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Learning to Heal: Integrating Restorative Justice into Legal Education

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Learning to Heal: Integrating Restorative Justice into Legal Education

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I. INTRODUCTION

According to Susan Daicoff, who has been researching and writing about the legal profession since 1991,¹ the legal field has transformed significantly in the past three decades.² Daicoff articulates eight particular developments in legal practice that have corroded the dominance of the zealous advocacy model.³ First, the widening justice gap has created a two-tiered justice system in which Big Law⁴ and moneyed clients dominate the first tier, while public service falls to the second tier.⁵ Second, there are more lawyers and fewer jobs.⁶ Third, court dockets are overwhelmed and inefficient, causing the majority of cases to be settled through alternative dispute resolution (ADR) such as negotiation and mediation.⁷ In practice, the full healing potential of these methods is seldom reached due to the “mini-trial” nature of these proceedings.⁸ This is often the result of the entrenchment of lawyers’ training, experience, and approach in the adversarial model.⁹ Furthermore, lawyers often draw out cases on the ADR track as a means of increasing their legal fees.¹⁰ This leads to the fourth development, that clients feel lawyers’ fees are too high.¹¹ Fifth, the criminal justice system is failing, as incarceration and recidivism rates are at historic highs.¹² Sixth, the legal profession is increasingly diverse, both demographically and

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1. See, e.g., SUSAN S. DAICOFF, *LAWYER, KNOW THYSELF* (Am. Psychol. Ass’n 2004) [hereinafter *LAWYER, KNOW THYSELF*] (compiling four decades of research into the lawyer personality and relating this research to professionalism and well-being within the legal profession); SUSAN S. DAICOFF, *COMPREHENSIVE LAW PRACTICE* (2011) (providing a foundational understanding of the comprehensive law movement). Susan Daicoff’s primary scholarship and speaking expertise focus on what she has called the “comprehensive law movement,” or the practice of law as a healing profession. *Curriculum Vitae of Susan Daicoff*, SUSAN DAICOFF, <https://susandaicoff.webs.com> (last visited Nov. 5, 2019). She was previously a Professor of Law and the Director of Clinical Programs at Arizona Summit Law School. *Id.*
 2. Susan Daicoff, *The Future of the Legal Profession*, 37 *MONASH U. L. REV.* 7, 13 (2011).
 3. *Id.* at 13–14.
 4. See Sally Kane, *Big Law: What It Means and Why It Matters*, *THE BALANCE CAREERS* (June 25, 2019), <https://www.thebalancecareers.com/biglaw-nickname-definition-2164198> (defining Big Law as “an industry nickname for the nation’s largest law firms” that “maintain a national or global presence, often with multiple offices across the country or around the world. They rank among the top-grossing law firms in the nation.”).
 5. Daicoff, *supra* note 2, at 13.
 6. *Id.*
 7. See, e.g., Howard H. Dana Jr., *Court-Connected Alternative Dispute Resolution in Maine*, 57 *ME. L. REV.* 349, 356 (2005); Irving R. Kaufman, *Reform for a System in Crisis: Alternative Dispute Resolution in the Federal Courts*, 59 *FORDHAM L. REV.* 1, 1 (1990); George L. Priest, *Private Litigants and the Court Congestion Problem*, 69 *B.U. L. REV.* 527, 527 (1989).
 8. Daicoff, *supra* note 2, at 13–14.
 9. *Id.* at 13.
 10. *Id.*
 11. *Id.*
 12. *Id.* There are currently over two million people incarcerated in the U.S. prison system. See *United States Profile*, *PRISON POL’Y INITIATIVE*, <https://www.prisonpolicy.org/profiles/US.html> (last visited Nov. 5,

psychologically.¹³ An increase in women and minority lawyers has changed the tone of the field, and is perhaps responsible for the increased demand for work that resonates with a lawyer's personal values.¹⁴ Seventh, a general societal dissatisfaction with the legal system has led to demand for affordable legal services aligned with higher values and humanistic ethics, such as the voice and participation of clients and accountability for lawyers.¹⁵ Last, and most critically, law schools' overemphasis on doctrine and the adversarial trial model has created a growing gap between what law students learn and what lawyers do.¹⁶ In addition to these eight changes within the profession, global developments also sound the alarm for change. There is a growing respect for and awareness of the interconnected, interdependent nature of the world.¹⁷ As humanity recognizes its interconnectivity, collaboration and cooperation gain increased importance.¹⁸ Values such as apology and forgiveness, which seemed all but forgotten within the contentious world of legal disputes, have made a resurgence.¹⁹

In response to these sea changes within the legal field, a number of holistic approaches to law developed. The comprehensive law movement describes the synthesis of several related movements in law and is composed of different approaches to law, or vectors, which share two special traits.²⁰ First, the vectors focus on "optimizing the emotional and psychological well-being of the parties throughout the resolution process."²¹ Second, the vectors take a "rights plus" approach, which considers factors supplemental to legal rights, such as people's needs, values, relationships, and connections to the community.²² Daicoff describes the various "lenses, processes, and skills" that comprise the comprehensive law movement as vectors "because they are all moving towards [the] common goals of optimizing

2019).

13. Daicoff, *supra* note 2, at 14.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 15.

18. *Id.*

19. *Id.* at 16.

20. *See generally id.* Daicoff first became aware of the similarities between various emerging approaches to law in the late 1990s, at a conference on therapeutic jurisprudence. *Id.* at 19. Through discerning insight, Daicoff discovered that these new approaches to law all fit within a larger movement. *Id.* By 2008, Daicoff characterized the comprehensive law movement as in its "adolescence, complete with growing pains" and by 2010, at least a dozen lawyers had written books acknowledging the changes to the legal profession and field as brought on by the various vectors of the comprehensive law movement. *Id.* at 20. In 2010 there was a conference on Non-Adversarial Justice in Melbourne, Australia, which according to Daicoff, served as proof of the global recognition of the comprehensive law movement. *Id.* at 21.

21. LAWYER, KNOW THYSELF, *supra* note 1, at 174; Susan Daicoff, *The Comprehensive Law Movement*, 19 *TOURO L. REV.* 825, 833 (2015) [hereinafter *Comprehensive Law Movement*].

22. *Comprehensive Law Movement*, *supra* note 21, at 834.

human well-being and considering rights plus.”²³ The vectors of the comprehensive law movement include therapeutic jurisprudence, procedural justice, preventive law, problem-solving courts, restorative justice, collaborative law, holistic law, and creative problem solving.²⁴ Each vector is a movement unto itself, manifesting in a diverse array of legal contexts.

This Note focuses on the vector of restorative justice, primarily as it operates within the criminal justice system. The Note begins with a discussion of restorative justice, which includes a detailed look into the Red Hook Peacemaking Program, a restorative justice initiative in Brooklyn, New York. The Red Hook Peacemaking Program illustrates some of the profound differences between the retributive model of justice and the restorative model. The latter necessitates special skills from attorneys that are not generally emphasized in law schools. I argue that law schools can begin to meet the challenge of training restorative justice practitioners by first, encouraging students to develop a philosophy of lawyering, and second, increasing the availability of experiential learning courses in restorative justice.

II. RESTORATIVE JUSTICE

Restorative justice takes a more nuanced approach to crime than does retributive justice.²⁵ The principles underlying restorative justice are that “crime is a violation of people and interpersonal relationships; violations create obligations; the central obligation is to put right the wrongs.”²⁶ These principles emphasize the interconnectedness of people and society, a notion that is undervalued within the retributive model.²⁷

At its outset, restorative justice “began as an effort to rethink the needs and roles implicit in crimes.”²⁸ Retributive justice treats victims as little more than witnesses. This is reflected in the very definition of crime as an offense against the state.²⁹ Restorative justice addresses the victims’ needs for involvement in the process of justice; information about what happened leading up to and during the actual crime;

23. *Id.* at 836.

24. *Id.* at 837–42.

25. See Laura Ravinsky, Note, *Reducing Recidivism of Violent Offenders Through Victim-Offender Mediation: A Fresh Start*, 17 *CARDOZO J. CONFLICT RESOL.* 1019, 1021 (2016). Retributive justice focuses on the specific offense and aims to punish the offender proportionately to the severity of the crime. *Id.* By contrast, restorative justice is more forward-thinking because it focuses on the offender and preventing future criminal behavior. *Id.* at 1026–27.

26. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 17 (2nd ed. 2015).

27. *Id.* at 16 (explaining how retributive justice aims to punish the offender instead of focusing on the needs of the victims, offender, and overall community).

28. *Id.* at 20 (discussing the origins of the modern restorative justice movement).

29. *Id.* at 21 (“People who have been victimized often feel ignored, neglected, or even abused by the justice process This results in part from the legal definition of crime, which does not directly include victims themselves. Crime is defined as against the state, so the state takes the place of the victims.”).

an opportunity to tell their side of the story, and restitution or vindication.³⁰ Offenders, too, are denied what they require in today's criminal justice system, where punishment is the primary objective.³¹ Restorative justice aims to have the offending party acknowledge and address the wrongful conduct by taking responsibility for what happened.³² Ultimately, restorative justice encourages a personal transformation in the offending party, followed by support for integration back into the community.³³

One way to conceive of restorative justice is in terms of a wager that contemplates the nature of reality and humanity.³⁴ Restorative justice wagers that "every human being wants to be connected in a good way' and in a 'safe place' we are able to take action through dialogue to build community so that all life might flourish."³⁵ Implicit in this framework is the understanding that deep within every human being is a "restorative impulse to seek social healing."³⁶ The potential to repair community in the midst of conflict through respectful dialogue lies at the heart of the restorative justice wager.³⁷ Restorative justice in the criminal context does not ignore wrongdoing; rather, it recognizes and seeks to address the "harms of conflict [and] the wounds of relationships."³⁸ By recognizing the trauma brought by conflict, restorative practices endeavor to "re-weave" relationships, restoring community.³⁹ Restorative justice emphasizes respect, honesty, compassion, and inclusion, and focuses on "the harms of crimes rather than the rules that have been broken."⁴⁰ Where retributive justice seeks punishment for wrongdoing, perhaps out of a sense of fear or lack of trust in the humanity of others, restorative justice views conflict as "an opportunity for creative, value-based, transformative dialogue," and thus fosters community in the face of conflict.⁴¹

30. *Id.* at 22–23.

31. *Id.* at 14.

32. *Id.* at 15.

33. *Id.* The well-being of the community is fundamental to the process of restorative justice, particularly where support for victims or offender integration is concerned. *Id.* at 16.

34. Howard J. Vogel, *The Restorative Justice Wager: The Promise and Hope of a Value-Based, Dialogue-Driven Approach to Conflict Resolution for Social Healing*, 8 *CARDOZO J. CONFLICT RESOL.* 565, 566 (2007).

35. *Id.* at 565 (quoting KAY PRANIS ET AL., *PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY* 9 (2003)).

36. Vogel, *supra* note 34, at 566.

37. *Id.*

38. *Id.* at 576 (quoting Penelope Harley, *The Globalization of ADR: Feeling the Way Forward? (Ruminations of a "Female, Peace-Making Interested, Restorative Justice Oriented Flake!")*), 27 *HAMLIN J. PUB. L. & POL'Y* 283, 291 (2006)).

39. Vogel, *supra* note 34, at 576–77.

40. *Id.* at 577; ZEHR, *supra* note 26, at 43.

41. Vogel, *supra* note 34, at 578.

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There is no particular program that characterizes restorative justice.⁴² Rather, the type of model or hybrid-model used is context-specific because the impacted community plays a vital role in restorative justice.⁴³ However, the primary models of restorative justice are victim-offender conferences, family group conferences, peacemaking circles, and truth commissions.⁴⁴ All of these methods involve two key components: (1) a meeting between those harmed and those who caused the harm, and (2) decisions concerning redress for the harm caused.⁴⁵ Although restorative justice initiatives vary vastly because they respond to the specific needs of particular communities, they always include these two key components, which are rooted in the foundations of restorative justice.⁴⁶

A. Restorative Justice as an Alternative, not a Replacement

Though restorative justice is expanding within the criminal justice system, its proponents do not seek to replace the retributive model. Rather, the introduction of restorative justice to the criminal system serves as a complementary alternative, which broadens the conception of what constitutes an appropriate response to crime and what constitutes justice.⁴⁷ Restorative justice has the potential to meet the justifications of the retributive approach in the appropriate cases.⁴⁸ Where retributive justice seeks punishment, restorative justice broadens the concept of punishment to include making amends to the victim, which may in turn deepen the retributive

42. ZEHR, *supra* note 26, at 42.

43. Vogel, *supra* note 34, at 571.

44. *Id.* at 570–71; ZEHR, *supra* note 26, at 49. Victim offender conferencing provides interested victims of crime the opportunity to meet the offender in a safe and structured setting, with the goal of holding the offender directly accountable for their behavior while providing assistance and compensation to the victim. *Victim Offender Conferencing*, RESTORATIVE JUST. OF NW. WIS., <https://restorativejusticewi.org/victim-offender-conferencing> (last visited Nov. 4, 2019). Family group conferencing is a legal process for resolving child welfare cases in which the state convenes a conference with immediate and extended family members and other important people in the child's life, such as teachers or religious leaders, to decide how to protect the child and support the parents. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 640–41 (2006). A peacemaking circle is a restorative justice model that emphasizes healing and learning through a collective group process, combining victim reconciliation, offender responsibility, and community healing. *Restorative Justice Training: Peace Circles*, STUDENT PEACE ALL., http://www.studentpeacealliance.org/uploads/2/9/4/4/29446231/peace_circles-3.pdf (last visited Nov. 4, 2019). Truth commissions are non-judicial inquiries established to determine the facts, root causes, and societal consequences of past violations, designed to provide acknowledgment and recognition of suffering and survival to those most affected. *Truth Commissions*, INT'L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/gallery-items/truth-commissions> (last visited Nov. 4, 2019).

45. Avery Calhoun, *Introducing Restorative Justice: Re-Visioning Responses to Wrongdoing*, 20 THE PREVENTION RESEARCHER 3, 4 (2013). These key features are broad and allow for creativity. *See id.* (identifying and explaining three broad categories of restorative justice that incorporate the two key components).

46. ZEHR, *supra* note 26, at 42.

47. Zvi D. Gabbay, *Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices*, 2005 J. DISP. RESOL. 349, 357, 380 (2005).

48. *Id.* at 376–77.

response to crime by adding another dimension of accountability.⁴⁹ Restorative justice carries the potential to change attitudes toward the criminal justice system by increasing perceptions of fairness within the system. In this paradigm, deterrence is achieved not through intimidation and fear, but through “supporting the basic norms prohibiting criminal conduct” within the community.⁵⁰ The community aspect of restorative justice ripples out to encourage “positive general deterrence.”⁵¹ Thus, restorative justice can work in tandem with the retributive model to form a coherent criminal justice system that provides an avenue for healing in appropriate cases. It is for this reason that even strong proponents of retributive justice may appreciate the integration of restorative justice programs.

B. The Red Hook Community Justice Center

Community Courts⁵² are an ideal place to initiate restorative justice programs. The first Community Court was established in Midtown Manhattan in 1993 to handle low-level, quality-of-life cases that had previously received little attention in the Times Square neighborhood.⁵³ Three years after the court opened, prostitution arrests in the area decreased by 50 percent.⁵⁴ Now there are over seventy Community Courts worldwide.⁵⁵ Community Courts vary in that they respond to the needs of the particular neighborhood, but they tend to share the following key features: individualized justice, an expanded range of sentencing options, a multi-track system of varying mandate lengths, offender accountability, community engagement, and community impact.⁵⁶

The Red Hook Community Justice Center opened in Red Hook, Brooklyn in 2000 with the goals of reducing crime and improving quality of life in the

49. *Id.* at 381.

50. *Id.* at 387 (outlining that the basic norms of the community are the external norms that guide the moral standards of the culture in which a person is raised to help define what is right and what is wrong).

51. *Id.* at 387–88.

52. Community Courts are one example of “problem-solving courts.” See *Problem-Solving Courts*, N.Y. ST. UNIFIED CT. SYS., https://www.nycourts.gov/courts/problem_solving/ (last visited Nov. 1, 2019). As the name implies, “problem-solving courts look to the underlying issues that bring people into the court system, and employ innovative approaches to address those issues.” *Id.* Problem-solving courts include drug courts, mental health courts, adolescent diversion parts, and veterans courts. *Id.*

53. Greg Berman & Aubrey Fox, *Justice in Red Hook*, 26 THE JUST. SYS. J. 77, 79 (2005).

54. *Id.*

55. Cynthia G. Lee et al., *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*, [Executive Summary], NAT'L CTR. FOR ST. CTS. 1 (2013), https://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Executive%20Summary_Final.pdf. Community Courts differ from traditional courts in that they address problems at the neighborhood level. *Id.* at 1. They are distinct from specialized problem-solving courts, such as drug courts, because they address multiple problems that contribute to social disorganization. *Id.*

56. *Id.*

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neighborhood.⁵⁷ Just ten years earlier, *LIFE* Magazine described Red Hook as “the crack capital of America.”⁵⁸ The Justice Center arose in response to a tragic accident in 1992, when a stray bullet killed a beloved school principal.⁵⁹ Led by Judge Alex Calabrese, the Justice Center aims to deter crime through meaningful punishment, intervene through providing social services, and increase perceptions of legitimacy and procedural justice within the community.⁶⁰ The Justice Center handles misdemeanors, non-traffic violations, juvenile delinquency cases, selected felonies that originate out of Red Hook and its surrounding neighborhoods, as well as family court and civil court cases.⁶¹ A single judge, Judge Calabrese, hears all the cases, which allows for a coordinated judicial response.⁶² Today, the Justice Center operates a number of programs beyond the courtroom, such as peacemaking, community service, youth court, and a housing court resource center.⁶³

C. *The Red Hook Peacemaking Program*

The Justice Center’s innovative Peacemaking Program provides a model of restorative justice in action. July 2012 marked the beginning stages of the program, when two peacemakers from the Navajo Nation⁶⁴ came to Red Hook to explain and demonstrate the basics of peacemaking.⁶⁵ Community members were recruited to

57. *Id.* at 2.

58. Danielle Tcholakian, *Red Hook Community Justice Center Delivers Solutions in Lieu of Judgment*, METRO (Nov. 13, 2013), <https://www.metro.us/local/red-hook-community-justice-center-delivers-solutions-not-judgment/tmWmkm---dcLhPQXdaWK8k>.

59. *Id.* In 1992, a school principal was killed by a stray bullet when he stepped out of the school to look for a missing student. *Id.*

60. *Red Hook Community Justice Center*, CTR. FOR CT. INNOVATION, <https://www.courtinnovation.org/node/20088/more-info> (last visited Nov. 1, 2019) [hereinafter *Red Hook*].

61. Lee, *supra* note 55, at 35, 70.

62. *Red Hook*, *supra* note 60.

63. *Id.*

64. The Navajo Nation has incorporated peacemaking into its culture for centuries. *See, e.g.*, Marianne O. Nielsen, *Navajo Nation Courts, Peacemaking and Restorative Justice Issues*, 31 J. OF LEGAL PLURALISM & UNOFFICIAL L. 105, 106–08 (1999); Sui Hynynen Lambson, *Peacemaking Circles: Evaluating a Native American Restorative Justice Practice in a State Criminal Court Setting in Brooklyn*, CTR. FOR CT. INNOVATION iii (2015), <https://www.courtinnovation.org/sites/default/files/documents/Peacemaking%20Circles%20Final.pdf>; *Muscogee Creek Nation Reintegration Program*, THE HARV. PROJECT ON AM. INDIAN ECON. DEV., <https://hpaied.org/sites/default/files/publications/Muscogee%20Creek%20Nation%20Reintegration%20Program.pdf> (last visited Nov. 9, 2019).

65. In 2008, the Center for Court Innovation created the Tribal Justice Initiative to support Native American communities in developing and strengthening tribal justice systems. *Red Hook Peacemaking Program: Program Guide for Court Referrals*, CTR. FOR CT. INNOVATION 3 (2004), https://narf.org/nill/documents/2014_red_hook_peacemaking.pdf [hereinafter *Red Hook: Program Guide*]. The goals of the initiative were to ensure access to training in tribal communities, encourage collaboration between tribal justice systems and local court systems, and identify best practices in tribal justice systems that could enhance public safety beyond the tribal community. *Id.* Through observing and learning from hundreds of practitioners of tribal justice, the Center for Court Innovation identified peacemaking as an

undergo intensive training as peacemakers, and in January 2013, the program officially launched.⁶⁶ The program endeavors to pursue the following four goals: heal relationships, give victims a voice, hold participants accountable, and empower the community.⁶⁷ In its inaugural year, the Red Hook Peacemaking Program handled thirty criminal cases and one case from the community.⁶⁸

1. Case Referrals

Criminal cases make their way to the Red Hook Peacemaking Program through referrals from various stakeholders in the criminal justice system, including judges, district attorneys, corporation counsel, defense attorneys, probation officers, and resource coordinators.⁶⁹ In order to be eligible for peacemaking, the case must not involve domestic violence, elder abuse, or sexual assault.⁷⁰ In addition, the defendants must voluntarily participate, accept responsibility for their actions, understand the intensive nature of peacemaking and be willing to commit the required time and effort, and not suffer from severe or untreated mental illness or need intensive drug treatment.⁷¹ If the eligibility requirements are met and the judge, district attorney, and defense attorney agree to peacemaking, the Peacemaking Program coordinator will discuss the program with the defendant, who decides whether to participate.⁷² If the defendant agrees to peacemaking, the program coordinator then informs the court and attorneys.⁷³ If there is a victim in the case,⁷⁴ the prosecutor will speak with the victim to obtain consent to move the case to peacemaking.⁷⁵ Victims can choose

approach to justice that held promise beyond the tribal justice system. *Id.* In 2010, the Center received a grant from the U.S. Department of Justice, Bureau of Justice Assistance to initiate an intensive, multi-stage plan for the development of a peacemaking pilot program. *Id.* After assessing whether peacemaking could work in New York courts, the Center designated the Red Hook Community Justice Center as the site of its first peacemaking program. *Id.*

66. *Id.* at 3.

67. *Id.* at 4.

68. *Id.* at 3.

69. *Red Hook: Program Guide*, *supra* note 65, at 6. Problem-solving courts employ resource coordinators, whose role is to establish and maintain relationships with community agencies and treatment and service providers. Resource coordinators identify referrals, maintain case files, and serve as the liaison between service providers, the court, and other relevant stakeholders. *Employment Opportunity Announcement: Resource Coordinator I*, ST. OF N.Y. UNIFIED CT. SYS. (June 5, 2015), http://www.cb14brooklyn.com/wp-content/uploads/2014/12/ResourceCoordinatorI_24502.pdf.

70. *Red Hook: Program Guide*, *supra* note 65, at 7.

71. *Id.*

72. *Id.* at 6.

73. *Id.*

74. Examples of crimes without a victim include drug possession, underage drinking, and truancy. Matthew K. Suess, Note, *Punishment in the State of Nature: John Locke and Criminal Punishment in the United States of America*, 7 WASH. U. JURIS. REV. 367, 385 (2015).

75. *Red Hook: Program Guide*, *supra* note 65, at 6.

to personally participate in the peacemaking sessions, but if they choose not to, a peacemaker, or other participant, can represent their interests.⁷⁶ The court will then re-call the case to enter a disposition of either adjournment in contemplation of dismissal,⁷⁷ a plea, or pre- or post-plea diversion.⁷⁸

Once a case is on the peacemaking track, the program coordinator meets with and prepares the defendant by explaining the peacemaking process and the defendant's responsibilities therein.⁷⁹ Victims who choose to participate are likewise prepared for the process.⁸⁰ All peacemaking participants sign confidentiality agreements, and the content of the peacemaking sessions remains confidential—even from the court.⁸¹ The peacemaking process may take several sessions before an agreement is reached. In the interim, the program coordinator works with peacemakers to ensure the defendant's attendance and participation, as well as overall compliance with the program.⁸² Once a consensus is reached and the defendant has complied with all of its terms, the court is notified.⁸³ The court will re-calendar the case for final disposition pursuant to the plea agreement.⁸⁴

2. Peacemaking Sessions

A peacemaking session typically runs two hours, with sessions continuing biweekly until a consensus is reached.⁸⁵ Each session is attended by two to three trained volunteer peacemakers and at least one Center for Court Innovation staff member.⁸⁶ Defendants and victims may also invite friends or family members affected

76. *Id.*

77. "An adjournment in contemplation of dismissal is an adjournment of the action without date ordered with a view to ultimate dismissal of the accusatory instrument in furtherance of justice. Upon issuing such an order, the court must release the defendant on his own recognizance." N.Y. CRIM. PROC. L. § 170.55(2) (Consol. 2019).

78. *Red Hook: Program Guide*, *supra* note 65, at 4–5.

79. *Id.* at 7.

80. *Id.* at 8.

81. The two mandated reporter exceptions to confidentiality are when a peacemaker suspects either child abuse or that a participant may harm himself or another. *Id.*

82. In the event that a defendant fails to attend the peacemaking sessions or participate in good faith, the case is returned to court, with the content of the sessions remaining confidential. *Id.*

83. *Id.*

84. *Id.* at 6.

85. *Id.* at 12.

86. *Id.* at 9. The Center for Court Innovation staff members act in a supervisory and support role throughout the peacemaking sessions. *Id.* The staff provide food for the session, assist in the case of an emergency, and keep track of the session. *Id.* at 12. After each peacemaking session, the staff members write a report analyzing the session. *Id.* The reports do not contain identifiers of any participants but focus on the peacemaking process. *Id.* at 13. These reports are then compiled at the end of the year to review successes and challenges in the peacemaking process in order to determine ways in which further training could be used to remedy any issues identified. *Id.* at 20–22.

by the case to participate in the sessions.⁸⁷ The goals of the sessions are to repair relationships that were damaged and reach a resolution.⁸⁸ Each session begins with introductions and an opening ceremony.⁸⁹ Seated in a circle, participants take turns speaking by passing a talking stick.⁹⁰ Peacemakers, in addition to sharing their own experiences, ensure that everyone is given an opportunity to speak and address the comments of others.⁹¹ The underlying controversy is openly discussed, and peacemakers guide participants toward a consensus decision. Once a resolution is reached, peacemakers summarize the agreement and the defendant reduces it to writing.⁹² The written decision is then acknowledged by all participants.⁹³ Finally, each peacemaking session ends with a closing ceremony.⁹⁴

3. *How Peacemaking Differs from Trial*

Clearly, peacemaking differs substantially from the adversarial trial model. Perhaps the most obvious difference is that peacemaking is not a court process. Peacemaking sessions do not operate according to court rules, yet the sessions foster a sense of respect and courtesy that encourages open communication. The meaningful dialogue in peacemaking sessions allows participants to address issues that generally would not arise in criminal court.⁹⁵ Instead of adjudicating, trained peacemakers strive to help participants talk through their issues to ultimately reach a consensus decision.⁹⁶ Peacemaking emphasizes the healing of interpersonal relationships and places value on the defendant's healthy reintegration into the community.⁹⁷ Whereas the court takes on the role of a neutral decision-maker, peacemakers actively participate in the process, guiding the defendant and encouraging communication.⁹⁸ One goal of peacemaking is to have the defendants accept responsibility for their wrongful behavior by facing those impacted by it.⁹⁹ The intimate and personal nature of this process creates an opportunity for self-correction.¹⁰⁰ Rather than the court

87. *Id.* at 9.

88. *Id.*

89. *Id.* at 11.

90. *Id.*

91. *Id.*

92. *Id.* at 12.

93. *Id.*

94. *Id.*

95. *Id.* at 10.

96. *Id.* at 9.

97. *Id.*

98. *Id.*

99. *Id.* at 9–10.

100. *Id.* at 10.

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determining the appropriate measure of punishment for a particular offense, peacemaking allows the defendant to propose resolutions to the underlying harm.¹⁰¹

The peacemaking process encourages all of the participants to reach a consensus decision in which the defendant may be required to apologize, pay restitution, meaningfully acknowledge the wrongful behavior, or address his personal challenges through participation in educational or support services.¹⁰² The space for creativity within the consensus decisions differs dramatically from sentences handed down by courts.¹⁰³ In addition, peacemaking sessions always include an aspect of ceremony, which serves to promote the sense of community and connection that underlies the process.¹⁰⁴

The differences between the peacemaking program and the adversarial trial model illustrate the different skills required of attorneys who engage in restorative justice. In restorative justice, it is not just the process that differs, but also the mentality of justice as a holistic endeavor involving the entire community. Restorative justice provides an avenue for evolution within the criminal justice system, yet the full realization of its promise rests on lawyers being adequately prepared to practice it. Without a thorough understanding of the values and processes that make restorative justice unique, attorneys risk diminishing the healing potential of initiatives like the Red Hook Peacemaking Program. As institutions that train future lawyers, law schools have the opportunity and responsibility to prepare students to practice restorative justice.

III. INTEGRATING RESTORATIVE JUSTICE INTO LEGAL EDUCATION

The preceding sections illustrate the holistic approach to justice required by attorneys who practice restorative justice. Clients in these settings need lawyers who appreciate their needs and can creatively seek solutions in a collaborative environment.¹⁰⁵ Practitioners of restorative justice must have well-developed “morality, creativity, professional identity, and general problem-solving skills.”¹⁰⁶ Unfortunately, law schools do not focus on these skills. Law school curricula “have generally overvalued lawyers as legal analysts and undervalued their roles as problem solvers.”¹⁰⁷ In training creative problem-solvers suited to practice restorative justice, law schools should endeavor to prepare students both mentally and practically.

101. *Id.*

102. *Id.*

103. *Id.*

104. Modes of ceremony utilized in peacemaking include observing a moment of silence, stating “peace be with you” or a similar meaningful statement, and playing music. *Id.* at 10–11.

105. Michael T. Colatrella Jr., *Learning “The True, the Good, and the Beautiful” in Law School: Educating the Twenty-First Century Litigator*, 33 REV. LITIG. 741, 747 (2014).

106. *Id.*

107. *Id.*

First, restorative justice asks lawyers to create “meaningful and effective partnerships with communities” while also taking a “rights plus” approach to clients’ needs.¹⁰⁸ In order to do so, attorneys must understand and embrace their role in engaging with communities to bring about lasting change. Therefore, law schools should explicitly encourage students to develop a philosophy of lawyering, wherein students can conceive of and reconcile their roles as attorneys and members of society. Second, because restorative justice emphasizes process rather than purely outcome,¹⁰⁹ law schools should increase the availability of experiential learning opportunities in the field of restorative justice. Together, these advances in legal education can ensure a future in which the promise of restorative justice is realized.

A. A Philosophy of Lawyering

Law students, who begin as a diverse group, are quickly inundated with an ethos of competition: students’ diverse opinions are replaced with a “think like a lawyer” ethic that positions attorneys as fighters engaged in adversarial practices.¹¹⁰ While there is competitive advocacy in legal work, it is overemphasized in law school to the detriment of other skills. Students are primed to internalize the grading curve or the importance of extrinsic markers of success, which place them squarely in competition with their cohorts.¹¹¹ The focus placed on building legal arguments and distinguishing opposing positions in legal terms removes the human element from conflict. Law students “compartmentalize the practice of law” and fail to consider how conflict impacts the people and relationships involved.¹¹² However, it is inaccurate to conceive of a lawyer’s role as wholly, or even mostly, adversarial in nature. Uncontemplated by this framework is the growing importance of collaborative and humanistic legal work such as counseling, advising, or engaging in alternative forms of justice.¹¹³ The focus on the win or lose dynamic de-emphasizes the importance of a lawyer’s many other contributions and responsibilities.¹¹⁴ If instead, law students have an opportunity to conceive of themselves as “humane problem-solvers,” they will see more possibility within the practice of law.¹¹⁵

108. Susan L. Brooks & Rachel E. Lopez, *New Directions in Community Lawyering, Social Entrepreneurship, and Dispute Resolution: Designing a Clinic Model for a Restorative Community Justice Partnership*, 48 WASH. U. J.L. & POL’Y 139, 149–50 (2015).

109. *See id.* at 141, 173.

110. Beth D. Cohen, *Helping Students Develop a More Humanistic Philosophy of Lawyering*, 12 LEGAL WRITING 141, 145–46 (2006).

111. *Id.* at 146, 158. *See also* Harrison Barnes, *Law School Is Highly Competitive: Only The Fittest Survive*, L. CROSSING, <https://www.lawcrossing.com/article/900011280/Law-School-Is-Highly-Competitive-Only-The-Fittest-Survive/> (last visited Nov. 5, 2019).

112. Cohen, *supra* note 110, at 146.

113. *Id.*

114. *Id.* at 146–47.

115. *Id.* at 149.

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Law schools can begin to accommodate the changing needs of modern lawyers by encouraging students to develop a philosophy of lawyering. A philosophy of lawyering concerns “the basic principles that a lawyer uses to deal with the discretionary decisions that the lawyer faces in the practice of law.”¹¹⁶ Stated another way, a philosophy of lawyering is “a concept of how, as professionals in the law, [lawyers] will relate to their clients and relate to the community.”¹¹⁷ Though not typically contemplated by law school curricula, developing a philosophy of lawyering can assist attorneys in contending with the demands of practice.¹¹⁸ As a lawyer’s role varies with context to include advocate, officer of the court, member of the professional community, and member of society, a philosophy of lawyering can help in discerning and balancing the tensions that arise amongst these roles.¹¹⁹ Far from one-dimensional, a philosophy of lawyering functions at the interrelated personal,¹²⁰ practical,¹²¹ and institutional¹²² levels.¹²³ By integrating these three modes through a developed philosophy of lawyering, attorneys become healthier in their approach to work, with a sense of how they will relate to their task as lawyers and to their clients. Addressing this at the law school level makes the most sense, for even though law school is but a few short years, the opportunities law students encounter profoundly influence their understanding of the legal field and their role as practitioners.¹²⁴ Law students encouraged to develop a philosophy of lawyering may come to recognize their power as attorneys and the role they can play in empowering communities through restorative justice initiatives.

The integration of more diverse approaches to lawyering within law school curricula will allow students to conceive of a philosophy of lawyering that is tailored to fit their personal and professional needs. When students develop holistic lawyering skills, their enthusiasm for their work increases, and the divide between personal values and professional pursuits may narrow.¹²⁵ Students can develop a philosophy of lawyering that considers the moral dimension of law, and allows them to make room

116. Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 75, 75 (2000).

117. Cohen, *supra* note 110, at 145.

118. *Id.*

119. *Id.* at 143–44.

120. At the personal level, a philosophy of lawyering relates to the dynamic between the lawyer’s private life and their professional role. Crystal, *supra* note 116, at 86–87.

121. The practical level of a philosophy of lawyering concerns the manner in which the attorney approaches ethical issues that arise in practice. While the rules of professional conduct provide some guidance, a philosophy of lawyering is helpful when a lawyer must reconcile unclear directives ethically. *Id.* at 85.

122. At the institutional level, a philosophy of lawyering relates to the dynamic between the lawyer’s private and professional life and the institutional issues facing the entire legal profession. *Id.*

123. Cohen, *supra* note 110, at 144.

124. *Id.* at 148.

125. *Id.* at 150.

for humanistic considerations within a conflict.¹²⁶ Therein lies the potential to move beyond the “crude instrumentalism” of lawyers disposing of conflicts with little regard for the underlying human element, toward a morally elevated professional identity.¹²⁷ The moral satisfaction that is available to lawyers so practicing allows them to integrate self and work in such a way that otherwise may not be possible or desirable.¹²⁸ Such an integrated personal and professional framework prepares attorneys for the holistic approach to conflict resolution inherent in restorative justice.

B. Experiential Learning

While a well-developed philosophy of lawyering sets the mental groundwork, students require practical experience in restorative justice to truly engage with the process. But such opportunities for law students are rare. A typical legal education stresses the case-analysis method in which law professors employ the Socratic Method¹²⁹ to teach students how to read and analyze appellate level court opinions.¹³⁰ The case-analysis method, initiated at Harvard University in the mid-1800s, “fosters inquiry and critical thinking [but also] cynicism and relativism.”¹³¹ In the 1960s and 1970s, the ethos of social revolution prompted a shakeup in legal education.¹³² Courses on alternative dispute resolution began to emerge amongst the traditional trial practice programs.¹³³ Law students headed south to volunteer in the civil rights movement, and returned with a desire for a more socially relevant education.¹³⁴ Students and law professors convinced law schools to start clinics that served clients who might not otherwise have had the benefit of legal counsel.¹³⁵ Despite these milestone developments, the evolution of law school curricula continues to be a slow process, particularly where novel approaches to justice are concerned.

For decades, reports coming out of respected legal institutions have identified a need for change in law school pedagogy. In 1992, the American Bar Association released a report entitled *Legal Education and Professional Development—An*

126. *Id.*

127. *Id.*

128. *Id.* at 151.

129. Michael P. Seng, *Restorative Justice and the Law School Curriculum*, in *RESTORATIVE JUSTICE IN PRACTICE: A HOLISTIC APPROACH* 167, 167 (Sheila M. Murphy & Michael P. Seng eds., 2015) Under the “Socratic Method,” law students read court decisions and law professors direct students in dissecting these decisions so that the students gain an understanding of the legal reasoning behind them. Students then make educated guesses about the influence that a case will have on the law in future cases.” *Id.*

130. *Id.*

131. *Id.* at 167–68.

132. *Id.* at 168.

133. *Id.*

134. *Id.*

135. *Id.*

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Educational Continuum (“MacCrate Report”¹³⁶).¹³⁷ The MacCrate Report criticized law schools’ approach to identifying and teaching skills and professional values, and stressed the importance of practical skills in legal education.¹³⁸ It identified ten fundamental lawyering skills that new lawyers should develop: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) organization and management of legal work, and (10) recognizing and resolving ethical dilemmas.¹³⁹ The MacCrate Report found that law schools succeed in teaching only the skills of legal analysis, reasoning, and research.¹⁴⁰ Clinical programs, however, have the potential to teach students all ten of the fundamental lawyering skills:

Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital...Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility and deepen their appreciation for their own values as well as those of the profession as a whole.¹⁴¹

In 2007, the Carnegie Foundation released a report entitled *Educating Lawyers: Preparation for the Profession of Law* (“Carnegie Report”). The report studied the manner in which law schools “develop legal understanding and form professional identity.”¹⁴² It found that through primary reliance on the case-dialogue method of teaching, law schools were able to quickly train students to think analytically and “like a lawyer.”¹⁴³ Specifically:

136. The MacCrate Report is named after the late Robert MacCrate, distinguished attorney and former ABA President, who was the driving force behind the report, and considered it one of his greatest accomplishments. Martha Neil, *Robert MacCrate, Former ABA President, Dies at Age 94*, A.B.A. J. (Apr. 7, 2016), http://www.abajournal.com/news/article/robert_maccrate_former_aba_president_dies_at_age_94.

137. Seng, *supra* note 129, at 168–69.

138. *Id.* at 169.

139. AM. BAR ASS’N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 138–40 (1992). The MacCrate Report also identified four fundamental values of the profession: providing of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession, and professional self-development. *Id.* at 140–41.

140. *Id.* at 234.

141. *Id.* at 238.

142. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law, Summary*, THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING 3 (2007), http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf.

143. *Id.* at 5.

The case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating upon the “facts” so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning. Students discover that to “think like a lawyer” means redefining messy situations of actual or potential conflict as opportunities for advancing a client’s cause through legal argument before a judge or through negotiation.¹⁴⁴

Thus, the Carnegie Report establishes the efficiency with which law schools train students to equate thinking like a lawyer with advancing a case through argument. The report goes on to note that the two major limitations of legal education are a failure to familiarize students with direct practice, and the ineffective development of ethical and social skills lawyers need.¹⁴⁵ The solution, according to the Carnegie Report, is the increased integration of experiential learning courses into law school curricula.¹⁴⁶

The integration of restorative justice experiential learning into law school curricula can be observed through the Community Lawyering Clinic (CLC)¹⁴⁷ at Drexel University Law School in Philadelphia, Pennsylvania. Established in 2014, the CLC is housed within a community center that offers an array of additional services.¹⁴⁸ Students in the CLC work closely with the community to identify needs and deliver legal services. During a year-long course, the clinic teaches students the importance of relationship-building and approaching legal work beyond the “attorney/client paradigm or limited to a narrowly defined set of legal issues.”¹⁴⁹ In the fall semester, students “engage in community outreach and provide direct legal services” to community members, while in the spring semester, students design and implement projects which address systemic issues, such as access to justice.¹⁵⁰

In rolling out this initiative, the CLC professors encountered challenges with pedagogy. The overvaluation of “quickness in all things” worked against skills they believed were more crucial to community lawyering, those of “moving slowly and reflecting deeply before coming to any conclusions.”¹⁵¹ The overemphasis on law students’ quickness in response to the Socratic Method of questioning, or lawyers’

144. *Id.* at 6.

145. *Id.*

146. Martin J. Katz, *The 2012 Randolph W. Throver Symposium Innovation for The Modern Era: Law, Policy, and Legal Practice in a Changing World: Article: Facilitating Better Law Teaching—Now*, 62 EMORY L.J. 823, 827 (2013).

147. See *Andy and Gwen Stern Community Lawyering Clinic*, DREXEL U. THOMAS R. KLINE SCH. OF L., <https://drexel.edu/law/academics/kline-difference/clinics/community-lawyering-clinic/> (last visited Nov. 6, 2019) (“[The clinic] allows students to serve as true community lawyers, addressing a variety of issues that affect Drexel’s neighbors...[as] students represent individual clients and families facing legal issues...[and] advocate for policy changes that would promote justice and equality for Drexel’s neighbors.”).

148. Brooks, *supra* note 108, at 161.

149. *Id.* at 161.

150. *Id.* at 167.

151. *Id.* at 171.

need to provide lightning fast responses to judges in oral argument, diminishes opportunities for reflection and patient understanding.¹⁵² Particularly when working with clients who have been disenfranchised or feel distrustful of the justice system, the ability of an attorney to listen deeply is highly valuable.¹⁵³ Students in the CLC are encouraged to “stay in a posture of curiosity such that they ask questions that elicit more information rather than assuming that they already have all the answers they need.”¹⁵⁴ By teaching the importance of these skills, the CLC challenges the typical conception of a good lawyer as always in a leading role. In a restorative setting, “often people who are able to make meaningful change are those who know how to spot a good idea and follow someone else’s lead.”¹⁵⁵ Experiential courses such as the CLC allow students to engage in a nuanced conception of lawyering, in which the voices and needs of the community are valued.¹⁵⁶

Short of establishing a clinical model like the CLC, there are other, more immediate ways that law schools can prepare lawyers to practice restorative justice. Law schools can offer courses that provide opportunities for students to develop underemphasized skills that lawyers in restorative settings need. In the realm of communication, this may manifest as a course that teaches students to engage in dialogue rather than debate.¹⁵⁷ Debate is how we communicate in adversarial advocacy, while dialogue is how we communicate in restorative settings. Dialogue endeavors to “share ideas in a way that gets beyond each person’s viewpoint, and to explore possibilities, even when there are fundamental differences, including different assumptions and strong positions”¹⁵⁸ Through engaging in dialogue, students disengage from the coercive nature of debate, and learn the skill of listening. Dialogue also fosters empathy, which not only increases a person’s ability to understand another’s perspective, but one’s own emotional needs as well.¹⁵⁹ Dialogue encourages those involved to examine their own assumptions, as well as those of others, while everyone “thinks together,” in contrast to the imposition of thought that characterizes debate.¹⁶⁰ Something as simple as teaching dialogue as a skill has the potential to transform the legal profession into one of healing, and encourage the continued expansion of restorative justice.

152. *Id.*

153. *Id.*

154. *Id.* at 172.

155. *Id.* at 171.

156. *Id.* at 172.

157. Colatrella, *supra* note 105, at 759.

158. Brooks, *supra* note 108, at 176.

159. Colatrella, *supra* note 105, at 757–58.

160. *Id.* at 758.

IV. CONCLUSION

Dramatic changes within the legal field have transformed the way attorneys practice. The introduction of restorative initiatives into the criminal justice system has created a growing need for attorneys to be skilled in the tenets and unique processes of restorative justice. Law school is the ideal setting to begin this training. By encouraging students to develop a philosophy of lawyering, law schools can prime students for the various roles they will encounter as attorneys, and empower them to engage with their work in a way that is morally satisfying. By providing experiential learning opportunities in restorative justice, law schools can allow students to deeply engage with the processes that set restorative justice apart.

Restorative justice does not replace the adversarial trial model of criminal justice. Instead, restorative justice provides an alternative approach for appropriate cases. Therefore, in evaluating the extent to which opportunities exist for lawyers to train in restorative methods, the solution is not to upend legal education as it stands. Rather, a traditional legal education should be adequately supplemented with opportunities to learn, develop, and practice skills unique to restorative justice. In this way, law schools will produce well-rounded attorneys who can continue to uplift and evolve the practice of law.