

ANNUAL LECTURE

Transforming restorative justice

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Abstract

From the global pandemic to the Black Lives Matter, the Me Too/Times Up and Indigenous reconciliation and decolonisation movements, the systemic and structural failures of current social institutions around the world have all been brought to our collective consciousness in poignant, painful and urgent ways. The need for fundamental social and systemic transformation is clear. This challenge is central to the work of dealing with the past in countries undergoing transition and in established democracies confronting deep structural inequalities and injustices. Rooted in lessons from the application of restorative justice across these contexts, this article suggests that grounding restorative justice as a relational theory of justice is key to understanding and realising the potential of a restorative approach for transformation. It also explores the implications of this transformative imperative for the growth and development of restorative justice

Keywords: relational theory, transformative justice, systemic injustice.

1 Introduction

2020 was quite a year in which to give the Annual Lecture for the *International Journal of Restorative Justice*.¹ It was an honour and privilege to be invited. Each year I look forward to reading the lecture and am always more than a little jealous of those who have the chance to be in the room for its delivery. I confess that, consistent with much of my pandemic experience, the invitation for this year felt bittersweet, because the vibrancy of in-person intellectual exchange that surrounds such gatherings was not to be. Instead, we gathered virtually in a *Zoom room* in the way that has become so quickly a feature of our lives since March 2020. Even as the pandemic has kept us at a distance, it has also presented new opportunities to connect more broadly across time (zones) and space. This

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1 The Annual Lecture was held on 7 December 2020. I am grateful to the respondents and participants at the lecture and to reviewers and members of the Editorial Board for their insightful comments and reflection on the lecture.

virtual version of the lecture had its limits, but it also allowed many to be *in the room* who might not otherwise have been able. The gathering was also a reminder of the important role the journal itself has come to play in building and nurturing the virtual international intellectual community in the field of restorative justice. I am particularly grateful for the participation of Fania Davis and Carl Stauffer, who offered their knowledge and wisdom as respondents at the Annual Lecture.² My thinking has been enriched by their scholarship and practice for many years, and this occasion was no exception. Their engagement during the Annual Lecture ensured that the best part of being in the room together was not lost this year. It was also reflective of the engagement that we need in order to realise the full transformative potential of the restorative justice movement.

The pandemic has revealed and brought to the fore many truths about our world and generated new ideas and possibilities for doing things differently (Llewellyn & Llewellyn, 2020).³ For this reason, it was a rich and important time to give the lecture about the significance of a restorative approach for social and systemic transformation. One of the things the pandemic has brought to our collective consciousness is the inescapable truth of the relational nature of our world. Lockdowns and isolation requirements have made us more acutely aware of the importance of connection for our mental, emotional and physical health. At the same time, we have had to rethink our reliance on congregated settings, from care homes to prisons, and confront the impossibility of safety for many who cannot shelter in place, or work and learn from home because they do not have shelter or the economic resources and options required. The pandemic shows us everyday the extent to which our fundamental relational nature is both threat and surety for our safety, security and well-being.

The pandemic requires us to reorient our thinking and ways of being and doing relationally in order to meet the challenges we face and to secure our well-being. It is prompting transformations of societies, systems and services that we never or only dared to imagine. One of the current challenges is how to retain the lessons and transformations brought about during this time for the post-

2 Fania E. Davis is an author, educator, restorative justice practitioner and long-time social justice activist and civil rights trial attorney, with a PhD in Indigenous Knowledge. Coming of age in Birmingham, Alabama during the social ferment of the civil rights era, the murder of two close childhood friends in the 1963 Sunday School bombing crystallised within Fania a passionate commitment to social transformation. The *Los Angeles Times* named her a New Civil Rights Leader of the 21st Century. See 'Conversations on Restorative Justice: A talk with Fania Davis' in this issue of the journal.

Carl Stauffer (PhD from the University of Kwa-Zulu Natal, South Africa) is a Senior Expert in Reconciliation at the US Institute for Peace in Washington, D.C. He was formerly an Associate Professor of Justice Studies at the Center for Justice & Peacebuilding at Eastern Mennonite University. He previously served as the Co-Director of the Zehr Institute for Restorative Justice, and Academic Director of the Caux Scholars Program in Switzerland. His research concentrates on the critique of transitional justice from a restorative frame, and the application of hybrid and, often, parallel indigenous or local community justice practices.

3 For an interesting discussion of the implications of COVID-19 within the field of restorative justice, see generally, 'Notes from the Field', in the last issue of this journal (*The International Journal of Restorative Justice* Issue 2, 2021).

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pandemic world. There is a real risk that the relational reorientation in our thinking and actions will be viewed as necessary only during these exceptional times and dispensable once things return to *the way they were*. This challenge has long marked the experience of those facing social and political transitions post conflict. Peacebuilding efforts open up opportunities to think and do differently, which are then closed as things *normalise*. This often results in a failure to retain and apply the lessons from the transitional time. For those who have long seen the need for a relational revolution to transform our ways of thinking and doing, this extraordinary time invites a necessary reset of the *ordinary*.

At the same time as our collective worldview has taken this relational turn, we are in the midst of a global moment of intersecting and urgent demands for justice that are also deeply relational – the Me Too/Times Up, Black Lives Matter, Indigenous rights and reconciliation movements and the Climate Strikes and environmental movements, among others, demand an end to the injustices of structural and systemic racism, sexism and colonialism. These injustices are deeply engrained in our understanding of one another and in the collective histories upon which our current assumptions, structures and systems are built. This moment has revealed the utter inadequacy of our current approaches to justice and care to respond and to secure the just relations needed for our well-being (Llewellyn & Llewellyn, 2020). Indeed, these systems are evidently and obviously implicated in and perpetuate these injustices. But this is more than a mere moment in time; it is reflective of a collective movement – a movement that will not be satisfied by simple repairs or reforms of the current justice and care systems. It is aimed at more fundamental transformations at conceptual, structural, societal, institutional and interpersonal levels – transformation in our very idea of justice and the ways we seek and secure it.

There can be no return to a *normal* that is informed and structured by liberal individualism, colonialism, western imperialism and the systemic inequalities of racism and sexism. Instead, this extraordinary time of pandemic must be followed by a time of transition – of transformation. It requires an understanding and approach to justice that is up to this task. Given the relational nature of this transformational work, it seems obvious, at least to many of us in the field, that restorative justice has a central role to play: restorative justice can and should help frame this movement for social and justice transformation.

2 Part 1: transformative justice critique

The potential of restorative justice in this transformative agenda is not, however, as obvious to some. In fact, restorative justice has been ignored or rejected in some recent efforts at social and justice transformation in favour of *transformative justice* as the approach required to meet the moment and shape the movement for fundamental change. Indeed, restorative justice has been used as a foil against which transformative justice defines itself. In this portrayal, restorative justice seeks a return to a status quo ante – focused on repairing

harms and relationships to make them whole again.⁴ In contrast, transformative justice, as the moniker suggests, is oriented to the cause of bringing about a new and different state. adrienne maree brown, in a March 2020 video introducing transformative justice, explains restorative justice as attempting to restore conditions to their state prior to the harm. The concern with this approach, she says, is that such original states often reflect systemic injustices. Transformative justice aims to dig deeper, she explains, to get at the root causes of injustice and move towards a new and more just condition (brown, 2020).

Restorative justice and transformative justice are also distinguished, by some, by their scope. Such accounts suggest that transformative justice is focused on macro-level social and structural change, while restorative justice is concerned with resolving micro-level interpersonal harms and conflicts. These distinct foci allow for the potential complementarity of these justice frameworks. adrienne maree brown, for example, posits that restorative justice and transformative justice can exist on a spectrum. Transformative justice, however, in her account, takes justice a step further than restorative justice (brown, 2020). In her view, restorative justice can contribute to the greater cause of transformative justice through its attention to interpersonal interactions and harms. Others, however, worry that a focus on individual incidents and relationships may undermine the cause of transformation by ignoring or obscuring systemic or structural factors and root causes. The concern is that, in resolving interpersonal conflict and harm, restorative justice is merely treating symptoms and not causes and, in the process, distracting from the real and urgent systemic work required for justice. Anthony Nocella, in his overview of transformative justice theory, identified another consequence of this more limited scope vision of restorative justice:

Restorative justice stresses that the system is flawed, overworked, and retributive, but does not address why it exists, how it is racist, sexist, ableist, and classist, whom it benefits, and how it was developed. Transformative justice...is about looking for the good within others while also being aware of complex systems of domination. (2011: 4)

These conceptual distinctions between restorative justice and transformative justice, described by brown and Nocella, derive from current experiences with restorative and transformative justice practices and their relationships with the mainstream legal system. Many transformative justice advocates maintain that transformation cannot happen within existing systems and institutions. It must happen outside these systems, within community. They point to the institutionalisation of restorative justice practices and programmes as evidence of

4 There are many accounts of restorative justice that invoke repair and return. For an example of this critique of restorative justice, see Lofton (2004). For an early rejection of this definition of restorative justice, see Llewellyn and Howse (1999a).

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its acceptance of the legitimacy of the current system, and its approach as a significant point of departure between it and transformative justice.⁵

Of course, the debate between restorative or transformative justice is not a new one. From the early development of the field, there was debate over the term *restorative*, and arguments made to replace it with *transformative*. Ruth Morris was among the earliest leading voices for transformative justice, and this was rooted in her long-standing advocacy for prison abolition (2000). On some level, as a debate about nomenclature, it is tempting to dismiss it in favour of more substantive debates. Perhaps a rose by any other name would smell as sweet, and our efforts would be better spent in service of transformation by saying what we mean and meaning what we say! What is so clearly and desperately needed in this moment, is a movement, whatever the name, with unity of purpose and commitment to the pursuit of justice.⁶ However, especially in this moment, as we face a renewed urgency for justice and social transformation, it is a mistake to dismiss the questions and concerns raised about restorative justice and its relationship to transformative justice. This moment calls for clarity about the theory and practice of restorative justice *as* transformative justice.

M. Kay Harris, in her chapter ‘Transformative Justice: The Transformation of Restorative Justice’, describes the perspectives on this relationship, ranging from those who juxtapose restorative and transformative justice, to those who place them on a spectrum, as noted earlier. Finally, she notes there are those who take the view that properly understood restorative justice and transformative justice are aligned: they are both aimed at interpersonal *and* social/structural transformation (2007). I share the latter perspective. It is important to be clear, however, that I do not claim that restorative justice in its current manifestations has been or will be transformative. This article is not a defence of restorative justice against the critiques and concerns raised by transformative justice advocates. I am mindful of the wisdom offered by Tali Gal, in a recent issue of this journal, that we must overcome and resist the sometimes-myopic perspective of restorative justice. This is an important moment for restorative justice scholars and advocates, as Gal suggests, to see ourselves as others do and to benefit from

5 The Bernard Center for Research on Women’s ‘Building Accountable Communities’ video series’ is an incredible resource of leading scholars and practitioners on transformative justice. There is strong agreement across the various presentations that transformative justice cannot happen within the system and must be pursued outside systems and structures. While many of the presenters do not reject restorative justice, they express concern with the potential cooptation of restorative justice through institutionalisation. Retrieved from <https://bcrw.barnard.edu/building-accountable-communities/> (last accessed 15 July 2021).

6 I suppose there is a strategic question for those committed to the agenda of social transformation about whether the debate over terms is useful; that is not what I want to take up here, however. Whatever the tactical choice of referent in order to build and sustain a movement, I am interested in what this debate reveals about the understanding of restorative justice and its implications for the future of restorative justice. I am keen the voices and visions of those advocating for transformative justice be taken seriously within the restorative justice movement so we can take up the transformative call and live out its implications for the future development of restorative justice.

the clarity of identity and the purpose it brings (2020). I take the current debate over the role of restorative justice as vital to clarifying and living into and up to restorative justice's fundamental conceptual commitment to transformation.

This clarification will also reveal the potential alignment of restorative and transformative justice that is so urgently needed in this moment and movement for social transformation. It is an important opportunity for the restorative justice movement to reflect on the understandings about and within the field and what is manifested in our practice. It is essential, I suggest, to recognising and realising the transformative potential of restorative justice that we understand and implement it as a relational theory of justice.

For many who have focused on restorative justice within or alongside domestic criminal justice systems, this moment brings new critiques and challenges to the field. Social and structural transformation has, however, been at the core of my work in restorative justice since I first entered the field two and a half decades ago. Conceptually, I came to restorative justice as an expression of a feminist relational theory of justice. Practically, I first explored the implications and applications of this theory of justice in the context of political and social transitions. In theory and practice, then, my approach to restorative justice was oriented towards transformation. I carried this orientation over into my broader work in the field to advance a restorative approach to justice in service of social transformation. Starting from relational theory and in the context of social transitions has fundamentally shaped and influenced my restorative justice scholarship and practice. It has made clear that restorative justice is conceptually and practically transformative. This moment in the world and the field requires this frame more than ever.

This is much more than a conceptual debate or a bid for conceptual clarity in the field for its own sake. It is about the allyship we need to build for the work on the ground. As Mimi Kim notes, 'Transformative justice proponents, operating with little or no financial support and with little legitimacy, [have] endured through political will and strong networks of solidarity' (Kim, 2018; 2021: 8). This is a familiar story for many restorative justice advocates too. Experience shows that we need each other to meet the challenges of the moment and in this movement for transformation. Shared understanding and commitment to the work ahead and careful attention to how we can support one another will foster solidarity and allyship. For restorative justice, this will require serious examination of current thinking and practice against the commitment to transformation to see the difference it must make. It is more than a strategic matter about nomenclature in reaction to this moment. It is about what is required to ensure restorative justice does not in fact become a set of practices or a new tool kit at the disposal of the oppressor – to maintain relationships *within* oppressive structures. Restorative justice conceptually and practically can and must offer ways of building new transformed social, structural and interpersonal relations.

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3 Part 2: restorative justice as transformative justice

The transformative nature of restorative justice is perhaps obvious to me because of the theoretical and practical foundations of my work in the field, my approach to restorative justice as a relational theory of justice and my work applying it in the context of social and political transitions. In this moment, as our past laden with structural and systemic injustices confronts us, and as we recognise and commit to the need for large-scale and fundamental social change, my work offers significant insights and clarity about the transformative character and potential of restorative justice.

3.1 A relational theory of justice is transformative

Relationships are core to the field of restorative justice. Indeed, one of the hallmarks of restorative justice is its focus on the impact of wrongdoing on 'people and their relationships' (Zehr, 2002). This marks the shift away from the focus of the mainstream legal system on the breach of laws and the responsibilities of individuals for such breaches (Zehr, 2005). Focusing on people and their relationships has resulted in some significant reforms in justice policy and practice. Yet, as the transformative justice critiques of restorative justice point out, while this focus on interpersonal relationships can contribute to fundamental social transformation, it can also reinforce the very systems and structures within which these relationships occur.

Given the existing focus on relationships, my suggestion that understanding restorative justice as a relational theory of justice is key to its transformative potential may sound like nothing new. What difference will it make to the way in which we understand and practice restorative justice? It is true that the field is already focused and committed to the importance of relationships. My suggestion for greater attention to the theory of justice animating a restorative approach is not inconsistent with the attention and concern for relationships that has characterised the field; however, neither is my claim for restorative justice as a relational theory of justice fully captured by the current focus on people and their relationships. From the perspective of the transformative potential of restorative justice there is an important difference between *being relationally focused* and *focusing on relationships*. They are related but not the same. Understanding this distinction is core to restorative justice as transformative justice.

As I mentioned earlier, when I first became engaged in the field of restorative justice (at least as an academic), I came to it through feminist relational theory.⁷ I was studying feminist relational theory and its implications for understanding oppression. This caused me to consider the implications of a relational orientation for the work of justice to address oppression. Restorative justice seemed a promising place to start. In those early days, restorative justice was

7 I have been particularly influenced by the work of Canadian feminist scholars in this field, including Christine Koggel, Sue Campbell, Ami Harbin, Sue Sherwin, Jennifer Nedelsky and Maneesha Deckha. For an introduction to the implications and application of feminist relational theory, see Downie and Llewellyn (2011); Harbin, Koggel and Llewellyn (2022).

grounded in a belief and commitment about the value and centrality of relationships in the work of justice – to doing and making right. To the extent that the theoretical basis for this was explicit at all, it was rooted differently across the field: for some in Christian theology about right relations; for others in the wisdom of Indigenous and traditional justice ways rooted in relational worldviews and knowledge. Despite this variety of intellectual foundations, the implications of its relational orientation were limited as it was translated into the evolving practice of restorative justice. In practice, restorative justice efforts were focused on interpersonal relationships between and among those affected by a situation, either in community or in connection with the criminal justice system.

This is not surprising given that the modern development of restorative justice came first and foremost as a practical response to the needs of people and community and the failures of the current criminal justice system to meet those needs.⁸ In doing so, restorative justice developments borrowed heavily on the wisdom and experience of Indigenous justice processes and practices, albeit to different extents and in different ways around the world (Chartrand & Horn, 2016; Hand, Hankes & House, 2012; Napoleon, 2004; Ross, 2006; Tauri, 2016). Those involved with these early restorative justice experiments experienced something significant and different and sought explanations for what they saw. As they looked for a theory to explain how and why this approach was working, some in the field found John Braithwaite's reintegrative shaming theory – itself deeply informed by Indigenous knowledge, practice and experience (Braithwaite, 1989; Walgrave & Aertsen, 1996). Rooted in republicanism and its commitment to non-domination, this theory helped us think more about this different way of doing justice (Braithwaite & Pettit, 1990). While for some, reintegrative shaming was significant only for its explanatory power of the effectiveness of restorative practice and process, for others, it revealed the need to attend more deeply to the theoretical foundations of restorative justice, which could support and sustain its future growth and development.

It is interesting to me that when restorative justice went looking for theory, it found reintegrative shaming, with insights rooted in the relational worldview and knowledge of Indigenous peoples and a philosophical commitment to relationships of non-domination. And, when I went looking for an expression of what a relational theory of justice could and should look like, expressed in the world, I found restorative justice.⁹ It was precisely the early articulations of restorative justice, as focused on the needs and responsibilities of people in relation to one another rather than on remedying the breach of the law as the requirement of justice, that made me explore the nature of this different *lens* restorative justice offered (Zehr, 2005).

8 See, for example, the well-known 1974 Elmira Case from Ontario (*The Elmira Case*, 2015).

9 This early engagement with restorative justice was also helped significantly by John Braithwaite, who was conducting a seminar at the University of Toronto Law School when I was a student. I took his course the year after I returned from working with the Truth and Reconciliation Commission in South Africa exploring the potential of relational justice and the restorative approach in that context and process. I was indebted to him for his wisdom and encouragement then and continue to be today.

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As I began to develop my account of restorative justice as a relational theory of justice rooted in feminist relational theory, I considered the difference it might make to the development of restorative justice. Perhaps the biggest difference was that it would require a shift from a focus on *relationships* to a deeper and broader *relational* focus. At the most basic level, the difference is that, as a relational theory of justice, restorative justice is not focused only on justice *in* interpersonal relationships but on justice as fundamentally concerned with *just relations*. This is not to suggest that the details of actual relationships do not matter for relational theorists. On the contrary, relational theorists believe that attention to how actual relationships shape and structure the lives and experiences at individual and collective levels is essential. But this attention cannot be limited to the interpersonal and requires recognition of the significance of relationships at institutional and structural levels as well. A relational theory of justice, then, as grounded in feminist relational theory, starts with an understanding of the world and human beings as relationally constituted. Feminist relational theorists are not simply focused on the significance of the social or the collective, as in communitarian theories. Relational theorists do not juxtapose sociality and individualism but offer an account of individuals as inherently relational. Relational theorists posit that human beings are constituted *in and through* relationships at interpersonal, institutional and structural levels (Downie & Llewellyn, 2011; Llewellyn, 2011). As I have articulated elsewhere, a relational theory is focused relationally – on the fact of connection and interconnection – as a metaphysical claim and an empirical fact about the world (Llewellyn, 2011). Furthermore, this relational theory that I suggest grounds restorative justice is explicitly feminist in the sense that it emerged out of feminist insights about the lived reality of women. As such, it is deeply rooted in the feminist ethic of transformation (Ahmed, Kilby, Lury, McNeil & Skeggs, 2000). In this way, it is a deeply political project aimed at disrupting the structures of power in our ways of knowing and being that have privileged some and resulted in inequality and oppression. Feminist relational theory is, therefore, explicitly emancipatory, anti-oppressive and oriented to transformation.

As a relational theory of justice, restorative justice is fundamentally concerned with just relations. The relational frame requires attention to the interplay among the various relational levels that structure our lives. As such, the pursuit of justice cannot be focused at *either* the interpersonal level *or* the systemic/institutional level. Wherever it starts, the work of justice must look for and address the interplay. One cannot, therefore, focus on the relationships between and among parties in a situation without looking to the contexts, causes and circumstances at play that reveal the relevant systemic and structural relations involved. Likewise, a relational approach to justice cannot focus on the systemic or structural level without regard for and attention to the implications of these injustices at personal and interpersonal levels.

I was convinced and compelled by the fit of restorative justice as an expression of a relational theory of justice from the outset. However, developing this theoretical framework for restorative justice has not been merely an exercise

in advocating for restorative justice. It has revealed the orientation and potential of restorative justice – including helping to clarify and dispel some of the most common misunderstandings or mischaracterisations of restorative justice. But it has also revealed significant critical concerns with some of the theory and practice of restorative justice, including, most relevantly to this lecture, about the limited and narrow applications often influenced and shaped by the assumptions and needs of the existing justice system. Restorative justice as a relational approach to justice challenges some long-held assumptions and assertions in the theory and practice of restorative justice, precisely because of its broader scope and commitment to the transformation of social structures and systems. Time and space will not allow a full exposition of restorative justice as a relational theory of restorative justice and the difference this framing makes to our thinking and doing of justice, but it is important to highlight the most salient aspects of this account to appreciating the transformative character of restorative justice.

3.1.1 *Aimed at realising just relations not returning the status quo ante*

First, grounding restorative justice in relational theory helps to address one of the most common misconceptions of restorative justice – that it is aimed at repairing existing relationships or seeks a return to the way things were prior to a specific harmful action or incident. Indeed, as I noted earlier, this view of restorative justice is central to the transformative justice critique. A relational theory of justice takes just relations as the core concern of justice. Restorative justice, then, is oriented to this goal – the establishment or re-establishment of just relations. However, while it is possible that the measure of just relations may be found in some prior state of relations, this is not necessarily the case. The idea of a *return* to a prior state – even at a conceptual level – does not drive restorative justice. It is not animated by notions of repair and return as the aim of justice; rather, the work of justice understood relationally is to discover what is required to support and sustain just relations in the future. The measure of what is *just* is also not oriented by the status quo ante but rather by what is required for those involved to be well and flourish. It is important to be clear that a relational theory of justice, then, does not view connection or relationship as a good in and of itself. Indeed, as noted, feminist relational theory is a normative theory. Its focus on relationality reveals the dynamics of power and privilege in order to address inequality and oppression. A relational theory of justice is explicitly focused on the character of relations required for *justice* – for *just* relations. It does not presume the preservation or reinstatement of existing or pre-existing relationships is just. Indeed, justice on this account may well require an end to particular relationships or patterns of relations insofar as they are harmful (Llewellyn, 2011).

In my previous work, I explain that the criteria for *just* relations can be derived from the experience of injustice as much as from the experience and articulations of justice. We have come to know that which is hurtful and harmful to our well-being and flourishing at individual and collective levels. I have articulated *just* relations as those marked by equal respect, concern, care and

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dignity (Llewellyn, 2011). What precisely is required to secure such relations will, of course, depend upon the particular relational context at issue. This is the work of restorative justice – to ascertain what is required for just relations and to do the work to create the conditions and commitments needed to secure just relations into the future. Thus, restorative justice is not oriented by a return to past relations. The past is relevant insofar as it reveals relational histories, patterns and structures that inform what is required to secure just relations in the future. Where the past has been marked by injustice, the nature and scope of the transformation required will be revealed. In this way, restorative justice is oriented to the future, not the past.

3.1.2 *Responsive and continuous commitment*

This future orientation reveals something else about restorative justice relationally conceived. Justice, on this account, must be a continuous concern and commitment. It is something we must be committed to *doing*, not, as much of our current discourse surrounding justice might suggest, an end state to be achieved – to be *done* once and for all. To be sure, a relational theory of justice is concerned with the lived experience of justice. It is not concerned with some unattainable ideal justice state; rather, a relational frame reveals the dynamic and fluid nature of relations, which means that the work of securing and ensuring just relations must be a constant and continuing imperative. This makes clear the way in which restorative justice is transformative justice. It understands that the work of justice is to and must always take account of the need for the conditions and circumstances to change in line with what justice requires.

This requires an adjustment in our way of thinking about the work of justice from the current orientation of justice systems and processes. One of the compelling, perhaps even seductive, aspects of the current approach to criminal justice is the certainty and finality it promises. It offers clear answers for what justice requires through the measure of punishment owed. By contrast, restorative justice sometimes struggles to gain confidence and legitimacy because it lacks such certainty. This has led critics to view it as soft, unpredictable or even unfair, because it does not result in the same predictable outcomes for similar cases. Some restorative justice programmes and practitioners have sought to satisfy the critics with greater predictability by predetermining elements of *restorative outcomes*. These sometimes take the form of model agreement terms or required outcomes, including mandatory community service, apology letters or standard restitution payments. Yet, as a relational approach to justice, restorative justice must be concerned with securing the conditions for *just* relations. This requires significant responsiveness to nuances of contexts, causes and circumstances in each situation to determine what is required for just relations. Relational justice will not be found in treating cases the same by virtue of the act done or law breached; rather, it must be concerned with the impacts on and needs of the parties involved in order to realise just relations in the future. Furthermore, relational justice will require that the parties involved recognise their continuing responsibility to maintain *just* relations, which may require further adaptation and change. Rather than seeking certainty in fixed and certain

outcomes, relational theory helps us see the responsive nature of restorative justice as its strength. This is particularly clear in situations where systemic and structural injustices are at stake. The work of justice in such circumstances requires ongoing attention to the transformations needed to support and sustain just relations.¹⁰

3.1.3 *More than a tool in the toolkit: a principle-based approach to justice*

The ongoing – continuous – nature of justice understood relationally has other implications for restorative justice. It must be pursued not merely as a process or set of practices but as a relational *approach* to justice, one that is guided by relational principles. Responsivity, discussed earlier, is one such principle (Llewellyn, Archibald, Clairmont & Crocker, 2013; Llewellyn, 2019). Restorative justice is not, then, a tool to be added to one's justice toolkit – it is a principle-based *approach* that shapes and frames the vision and design of justice and informs how to go about building it.

First and foremost, restorative justice embodies a transformed way of thinking about justice. This relational understanding of justice – as just relations – shifts our view not only of how justice is done but where and when the work is done. Fostering, supporting and sustaining just relations is not and cannot be the preserve of the formal justice system. It also cannot be achieved only by reacting to incidents of harm and injustice. It requires proactive and continual attention in all the spheres, places and spaces – across systems and social structures. Restorative justice must be secured in education, labour and workplaces settings, in environmental policy and protection, in economic development and infrastructure.¹¹ Restorative justice transforms our siloed approach to justice from reactive to responsive and proactive and, thus, expands the arena of justice beyond the legal system to the social and political systems and structures in and through which we live. It is important to acknowledge the concern this may cause for some within the restorative justice field who fear that expanding beyond a clear focus in response to offences may render restorative justice little more than a general relational improvement practice, thus sacrificing

- 10 The current work for reconciliation between Indigenous and non-Indigenous peoples in Canada offers a profound example of how justice requires a journey of transformation of relationships – that reconciliation is not an end point or destination but a way or being in relation with one another (Llewellyn, 2008).
- 11 It was beyond the scope of the focus of the lecture to explore examples of policies and practices that illustrate and offer important insights into the transformative potential of restorative justice. They are many and varied, as we witness the expansion of a restorative approach to secure justice in a range of systems and settings around the world. For example, in my own province of Nova Scotia, we have seen a significant growth of restorative justice to secure just relations well beyond the youth and adult criminal justice context. A restorative approach to securing just relations is being taken in schools and on campuses (Llewellyn, 2019) and in community organisations and amateur sports clubs. It has shaped the approach to elder abuse and senior safety, to the protection and promotion of human rights, the response to institutional abuse and to reimagining child welfare and ensuring accessibility for those who are differently abled.

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its identity and efficacy.¹² I am not, however, advocating an expansion of restorative justice beyond the justice sphere. I am suggesting that a restorative approach expands our understanding of justice itself, such that justice is not defined or limited by the legal system. Thus, if restorative justice is to maintain its focus on justice and its efficacy in doing justice, it must move beyond the bounds of the current legal system.¹³

The relational theory frame for restorative justice emphasises that justice also cannot be the preserve of states and government systems. Just relations cannot be secured and sustained through systems alone. Systems can and must contribute to the conditions required for just relations, but just relations happen in and through social relations. As transformative justice advocates rightly insist, justice cannot be achieved through the very systems and structures reflective of and responsible for unjust relations. As a relational approach, restorative justice insists on attention to injustice at the systemic and structural level and a focus on what is required at this level to support and sustain just relations. Justice cannot, then, be achieved on a relational restorative account simply by dismantling unjust systems and structures. The work of justice requires building systems and structures as needed to secure the conditions for just relations. The power and responsibility to bring about fundamental change in our relations at individual and structural levels rest with social networks – in the groups, communities and cultures in and through which we live.

If the work of restorative justice is about securing just relations, and just relations require attention to interpersonal dynamics and institutional systems and structures, then restorative justice must have a twin focus – on the micro-level interpersonal incidents and harms and the macro-level structural injustices. Indeed, to the extent restorative justice programmes or processes abstract the interpersonal from the systemic and structural, they risk undermining the cause of transformation by retaining or maintaining the existing order. While this is a fair concern about restorative justice, it is not a concern that is rooted in the idea of restorative justice, but in some of its practice – in no small part owing to the positioning of restorative justice as alternative justice practice alongside or within the criminal justice system.¹⁴ This relationship sometimes caused restorative justice to develop with a narrower interpersonal focus and in service of securing

12 I am grateful to the editorial board reviewers for their thoughtful and important discussion of this concern.

13 To be clear, moving beyond the legal system does not mean that we can or should ignore the important role of law and the legal system. I do not view restorative justice as justice without law or the legal system. Indeed, grounding restorative justice as a relational theory of law requires significant engagement with legal theory and the legal system, precisely because it ought to be driven by justice. This is key, in my view, to realising the transformative potential of restorative justice. I have given much consideration, for example, to the significance of a restorative approach to our understanding of human rights and key principles animating legal traditions and institutions, including democracy, subsidiarity and proportionality.

14 Gal and Dancig-Rosenberg (2014) consider this in terms of a continuum between conflict resolution among parties and broader justice seeking goals at the other. For a helpful illustration of restorative justice practices that overlook this broader justice orientation in the way I am concerned with here, see: Gal, Dancig-Rosenberg and Enosh (2018).

some reforms to reduce the harm of the current criminal justice system. Approached through relational theory, however, restorative justice cannot be exclusively focused on the micro level. A relational approach requires attention to the structural and systemic influences (i.e. the contexts, causes and circumstances) of unjust relations that cause harm. Likewise, a relational approach demands attention to the impacts and needs generated for individuals, groups and communities by unjust institutional, systemic or structural relations.

Far from preserving and protecting the status quo, restorative justice, as an expression of a relational theory of justice, is transformative at its core. As Fania Davis suggested in her response to the Annual Lecture, we need restorative justice in this moment that is abolitionist in its orientation (Davis, 2019). I take this to mean that restorative justice cannot be conservative, that is, seeking to conserve or preserve by way of repair or reform the failures of the current justice/legal system. Her comments reflect the commitment of relational theory to reveal and uproot the fundamental relations of power and privilege upon which the current system is built. The status quo cannot form the foundation for a new justice; no less than fundamental and structural transformation is required as a condition of just relations. This must be the work of restorative justice wherever and whenever it is implemented.

In this time of pandemic, making the case for a relational worldview is getting easier and more intuitive for those who, because of their privilege, have not had to see or believe this as a fundamental fact of the world. It is now clear that this fact must be made to matter in how we think about and live in the world. This is what restorative justice must do: bring this relational worldview to bear on our understanding of justice and what it requires.

3.2 Lessons from restorative justice in transitional times

While the transformative character of restorative justice has been somewhat obscured by its development and application in service of some domestic criminal justice systems, this has been less true of restorative justice in transitional contexts. There, the transformative imperative of restorative justice has been at the fore, as restorative justice scholars and advocates challenge status quo justice responses and bring a wider lens to the meaning and requirements of justice in transitional times.

In many ways we are all now living in an overt time of transition when the demands to address systemic and structural injustices require that we confront and reckon with the legacies of the past that structure our present. All the while, we must also deal with the clarity brought by the pandemic about the interconnected nature of our health and well-being. Amid efforts to face the challenges brought in this moment, it is perhaps not surprising that some have turned to the transitional justice field for inspiration, ideas and, sometimes even, instruction for this work (Mazzucato, 2020; Parmentier, 2021). For example, we have heard calls for truth and reconciliation and reparation – particularly in Canada and the United States – as mechanisms to deal with the past of racial injustice and violence against Brown and Black peoples (Davis, 2016; 2021a). We have experienced the turn to such mechanisms to address histories of abuse and

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oppression of Indigenous peoples in Canada and the United States. The idea of a truth commission and demands for lustration-like responses to expel those who have committed sexual violence have also been voiced by those within the Me Too/Times Up Movement.

It is instructive as we bring transitional justice ideas to deal with systemic injustice within more *stable* or established democracies to consider the role and relationship of restorative justice in the context of transitional justice over the past 30+ years. This is an exciting moment for me given that the intersection of these worlds has informed much of my thinking and work over the past 2½ decades (Llewellyn, 2004; 2006; 2007; Llewellyn & Howse, 1999b; Llewellyn & Philpott, 2014). Oddly, restorative justice, as it has developed within these spheres (domestic and transitional), has often been very disconnected. There has been distance between those working on restorative justice in response to interpersonal conflict (as it often emerges in connection with mainstream legal systems and/or community justice initiatives) and those working in the context of national and international peacebuilding and transitions to support the use of restorative mechanisms to tackle institutional- and societal-level transformation.¹⁵

The field of transitional justice developed with a primary focus on *dealing with the past* in order to secure conditions for a successful transition, often from authoritarianism to democracy and from violence and conflict to peace and reconciliation (Teitel, 2000). In line with the evolution of international criminal law, transitional justice was oriented by a retributive theory of justice – focused on accountability through punitive mechanisms to deal with the past. Transitional justice employed a range of mechanisms to this end, from trials to lustration and even including some truth commission models.

As I characterised in my earlier scholarship, restorative justice was often considered by transitional justice scholars and practitioners as a tool or mechanism to be deployed towards this end. As a result, restorative processes were often assessed on the basis of their ability to contribute to this retributive or punitive theory of justice. Not surprisingly, restorative mechanisms were often found lacking by this measure. Nevertheless, they were sometimes viewed as an acceptable alternative where and when no other justice was possible. In this way restorative justice came to represent at best a *type* of justice appropriate to transitional circumstances or, at worse, ‘justice to the extent possible’ in a compromise of peace versus justice (Llewellyn, 2004; 2006; Zartman & Kremeniuk, 2005). Otherwise, restorative justice processes were accommodated within or alongside the mainstream justice responses and allowable only insofar as, and in ways, that it could, co-exist with the pursuit of *full* justice through trials or other punitive accountability mechanisms.

15 There are, of course, notable exceptions, including Carl Stauffer, Dan Van Ness and John Braithwaite. I had the opportunity to explore this relationship, or lack thereof, within the field at the ‘New Advances in Restorative Justice Theory and Practice’, the Centre for Criminal Justice Studies University of Leeds International Conference 18-19 September 2017; for more details, see: <https://n8prp.org.uk/event/rjleeds17/> (last accessed 18 September 2021).

Restorative justice was (and still is for some) thus viewed as having a contribution to make as a complement to core transitional justice mechanisms. For example, restorative justice processes could be used following criminal trials for reintegration or alongside trials to respond to community-level harms that were not within the scope of the transitional justice mechanisms or to mitigate the harms of offender-focused mechanisms by offering something to victims/witnesses. As a result of the primacy of punitive/retributive justice, much attention has been paid in transitional justice to the issue of 'sequencing' to ensure the right place and relationship of restorative and other alternatives (Llewellyn, 2012). This will sound very familiar to restorative justice advocates and practitioners struggling to make space within similar parameters of domestic criminal justice systems.

However, many restorative justice scholars, community leaders and practitioners balked at this role for restorative justice, insisting, instead, that restorative justice is more than an alternative *practice* in service of retributive or punitive justice – it is a different theory/idea of justice. Some still represented it as a special *type* of justice uniquely required for transitions, but others (and this is where my own contribution was focused) claimed restorative justice offered a theory that was not born of the exceptionality of transitional times but, rather, was particularly evident in such times. This is true, for example, of this current pandemic and the justice moment we are living, when the relational nature of justice itself has come clearly into focus.

The efforts of those restorative justice scholars and advocates who rejected attempts to subsume restorative justice in service of a retributive/punitive approach are instructive to our consideration of the transformative nature of restorative justice. Considering the application of restorative justice in transitional contexts gives practical expression to the conceptual insights offered by relational theory.

Restorative justice advocates argued that the mode and mechanisms of transition set the stage and conditions for justice after transition and that the seeds of conflict and violence required deep relational transformation as a basis for new cultures, structures, systems. The application of restorative justice then challenged the backward-looking orientation of the mainstream criminal justice approach. Rather than simply *dealing with the past* to set things right as a foundation for the future, restorative justice shifted and expanded the focus of justice processes to modelling and establishing the conditions required for that future. This is not to suggest that restorative justice efforts sought to sweep the past away in favour of the future; rather, restorative justice sought truth about what happened with a view to understanding why and how it happened. This was not done to mete out blame and punishment but, rather, to identify matters about that past to inform a different and more just future. The work of transitional justice understood through this lens required processes oriented towards this relational work. Restorative justice could not deal with individuals and their conduct apart from the context, causes and circumstances. To serve this justice in transitions, processes must involve and engage those affected to support the transformation of relationships required for a just and sustainable

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future. This also required an expanded focus beyond the individual relationships to consideration of the systems and structures that facilitated and contributed to harm. The transitional justice mechanisms of tribunals and trials could not bring about such transformation. Justice understood restoratively in a transitional context could not be merely a tool of systems or international/national justice professionals. Restorative processes in and of groups and community were essential to this work.

The experience of restorative justice in transitional times also revealed the importance of designing and adapting processes according to the cultural norms and needs of the parties and communities. Restorative justice processes cannot be one size fits all or served up through a fixed set of practices; rather, they must be an *approach* to justice guided by relational principles that inform the development or adaptation of different practices and process models.

Interestingly, many of the objections voiced by these restorative justice advocates in response to mainstream transitional justice practice can now be heard from transformative justice advocates about restorative justice. This reflects the fact that restorative justice has often been developed domestically within the space allowed or offered by the criminal justice system. Transformation – transformative justice scholars argue just as restorative justice scholars in transitional contexts have insisted – requires more than system reform; it requires a different vision of justice that understands justice as both a personal and political project.¹⁶

Recognising that justice is a personal as well as political project has implications for how we pursue justice in this moment and for the movement for social and system transformation calling for truth, reparation and reconciliation. It also has implications broadly for restorative justice and how it is pursued in service of the justice transformation that is required.

4 Conclusion: implications of restorative justice as justice transformation

As the new collection *Listening to the Movement* acknowledges, the notion of a restorative justice movement is not new. However, to this point it has been a movement united mostly by a commitment to shared practices. In her foreword to the collection, Fania Davis suggests that a ‘qualitative change’ is afoot with ‘the restorative justice community’s emerging self-image as a *social justice* movement, a modality of both systemic and relational transformation’ (Davis, 2021b: viii). Carl Stauffer and Sonya Shah, who facilitated the dialogue process that informed the volume, agree that its authors

attempt to dispel the bifurcated way of seeing restorative justice. ... They offer a widening of the restorative justice movement ‘tent’ that rises above self-imposed, dichotomous thinking and simultaneously embodies a

16 It is perhaps not surprising given the central role of feminist relational theory in my account of restorative justice that we might find significant wisdom in this feminist slogan and rally cry popularised by Carol Hanisch (1969).

transformative agenda where individual and systemic transformations are so well integrated as to become indistinguishable (Stauffer & Shah, 2021: xvi).

The result, Shah and Stauffer claim, is that restorative justice can serve as

a container for trauma and memory-healing work, a vehicle for nonviolent social and structural change, a practice for building social networks (community activism, organizing and development) and the guiding values for restorative and indigenous approaches to transitional justice at national and international levels. (2021: xvi-xvii)

Indeed, it is and can be *each* of these things, but, if it is to be transformative, it needs to be *all* these things at once. To do this it needs a robust and unifying foundation.

In my own work I use the image of an umbrella to explain how a restorative approach conceptually informs policy, practice, procedures, structures and systems. Shah and Stauffer suggest that '[t]here are differences in our definitions, but there is a glue that holds it all together, namely community-based practice to heal and repair harm' (2021: xvi). I think that the glue they identify is not strong enough to provide the structural integrity required for transformation. Restorative justice needs more than practices and commitments to repairing and healing harm to build a transformative movement. Enter, I suggest, a relational theory of justice. The connective tissue required for restorative justice as transformative justice is to be found not in its practices or even its social justice ambitions, but in its relational understanding of justice and its implications for securing and sustaining justice.

This starting point does not merely provide a container for existing restorative practices and programmes but a conceptual foundation to orient, support and assess restorative structures, systems, policies, processes and practices towards this transformative purpose. Approaching restorative justice as a relational theory of justice is, thus, essential to realising its potential as transformative justice. If this is the foundation of the movement, it will require transformation of some of the current thinking and practice of restorative justice in line with its relational nature.

What would it mean for the future of restorative justice to be built on a foundation of relational theory? I do not pretend to have answered this question in the time and space that this Annual Lecture allowed, but this is *the* important question arising for restorative justice out of the transformative justice critique. The real debate and dialogue at the heart of this moment is not whether restorative justice is transformative but, rather, what is required to fully realise the transformative promise and potential of restorative justice.

Shah and Stauffer invoke restorative justice as a paradigm shift and not merely a programme, and it requires that we 'understand that violence is simultaneously interpersonal and structural *all of the time*, and that every restorative practice and mindset should reflect this inter-relatedness' (2021: xvi emphasis in the original). The work of justice, then, must likewise be

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simultaneously interpersonal and structural *all of the time*. Restorative justice has recognised the integrated nature of this work in times of social transition, insisting on the integration of the personal and political work of justice. It is equally true, though, even in times that are not overtly transitional because justice requires transformation all of the time. It is this fact that must shape the growth and development of restorative justice in all spheres. This requires an ongoing commitment to attend to the dynamic needs and changing contexts and circumstances, and to be responsive to them in ways that create and sustain the conditions for just relations.¹⁷

I welcome the current dialogue and debates over the transformative potential of restorative justice. Engaging in them invites and demands greater clarity about the foundations of restorative justice as a relational theory of justice. It is this foundation upon which we can and should continue to build a united movement for transformative justice. Indeed, our understanding of justice warrants this attention because of its impact on the structure and integrity of our relations in this transformative movement.

Of course, the transformative nature of restorative justice is not guaranteed. It will require careful and ongoing examination of those challenges and changes required in the pursuit of transformation restoratively. As I think about the work ahead for restorative justice as transformative justice, I find myself drawn to the ideas of Roberto Mangabeira Unger, who influenced my early thinking as a student at Harvard Law School where he is a professor (he is also a philosopher and former Brazilian politician). His contemplation of the challenge of revolutionary change in the times in which we are living resonates. In a recent interview with *The Nation* he said,

I am a revolutionary by conviction as well as by temperament. I believe it is likely that I am living in a counterrevolutionary interlude in a long revolutionary period in the history of humanity. I am determined that my thoughts and actions not be controlled by the biases of the interlude. But I understand that revolutionary change today must differ in form and method as well as in substance from what it was in the past. For any program, the direction and the choice of the initial steps are crucial. It does not matter that the steps are longer or shorter. It matters that they be the right moves in the

17 The recent Restorative Inquiry for the Home for Colored Children in Nova Scotia offers an example. Without a restorative approach the Inquiry would not have been able to respond to the calls for justice from former residents who were clear that this was about individual harms and abuses but these could not be understood or responded to outside the context of the systemic racism that structured and shaped their experience and continues even today. It might have been tempting to distinguish these justice needs leaving the individual justice needs to the legal system by taking up the broader systemic issues through the public inquiry. Instead, the former residents sought restorative justice explicitly to ensure that the relational nature and impacts of the individual and collective harms were understood and addressed through a process that fostered the collective responsibility and action needed for systemic transformation. To learn more about Nova Scotia's Restorative Inquiry, see *The Journey to Light: The Final Report of the Nova Scotia Home for Colored Children Restorative Inquiry* (Halifax: Queen's Printer, 2019) and other resources available at www.restorativeinquiry.ca.

right direction. My criticism of the American progressives is not that the steps they take are too small. It is that they are steps in the wrong direction, taken under the influence of bad ideas about the future, the present, and even the past. The notion of a sudden leap into another regime of social life is a fantasy. Its practical role today is to serve as an excuse for its opposite. Once its fantastical nature has been exposed, what remains for the disappointed fantasists is to sweeten the world that they have despaired of reimagining and remaking (Steinmetz-Jenkins, 2020).

I think approaching restorative justice as a relational theory of justice will guide us in the right direction, and will ensure that the restorative justice movement can take the next steps towards transformation.

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