

A REINTERPRETATION OF RESTORATIVE JUSTICE THROUGH BLACK AND  
NATIVE FEMINISMS

by

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## THESIS ABSTRACT

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This thesis seeks to reorient the ideological foundations of restorative justice through feminist epistemologies in order to explore possibilities of how the movement might more fully actualize its values. The *Three Pillars of Restorative Justice*, conceptualized by Howard Zehr, offer an alternative process to the punitive recourse of the criminal justice system and serve as the foundation of mainstream restorative practices. However, the praxis and analytical discourse have stalled due to the limited binary of criminal and restorative justice frameworks. My thesis uses methodologies prominent in Black/Native feminisms-- such as critical thinking, contextual intelligence, and imagining futurity-- to complicate assumptions embedded in the criminal/restorative justice relationship. I establish the framework of restorative justice and briefly summarize the essential paradoxes to make clear the parallels and limits of the relationship. I then use feminist methodologies to reinterpret the pillars' values and introduce how some activists have begun to reimagine justice.

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## TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION .....	1
II. LITERATURE REVIEW.....	9
The First Pillar: Harms and Needs.....	11
The Second Pillar: Obligations and Accountability.....	15
The Third Pillar: Facilitate Engagement as Much as Possible .....	19
III. METHODOLOGY .....	23
Limitations of Previous Methods.....	24
Black and Native Feminist Methodologies.....	27
Questions.....	36
IV. FUNDAMENTAL PARADOXES.....	37
The Imitor Paradox .....	39
Towards Feminist Logics.....	43
V. A FEMINIST REINTERPRETATION OF RESTORATIVE JUSTICE .....	48
Critical Reflections on the Need for Complex Personhood.....	54
Critical Reflections on Relationships and Solidarity .....	63
Critical Reflections on the Role of the Mediator .....	69
VI. CONCLUSION.....	76
REFERENCES CITED.....	79

# CHAPTER I

## INTRODUCTION

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.

Howard Zehr, (p 40, 2002)

For those of us  
who were imprinted with fear  
like a faint line in the center of our foreheads  
learning to be afraid with our mother's milk  
for by this weapon  
this illusion of some safety to be found  
the heavy-footed hoped to silence us  
For all of us  
this instant and this triumph  
We were never meant to survive.

Audre Lorde, (stanza 2, 1995)

The purpose of my thesis is to use complex layers of women of color feminist theory to critique mainstream restorative justice praxis and begin a conversation about the evolution of restorative justice. I offer a brief overview of dominant restorative justice ideology through Howard Zehr's (2002) *Three Pillars of Restorative Justice* and identify crucial paradoxes that exist in the relationship between the criminal justice system and the restorative justice movement. I identify significant paradoxes through a perspective that uses women of color feminisms to complicate contemporary understandings of how restorative justice functions within society and as a response to crime. I offer a reinterpretation of Zehr's pillars in order to begin a conversation with restorative justice practitioners and theorists based on the interdisciplinary work of conflict resolution, ethnic studies, and feminist studies. My analysis is not meant to detract from the



progress and genuinely good work restorative justice practices provide those currently involved with the system. Zehr's contribution to the professionalization of restorative justice and its mainstream legitimacy as an alternative to incarceration was an enormous step in social justice reform. My ambition is to reorient critical thinking strategies, through an intentional, socially just, feminist, and intersectional understanding of conflict and justice in order to imagine ways for restorative justice to more fully actualize its core values of interconnectedness, humility, and respect (Zehr, 1990).

The focus on the legal definitions of harm has manipulated conceptions of justice into a replicable process which ignores unequal socioeconomic realities of humanity (Auerbach, 1983). Paul Freire (1970) asserts such static definitions of knowledge are the product of the educational banking method, which uses the politicization of knowledge to dichotomize society into a class of legitimate knowers and non-knowers. The non-knowers are politically marginalized and socially contained through the embedded, and self-reinforcing, power dynamics of unequal positions created by the knowers. The false dichotomy created through the institutionalization of knowledge not only limits possibilities for resolution, but subverts the legitimacy of ideologies which challenge the assumptions which construct systemic injustice.

When Howard Zehr (1990) published *Changing Lenses: A new focus for crime and justice*, he realized the need for a new perspective on what society had come to label as crime. Zehr sought to humanize a process the legal system had devastated, and he brought restorative justice into mainstream discussions about reforms, supplements, and alternatives to North American criminal justice systems. Instead of the criminal justice system occupying the traditional space of the *knowers*, Zehr's (2002; 1990) method

argued for more direct involvement of those directly affected by crime to develop resolutions. Traditional justice systems construct crime as a matter between the offender and the state, but Zehr (2002) expanded the vision of stakeholders to include victims and community members.

The focal point of Zehr's (1990) lens shifts the understandings of the roles and responsibilities for justice to victims, offenders, and community. In response to the socio-economic failures of castigatory policy, the mainstream acceptance and adaptation of the restorative justice movement aimed to redesign how communities addressed criminality by shifting focus from assigning punishment, to developing interpersonal trust (Zehr, 1990; Amour, 2012). Restorative justice recognizes many people are impacted by crime, and steps must be taken to repair individual and collective harms (Toews, 2006). Where the state seeks to assign a punitive sentence, restorative justice aims to facilitate an empowering learning moment. Restorative justice practices strive to reestablish dignity in individuals and communities after harm has occurred (Zehr, 1990). Proponents argue that when restorative justice is implemented within the current system of justice, it turns an adversarial process into a consensual and communicative experience for involved parties (Dzur, 2003).

Previous critiques have used the objectives and outcomes of the criminal justice system as precedent for evaluating restorative justice processes (hereafter referred to as the criminal/restorative justice binary or relationship). Procedural satisfaction-- or a consistent, replicable, and regulated process-- and quantitative measurable effectiveness are used in both criminological and restorative justice studies to validate restorative justice practices. While the data tend to support the claims of restorative justice

advocates (Sherman & Stang, 2007), legal conceptions of objectivity, precedent, and the sheer volume of cases remain at odds with the practicality of mass restorative justice implementation (Palvich, 2005). In *Against Settlement*, Owen Fiss (1984) expressed reservation about the institutionalization of alternatives to adjudication to resolve interpersonal quarrels because he feared it would interfere with the law's ability to ensure equitable justice. Fiss' concern for a power shift comes from an understanding of justice as equity, and the measure of equity as represented in similar, or identical, sentences (Zehr, 1990). Fiss' views, although intended for the general practice of alternative dispute resolution, have operated as the archetypal analysis of restorative justice, which I believe limits the evolution of restorative justice to a legalistic paradigm.

Criminal/restorative justice discourse has stalled around what George Palvich (2005) calls the *imitator paradox*. Palvich argues that restorative justice functions as a substituted parody, or imitation, of the criminal justice system instead of an alternative. The imitor paradox occurs because restorative justice values are conceived of as independent of the criminal justice system, but in actuality, function within the dominant powers of legal institutions (Pavlich, 2005). Therefore, it can be argued that restorative justice does little to challenge the systemic powers producing injustice. The intent of restorative justice to more humanely address what the criminal justice system has failed to resolve conflicts-- while relevant, important, and needed-- does not lead to a critical questioning of how the criminal justice system and the institutions entangled in the vast web of social, political, and economic influences necessitate and generate conflict. The disproportionate targeting of people of color, gendered harassment and oppression (Parenti, 2008; Belknap, 1996), and intra- and intergenerational violence (Braman, 2004),

among other conflicts, are all evidence of how criminal processing and management not only fails to maintain community safety, but specifically targets marginalized populations (i.e., people of color and low-income communities) and compound the problems the institutions attempt to resolve.

The second epigraph at the beginning of this chapter is from Audre Lorde's (1995) poem, "A Litany for Survival". The poem denounces the "illusion of some safety to be found" (Lorde, stanza 2, 1995), within systems contingent on the marginalization of some citizens in order to reify the power of others. If in the criminal justice system's reaction to legal harms, the system produces more harm, then the work of restorative processes are incomplete until the systems producing and sustaining conflict are dismantled, not simply restored or reformed. Restorative justice as reform or a supplement assumes the core functioning of the criminal justice system provides communities with safety and justice-- save for a few special circumstances. However, for some communities the interaction with the criminal justice system and law enforcement has primarily negative connotations and experiences; especially if those communities are socially, politically, and economically marginalized from the normative or mainstream society. Lorde's lens provides an escape from the fundamental paradox of criminal/restorative justice values not just by challenging injustice, but by rejecting institutional assumptions guiding how society understands justice.

When restorative justice fails to critically examine its parallels to criminal justice, systemic conflict is appropriated to the local level and framed as resulting from flaws in interpersonal relationships. The parallels of the criminal/restorative justice relationship construe the harm as evidence of one's ability, or inability, to respect community

relationships, rather than a reflection of how society creates disadvantages which limit one's agency and ability to develop, maintain, and respect community relationships. For example, when restorative justice processes depend on referrals from the criminal justice system, either as diversions or supplements, it runs the risk of perpetuating systemic dysfunctions of the criminal justice system, such as the over-representation of people of color as perpetrators. If restorative values can be refocused to critically analyze racial disparities in representation as a part of the conflict, restorative processes have the potential to provide a much more complex understanding and application of restorative justice values and practices. Therefore, in order for resolutions to be truly just, the theories and functions of the criminal justice system perpetuating conflict must be dismantled and restorative justice must be reimagined to address harms outside the definitions and power of the criminal justice system.

The framework I propose exposes how the roots of the criminal justice system are intimately connected to the conflicts restorative justice aims to address, and attempts to detangle the criminal/restorative justice relationship to facilitate a broader application of restorative justice praxis. I also explore the potential for restorative justice to function preemptively, independent of the criminal justice framework, and in a way which transforms community relationships. If, as Lorde argues, a system was not built on the inclusion of everyone, then resolving individual disputes allows the systemic injustice of the legal system to continue and provides a supplemental system to fix, or restore, aspects of conflict not managed by the rule of law. If restorative justice cannot fully actualize its values within its relationship to the criminal justice system, then it may be helpful for restorative justice praxis to imagine justice outside of its traditional relationship to the

criminal justice system. If restorative relationships based on respect and trust are antithetical to the punitive nature criminal justice system, then the restorative justice movement must break from legal ideology and make space for more progressive philosophies.

Feminist pedagogies supply complex inquiries of reason, rationality, neutrality, and objectivity on a level that disrupts the ideological binary paralyzing analytical discourse (Tanesini, 1999). One feminist theory proposes that what one understands to be rational and objective thought is actually a social construction with embedded cultural assumptions that can lead to prejudiced outcomes (Gatens, as cited in Jaggar & Young, 1998). Feminist philosophy believes these assumptions can be self-reinforcing due to a void of diverse representation in the institutions responsible for defining justice (Walker, as cited in Jaggar & Young, 1998). Therefore, if restorative justice is meant to be an alternative to criminal justice, it may stand to benefit from a more diverse and nuanced understanding of knowledge, power, and justice. Black and Native feminisms provide complex layered analyses of how power is racialized, gendered, and systemically woven into institutions (Smith, 2005; Davis, 1998; hooks, 1984), and the ways in which those institutions are complicit with, sustain, and even necessitate inequalities. Furthermore, Black and Native feminist theorists have explored actions and imaginaries that attempt to address the root causes of conflict and have the potential to transform contemporary practices of restorative justice to more fully center people and relationships.

Black and Native feminisms provide a critical layer of inquiry for the contemporary praxis of restorative justice that has not fully been explored in mainstream conflict resolution or restorative justice discourse. The re-centering of restorative justice through

Black and Native feminisms differs from previous critiques because this perspective does not seek to reform current methodologies to fit within the criminal/restorative justice binary. Black and Native feminists believe when an institution is incongruent with a full actualization of justice, feminist methods should challenge those inconsistencies instead of conforming to fit within the system. Similar to the relationship-centered approach of restorative justice, Black and Native feminisms provide many additional layers of knowledge, which recognize the intersectionality of complex experience and identities based on race, class, gender, etc., and uses those contextual sources of knowledge to construct alternatives to contemporary modes of resolution.

I offer an overview of restorative justice through Howard Zehr's *Three Pillars of Restorative Justice* and identify the ideological and functional paradoxes of the criminal/restorative justice relationship. I explore the extent to which a new interpretation of restorative justice, centered by women of color feminisms, can illuminate assumptions of the criminal/restorative justice binary and inspire a more critically reflective discourse of restorative justice praxis. I then reinterpret the pillars of restorative justice using feminist methodologies and values to help transform restorative justice from a reaction to the criminal justice system, towards an institution that facilitates a constantly evolving sense of justice. I share some examples of how some organizations and coalitions have begun to work at what I believe is the intersection of conflict resolution, ethnic studies, and feminist studies to develop politically conscious understanding of conflict and justice.

## CHAPTER II

### LITERATURE REVIEW

When I was writing *Changing Lenses* in the mid-1980's I sometimes wondered whether it would be the object of laughter and derision. To be fair... [restorative justice] was being practiced in several countries by that time but it was not widely known and the conceptual framework of restorative justice was new and seemed a little crazy.

Howard Zehr (p 263, 1990)

Restorative justice is a dynamic and expansive concept that covers a spectrum of collaborative efforts to address human needs for safety. In order to understand the direction and foundation of my proposed lens, it is important to define and contextualize the terms and philosophies present in the majority of restorative justice practices. Paramount to the understanding of restorative justice in the modern context of the United States' criminal justice system is the work of Howard Zehr. Though diverse perspectives on restorative justice exist, Zehr's works have been most widely accepted into mainstream justice systems, and he is commonly referred to as "the godfather of restorative justice" (Center for Justice & Reconciliation, 2013; Rosa, 2013, LaTaille, 2011; Eastern Mennonite University, 2006). Zehr (2002) identified harms, needs, obligations, accountability, relationships, and engagement as central to restorative justice and used those values to construct the *Three Pillars of Restorative Justice*. Zehr's skepticism of how mainstream justice systems would receive the emotions and humanization of victims and offenders was the result of the stark contrast restorative justice philosophies against decades of punitive policy.

Zehr's pillars are most applicable to a form of restorative justice called victim-offender dialogue. Zehr (1990) refers to victim-offender dialogue as the Victim Offender Reconciliation Program, or VORP. The method, Zehr (1990) argues, "consists of a face-



to-face encounter between victim and offender in cases which have entered the criminal justice process and the offender has admitted to the offense” (p 161). Restorative justice is able to shift its focus away from assigning guilt because participants have self-selected into the process through the roles and definitions of the criminal justice system. There are many possible combinations of a diverse cast of roles and styles of restorative justice to provide specific focus on individuals or conflicts. In *The Little Book of Restorative Justice*, Zehr (2002) asserts a victim-centered process attempts to take seriously the specific needs of information sharing, truth-telling, empowerment, and restitution or vindication. In the third edition of *Changing Lenses* (Zehr, 2005), Zehr states facts, feelings, and agreements guide the VORP process. Zehr (1990) believes participants should share personal narratives about the harm and ask each other questions in order to understand the literal and emotional facts of another’s experience. VORP is meant to cooperate with the criminal justice system and provide additional methods of accountability, as well as opportunities for reconciliation.

Zehr (1990) believes this shift has powerful effects on the victims, whose personal experience and possible trauma are appropriated to violations of the state in the criminal justice process. Despite the invocation of victim’s rights in political rhetoric, victims are sometimes the most removed from the traditional justice process, both physically and emotionally (Sherman & Strang, 2007; Zehr, 1990). Zehr writes:

“[W]e may invoke their names to do all sorts of things to the offender, regardless of what victims actually want. The reality is that we do almost nothing directly for the victim, in spite of the rhetoric. We do not listen to what they have suffered and what they need. We do not seek to give them back some of what they have lost. We do not let them help to decide how the situation should be resolved” (p 32).

In the same way society traditionally locks the offenders out of sight, and therefore, out of consciousness of the community, the victim's experience is disassociated from community responsibility, creating a second wave of victimization (Zehr, 1990).

Restorative justice values victims' needs and safety over *anything* else in the mediation process (Umbreit & Greenwood, 2000). However, Zehr (1990) acknowledges all participants have needs and part of the restorative process includes addressing the needs of the offender and community in addition to the victim.

In this section, I use the *Three Pillars of restorative Justice* to map the values of contemporary restorative justice practices. Though restorative justice practices will vary depending on focus and cultural influence, western restorative justice programs can be understood to be largely influenced by how the ideology of Zehr's pillars function within their relationship to the criminal justice system. The first pillar focuses on framing harms resulting from unmet needs. The second pillar explores restorative understandings of obligations and how one demonstrates accountability by meeting those obligations. The third pillar defines the role of the mediator or facilitator of restorative processes. Each pillar contributes to Zehr's construction of an alternative framework communities can use to respond to crime, and provide a framework from which people and communities can begin to repair relationships

### **The First Pillar: Harms and Needs**

Restorative justice focuses on harm: Restorative justice views crime first of all as harm done to people and communities... For restorative justice, then, justice begins with a concern for victims and their needs; it seeks to repair the harm as much as possible, both concretely and symbolically.

Howard Zehr (p 21 , 2002)

Zehr's first pillar concerns *harm*. Harms can be understood to encompass both the legal infractions which occur during an offender's interpersonal or communal transgressions and the emotional harms of victims and communities (Zehr, 1990). Harms are the violation of individuals and relationships that cause suspicion, mistrust, and estrangement between people (Zehr, 1990). Functionally, this definition encompasses or parallels how crime is defined within the traditional justice system to provide an alternative and/or supplemental process. Zehr (1990) argues, "[C]rime [is] a form of conflict... and sometimes grows out of conflict" (pp 182-183). However, Zehr does not believe some cases of violence can be reduced to a simple understanding of conflict because of its antisocial nature. Zehr (1990) acknowledges that in some cases, offenders are accountable to the state. He further asserts his lens is not meant to alter one's understanding of obligations, which will be further explored through the second pillar, but to provide the potential to expand how one understands of the causes and effects of crime (Zehr, 1990).

Zehr (1990) believes a major contributor to harm results from the offender's lack of awareness of the effects of crime on victims and community members. Restorative justice facilitates this understanding by empowering victims, communities, and offenders to share their needs in order to move forward and prevent harms from reoccurring (Zehr, 1990). Zehr believes justice begins when people repair harms by addressing the human needs of safety, belonging, and identity of those most affected by crime, including victims, their circles of support, and community members. Zehr (1990) defines justice as the "movement toward reconciliation" (p 188) to "make things as right as possible to and between people" (p 187). Victim-centered restorative justice will prioritize the needs of

victims (Zehr, 2002), but other factions of restorative justice, such as community-oriented models, take a holistic approach to repairing harms by drawing on community strengths to support offenders in meeting the needs of victims (Zehr, 1990). Some processes involve the offender and their family or communities of support (Zehr, 2002; Toews, 2006), while others focus specifically on community building or facilitating dialogue between segregated groups.

Understandings of victims' needs in restorative justice are influenced by western psychological theories about human needs and self-determination. Universal needs theory postulates one's physiological, psychosocial, and emotional needs, be they innate or socialized, motivate one's actions (Deci & Ryan, 2000). Self-determination theory believes one can autonomously actualize goals through empowerment (Deci & Ryan, 2000). Both ideologies are present in the foundations of the criminal justice system and mainstream restorative justice practices. The state assumes responsibility for determining needs and using retributive ideology to motivate self-determination, while restorative justice empowers participants to satisfy their needs in order to rebuild safety and trust within their relationships and communities. Victims' needs are understood to be empowerment, vindication, and justice (Zehr, 1990). Zehr (1990) believes victims are empowered when they are given space to share how they experienced the offender's harm, which is sometimes labeled as truth-telling in certain restorative justice practices (Trujillo et al., 2008). Truth telling can lead to transformative understanding, which is understood to mean deep listening and a style of sharing information which changes those who witness another's truth (Trujillo et al., 2008; Zehr, 1990). Victims then receive vindication through the offender's and community's acknowledgement of the

victim's experience. Barbara Toews (2006), author of *The Little Book of Restorative Justice for People in Prison*, expands her understanding of victims needs to meaning, information, growth, accountability, empowerment, storytelling, expressing feelings, and justice. Toews, like Zehr, believes justice is comprised of safety and relationships for victim, offender, and community. Empirical studies have found victim's to be more receptive and supportive of offenders' need for rehabilitation and reintegration when they participate in a restorative model as opposed to a retributive model (Sherman & Strang, 2007).

Zehr (1990) draws a parallel to the criminal justice system's model of restitution, and says part of addressing harms and meeting the needs of participants can happen through restitution, such as volunteering, repayments, or educational commitments. However, unlike the criminal justice system, restorative justice does more to acknowledge the needs of offenders, which Zehr (2002; 1990) states include understanding, encouragement, and community reintegration. Zehr (1990) recognizes restorative processes work under the authority of the criminal justice system and believes offenders may occasionally need temporary restraint—which alludes to the restrictions of physical and political freedoms that are limited during an offender's incarceration and post-release.

Zehr's (1990) framework is able to recognize offenders' needs and maintain a victim-centered approach by allowing the community to be responsible for offenders' rehabilitation and reintegration. Society is responsible for helping offenders meet the needs of victims and helping the offender restore their own place within the community (Zehr, 1990). Community needs include, but are not limited to, needs of social welfare, wholeness, safety, and prevention (Zehr, 2002; Zehr, 1990). While Zehr recognizes

wholeness may not be possible, rebuilding participants' capacity to trust others can be viewed as progress (Good & Gustafson, as cited in Beck et al., 2011). Restorative justice intentionally shifts the discourse of victims' needs from the need for punishment towards an understanding of needs as emotional, mental, and communal stability.

Zehr's conceptions of harms and needs are meant to both supplement and offer alternatives to the criminal justice process, which has helped its mainstream acceptance and success. Restorative understandings of harm include both legal infractions and the harms done to relationships. The needs of participants, though centered on the needs of victims, include the victim, offender, community, and participants' circles of support. Through victim empowerment, offender accountability, and the collaborative efforts to restore community safety, restorative processes seek to redefine relationships built on trust (Zehr, 1990). The movement has given rise to some doubts about the capacity of such a process to hold offenders accountable. Zehr's second pillar attempts to resolve the difference in opinions of accountability by using the values of the first pillar, harms and needs, to develop relationship-based solutions to community conflicts.

### **The Second Pillar: Obligations and Accountability**

[R]estorative justice emphasizes offender accountability and responsibility...If crime is essentially about harm...accountability means offenders must be encouraged to understand that harm [and] to begin to comprehend the consequences of one's behavior. Moreover, it means they have a responsibility to make things right in so far as possible, both concretely and symbolically.

Howard Zehr (p 22, 2002)

The criminal justice system views accountability through punishment that physically, psychologically, and emotionally alienates offenders from society and possible communities of support (Sherman & Strang, 2007; Zehr, 2002). In order to

understand Zehr's construction of accountability in the second pillar to counter a traditional punitive response to crime, it is important to acknowledge the relationship between religion and restorative justice in the context of Zehr's message. Zehr (1990) draws much of his inspiration for the obligations between human beings to the New Testament of the Bible. Zehr is quick to acknowledge the complexities of interpreting morals and text from previous centuries in a completely new context; and yet, Zehr (1990) believes *covenant justice* provides essential parallels to understanding communal responsibility for crime. Covenant justice is understood to be God's intent for humankind, as described in the Old and New Testaments of the Bible (Zehr, 1990). In the Old Testament, covenant justice is the communal representation of the people's covenant with God to live righteously and be rewarded with salvation (Zehr, 1990). Restorative justice philosophy can be understood as connecting to Jesus Christ's message in the New Testament to "grasp the spirit, not just the letter, of the law" in one's relationships with others (Zehr, p 129, 2005).

Negotiating a safe space for religion within conflict resolution culture is met with desire and skepticism (Goldberg & Blancke, 2011). Some argue whether or not religion is overtly integrated into restorative justice, *faith* is already an important aspect of resolution, even when not directly affiliated with a religious connotation (Goldberg & Blancke, 2011). Faith can manifest in several ways: as the mediator's faith in people to trust the process and each other; as the victim's faith in the follow through of the offender; and as the collective faith in the power of vulnerability. Furthermore, engaging participants who value religion, spirituality, or faith is a reality of practicing conflict resolution across diverse populations (Goldberg & Blancke, 2011). Spirituality and

religion can serve many roles in conflict, from a catalyst to conflict, causing divisions or serving as motivation for punitive retribution, to a road map for understanding one's morality, ethics, or values. Other forms of restorative justice advocate a nondenominational understanding of faith and spirituality (Goldberg & Blancke, 2011), but Zehr (1990) chooses to intentionally ground his understanding of faith in Christian spirituality. Through Zehr's lens, faith is viewed as invaluable to building trust and holding people accountable.

Central to the idea of covenant justice is the message of *shalom*, or the wellbeing and rightness of all relationships on multiple dimensions that God intends for His people (Zehr, 1990). *Shalom* is God's vision for humanity which consists of peace, salvation, atonement, forgiveness, and justice (Zehr, 1990). Zehr believes there are three dimensions to *shalom* as it applies to restorative relationships: material or physical circumstance, social relationships, and moral or ethical integrity (Zehr, 1990). These three dimensions paint a more complex picture of individuals who commit and experience harm, and promote mutual understanding instead of blame and guilt. Zehr (1990) asserts the offender has the primary obligation to set things right with the person that was harmed and with the community. Crime, or harm, creates a social debt for the offender to make as right as possible in a way that represents the "natural consequences of their actions" (Zehr, p 200, 1990). In most restorative justice practices, offenders must admit their wrong doings before participating as the first step towards accountability (Toews, 2006; Palvich, 2005; Zehr, 2002). The offender then has the obligation to meet the needs of the victim and "put things as right as possible" (Zehr, p 40, 2002). Though offenders are obligated to be a part of the solution, they would ideally feel empowered to



contribute towards the construction of resolution and motivated by their ability to follow through with the help of the community (Zehr, 1990). The community has the obligation to support the offender as well as hold them accountable. Youth diversion programs, reentry programs, and family conferencing are all examples of ways the community assists in holding offenders accountable because they attempt to alleviate or avoid additional harms of the criminal justice system (Sherman & Strang, 2007; Zehr, 1990).

While the obligations of offenders and communities are relatively well defined across the literature (Toews, 2006; Zehr, 2002), the obligations of victims are less clear. For example, in some practices, community members sit in as proxy victims as a way of respecting reasons why actual victims may not be able to participate, while still centering the process on victims' needs (Zehr, 2002). Zehr (1990) argues that while a victim should never feel coerced into reconciliation, that becoming a part of the solution to restore harms caused by crime is the only way victims can experience reconciliation and closure. If participating in a reconciliation process would cause additional harm to the victim, it is possible the ripeness, or appropriate time for resolution, has not yet occurred (Zehr, 1990). Offenders' obligations then default to approximate justice (Zehr, 1990), or stages of reconciliation on a continuum that acknowledges varying stages of restoration when full reconciliation is not possible.

When crime is understood as interpersonal harm, solutions can focus on repairing relationships as a means of making things right. In addition to the roles played by victims, offenders, and community members, Zehr (2002; 1990) envisions mediators as playing a critical role in the restorative justice movement. Zehr's pillars delineate between the people participating in the resolution process (i.e., victims, offenders, and

other community members) and the person(s) responsible for mediating the process. The third pillar suggests principles for restorative justice practitioners in order to uphold the values and responsibilities described in the first two pillars and create just resolutions.

### **The Third Pillar: Facilitate Engagement as Much as Possible**

The principle of engagement suggests that the primary parties affected by crime victims, offenders, family members, members of the community are given significant roles in the justice process. These ‘stakeholders’ need to be given information about each other and to be involved in deciding what justice in this case requires...

Howard Zehr, (p 22, 2002)

The final pillar explains that the role of the mediator is to facilitate engagement as much as possible (Zehr, 2002). The mediator helps participants construct a process, provides a safe space for the process, and helps participants navigate the process, while not influencing the outcomes (Zehr, 1990). For Zehr (1990), reconciliation involves full repentance by the offender and forgiveness from the victim. Though Zehr (1990) believes the goal of every opportunity for justice is to move the participants towards reconciliation, successes can occur when the resolution is a form of approximate justice— or the genuine commitment to deeper understanding, whether or not any movement towards resolution was made. Some victims forgive as the beginning of their personal journey past harm, others come to forgiveness after a long period of time, and some may choose to never forgive, which can result in no definitive sense of closure or healing. However, Zehr (1990) believes the cognitive shift of participants’ anger from an abstraction of crime to a concrete picture of a person’s thoughts and beliefs is a sign of progress. In addition, Zehr (1990) asserts restorative justice processes should lead to outcomes “[focused] on problem solving, addressing not only present needs but future intentions” (p 204), though his process for such action is less clear. Nevertheless, the role

of the mediator is to construct a process that engages victims, offenders, and community members, and help them navigate through approximate justice, reconciliation, and forgiveness.

Practitioners must determine which form of restorative justice is appropriate based on who is willing to participate, the emotional states of participants, and the potential for positive and transformational change (Zehr, 1990). As previously stated, Zehr believes there are some crimes for which restorative justice is inappropriate based on how particular types of violence have affected people and relationships. The complexities of restorative justice for sexual offenses illustrate the complexities of a facilitator's options when developing an appropriate, safe process to guide participants through reconciliation without influencing specific outcomes. In some cases, sexual offenses maybe inappropriate for restorative justice, but practitioners and participants have several options. One option Zehr (2005) mentions in *Changing Lenses* is Walter Berea's victim-centered sex offender therapy. This approach has several stages, including therapy and time for emotional processing for both victim and offender, and would likely take place after or during the offender's reentry back into the community (Zehr, 2005). This such model is representative of what Zehr (1990) means when he acknowledges some offenders need temporary restraint; a restorative justice process that takes place during an offenders reentry allows the state to hold serious offenders accountable and provides a process to restore the offender to the community post-release. Another alternative employed in Canada uses surrogate victims, who are either people previously impacted by a similar crime and have had time to process, or the family member of a victim/survivor (Zehr, 2005). A significant influence of which restorative process is used

depends on the facilitator's ability to make the participants feel safe while going through a highly vulnerable and emotional experience.

True tests of success, according to Zehr, occur when responsibility is assumed by the wrongdoer, parties attempt to meet each other's needs, and the mediator encourages healing. Victims are empowered to feel in control of their own healing process by sharing their story, or perspective without shame or judgment (Zehr, 2002). Zehr believes in a different approach for offenders. He argues coercion might be necessary, but participants should never feel forced to comply with a process (Zehr, 1990). It is a fine line that avoids crossing into the domain of the criminal justice system, which forces compliance or imposes a punitive sentence when offenders are unable to comply. The tension between encouragement and enforcing compliance is balanced by a mediator's ethical obligations of neutrality, or impartiality. Neutrality is understood as "the condition making it possible for parties to raise any topic that concerns them, negotiate with other(s), and come to a resolution on their own accord" (Wing, as cited in Trujillo et al, pp 94-95, 2008), and impartiality "supports empowerment... because the mediator does not take sides over the content of the conflict or its resolution" (p 95). By remaining impartial, mediators allow participants to play a more central role in the construction of restorative justice processes and resolutions.

Mediators are able to empower participants to create greater awareness of each other, help participants reconcile harms, and create the possibility for forgiveness when appropriate. Zehr believes there is a spectrum of results which show the success of a restorative justice process and mediators can help empower participants to engage in whatever capacity one is ready to explore. Through neutrality and the framework

constructed by the first two pillars of restorative justice, mediators are able to empower participants construct solutions that focus on people and relationships based on shared values for empowerment, respect, and safety.

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Zehr's (2002) *Three Pillars of Restorative Justice* provide an alternative, or supplemental, process for communities to use to address harms caused by crime. The ability for Zehr's framework of restorative justice to easily adapt to traditional systems of justice was a major contributor to its mainstream success and acceptance. However, the relationship between the criminal justice system and the restorative justice movement has led to a limited analysis for the potential of restorative justice to transform communities and more fully actualize its core values of empowering people to build relationships in their community based on trust (Zehr, 1990). A legal paradigm lacks the intersectional perspectives and diversity necessary to address the roots of interpersonal and systemic conflict. I propose an alternative methodology that draws from inspirations outside of the criminal/restorative justice relationships, and centers itself at the intersection of conflict resolution, ethnic studies, and feminist studies.

### CHAPTER III

#### METHODOLOGY

It is learning how to take our differences and make them strengths. For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this fact is only threatening to those...who still define the master's house as their only source of support.

Audre Lorde (p 2, 1984)

The stagnation of restorative discourse and limited evolution of restorative practice suggest incomplete analyses by previous methodologies. The above excerpt from Lorde's (1984) essay, "The Master's Tools will Never Dismantle the Master's House", suggests mainstream efforts to address reform injustice will never actualize ending injustice because reform assumes aspects of a system are unjust rather than questioning whether the ideological foundations of the system are unjust. A flaw of restorative justice discourse has been its willingness to engage the logic that constructs the criminal/restorative justice binary in an attempt to justify an alternative perspective. Women of color feminisms believe reformist efforts risk strengthening the criminal justice institution by appearing to correct the flaws it produces, and therefore, strengthening the institution's power in society (Smith, 2009; Critical Resistance & Incite!, 2006).

Previous methodologies have measured and evaluated restorative justice praxis primarily through its relationship to the criminal justice system, such as economic effectiveness or recidivism rates. My proposed methodology seeks to destabilize the criminal/restorative justice relationship in order to critically analyze the relationships between interpersonal and systemic conflicts and explore a more nuanced application of

restorative justice values. First, I briefly explain the limitations of strictly quantitative and qualitative methods in order to clarify how my proposed analysis adds a complex layer of exploration to bridge feminist epistemology and restorative justice praxis. Then, I explain the potential for feminist methodologies of complex inquiries of reason, rationality, neutrality, and objectivity complicate assumptions embedded in the criminal/restorative justice relationship and disrupt the normalcy of both institutions. I believe this bridge will allow restorative justice to more fully actualize its values of interconnectedness, humility, and respect (Zehr, 1990).

### **Limitations of Previous Methods**

You can't dump one cup of sugar into the ocean and expect to get syrup. If everybody sweetened her own cup of water, then things would begin to change.  
—Florynce Kennedy (as cited in EBONY, para 8, 2014)

Previous analyses are proof of the limitations within restorative justice discourse to venture outside of the criminal/restorative justice relationship when evaluating restorative justice processes. Sociological and criminological analyses have relied heavily on statistically measurable outcomes. A positive component of quantitative measurements of restorative justice is the ease of a cost-benefit analysis when compared to the criminal justice system. Time and again, the data suggest restorative justice programs reduce offender recidivism, save money, and lead to greater participant satisfaction (Sherman & Strang, 2007; Zehr, 2002; Zehr, 1990). Based on restorative justice's intent to offer a more humanized process than the traditional criminal justice system, strictly quantitative data can be dehumanizing measurement to assess the experiences of those affected by crime (Weaver, 2007), and can portray a one dimensional or superficial representation of a complicated human experience. For

example, arguments for cost-effective methods of accountability can encourage restorative justice based on its ability to save money. However, this justification makes space for the argument that a cheaper method of incarceration is a legitimate alternative. The method of argument tries to use the logic of an unjust system to reorganize power, by using the capitalist desire to cut the cost of incarceration, but the logic behind such an argument is superficial and porous. By Lorde's logic, a capitalist-based argument cannot resolve violence because those values produce violence. Despite the validity of quantitative measurements, they lack empathic motivations for transformation. Furthermore, restorative justice values are not centered on cost-effectiveness, and thus, a failure to produce a cost-effective approach would not necessarily mean restorative justice is flawed. Restorative justice may in fact be more expensive than current methods of incarceration, *and* it could also be a worthwhile investment.

The desire for a more complex analysis has led to a surge in qualitative, or ethnographically-based, methods of inquiry aimed at portraying a more detailed picture of the demographic under observation. While a qualitative analysis can appear to use a different approach by using narratives and dialogic feedback, like objective data, qualitative data can simultaneously reinforce the same ideologies grounding quantitative reasoning within the criminal/restorative justice binary. For example, a progressive ideology proposed by Donald Braman (2004) uses personal narrative to assess the social capital of former inmates and their communities of support. Braman's theoretical analysis uses observations of the relationships of the ex-offenders in his study to interpret how and why the character of those relationships affects recidivism. Braman was correct to use relationships as central to his analysis, but he used the master's tools of capitalist



understanding by commodifying those relationships into capital. Superficially, the substitution of material capital with relationships that create social capital serves immediate needs. However, like qualitative data that points to cost-effect models, such reasoning will only allow restorative justice to temporarily beat criminal justice so long as it is more economically conservative. In addition, an unjust society, fraught with heteropatriarchy and racism, would produce differing maximum and minimal capitals based on social privileges.

Quantitative and qualitative restorative justice analyses tend to suggest corrections or supplements to the criminal justice system, but fail to critically question the fundamental flaws sustaining the criminal justice system. This does not mean that restorative justice programs are ineffective or do not yield positive, influential results; rather, it is an observation of a missing analysis of restorative justice values and the lack of critical inquiry of the systemic harms perpetuating the conflicts necessitating restorative action. Therefore, methodologies cannot draw from philosophies that would reinforce the criminal/restorative justice binary, and requires a methodology that critically examines the values of restorative justice so as to bridge the ideological aspirations of restorative justice with praxis. The intersectional positionality of Black and Native feminisms provide a critical analysis of the racialized, gendered, classist, sexist, and other oppressive forces which create conflict and limit resolution within the criminal/restorative justice binary.

## **Black and Native Feminist Methodologies**

The future of our earth may depend upon the ability of all women to identify and develop new definitions of power and new patterns of relating across difference. The old definitions have not served us, nor the earth that supports us.

The old patterns, no matter how cleverly rearranged to imitate progress, still condemn us to cosmetically altered repetitions of the same old exchanges, the same old guilt, hatred, recrimination, lamentation, and suspicion.

Audre Lorde, (p 123, 1984)

Appropriate methodology must expose and disrupt embedded assumptions in order to break free of the criminal/restorative justice binary. The introduction of women of color feminisms complicates the assumed superiority of rationality, detached-objectivity, neutrality, precedent, and impartiality, while envisioning a preemptive construction of justice that works to eliminate conflict resulting from systemic injustice. Feminist methodology promotes emotionally driven logics (Alcof & Kittay, 2007; Tanesini, 1999), contextual understanding, comfort with ambiguity, and imagining solutions beyond the scope of contemporary ideological and structural limitations (Smith, 2011; Tuck, 2009). Unlike traditional forms of knowledge, feminist epistemology is not trying to reproduce generalizable knowledge. Instead, intelligence is conceived as the ability to be contextually, as well as culturally, aware and reach the limitations of our own knowledge and still extend empathy (Tanesini, 1999). Black and Native feminisms provide an explicit and intentional inquiry into the assumed normalcy of institutions and social controls, which may possibly provide the opportunity for restorative justice to actualize its goals of a people-centered process focusing on relationships.

Like restorative justice, there is no one singular definition for Black or Native feminisms—hence I sometimes refer to Black *feminisms* and/or Native *feminisms* to

acknowledge the influence of diverse experiences and knowledge of Black and Native women. While some may see the lack of a solid definition of what the philosophies *are* or *are not* as ambiguous, both Black and Native feminisms find rich analyses in the complexities and contradictions from a progressive social consciousness derived from lived experienced of struggle and resistance (Davis 1998; Smith, 2005). In addition, the desire-based praxis and political consciousness could possibly revolutionize the actualization and application of restorative justice values of developing safety and trusting community relationships.

According to Angela Davis (1998), a leading Black feminist scholar and *the* leading prison abolition scholar, Black feminism provides “raw emotional... layers of meanings and are often astounding in their complexity” (p 24) because of the diverse lived experience of Black and African-American women, who in their very existence, challenge dominant powers aimed at reducing their humanity. Therefore, a Black feminist analysis always includes critical questioning of how injustices are racialized, gendered, sexist, and classist because people experience the world through the intersection of multiple identities. Though Black feminism is derived from lived experience, the social consciousness is beneficial to the larger, diverse society. Audre Lorde (1984), a self-described “Black lesbian socialist mother of two” (p 114) and foremother of Black feminism, believes “once we begin to feel deeply all the aspects of our lives, we begin to demand from ourselves and our life-pursuits that they feel in accordance with that joy which we know ourselves to be capable of” (p 57). The ultimate goal of Black feminism is to end violence against women, particularly Black women and other women of color (Richie, 2012; Davis, 1998; Lorde, 1984), and abolish institutions

which perpetuate systemic and interpersonal violence (Davis, 1998). This revolutionary perspective, or activist methodology, intentionally diverges from reform-based methodologies. Beth Richie (2012) argues, “the Black Feminist Analysis... demands a more rigorous and in-depth analysis of how state institutions and neoliberal public policies interact” (p 139) in order to understand how interpersonal conflict and violence are a part of a larger sociopolitical structure. Richie defines neoliberalism as “the ideological and political conditions that operate to reinforce power and privilege of elite groups” (p 136), and is especially critical of reformist movements, which advocate change while also enriching the institutional powers creating injustice. For Richie (2012), and many other feminists, the goal is to use methodologies which illuminate the connection between the personal and the political (Davis, 2000). Therefore, there must be critical inquiry into the extent to which restorative justice operates as a neoliberal function of the criminal justice system.

Black feminists believe through the examination of those most marginalized in our society, specifically Black women, one finds the richest analyses of society’s injustices (Davis, 1998; Richie, 2012). This is not meant to construe Black women as victims, but recognize their legitimacy as knowers, capable of self-determined resolutions. Richie (2012) identifies this perspective as the “intersectional analytical paradigm” (p 161), referencing the Black feminist concept of intersectionality, or the “complex awareness that we inhabit—and are inhabited by—multiple categories of identity and that our experience of several identities taken together may be emotionally, culturally, and materially different than the experience of any one particular identity category by itself” (Riggs as cited in Gibson et al., 2013, p 177). Though similar to the

intentions of Zehr's *Three Pillars of Restorative Justice*, Black feminisms allow for a more complex "explanation of multiple dynamics of race, sexuality, gender, and class" (Richie, 2012, p 127), which aim to end multiple forms of violence and, simultaneously, question the way knowledge and solutions are produced and validated to avoid neoliberal reproductions.

Black and Native feminist works have discussed the restorative justice movement, but the absence of Black and Native feminisms in restorative justice conversations has led activists to slot restorative justice as simply reformist, or an insufficient response to the myriad ways women of color experience violence (Smith, 2009; Critical Resistance & Incite!, 2006). I argue the intersection of restorative justice, Black feminisms, and Native feminisms is not as incongruent as previously discussed, but that the limitations of the criminal/restorative justice binary limit the function of contemporary restorative justice praxis. I believe the interjection of Black and Native feminist values has the potential to develop restorative justice discourse through philosophies informed by communities who have resisted violence outside of mainstream and state-run reforms. The critiques of the Black and Native feminisms not only derive rich analyses from the lived experiences of women of color as marginalized members of society, but as communities which seek to define their own existence and solutions outside of the damage-centered gaze of their oppressors.

Native feminist Eve Tuck (2009), believes a shift from damage-centered research, or identifying and managing the flaws within a system, to desire-based research, which encourages people to build from what sustains them (Million, 2013), will produce more just outcomes. Furthermore, solutions should allow for complex personhood, which

acknowledges the contradicting and multifarious components of one's humanity (Million, 2009). Where traditional methodologies have shirked the knowledge of incompleteness, Black and Native feminists have found great value in chaotic ambiguity of untested theories (Smith, 2008a; King, 2013). The reasoning is that if one had the answers, communities would not be facing the types of interpersonal and systemic violence restorative justice aims to resolve (Smith, 2005); therefore there is liberation in admitting society has yet to figure out appropriate solutions that allows for new experiments in the pursuit of one's ideal community.

Native feminisms allow one to address the tensions of multiple critiques which debate restorative justice's alleged roots in Native practices (Daly, 2002; Zehr, 1990), the liberal romanticizing of Native histories, and appropriation of Native values through failed multicultural hybridizations (Smith, 2009). In the third edition of *Changing Lenses*, Zehr (2005) writes: "I did not adequately realize in those early days what a tremendous debt restorative justice owes to many indigenous traditions" (p 268). However, Andrea Smith (2005), a prominent Native feminist activist-scholar, believes this attitude can romanticize Native histories and erases the story of struggle faced by Native feminists to transform their own communities while fighting the oppression of the hetero-patriarchal nation-state. My use of Native feminisms is not to resolve this aspect of restorative justice discourse, but to use the critical reflection centered on Native feminist philosophy to address systemic conflict that leads to interpersonal violence in communities and *may* align with the desires of Native feminists who are also working towards sovereignty and the abolition of violence.

Native feminist analyses focus on Native sovereignty, or the spiritual connection of Native people to their land and each other bound by identity, beliefs, and history, with the desires of Native women at the center of the self-determined process (Simpson, 2014; Smith, 2005). For Smith (2009; 2005), sovereignty is an active, lived philosophy, much like restorative justice, that involves the reclaiming of knowledge subverted by the heteropatriarchy of the nation-state, and the imagining of new realities that create greater freedoms for all peoples. Smith argues contemporary methods of restorative justice lack an analysis of the perpetual state of violence people live under depending on their historical and contemporary relationship to the United States' governmentalities. Native feminisms challenge the heteropatriarchy of the nation-state, as well as injustices within Native communities (Smith, 2005), which provides a more critical analyses than previous attempts by mainstream restorative justice practices to incorporate Indigenous knowledge and traditions. Indeed, contemporary mainstream practice of restorative justice, especially its operation within the criminal/restorative justice binary, is not a reflection of Native practices. However, Native feminisms share many of the same values of restorative justice, such as solutions to problems that are developed by those closest to the issues, transparent relationships that promote accountability, and values of interrelatedness based on mutual respect (Smith, 2005). The contentious debate about the amount of incorporation-versus-appropriation of Native influences is limited within the construct of the criminal/restorative justice binary, and thus, the more complex analysis of Native feminisms provides a more productive discourse to move restorative justice towards more fully actualizing its core values.

My focal point of constructions draws from three methodologies prominent Black and Native feminisms: critical thinking, contextual intelligence, and imagining futurity. Superficially, these techniques are not unique to Black or Native feminisms, but the connotations and grounding in the experiences and strategic resistance of Black and Native women make the insight generated from these methodologies unique. Critical thinking encourages one to “[ask] questions, [conduct] investigations... [build] knowledge through exploration ... [and] reflect upon, reconsider, and rethink long-held ideas about ‘normalcy’” (LadyBuddha, 2013, para 1) -- a sharp departure from precedence required in legal communities, which also destabilizes assumptions of neutrality. Feminist critical thinking differs from conceptions of legal critical thinking because feminist thought is informed by a socially aware political conscious (Tanesini, 1999; Davis, 1998)—not impartiality. Some feminists believe value-neutrality is impossible (Tanesini, 1999), and therefore, one must intentionally identify which values ground one’s analyses and actions. A critical level of inquiry requires a political and/or sociocultural positionality in order to understand how social location, or context, influences one’s understanding (Hames-Garcia, 2011; LadyBuddha, 2013). Feminist critical thinking, according to Davis, allows one to “enlarge and expand and complicate and deepen our theories and practices of freedom” (Davis, as cited in Jonsson, 2013, para 3). Freedom, in this context, is not defined by western conceptions of autonomy, but by Black and Native feminist beliefs of the interconnectedness of all people (Hames-Garcia, 2004; King, 2013). Critical thinking occurs when one engages with others to foster intersubjective knowledge in an attempt to make society freer, making the paradoxes of social constructions visible (Jaggar & Young, 1998).



In addition, because people and freedoms are seen as positively connected, thinking for oneself requires more than simply thinking about oneself; it requires a deeper reflection on how the roles, relationships, and responsibilities in one's daily life are connected to the experiences of others. Critical thinking encourages feminists to expand beyond the socially constructed boundaries of the self and others, to understand effects felt by others are intimately connected to the self (Tanesini, 1999; Million, 2013); also known as co-preformative witnessing (King, 2013). Black and Native feminist strategies of critical thinking include the way society has misnamed differences to create racialized, gendered, sexist, and classist conflicts sustaining multiple forms of interpersonal and systemic violence. Experiential knowledge draws from layers of raw emotional intelligence of the scholar-activist, whose political consciousness is expanded through the experience of resistance that produces contextually-based intelligence (Richie, 2012; Davis, 1998; Lorde, 1984).

Contextual intelligence means one derives knowledge from direct experience and reflection as an alternative to impartial observation (Tanesini, 1999; Davis, 1998). As previously stated, what has traditionally been argued as objective, generalizable knowledge is filtered through the assumptions of the culture constructing paradigms of rationality. Feminist philosophers suggest the assumed objectivity of knowledge is actually derived from a lack of diverse representations of knowledge in institutions of authority (Jaggar & Young, 1998; Tanesini, 1999). Thus, Black and Native feminisms reaffirm the need for an intersectional analytical paradigm to address the racialized, gendered, sexist, and classist violence occurring in what is supposedly a neutral system. Critical thinking and contextual intelligence mutually constitute one another and operate

simultaneously in such a way that collective differences generate knowledge and new perspectives from which to explore diverse solutions. In addition, context-specific awareness encourages self-determination of communities to use home-grown knowledge to resolve conflict (Tuck, 2009). This has potential to redistribute power relations within society, as well as during the resolution process, to create greater equalities and freedoms.

The third layer of feminist inquiry is the ability to imagine a future where solutions are not limited by the contemporary functional realities of an unjust system (Smith, 2008a; Arvin, et al., 2013). Futurity draws influences from queer theory, in addition to Black and Native feminisms, and advocates transformative, desire-based, collective, experimental, oppositional, and utopian logics to imagine solutions to end institutions of heteropatriarchy, racism, and violence (Arvin et al., 2013; Munoz, 2009; Smith, 2008b). Lorde (1984) believes imagining futurity means the “power to examine and redefine the terms upon which we will live and work... to envision and to reconstruct... a future of pollinating difference and the earth to support our choices” (p 133). Davis (1998) argues imagining future alternatives is a consciousness raising strategy that names violence in order to bring conflicts into public discourse and develop alternatives outside of the criminal justice system. Imagining futurity rejects the false-dichotomies created by the construction of objective binaries (Tuck, 2009), because divisional notions of victim/offender, guilty/not-guilty, retributive/restorative provide limited understandings of how the criminal/restorative justice binary sustains systemic injustice. Furthermore, these false-dichotomies limit the potential scope and impact of restorative justice praxis by limiting the application to the current framework of the criminal/restorative justice relationship.

In sum, feminist methodologies use critical thinking to generate complex analyses; contextual intelligence to appropriately use the power of difference; and imagines solutions beyond the limitations of the current injustices. Black and Native feminisms center these methods of analysis on the lived experience of Black and Native women in the United States and draw distinction from knowledge aimed towards social reform and knowledge aimed towards abolition of violence. While my analysis does not invalidate or seek to reduce the advances made by previous methodologies, it does seek to complicate assumptions within neutrality, impartiality, and universal objectivity that explicitly or implicitly work against socially just values.

### **Questions**

How can the introduction of Black and Native feminisms into restorative justice discourse destabilize the assumptions constructing the criminal/restorative justice binary?

Can doing so allow communities to expand the understanding and application of restorative justice values?

## CHAPTER IV

### FUNDAMENTAL PARADOXES

We turn to the court because we need to... [Not because] we take special pleasure in combat... American adjudication style is not a reflection of our combativeness, but rather a tribute to our inventiveness and perhaps even more to our commitment.

Owen Fiss (1978, pp 92-93)

As mainstream restorative justice practices have adapted to function within the criminal justice system, certain contradictions have emerged within the same social and political frameworks of western justice (Palvich, 2005). It is important to acknowledge the ideological paradoxes of restorative justice in order to identify the limitations of contemporary restorative justice praxis and effectively use Black and Native feminist values to imagine solutions beyond those limitations. Owen Fiss's quote represents the assumption supporting the legal institutions: that the system, as a whole, is effective and justice, with minor flaws. However, Fiss represents a privileged perspective found in communities who have the affluence, personal agency, and educational training to navigate or avoid the criminal justice system. Since the passing of several decades since Fiss' critique was originally published, the debate over restorative justice's legitimacy has continued to be measured by its ability to function as an alternative to traditional legal processes.

Legal apprehensions grow out of the view of the criminal justice system as necessary to protect vulnerable and marginalized populations (Auerbach, 1983). The fear is that an unregulated process, like restorative justice, would likely compound issues faced by vulnerable populations. Furthermore, to stray from a central process contradicts a long standing legal belief from the Enlightenment era which states universal social reason can

be derived from secure, objective processes (Palvich, 2005). This argument may seem familiar because it is the same belief restorative justice practitioners hold; both criminal and restorative justice philosophies believe the other method has the potential to facilitate more harm than justice for people involved in conflict. Though Zehr (1990) argues “restorative justice [embodies] a coherent, internally consistent value system in a way that ‘criminal justice’ does not” (p 277), restorative justice has become popular in western legal culture for its ability to parallel the criminal justice system. However, the extent to which those adaptations compromise the core of restorative justice values has not been a dominant component of restorative justice discourse.

The oversight of previous methodologies to critically analyze how the parallel systems reproduce power dynamics and sustain systemic injustice has created the criminal/restorative justice binary currently stalling contemporary discourse. In this section, I identify some of the more significant paradoxes that currently encumber restorative justice praxis and analysis. I chose to identify paradoxes specific to the function of Zehr’s pillars within the criminal/restorative justice relationship, which are sometimes mischaracterized as polarized conceptions of justice, but by no means believe these are the only viable critiques of restorative justice. My desire is for restorative justice praxis to explore the application of its values of interconnectedness, humility, and respect (Zehr, 1990) outside of the criminal/restorative justice relationship, and through a politically informed, intersectional positionality.

## **The Imitor Paradox**

As reforming visions are made operational, they tend to be diverted from their original intents...I have struggled to understand the forces which tend to distort our visions. Such distortion may be inevitable, but it can be minimized if we understand the dynamics of the process.

Howard Zehr (p 232, 1990)

The dominant criticisms have countered the optimism of the restorative justice movement through the shared cultural acceptance of the norms and prestige of the criminal justice system (Palvich, 2005; Hahn, 1998), as well as its presumed authority to enforce retributive resolutions. Formalities and professionalism are considered important in order to ensure equality; from the lawyers and judges who interpret the law, to the consistent procedural structure of trials, legal scholars and practitioners insist the formalities protect people and produce fair outcomes (Zehr, 2002; Silverman, 2010). Some critiques use popular tough-on-crime rhetoric of the criminal justice system to invalidate the humanist purpose of the restorative justice movement (Gavrielides, 2005). The vulnerable position of the victim and the potential for the offender to manipulate the process are contested are “morally problematic” (Gavrielides, 2005, p 97; Acorn, 2004). Others allow for the practical existence of restorative justice as a means to avoid litigation and decongest the already overwhelmed court systems (Wilson, 2002; Auerbach, 1983), but also question the still forming institution’s ability to hold participants accountable without the power, or threat of action, of the legal community behind reconciliation agreements (Palvich, 2005).

Social scientists have long recognized the 1970’s as a significant turning point in carceral history, with unprecedented application of disciplinary sanctions for non-violent crimes (Travis, 2000; Alexander, 2010; Braman, 2004). Known as the tough on crime

era, this trend applied mandatory minimum sentencing laws, increased criminalization factors for non-violent drug crimes, and erupted into a multibillion dollar industry that increased the number of American bodies under the supervision of correctional departments-- especially black, brown, and female-gendered bodies-- by over 300% (Alexander, 2010; Parenti, 2008). The tough on crime era is significant not only for the way it redefined crime (Palvich, 2005), but also for the political incentive it created to hyperbolize punitive recourse as evidence of accountability. By Zehr's (1990) timeline, restorative justice was emerging just as the tough on crime era had peaked and the weight of mass incarceration had settled into the foundation of society.

The fundamental paradoxes of the criminal/restorative justice binary have evolved from the construction of the *imitator paradox*, which Palvich (2005) argues is defined by restorative justice's simultaneous rejection and imitation of the criminal justice system. I argue the imitation is the result of the emergence of restorative justice within a political climate that had centered justice through intensive tough on crime values. Furthermore, restorative justice was influenced by its construction as an alternative to criminal justices and its coming of age in western culture during the height of social, political, and economic neoliberalism. The socio-political values encourage self-regulation and monitoring in order to pro-socially exist within society (Ringrose & Walkerdine, 2008). Though restorative justice is arguably more humanizing than traditional methods of western justice, the mainstream practice of restorative justice functions as a neoliberal ideology because it when it adapts to the criminal justice system, it strengthens that institutions power (Smith, 2005).

Another prominent paradox of the criminal/restorative justice relationship is the parallel roles ascribed to participants and the obligations attached to those roles. For example, restorative justice claims to avoid punitive labels; yet, it is functionally able to do so because the criminal justice system identifies the roles of participants prior to commencement of restorative action. Therefore, while the restorative processes can attempt to renegotiate harms, needs, and power, their function has been filtered through a criminal justice paradigm with embedded assumptions and images, or connotations, people have interpolated about justice (Daly, 2002). Restorative justice as a supplement to criminal justice creates the appearance harms are the result of interpersonal conflict and avoids critical inquiry into how systemic injustice created the environment and conditions for conflict.

A less obvious limitation of the criminal/restorative justice relationship comes from the assumptions of needs. The theory of universal needs assumes people can come together by understanding how people are alike (Toews, 2006; Deci & Ryan, 2000). The validity of universal needs is debatable, but not the focus of my analysis; whether or not those needs can be reduced to specific roles or generalized outside of specific contexts deserves critical reflection. I suggest this position offers limited analyses on the mutually beneficial knowledge found in differences, which Black feminisms notes as necessary to understanding the benefits of intersectionality (hooks, 1984; Lorde, 1984; Davis, 1998). In addition, assumptions about needs carry additional social norms of how people relate to each other, which influence how people perceive their obligations and relationships to others (Tanesini, 1998).



One reason the imitor paradox has gone largely unexamined is due to what Kathleen Daly (2002) labels the mythologizing of restorative justice. Previously mentioned in Smith's (2005) critique of restorative justice's tenuous relationship with Indigenous communities, Daly further asserts that the critics and practitioners of restorative justice are both to blame for the over-simplification of its potential and contradictions. Daly argues that not enough critical reflection has been done on the transfer of restorative justice's philosophies and values into the governance of the criminal justice system; which she believes is minimal at best. Therefore, while restorative justice offers an alternative procedure within the justice system, it does not always offer alternative rationales (Daly, 2002; Palvich, 2005); both practices seek to reintegrate people back into society, but do little to question the structural inequalities that contribute to harm, conflict, and violence.

The assumptions in the word *restorative* indicate once the harms from the identified conflict are resolved, justice is the logical outcome. Embedded in this assumption is the idea justice existed prior to the conflict and fails to question whether contemporary definitions of justice, or the ability to make things as right as possible, are adequate guides for resolution (Smith, 2009). It further assumes a system, institution, or society is partially flawed and not fundamentally flawed. It is important to contextualize the pillars and paradoxes as the result of a paradigm where restorative justice sustains the current criminal justice system in order to move away from the false construction of neutrality. The limitations of the criminal/restorative justice binary prevent a critical analysis of the applicability of restorative justice in the modern context and as a tool of future social justice.

The limitations of previous methodologies resolve these paradoxes speak to the missing layer of critical reflections in analytical discourse. Both criminal and restorative methodologies of justice are a reaction to a criminal harm committed by human offenders. In the following chapter, I use feminist epistemologies to complicate understandings of restorative justice praxis. I offer a reinterpretation of the values within Zehr's pillars in order to begin a conversation based on the interdisciplinary work of conflict resolution, ethnic studies, and feminist studies to help transform restorative justice from a reaction to the criminal justice system, towards an institution that facilitates a constantly evolving sense of justice.

### **Towards Feminist Logics**

Unfortunately, in the discussion of ending violence, advocates often assume only one of two possibilities: traditional criminal justice or RJ. When anyone finds faults with the RJ model, it [sic] assumed that that the traditional criminal justice approach is the only possible back up strategy...

What generally seems to unite both RJ advocates and critics is an inability to think outside the traditional criminal justice/social service model...

Andrea Smith (p 260, 2009)

In order to understand how contemporary restorative justice praxis risks reproducing inadequacies of the criminal justice system and the potential for Black and Native feminisms to destabilize these ties, it is important to frame how Black and Native feminisms view the legal system. This section will explore why Native and Black feminisms are better positioned to analyze restorative justice in order to more fully actualize the desire to place people and relationships at the center of community-based problem solving. By destabilizing the criminal/restorative justice binary, Black and

Native feminisms may provide a more expansive understanding of conflict and greater possibilities for the application of restorative justice values.

Black and Native feminisms provide many critiques of the legal system and sometimes directly address restorative justice reformist movements. These critiques are informed by the violent and complicated histories of the United States' legal system with Black and Native populations, as well as the keen strategies of resistance and survival (Smith, 2005). Linda Tuhiwai Smith (1999), author of *Decolonizing Methodologies: Research and Indigenous peoples*, argues: "Legislation was frequently used to regulate both the categories to which people were entitled to and the sorts of relations which one category of people could have with another" (p 27). Thus, the argument that the criminal justice system is flawed and restorative justice helps address specified flaws does not hold the same weight in communities where the specific intent of the legal system has not been to protect people, but to deny them full humanity. Furthermore, the continued reliance of restorative justice on, and validation through, the criminal justice system sustains the underlying assumptions of a racialized, gendered, and hierarchical knowledge creating injustice (Smith, L.T., 1999). Therefore, a goal of restorative justice should focus on restoring human dignity that has been interpersonally or systemically denied to people and communities. Such a task requires critical inquiry into the assumption that restoring relationships to the status before the identified harm is actually enough to end, not just the singular experience of harm, but related and interlocking forms of violence facilitating harm.

Presently, the nation-state's enforcement of social order happens primarily through fear, especially in communities of color, and often involves a capitalist influence

(Simpson, 2014); cost of incarceration, links to poverty, cost of rehabilitation, costs for policing and law enforcement, etc. Therefore, some argue paradoxes are inevitable because freedom is impossible under the management of current institutions with the United States (Simpson, 2014; Smith, 2005). Richie (2012) argues, “the most serious problem with the over-reliance on the legal and legislative changes in response to the problem... is that it precludes the development of a sustained critique of the state’s role in causing, complicating, or being complicit with violence” (p 163). In addition, this ideology assumes certain types, or certain amounts of conflict are inevitable and that a regulated reaction, either through retribution or restoration, is the preferred, or logical, methodology (Smith, 2009). Historically, these methodologies have been embedded with racist, classist, and gendered language that privileges white, male, cis-gendered citizens while using the grammar of imperialism to control underprivileged people and communities who fall outside the construction of a normative citizen (Smith, L.T., 1999).

It is important for restorative practices to be critical of historical relationships and lasting systemic influences in order to address interpersonal conflict and construct alternative definitions and measures of justice that avoid the pitfalls of the criminal/restorative justice binary. As Lorde (1984) states, “when the rules of racist patriarchy are used to examine the fruits of that same patriarchy... only the most narrow perimeters of change are possible” (p 111). If restorative justice must adapt in order to comply with the oversight of the criminal justice system, it limits the transformative understanding necessary to restorative justice. Davis (1998), Smith (2009), and other activist-scholars recognize the benefits of reform efforts to meet the immediate needs of those currently suffering, but question the movement’s ability to move beyond restoring

those who have been harmed by violence, to abolishing violence in relationships, communities, and institutions.

Black and Native feminisms provide a more complex understanding of the people-centered process restorative justice advocates. A major limitation of the criminal/restorative justice relationship is its use of the roles, definitions, and cases identified for the criminal justice system. Black and Native feminisms not only allow the restoration of traditional victim/offender relationships within the criminal/restorative justice binary, but believe processes should be guided by those not currently served by existing structures. By focusing on who is not included or served by contemporary methodologies of resolution, new imaginaries of restorative justice can resolve interpersonal and systemic conflicts.

Black and Native feminisms specifically acknowledge a political consciousness that advocates for continuously evolving praxis. When applied to restorative justice, this praxis asks participants to reconsider previously held assumptions, such as impartiality or what one considers a restored resolution, to acknowledge the ways existing methods of validation limit how one understands justice and freedom. Where the criminal/restorative justice binary believes resolution is possible when the offender is able to understand how their actions affected the victim(s) and community (Zehr 2002; 1990), Black and Native feminisms expand the roles, obligations, and contexts in which restorative justice is able to actualize its values by decentralizing power and inviting responsibility through a sense of interconnectedness (Davis, 1998). By destabilizing the criminal/restorative justice relationship, Black and Native feminisms may allow communities to expand how

restorative justice philosophies are imagined and how resolutions, or modes or resistance, can be incorporated into one's daily life.

## CHAPTER V

### A FEMINIST REINTERPRETATION OF RESTORATIVE JUSTICE

We resist the hegemonic dominance of feminist thought by insisting that it is a theory in making, that we must necessarily criticize, question, and re-examine, and explore new possibilities.  
bell hooks (pp 10-11, 1984)

Does self-determination for indigenous peoples equal aspirations for a nation-state, or are there other forms of governance we can create that are not based on domination and control?

Andrea Smith (p NA, 2005)

A reinterpretation of restorative justice through Black and Native feminisms offers the potential to analyze and combat violence within communities outside of the roles and responsibilities of the criminal/restorative justice relationship. Black and Native feminists have used the technique of imagining futurity to explore alternative forms of resisting institutional and interpersonal violence that draw from similar values of interconnectedness and respect that frame restorative justice. From community groups, to music, to political action, the values of restorative justice can exist far beyond, and independent of, its relationship to the criminal justice system. I will show how layering definitions of feminism provides a generative discourse where knowledge is produced and strengthened from diverse perspectives. I will discuss the potential influence of women of color feminist methodologies to inspire a new discourse through a reinterpretation of Zehr's *Three Pillars of Restorative Justice*. I also share examples of methods, organizations, and individuals which/who employ, or have imagined, the intersection of conflict resolution, ethnic studies, and feminist studies to address violence outside of the function criminal/restorative justice relationship.

Like restorative justice, feminism has numerous definitions and social connotations. I chose the feminist methodologies of critical thinking, contextual intelligence, and imagining futurity, grounded in Black and Native feminisms, for the ideological freedom, fluidity, and complexities they allow, and as an intentional break from the rigidity of neutrality, objective knowledge, and precedent present in the criminal/restorative justice discourse. Bettina Aptheker's (2002) definition of feminism is a continuous, working definition—meaning she acknowledges personal or contextual limitations of the present and expects the definition to evolve as personal and collective consciousness evolves. She defines feminism as “The collective empowerment of women as autonomous, independent human beings, who shall have at *least* as much to say as men about *everything* in the arrangement of human affairs” (Aptheker, 2002, para 19). However, an adequate feminist analysis of restorative justice and the criminal justice system necessitates critically inquiry of multiple layers of oppression beyond gender in order to create greater capacities for freedom and trust.

Davis (1998) asserts Black feminism is the “collective mode of black consciousness” (p xiv) developed through an “emotional community based on the affirmation of black people’s—especially black women’s—absolute and irreducible humanity” (p 36). Davis believes the knowledge generated from the lived experiences of Black women in the United States crosses racial and class borders and has the potential to inform the construction of a more just society. Lorde (1984) believes Black feminist understandings of justice and injustice must be viewed through an intersectional lens. As previously mentioned, intersectionality can be understood as the “relational, structural, political, and ideological... complex and multidimensional” parts of one’s identities



which inform how the world is understood and experienced (Richie, 2012, p 129). Black feminists use of intersectionality has the potential to create the capacity for a richer analysis of the catalysts, impacts, and resolutions for violence.

Native feminisms provide a unique opportunity for restorative justice to address the contentious debate of the relationship between Indigenous histories and the mainstream restorative justice movement. The criminal/restorative justice binary appropriates Native practices more than it does honor indigenous knowledge because it is unwilling, or unable, to have a critically reflective conversation about the destructive history of the United States and Native Americans necessary to develop a genuine process. Daly's (2002) previously mentioned critique of the mythologizing of restorative justice includes the romanticizing of Native spiritual traditions within contemporary restorative praxis. However, a turn towards a collective responsibility for justice grounded in community values is not a novel concept, and Indigenous knowledge deserves recognition for its influence on restorative justice. Native feminisms allow for the possibility to acknowledge the histories of Indigenous tribes who practiced many different types of reconciliation processes and sometimes included resolutions that were much harsher than current prison sentences (Smith, 2009), but also provide a distinct alternative to contemporary methods of analyzing and addressing community harms. The relationship between restorative justice and Native histories, like feminism, is complicated. One need not romanticize Native histories in order to gain perspective from a Native feminist analysis; much more complex analyses are possible. To borrow from Black feminisms, using Native feminist theory to analyze historical and contemporary Indigenous forms of conflict resolution allows one to entertain multiple, and sometime

contradicting hypotheses because critical feminist analyses can “divulge unacknowledged traditions of feminist consciousness... [and] what these interpretations can tell us about past and present consciousness” (Davis, 1998, p xi). Therefore, Native feminisms is able to simultaneously acknowledge whatever links do exist between restorative justice and *some* tribes practices, *and* the heteropatriarchy in both Native communities and the United States which perpetuate interpersonal and systemic violence.

Similar to Zehr’s (2002; 1990) Biblical understanding of covenant justice, Native feminists recognize the past, present, and future potential of community covenants are to promote “a collective identity that embeds desire for sovereignty and justice” (Simpson, 2014). It is critical to note that where restorative justice can act as a supplement or in tandem with the criminal justice system, sovereignty calls for the self-determined process centered with Native feminist values which acts independently from the criminal justice system and other forms of United States governance. Smith (2009) advocates that not enough has been done with the praxis of restorative justice to see what the movement can do to eradicate violence. Both restorative justice and Native feminisms believe moral authority and accountability are maintained through community relationships and influence the behaviors of community members. However, Native feminisms advocates taking the strategies used to address interpersonal harms, conflict and violence, in a politically conscious direction to shape one’s desired community (Green, 2007). Native feminist politics aim to “transform the world through indigenous forms of governance that can be beneficial to everyone... [and operates as a] framework that understands indigenous women’s struggles as part of a global movement for liberation” (Smith, 2011, p 1).

Before exploring the possibilities these definitions allow for, it is important to recognize how these methodologies inform my thought process and communicate my restorative justice values. First, because critical thinking requires constant reflection and evolution, I do not expect to produce generalizable practices, but demonstrate how to use Black and Native feminist methodologies to generate possibilities and break through contemporary ideological limitations. I hope to inspire a break from traditions of criminal and restorative justice in order for those committed to a feminist notion of justice to more freely actualize the construction of a more just society. Therefore, universal pillars would be an inappropriate concept with which to label my interpretations. Instead, I call them perspectives with the intention they will create a generative dialogue with other practitioners outside of strictly academic or scholarly discourse. The sections of this chapter are not meant to act as parallel frameworks for Zehr's pillars, but act in dialogue with Zehr's work and Black and Native feminist activists involved in revolutionary forms of conflict resolution. The perspectives I propose are not necessarily new to Black and Native feminist activists and scholars, as both communities have engaged with restorative justice and the criminal justice system. However, the severe lack of ideological and representational diversity in restorative justice, as well as general conflict resolution and legal practices, makes it possible for interjection of Black and Native feminist epistemologies to significantly change analyses of restorative justice praxis.

This makes space for my second methodology of contextual intelligence, which values experiential, emotional, self-determined, culturally competent, and dynamic forms of knowledge production. Similar to Zehr's model, recognizing contextual intelligence

means empowering those most affected by harms to determine the solution based on experience. Black and Native feminisms take the concept a step further and clarify those marginalized by current practices should be central to the creation of alternatives (Smith 2009; 2005; Davis, 1998). Black and Native feminists believe this is possible through re-centering a process developed through the collective struggles against systemic injustice (Smith, 2005; hooks, 1984). Re-centering means not looking at race, class, gender, and other parts of intersectional identities as supplemental components of conflict, but the misunderstanding of those differences as intimately connected to the perpetuation of conflict (Lorde, 1984?). Re-centering “requires critical self-reflection about our society’s bias towards the myth of objectivity” (Trujillo et al., p xxix, 2008), in order to move knowledge-making from the sterilization of academia to the experienced realities of complex human beings. Western ideologies tend to separate sense and reason, but contextually-based intelligence is seen as a part of the soul, psyche, and consciousness of interconnected people (Smith, L.T., 1999).

Finally, imagining futurity draws from Native feminist strategies to reclaim knowledge that has been marginalized by systems focused on institutionalizing rationality and logic, such as the legal system. Imagining futurity is a revolutionary perspective that encourages communities to transcend, either ideologically or in actuality, the basic survival mode of everyday life in order to “rise above their own circumstances, to dream new visions and hold on to old ones” (Smith, L.T., p 158, 1999) by experimenting with solutions that allow people to invent, discover, create, and imagine what makes them passionate and from what sustains passion (Lorde, 1984). The influence of imagining futurity has the potential to profoundly change the role of the mediator, the function of

restorative justice practices, and the application of restorative justice values because it can destabilize assumptions about power.

Introducing Black and Native feminisms to the paradoxes of the criminal/restorative justice binary destabilizes embedded assumptions and has the potential to facilitate progress currently limiting contemporary restorative justice praxis. The intersections of Black and Native feminisms with restorative justice provide rich opportunity to critically think about the direction of future applications of restorative justice values. Once able to see past the limitations of criminal/restorative justice binary, restorative justice can potentially embark on an interdisciplinary experiment with more progressive and politically conscious forms of conflict resolution. The following sections of this chapter will illuminate how the methods of Black and Native feminisms have the potential to help the restorative justice movement more fully actualize its desire to center people and relationships in the collective response to injustice.

### **Critical Reflections on the Need for Complex Personhood**

The principal horror of any system... which defines human need to the exclusion of the psychic and emotional components of that need ... is that it robs our work of its... value, [and] its power and life appeal and fulfillment. Such a system reduces work to a travesty of necessities... it is also profoundly cruel...

I am speaking here of the necessity for reassessing the quality of all the aspects of our lives and of our work, and of how we move toward and through them.  
Audre Lorde (1984, p 55)

Black and Native feminisms go beyond the superficial questions posed by the criminal/restorative justice binary of what people need to be restored to their community by imagining how communities can function to restore human dignity. Western constructions of trauma logic assume violent conflict overwhelms individuals and an

impartial third party can empower participants to satisfy their own needs in order to feel safe in society (Million, 2013). However, this assumes society is able to sustain empowerment and safety generated from restorative process, and was not a part of the conflict which necessitated a supplemental process. Therefore, a part of critical reflection should include inquiry into how interpersonal and systemic harms contribute to conflict and what environment would be necessary to resist further harm (Critical Resistance & Incite!, 2006).

When Zehr (1990) proposes the idea that crime is “violation of people and relationships” (p 181), there is an understanding the harm referenced is the harm caused by the identified offender. Zehr (2002; 1990) also believes the results of a restorative process should not just aim to repair the trust of interpersonal relationships but also be consistent with future intentions. The current function of the criminal/restorative justice relationship does not allow for this full actualization of restorative values because the criminal justice system itself produces harm in its attempts to maintain social order. There is a critical level missing in Zehr’s analysis which makes restoring human dignity challenging, or impossible in situations where it did not exist before, on both systemic and interpersonal levels. The criminal justice system and other institutions of power within the United States operate under the guise of safety, but actually contribute to systemic community harms, such as employment barriers, destabilization of families, and the criminalization of poverty and substance abuse (Braman, 2004; Travis, 2000), and restoring the harms perpetuated by these institutions are rarely the central focus of restorative justice praxes (Smith, 2009). According to Smith (2008a), “Native feminism can provide a helpful vantage point for destabilizing [norms]... to critically interrogate

the contradictions between how the United States [articulates] itself” (p 311), and the way the United States operates. The decision to criminalize and police behaviors positions resolution differently than the desire to transform community relationships; thus, the full actualization of restorative justice is complicated by the power of the criminal justice system to regulate social order.

Harms are not just the legal infractions recognized as suitable for restorative justice practices, but the realities which people, especially women of color, exist in daily. While Zehr’s pillar’s never explicitly limit the understanding of harm and violence to crime, the application and function of mainstream restorative justice operates under these assumptions. The idea that people commit harms because of a misunderstanding assumes several characteristics about people’s relationships. First, it assumes people are unaware of how their actions affect other individuals and the wider community or a lack of empathy, rather than a broader context of personal agency or circumstance. Second, it assumes awareness and motivation are the missing components to actualizing restorative resolutions and sustaining safety, not disparities in freedoms, agency, or privileges. Finally, it implies a limited scope for the types of relationships appropriate for restorative justice opportunities, and thus types of conflict it is able to address. While this mainstream process is beneficial and also capable of accomplishing the pillars’ objectives, it reinforces mythologized narratives of both violence and resolution (Daly, 2002), which sustain a disconnected understanding of justice on the interpersonal and systemic levels.

Similar to embedded assumptions of harms, assumptions of needs should be disassociated from the participant roles of the criminal/restorative justice binary in order

to expand potential applications for restorative justice praxis. The needs for safety and empowerment cannot just be the result of a restorative justice process but should be a daily part of how one exists in the community, and will be explored further in the following section. In addition, participants should consider the potential for conflicts to reoccur and what sociocultural norms limit ideal restorative responses. All of these strategies can be thought of as collective needs for a safe community. Complex personhood provides the opportunity for restorative justice praxis to address a wider range of community needs.

Zehr's first pillar assumes the offender's primary needs are to learn how one's actions affect one's community and complete a rehabilitation process. As previously mentioned, the first pillars also assumes offenders are unaware of the impact of their actions, but it also an idealized form of rehabilitation necessary to actualize and sustain its resolution goals. It is the community's responsibility to help the meet the offender's needs and facilitate the rehabilitation process (Zehr 2002; 1990), but this assumes state-sanctioned rehabilitation models are necessary in order to meet such needs. Depending on funding or political climate, these state-run supports may or may not exist, nor do they ensure the services possess the intersectional capacity to address the roots of violence. Furthermore, it subtly limits the scope of restorative justice because Zehr's rehabilitation narrative operates for harms which society has a regulated response (Critical Resistance & Incite!, 2006). For example, if restorative justice practices do not have supplemental referral programs—such as volunteer programs, drug/alcohol rehabilitation programs, or victims services—it is possible for people to assume the certain conflicts are



inappropriate for restorative justice because a process would not be capable of addressing the needs of participants.

Black and Native feminist interpretations allow for diverse moments of transformative understanding and multifarious combinations of identities and needs within a restorative context. I propose the opportunity should be opened up for all participants to foster a collectively understanding of responsibility for harms outside of those identified by, and processed through, the criminal justice system. People should not have to wait until they can identify as directly affected by violence in order to commit to the abolition of that violence. Furthermore, his is not to insinuate a victim is, or should be made to feel, responsible for their own victimization. The perspective is meant to contextualize how institutional norms contribute to conflict so communities can proactively work to prevent conflicts through social consciousness derived from restorative justice praxis.

Black and Native feminist conceptions of complex personhood are helpful for reinterpreting understandings of harms and needs so restorative justice praxis can function outside of the roles identified in the criminal/restorative justice binary. Complex personhood is the understanding that:

“[A]ll people... remember and forget, are beset by contradiction, and recognize and misrecognize themselves and others...that people suffer graciously and selfishly too, and get stuck in the symptoms of their troubles, and also transform themselves. Complex personhood means even those called ‘Other’ are never never that.” (Gordon as cited in Murphy, Lemire, & Wisman, p 44, 2009)

Therefore, a restorative justice experience should not prioritize the needs or learning experiences of any of the participants, and should provide opportunity for new

knowledge to emerge that renegotiates understandings of who is affected by crime, and how, based on context. In addition, complex personhood does not ascribe certain needs to specific roles. Where Zehr (2002; 1990) attempted to localize those *most* affected by crime, Native feminist thought encourages community members to conceive *everyone* as affected by crime and does not focus on ranking the needs or obligations of participants. Complex personhood allows for everyone to reflect on the different and intersectional ways people experience, participate in, are complicit with, and can work to end systemic conflict. Furthermore, complex personhood builds from an intersectional understanding of the fluidity of identities and needs necessary for restorative justice praxis to operate independent of existing institutions. Though Zehr provides a similar process, his analysis, as well as much of restorative justice praxis, is a reaction to harm and not used as a catalyst for preemptive, collective responses to the social constructions producing conflict, harm, and violence.

Smith's (2009) chapter of *Restorative Justice and Violence Against Women*, titled "Beyond Restorative Justice: Radical organizing against violence", she lists several organizations committed to work typically thought of as beyond the scope of restorative justice praxis. I believe these organizations most closely exemplify the intersection of ethnic studies, feminist studies, and conflict resolution which I attempt to imagine in my reinterpretation of restorative justice through Black and Native feminisms, and draw from them frequently throughout this chapter. Though Smith believes these approaches are beyond restorative justice, I argue the practice of restorative justice has been limited by its relationship to the criminal justice system, and other forms of legal control, to envision the potential other intellectual and activist communities can offer the movement. Two

organizations, Sista II Sista (SIIS) and Young Women’s Empowerment Project (YWEP), provide examples of how community-based action has led to alternatives to ending violence while operating outside of state-based and mainstream anti-violence movements.

First, SIIS (2005, October, 10) identifies as follows:

“[SIIS] is a Brooklyn-wide community-based organization located in Bushwick. We are a collective of working-class young and adult Black and Latina women building together to model a society based on Liberation and Love. Our organization is dedicated to working with young women to develop personal, spiritual and collective power” (para. 1).

SIIS believes the diverse make up of women of color, some first generation immigrants from parts of Central America, South America, the Caribbean, and Africa, help the group creatively, and proactively address community-based violence at the local-level (Smith, 2009). SIIS empowers women to end violence because there may be several reasons women of color cannot depend on state-sponsored methods for justice; either because they do not have proper documentation, or the threat it poses to family members and other community members by interacting with government programs, or a void of formal resource providers within one’s community may all prevent marginalized people and communities from accessing restorative justice. Religious organizations have played prominent roles in providing alternative havens for multiple social issues, but the complex role of spirituality in restorative justice is both inherent and treacherous.

While some view spirituality as central to restorative justice practices, a reinterpretation of restorative justice through Black and Native feminist values requires a deeper analysis of the appropriate use of spirituality. Both Black and Native feminisms provide insight on the potential for spirituality to transform relationships. Both feminist

logics recognize the sacred, which should be regarded as highly sensitive and deemed culturally appropriate when employed. Davis (1998) addresses the sacred and spirituality as something separate from religion and, in fact, denounces religious institutions' monopoly on morality. Davis believes the sacred is an emotionally informed practice and is revolutionary in its pursuits to abolish injustice, which is encumbered by the heteropatriarchy and racism prevalent in many religions. Davis also believes the practice of revolution must be incorporated into people's everyday lives; meaning it should reflect their true lived experience and that it must be literally practiced in the way one lives.

Restorative justice has typically had a complicated relationship with Indigenous spirituality, which is why Native feminisms provides such a rich analyses for the potential evolution of restorative justice. Native feminisms is both critical of the homogeneous appropriation, historicizing, romanticizing, and mythologizing of Native spirituality which perpetuates the violence felt on an intimate level to a systemic level (Smith, 2005). Native feminisms provide insight into a more accurate representation of Native spirituality, centered by Native women's pursuit of sovereignty (Smith as cited in Green, 2007; Smith, 2005). Smith (2005) argues that because Native spiritual practices are tied to their relationship with land, and the United States has a capitalist relationship that commodifies land, that the appropriation of Native spiritual values to relationships not centered on Native sovereignty is a part of the continued systemic violence the United States perpetuates against Native nations. The contemporary appropriation of Indigenous spiritual practices disconnects the process from Native people and their claim to the land, and undermines the continued struggle for survival and sovereignty (Smith, 2005). Smith further argues it is a form of objectification and prostitution which turns Native people,

and particularly Native women, into “products for consumption” (p 125), while it also obscures how the continued power of white supremacy uses an appropriation of Native culture to sustain an institution whose foundation was created upon the genocide of Native people. Native feminisms provide the critical insight for Natives and non-Natives to reflect on the potential damage from the general application of a culturally-bound practice. Spirituality influences how people relate to one another, and possible alternatives to the universality of spiritual needs posed in Zehr’s pillars is the reimagining of values grounding spiritual and community relationships.

An additional example of communities which have imagined alternatives to government regulation of violence is the Young Women’s Empowerment Project (YWEP). YWEP came out of the need for safety for young women and girls under 18 who are involved in the sex trade because reform programs tend to have a strict codes of conduct which may be unrealistic for certain women to follow based on their personal agency and power within society (Smith, 2009). The goal of YWEP is to “[work] with a young woman’s life conditions to help her develop strategies to keep her as safe as possible, while directing her self-determination” (p 270). YWEP works with young women and girls through a harm-reduction philosophy, which Smith (2009) defines as a method which “facilitates safety based on current conditions” (p 270), as opposed to traditional abstinence only or zero-tolerance policies. Therefore, a young woman or girl is not required to abandon her current situation and forego all participation in the sex trade in order to receive services and talk about increasing one’s safety. YWEP acknowledges that focusing on the legal-driven discourse of decriminalization is not

socially or politically aware of how such an argument assumes sex workers are adults and avoids addressing issues sustaining violence against women (Smith, 2009).

Black and Native feminist analyses destabilize the assumptions of harms and needs that have been limited by the functional relationship of the criminal/restorative justice binary. Rethinking harms and needs through an intersectional understanding of complex personhood provides the opportunity for restorative justice praxis to imagine alternative methods of addressing interpersonal and systemic harm. Some activist groups have already taken efforts to restore people's power within their communities using methods consistent to the intersection of conflict resolution, ethnic studies, and feminist studies. These strategies address harms and needs, promote the development of political consciousness, and recognize those who are directly affected by violence are capable of producing the knowledge and solutions to stop that violence. A rethinking of needs produces a new understanding of people's obligations of relationships within one's community. The following section explores how Black and Native feminist understandings of community can broaden one's reflections on relationships, obligations, and accountability.

### **Critical Reflections on Relationships and Solidarity**

Certainly there are very real differences between us of race, age, and sex. But it is not those differences between us that are separating us. It is rather our refusal to recognize those differences, and to examine the distortions which result from our misnaming them and their effects upon human behavior and expectation.

Audre Lorde (1984, p 115)

The introduction of Black and Native feminist values to restorative understandings of harms and needs requires a critical rethinking of relationships and

obligations. An intersectional awareness and analysis of how race, class, gender, sexuality, and other components constituting identity to help people see past binaries (Richie, 2012; hooks, 1984; Riggs as cited in Gibson et al., 2013), such as *self* and *other*, calls for a rethinking of how relationships can facilitate accountability. Black and Native feminist understandings of intersectionality, community, and solidarity provide opportunity for the restorative justice movement to reimagine how relationships function within communities and promote accountability outside of the traditional reaction of the criminal/restorative justice binary. Furthermore, and in light of Lorde's warning from the above passage, intersectionality provides a context for communities to positively acknowledge difference so as to grow one's knowledge base and potential solutions.

Black feminism uses intersectionality to explain how difference can produce liberating knowledge and create social freedoms as people conceive their struggles as interconnected (Lorde, 1984). Intersectionality provide a way to understand the complex ways one can experience violence, in addition to the ways prejudice and the misunderstanding of difference influence the ability to building trusting relationships and safe communities. Instead of using the pre-identified labels of victim, offender, and community member(s), an intersectional approach to complex personhood is meant to show how everyone in a community has a complex relationship with crime; how it is possible to directly contribute to crime in one's complacency; and how the stake one holds in resolving conflict depends on the perceived interconnectedness of community members. As previously stated, intersectionality is the awareness that people have multiple identities, which intersect in different ways as we move through the world, and influence how one experiences the world (Riggs as cited in Gibson et al., 2013).

Intersectionality has the potential to transform restorative justice because it brings to light that anyone who enters a restorative process can, and likely does, hold different amounts of victim, offender, and community member identities and does not wait for one to definitively identify with a particular role based on the definitions of the criminal justice system.

Lorde (1984), believes intersectionality helps people see past ideological binaries, such as the self and the other, and approach understandings of difference through an understanding of the interconnectedness towards resolution. Learning to see difference as a way to grow collective power in a struggle, instead of divide people, is a constant and interdependent practice that draws on contextual intelligence from the experience of struggle (Hames-Garcia, 2004). The criminal justice system has constructed freedom as protected through civil rights, or state-given rights, and restorative justice has reinforced this idea, but does so through a dialogic process. However, both systems operate under the assumption that laws protect rights, when it is arguable the idea of western law was created to protect the rights of few by restricting the freedoms and humanity of others (Mattei, as cited in Fassin & Pandolfi, 2010). The theory of accountability in restorative justice assumes people's participation in overseen by a larger power, which replaces the authority of the state with the authority of a third-party neutral or by the community. However, if institutions and the social norms regulating those institutions were created with racist, sexist, and other oppressive morals, the systems are incapable of producing equitable freedoms, both morally and in actuality (Hames-Garcia, 2004), as well as holding people accountable to socially just standards.



One way to critically analyze and reimagine such relationships is to understand how Black and Native feminist have imagined, reimagined, or reclaimed the function of communities. Such analyses are critical to the success of restorative outcomes because they supply the collective and collaborative environment to make restorative values sustainable in people's everyday lives. Both Black and Native feminisms believe community understanding of the interconnectedness of people, rather than the independence of people, depends on the sharing of political knowledge and collaborative action (Smith, L.T., 1999; hooks, 1984). Beyond political action, community and interconnectedness acknowledge the full person-hood of others who experience violence and are engaged in conflict in a way that links the survival, triumph, and restored humanity of one person to all people. As Makere Stewart-Harawira (as cited in Green, 2007) writes of her realization of the critical nature of interconnectedness:

“I am reminded of our late and much-loved Waitaha matriarch who consistently exhorted us to recognize the ‘other’ as also ourself, a concept I balked against at the time... Yet surely, in the deepest meaning, she was right...[T]his means at the very least to honour the sacredness inherent in all things and beings, to recognize the truth of our inherent interconnectedness, and to act in the world and towards each other appropriately” (p 134).

As evident from Davis' (1998) critique of spirituality in the previous section, interconnected relationships can exist within communities outside of a religious practice based on community values. Davis (1998) argues people experience everything as a community and the social construction of the individual experience serves to further separate people from each other and a collective-based solution.

Another interpretation of one's community obligations can be understood through the concept of solidarity. Bell hooks (2000) believes solidarity is:

“...The only path that can lead our nation back to a vision of community that can effectively challenge and eliminate violence and exploitation. It invites us to embrace an ethics of compassion and sharing that will renew a spirit of loving kindness and communion that can sustain and enable us to live in harmony with the whole world” (pp 49).

Therefore, the obligation of community is to stand in solidarity with those targeted by interpersonal and institutional violence. Community is about the physical, political, social, psychological, linguistic, cultural and spiritual bonds people may share (Smith, L.T., 1999). These intersectional identities are not necessarily geographically defined and create “nested identities” (p 126) which give people multiple layers of meaning. The idea of accountability becomes less relevant because community members are encouraged to become invested in the humanity of others because the freedom of oneself is intimately connected to the freedoms of one’s fellow community members. For example, even a concept such as self-determination includes an individual thinking about how one’s relationship with community members is intimately connected to how one analyzes effects on the self.

FAR Out is a part of The Northwest Network of Bisexual, Trans, Lesbian, and Gay Survivors of Abuse and aims to transform how society addresses violence in relationships (The Northwest Network, 2011; Smith, 2009). Smith describes FAR Out’s praxis as follows:

“FAR Out’s model is based on developing friendship groups that make regular commitments to stay in contact with each other. In addition, these groups develop processes to talk more openly about relationships... By talking about [sexual relationships] more openly, it is easier for friends to hold us accountable. In addition, if a person knows she/he is going to share the relationship dynamics openly, it is more likely she/he will be accountable in the relationship” (p 269).

FAR Out uses dialogue as a preventative means in multiple ways in that it promotes developing community around the shared values of ending intimate partner violence and gives spaces for friends to discuss positive aspects of one's relationships, as well as negative; whereas the criminal/restorative justice binary focuses on reacting to the legal violation of relationships. Furthermore, FAR Out is desired-based in that it centers on communicating about healthy relationships, which provides models for others and has the potential to generate multiple examples of healthy relationships, rather than policing or reacting to violence.

Communities Against Rape and Abuse (CARA) provides an additional radical methodology for dealing with sexual and physical violence which centers on the perspective that violence on the interpersonal level has a direct link to violence on the system level. Smith (2009) states CARA believes:

“Prisons, policing, the death penalty, the war on terror, and the war on drugs, all increase rape, beatings, isolation, oppression, and death. As an anti-rape organization, we cannot support the funneling of resources into the criminal justice system to punish rapists and batterers, as this does not help end violence. It only supports the same system that views incarceration as the a solution to complex social problems...As survivors of violence, we will not let the antiviolence movement be further co-opted to support... the dehumanization of poor people, people of color, and people with disabilities” (p 270)

CARA's values promote a deep and expansive view of solidarity, understanding the violence committed against one person is supported by the same values which allow systemic injustices, such as violence against women and the prison industrial complex. CARA's key principles share many similarities with contemporary restorative justice practices, such as concern for victims/survivors, collective efforts towards justice, safety, support, self-determination, and accountability (Smith, 2009). However, CARA's model

empowers participants to develop a political awareness, aims to prevent violence through proactive efforts, and addresses violence outside of those defined by the state as criminal violence (Smith, 2009). The way CARA reimagines the potential for relationships to promote accountability “ultimately transcends the idea of simply holding an abusive community member responsible for his or her actions, but also includes the vision of community itself” (Smith, p 270, 2009), and thus is a desire based program. CARA focuses on more than the resolution of damaged relationships, but the communities necessary to develop and sustain safe relationships.

With an expanded understanding of the needs of participants within a restorative process and the foundations of their relationships to one another, the role of the mediator must also evolve. An intersectional lens provides a multilayered analysis of relationships based on interconnectedness, solidarity, and the pursuit of freedom in ways that create and protect relationships centered on the restorative values of Black and Native feminisms. If the needs and obligations of participants have been reinterpreted through a perspective that rejects concepts such as neutrality and impartiality, the role of the mediator may also experience a profound transformation.

### **Critical Reflections on the Role of the Mediator**

The task of an activist is not to navigate systems of oppressive power with as much personal integrity as possible; it is to dismantle those systems

Lierre Keith (2012, September 10)

The reinterpretation of restorative justice through Black and Native feminisms has the potential to empower communities to reimagine harms, needs, relationships, and methods of accountability; which, also impact the role of the mediator. The re-centering of

restorative justice through Black and Native feminist epistemologies transforms the purpose of Zehr's third pillar in several important ways. First, the social and political awareness of a restorative processes centered by Black and Native feminisms transforms a neutral position into one occupied by an activist-scholar. Second, experiential knowledge and emotional intelligence suggest potential benefits to the positive identification of differences through multi-partiality (hooks, 1984). Finally, the alternative conceptions of power present in women of color feminisms present further opportunities to experiment with alternative and expanded understandings of restorative justice values and conflict resolution. Black and Native feminists have experimented with the transformative potential of desire-based methods through community engagement, scholarship, and even art, to work towards the abolition of violence in one's communities, and align the structure of the movement with goals that will abolish violence for everyone.

Since my proposed strain of feminist philosophy fundamentally rejects neutrality and impartiality (Tanesini, 1999), the understanding of a restorative justice mediator as an impartial third party must be reassessed. Neutrality serves the purpose of dominant powers (Wing, as cited in Trujillo et al., 2008), and the failure to address oppressive, hegemonic power sustains the current injustices of institutional privilege (Roy, as cited in Trujillo et al., 2008; Million, 2013). Some Native feminists believe neutrality contributes to the conspiracy of silence (Million, 2013), or an institution's construction of peace as the absence of visible conflict, when in reality, people's marginalization has made it impossible or extremely difficult to even engage in a way that communicates their resistance. Institutionalized norms that mediators ask their participants to suspend are

still in effect post-mediation when the participants are expected to uphold their agreement(s). Privileged experiences can act as social capital that buys rights to less tolerance towards differences. In her famous essay, “Age, Race, Class, and Sex: Women Redefining Difference”, Lorde (1984) explored how the misnaming of differences in a profit-economy creates divisions which limit one’s consciousness. To Lorde (1984), institutions that support a profit economy are not capable of abolishing its injustice because a profit economy is sustained through the misnaming and objectification of difference. As discussed in the previous section, a Black feminist understanding of the power of difference has the potential to inspire creativity and generate new knowledge (Lorde, 1984). Lorde writes:

“Institutional rejection of difference is an absolute essential in a profit economy which needs outsiders as surplus people... we have *all* been programmed to respond to the human differences between us with fear and loathing...we have no patterns for relating across our human differences as equals” (p 115).

Conflict specialists must facilitate sustainable agreements and resolutions that recognize structural forms of violence and end the minimization of differences. The misunderstanding of differences influence systemic and personal conflicts which perpetuate violence within a system ill-equipped to resolve the issues it creates (Lorde, 1984). If participants are empowered through political consciousness (Davis, 1998), then the role of the mediator is to inspire political action intended to abolish systems of violence. Therefore, to only use the term mediator or facilitator to describe a person committed to conflict resolution, and who may or may not have a leadership role in resolving conflict(s), would be inadequate to describe the potential range of possible evolutions of the role of restorative justice practitioners. Furthermore, the desire for the

centering of experiential knowledge provides a critical inquiry into the professionalization of restorative justice.

In accordance with participants destabilizing the self/other binary (King, 2013), and seeing their fates as interconnected (Smith, L.T., 1999) Black and Native feminisms allow for a more complex understanding of the relationship(s) activist-scholars have with conflict(s) (Quan, 2005). The separation of a mediator from the conflict as a third or neutral party reinforces power dynamics of knowledge, as well as assumes removed rationality is capable of justly resolving conflict. Reimagining the role of the mediator as an activist scholar allows practitioners to acknowledge and develop a more intimate relationship with conflict and the people involved in conflicts to more fully actualize restorative justice values. Specifically, contextual intelligence validates those who experience conflict to develop the vision necessary to resolving said conflict; and relationships based on solidarity can help to imagine possibilities for restorative justice advocates beyond the traditional roles of mediators.

Building relationships based on trust has allowed social justice groups to experiment with decentralizing the responsibilities traditionally taken on by a mediator within mainstream restorative justice practices. For example, Smith (2009) notes some groups will have rotating leadership roles as a way to prevent abuses of power, while consciously committed to relationships built on mutual respect, responsibility, and participation. The scholarly component of the activist-scholar does not refer to form academic institutions, but the spaces where people create co-educational communities through their collective commitment to social justice. A collective commitment to justice, which destabilizes the tradition distinction in roles between participants and

practitioners, requires a more nuanced vocabulary to describe the work being done at the intersection of restorative justice and women of color feminisms.

Davis (1998) believes the role of the activist-scholar is to “evoke solidarity” (p 194) from people who witness the struggle of fellow community members. Like freedom, justice is made from the emotional intelligence of experience and an empathic connection to conflict through various levels of engagement. In feminism, the personal is political (Davis, 2000), and multi-partiality allows for an interpersonal social critique through restorative justice that inspires an emotional connection and political action in pursuit of systemic change (Million, 2013; Suzack et al., 2010). Multi-partiality also generates more possibilities for understanding and resolution given Black and Native feminist understandings of complex personhood. Participants should not only be encouraged to connect with others, but to connect with the layered identities that may or may not be similar from one’s own intersectional experience; to appreciate difference in a complex and mutually beneficial relationship. Multi-partiality recognizes there are multiple, complex ways in which a conflict can be viewed, experienced, and processed in addition to the intricacies of the relationships of those involved.

Expanding restorative justice outside of the criminal/restorative justice binary requires people to envision resolving conflicts in innovative ways. Furthermore, if the traditional role of a mediator is to facilitate engagement as much as possible (Zher, 2002; 1990), it can be helpful for restorative justice to turn to the work of women of color feminists, who intentionally develop methodology which incorporates resistance and activism into their everyday lives (Smith, 2008; Tuck, 2009). This specific intention re-centers conflict resolution processes to acknowledge the working-class realities of people



who experience violence every day and do not have the privilege to participate or commit their time or money beyond what they need to survive. Black and Native feminisms requires those engaged in conflict resolution to be cognizant of how strategies work across intersectional race, sex, class, and gender dimensions (hooks, 1984; Lorde, 1984), and how those critical reflections can inform the ways communities reimagine a more just society. The use of desire-based strategies, or focusing on how the ideal imagination of communities informs one's activism (Arvin et al, 2013; Davis, 1998), allows restorative justice values to proactively influence relationships.

Incite!: Women of Color Against Violence, “a nation-wide network of feminists of color” (Incite!, n.d.), empowers communities to develop accountability models which can serve as alternatives to state-based programs and services (Smith, 2009). Smith describes Incite!’s model as follows:

“Through workshops and activist institutes, women of color have strategized about [community accountability models]. Incite! has compiled these models and distributed them to other local groups to help them develop their own models. As groups try these models and provide feedback on what does and does not work for them, Incite! Then shares this information with other women-of-color organizers” (p 267)

Incite! embodies the intersection of restorative justice and women of color feminisms in several ways that distinguish it from mainstream restorative justice practices. First, Incite! reimagines the production of knowledge in both theory and practice. The continuous commitment to co-educational activism draws strength from the diversity of experiences. Second, Incite! destabilizes the criminal/restorative justice binary and acknowledges state-run services or models are not safe for all communities to access nor adequately informed to address the conflicts those communities experience. Third,

Incite! believes communities can proactively hold people accountable through transparent, non-hierarchical relationships in an attempt to avoid reproducing racialized, gendered, and classist methods of accountability found in nation-state governmentalities (Smith, 2009). One way for the restorative justice movement to use this as inspiration is to interject the values created at the intersections of conflict resolution, ethnic studies, and feminist studies into spaces where the such philosophies are viewed as supplement and use those philosophies to center problem solving strategies. For example, there is a disproportionate arrest of Black women who initially called law enforcement as a victim of a crime (Richie, 2012). If we were to use CARA's philosophies that incarceration only begets more violence, communities are left to develop responses to violence outside of the protections provided by the state. However, developing such a response is difficult in the context of a society with interlocking systems of oppression causing violence at the personal and systemic levels (Richie, 2012). If restorative justice can be imagined to include Black and Native feminist values, its praxis can expand to proactive and politically minded community development focused on creating the ideal relationships and desired environment in which to abolish violence.

In conclusion, if the traditional role of the mediator is to facilitate engagement as much as possible, then the role of a restorative justice activist-scholar informed by Black and Native feminist epistemologies is to create opportunities for people to engage to restore personal and community dignity outside of the roles provided by the criminal/restorative justice binary. Similar to the transformative understanding Black and Native feminisms gave to the Zeh'r first two pillars, the role traditionally reserved for a third-party neutral is transformed into a politically-minded activist. This transformation

not only reimagines the organization and uses of power, but how a politically conscious and intersectional positionality multiplies the potential praxis of restorative justice.

## CHAPTER VI

### CONCLUSION

In sum, feminist methodologies destabilize assumptions within restorative justice that parallel the limitations of the criminal justice system. Howard Zehr's *Three Pillars of Restorative Justice* have served as the main framework of restorative justice, but the dominant critique of the criminal/restorative justice binary has limited analyses and stalled the evolution of the practice of mainstream restorative justice. In order for restorative justice to actualize its desire to center people and relationships in the resolution of harms, it must engage in a critically reflective analysis of the assumptions of harms, needs, relationships, and obligations resulting from the functional relationship of criminal and restorative justice processes.

Feminist methodologies, especially Black and Native feminist thought, complicate assumptions of the criminal/restorative justice binary and provide an opportunity for restorative justice to more accurately actualize its core values and commitment to community. Black feminist values of intersectionality, solidarity, and the activist scholar offer the opportunity to move beyond restoring people to the state before they experienced harm, towards a full experience of freedom and humanity. Native feminist values of multi-partiality, community, and imagining futurity help facilitate deeper interpersonal connections and incorporate justice praxis into our everyday lives.

Black and Native feminisms have engaged in analyses and critiques of the criminal justice system and restorative justice practices, but restorative justice has not seemed to reciprocate the analytical discourse. This paper serves as evidence of the

exploration some women of color activists have already done at what I propose is the intersection of conflict resolution, ethnic studies, and feminist studies, as evident in the scholarship, activism, and community-development of grass-roots organizations. In addition, I offer other possibilities to inspire the restorative justice movement to reimagine people's relationships to conflict and the possible strategies to not just respond to harm, but abolish violence.

The interjection of Black and Native feminist values into restorative justice praxis has the potential to decentralize power, destabilize assumptions about needs and responsibilities, create political awareness, and motivate intentional actions of solidarity. In order to bring this imaginary into reality, the restorative justice movement must develop and intersectional capacity from which to analyze conflict. Transformative change cannot occur through systemic reform, but must occur from changes community members make in their everyday relationships. The movement must understand differences as necessary to generating new knowledge that pushes people to develop safer communities and more trusting relationships. This transformation must be collaborative, mutually beneficial, and seek to end interpersonal and systemic violence.

Through Black and Native feminist understandings of solidarity and community, restorative justice has the potential truly develop relationships based on its core value of interconnectedness. Restorative understandings of humility can be informed by experiential knowledge, emotional intelligence, and cultural competency, which may allow for more moments of transformative understanding to occur in one's commitment to restorative justice. Finally, the possibility for restorative justice praxis to create relationships that respect of all aspects of an individual's complex personhood can allow

restorative justice values to transfer from individual processes to a practice people incorporate into their everyday lives.

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