Oliner. Parents that model caring values pass these same values onto their children. Parents who adopt "forms of discipline that call a child's attention to the harm he or she has done to others, highlight the feelings or needs of others, and encourage children to make reparations to those whom they have harmed" (Engster, 2007, p. 209). This is the premise behind restorative justice, which will be discussed in chapter 3.

Engster (2007) supported the establishment of governmental agencies to regulate who requires care and how individuals can adequately fulfill their obligation to care. According to Engster:

The government can establish general standards of fairness designating how much individuals should be expected to the care of others and can use the threat of force if necessary to compel compliance with these standards. A purely private approach to caring, by contrast, would allow some immoral or misguided individuals to avoid contributing their fair share to the care of needy individuals, thereby diminishing the quality and quantity of caring for many people throughout society. (p. 74)

It would, claimed Engster, be appropriate for the government to designate community organizers and organizations to implement caring activities and establish liaisons between caregivers and care receivers. The government could offer financial support and subsidize agencies to provide individualized local assistance to communities. Engster listed the attributes of a caring government:

1. To help individuals to meet their basic needs for nourishment, sanitary water, clothes, shelter, basic medical care, a clean environment, rest, and protection from physical harm when they cannot reasonably meet these needs on their own;
2. To help individuals to develop and sustain their basic capabilities for sensation, mobility, emotion, imagination, reason, communication, affiliation, literacy, and numeracy when they cannot reasonably achieve these goal on their own; and
3. To help individuals to avoid and alleviate unnecessary pain and suffering when they need help in meeting this goal. (p. 76)

Braithwaite (2002) claimed a restorative justice process can have significant success both in rehabilitation and can build "individual, community, and bureaucratic commitment to do what is needed" (p. 97). He continued by stating five reasons restorative justice offers "greater success than programs grounded in welfarist models of monopoly state provision" (p. 97):

1. Restorative justice can build motivation.
2. Restorative justice can mobilize resources.
3. Restorative justice reinforces the social cognitive principles that have been shown to be hallmarks of effective rehabilitation programs.
4. Restorative justice can foster plural deliberation that delivers "responsivity."
5. Restorative justice can improve follow-through. (p. 97)

The importance of Braithwaite's theory is the relational aspect between participants. Building relationships assists in strengthening feelings of confidence, empowerment, and security (Strang & Braithwaite, 2000).

Though I understand Engster's (2007) desire to establish formal caring agencies, it also seems problematic to have a single entity—the government—be the sole determinate of how basic care is defined, who is in need of care, how the caring needs of individuals are to be met, who the caregivers will be, and how individuals are to meet their obligations of caring. I understand Engster's concern for immoral private caregivers; however, trusting an impersonal governmental institution seems equally as problematic when deciding issues of moral obligation. The establishment of a caring government would take a considerable amount of research, public support, and financial resources, as well as a re-evaluation of existing national and international policies. Even Engster admitted countries that practice capitalist activities "tend to penalize individuals who engage in caring activities" (p. 130). Care theory, by contrast, tries to meet the needs of individuals, rather than pursue profits at their expense. It would appear governmental support, through grants and other financial sources, of independent agencies that mandate specific outcomes might be a more realistic possibility.

Engster (2007), in an attempt to distinguish between individual and group obligation of care-giving/receiving wrote:

> It is therefore to individuals that we own care. The group exists in care theory to support individuals and not the other way around. Care theory's notion of interdependency can be contrasted in this regard with the idea of collectivism: interdependency recognizes the dependency of individuals upon one another for care, and supports a theory of community and politics resting upon caring relationships. Collectivism, by contrast, subordinates individuals to an already existent and usually abstract ideal of community. (p. 99)

My concern is, by having the government control and mandate the caring policies, care would be dictated by decision-making for the benefit of the majority, even though significant numbers of individuals would not necessarily be in need of services. Both

restorative justice and care practices need to be attentive to the members of individual communities, both for social policies and restorative justice programs. This communal process is both respectful of community ethnicities and cultures, and specific needs.

Caring Relationships

The terms caring *for* and caring *about* possess two different meanings. Noddings (2003) made an important point: "Caring is a relationship that contains another, the cared-for . . . [T]he one-caring and the cared-for are reciprocally dependent" (p. 58). Caring about the welfare of an individual implies an emotional relationship; whereas, caring for implies a detached, neutral, yet practical activity. Care ethics does not require there be an emotional connection between the caregiver and the care receiver. If it did, the full scope of an individual's caring would extend only to a familiar circle. "The idea that emotional affection is inherent to caring practices appears to be rooted in a particularly Western and sentimentalized ideal of caring relationships" (Engster, 2007, p. 34). It is important that the caring obligation extend to others that are not part of an individual's familiar circle because in today's global economy, the other is just a keystroke away and can be impacted by a trip to the retail store by way of our consumer habits. Engster wrote, "it is our dependency on others rather than their vulnerability to us that ultimately grounds our obligation to care for them" (p. 40).

Women in developing countries (referring to those countries whose economies are attempting to emerge and compete on the global market) are most affected by the inequalities of power, education, and economic opportunities. Women experience poverty differently than men, yet they are primarily responsible for the caring of family and community. Increasing the education opportunities for women is the "cornerstone of

poverty reduction" (Diamanka & Godwyll, 2008, p. 136). In societies that devalue women's abilities, obstacles exist preventing women from entering professional careers. Research indicates that women who are educated have fewer children, thus reducing the population crisis. Harlem Brundtland (as cited in WCED, 1991) addressed this: "Fertility rates fall as women's employment opportunities outside the home and farm, their access to education, and their age at marriage all rise. . . . Poverty breeds high rates of population growth" (p. 106). Because of society's assignment of caring activities onto women, especially in developing countries, young girls are frequently tasked with caring for those individuals suffering from the epidemic AIDS infection. Not only does this prevent girls from completing their education, it also exposes them to higher rates of infection from these diseases.

Women with little to no education are confined to low level jobs and a low status in their community. According to Diamanka and Godwyll (2008), there is a "strong relationship between children's achievements and their parents' level of education, especially their mothers' education" (p. 143). In agreement with this statement, Miller (2008) claimed "education provides women with the necessary tools to make informed decisions about their health . . . [they] tend to marry and have their children later in life . . . and have greater prospects for employment" (p. 165). Parents who have had the resources to raise happy and well-adjusted children perform a service, not only to the child, but also to the community, future employers, and society in general. Supporting the caring capabilities of parents in general, and women in general contributes to society as a public good.

We all depend on the care of parents, friends, and professionals for our

development and survival.

> We likewise depend upon the care these figures give, or have given, to others in our social environment for our social existence and well-being. We may therefore all be said to have a duty to contribute our fair share to the cooperative scheme of caring. (Engster, 2007, p. 45).

The first introduction to caring is usually initiated with the maternal bond and

cultivated in the child by the nurturing and responsiveness of the parents (Ruddick,

1989). If resources from reliable child development sources are made available to

parents, it may encourage and support parents to develop the attachments necessary for a

caring relationship. If women are furnished with the resources they need to provide

appropriate care, including educational, medical, and nutritional resources, they will be

able to care more effectively for their children and others. In addition, educational

systems founded on an ethics of care and encouraging sympathy, compassion, and

cooperation, as well as peaceful and mutual acceptance of difference have been

successful in countries, especially if they are supported by the government and accessible

to all children (Braithwaite, 2002).

Caring Rights

Engster (2007) provided the following list of caring rights [abridged]:

1. All individuals have the right to physical security . . . including due process and a fair trial.
2. All individuals have the right to food, sanitary water, clothing, shelter, basic medical care, a clean environment, and rest at levels adequate to survive, develop, and function.
3. All individuals have the right to the personal and social care necessary to develop and sustain their basic capabilities for sensation, mobility, emotion, imagination, reason, communication, affiliation, literacy, and numeracy at levels adequate to function in society.
4. All individuals have the right to work and earn a living sufficient to satisfy the biological and developmental needs of themselves and their dependents.

5. All individuals have the right to care for their dependents and themselves without undue interference from work or other sources. Individuals should be offered subsidized work leaves to care for new children, sick relations, or themselves.
6. All individuals have the right to a safe workplace.
7. All individuals have the right to unemployment and disability insurance.
8. All individuals have the right to protection against discrimination on the basis of race, sex, sexual orientation, religion, caste, ethnicity, or national origin.
9. All individuals have the right to a responsive government.
   All individuals have the right to enter into relationships free from coercion. Slavery and indentured servitude as well as forced and underage marriages should be prohibited. (pp. 169-170)

I observed from my readings on care theory that most of the research on caring has its roots in feminist philosophy and developed within the field of education. Much can be borrowed from this research, and with its integrity maintained be appropriated for the argument to support the education and social empowerment of women. Care theory also correlates positively with the principles of restorative justice, as we shall discover in chapter 3.

> The benefits of freedom gained through forgiveness
>   are foremost my own.
> I needed to recover my lost humanity, my love of others
>   and of myself.
> As I shared my pain with others and expressed my
>   struggle to forgive,
> I regained a sense of inner peace and compassion.
> (Solomon Nsabiyera Gasana, "Confronting Conflict and Poverty Through Trauma Healing," as cited in Clark & Kaufman, 2009, p. 101)

Chapter III: Traditional Justice

This chapter discusses a selection of early justice philosophies that have been influential on the current Western judicial processes. The information presented is a very brief and basic overview of some of the early thoughts on social obligation, punishment, social contract, and citizens' rights. It is not intended to provide an in depth study of these philosophies, as that is well beyond the scope of this paper and the expertise of the writer. Instead, it serves to provide a tapered introduction of the nascent ideas that shaped modern day justice. Restorative justice literature focuses on the grassroots efforts of community leaders. It is not embedded in political theory.

Several indigenous justice systems are examined along with their application to modern justice systems. In addition, the chapter introduces several restorative justice systems that are demonstrating success as an alternative justice process.

Early Justice Philosophers

Plato believed "justice [was] the highest goal of political life because it enabled everyone to fully realize themselves, to fulfill their true nature" (Tannenbaum & Schultz, 1998, p. 35). Furthermore, he believed justice to be dependent on logic and reasoned debate and only through intellectual discussion could the ultimate truth be determined. Those individuals in the highest levels of society, the most educated, were the only ones that could decide on the attributes of justice. Plato understood the world as being fluid and changing; therefore, the only real constant for him was the forms found in nature. For Plato "all physical objects [were] merely the appearances the forms emit. Furthermore, all matter has an ideal form—humans, city-states, even justice" (Tannenbaum & Schultz, 1998, p. 35). To understand the "form of true justice"

(Tannenbaum & Schultz, 1998, p. 36) required the knowledge of the truly learned, the philosophers.

Aristotle was a student of Plato's. Unlike Plato, Aristotle was interested in community. For him, the community was the focus of civil life.

> To be human, is by definition to be part of a community . . . the community that follows the golden mean, avoiding extremes provides the necessary conditions for each person's search for the good life. These conditions include meeting basic material needs as well as friendship and political stability. (Tannenbaum & Schultz, 1998, p. 50).

Aristotle's views on community are very similar to the tenets of care theory and restorative justice.

Niccole Machiavelli's (as cited in Tannebaum & Schultz, 1998) concept of justice was based on the scientific evidence discovered during the Renaissance period. According to Tannenbaum and Schultz (1998), Machiavelli believed:

> Individuals must reject what they might ought to be for what is, shun ends for means, and avoid the appearance of vice, not vice itself. People should be miserly rather than liberal, feared rather than loved, and faithless and deceptive, even violent, if necessary to achieve important goals. (p. 109)

Justice, for Machiavelli, was retributive and severe.

In December of 1689, John Locke (as cited in Nidditch, 1975) published an essay entitled, *An Essay Concerning Human Understanding.* In several chapters, Locke discussed his concept of justice, which he viewed as a universal truth, a natural law with natural consequences. Locke wrote "Justice and Truth are the common ties of Society" (as cited in Nidditch, 1975, p. 67). Just as in physics, there was an order and a consequence to any action. Locke believed institutions often established rules and laws contradictory to the natural law of justice and truth.

Immanuel Kant (as cited in Tannebaum & Schultz, 1998) believed in the necessity for retributive justice in order for civil society to be maintained. Kant supported the idea of a social contract, which regulated society and maintained order. In accordance with this contract, "human freedom [was] the first principle of a constitution, and that individual freedom, or autonomy, [was] a necessary presupposition" (Tannenbaum & Schultz, 1998, p. 224). This ability to make free decisions was the only way an individual could be held accountable for his or her actions. "Freedom does not include disobeying authority" (p. 222). If an individual committed a crime, punishment, according to Kant, was an absolute necessity. "If justice goes," Kant wrote in 1797, "there is no longer any value in men's living on the earth" (as cited in Law Library, 2010).

Thomas Hobbes (as cited in Tannebaum & Schultz, 1998) believed man was always in competition with other men. Men desired things, not because of need, but because others desired the same items. For Hobbes, it was rational for a government to control society so as to prevent man from destroying man for material gain and power. Hobbes also exhibited a contradictory view of women. He claimed that "in the state of nature men and women are equal, with children remaining the birthright of women;" however, in the political realm, "women were excluded from politics, birthright switched to the husband, and wives were subordinated to their husbands" (Tannenbaum & Schultz, 1998, p. 204).

John Locke (as cited in Tannebaum & Schultz, 1998), in contrast to Hobbes, claimed individuals should only possess enough material items as needed for existence. However, he also believed that humans were basically selfish and greedy. His theory of

justice focused on the social contract, which requires members of a society to give up certain individual rights for the sake of social order. Though Locke believed:

> Most people follow their nature, acting in a moral, rational, and social manner, he also stated although most people are naturally law-abiding, it takes only a few lawbreakers to change a peaceful environment into a dangerous one . . . a benign state of nature can, suddenly and without warning become a state of war. (Tannebaum & Schultz, 1998, pp. 170-172)

It is important to note each of these philosophers considered women inferior and "passive citizens" (Tannebaum & Schultz, 1998, p. 225).

Modern Justice Philosophies

David Emile Durkheim, though not a philosopher per se, was a social critic and the founder of the academic discipline of sociology. He claimed that, at times, "the state can become too strong and develop its own pathological dimensions and capabilities" (Mukherjee, 2010, p. 48). When the state hegemony becomes too authoritarian, "the structures protecting individual values are weakened" (p. 49).

> Law, morality, and virtue are hence synonymous with the social aggregate and all that takes account of others is intrinsically moral. . . . Individualism or the duty of one towards oneself can only be rendered moral if it converges with duty and obligation towards the social body. (Mukherjee, 2010, p. 12)

Durkheim believed social cohesion was the basis of a stable and functioning society. In this state, the individuals take only what they need to subsist and are mindful of the needs of others. However, such a state is almost impossible to sustain. In order to prevent social disorder, or anomie, a symbolic force that could maintain stability and avoid violence, was needed.

Russian philosopher, Mikhail Mikhailovich Bakhtin used the term *carnival* to describe "a way of experiencing the fullness of life" (Shields, 2007, p. 1). Bakhtin believed the ancient public square was beneficial for civil society. It provided a place

where citizens could gather to listen to philosophers teach lessons and discuss political,

religious, cultural, and legal matters. The public square was a place where people

gathered without sanction or restraint to witness all of the important events in daily life"

(Shields, 2007, p. 102). For Bakhtin, "Participation [was the] basis of success [and]

creates a mode of interrelationship among those who participate and new ways of being

of helping people to see alternatives of possibility and justice" (pp. 102-104). Bakhtin

saw communication, dialogue, and participation as opposed to rules and uncaring

practices as the means to interact constructively and form new relationships with others—

especially those we normally would not encounter and build infrastructures of

cooperation, learning, and fairness.

Mortimer Adler (1981) believed justice to be one of the supreme, sovereign goods

of society. However, "only justice is an unlimited good . . . no society can be too just; no

individual can act more justly than is good for him or his fellowmen" (p. 137). Justice,

according to Adler, dictates the pursuit of liberty, equality, and truth. Adler claimed there

are two domains of justice, one for the interactions of individuals between themselves

and the other for the governance of the state, its politics, and its laws. Adler disagreed

with Immanuel Kant's philosophy that an individual's rights takes precedence over what

is good. Adler claimed:

> Real goods, based on natural needs are convertible into natural rights, based on
> those same needs. To wrong another person is to violate his natural right to some
> real good, thereby depriving him of its possession and consequently impeding or
> interfering with his pursuit of happiness. To wrong or injure him in this way is
> the paradigm of one individual's injustice to another. (p. 187)

Discipline and punishment, for French philosopher Michel Foucault, were

actions predominantly motivated by power and control. Foucault (1995), amongst his other distinguished accomplishments, researched the historical motivation and physical acts of torture and punishment, and the subsequent establishment of the prison. His conclusions were that the acts of torture and physical punishment were a display of power for the hierarchy. The prison was instituted as a consequence to the outrage of the public over the barbaric torture and bodily disfigurements common in the eighteenth century. In the events leading to the establishment of the prison, the psychological aspects of confinement became apparent to Foucault. Now, instead of having control over one's body, as in the execution of torture, the prison allowed for the control of the mind. These procedures of power reprimanded the prisoner, and made the loss of liberty, not the loss of life, the ultimate punishment. "By levying on the time of the prisoner, the prison seems to express in concrete terms the idea that the offence has injured, beyond the victim, society as a whole" (Foucault, 1995, p. 232). The prison was to transform the individual and make them worthy to live in society in the future. The prison was "a form of legal detention entrusted with an additional corrective task, or an enterprise for reforming individuals that the deprivation of liberty allowed to function in the legal system" (p. 233).

The aim of justice, according to Rawls (1999) is to establish a mutually acceptable ordered association for human society. Though there is much disagreement about what the order would be, there is a general consensus that there needs to be "a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation" (Rawls, 1999, p. 5). Rawls equated justice with the idea of fairness, in the

sense that it is an agreed upon association. The challenge of this principle is that it must

be decided, instituted, and legislated for the benefit of society by those with no vested

interest in the outcome. In addition to this definition of fairness, is the precept that

evaluations must be unbiased and free from any personal agendas. Rawls presented two

arguments:

> The first requires equality in the assignment of basic rights and duties, while the
> second holds that social and economic inequalities, for example inequalities of
> wealth and authority, are just only if they result in compensating benefits for
> everyone, and in particular for the least advantaged members of society. (p. 13)

Providing for the basic needs of all of humanity is a principle of justice. Rawls

(1999) incorporated this conceptual perspective, as well as an element of compassion and

concern in his philosophical approach to justice. Generalizing the social systems is one

of the more challenging aspects in developing a theory of justice. How to determine and

account for individual social need, or as Rawls refers to it as "social position" (pp. 82-83)

without becoming burdened by a multiplicity of "competing claims" (pp. 82-83) while

establishing a mutually acceptable policy is formidable. If "reasonable regulations to

maintain public order and security, or efficient measures for public health and safety"

(p. 83) were established, then according to Rawls, this would "promote the common

interest [and] advance the shared ends that will similarly benefit all" (p. 83). Rawls'

concept of justice would correlate with the tenets of care ethics.

A colleague and peer philosopher of Rawls is Amartya Sen. Though an admirer

of Rawl's work, Sen's theory differs from Rawl's ideas, which has only two arguments

for justice. Sen (2009) believed there are multiple reasons for differing positions and the

complexity of social institutions requires a plurality of principles. Wrote Sen:

> There are genuinely plural, and sometimes conflicting, general concerns that bear

on our understanding of justice. They need not differ in the convenient way-convenient for choice, that is-that only one such set of principles really incorporates impartiality and fairness, while the others do not. (pp. 56-57)

In addition, Sen (2009) stated justice cannot just be a principle or written policy. It must be openly practiced, so that the people can see the practical application and know fairness in justice is being administered. Sens also disagreed with Rawls' (1999) adherence to personal liberties as being the ultimate principle. Sen wrote: "Why should we regard hunger, starvation, and medical neglect to be invariably less important than the violation of any kind of personal liberty?" (p. 65). Sen also diverged from Rawls' idea of the social contract, as he believed it limits the participation of all members in society in issues of fairness and justice. Sens questioned whether global justice can actually occur.

Sen's (2009) position on plural reasons or contextual understandings concerning justice is consistent with the tenets of restorative justice. Furthermore, his perspective on practicing what one speaks is equally admirable. "A theory of justice must have something to say about the choices that are actually on offer, and not just keep us engrossed in an imagined and implausible world of unbeatable magnificence" (p. 106). Sen clearly sees justice as being composed of principles that are of value and meaning to the people they are to serve.

At this point, I think it also appropriate to introduce another modern concept of justice, advocated by Sally Engle Merry (2006). Alternative dispute resolution (ADR) has been reluctantly adopted by the modern legal system in several districts as a way of reducing the caseload of the over-burdened court system. ADR incorporates mediation, negotiation, cooperation, and conciliatory agreement. Facilitators are trained in the process and the pragmatics of mediation and are credentialed to serve in diverse agencies.

Respectful negotiations are the main focus of ADR. Merry (2006 identified eight central themes in the mediation process of ADR: "ritual of respect, repeating back the story, talking in private, withholding judgments, searching for themes, sustaining momentum and morale, formulating integrative agreements, and handling power imbalances" (as cited in Kolb, 1994, pp. 264-268). Merry stated integrating the liberalism of legal and grassroots community organizing is at the heart of ADR.

Restorative justice recognizes the needs of the present and seeks guidance from the lessons of the past. Though many indigenous communities engaged in violent and retributive acts in punishment for criminal behavior, many others recognized the value of reconciling and restoring peace so that the community could continue to function harmoniously and effectively. The following section describes some of these early societies.

Justice in Early Societies

In early society, when a person committed an infraction against another person, the dispute was generally settled between the immediate members involved and rarely involved any outside entities. A crime was seen for what it was, one person committing a violation against another person. In the earliest human societies, there existed two categories, the acephalous (non-state) and the state (Weitekamp, 2003). In the acephalous clans, conflicts were resolved within the community with an emphasis placed on restoring the entire clan life to harmony and balance. "Communities handled their own conflicts, and their primary aim was to make peace between the conflicting parties" (Johnstone, 2003, p, 12). Therefore, resolution was achieved quickly because:

> A state of unrest remained until the victim was satisfied; and because collective responsibility was combined with important social and economic ties between the

offender's group and the victim, a resolution was important for facilitating a quick
return to daily life. (Weitekamp, 2003, p. 111)

Acephalous communities tried to reestablish peaceful coexistence by encouraging

restitution and reconciliation. They functioned in a more cooperative spirit and were:

More egalitarian and most of their members had nearly equal access to material
consumption and opportunities to develop personal worth. . . . Because every
member was necessary for the life of the community, deviant members were
neither devalued nor disgraced, nor did they receive a negative label or stigma for
even a short period of time as these societies were interested in restoring the peace
as quickly as possible. (p. 113)

One significant view that acephalous clans incorporated was that misbehavior was

counter to the acceptable practices within the community and it was not only the failure

and responsibility of the person committing the misbehavior, but also that of the

community. It was encouraged, therefore, that the family and all those who were in close

contact with the offender be involved with his or her resolution of the conflict.

Restitution, in the form of a monetary or material compensation became a popular way to

appease the victim, show remorse and avoid blood revenge and feuds. In some societies,

elaborate systems were devised that specifically stated what an individual's bodily harm

was worth and the consequence of not paying full compensation. It is not difficult to see

how the emerging leaders and chiefs saw opportunity in this pecuniary system.

Eventually, the state recognized the monetary value of conflict mediation and established

control over dispute resolution and punitive compensation.

During the 12th century, the Church decided that it was responsible for the

salvation of a person's soul and therefore was rightfully in authority to decide matters of

decency and civil behavior (Johnstone, 2002). This had a significant impact on the

conception of crime. An offence against an individual was not seen as a conflict to be

decided between the victim and the offender. Instead, it was "a violation of the law of the church/state which although a bureaucratic creation, was also represented as reflection of divine law" (Johnstone, 2002, p. 173). An offending action now bore both a moral and a criminal label, and a severe penalty on both accounts was attached to the crime.

> The emerging institution of judicial punishment influenced understandings of the atonement, which in turn lent judicially imposed suffering a new authority, allowing it to be represented and understood as an analogue of divine justice. (Gorringe as cited in Johnstone, 2002, p. 174)

Later in the 12th century, the system of judicial punishment became widespread, particularly in areas of colonization (Johnstone, 2002). Eventually, offences were no longer considered crimes against a victim, but crimes against the state and restitution was paid to the state, leaving the victim virtually insignificant in the process.

The state, in an effort to provide security for the greater good, also realized the monetary benefits of punitive measures for crime prevention. Conflicts between members of society became criminalized and attention was directed *away* from the victim and placed, instead, as a matter of the state--with the state dictating punishment for the offender, not reparations for the victim. Criminal penalties were paid directly to the state and violent, punitive measures were imposed for those unable to pay. No longer a restorative system for society, the system of judicial punishment became a divisive one.

In more modern times, there was an emphasis in the 1950s and 1960s on rehabilitation and re-socialization of criminal offenders. However, these policies changed when criminologists chose to "put an end to arbitrary sentencing in the criminal justice system [which] ultimately led to longer [jail] sentences" (Boutellier, 2006, p. 27). The role of the victim also changed. Instead of policies being formulated and enacted on behalf of the victim or to aid the victim, the current punitive system was instituted

because of the victim. Public safety became the primary importance, though states did

and do receive compensation through penalties and fines paid by the offender. Offenders

are removed from society, stigmatized, in some cases for life and victims are left without

closure or restitution.

> From 1973 to 1997, there was a 500 per cent rise in the United States in the
> number of prisoners per 100,000 residents. . . . The belief in the prison system
> grew, not because of any positive effect it might have on the convicts, but as a
> way to incapacitate them and satisfy the punitive sentiment. (Boutellier, 2006,
> p. 28)

Years of research have indicated that this modern, punitive system of justice is not

effectively working (Braithwaite, 1996).

Blumstein (2007) studied incarceration rates and recidivism statistics for the past

80 years in countries that espouse to democracy. His findings have shown that

incarceration rates in the United States remained stable from 1925 to 1975,

approximately 110 per 100,000 (Blumstein, 2007. However, once Americans adopted the

then political stance of being tough on crime, incarceration in the U.S. during the 1970s

began to see:

> A rapid escalation to a level of about 500 per 100,000 over the next 30
> years. This clearly suggests a regime change from the early period of stability
> into a regime of increasing punitiveness. (p. 2)

Blumstein's research concluded that criminal activity increased in some areas, drug

trafficking, youth homicides and handgun use, due to the increase in incarcerations.

Indigenous Justice and its Influence on Modern Communities

Indigenous refers to a native place of origin. It certainly does not imply all

indigenous people are the same nor is it an inclusive, encompassing term that implies

all people believe and hold the same values, rituals, or traditions. There are several

indigenous communities that have justice systems that have sustained their communities

and contributed significantly to the resolution of conflicts. Their contributions have been

a significant factor in the protection of human rights for both victim and offender. When

the governing powers of several nations realized that the modern justice system was

destructive to the lives of many of their indigenous citizens, they decided, independently,

to allow some of the traditional peacemaking methods to be used in the court system.

Research has shown that these methods have attained measurable success (Ross, 2006;

Zernova, 2007). However, indigenous systems of justice and the modern forms that are

being co-opted into the current judicial systems may not be of the same quality and

characteristic, nor follow the same original tenets. Cunneen (2004) cautioned indigenous

systems of justice do not necessarily integrate into modern justice systems:

> There is little recognition that a restorative justice program initiated and
> controlled by the state may be viewed with suspicion by indigenous people. It
> may be viewed as an imposed form of control, which undermines existing
> indigenous practices of governance. In this context it is worth remembering that
> restorative justice programs have often been state-controlled and introduced
> without consultation with indigenous organizations. (p. 348)

In early Navajo society, the community incorporated a justice system that was

egalitarian and consensus focused. In the late 1950s, this system was replaced by a

forced Western colonial system, which had devastating effects on the Navajo society

(Zernova, 2007). In the1980s, the Navajo Supreme Court, in an effort to restore their

society, decided to reestablish the Navajo peacemaking consensus practices of earlier

times and develop the Peacemaker Courts. Today, the community has a form of

peacemaking that is very similar to restorative justice. In Navajo society, if someone is

wronged, the victim will enlist the assistance of a third party, a naat'aanii (peacemaker)

who will visit the offender and his or her family and any other persons involved and

request a meeting. According to the teachings of the Navajo people, agreements must be

consensual as "one person cannot impose a decision on another—to the Navajo way of

thinking, coercion is witchcraft" (Yazzie as cited in Johnstone, 2002, p. 45). At the

gathering, the participants listen to and evaluate the details of the offense, the harm that

has been suffered by the victim and significant others, and the justifications that are made

by the offender for the action. Together, a proposal for restitution is made which the

offender is asked to accept. The plan is offered with an understanding that compliance is

a show of respect and an acknowledgment of the necessity for close connections with the

community.

> The parties themselves will then decide whether to commit themselves to the plan
> of action. The plan of action will often involve restitution from the wrongdoer to
> the victim. But crucially, the main focus is not on making adequate material
> reparation but upon making symbolic reparation. Compensatory payments are
> important as much for what they symbolise—acceptance of responsibility for the
> damage caused—as for their ability to make up for material losses. (Johnstone,
> 2002, p. 46)

The Navajo system of justice is effective because the people have been taught their entire

lives about the importance of community relations and respect.

In Canada, the native system of justice incorporates sentencing circles, a system

based on aboriginal peacemaking. Members of the offender's community come

together to discuss the crime and possible resolutions, including the community's

responsibility in rehabilitating the offender, providing support for the victim, and

preventing future problems. The gathering is in the form of a circle. In some

circumstances, there are two circles:

> An inner circle [which] includes the victim, the offender, their supporters and criminal justice professionals who are normally involved in court [and] the outer circle composed of professionals who may be called upon for specific information and interested members of the community. (Zernova, 2007, p. 16)

The proceedings begin with some type of opening message that stresses the interconnection of all beings (Ross, 2006). Each member is asked to introduce him or herself and has the complete floor to speak upon his or her turn. No interruptions are allowed. All aspects of the crime are discussed, including the contributing circumstances in the offender's past or present life. The process, according to Zernova (2007):

> Empowers participants to take ownership of the process and to develop solutions to problems in accordance with their values and customs [as well as] reconnects offenders to their communities . . . rebuilds broken relationships, addresses victim's needs . . . develops participatory skills . . . promotes the ability to mobilize local resources and generate community-based solutions to problems. (p. 17)

Sentencing circles are being incorporated into the traditional court system in many parts of the Yukon in Canada and are having success in areas of family and sexual abuse in some aboriginal communities. Ross (2006) has written extensively on the Holistic Circle Healing program at Hollow Water, where a group of concerned community members gathered to discuss the abuse that was occurring within families on their reservation. The community group now actively works in cooperation with the government's social services and justice system concerning domestic and sexual abuse crimes.

In New Zealand, a restorative justice system to address juvenile offenders has been largely successful. Similar to a traditional justice practice of the Maori people where conflict resolution was incorporated into the daily life practices of the clan's people and was negotiated quickly so as to maintain community harmony, the modern restorative justice system seeks to restore trust and harmony through attentive dialogue

and proactive intervention. In 1988, the New Zealand Department of Justice determined

that, because "racial bias was so endemic" (Zernova, 2007, p. 10) justice would best be

administered in a more culturally appropriate method. The Family Group Conference

was established and it addresses youth offenders and encourages a larger, more inclusive

audience. Supporters of both the victim and the offender, including members of the

police and social service agencies attend the session to offer discovery information and to

establish a program that aids in preventing re-offending behavior (United Nations, 2006).

Participants discuss the offense, the circumstances in the offender's life that led to the

choices the young person made, the corrections that could be adopted, the changes

needed in the life situation, how the injuries caused by the offender can be repaired, and,

most importantly, how the offender's family can establish and maintain a plan of

accountability and responsibility. If all parties agree and accept the plan, it is then

instituted. In cases of severe crime, the court may impose further sanctions.

Zernova (2007), speaking of the New Zealand model of restorative justice,

claimed "it was found that restorative justice conferences could reduce [youth] re-

offending, especially if offenders apologized to their victims and felt truly sorry for what

they had done and provided the re-integrative aspects of restorative justice were

achieved" (p. 12). Sherman and Strang (2007), in researching the effectiveness of

restorative justice practices, found that in control groups of restorative justice

participants:

> These controlled tests show that face-to-face RJ [restorative justice], consistently
> delivered by facilitators (mostly police officers) trained by the same Australian RJ
> training firm, has reduced repeat offending on three continents [Australia, UK,
> US], for highly specific populations, all of which are identified by characteristics
> that existed before random assignment and are therefore considered by
> statisticians to be appropriate for subgroup analyses that produce statistically

significant within-group differences by treatment. (p. 22)

Information on the process and practice of restorative justice is difficult to assess, mainly because of the subjective manner in which it is applied. However, as Sherman and Strang demonstrated, there is evidence it is a valuable asset for both the victim and the offender and has shown to reduce the incidence of recidivism.

The Restorative Justice Consortium (2006) published research that indicates "51% of people surveyed believe offenders meeting their victims is an effective option to stop offenders from committing further crime". In addition, in another report by the Restorative Justice Consortium (2009), the researchers found an "independent expert analysis of the economic benefits of restorative justice has revealed that restorative justice would likely lead to a net benefit of over £1billion over ten years." This is the equivalency of $1,449,299,991.13 in U.S. dollars at the current exchange rate. This indicates success on several levels, individual, communal, and governmental.

In Australia, both adult and youth restorative justice programs are being introduced and developed in many communities throughout the country. A similar system to the family group conference has been established in Australia, the main difference being that it often involves the police serving as advocates. "The family group conference includes private family time. The so-called scripted model does not include private family time, and is facilitated largely by police" (Brenda Morrison, personal communication, May 5, 2010). The process incorporates a more formalized agenda. The results have been very positive.

> It was found that offenders participating in conferences reported a higher level of satisfaction and greater procedural justice than offenders who were processed by the court. The findings show that conferences increased the respect of offenders towards police and the law more than the court did. (Zernova, 2007, p. 14)

Theoretically, Australia is experimenting with a re-integrative shaming ceremony, in which the offender is made aware of the contempt that society has against his or her abusive and/or violent behavior and the necessity to rehabilitate his or her actions (Johnstone, 2002). This conceptual understanding of shame and re-integration is being met with criticism. Shame and shaming have deep phenomenological and psychological understandings and implications. If it is incorporated as a way in which an offender feels regret for a harm caused and can provide appropriate reparations, whereby restoring trust and resolving guilt, then shame can be a productive tool (Ahmed, Harris, Braithwaite, & Braithwaite, 2001). However, if used in a retributive manner, it can, be destructive and counter productive.

South Africa introduced a Community Peacemaking Programme in which peace committees try to mediate crimes before they progress to legal proceedings (Zernova, 2007). The program focuses on two processes: peacebuilding and peacemaking, and sustaining the process. Peace committees are community members that try to encourage participation on the part of the community members to ensure that peace agreements are being adhered to and are in accordance with the 'Code of Good Practice' . "The overall objective of peacemaking forums is to bring together local knowledge and resources and provide solutions to the disputes by mobilizing the local capacity to deal with problems" (Zernova, 2007, p. 22). In South Africa, the objective is empowerment of the community, not necessarily a resolution to the dispute.

In England, restorative justice models became established in the juvenile justice system in 1998 through the Crime and Disorder Act and the Youth Justice and Criminal Evidence Act of 1999. Canada has a similar act. These acts require some form of

reparation be made to the victim, whether that be an apology, an offer of restitution and compensation, or a service that would be of benefit to the victim or their community. In addition, the youth offender must appear before a panel of community members who establish an agreement or contract to prevent re-offending. The youth's parents are involved in the panel discussions. The criticism this program has received is that the victims are not directly involved with the process and often are not generally satisfied with the reparations received. Also, the composition of the panels has been criticized for not being diverse or inclusive enough to be fully culturally representative of all youth offenders. Youth offenders and their parents are frequently coerced into this model of justice, which is against the doctrines of the restorative justice paradigm. However, it does allow for more youth offenders to participate in the process, which research indicates has been a positive experience. In addition, there is generally low community involvement other than those individuals directly involved in the offense. One study found that, for those who did participate in the process, "both victims and offenders tended to display altruism, with offenders wanting to help victims and victims wishing to help offenders to stop offending" (Zernova, 2007, p. 29). In the United Kingdom, restorative justice is continuing to gain popular support.

The Oxfordshire Youth Offending Team (YOT) is composed of facilitators that meet with the victim and inquire if she or he would like to meet with the offender. The victim is also given the opportunity to request certain reparations and/or community service projects the offender should perform. "An especially positive element of the YOT scheme is its emphasis on making reparation visible to the public" (United Nations, 2006, p. 27). The YOT also encourages community involvement in restorative justice

practices and "holds public meetings to celebrate achievements" (United Nations, 2006, p. 27).

Restorative Justice for Modern Society

Zehr (2005) wrote criminal offenses are damaging to human relationships, and the true value of restorative justice is the re-establishment of those bonds. However, the current justice system of most communities involves a system of coercive and punitive procedures for both the simplest of social disturbances and the gravest of criminal behaviors. Though appropriate and necessary in specific circumstances, this retributive system does not foster mutual respect, accountability, tolerance, or reconciliation. The victim is prevented from participating in any decision-making concerning compensation and/or rehabilitation. The offender is ostracized and isolated, thus encouraging feelings of disassociation with his or her community and detachment from society, all precursors for repetitive offending behavior. According to Johnstone (2002):

> Punishment of the offender may help the healing process, but it is not on its own adequate to heal the injury. Moreover, punishment may sometimes prevent healing . . . where being punished interferes with the offender's ability to earn and hence pay compensation to the victim. (p. 69)

Establishing a sense of personal inclusiveness on the part of the victim in the decision-making process, as well as emphasizing offender accountability and community responsibility is central to building strong social bonds.

> We have an ongoing relationship with offenders. They are "one of us," not enemies from the outside, even though they may be adopting the attitudes and behaviours of an enemy. As such we cannot simply cut them off and act in a totally hostile manner towards them. . . . We lose whatever chance we have of influencing them to behave better and to subject themselves to various forms of supervision and control. (Johnstone, 2002, p. 13)

The establishment of a punitive system to punish offenders who commit behaviors directed against a community or members of a community, was a decision made by representatives to the state. This system was intended to establish order and control and safeguard the security and stability of the community at large. Therefore, it can be concluded, "judicial punishment is a social choice, not a natural or inevitable response to crime" (Johnstone, 2002, p. 7). This is significant to the discourse on restorative justice because it recognizes the potential for alternative options. Zernova (2007) wrote in the traditional criminal justice system, the offender's crime is isolated from other extenuating circumstances. "It is quite possible," claimed Zernova, "that the conflict may be much bigger and deeper and may have social-structural roots (for example, poverty, inequalities of power, marginalization of certain individuals and groups)" (p. 107). In a restorative justice system, these mitigating factors are factored into the final plan of action and reconciliation between the victim and the offender.

Some communities are returning to, or exploring several of the indigenous practices of justice as an alternative to the current retributive and punitive ones. Restorative justice encourages conflicts to be resolved through the voluntary participation of both the victim and the offender through negations and communication. In restorative justice, the parties involved are "encouraged to tell their stories, express their feelings, ask questions of each other, talk about the impact and implications of the crime, and eventually come to an agreement about what the offender will do to make restitution" (Johnstone, 2002, p. 3). It also encourages all those affected by the adverse actions of the offender to participate in the discovery process, the restitution process and in the resolution and reconciliation process. The process of restorative justice involves

providing support for the peaceful resolution of the conflict so that the victim is provided

the necessary means for healing, the offender is provided the necessary means for

accountability, and rehabilitation, if needed, and both victim and offender and the

community are provided the tools to be able to reconcile and move forward. The focus

moves from punishment of the offender to restitution and reparation of harm for the

victim. According to Johnstone (2002), if the process works to fruition, the victim will

experience changes in "emotion, self-image, world-image, and relations with others"

(p. 64).

> Restorative justice programmes are based on the fundamental principle that
> criminal behavior not only violates the law, but also injures victims and the
> community. Any efforts to address the consequences of criminal behavior should,
> where possible, involve the offender as well as the injured parties, while also
> providing help and support that the victim and offender require. (United Nations,
> 2006, p. 6)

Zehr (2005) reminded us that "recent developments" are not always "improvements over

the past" (p. 97). Nor do they imply an advanced perspective of advocacy for social

reform, conflict mediation, and peaceful coexistence. Power and control are still

formidable temptations. Foucault (1995) believed crime served a social good because it

made people aware, and subsequently, proactive in understanding the current problems

and finding solutions to social problems. He claimed these problems could only be

resolved through social cohesion and cooperation—both vital components to restorative

justice practices.

> The dominant Western conception of justice
>   is rooted in a fundamentally individualistic,
>   materialistic ideal of equity or sameness.
> By contrast, indigenous notions of justice
>   arose within the context of belief in a universal
>   relationship among all elements that
>   make up our universe.

(Taiaiake Alfred, "Peace, Power, Righteousness: An Indigenous Manifesto,"
2009)

Chapter IV: Restoring Justice

This chapter discusses restorative justice, its tenets, and the intentional outcomes it seeks for the individual participants involved. Restorative justice requires community participation, and this is a challenging aspect of restorative justice practice. The chapter presents several successful programs, potential outcomes, and the challenges this alternative justice system confronts.

Restorative Justice and Community Support

The intention of restorative justice is to allow the victim a voice in order to express their story concerning the harm that was committed against them. In addition, it allows an opportunity for the victim and offender to meet and discuss the trauma created for the victim and any restitution that is appropriate. It also makes the offender aware of the harm that has been committed and its effect on the victim, his or her family, and the community. The process also allows the offender the opportunity to explain his or her situation and, if so desired, the offender has the ability to express remorse. If rehabilitative services are desired or required, then these services are coordinated along with the established restitution plan. The offender takes responsibility for the crime committed and is held accountable for any reparations owed the victim. The ideal outcome would be closure for the victim and some level of reconciliation between the victim, the offender and the community. "Condemnation of [the offender's] behavior as unacceptable to the community, will be mixed with empathy for them as members of the community" (Johnstone, 2002, p. 93). Community involvement is necessary in restorative justice programs. It is essential that communities take their moral responsibility seriously.

Johnstone (2002) stated:

> The main reason for insisting on this complex moral judgment is that in restorative justice, the community's judgment is not simply a prelude to pain delivery, but is intended to perform an educative and re-integrative function. The concern is to persuade offenders to share the community's judgment of their behaviour. For this to happen, the judgment of the community must be one, which the offender can accept as reasonable, even if such acceptance is uncomfortable. (p. 93)

Secondary, but essential to the process, is the community building and support structure necessary to foster, facilitate, and maintain the ideals and objectives of restorative justice. One criticism of restorative justice is that it is not always possible to assure the victim and offender will meet with equitable justice. "Communities, even small tight-knit communities, are not the homogenous units which many suppose them to be . . . they contain hierarchical social arrangements . . . and all sorts of social prejudices and rivalries" (Johnstone, 2002, p. 29).

Restorative justice tries to encourage and foster the ideas of apology and forgiveness; however, these are not requirements of the process, Braithwaite (2002) wrote "it is wrong to ask victims to forgive and very wrong to expect it of them. Forgiveness is a gift victims can give" (p. 15). According to Johnstone (2002) forgiveness is hampered by the antipathy many people feel towards offenders and an inconsistent understanding of apology and forgiveness. If forgiveness and caring were not part of one's cultural upbringing, then the ritual of forgiving may hold no meaning. Therefore, education for both the victim and the offender is a vital component of restorative justice programs.

> Proponents of restorative justice, while not denying either the legitimacy or even the usefulness of the resentment, which people often feel towards criminals, insist that there comes a point when resentment becomes counterproductive. At that

point, a shift from resentment to forgiveness is required if the justice process is to have positive outcomes. (p. 133)

Modern communities are very different than early acephalous clans. Community does not necessarily exist within a close geographical boundary. Furthermore, the bonds between communities are not as strong as those between early clan members. Shifting alliances can be both advantageous and difficult as the community boundaries can be quite extensive because of technological advances. Johnstone (2002) referred to the current modern community as "individual-centered communitarianism" and stated restorative justice may have difficulties in areas where little local community interaction occurs regularly. Unlike in the indigenous communities:

> Many individuals can withdraw from "the non-geographical communities of modernity" and join other communities. This means that most of our community relationships are weak, relative to those of the medieval village dweller. To the extent that this is the case, the capacity of micro-communities to influence modern delinquent individuals will be relatively weak. (pp. 52-53)

The challenge of establishing community in modern society is one quandary with whitch many civic leaders are confronted.

Restorative Justice versus Retributive Justice

Traditional court-based systems of justice situate one party against the other, thereby preventing any reconciliation between the victim and the offender. According to Daly (2000), the main differences between retributive justice (punishment based) and restorative justice are the loci of the focus. In retributive justice, the focus is on the offense, not the offender; on blame, not on rehabilitation; on punishment, not treatment. In retributive justice, the offender is an outcast, in a sense, from society and, left with few resources, joins a new community of offenders that are disconnected with society. "By

segregating and ostracizing offenders we render them more, rather than less, of a threat to us. We drive them into criminal subcultures where they become more and more like alien enemies of the community" (Johnstone, 2002, p. 13). Rather than reintegrating into society and learning the importance of community cohesiveness and social responsibility, the offender is disengaged, and with little opportunity available and frequently becomes a repeat offender. In restorative justice, the focus is on repairing the harm that has been created and trying to prevent further crime.

> To persuade offenders to admit to the truth, the threat of punishment will be removed, or at least reserved as a last resort. Also, steps will be taken to ensure that those who admit responsibility for a crime are not permanently stigmatised as criminals. (Johnstone, 2002, p. 92)

Some opponents of restorative justice claim victims have the right to participate in court hearings. However, this is a very different situation than restorative justice gatherings. Restorative justice challenges the rigidity of the "state bureaucracy-uniformity, regularity, and predictability—and those which many see as essential to restorative justice-flexibility and creativeness" (Johnstone, 2002, p. 17). Just having a victim appear in a court hearing is not the same as having complete inclusiveness in the justice process.

> While proponents of restorative justice want victims to have rights to participate in the justice process, they also maintain that in order to benefit from such rights, the justice system must become restorative rather than punitive. To invite victims into an adversarial confrontation with offenders is clearly not in the interest of offenders, but nor they claim is it in the interests of victims. What victim will benefit from, it is claimed, is participation in a non-confrontational attempt to reach a restorative solution to the wrong, which has been committed. (Johnstone, 2002, p. 73)

Much research has been conducted on the rationale offenders subscribe to in order to commit a crime. Zehr (2005) called these "techniques of neutralization" (p. 40).

According to Johnstone (2002), offenders justify their crimes with claims of "I'm not hurting anyone" to "They can afford it" (p. 22) because the offender is convinced that the victim's insurance or other large assets make up for the monetary or property loss. Often, addictive behavior is used as the excuse, such as drunkenness and drug abuse (Braithwaite as cited in Johnstone, 2002). Restorative justice can be of significant benefit in helping both the victim and the offender understand the real impact of the crime and the steps needed to restore a sense of security.

According to Johnstone (2002), "victims usually enter a restorative conference traumatised by their experience" (p. 117). When the victim is allowed to express how a crime has personally affected them, what the loss actually means, in other words, show the connection between the action and the person, then these rationalizations of the offender are more difficult to uphold (Johnstone, 2002). It no longer is a victimless crime. According to Johnstone (2002), Braithwaite (2002), and Zehr (2005), research has shown many offenders are completely unaware of the true impact of their crimes on their victims. Through face-to-face encounters with their victims, the techniques of neutralization are broken down and the offenders are confronted with the human costs of their actions (Johnstone, 2002).

Restorative Justice Programs

In its handbook on Restorative Justice Programmes, the United Nations (2006) acknowledged the many benefits and advantages of adopting a restorative justice system in some capacity in addition to, in conjunction with, or in place of the current traditional justice system. It sets guidelines for successful implementation and discusses several potential areas of dissention and difficulty. The most crucial element in applying and

administering a restorative justice program is determining the most appropriate model

that is sensitive to local and individual understanding and needs. "The decision must be

informed by best practices in the field, but it must also remain conscious of the

parameters and contingencies within which the programme is expected to operate"

(United Nations, 2006, p. 43). Each community has specific needs and characteristics,

and through the unique creative process of restorative justice, these community

characteristics must be incorporated and taken into consideration when establishing an

appropriate model. Deciding on the desired outcomes in a restorative justice program is

also a vital component to a successful system. This involves not only determining what

is expected, but also what conditions must be met, how they will be monitored, who will

be responsible for compliance, and what will be the consequences of noncompliance.

Additionally, issues of priority of case load, locations of meetings, resource needs,

funding and budgeting, stakeholder and partner agencies, training of facilitators, and

management of volunteers must be addressed for the restorative justice process to have

any successful outcome. An understanding of cultural practices and teachings is so

important that I would consider it to be the foremost criteria in the selection of anyone

involved in the local implementation of restorative justice programming.

> Facilitators or mediators, together with programme managers, can either make or
> break a programme. . . . Their recruitment and training therefore becomes an
> essential component of the each new programme and remains a concern
> throughout the existence of the programme. Facilitators should possess a good
> understanding of local cultures and communities and where appropriate, receive
> initial training before taking up facilitation duties. Facilitators and programme
> administrators must also take every step possible to reduce the likelihood of bias
> and discrimination in their interactions with offenders, victims and members of
> the community from different cultural or ethnic backgrounds. (Umbreit & Coates
> as cited in United Nations, 2006, pp. 47-48)

There are significant risks to a process that depends heavily on the support and inclusion of community members. From the victim's perspective, the possibility of intimidation, lack of confidentiality and safety, and dissatisfaction with the final sentence can be devastating and frustrating. These are especially more likely if the community is small (United Nations, 2006; Johnstone, 2002). For the offender, the potential for stigmatized shaming and retaliation, as well as feeling pressured to conform and participate in a program that is meaningless, but less oppressive than a traditional legal sentence are all risk factors that must be taken into consideration when deciding the true value of a restorative justice paradigm. For the community, risks involve power sharing, consistency in participation, overall interest, as well as safety for the greater majority. There are also risks to the judicial system itself, as having a restorative justice system creates problems of case distribution, the potential for bureaucratic take over, inclusion of cases that would otherwise be dismissed, overload of supervisory responsibilities, loss of oversight concerning offender rights, loss of oversight in offender rehabilitation, and the inclusion in the system of insufficiently trained facilitators.

Though these risks appear to be daunting obstacles, they can, according to the United Nations Handbook on Restorative Justice (2006), be arbitrated by a strong commitment by those who believe strongly in the process of restorative justice. Those who believe in inclusiveness, are willing to adhere to a similar ideology of restorative justice and reconciliation, are willing to accept valid research, and are willing to be open-minded to the different needs of communities and governments can facilitate a successful restorative justice program.

Restorative justice programs are being implemented worldwide. With this implementation comes the challenge of assessing their effectiveness and contribution to the social welfare of the community. Obtaining accurate and reliable information is critical. Statistical information consisting of numbers of cases, time tables, including preparation time, presentation, and process deliberation concerning appropriate reparation and reconciliation, as well as a calculation of volunteer hours, and program costs are necessary for proper evaluation. Qualitative research is even more substantial, though probably more problematic as far as analyzing significant outcomes. Assessing participant's satisfaction, comfort, feelings of personal safety and well-being, acknowledgment of damage caused, fair restitution received, and closure are illusive and difficult to qualify. But these are the tenets most essential to restorative justice.

Restorative Justice Outcomes

There are several positive outcomes that have been well researched and confirmed. The following list has been abridged and reproduced from the United Nations (2006):

1. Restorative justice has a positive effect in reducing the frequency and the severity of re-offending.
2. There are high levels of support among crime victims and in communities for offender reparation.
3. Many crime victims and offenders will participate in a restorative process if given the opportunity to do so.
4. In some jurisdictions, restorative approaches have reduced court costs and court processing time and improved service delivery.
5. Where crime victims and offenders participate in restorative processes, the rates of agreement and compliance with agreements by the offenders are very high.
6. There are reports of successful resolutions in victim-offender mediation and conferencing for both property-related and violent offences [for] adult and youth offenders.
7. Preliminary findings suggest that victim-offender mediation can be successfully used in cases involving severe violence.

8. Both crime victims and offenders rate restorative processes as more fair and satisfying than conventional criminal justice system.
9. Restorative justice can be an integral component of an overall community policing strategy and means to improve police-community relations.
10. Crime victims report being less fearful after having met their offender.
11. Restorative processes provide victims with a voice, an opportunity for material reparation, the opportunity [to receive an apology] from their offender and to receive additional information about the offender about the crime . . . often not available in the conventional criminal justice system.
12. There is preliminary evidence from evaluations that restorative processes can reduce both the frequency and severity of re-offending.
13. Offenders who have participated in a restorative process have higher rates of compliance with agreements and contribute to their acceptance of responsibility for their behaviour and the consequences of it.
14. Restorative justice processes can increase community engagement and facilitate the involvement of community residents in the response to, and the resolution of, problems of crime and social disorder. (United Nations, 2006, pp. 86-88)

Research conducted on restorative justice has indicated it has the ability to reduce recidivism, prevent criminal offenses from occurring, and reduce the incarceration rates, which also equates to an economic advantage for governments and states (Braithwaite, 2002; Restorative Justice Consortium, 2009; United Nations, 2006). Along with these tangible benefits, restorative justice offers an opportunity for the victim to receive the assistance and appropriate restitution he or she deserves. Rather than create more conflict, restorative justice seeks reconciliation.

Restorative Justice and Future Trends

There is much debate about the feasibility of restorative justice in modern society. Many feel it has limited application because it relies on community involvement for its initiation and implementation. Questions also arise about its ability to address all forms of crime, fairly and competently. While it is true there is an inconsistency with how certain crimes, especially those involving domestic abuse and sexual offences against women, are punished, the paradigm can be adjusted, rather than dismissing the process

entirely. "One obvious solution is to ensure that all restorative action plans are overseen

by judges, who will have power to disallow those plans which do not comply with certain

standards" (Johnstone, 2002, p. 58). Learning from the proceedings of other countries

that have incorporated restorative justice in their national legal system, it is possible that

categories of crimes can be established, with certain ones re-directed to the state court

system. Findlay (2000) recommended a shared justice where both

the cultural and the legal considerations of the case would be integrated into an official

resolution.

   Opponents of restorative justice maintain the current legal system has safeguards

in place to protect offender's rights and these would be jeopardized if a restorative justice

system were completely adopted, or unregulated. "Guilt adheres to a person more or less

permanently, with few known solvents" (Zehr, 2005, p. 69). Therefore, opponents

recognize abuse exists concerning regulating these safeguards, but claim they protect the

offender from unsupported accusations. However, in the current justice system, innocent

defendants are also found guilty of crimes they did not commit and are incarcerated. In

contrast to this, proponents of restorative justice claim the abuses of the not guilty plea in

situations where the offender was guilty, harms both the victim and the offender.

> Their [the offenders] minds become focused on the circumstances, which mitigate
> their blame, and not on their moral responsibility for harming another person. In
> their efforts to avoid a finding of legal guilt, and the serious consequences of such
> a finding, they come to see themselves as having no accountability for the crime
> they have committed. Nor are they encouraged to acknowledge and deal with any
> moral guilt, which they may feel; guilt feelings that can leave them emotionally
> damaged. (Johnstone, 2002, p. 89)

One of the biggest mistakes that can be made, according to Braithwaite (2003), is to

"compare the efficacy of restorative justice, statistically conceived, with traditional

Western justice. Rather, we must think more dynamically about developing the restorative justice process and the values that guide it" (p. 344).

Restorative justice is also focused on the rights of the victim, which has been eroded down to a simple plaintiff's voice in most criminal courts. Restorative justice has the potential to not only restore justice to its rightful owner—the victim—but it also has the potential to build community and foster strong relationships within society that are, and will be needed to address future national and global issues that will affect all people.

> The process is seen as having the potential to achieve a range of other goals, including increasing participants sense of personal efficacy and power, increasing the capacity of parties locked in conflict to "recognize" the other party and increasing confidence capacity of ordinary members. (Johnstone, 2002, p. 140)

 Modern life is lived in loosely bonded social networks. The acephalous communities that incorporated the interconnected behaviors of each of its members are gone. These collectivists' societies were relatively secure places and each member understood their importance to the greater good of their society. Disputes and conflicts disrupted this balance and the reestablishment of communication and reconciliation was a vital part of the sustained unity of the clan.

In today's society, individualism (particularly in the West) has become the norm. Though communication networks do exist, they are frequently well beyond the physical boundaries of the homes in which people dwell. Restorative justice has the capability to empower those who are marginalized and those who want to reengage members to work together for the betterment of their community. Community building enables people to make connections within their residential locations and develop levels of communication to facilitate solving issues relevant to individual neighborhoods. Learning to resolve disputes can only be of benefit to the greater society. Building and strengthening

community relationships now will only aid in future global issues requiring consensus and cooperation.

Restoring Justice through Social Engagement

McCold (2004) claimed restorative justice has three central concepts: crime harms people and their relationships; offenders need to make reparations to the victim; and community is affected when crime occurs. Victims need closure and empowerment, and through restorative justice practices, many are able to become "healthy survivors" (McCold, 2004, p. 162). Crime is an action or violation that harms another person and also creates feelings of insecurity and mistrust. By giving the victim and their family a voice in the justice process and allowing them to express the trauma experienced, the offender gains a better understanding of how his or her offense affected the victim, and the extended community. If, for example, the victim's home is intruded and items removed, the offender may have no understanding of the feelings of violation and fear, perhaps immobilizing fear, the victim is experiencing. The community is also affected because the area is no longer considered safe. Community members may request more police surveillance, which becomes an increased financial burden on the community.

If the offender performs some act or restitution the victim and or the community requests, then the process of re-establishing feelings of security have the potential to develop. Furthermore, if the offender requires rehabilitation for addiction or other problems, he or she can be helped, possibly reducing the risk of recidivism.

Braithwaite (2002) posited restorative justice is more empowering for the participants than the traditional legal. Active involvement in social advocacy organizations, especially groups that involve peacemaking skills, empowers community

and lessens the control of "power-hungry" (p. 181) bureaucrats in positions of authority.

Ritchie and O'Connell (2001) claimed:

> All human organization is composed of two control systems, the formal control system of requirements, commands and instruction and the social control system concerned with treatment, a sense of collective worth, and communal expectations. (p. 154)

Bringing change to any organization requires a positive self-efficacy and a belief that the efforts expanded will bring significant benefit. McCold (2004) claimed "restorative justice's call for 'community' is for many a 'sweet sound' [because] it emphasizes a collective rather than individual conception of, and responses to crime" (p. 175). Braithwaite (2002) claimed "once citizens learn to be actively responsible as opposed to learning to rely totally on protection by a state that enforces passive responsibility, they will be active in social movement politics" (p. 133). The ideal justice system, according to Braithwaite, is one in which a true democracy functions, where the law informs the actions of the people, and the people help shape the conventions of the law. The justice system will not change on its own, especially to a paradigm that attempts to bypass the legal processes and courtroom rituals.

Restorative justice has many attributes that can be beneficial to all—the participants, victim, offender, and community. However, there are challenges that have legitimate justification. McCold (2004) believed the concept of community is problematic. Community, to McCold, implies the possibility of exclusion and "totalitarianism [because community can also be a] fertile breeding ground for the most perilous, irresponsible, and tyrannical of exclusions" (p. 178). Restorative justice has been accused of being biased to certain ethnic and racial groups. It also has been accused of inadvertently diminishing the identity of the victim, by concentrating on the reasons

for the offending behavior of the perpetrator. This is in complete contrast to a primary intention of restorative justice—justice for the victim.

Many mediators believe eliminating the categories of victim and offender would be in the best interest of the justice system. By eliminating the roles of victim and offender, advocates believe a more comprehensive and effective conflict mediation session can occur (Braithwaite, 2002). Braithwaite (2002) offered an alternative view, a suggestion that restorative justice be evaluated "in terms of avoiding harm more than in terms of doing good" (p. 155). One reason for adopting restorative justice practices for the offender is to avoid the stigmatization of being categorized as a criminal. Once convicted of a criminal offence, the individual is often ostracized from society and learns to live within a subculture of others alienated from the mainstream. For example, "the evidence is persuasive now that a criminal record is an important cause of unemployment" (p. 155). Furthermore, wrote Braithwaite, "the prison system is a major cause of suicide in the Aboriginal community [in Australia, and] a major cause of rape and drug addiction" (p. 155).

Can a justice system based completely on the tenets of restorative justice practice, effectively serve the dictates of justice and fairness for all members of society? This would need active participation on the part of the community. Braithwaite (2002) stated "one reason that [community programs fail] is that most of us do not care enough about our community or are just too busy" (p. 215). McCold (2004) suggested the concept of "communality [as it does not infer one] fixed community [and can be envisioned as] open-ended [with] its role more revisionary and less restorative" (p. 179).

Braithwaite (2002) suggested beginning the process of restorative justice in the educational systems. In this way, youth are mentored and guided, and advocates proactively invest in the future of the students. Trust is established and a "social intelligence" (Braithwaite, 2002, p. 219) is developed in the young people.

Braithwaite (2002) concluded "the best way to start transforming the legal system from an injustice to a justice system is to participate in building the social movements that we have found to be crucial to making decent transformation possible" (p. 263). Community, or communality, is at the core of restorative justice.

> All things are interrelated.
> Everything in the universe is part of a single whole.
> Everything is connected in some way to everything else.
> It is only possible to understand something if we understand
>   how it is connected to everything else.
> (Proverb, "Twelve Principles of Indian PhilosophyWholeness", n.d.)

Chapter V: The Practice of Restorative Justice

This dissertation has attempted to present a sustained discourse for the interconnection between and ethics of care theory and restorative justice. Significant theorists have been discussed, as well as modern paradigms and potential outcomes. The opposing perspectives have also been presented with suggested solutions.

This chapter adds to the discussion by recounting the experiences of restorative justice practitioners and communities. The reports of their experience confirms the practice of restorative justice as being a valuable addition to the current justice system and how the doctrine of care theory reaffirms the philosophical foundations of restorative practice.

Justice and Caring

When I first expressed an interest in researching restorative justice, my advisor, Carolyn Kenny suggested I read a book by Rupert Ross (2006), *Returning to the Teachings*. It was not specifically an academic book; however, it was a genuinely authentic and beautifully sincere testament to the value and importance of restorative justice practice. Ross described the rituals, the emotional environment, the traditional teachings, and the accountability, and subsequent healing from the peacemaking processes. Ross (2006) offered this explanation:

> Traditional teaching suggests that the principle-or law- of wholeness applies not only to the nonhuman realms, but to the human one as well. When people cause problems, for instance, this law of interconnectedness requires that a justice system investigate all the factors that might have contributed to the misbehavior . . . the principle of wholeness thus requires looking for, and responding to complex interconnections, not single acts of separate individuals. (pp. 65-66)

This book inspired my desire to learn more.

Select Practitioners of Restorative Justice

The Native American and First Nation justice systems have much to teach us. "The Native peacemaking process involves bringing together victims, offenders, and their supporters to get to the bottom of a problem" (Mirsky, 2004, p. 1). Pranis, Stuart, and Wedge (2003) added "peacemaking circles help us resolve conflicts in a good way, one that honors the needs and concerns of everyone involved" (p. 31). This is a basic tenet of restorative justice and care theory. A caring environment, one in which people are able to express their needs, express their challenges and concerns, and request assistance, as well as strive to obtain a fair and fundamental quality of life, equates with the establishment of restorative justice practices.

The Honorable Robert Yazzie, Chief Justice Emeritus of the Navajo Nation Supreme Court, has tried to eliminate the colonial influence of retributive justice in his court and re-introduce the Navajo perspectives of respect, dialogue, harmony, and balance. Yazzie (2003) stated "the peacemaking process is related to the concept of k'e, or respect. K'e means to restore my dignity, to restore my worthiness" (p. 2). Focusing on the individual and not on the offending deed allows for the reestablishment of trust, providing the offender accepts responsibility for the offending action and the victim offers forgiveness. The intention becomes one of healing, not punishment. Yazzie also cautioned about shaming and suggests that many offenders have been indoctrinated with feelings of inferiority and ignominy and, consequently, delve into activities of self-destruction, which often cause harm to others. Yazzie, instead, recommended proceedings that focused on "avoiding harm to others" (p. 3). He firmly believed the two

practices, restorative justice traditional, state justice should not be combined as their

approaches and expected outcomes are too distinct. However, Yazzie did believe

> The two systems can work side by side; they can help each other, and this can be
> done either at the federal or state court level . . . we can use peacemaking and the
> federal court system hand in hand to come up with solutions. (p. 3)

James Zion (2004) a Domestic Abuse Commissioner for the Crownpoint Family

Court stated in an article authored by Mirsky for Restorative Practices E Forum"Anglo

law is all about rules and principles . . . the individual trumps relationships, and that's

destructive. [In the Indian justice process] people are not simply individuals in society.

Everyone owes special obligations to others" (Mirsky, 2004, p. 4). In his work, Zion

focuses on responsibility, understanding, apology, forgiveness, and reconciliation.

"Talking about possible relief rather than just imposing orders is a very powerful

restorative justice tool" (p. 4).

Louise Thompson, Justice Coordinator of the Mohawk Council of Akwesasne

has implemented the mandate of the Mohawk Nation of Akwesasne Justice Department

to develop "a comprehensive community justice program based on traditional [Native]

principles and culture" (Mirsky, 2004, p. 1). Thompson (as cited in Mirsky, 2004) stated

that in the Akwesasne system the "custom is to ask the people what they want to do-to

come to a community collective agreement" (p. 2). Thompson's hearings are open to

both Native and non-Native community members. Individuals may request the

proceedings on their own or other community members may refer a potential participant.

The local police also refer individuals they feel would benefit from the process. The

Akwesasne courts, recognizing the extenuating circumstance that affect human behavior,

also provide health, counseling, and social services to aid in the healing process.

The Mnjikaning First Nation community has developed the Biidaaban restorative justice system. "The goal of the Biidaaban is for people who have harmed to take responsibility for the harm they have caused, be accountable to the community and to people they have hurt, publically apologize and make amends and restitution" (Mirsky, 2004, p. 4). Frequently, members of the community request a temporary reprieve from the state court system to determine if the Biidaaban restorative process will benefit the offender. Leanne Douglas (as cited in Mirsky, 2004), Coordinator for the Biidaaban, commented that, unlike the state system where the public is not informed of all of the legal proceedings, in the Biidaaban system, the entire community serves as the supervisor "so people know that people are watching them and they [offender] need to behave properly" (p. 5).

The Biidaaban system was modeled after the Healing Circles of Hollow Water, the system Ross (2006) described in his book, *Returning to the Teachings*, I referenced earlier in this chapter. Douglas (as cited in Mirsky, 2004) claimed the system "derives from the traditional Aboriginal justice practice because people took responsibility for their behavior and it was community that tried to set them on the right path" (p. 6). The system, according to the city probation officer, is working well.

Another practitioner of restorative justice is Judge Joseph Flies-Away. A visiting judge in a Hulapai tribal community in Arizona, Judge Flies-Away re-introduced justice systems that support individual tribal communities and needs. His recommended systems incorporate additional services, such as health, education, and social services. In an article authored by Mirsky for Restorative Practices E Forum , Flies-Away states "Tribal court systems are a tool to make people connected again. Anglo court processes are cold

and icy" (Mirsky, 2004, p. 6). Termed *Tribal Healing to Wellness Courts*, Flies-Away

instituted measures that hold individuals more accountable for their actions by providing

"comprehensive supervision, drug testing, treatment services, immediate sanctions and

incentives, team-based management and community support" (Mirsky, 2004, p. 6). His

intentions and actions reflect his collectivist's philosophy and his belief in the

interconnection between all beings. Flies-Away acknowledged the work of John

Braithwaite and supported the tenets of restorative justice Braithwaite set forth, working

together through dialogue and cooperation.

Preventing Offences and Restoring Victims

Braithwaite (1996), commenting on the Western criminal justice, wrote "few sets

of institutional arrangements created in the West since the industrial revolution have been

as large a failure as the criminal justice system" (p. 2). He continued:

> In theory, it administers just, proportionate corrections that deter. In practice, it
> fails to correct or deter, just as often making things worse as better. It is a
> criminal injustice system that systematically turns a blind eye to crimes of the
> powerful, while imprisonment remains the best-funded labour market program for
> the unemployed and indigenous people. It pretends to be equitable. (p. 2)

Braithwaite (1996) defined restorative justice as a process of "restoring victims,

[that has] a more-victim-centered criminal justice system, as well as restoring offenders

and restoring community" (p. 3). It restores the dignity of the victim and prevents

victims from becoming offenders out of shame and anger. Braithwaite challenged the

general use of the word *crime* and claims crime implies something that "involves some

domination of us that reduces our freedom to enjoy life as we choose" (p. 3). Restorative

justice focuses on "the consequences of a crime, how to deal with them and prevent their

recurrence" (p. 3) not on retributive measures that deprive the victim of justice and

deprive the offender of support for rehabilitation. Restorative justice "aims to restore

harmony based on a feeling that justice has been done" (p. 3). He advocates for all

cultures to value traditional rituals and customs that preference restorative processes over

retributive ones. Incorporating shaming as a means to showing community disapproval

of an action, not stigmatizing the person, is an attribute that contributes, according to

Braithwaite, to successful restorative practice outcomes. Braithwaite prophetically

declared restorative justice has the potential for significant social change:

> I believe that restorative justice will come to be a profoundly influential social
> movement throughout the world during the next century firstly because it appeals
> to values that are shared universally by humanity, secondly because it responds to
> the defects of a centralized state criminal model that itself has totally globalized
> and utterly failed in every country where it gained ascendancy. (p. 8)

The values Braithwaite referred to as being universal to all humanity are tenets reflected

in care theory, compassion, and fairness.

Braithwaite (2002) provided nine "reasonable hypotheses" (p. 121) for why

restorative justice deters delinquent behavior. They are presented in an abridged format

here:

1. Crime is deterred because the certainty of punishment predicts compliance
   better than the severity of punishment.
2. Community members, when working in unison and restoratively together,
   respond to crime more successfully in situations where they have more
   comprehensive knowledge of the offense than the local police who seek
   retributive justice.
3. Dialogue contributes to community participation thus enabling an atmosphere
   of engaged community collectivist's behavior of restoration instead of
   punitive social control.
4. To the extent that restorative justice holds many people responsible for a
   crime at levels of responsibility less than criminal responsibility, many are
   specifically deterred.
5. Having community members aware of a restorative plan, agreed to by victim
   and offender, holds the offender accountable to many and deters recidivism.
6. Doing without traditional western deterrence altogether has a major impact
   since escalating punitive measures have been shown to have no major impact.

7. Deterrent penalties should be dynamic and responsive to the profile of the offender. Restorative justice requires jurisprudence of reactive fault.
8. It is possible to administer justice so that restoration is in the foreground of actors' deliberation while threat is in the background.
9. Most punishments are more feared in anticipation than they are onceexperienced. A criminal justice system that privileges restorative justice ahead of punitive justice thereby increases the deterrent power of punitive justice. (pp. 121-122)

Restorative justice practices fostered and supported by an ethics of care offer the opportunity to move beyond punitive, retributive systems that have been shown to have limited effectiveness (Braithwaite, 2002) and move toward caring communities that serve the needs of the victim and support the rehabilitation of the offender. They also foster community activism, cohesion, and engagement. Encouraging these attributes for a community promotes a caring concern for the other and a compassion for those in need. In an era of global obscurity, a system that develops interconnections, mutual cooperation, and personal commitments will be of significant consequence when discourse and negotiation are required, especially in terms of sustainability. Leaders who possess characteristics of compassion, communication, cooperation, and fairness and have a vision of restorative, rather than retributive justice will be the ones who make significant change, in local communities and in the global world.

Following the counsel of Harlem Brundtland (2002), "Men and women [are] of equal value, but the roles we perform must also harmonize with the conditions imposed upon us by nature" (p. 53). "Women are the primary caretakers. We must push for real change for women, children, and families" (pp. 458-459). Harlem Brundtland also stated "democracy isn't a process that starts at the top and extends downward. Rather, democracy must be based at the local level, in the hearts and minds of ordinary

[citizens]" (pp. 340-341). "We stand to gain if we as people and societies are able to harness everyone's resources, regardless of nationality, economic position, heritage, religion, race, or gender" (p. 471). We must all recognize our obligation to be learners, educators, and practitioners of caring and restorative practices for ourselves, for others, for all of humanity.

> Restorative justice programmes are based on the belief that
> parties to a conflict ought to be actively involved in
> resolving it and mitigating its negative consequences.
> These approaches are also seen as a means to encourage
> the peaceful expression of conflict, to promote tolerance
> and inclusiveness, build respect for diversity and
> promote responsible community practice.
> (United Nations, 2006)

Chapter VI: Restorative Justice and Care

The United Nations (2006) Office on Drugs and Crime defined a restorative

process as:

> Any process in which the victim and the offender and, where appropriate, any
> individuals or community members affected by a crime participate together
> actively in the resolution of matters arising from the crime, generally with the
> help of a facilitator. (p. 6)

The key phrase here is "*participate together actively in resolution* [emphasis added]"

(United Nations, 2006, p. 6). This implies a desire for a dialogue, and or a negotiation

that attempts to find a solution. The participants care about some aspect of the conflict

and seek a resolution that addresses their concerns. They are willing to discuss the

situation and find some balance to each other's needs, specifically, those of the one

harmed.

Caring about an idea or a philosophy is, according to Mayeroff (1971), an

attribute of an ethics of care. If the process of restorative justice can bring a resolution

that is appropriate and accepting to both participants then, perhaps, a relationship of trust

can be established. Restating the earlier comments of Mayeroff, "faith in oneself

develops from the experience of being cared for and caring for another; caring for another

is a way of expressing gratitude for care received" (pp. 100-103). Following Mayeroff's

sentiments, a new and renewed perspective of respect, trust and responsibility may

develop for both victim and offender after a successful resolution.

Restorative justice has significant value for the community as it has the ability to

give victims a voice in deciding how best to meet their needs after a harm has been

committed against them, and to repair "the relationships damaged by the crime, in part by

arriving at a consensus on how best to respond to it" (United Nations, 2006, p. 10).

Restorative and Caring Resolutions

Restorative justice is a positive approach to preventing delinquent behavior and reducing the act of recidivism once a crime has been committed. Care theory reinforces the reasons for adopting an empowering and engaging approach to justice, one that is holistic and adaptable to various situations. Care theory fosters relationship building, which, in a restorative justice process, equates to having the victim, the offender, and the community supported and encouraged to voice their individual stories and concerns. Research has confirmed that restorative justice can work with the most serious of crimes and is successful with both youth and adult offenders (Braithwaite, 1996; United Nations, 2006). The United Nations (2006) conducted research on restorative justice and has stated that a restorative process works best when the process itself is "predictable, yet flexible and responsive to the individual circumstances of each case" (p. 9).

Community is important in both the practice of restorative justice and caring. When the community is actively involved in the peaceful and constructive resolution of conflict, it demonstrates its interest in the lives of the participants. Through community support services, proactive rehabilitation, and accountability protocols, the community shows its understanding of interconnections and the importance of building relationships.

The research from the United Kingdom and from the United Nations concludes that, if given a choice, many crime victims and offenders will participate in restorative justice practices if provided the opportunity (Restorative Justice Consortium, 2006; United Nations, 2006). Offering a safe place that cares about and supports the victim's need to express his or her trauma is foremost in the process. A community that demonstrates its concern for amending the harm experienced by the victim helps bring a

sense of security and closure for the victim. Offenders are treated with respect, yet are made aware of the disapproval of their actions (Braithwaite, 2002). Both victim and offender are encouraged to communicate their feelings so each can gain a better understanding of the other, their life situations, and the circumstances leading up to the incident (Johnstone, 2002; Ross, 2006; Zehr, 2005). According to Zehr (2005), most offenders are unaware of how their actions have affected the personal lives of their victims. By having offenders witness the story of the victims and come to understand how their misdeeds have affected others, offenders confront the consequences of their actions.

Research from the United Nations (2006) indicated that offenders who participate in restorative justice practice are more willing to accept responsibility for their actions and comply with their restitution and reparation agreements. Becoming acquainted with the participants involved in the crime helps develop relationships between all of the partakers and fosters caring concern for their needs. The ideal value of restorative justice is a resolution that includes remorse, forgiveness, and reconciliation (Braithwaite, 2002). If an apology from the offender is offered to the victim, research indicates forgiveness is often extended to the offender, and both victim and offender experience closure (Karremans & Van Lange, 2004). The freedom to forgive often provides the victim freedom from their fear (Karremans & Van Lange, 2004; United Nations, 2006). It also helps to bring understanding to the "Why me?" question (Brenda Morrison, personal communication, May 5, 2010).

Offering support and rehabilitation services to the offender demonstrates a caring compassion and a willingness to see the offender as a member of the community who

needs assistance, especially while fulfilling his or her responsibility to the victim. The emphasis shifts from punishment to empowerment, as the process focuses on healing the consequences of the crime, not on the crime itself. Recognizing one's responsibility to, and interconnection with, other members of society assists in developing caring, respectful relationships (Engster, 2007; Johnstone, 2002; Ross 2006). Accepting responsibility for the harms one has committed and offering restitution, without the fear of being stigmatized or ostracized from society, allows for personal growth and moral development (Johnstone, 2002).

Restorative justice and care theory emphasize respect, compassion, and understanding. Both practices support the needs of the participants and strive to develop relationships between the individual participants and the larger community. Care ethics and restorative justice practice attempt to heal the harm caused by intended and unintended circumstances. Establishing programs to support and provide for the needs of others helps to achieve self-sufficiency and allows for others to become contributing members of society (Zehr, 2005). Taking responsibility for one's actions also encourages a sense of accountability and an understanding of how one's behavior affects the lives of others (Braithwaite, 2002; Eisenberg, Fabes, & Shea, 1989).

Both care theory and restorative justice recognize the interconnection of all human beings. Community is necessary for education, implementation, and successful establishment of structures that support and provide for the needs of society. Developing strong community bonds and empowering individuals to make transformative change are the prospective outcomes of restorative justice practices (Johnstone, 2002).

Having the voices of women heard and actively involved in the processes of restorative justice will be an advantage. Women have significant learned experience in communication, education, mediation, negotiation, relationship building, as well as compassionate care and advocacy. Women have historically been assigned roles in society, many of them involving caretaking and providing assistance to others. Women have also accepted these roles and have gained valuable experience from them. These have not been menial, insignificant roles.

Transforming Lives with Restorative Justice

Caring for others is a task requiring compassion, interdependency, resilience, inventiveness, and fortitude, all desirable and virtuous characteristics. These roles have required leadership qualities that equate to those of a transforming leader. Simola et al. (2010) concluded that striving for the "idealized influence (interconnections), . . . [the] inspirational motivation (shared vision of community); . . . [the] individualized consideration (responsiveness to other's needs); . . . [and, the] intellectual stimulation (creativity)" (pp. 181-185) are characteristics of a leader who aspires to building relationships and engagements. These attributes, according to the study's authors, characterize an ethics of care. A leader with transforming leadership qualities is, according to Burns (2003), a facilitator of change:

> The task of leadership is to accomplish some change in the world that responds to human wants. Its actions and achievements are measured by the supreme public values that themselves are the profoundest expressions of human wants: liberty and equality, justice and opportunity, the pursuit of happiness. And if leadership is a moral undertaking, a response to the human wants expressed in public values, then surely its greatest task of global leadership must be to respond to the billions of the world's people in the direst of want, people whose pursuits of happiness might begin with a little food or medicine, a pair of shoes, a school within walking distance. They might seek some respect and dignity, some understanding of the interlocked burdens and frustrations of poverty as, they the poor understand

them. They might become followers of those who hear their wants and whose responsive leadership in turn empowers them, in the initial steps of a leadership process that might break the vicious cycle of poverty. (pp. 2-3)

Caring for and caring about others are important qualities for a society to function in a way that benefits all of humanity. Providing for the basic needs of others, including their needs for education, health care, security, and justice is a sign of a strong, functioning community. Restorative justice endeavors to give voice to the victim, repair the harm created by the offense, rebuke the crime, oblige accountability and responsibility, prevent recidivism, and restore the balance (United Nations, 2006). Communication, negotiation, compassion, resilience, and determination all foster the transformative change that is needed.

Restorative Justice and Care Theory Outcomes

The United Nation's 14 outcomes for restorative justice practice presented earlier can be further reinforced and strengthened by adopting the tenets and rights of care theory developed by Engster (2007):

"1. Restorative justice has a positive effect in reducing recidivism" (United Nations, 2006, pp. 86-88). Care theory focuses on building relationships, thus enabling one to provide for the needs of the other. If an offender needs to have rehabilitative support, then the community has the responsibility to offer those services in order to provide for the offender's needs, which, in turn provides for the security needs of the members of the community.

"2. Community support for victim and offender is high in communities who adopt restorative justice practices" (United Nations, 2006, pp. 86-88). Care theory recognizes the value of supporting all of a community's members. By offering support

services and investing in the lives of the participants in a restorative justice practice, the
community shows its understanding of interconnections and the importance of building
relationships.

"3. Many crime victims and offenders will participate in restorative practices if
provided the opportunity" (United Nations, 2006, pp. 86-88).According to Engster
(2007), care theory provides individuals with the "right to physical security including
protections against . . . unusual punishment and arbitrary arrest and detention. Consistent
with these protections, all individuals should also enjoy rights to due process and a fair
trial" (p. 169). In restorative justice both victim and offender are encouraged to
communicate their feelings so that each can gain a better understanding of the other's life
and the circumstances leading up to the incident.

"4. In some jurisdictions, restorative justice practices reduce court cost,
processing fees and has improved services" (United Nations, 2006, pp. 86-88).   The
reduction of costs in the regular court system, potentially allows for more funding to be
available for social and other support services in the communities. This is consistent with
what care theory advocates for, providing for the needs of others. In the Akwesasne
Justice System, restorative practices reduced the incarceration rate so dramatically, that
the government awarded the $46,000 (the annual cost of housing a single inmate) to the
community (Mirsky, 2004, p. 2).

"5. When crime victims and offenders participate in restorative processes,
compliance to the agreement by the offender is high" (United Nations, 2006, pp. 86-88).
Care theory encourages respect for all individuals. It acknowledges that each person has
specific needs and it is important to listen and understand what an other's needs are.

Misunderstandings can be reduced if respect for the other is practiced. It has been shown in restorative justice that offenders are often unaware of the harm they have caused to the victim (Zehr, 2005). By having offenders listen to the stories of the victims and understand what their needs are in order to recover from the harm they have experienced, the offenders confront the consequences of their actions. By investing in the rehabilitation of the offender, the victim and the community members are able to provide for the needs of the offender, and in doing so, recognize the offender as a member of the community who needs assistance while fulfilling his or her responsibility to the victim. The emphasis is on the interconnections and relationship building, both of which are inherent in care theory.

"6. There are reports of successful resolutions in victim-offender mediation in both youth and adult offenders and for all levels of crime" (United Nations, 2006, pp. 86-88). Caring about the consequences to people of criminal activity and preventing its re-occurrence is a significant objective of care theory. Building relationships, within the community, between victim and offender, and between victim, offender, and community reinforces and supports community cohesion. Caring for an individual's well being and caring about fair treatment in a justice system are equally important attributes. In care theory, individuals have "the right to protection against discrimination" (Engster, 2007, p. 170). It is not the crime that is important; it is the actions taken to heal the harm (if possible) and restore the balance to community (Braithwaite, 1996).

"7. Victim-offender mediation can be successful in severe violence" (United Nations, 2006, pp. 86-88). Care theory focuses on understanding, providing for and respecting the needs of others. It can be applied to restorative justice as it focuses on

healing the consequences of the crime, not on the crime itself. Understanding the needs of the victim, recognizing the value each individual has to community, and sincerely offering compassionate understanding reinforces the concept of interconnection and relationship development. Understanding there are reasons for behavior and there may be extenuating circumstances for deviant conduct is an attribute of care theory. "The right to personal and social care should be understood to include access to adequate care during childhood, sickness, disability, and old age" (Engster, 2007, p. 169). If an individual has been deprived of these rights, then it is possible that this dispossession has influenced his or her behavior. Providing services for both the victims and offenders allows for healing and rehabilitation.

"8. Both crime victims and offenders rate restorative processes as more fair and satisfying than the conventional criminal justice system" (United Nations, 2006, pp. 86-88). Care theory emphasizes respect, compassion and understanding. Furthermore, it supports the needs of the participants and strives to develop relationships between the individual participants and the larger community. Taking responsibility for one's actions also encourages a sense of accountability and trustworthiness and a genuine interconnection with the other members of the community (Eisenberg et al., 1989). Care theory claims all individuals have "the right to security from unwarranted police or military violence, cruel and unusual punishment and arbitrary arrest and detention" (Engster, 2007, p. 169). Therefore, participants are provided a safe environment in which they can begin the restorative justice process.

"9. Restorative justice can be an integral component of an overall community policing strategy and means to improve police-community relations" (United Nations,

2006, pp. 86-88). Care theory provides for the rights of individuals "to physical security . . . [as well as] a responsive government [and] the right to enter into relationships free from coercion" (Engster, 2007, p. 170). In Australia, police members often facilitate the restorative justice practices. Developing a caring concern by all members of society towards those who are marginalized and in need of assistance may prevent future criminal activity. In the Akwesasne system, police often refer offenders to the restorative community justice system (Mirsky, 2004, p. 5).

"10. Crime victims report being less fearful after having met their offender" (United Nations, 2006, pp. 86-88). Care theory encourages the development of relationships in order to provide for the needs and well being of others. Victims need to tell their story, to describe how the offender has violated their sense of security, and how the offense has affected their lives. If acknowledgment is provided and the offender accepts responsibility for the crime and an agreement of reparation is established, a relationship develops that is supported by the community. If an apology, from the offender is offered to the victim, research indicates that forgiveness is often extended to the offender and both victim and offender experience closure (Karremans & Van Lange, 2004). The freedom to forgive often provides the victim freedom from fear.

"11. Restorative processes offer victims a voice, an opportunity for an apology and reparations, as well as information about the offender" (United Nations, 2006, pp. 86-88). Caring about the needs of the other is primary to care theory. Acknowledging the story of the victim and attempting to repair the harm caused by the offense provides for the needs of security and safety, as well as sustaining "their right to personal and social care" (Engster, 2007, p. 169). Knowing the Other, helps develop relationships and

fosters caring concern for their needs. The ultimate value of caring for others is providing the opportunity for them to develop their basic capacities.

"12. Restorative justice can reduce both the frequency and the severity of re-offendin" (United Nations, 2006, pp. 86-88). Care theory attempts to heal the harm caused by intended and unintended circumstances by developing relationships and fostering cooperative agreements, as well as establishing programs to support and provide for the needs of others. It also helps to achieve self-sufficiency and allows others to become contributing members of society (Zehr, 2005).

"13. Offenders who have participated in a restorative process have higher rates of compliance with agreements and taking responsibility for their actions" (United Nations, 2006, pp. 86-88).   Recognizing one's responsibility to, and interconnection with, other members of society, assists in developing caring, respectful relationships. Accepting responsibility for the harms one has committed, and offering restitution, without the fear of being stigmatized or ostracized from society, allows for personal growth and moral development (Johnstone, 2002). Care theory advocates for the right of all individuals to "exercise some control over the design and implementation of local programs so that public programs address their particular needs" (Engster, 2007, p. 171). By feeling like a member of a community, as opposed to an outcast, allows offenders to accept their responsibility. Caring about the well being of the offender, along with that of the victim helps prevent recidivism (Braithwaite, 2002).

"14. Restorative justice processes can increase community engagement and facilitate community involvement" (United Nations, 2006, pp. 86-88).   Care theory recognizes and supports the interconnection of all human beings. Community is

necessary for the education, the implementation and the successful establishment of structures that support and provide for the needs of society. Care theory supports the idea that individuals have "the right to satisfy biological and developmental needs for themselves and their dependents" (Engster, 2007, p. 169). Empowering one's community supports and sustains services that can meet the basic needs of the individual members of the community and of the larger, more diverse populace.

Restorative Justice, Care Theory, and Sustainability

Harlem Brundtland (1991) was very clear in her report to the United Nations when she spoke of meeting the needs of the world's poor. Providing for the essential needs for the world's populous is a primary concept to sustainability.

> The satisfaction of human needs and aspirations is the major objective of [sustainable] development. The essential needs of vast numbers of people in developing countries-for food, clothing, shelter, jobs-are not being met, and beyond their basic needs these people have legitimate aspirations for an improved quality of life. A world in which poverty and inequality are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life. (Harlem Brundtlant, 1991, pp. 43-44)

I do not believe there could be more compelling words than those of Harlem Brundtland for the adoption of care theory and restorative justice.

Engster's (2007) caring rights include the rights of physical security, food, clean water, clothing, shelter, medical care, a clean environment, social care, employment, and a safe workplace, as well as the ability to care for dependents, and be free from forced servitude. All of these share a common theme of social justice, and according to Braithwaite (2002), "sustainable development is a political objective that advances social justice" (p. 211) if the poor are given priority. Braithwaite continued, "there can be no enduring peace without social justice" (p. 211).

Restorative justice and care theory can support sustainable development if the focus, as Braithwaite (2002) contended, remains on those people who have been marginalized by the economic disparity evident in many societies. Development that respects the basic and primary needs of people, especially their needs for a clean environment and the opportunity for safe employment can be sustainable and just (Braithwaite, 2002).

A significant factor in sustainable development is investments for the creation of meaningful employment, thus allowing people to meet their basic needs of survival. Employment opportunities also have the potential to reduce the wealth disparity that creates many of the social justice issues and inequalities present in today's world. Restorative justice can be instrumental in providing a safe environment for people to live and work. "Streets that are safe enough for job creation are a minimal requirement for economic development" (Braithwaite, 2002, p. 14). Success in Papua New Guinea with gang violence through restorative justice processes has significantly increased the safety of the cities and allowed for education and employment opportunities for the people (Braithwaite, 2002). Caring about meeting the basic needs of others also enables discussions in the sustainable development discourse for responsive and attentive decision making for those marginalized by excessive growth. Investing in the education and health of people, especially the youth, and making sure that their basic needs are met allows for a healthier, more educated, and more responsible work force (Braithwaite, 2002).

Restorative practices have the potential to restore peace and justice to people who want to create transformative change in their communities. Care theory supports

restorative justice because it focuses on meeting the needs of the participants and strives

to bring compassion and caring into the process. To care for the well being of others and

care about the just treatment of individuals are virtues that all of us need to adopt. Care

theory claims we have a responsibility to care for others. Restorative justice utilizes that

responsibility to restore peace and improve the lives of others. Most importantly, it

encourages relationships and responsive communities that strive to bring respect,

compassion, and hope into the lives of others.

Implications for Leadership and Change

This dissertation contributes to the discussion of restorative justice because it

brings in a component not yet introduced, the concept of care in support of restorative

practice. Earlier research tried to combine an ethic of care with a conventional justice

system; however, the efforts have not been successful, mainly due to the punitive and

retributive intentions behind the systems. Restorative justice's foundation is care—care

for the victim and the offender and all other members of the community affected. This

system of justice has the potential to restore relationships, heal broken bonds of trust, and

empower communities. It fosters an environment of caring compassion and it has the

potential to mediate conflict and restore harmony and balance in the world of humanity.

Restorative justice listens to the voices of women echoing their learned experience. It

listens to the voices of the victims, the voices of those marginalized and in need, the

voices of distant others, and the voices of the offenders. Restorative justice, supported by

the tenets of care theory can help transform the systems of justice so they are responsive,

respectful, and restorative, and serve the needs of the people, not the system. Following

the Teachings of the Sacred Tree, "Human beings must be active participants in the

unfolding of their own potentialities" (Ross, 2006, p. 292). Restoring justice and caring

for others initiates this process of transformative change, for ourselves, and more

importantly, for others.

"Isandla sihlamba esinye" (Old Zulu Proverb). Translation: a single hand cannot

wash itself. Meaning: people need each other and cannot succeed separately.

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