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Restorative Revelations

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ARTICLE

RESTORATIVE REVELATIONS

MONICA COSBY* & ANNALISE BUTH**

A novel coronavirus and endemic racism are cracking the foundations of the United States of America. In October 2019, while participating in the University of St. Thomas Law Journal Symposium “Restorative Justice, Law & Healing,” we never dreamt that months later a viral pandemic would be devastating the world. There have been over sixty-three million cases and one million deaths from COVID-19 worldwide.¹ With the unprecedented spread of the virus, international borders have shut down,² economies have crumbled,³ and governments across the globe have enforced

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** Daughter, sister, aunt, godmother, restorative justice practitioner, circle keeper, teacher, attorney, mediator, and M.R. Bauer Foundation Fellow in Dispute Resolution at the Center on Negotiation and Mediation at Northwestern Pritzker School of Law.

Our friendship reflects an interconnection of relationships. We are grateful for all that we shared and learned from each other in collaborating for the University of St. Thomas Law Journal Symposium. In writing, we honor our ancestors who loved us into existence and those committed to this work such as Ruth Wilson Gilmore, Mariame Kaba, Dr. Beth Richie, Alice Kim, Ora Schub, Cheryl Graves, Dr. Barbara Ransby, Tomas Ramírez, Charlene Carruthers, Kelly Hayes, and the many others who inspire us. We thank Taylor Todd for her research assistance and the editors of the University of St. Thomas Law Journal. We are grateful to all who participated in the symposium and invite continued conversation. Please send correspondence to annalise.buth@law.northwestern.edu.

1. In the past few months, the number of global cases and deaths has dramatically increased, and the numbers continue to rapidly grow. Ctr. for Sys. Sci. & Eng’g, *COVID-19 Dashboard*, JOHNS HOPKINS UNIV. & MED., <https://coronavirus.jhu.edu/map.html> (last visited Dec. 1, 2020, 12:27 PM). We anticipate that the number of global cases and deaths will be even greater at the time of publication.

2. *Coronavirus: Travel Restrictions, Border Shutdowns by Country*, AL JAZEERA (June 3, 2020), <https://www.aljazeera.com/news/2020/03/coronavirus-travel-restrictions-border-shutdowns-country-200318091505922.html/>.

3. See Mike Patton, *Stock Market Falls on Coronavirus Fears: Is This Another Leg Down?*, FORBES (June 11, 2020, 8:08 AM), https://www.forbes.com/sites/mikepatton/2020/06/11/stock-market-falls-on-coronavirus-fears-is-this-another-leg-down; see also *The Global Economic Outlook During the COVID-19 Pandemic: A Changed World*, WORLD BANK (June 8, 2020), <https://>

stay-at-home orders and quarantines.⁴ Fear, uncertainty, and isolation have highlighted what is most important in life—relationships, connection, community, and justice. However, the COVID-19 pandemic has also revealed deep historical injustices, inequalities, and indifference to the humanity of others.

While COVID-19 was wreaking havoc, the police murdered George Floyd in Minneapolis, Minnesota, a mere fifteen-minute drive from the University of St. Thomas School of Law.⁵ His murder is part of an American history of police brutality and violent individual and structural racism.⁶ The killings of Breonna Taylor,⁷ Ahmaud Arbery,⁸ Tony McDade,⁹ David McAtee,¹⁰ Rayshard Brooks,¹¹ Trayvon Martin,¹² Eric Garner,¹³ Laquan

www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world.

4. Juliana Kaplan et al., *Our Ongoing List of How Countries Are Reopening, and Which Ones Remain Under Lockdown*, BUS. INSIDER (June 22, 2020, 10:39 AM), <https://www.businessinsider.com/countries-on-lockdown-coronavirus-italy-2020-3#>; Hannah Miller, *Reopening America: A State-by-State Breakdown of the Status of Coronavirus Restrictions*, CNBC (June 22, 2020, 7:12 PM), <https://www.cnbc.com/2020/04/30/coronavirus-states-lifting-stay-at-home-orders-reopening-businesses.html>.

5. *George Floyd: What Happened in the Final Moments of His Life*, BBC (May 30, 2020), <https://www.bbc.com/news/world-us-canada-52861726#>; Driving Directions from Location of Police Report and Medic Report to St. Thomas School of Law, GOOGLE MAPS, <http://maps.google.com> (follow the “Directions” hyperlink; then search starting point “3759 Chicago Ave., Minneapolis, MN,” and search destination field for “University of St. Thomas School of Law”).

6. See Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, Sex*, 116 PROCEEDINGS OF THE NAT’L ACAD. OF SCI. OF THE U.S. (Aug. 20, 2019), 16793. Individual racism focuses on acts of racial discrimination motivated by prejudiced beliefs, while structural racism emphasizes interinstitutional structural relationships across domains that produce racialized outcomes. John A. Powell, *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 794–96 (2008). Please note that John A. Powell does not capitalize his name. Dismantling linguistic gatekeeping plays a role in liberation from prescriptive norms.

7. See Richard A. Opiel & Derrick B. Taylor, *Here’s What You Need to Know About Breonna Taylor’s Death*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html>. On the whole, there has been a failure to recognize police killings of Black women and to demand accountability for their deaths. Kimberlé Williams Crenshaw & Andrea J. Ritchie, *AFR. AM. POL’Y F., SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 1* (2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf. Moreover, a gender-inclusive, Black feminist approach to fighting anti-Black police violence requires inclusion of the experiences of Black women and girls who are transgender and not transgender, lesbian, bisexual, and heterosexual. *Id.* at 30. “Until we say the names and tell the stories of the entire Black community, we cannot truly claim to fight for all Black lives.” *Id.*

8. See Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

9. See Elliot Kozuch, *HRC Mourns Tony McDade, Black Trans Man Killed in Florida*, HUM. RTS. CAMPAIGN (May 29, 2020), <https://www.hrc.org/blog/hrc-mourns-tony-mcdade-black-transgender-man-killed-in-florida>. Police violence against transgender and gender nonconforming people is often underreported or misreported.

10. See Brakhton Booker, *Louisville Hosts Public Viewing for David McAtee as Details of His Shooting Emerge*, NPR (June 12, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/12/875463084/louisville-hosts-public-viewing-for-david-mcatee-as-de>

McDonald,¹⁴ Michelle Cusseaux,¹⁵ Tamir Rice,¹⁶ Walter Scott,¹⁷ Freddie Gray,¹⁸ Sandra Bland,¹⁹ Alton Sterling,²⁰ Philando Castile,²¹ Stephon Clark,²² Botham Jean,²³ Rekia Boyd,²⁴ and countless others²⁵ are a direct result of anti-Black racism in the United States. The video of Floyd's horrific death sparked mass protests against racial injustice across the country

tails-of-his-shooting-emer (summarizing the result of militarized responses to the recent protests for racial justice). A Kentucky National Guardsman fatally shot David McAtee at his barbecue business during enforcement of a curfew. *Id.*

11. See Christina Maxouris, *Rayshard Brooks Was Killed a Day Before He Planned to Celebrate His Daughter's Birthday*, CNN (June 15, 2020, 9:02 PM), <https://www.cnn.com/2020/06/14/us/rayshard-brooks-atlanta-shooting/index.html>.

12. See *Trayvon Martin Shooting Fast Facts*, CNN (Feb. 16, 2020, 7:01 PM), <https://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html>.

13. See Al Baker et al., *Beyond the Chokehold: The Path to Eric Garner's Death*, N.Y. TIMES (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html>.

14. See Ray Sanchez & Omar Jimenez, *16 Police Officers Participated in an Elaborate Cover-Up After Laquan McDonald's Death, Report Alleges*, CNN (Oct. 10, 2019, 8:17 PM), <https://www.cnn.com/2019/10/10/us/chicago-inspector-general-laquan-mcdonald-shooting/index.html>.

15. See Megan Cassidy, *Phoenix Police: 2014 Fatal Shooting of Michelle Cusseaux Was 'Outside' Policy*, AZ CENTRAL (Sept. 17, 2015, 8:22 PM), <https://www.azcentral.com/story/news/local/phoenix/breaking/2015/09/17/phoenix-police-michelle-cusseaux-shooting-outside-policy/72370792/>.

16. See Shalia Dewan & Richard A. Oppel Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 22, 2015), <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html>.

17. See Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer Is Charged with Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <https://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>.

18. See *Freddie Gray's Death in Police Custody—What We Know*, BBC (May 23, 2016), <https://www.bbc.com/news/world-us-canada-32400497>.

19. See Tim Elfrink, *'Open Up the Case, Period': Sandra Bland's Family Demands Answers over New Video of Her Arrest*, WASH. POST (May 7, 2019, 3:32 AM), <https://www.washingtonpost.com/nation/2019/05/07/open-up-case-period-sandra-blands-family-demands-answers-over-new-video-her-arrest>.

20. See Eric Levenson, *Baton Rouge Police Chief Apologizes for Hiring the Officer Who Killed Alton Sterling*, CNN (Aug. 1, 2020, 4:20 PM), <https://www.cnn.com/2019/08/01/us/alton-sterling-baton-rouge-police/index.html>.

21. See *Philando Castile Death: Police Footage Released*, BBC (June 21, 2017), <https://www.bbc.com/news/world-us-canada-40357355>.

22. See Faith Karimi, *Officers Who Killed Stephon Clark Reveal New Details About the Night He Died*, CNN (Mar. 7, 2019, 10:49 AM), <https://www.cnn.com/2019/03/07/us/sacramento-stephon-clark-shooting/index.html>.

23. See Erik Ortiz & Alex Johnson, *Amber Guyger Sentenced to 10 Years for Murdering Neighbor Botham Jean*, NBC NEWS (Oct. 2, 2019), <https://www.nbcnews.com/news/crime-courts/amber-guyger-sentencing-resumes-after-murder-conviction-death-botham-jean-n1061146>.

24. See *Officer Dante Servin Resigns Before Disciplinary Hearing in Death of Rekia Boyd*, CBS CHI. (May 17, 2016, 9:02 AM), <https://chicago.cbslocal.com/2016/05/17/dante-servin-quits-resigns-reakia-boyd-shooting-death>.

25. There are many more whose names we do not know because their deaths were not publicized and there was not a public demand for justice and accountability.

and throughout the world.²⁶ Racism has infected not only our institutions and systems but also our hearts and minds. The harm of white supremacy pervades everyday life, and racism is embedded in almost every aspect of society, including legal education, the legal field, and restorative justice.²⁷ Like COVID-19, racism is a deadly pandemic demanding an immediate response.²⁸

The COVID-19 pandemic has exposed the breadth of the racism pandemic by uncovering the nation's decay and calling attention to our society's disregard for Black lives. These two pandemics underscore the overlapping and interrelated crises of anti-Black racism; gross inequalities in health, education, employment, resources, and wealth; rampant mass incarceration; environmental destruction; global climate change; fractured politics; and violence in our communities.²⁹ They lay bare the injustices that have long afflicted the country and shine a spotlight on systems of structural domination, forcing us to confront them in a way that we have not in the past.

The COVID-19 and racism pandemics magnify the need to grapple with harm, accountability, and healing on a national scale. We can no longer ignore or deny the extent of harm. In the essay *The Pandemic Is a Portal*, Arundhati Roy encourages us to take this time to rethink our existence "in the midst of terrible despair" and imagine a new world that leaves behind the injustice of the past.³⁰ Now is the time to create change and establish more equitable communities. Restorative justice equips us to journey through the portal by challenging us to acknowledge harms, repair them, and work toward creating a more just society.³¹ If we have the courage and strength to fight for transformation, revelations from both pandemics will show us the way forward.

26. *A Timeline of the George Floyd and Anti-Police Brutality Protests*, AL JAZEERA (June 11, 2020), <https://www.aljazeera.com/news/2020/06/timeline-george-floyd-protests-200610194807385.html>.

27. See Susan Ayres, *Claudia Rankine's Citizen: Documenting and Protesting America's Halting March Toward Racial Justice and Equality*, 9 ALA. C.R. & C.L. L. REV. 213, 228–32 (2018); George B. Shepherd, *No African American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103 (2003); William R. Wood & Masahiro Suzuki, *Four Challenges in the Future of Restorative Justice*, 11 VICTIMS & OFFENDERS 149 (2016).

28. Though racism is a deadly pandemic like COVID-19, it is not a new pandemic. Racism has plagued our country from its founding. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (rev. ed. 2012).

29. In this essay, we focus on racial inequalities relating to COVID-19 and mass incarceration. We hope others will explore related issues further.

30. Arundhati Roy, *The Pandemic Is a Portal*, FIN. TIMES (Apr. 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca>. Though Roy writes in regard to the COVID-19 pandemic, her words are applicable to the racism pandemic as well.

31. See Brenda E. Morrison & Dorothy Vaandering, *Restorative Justice: Pedagogy, Praxis, and Discipline*, 11 J. OF SCH. VIOLENCE 138, 139–42 (2012).

I. LIVED EXPERIENCES

*What happens to a dream deferred?
Does it dry up*

*like a raisin in the sun?
Or fester like a sore—
And then run?
Does it stink like rotten meat?
Or crust and sugar over—
like a syrupy sweet?*

*Maybe it just sags
like a heavy load.*

Or does it explode?

—Langston Hughes³²

When the pandemics of COVID-19 and racism halted daily life, Monica and Annie could not and did not want to continue with the “normal” course of business while writing this essay. Like others, we were upset, enraged, angry, tired, and sad. We struggled, and some days all we could do was put one foot in front of the other. As we continue to face our own unique challenges, we stand in solidarity with many who are hurting and fighting for freedom. This profoundly influences us, informing our writing and the way we conceptualize restorative justice. It is important to contextualize restorative justice and ground it in reality by acknowledging history, culture, and background. During this time, we have sought to prioritize support for the people we love, because, to us, process matters as much as any end product.³³

Each of our lived experiences shapes the way we see and understand the harm of the pandemics and possibilities for the future. We are both lawyers who were trained in institutions. Monica is a biracial Black jailhouse lawyer who began her legal education while growing up in Uptown in Chicago, Illinois, and completed it while locked up in the Illinois Department of Corrections (IDOC).³⁴ Annie is a Korean American lawyer who

32. LANGSTON HUGHES, *Harlem*, reprinted in *THE COLLECTED WORKS OF LANGSTON HUGHES: VOLUME 3*, 74 (2001).

33. We sought to adopt a restorative approach at the outset by creating shared values for our collaboration such as humility, love, authenticity, acknowledgment, and honesty, and we worked to honor those values throughout the writing process.

34. Issues concerning identity politics, colorism, and the complexities surrounding the social construction of race are critical to discussions about racism; however, they are beyond the scope of this essay. Monica refers to being “locked up” rather than incarcerated as a reminder about the truth concerning the harsh reality of imprisonment. Monica survived the prison system, and she was solely responsible for her legal education while in IDOC custody. IDOC did not provide her with a legal education.

attended law school and has continued her legal education by learning from communities in places like Rogers Park in Chicago and Kalina in Mumbai, India. We have both witnessed racism within the institutions we have been a part of, and we have each been affected in different ways by a dehumanizing legal system that is sick from the racism pandemic. This impacts how we think about the harms of racial injustice in terms of COVID-19 and the criminalization of blackness.

We believe that transformation is possible only when theory and action converge. A commitment to equity is meaningless without action. As critical race theorist Mari Matsuda emphasizes, the crucial question is “What are we going to do?”³⁵ Moreover, we should always ask, “To what end?” and the end must focus on the lives of real people. Accordingly, our purpose in writing is to engage people in an accessible way that invites critical reflection and action grounded in restorative justice principles.³⁶

II. RESTORATIVE JUSTICE AS A BRIDGE

Justice is what love looks like in public.

—Dr. Cornel West³⁷

Restorative justice provides a lens for understanding, and it can help support travel through the pandemic portals. We live and practice restorative justice in Chicago. Therefore, our understanding of restorative justice exists within the context of the United States’ long history of slavery, anti-Black racial violence, white supremacy, and the genocide of Indigenous people.³⁸ Acknowledgment of the social and historical context strengthens,

35. Mari J. Matsuda, *Only We Can Free Ourselves*, 18 UCLA ASIAN PAC. AM. L.J. 5, 9 (2013).

36. Democratic education is a practice of freedom from exclusive and alienating intellectualism. BELL HOOKS, *TEACHING CRITICAL THINKING: PRACTICAL WISDOM* 17 (2009). bell hooks does not capitalize her name in order to place emphasis on her work and ideas. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 86 (50th anniversary ed. 2000). Democratic education requires understanding how “imperialist capitalist white supremacist patriarchal politics” influences the way in which knowledge is presented and striving to share knowledge in a way that does not reinforce elitism and structural domination. BELL HOOKS, *TEACHING COMMUNITY: A PEDAGOGY OF HOPE* 45 (2003). Critical thinking invites passionate initiative from everyone to reflect and share in a learning community together; critical thinking empowers us. HOOKS, *TEACHING CRITICAL THINKING*, *supra*, at 11.

37. Harvard Graduate School of Education, “*Justice is what love looks like in public. Tenderness is what love feels like in private.*” —Dr. Cornel West, speaking at a recent Askwith Forum, FACEBOOK (Oct. 24, 2017), <https://www.facebook.com/HarvardEducation/posts/justice-is-what-love-looks-like-in-public-tenderness-is-what-love-feels-like-in-10155292829161387>.

38. See David E. Wilkins, *African Americans and Aboriginal Peoples: Similarities and Differences in Historical Experiences*, 90 CORNELL L. REV. 515 (2005); Matthew L.M. Fletcher, *Sawnagezewog: “The Indian Problem” and the Lost Art of Survival*, 28 AM. INDIAN L. REV. 35 (2003). Contextualizing our discussion of restorative justice means recognizing the ways in which restorative justice draws from different Indigenous traditions and teachings amid a history of genocide and continued discrimination against Indigenous communities. See Wilkins, *supra*;

rather than diminishes, the ability to repair harm and move forward in a good way.³⁹ Recognition of the past is crucial. Until and unless we understand and reckon with the past, we will be stuck in continuing patterns of racism and inequity.

Restorative justice philosophy and practices focus on building relationships and equitable communities.⁴⁰ Restorative justice draws on Indigenous teachings and traditions from around the world.⁴¹ It centers on being in healthy and good relationships with self, others, and nature in an interconnected universe.⁴² At its core, restorative justice is fundamentally about a value-based approach to honoring the humanity and dignity of each person.⁴³ Humans are relational and wired for social engagement and connection.⁴⁴ Good relationships empower us to honor the sacred humanity that every human being possesses, which is not bestowed upon that person by anyone else and cannot be taken from him or her. When relationships break down, restorative justice emphasizes the need for repairing the resulting harm in order to work toward healing.⁴⁵ We cannot be in truly authentic and

Fletcher, *supra*. Decontextualization erases the hard-fought struggle of people who sacrificed their lives and endured suffering.

39. “In a good way” is an expression and concept used by different Indigenous communities, such as the Anishinaabe people, to characterize participation that honors tradition and spirit. Sarah Flicker et al., *Research Done in “A Good Way”: The Importance of Indigenous Elder Involvement in HIV Community-Based Research*, 105 AM. J. PUB. HEALTH 1149, 1149–52 (2015); see Robert Yazzie, “Hozho Nahasdlii”—*We Are Now in Good Relations: Navajo Restorative Justice*, 9 ST. THOMAS L. REV. 117 (1996).

40. See Yazzie, *supra* note 39, at 120; Robert Yazzie, “Life Comes from It”: *Navajo Concepts of Justice*, 24 N.M. L. REV. 175 (1994); Morrison & Vaandering, *supra* note 31; Thalia González, *Reorienting a New Dialogue of Rights Consciousness, Community Empowerment and Politicization*, 16 CARDOZO J. CONFLICT RESOL. 457 (2015); HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (2002).

41. We recognize that Indigenous, First Nations, and Aboriginal groups are uniquely distinct and are located throughout the world, including but not limited to the Americas, Africa, Asia, and Australia. See U.N. DEP’T OF ECON. AND SOC. AFFAIRS, STATE OF THE WORLD’S INDIGENOUS PEOPLES: IMPLEMENTING THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, U.N. Doc. ST/ESA/371, U.N. Sales No. E.19.IV.5 (2019), <https://social.un.org/unpfii/sowip-vol4-web.pdf>. See also Wilkins, *supra* note 38, at 515–16.

42. Annalise Buth & Lynn Cohn, *Looking at Justice Through a Lens of Healing and Reconciliation*, 13 NW. J.L. & SOC. POL’Y 1, 4 (2017).

43. See Jennifer Llewellyn, *Bridging the Gap Between Truth and Reconciliation: Restorative Justice and the Indian Residential School Truth and Reconciliation Commission*, in FROM TRUTH TO RECONCILIATION: TRANSFORMING THE LEGACY OF RESIDENTIAL SCHOOLS 183, 189 (M. Brant-Castellano, L. Archibald M. DeGagne eds. 2008); Howard Vogel, *The Restorative Justice Wager: The Promise and Hope of a Value-Based, Dialogue-Approach to Conflict Resolution for Social Healing*, 8 CARDOZO J. CONFLICT RESOL. 565, 565 (2013).

44. Morrison & Vaandering, *supra* note 31, at 139; John T. Cacioppo et al., *Lonely Traits and Concomitant Physiological Processes: The MacArthur Social Neuroscience Studies*, 35 INT. J. PSYCHOPHYSIOLOGY 143, 144 (2000).

45. See ZEHR, *supra* note 40; Vogel, *supra* note 43; Morrison & Vaandering, *supra* note 31, at 140–41. This reparation and healing is embodied by the Diné concept of hozho nahasdlii, describing the healing and restoration of good relations. Yazzie, *supra* note 39, at 124.

healthy relationships until there is equity.⁴⁶ There will be no restoration without justice.

Restorative justice is love in action. Love plays an important role in justice, though the legal field rarely speaks of it. Love connects us with ourselves, others, and nature, and it transforms us. It changes the narrative about who has value and worth. However, romanticizing love is also dangerous because restorative justice must be more than aspirational and abstract concepts about relationships. Our stories do not always fit a nice, neat narrative arc because human beings, emotions, love, and healing are complicated. As bell hooks writes, “Whenever we love justice and stand on the side of justice we refuse simplistic binaries.”⁴⁷ Restorative justice does not always lead to a feel-good story where a single person who caused harm makes amends within a judicially sanctioned timeline. Harm is not necessarily unilateral, relationships need work, and growth is challenging. Genuine love requires that we hold each other accountable in order to identify and change harmful behaviors. We must support and believe in each other’s ability to grow.

III. LANGUAGE OF THE LENS

Changing how we see images is clearly one way to change the world.

—bell hooks⁴⁸

Before applying a restorative justice lens, we first recognize that restorative justice is not immune to the reach of the racism pandemic and the ways it has infected the “justice” system. The very language of restorative justice may reinforce the legitimacy and validity of racist and punitive structures.⁴⁹ White supremacy shapes privilege and power.⁵⁰ Because language is a product of politics and underscores power disparities, it is critical to consider who has influenced the current restorative justice narrative.⁵¹ Though restorative justice concepts are foundational in many Indigenous cultures, the modern language of restorative justice largely grew out of

46. There are important differences between the terms *equality* and *equity*. We use the term *equity* here rather than *equality* because justice and fairness require reparation rather than treating everyone the same.

47. HOOKS, TEACHING COMMUNITY, *supra* note 36, at 10.

48. BELL HOOKS, REEL TO REAL: RACE, SEX, AND CLASS AT THE MOVIES 7 (1996).

49. See Mara Schiff & David Anderson Hooker, *Neither Boat nor Barbeque: In Search of New Language to Unleash the Transformative Possibility of Restorative Justice*, 22 CONTEMP. JUST. REV. 219, 221 (2019).

50. See Anthony Cook, *The Ghosts of 1964: Race, Reagan, and the Neo-Conservative Backlash to the Civil Rights Movement*, 6 ALA. C.R. & C.L. L. REV. 81 (2015).

51. Thalia González & Annalise Buth, *Restorative Justice at the Crossroads: Politics, Power, and Language*, 22 CONTEMP. JUST. REV. 242, 246–47 (2019).

work within punitive criminal legal systems.⁵² We draw attention to language at the outset because it establishes the framework for our dialogue.

Words convey meaning beyond their dictionary definitions. Mara Schiff and David Hooker contend that social, political, and linguistic assumptions may limit the possibilities of restorative justice, and they “question whether grounding [restorative justice] in current linguistic and discursive formulations of ‘justice’ can be disentangled from historical actions, systems, and narratives that have codified and exacerbated marginalization, oppression, and exclusion.”⁵³ The language of “justice” has become so badly tainted by the racism and injustice of the criminal legal system that some want no association with it. Our hope is that one day we can reclaim the language of “justice.” Others are angered by the idea of restoring an unjust status quo, and they question whether it is possible to restore a relationship or an equilibrium that never existed. Neither history nor the status quo are neutral. If restorative justice fails to acknowledge this, then it is in danger of maintaining and furthering injustice.

There is not a single, agreed-upon definition of restorative justice. A shared vocabulary enables us to discuss the bounds of restorative justice, but it poses a risk of intellectualizing and professionalizing restorative justice. This reinforces the power inequities and racism reflected in the wider society. Some people live and breathe restorative justice because it is part of their worldview although they might not use “restorative justice vocabulary.” We must ensure that the language of restorative justice does not exclude or discriminate against those who use different terminology or have different cultural understandings. We cause harm when we devalue or exclude their voices from the conversation, and that results in a framework centered on whiteness.

Monica finds both humor and sadness in recalling one of the first circles she kept at Logan Correctional Facility.⁵⁴ She had recently completed a nonviolent communications training and peace circle skills-sharing program. Monica enjoyed spending time sitting in circle, establishing shared values with the group, learning about the history and philosophy behind circle practice, and meditating. However, during the trainings, Monica had questions about language. Facilitators told her she should use “I” statements, a style of communication focused on the impact of an action rather

52. See MARK UMBREIT & MARILYN PETERSON ARMOUR, *RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE* 10–13 (2011); Vogel, *supra* note 43, at 566.

53. Schiff & Hooker, *supra* note 49, at 221.

54. Circles are a restorative practice that incorporates a value-based process designed to provide voice to all participants through dialogue and create a safe space where people may be their most authentic selves. Buth & Cohn, *supra* note 42, at 4. Circles use a framework that involves ritual, talking pieces, and consensual decision-making; they draw on Indigenous traditions as well as dispute-resolution concepts. KAY PRANIS ET AL., *PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY* xiv, 81, 116–21 (2003). In a circle, participants are able to share their stories and connect with others in a good way. *Id.* at 9.

than blame and accusation. For example, one might say, “I felt let down and disappointed” as opposed to “you failed me.” Monica felt pressured to code switch and was unable to communicate genuinely as herself. The direct and indirect training messaging was that her questions and concerns were not welcomed.

When Monica later tried to incorporate her training in her circle by using “I” statements, it did not naturally flow with her or any of the other circle participants’ communication styles. It felt false and performative because of how it differed from the way they spoke in everyday conversation. When Monica used “I” statements, her language sounded more formal, inauthentic, and centered on herself. Because the vernacular was far removed from the group’s daily life experience in prison, one participant understandably misinterpreted Monica’s communication. The participant became upset with her and questioned, “Why is everything about you?!” and “Why are you even talking like that?” In the end, the group talked through the issue and decided to stay in circle and be true to who they were—using their own language and ways of relating to one another.

While the training facilitators had good intentions in encouraging the use of “I” statements, there was a disconnect between theory and implementation in the prison setting. Insistence on a specific vocabulary devalued and disrespected the lived experiences and backgrounds of the circle participants. Instead of supporting healthy relationships, the imposition of a specific vernacular became a challenge to community building within Monica’s circle. Fidelity of practice should not act as an excuse to elevate certain lived experiences and identities over others. This story illustrates the need for cultural competence and culturally informed trainings. Restorative justice must adapt to and evolve with community needs.

Despite concerns, restorative justice offers hope for a much-needed paradigm shift from retribution to equity and healing. We appreciate the complexity surrounding language and commit to engaging in ongoing dialogue about the politics of restorative justice, antiracism, and the intersection of theory and practice. We aspire to embrace an inclusive understanding of restorative justice, one that elevates and honors the restorative values of humility and respect. In the following section, we examine historical and ongoing harms that are interrelated with the discourse about the language of restorative justice.

IV. OMNIHARM

If you stick a knife in my back nine inches and pull it out six inches, there’s no progress. If you pull it all the way out, that’s not progress. Progress is healing the wound that the blow

made. And they haven't even begun to pull the knife out much less heal the wound. They won't even admit the knife is there.

—Malcolm X⁵⁵

The pandemics of COVID-19 and racism are closely entwined. Even before the murder of George Floyd, the COVID-19 pandemic confronted us with injustice because it aggravated the impact of deep-seated racism. Arundhati Roy explains, “The tragedy is immediate, real, epic and unfolding before our eyes. But it isn’t new. It is the wreckage of a train that has been careening down the track for years.”⁵⁶ Long-standing disparities affect communities of color as a result of hundreds of years of racism in the United States, exacerbating the devastation of COVID-19.⁵⁷ It is only when we scrutinize the harm that we are in a position to begin repairing it. To heal from pandemic harms, we must understand the nature and extent of the wounds they have caused.

The pandemics of COVID-19 and racism are enmeshed and amplify what Monica refers to as “omniharm.” The Latin root of the prefix “omni” means “all, every, the whole, of every kind.”⁵⁸ She uses this term in part to capture how historic harms are continuous and have permeated all aspects of our country. For instance, hundreds of years of white supremacy and a legacy of disinvestment in communities of color shape current inequity. In Chicago, redlining policies dating back to the 1930s forced African American residents into low-income neighborhoods, and redlining policies are largely responsible for the racially segregated neighborhoods today.⁵⁹ “Omniharm” conveys the insidious damage from the complex intersections of racism, sexism, xenophobia, classism, homophobia, transphobia, ableism, and other forms of discrimination.⁶⁰ It demonstrates that we are not facing single-issue problems.

55. mrholtshistory, *Malcolm X- On Progress*, YOUTUBE (Apr. 21, 2008), <https://www.youtube.com/watch?v=cReCQE8B5nY> (The full-length video can be found at www.youtube.com/antihostile).

56. Roy, *supra* note 30 (explaining the devastation of the COVID-19 pandemic).

57. While we highlight some harms, full examination of the depth of the harm is beyond the scope of our writing. Further inquiry and education are necessary.

58. *omni-*, Online Etymology Dictionary, <https://www.etymonline.com/word/omni-> (last visited Dec. 1, 2020).

59. Redlining practices intentionally excluded Black residents from obtaining mortgages through Federal Housing Administration loans by intentionally downgrading areas in Black neighborhoods and implementing restrictive covenants on properties covered by loans to prohibit sale to any nonwhite buyers. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/74a-8e1c-50948219ecbb>.

60. Race intersects with many other identity dimensions, such as gender, sexuality, national origin, class, disability, and ethnicity, to shape bias. Intersectionality is a theoretical framework that captures the way in which different aspects of a person’s identity overlap and result in layers of oppression. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991). There are patterns of intersectional subordination that exacerbate disempowerment. *Id.* at 1249 (exploring the multiple

Emerging data suggest that there are significant disparities in rates of COVID-19-related morbidity and mortality for African American, Latinx, and Native people when compared to white populations.⁶¹ These racial differences correlate with inequity in resources and opportunities, rather than biological variation or personal choices.⁶² Social conditions resulting from discrimination affect risk factors.⁶³ Because many communities of color face barriers to resources relating to food, health care, housing, and employment and other economic opportunities, Black and Brown individuals have a higher risk of exposure to COVID-19.⁶⁴ For instance, they may reside in densely populated areas in cities because of historic residential segregation; live in an intergenerational household; rely on public transportation; or, as a result of economic marginalization, work in service-industry jobs that have been deemed essential and provide no sick leave.⁶⁵ Consequently, they are in contact with more people, which increases their risk of infection and death. Lack of health insurance, underlying conditions like heart disease and diabetes, and barriers to health care also heighten vulnerability.⁶⁶ Unequal access to testing in communities of color further illustrates inequalities in medical care that contribute to the spread of the virus.⁶⁷ COVID-19 and

dimensions of a Black woman's experience and the ways in which race and gender intersect and shape structural, political, and representational aspects of violence against women of color).

61. In Chicago, Black residents make up 29 percent of the city's population and 70 percent of COVID-19 fatalities. Andre M. Perry et al., *Mapping Racial Inequity amid COVID-19 Under-scores Policy Discriminations Against Black Americans*, BROOKINGS (Apr. 16, 2020), <https://www.brookings.edu/blog/the-avenue/2020/04/16/mapping-racial-inequity-amid-the-spread-of-covid-19>; Maria Godoy & Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State by State?*, NPR (May 30, 2020, 6:00 AM), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>; *Health Equity Considerations and Racial and Ethnic Minority Groups*, CTRES. FOR DISEASE CONTROL & PREVENTION (CDC) (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>. The autopsy report for George Floyd revealed he tested positive for COVID-19. See Scott Neuman, *Medical Examiner's Autopsy Reveals George Floyd Had Positive Test for Coronavirus*, NPR (June 4, 2020, 6:27 AM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/04/869278494/medical-examiners-autopsy-reveals-george-floyd-had-positive-test-for-coronavirus>.

62. Graeme Wood, *What's Behind the COVID-19 Racial Disparity?*, THE ATLANTIC (May 27, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/we-dont-know-whats-behind-covid-19-racial-disparity/612106>.

63. Merlin Chowkwanyun & Adolph L. Reed Jr., *Racial Health Disparities and COVID-19—Caution and Context*, NEW ENG. J. OF MED. (May 6, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2012910?query=featured_home.

64. Linda Villarosa, 'A Terrible Price': *The Deadly Racial Disparities of COVID-19 in America*, N.Y. TIMES (May 20, 2020), <https://www.nytimes.com/2020/04/29/magazine/racial-disparities-covid-19.html>.

65. CDC, *supra* note 61; see Molly Kinder, *COVID-19's Essential Workers Deserve Hazard Pay. Here's Why—and How It Should Work*, BROOKINGS (Apr. 10, 2020), <https://www.brookings.edu/research/covid-19s-essential-workers-deserve-hazard-pay-heres-why-and-how-it-should-work>.

66. CDC, *supra* note 61.

67. Anna Maria Barry-Jester et al., *California's Coronavirus Testing Still a Frustrating Patchwork of Haves and Have-Nots*, NPR (May 3, 2020, 6:00 AM), <https://www.npr.org/sections/>

racism create an interrelated threat to public health and the wellbeing of our nation.

The high rates of infection in correctional facilities spotlight the failure to protect Black and Brown lives. Structural racism affects every stage of the criminal legal system from policing to prosecutorial decisions to convictions to sentencing, which leads to serious racial disparities in mass incarceration.⁶⁸ African Americans are more likely to be arrested and convicted and to receive longer prison sentences than their white counterparts.⁶⁹ African American adults are 5.9 times and Hispanic adults are 3.1 times more likely to be incarcerated in prison than white adults.⁷⁰ Correctional facilities have become hot spots for the spread of the virus with soaring infection rates.⁷¹ There have been 125,730 cases of COVID-19 reported among prisoners, and since mid-May 2020, COVID-19-related deaths in prison have risen by 73 percent.⁷² Moreover, recent arrests from protests against anti-Black police brutality increased the number of people in local jails, placing those calling for racial justice at higher risk of infection and death.⁷³ Rampant outbreaks of COVID-19 in prisons and jails illustrate the contours and depth of our country's racial injustice.⁷⁴

People who are locked up in correctional facilities are often forced to remain in horrendously overcrowded conditions that accelerate the spread of infection.⁷⁵ County jails are designed as congregate environments to

health-shots/2020/05/03/849243723/californias-coronavirus-testing-still-a-frustrating-patchwork-of-haves-and-have.

68. Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, PRISON POL'Y INITIATIVE (July 27, 2020), <https://www.prisonpolicy.org/blog/2020/07/27/disparities>.

69. THE SENT'G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE: REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM 1 (Mar. 2018), <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>.

70. *Id.* We use the term "Hispanic" because of the language used in the report.

71. Timothy Williams et al., *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, N.Y. TIMES (June 30, 2020), <https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html>; Matt Masterson, *Report: 1 in 6 Chicago COVID-19 Cases Can Be Tied to Cook County Jail*, WTTW (June 4, 2020, 6:33 PM), <https://news.wttw.com/2020/06/04/report-1-6-chicago-covid-19-cases-can-be-tied-cook-county-jail>; Laura Hawks et al., *COVID-19 in Prisons and Jails in the United States*, JAMA INTERNAL MED. (Apr. 28, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765271>.

72. The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (Oct. 2, 2020, 4:55 PM), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>; Williams et al., *supra* note 71.

73. See Michael Sainato, *'They Set Us Up': US Police Arrested over 10,000 Protesters, Many of Them Non-Violent*, THE GUARDIAN (June 8, 2020, 6:00 AM), <https://www.theguardian.com/us-news/2020/jun/08/george-floyd-killing-police-arrest-non-violent-protesters>.

74. While the COVID-19 pandemic has created new dangers to those who are incarcerated, dangers and harm from racism and dehumanization have always been present.

75. Williams et al., *supra* note 71. Overcrowded conditions lead to reduced medical attention and spending on health and wellness. Juliano Florio, *Healthcare for Justice-Involved Individuals:*

maintain control over people who are incarcerated, and people in jails often live in dormitories in close, densely populated quarters.⁷⁶ In prisons, people are housed in dormitories in a single large room or confined in small cells with bunked beds.⁷⁷ Each person may have only a five-by-five-foot unencumbered space, far less space than a cruise ship cabin or nursing home room, and beds can be as close as three feet apart.⁷⁸ It is impossible for people who are incarcerated in these environments to maintain social distancing of six feet, which is a key strategy for lowering the risk of infection.⁷⁹ People have no choice in using shared spaces like dining halls and bathrooms where social distancing is unfeasible.⁸⁰ Correctional staff fail to provide access to soap, hand sanitizer, masks, and hot water, and many shared areas are not properly disinfected or cleaned per the Center for Disease Control and Prevention recommendations.⁸¹ Correctional officials have refused donations of personal protective equipment (PPE), soap, and sanitizer, and even when they have accepted donations, the donated items do not always reach the people who need them.⁸² Furthermore, prisons and jails restrict access to medical providers by denying or delaying requests for medical care.⁸³ The financial cost of copayments creates additional barriers

The Difference by State, 29 ANNALS HEALTH L. ADVANCE DIRECTIVE 119, 125 (2020); see Joanna Weschler, HUM. RTS. WATCH, PRISON CONDITIONS IN THE UNITED STATES 20 (1991), <https://www.hrw.org/sites/default/files/reports/US91N.pdf>.

76. Megan Wallace et al., *COVID-19 in Correctional and Detention Facilities—United States, February–April 2020*, CDC (May 15, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6919e1-H.pdf>; see *Averting an Imminent Catastrophe: Recommendations to US Local, State and Federal Officials to Covid-19 in Jails and Prisons*, HUM. RTS. WATCH (Apr. 29, 2020, 11:00 AM), <https://www.hrw.org/news/2020/04/29/averting-imminent-catastrophe-recommendations-us-local-state-and-federal-officials>; e.g., Abbie Vansickle, *Photos Show Some Prison Beds Are Only Three Feet Apart*, THE MARSHALL PROJECT (Mar. 27, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/03/27/photos-show-some-prison-beds-are-only-three-feet-apart> (“Joshua Hall, a dormitory at the California Institution for Men, is built to hold 80 people but currently houses 129.”); WESCHLER, *supra* note 75.

77. See WESCHLER, *supra* note 75, at 20–21, 33–34; Anabel Mendoza, *Forgotten: Stateville Inmates Warn of Rising COVID-19 Outbreak Behind Bars*, CHI. REP. (June 26, 2020), <https://www.chicagoreporter.com/forgotten-stateville-inmates-warn-of-rising-covid-19-outbreak-behind-bars>.

78. Aleks Kajstura & Jenny Landon, *Since You Asked: Is Social Distancing Possible Behind Bars?*, PRISON POL’Y INITIATIVE (Apr. 3, 2020), <https://www.prisonpolicy.org/blog/2020/04/03/density>.

79. *Averting an Imminent Catastrophe*, *supra* note 76.

80. See *id.*; WESCHLER, *supra* note 75, at 20, 34, 93.

81. Mendoza, *supra* note 77; *Averting an Imminent Catastrophe*, *supra* note 76; The Editorial Board, *The Coronavirus Crisis Inside Prisons Won’t Stay Behind Bars*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/opinion/coronavirus-prisons-compassionate-release.html>; Jimmy Jenkins, *Prisons and Jails Change Policies to Address Coronavirus Threat Behind Bars*, NPR (Mar. 23, 2020, 5:00 AM), <https://www.npr.org/2020/03/23/818581064/prisons-and-jails-change-policies-to-address-coronavirus-threat-behind-bars>.

82. Monica has firsthand experience with this issue and works with many others who have experienced the same. See Mendoza, *supra* note 77.

83. Florio, *supra* note 75 (E.g., in a lawsuit based on conditions in Angola prison, the Louisiana State Penitentiary allegedly refused medical services to a person experiencing a stroke, prevented a person with cancer from seeing an oncologist for over four years, and failed to provide a

by discouraging people from getting treatment, resulting in worsened medical conditions that are more difficult to treat. When those with underlying health problems like respiratory or heart disease do not receive necessary care, they are more susceptible to infection.⁸⁴ Lack of testing intensifies the spread of the virus to people who are incarcerated.⁸⁵ While state officials have authorized the limited release of some, they have refused to use broad executive powers to release people on a whole-scale level in order to protect public health.⁸⁶ The dangerous and unwarranted incarceration conditions threaten lives.

Incarceration is part of, as well as a product of, “omniharm” causing sweeping damage to individuals, communities, and institutions.⁸⁷ Mass incarceration works in conjunction with other systems to regulate and punish communities of color.⁸⁸ The criminal legal system has become a new form of racialized control and dehumanization, and it has produced a contemporary racial caste system.⁸⁹ Police are one of the first points of contact and act as gatekeepers to the criminal legal system.⁹⁰ Organized modern policing has roots in fugitive slave patrols, which were designed to protect white property—not serve and protect all people.⁹¹ Police enforced racially discriminatory Jim Crow laws, they failed to properly respond to violent acts against Black citizens, and they allowed white hate groups to terrorize Black communities.⁹² The racist legacy of policing in the United States has

cane to someone who was blind for almost two decades.); see Ned Parker et al., *Spread of Coronavirus Accelerates in U.S. Jails and Prisons*, REUTERS (Mar. 28, 2020, 12:40 PM), <https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-us-jails-and-prisons-idUSKBN21F0TM>.

84. See Jenkins, *supra* note 81.

85. Williams et al., *supra* note 71; Wallace et al., *supra* note 76.

86. *Responses to the COVID-19 Pandemic*, PRISON POL’Y INITIATIVE (Sept. 11, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.

87. See Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004).

88. Jodie M. Lawston & Erica R. Meiners, *Ending Our Expertise: Feminists, Scholarship, and Prison Abolition*, 26 FEMINIST FORMATIONS 1, 4 (2014); THE SENT’G PROJECT, *supra* note 69; see ALEXANDER, *supra* note 28; DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION AND A ROAD TO REPAIR* 54–59 (The New Press, New York, 2019).

89. ALEXANDER, *supra* note 28, at 22; see, e.g., Erica Meiners & Charity Tolliver, *Refusing to Be Complicit in Our Prison Nation: Teachers Rethinking Mandated Reporting*, BLACK ON BOTH SIDES (Feb. 14, 2017), <https://blackbothsides.wordpress.com/2017/02/14/refusing-to-be-complicit-in-our-prison-nation-teachers-rethinking-mandated-reporting/>; *Abused, Neglected, & Suspended: School Discipline’s Hidden Discrimination*, BLACK ON BOTH SIDES (Sept. 23, 2015), <https://blackbothsides.wordpress.com/2015/09/23/chicago-report-2015-suspensions/> (The education and foster care systems funnel Black and Brown youth into the criminal legal system through punitive policies and practices.).

90. Mary Fan, *Street Diversion and Decarceration*, 50 AM. CRIM. L. REV. 165, 180–81 (2013).

91. Mikah K. Thompson, *A Culture of Silence: Exploring the Impact of the Historically Contentious Relationship Between African-Americans and the Police*, 85 UMKC L. REV. 697, 716–18 (2017).

92. *Id.* at 719–20.

resulted in the disproportionate incarceration of Black and Brown people.⁹³ As of 2020, America's criminal legal system imprisons almost 2.3 million people in state, federal, and military prisons; local jails; juvenile correctional facilities; immigration detention facilities; state psychiatric hospitals; and civil commitment centers.⁹⁴ We cage more people than any other nation.⁹⁵ The Thirteenth Amendment constitutionally protects modern-day slavery by prohibiting slavery and indentured servitude “*except as a punishment*” for conviction of a crime.⁹⁶ Moreover, incarceration is only one piece in a system of correctional control that includes probation and parole.⁹⁷ On the whole, the legal system has legitimized and codified discrimination against and oppression of people of color.⁹⁸

Current cries for racial justice are evidence that our nation cannot escape its past; we must confront “omniharm.” Slavery, segregation, and Jim Crow laws directly influenced policies and legal decisions that have shaped the face of incarceration in the United States.⁹⁹ History shows an ongoing intentional infliction of violence on Black and Brown communities through various mechanisms. For example, the FBI COINTELPRO program undermined organizing efforts by creating both inter- and intragroup conflict.¹⁰⁰ COINTELPRO spanned from 1956 to 1971 and was designed in part to dismantle and destroy Black Liberation groups such as the Black Panther Party as well as civil rights organizations like the Student Nonviolent Coordinating Committee (SNCC) and the Congress of Racial Equality (CORE).¹⁰¹ The FBI used the same tactics against the American Indian Movement, which focused on sovereignty and provided community support in ways similar to the Black Panthers.¹⁰² As a result of deliberate policy decisions in the 1970s and 1980s relating to the declaration of the war on

93. See ALEXANDER, *supra* note 28; SERED, *supra* note 88, at 54–59; Thompson, *supra* note 91, at 715–23.

94. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL'Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html#slideshow1/slideshow1/1>.

95. Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL'Y INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html>.

96. “Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. CONST. amend. XIII, § 1. Since the labor is forced and prisoners are not employees in any capacity, workers do not get the same protections that employees do, often subjecting them to unsafe working conditions and long hours.

97. Sawyer, *supra* note 68.

98. See ALEXANDER, *supra* note 28; Thompson, *supra* note 91, at 720; see also Derrick A. Bell, *Who's Afraid of Critical Race Theory*, 1995 U. ILL. L. REV. 893, 901 (1995).

99. See ALEXANDER, *supra* note 28.

100. Natsu Taylor Saito, *Whose Liberty? Whose Security? The USA Patriot Act in the Context of COINTELPRO and the Unlawful Repression of Political Dissent*, 81 OR. L. REV. 1051, 1083 (2002).

101. *Id.* at 1060, 1081–88, 1091, 1094–96.

102. *Id.* at 1097.

drugs, incarceration of people of color skyrocketed.¹⁰³ The Clinton administration's crime policies in the 1990s intensified racial disparities.¹⁰⁴ For instance, the 1994 federal crime bill created new "tough on crime" sentencing guidelines and truth-in-sentencing laws that dramatically escalated the number of people locked up in prisons.¹⁰⁵ Sadly, the nation continues to invest in a punitive approach to crime with the false belief that it will lead to justice, changed behavior, and safer communities.¹⁰⁶ We must acknowledge the unjust history and foundation of the legal system in order to create any profound change.

Another aspect of "omniharm" is the destruction of people's lives through incarceration. By incarcerating people, the state strips them of their human rights.¹⁰⁷ Locking people up removes agency, divides communities, breaks down relationships with others both inside and outside prison, and isolates people through forced disconnection.¹⁰⁸ The state gives legal authority to control and monitor every aspect of a person's daily life.¹⁰⁹ In a strip search, corrections officers are even given the power to disrobe and penetrate a person's body without permission.¹¹⁰ Prisons use solitary confinement to control and punish people despite research showing its serious harmful psychological consequences.¹¹¹ Segregation may cause panic, loss of control, intense emotion, insomnia, withdrawal, paranoia, hallucinations, lethargy, self-mutilation, suicidal ideation, and posttraumatic stress disorder because human connection is a fundamental part of wellness.¹¹² During im-

103. ALEXANDER, *supra* note 28, at 59–100; Thompson, *supra* note 91, at 715–23.

104. Parker et al., *supra* note 83.

105. ALEXANDER, *supra* note 28, at 56–57.

106. Peter Wagner & Bernadette Rauby, *Following the Money of Mass Incarceration*, PRISON POL'Y INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html> (Mass incarceration costs total around \$182 billion a year.); see SERED, *supra* note 88, at 2–14, 51–90.

107. Monica Cosby's lived experience supports the assertion of facts in this paragraph. Lived experience is a form of participatory research and scholarship that too often is not recognized or valued. We seek to amplify and center our work on lived experiences. See also Deborah Labell, *Bringing Human Rights Home to the World of Detention*, 40 COLUM. HUM. RTS. L. REV. 79 (2008).

108. Monica also notes that locking people up takes away the ability to repair harm and contribute to the world in positive ways.

109. Mary Anne Franks, *Democratic Surveillance*, 30 HARV. J.L. & TECH. 425, 441–43 (2017). People who are locked up in detention facilities also witness and experience unsanctioned violence and abuse from corrections officers and others who are incarcerated. *Id.* at 442. See Mika'il DeVeaux, *The Trauma of the Incarceration Experience*, 38 HARV. C.R.-C.L. L. REV. 257 (2013).

110. See *Bell v. Wolfish*, 441 U.S. 520 (1979).

111. Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, CRIME & DELINQ. 130, 130–32 (2003).

112. *Id.*; see Mary M. Cocoran, *Effects of Solitary Confinement on the Well Being of Prison Inmates*, APPLIED PSYCH. OPUS (2020), https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates; Elena Blanco-Suárez, *The Effects of Solitary Confinement on the Brain*, PSYCH. TODAY (Feb. 27, 2019), <https://www.psychologytoday.com/us/blog/brain-chemistry/201902/the-effects-solitary-confinement-the-brain> (describing the neurological effects of extended isolation).

prisonment, the state deprives many of adequate health and mental-wellness care.¹¹³ Incarceration is one way the criminal legal system has ravaged communities of color for decades with impunity. It intensifies “omniharm” by inflicting violence, destroying communities, and punishing people for life. Caging people is a traumatic form of state-sanctioned violence.¹¹⁴ The racism and dehumanization involved in caging human beings damage everyone’s humanity.¹¹⁵

The harm of locking people up extends far beyond physical incarceration. The “offender” label follows people and continues to punish them.¹¹⁶ Being an “offender” is stigmatizing, and it acts as an impediment to housing, employment, voting, and other opportunities and resources.¹¹⁷ In some states, like Illinois, public criminal registries formalize criminal labeling.¹¹⁸ For certain crimes like murder, even after people are released from prison, they must withstand the indignities of having to register at a police station and report any out-of-state travel plans, police may show up at their home at any time, and the public can search for their criminal record.¹¹⁹ Because people are unable to grow and shed others’ assumptions about what it means to be an “offender,” they remain disconnected. There is decreased safety when people who have been separated from their communities are unable to reintegrate, and we lose the contributions of gifted community members. Instead of collateral consequences, formerly incarcerated people experience permanent punishment. Many have endured serious harm, which may have played a role in the reason for their incarceration.¹²⁰ However, the focus is on their status as a “convicted felon” rather than a survivor, and their survivorship is criminalized.¹²¹ Without fully recognizing the extent of

113. See Andrew P. Wilper et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 AM. J. PUB. HEALTH 666, 669 (2009).

114. DeVeaux, *supra* note 109, at 256–66.

115. See FREIRE, *supra* note 36, at 9 (“[A] semihuman who pursues the process of *othering* human beings so as to devalue and typecast them has already lost his or her humanity to the extent he or she cannot see humanity in others.” (emphasis in original)).

116. Monica Cosby’s lived experience and relationships with others who have been incarcerated supports and informs this section. See Courtney Cross, *Reentering Survivors: Invisible at the Intersection of the Criminal Legal System and Domestic Violence Movement*, 31 BERKELEY GENDER L. & JUST. 60, 73–78 (2016).

117. Cross, *supra* note 116, at 74–77; Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 350–51, 370–72 (2012).

118. Monica Cosby continually experiences harm from being on the murder registry in Illinois. See Elizabeth Reiner Platt, *Gangsters to Greyhounds: The Past, Present, and Future of Offender Registration*, 37 N.Y.U. REV. L. & SOC. CHANGE 727, 736–49 (2013).

119. See Murderer and Violent Offender Against Youth Registration Act, 730 ILL. COMP. STAT. 154/10 (2006).

120. Cross, *supra* note 116, at 97–99.

121. See *id.* at 79–81, 93, 107–11. For example, domestic violence survivors who are incarcerated as a result of an abusive relationship are more likely to be categorized as perpetrators or offenders because of their criminal record. *Id.* at 93, 97. After incarceration, reentering survivors face judgments and denial of assistance when seeking support services, and they are more likely to

harm from punitive systems, we will perpetuate it, and “omniharm” will continue to destroy lives.

“Omniharm” includes poverty, addiction, mental illness, health and wellness issues, housing and food insecurity, violence, and other harms that lawmakers criminalize that pave a pathway to prison. In domestic violence trainings, Monica uses an exercise to illustrate the complexity of “omniharm.” She shares the life story of a woman who was incarcerated in prison. Each participant is given a numbered card that includes information about different points in the woman’s life. For instance, the cards might include the following: “molested by a family friend,” “suspended from school for acting out in class,” “witnessed domestic violence in the home,” “not enough food to eat at home,” and “lost job and was evicted for nonpayment of rent.” The participants stand in a circle, and they toss a ball of string based on the card numbers, which correspond with the chronology of the woman’s life. Monica stands in the middle of the web of string and asks the group where in the intricate web there could have been an intervention that prevented the woman from being locked up. This activity highlights the multifaceted dimensions of “omniharm.”

V. LIBERATION FROM HARMFUL NARRATIVES

*Ofentimes I have heard you speak of one who commits a
wrong as though he were not one of you, but a stranger unto
you and an intruder upon your world.*

—Kahlil Gibran¹²²

Reflection on pandemic hardships and suffering demonstrates the need for transforming the way we think and talk about harm. We are likely to cause further harm if we do not examine the narratives and beliefs surrounding it. Punitive and racist ways of being permeate our lives. As Stephan Beyer highlights, “Because we have been brought up in a hierarchical, punitive, and transactional culture, we are ourselves hierarchical, punitive, and transactional in our lives, in how we deal with others, and in how we view ourselves.”¹²³ This is reflected in our beliefs, attitudes, and systems.¹²⁴ It is imperative to realize the consequences of harmful narratives and the damage they cause to ourselves and others. Even when we seek change, internalization of harmful ways of being limits our ability to do

“become further entrapped in systems of state control and punishment.” *Id.* at 109, 111. Recognizing survivorship is not intended to detract from responsibility or accountability. Instead, it illustrates the need for recognizing the complexity of harm.

122. KAHLIL GIBRAN, *On Crime and Punishment, from THE PROPHET* (1923), reprinted at <https://poets.org/poem/crime-and-punishment>.

123. STEPHAN V. BEYER, *TALKING STICK: PEACEMAKING AS A SPIRITUAL PATH* 6 (2016).

124. *See id.* at 2–6.

so.¹²⁵ Therefore, we seek justice and redemption through violent ways and become stuck in patterns of retribution, harm, and white supremacy.

Focusing on and perceiving harm narrowly in terms of broken laws marginalizes people, inflicting greater harm. When a harm occurs, attorneys and law students often fixate on whether the law was violated, and they fail to explore the nature and extent of actual damage.¹²⁶ This framework is problematic because broken laws do not always accurately reflect harm.¹²⁷ For instance, after years of racist enforcement of marijuana laws, recreational marijuana is now legal in many states.¹²⁸ Responsible recreational marijuana use is no longer viewed as criminal behavior. Because laws have been used to oppress and discriminate against communities of color, we should concentrate on the complexity of harms rather than broken laws.¹²⁹ Current carceral systems strengthen problematic narratives and restrict our ability to envision transformation.

Oversimplified narratives are a hallmark of punitive systems. Complicated situations are reduced to good or bad, and people become either victim or offender. Labels fail to acknowledge the intricate nature of people and harm.¹³⁰ When Annie was first learning about restorative justice, she too embraced the “victim/offender” narratives without a second thought. While those who use the term “offender” may not intend to harm others, their use of the term dehumanizes people and sends the message that a crime is all that a person is and all that the person can ever be.¹³¹ Because of the racial inequality in the criminal legal system, these labels are also laden with stereotypes that reinforce white supremacy.

Another common binary that causes harm is the distinction between people incarcerated for violent offenses and those incarcerated for nonviolent offenses. This distinction is often used to support arguments about release or eligibility for programming or resources for people who are locked up.¹³² For example, some have argued for the release of people who have

125. *Id.* at 2–8.

126. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1400–01, 1408–09, 1412 (1997).

127. See Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 360–69 (2006); ALEXANDER, *supra* note 28.

128. See Michael Vitiello, *Marijuana Legalization, Racial Disparity, and the Hope for Reform*, 23 LEWIS & CLARK L. REV. 789, 805–08 (2019).

129. See Vogel, *supra* note 43, at 566.

130. Monica Cosby has firsthand experience with the reductionist “offender” label, which is dehumanizing. An alternative to using a label is to emphasize the person or individual first and then his or her experience. Cf. Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 20–21 (2003) (discussing person-first principle concerning language choices related to disabilities).

131. Cosby, *supra* note 130.

132. Monica Cosby has been frustrated in her activism by the use of this distinction. She has faced the judgment of others who minimize her identity and life story by fixating on the label of

been incarcerated for nonviolent offenses to protect them from COVID-19, but those who make this argument do not advocate for the release of people who are locked up for violent offenses.¹³³ The binary is grounded in the assumption that some people are more or less worthy based on the nature of the offense they committed.¹³⁴ It insinuates that those who committed an action classified as a violent offense are bad and more dangerous people. This narrative allows for the ongoing dehumanization of people who have committed violent offenses without any understanding of the context of their actions. Additionally, the categorization fails to appreciate the fact that people change.

Even when we know these limiting narratives are destructive, it is hard to let go of them because of how entrenched they are in our socialization. In restorative justice courses at Northwestern Pritzker School of Law, there are students who care deeply about advocating for people who are incarcerated, but they still struggle to let go of “victim/offender” terminology. The labels have become so normalized in the legal profession that it can feel strange not to use them. When we accept limiting narratives, we ultimately disparage other people’s dignity and accept false assumptions about them. These narratives create barriers to building authentic relationships and learning to be in community with one another. The way we think about harm and how we approach our work is as important as any outcome.

Failure to liberate ourselves from problematic narratives means we will replicate the harms of dehumanization and racism even through restorative practices.¹³⁵ We must ensure that we are not forcing participation in practices and perpetuating state control and dominance over others. We also need to reflect on the following questions: What harmful narratives affect implementation of restorative practices? Are we inviting people to fully and authentically participate as themselves? How does white supremacy influence restorative practices? In what ways do practices protect and focus on whiteness? To travel through the portal to a just world, we must be accountable for educating each other about the harm caused by carceral and racist narratives. Restorative justice challenges us to reject and change narratives that hurt others.

“violent offender.” The majority of people who are incarcerated for “violent offenses” do not commit subsequent violent offenses. Daniel O’Connell et al., *Violent Offending, Desistance, and Recidivism*, 103 MARQ. L. REV. 983, 1002, 1004 (2020).

133. E.g., Joe Ward, *After 2 Inmates Test Positive for COVID-19, Activists Urge Release of Non-Violent Cook County Jail Detainees*, BLOCK CLUB CHI. (Mar. 23, 2020, 4:10 PM), <https://blockclubchicago.org/2020/03/23/after-two-inmates-test-positive-for-covid-19-activists-urge-release-of-non-violent-cook-county-jail-detainees/>; Catherine Kim, *Why People Are Being Released from Jails and Prisons During the Pandemic*, VOX (Apr. 3, 2020, 2:10 PM), <https://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated>.

134. See Cosby, *supra* note 132.

135. Though full examination of these issues falls outside the scope of this essay, we believe exploration concerning fidelity of restorative practices and perpetuation of harm is critical. See SERED, *supra* note 88, at 154–56.

VI. TRAVELING THROUGH THE PORTAL

Only justice can stop a curse.

—Alice Walker¹³⁶

We should embrace the current moment as a turning point rather than yearning for a return to “normal.” When injustice and “omniharm” are revealed, things must not remain the same. Shifting the way we understand harm and moving away from carceral frameworks inevitably change the way we think about reparation. Repairing harm involves bringing together and listening to the needs of those who are most affected by harm.¹³⁷ Their inclusion is critical. The lived expertise of those affected must be valued above the opinions of system professionals. Reparation means ensuring people have their needs fulfilled so that they have the resources to heal and the ability to make amends—there must be meaningful opportunities for restoration.

The journey through the portal begins with working toward being in right relationship with self. “Because every change we make is a change in a relationship in which we take part, we cannot cause change without changing ourselves.”¹³⁸ A balanced and healthy relationship with one’s self involves introspection, self-love, self-care, and making meaning out of past experiences. Growth requires knowing and accepting ourselves. Questions for reflection include the following: Who am I? How does my positionality affect the way I see and engage with the world? What experiences shaped me? Who are the people who influenced me? What does self-compassion and -acceptance look like? To help ourselves determine the best direction forward, we must hold up the mirror and examine where we are sitting and how we came to be in that place.

Introspection requires attorneys and law students to recognize that restorative justice is not merely for clients, “victims,” “offenders,” or “those people.” It is for all of us. In Queensland, Australia, in the 1970s, a group of Aboriginal activists declared, “If you have come to help me, you are wasting your time. If you have come because your liberation is bound up with mine, then let us work together.”¹³⁹ These words are a reminder of the im-

136. ALICE WALKER, *IN SEARCH OF OUR MOTHERS’ GARDENS: WOMANIST PROSE* 342 (1983).

137. See DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* 63–79 (5th ed. 2015); SERED, *supra* note 88, at 135.

138. STARHAWK, *DREAMING THE DARK: MAGIC, SEX, AND POLITICS* 44 (1997).

139. Dr. Lilla Watson, Keynote Address: A Contribution to Change: Cooperation Out of Conflict Conference: Celebrating Difference, Embracing Equality (Sept. 21–24, 2004), <https://uniting.church/lilla-watson-let-us-work-together>. This slogan challenged white people attempting to help the Murri people, who are indigenous to Australia. It asked them to confront their paternalism and recognize the ways colonialism was embedded in their perceptions, attitudes, and relationships.

portance of reorienting power and elevating the value of humility.¹⁴⁰ While restorative justice provides a way to address harm from crime, it should not merely be reduced to a diversion program, credential, or certificate. Practicing introspection is key to understanding why we see ourselves the way we do and how we understand our roles as attorneys. We must allow people to tell their own stories and work on sharing our own. In the end, this will support relationships with others and dismantle harmful narratives and approaches. Practicing introspection enables people to stand in solidarity with each other.

In a discussion about the limits of empathy in a restorative justice class at Northwestern Pritzker School of Law, a student cautioned, “You don’t know what you don’t know.” While we may never walk in someone else’s shoes, we are changed when we are in relationship with them. Though our understanding of someone else’s experience is limited, “getting proximate”¹⁴¹ and building relationships lead to greater awareness. Relationships ultimately affect the way in which we see the world, how we feel, and what we care about. We are designed to be connected with one another through relationships.¹⁴² People do not tend to change, make amends, or heal based on persuasive arguments. Instead, transformation happens through relationships with others.

Relationships help foster compassion and deeper knowledge of people’s stories and the harm people have caused. Decontextualization of harm with emphasis on personal choice often aggravates feelings of shame, guilt, and self-loathing for those who have caused harm.¹⁴³ These feelings make negative labels seem inescapable.¹⁴⁴ When people are unable to move beyond labels such as “offender” or “addict,” the labels gain a permanency that suggests a moral failing and an inability to grow.¹⁴⁵ Assumptions associated with labels are barriers to building positive relationships. Treatment and reentry programs that use rehabilitation models that replicate a power imbalance mirror toxic and unequal relationships.¹⁴⁶ Encouraging dependency over growth insults a person’s power. Instead of focusing on “fixing” people, we should fix systems that actively pathologize race, trauma, poverty, sexuality, gender, and class.

140. See Kay Pranis, *Restorative Values*, in HANDBOOK OF RESTORATIVE JUSTICE 61–62 (Gerry Johnstone & Daniel W. Van Ness eds., 2007).

141. Bryan Stevenson, *The Power of Proximity*, YouTube (June 27, 2018), <https://www.youtube.com/watch?v=1RyAwZiHo4Y>.

142. See Mona Dekoven Fishbane, *Wired to Connect: Neuroscience, Relationships, and Therapy*, 46 FAM. PROC. 395 (2007).

143. Monica’s lived experience and relationships with others who have been incarcerated are a form of informal participatory research concerning feelings of shame, guilt, and self-loathing under these circumstances.

144. *Id.*

145. E.g., Samuel H. Pillsbury, *The Meaning of Deserved Punishment: An Essay on Choice, Character, and Responsibility*, 67 IND. L.J. 719 (1992).

146. See Cross, *supra* note 116, at 110.

The belief that the people who have caused harm need to be taught compassion or remorse is detrimental. Many people are deeply sorry for the harm they caused and would take it back if they could.¹⁴⁷ The assumption that they have no remorse rests on a presumption of moral inferiority, and it reveals a level of arrogance and perception of superiority on the part of those judging. An inability to forgive and see value in oneself stands in the way of being in right relationship with self, which in turn can become an obstacle to relationships with others.¹⁴⁸ We should support people and help remove hurdles to reparation of harm. The “othering” of people who are viewed as inherently criminal perpetuates the anti-Black racism within the criminal legal system.

The complexity of harm means that someone may have harmed someone else, and at the same time, the legal system may be causing harm to that person and all others involved. Experiencing harm does not excuse harming others. For instance, a person may physically abuse a partner as a result of his or her own history of trauma and abuse. The person’s past does not absolve that person of the harm caused to the partner; however, the person’s background must be addressed. When examining harmful actions, we find there is not a simple relationship between individual agency and the effects of “omniharm.” While personal responsibility and accountability are necessary, we must also recognize that choice is profoundly shaped by life experience. Racism, other forms of discrimination, poverty, and trauma influence decision-making as well as the options available to a person.¹⁴⁹

Too often the sole focus in any discussions about harm, particularly within the context of the criminal legal system, is on individual personal responsibility without a recognition of the impact of “omniharm.” Healing and repair require a focus on both. If we advocate for restorative justice, and if we believe these pandemics can become a portal to a just world, then we must also work toward repairing “omniharm.”¹⁵⁰ While it is imperative to understand individual needs and interests, we must also think more broadly in terms of the circumstances surrounding a person’s actions. To address “omniharm,” we must be holistic in our approach to housing, educational, health, environmental, and economic justice. “Omniharm” reparation looks like access to noncoercive reentry support and housing, fully resourced and funded education, affordable housing, quality health care, jobs with a living wage, viable economic opportunities, voting rights, and

147. Cosby, *supra* note 132.

148. *Id.*

149. See Howard M. Leichter, “*Evil Habits*” and “*Personal Choices*”: Assigning Responsibility for Health in the 20th Century, 81 MILBANK Q. 603 (2003).

150. There have been some swift and unprecedented responses to the novel coronavirus. *E.g.*, *supra* notes 2 and 4. In contrast, wide-scale responses to the pandemic of racism have been slow and stymied despite claims of support for racial justice. See Kevin E. Jason, *Dismantling the Pillars of White Supremacy: Obstacles in Eliminating Disparities and Achieving Racial Justice*, 23 CUNY L. REV. 139 (2020).

wellness support. Healing “omniharm” will reduce the harm caused to others and prevent incarceration.

The healing process includes naming trauma, its effects, and the loss it has caused because trauma is an integral part of “omniharm.” Trauma occurs because of experiences related to factors such as neglect, abuse, violence, or transgenerational harms. When untreated, trauma can lead to physiological and psychological impairments and self-medication through substance abuse.¹⁵¹ It is often comorbid with other mental health issues.¹⁵² These concurrent conditions harm both self and others. Thus, healing requires working on personal and collective wellness and preventing future trauma.

VII. A NEW FUTURE

Remember to imagine and craft the worlds you cannot live without, just as you dismantle the worlds you cannot live within.

—Ruha Benjamin¹⁵³
#defundthepolice

Presently, many are demanding to defund police and move away from traditional punitive systems of mass incarceration.¹⁵⁴ It is hard for some to imagine defunding police and prison abolition because of the entrenchment of retributive mindsets. Restorative justice can help us envision a world liberated from domination, one in which communities have the support and resources they need. Arundhati Roy suggests:

[The pandemic] offers us a chance to rethink the doomsday machine we have built for ourselves. Nothing could be worse than a return to normality. Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next.¹⁵⁵

The pandemics will not act as a portal unless we fight for change, because the status quo benefits many, and they will actively resist

151. Irene M. Howgego et al., *Posttraumatic Stress Disorder: An Exploratory Study Examining Rates of Trauma and PTSD and Its Effect on Client Outcome in Community Mental Health*, 5 *BMC PSYCHIATRY* 21 (2005); Edward J. Khantzian, *The Self-Medication Hypothesis of Substance Use Disorders: A Reconsideration and Recent Applications*, 4 *HARV. REV. OF PSYCH.* 231 (1997).

152. Howgego, *supra* note 151, at 11.

153. Ruha Benjamin, *Ruha Benjamin* (2018), <https://www.ruhabenjamin.com>.

154. Farah Stockman & John Eligon, *Cities Ask If It's Time to Defund Police and 'Reimagine' Public Safety*, *N.Y. TIMES* (June 5, 2020), <https://www.nytimes.com/2020/06/05/us/defund-police-floyd-protests.html>.

155. Roy, *supra* note 30.

change.¹⁵⁶ Failure to act will only result in worsened conditions, and in the future, the portal may close.¹⁵⁷ There are no easy fixes. Transformation requires patience, perseverance, resilience, and imagination.

As we wrestle with the complexity of harm, we maintain hope in the face of adversity.¹⁵⁸ Restorative justice challenges us to proactively advocate for healing and justice. Jennifer Llewelyn suggests, “The goal of restorative justice is not a return to the past but rather the creation of a different future founded on relationships of equal concern, respect, and dignity.”¹⁵⁹ Restorative justice seeks to realize the ideal of human relationships, providing a vision of balanced relationships.¹⁶⁰ It can potentially lead to liberatory outcomes through raising rights consciousness, reorienting power, and standing up against white supremacy.¹⁶¹ We must free ourselves from oppression, and we must also invest time imagining the world we want to see.¹⁶²

We dream of a just, equitable, antiracist, and inclusive world where human desires for safety, love, acknowledgment, and expression are satisfied. Safety is having a place from which to navigate this life, a space of one’s own, a space where there is no coercion or threat of harm. It is being able to walk down the street breathing clean air without fear of harassment or assault. It is developing healthy and nonabusive relationships. The reorientation and redistribution of power means not having to fear state violence in our lives. Building communities of care supports holistic mental, physical, emotional, and spiritual healing. Love, arts, culture, and relationship building are integral to growth and collective healing.

We need to spend time supporting the development of relationships that racism, discrimination, and oppression have prevented. The pursuit of full humanity is achieved through fellowship and cannot be accomplished in isolation.¹⁶³ When we develop relationships with people who we believe are the “other,” those relationships humanize them. Sharing our stories lays a foundation for relationships.¹⁶⁴ Stories connect us through highlighting

156. Barnard Center for Research on Women, *Past as Prologue: Storytelling About Resistance to Incarceration*, YOUTUBE (May 8, 2020), <https://www.youtube.com/watch?v=ckw8tyagfb4>.

157. *See id.*

158. *See* HOOKS, TEACHING COMMUNITY, *supra* note 36 (“It is imperative that we maintain hope even when the harshness of reality may suggest the opposite.” (quoting Paulo Freire)).

159. Llewelyn, *supra* note 43.

160. *Id.*

161. González, *supra* note 40, at 461–62.

162. *E.g.*, the Northwestern Pritzker School of Law Bluhm Legal Clinic Children and Family Justice Center Reimaging Youth Justice Project works with young people who are incarcerated to amplify their experiences and listen to their ideas about transforming youth justice. *See also* Mon Mohapatra et al., #8toAbolition (2020), <https://www.8toabolition.com> (an organization dedicated to police abolition and demanding eight key policy changes immediately).

163. FREIRE, *supra* note 36, at 85.

164. *See* HOOKS, TEACHING COMMUNITY, *supra* note 36, at 49–58. Throughout this collaboration, Monica and Annie have practiced sharing their stories with each other to deepen their relationship. They have also had powerful experiences connecting with others through storytelling.

universal human experiences.¹⁶⁵ Restorative justice helps dismantle assumptions and changes the ways in which we categorize the world.¹⁶⁶ The “other” becomes a sibling, a person who has experienced loss and joy, or someone else with whom we can relate—even if our experiences are different.¹⁶⁷ Relationships help us to honor each other’s stories and prevent the transactional use of them. When we truly see and accept each other for who we are, we change the narrative and move beyond labels. We enable each other to embrace differences in lived experiences, language, and culture. We can become more than what happened to us or what we have done.¹⁶⁸

Liberation requires being in community and valuing differences.¹⁶⁹ We create community when we stand in solidarity and bear witness to the narration and re-narration of experiences.¹⁷⁰ When we live with one another, we are changed by community and responsible to it.¹⁷¹ Compassionate accountability is crucial because we need to learn from each other. We are in a better position to engage in hard and painful conversations about the harm we cause when a foundation of community relationships has already been established. Together, we practice living out the dreams we want to make a reality.

We see glimpses of safe and healing spaces, communities of care, and true investment in relationships. While locked up, Monica was part of a theatre troupe named “Acting Out,” which used the arts and storytelling as a means of expression and liberation from oppression. The members of the troupe celebrated their different gifts and were responsible to each other for learning and performing. As a group, they engaged in conversations and educated each other about issues like racism, classism, and sexism. They learned about themselves and their relationships with others through studying characters and reading lines. They were not always in agreement and had to find ways to work through harm that they caused. One powerful collaborative production involved the performance of letters that troupe members had written to their younger selves along with other personal written reflections. Preparation for the production involved introspection, facing the past, healing, and supporting each other as a community. Afterward, people from the audience shared their gratitude for the ways the perform-

165. *See id.*

166. *See* PRANIS ET AL., *supra* note 54, at 9–21.

167. *But see* AUDRE LORDE, *SISTER OUTSIDER* 112 (2007) (“Without community there is no liberation, only the most vulnerable and temporary armistice between an individual and her oppression. But community must not mean a shedding of our differences, nor the pathetic pretense that these differences do not exist.”).

168. *See* BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 17–18 (2015).

169. LORDE, *supra* note 167.

170. González, *supra* note 40, at 461, 469.

171. STARHAWK, *supra* note 138, at 40.

ance helped with their own healing. The theatre troupe's work humanizing those who were incarcerated was an act of resistance and survival.

Monica plans to create a noncoercive and supportive housing collective named Diana Dawning for women who have been impacted by the criminal legal system. She envisions it as a "way station," in other words, a stopping point in women's journeys where they can rest and fortify themselves. In the housing collective, women will gather together, share their experiences and wisdom, reclaim their own power, liberate themselves through education and activism, and speak for themselves in ongoing dialogues about incarceration and its consequences. Diana Dawning will amplify the voices of women who are most affected by state-sanctioned violence. Women will have autonomy to make decisions for themselves about their own lives. Diana Dawning will provide the time, space, communal support, creative energy, and resources enabling women to identify and achieve their own goals. The collective will meet the immediate and everyday needs of women like housing, food, transportation, and wellness care in order to allow them to focus on healing. Because "the personal is political," education will play an integral role in individualized care.¹⁷² For example, the community of women will host educational consciousness-raising events about issues that have impacted them such as living in the crosshairs of state and domestic violence. The women will also explore ways of freeing themselves from internalized oppressions. The healing process might involve culturally informed cognitive behavioral therapy, meditation, art, dance, horticulture, and time with family. Diana Dawning is a radical act of self-care for Monica because she sees herself in the women who will be a part of the community—a true embodiment of the precept "you are my other me."¹⁷³ Monica needs people who will live out their solidarity by investing their support, resources, time, and money.¹⁷⁴

VIII. GROWING SEEDS OF SOLIDARITY

Hope is a discipline.

—Mariame Kaba¹⁷⁵

172. The origin of this phrase is uncertain. Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 515 (2012). It became a slogan for the feminist movement in the 1960s and 1970s that was popularized by Carol Hanisch's essay entitled "The Personal Is Political." *Id.*; see Carol Hanisch, *The Personal Is Political*, in RADICAL FEMINISM (Barbara A. Crow ed., 2000).

173. Luís Valdez & Dominico Martinez Paredes, *In Lak'ech: You Are My Other Me*, VUE: Voices in Urban Education, <http://vue.annenberginstitute.org/perspectives/lak%E2%80%99ech-you-are-my-other>.

174. If interested, please reach out to Monica at mdcosby101268@gmail.com.

175. Mariame Kaba is a prison abolitionist who believes "hope is a discipline"; she has shared this message with Monica and others in her work to dismantle the prison industrial complex.

Through the pain of the COVID-19 and racism pandemics, we see the deep wounds of harm from dehumanization, disrespect for human dignity, disconnection, and inequity. Too many have died from the COVID-19 and racism pandemics, and sadly more will die in the future while battling against them. Justice is entwined with reparation of harm. We must name the harm so that we can work to repair and heal it. We should not return to the normalcy of a world decayed by inequity and anti-Black racism. Our hope is that the pandemics change us forever and that we take the opportunity presented to grow and rebuild something better because our current systems cannot provide the justice we seek. Restorative justice can act as a catalyst for change on all levels—in attitudes, beliefs, policies, actions, relationships, and culture. This moment is a call to action for fighting to cross through the portal to a better future.

In Monica's kitchen, ceramic and plastic pots of plants sit on her counter growing "seeds of solidarity."¹⁷⁶ Monica's plants not only represent her collaborative work but also symbolize growth. We all need growth. Like others, Monica and Annie are in flux, and their stories are unfinished. When Monica sees the plants, she thinks about the smell and feel of soil in her hands when she planted the seeds. They are a daily reminder of her connection to the earth and the fact that we are part of an ecosystem, dependent on each other for survival. Our wellness rests on the health and well-being of everyone.

Moving forward, we want to continue to engage in critical reflection that deepens relationships and leads to action shaped by listening to those who are affected most by "omniharm." Let us challenge and hold each other accountable as we face the challenges ahead. May we strive for connection, community, and solidarity throughout our journey.

176. The plants embody Monica's work creating a garden to represent and celebrate education behind bars with the Prison + Neighborhood Arts Project (PNAP), other activists, artists, and the University of Chicago Human Rights Lab.



From the University of Chicago Human Rights Lab Seeds of Solidarity Garden