

FALL 2021

**FROM THE FIELD:
A RESTORATIVE
JUSTICE GUIDE**



LEARNINGS FROM THE DISPUTE SYSTEMS
DESIGN CLINIC AT HARVARD LAW SCHOOL

ABOUT HNMCP

Founded in 2006, the Harvard Negotiation & Mediation Clinical Program (“HNMCP”) focuses on cutting edge work in dispute systems design, negotiation, mediation, and facilitation. We train Harvard Law School students in the theory and practice of dispute systems design; serve clients by building their capacity for effective conflict management and successful negotiation; and serve the dispute resolution field by producing practice-informed scholarship, creating innovative teaching pedagogy, and inspiring and building a community of problem-solving law school graduates.

Students in our Dispute Systems Design Clinic provide clients with high-quality analysis and practical dispute management strategies in a wide range of contexts. Working closely with our faculty, our students engage in dispute systems evaluation; conflict analysis; facilitated dialogue; strategic negotiation advice; consensus building efforts; dispute systems design; stakeholder assessment; mediation; and curriculum development and delivery. Our clients are U.S.-based and international and include non-profit organizations, government agencies, community groups, and private companies.

ABOUT THIS GUIDE

This guide seeks to bring together learnings and insights from HNMCP's experience in the area of restorative justice. The content of this guide reflects themes that emerged in our clinical work through the Dispute Systems Design Clinic, as well as symposia organized by the Harvard Negotiation Law Review in recent years. In order to preserve confidentiality, the guide does not share non-public findings or recommendations of individual projects.

The guide is organized into three main sections:

- Definition and key features of restorative justice.....4
- Key learnings from past projects.....6
- Design tips: Advice for creating restorative processes.....10

The guide concludes with an appendix offering a concise checklist of key design questions to consider, and a list of recommended additional readings.

We hope that these insights can be useful to multiple audiences, including experienced practitioners in the area of restorative justice, academics who focus on conflict management processes, and others – teachers, managers, organizers, activists – who are interested in exploring the possibility of integrating restorative justice practices into their work.

RESTORATIVE JUSTICE

DEFINITION & KEY FEATURES

Restorative justice, so-called since the 1990s, grew from theories and practices developed since the 1960s by activists, academics, and justice and social work practitioners who themselves drew from ancient and indigenous practices from the North American First Nations and the Maori of New Zealand, among other groups.

Restorative justice contrasts with retributive, deterrence, and incapacitation-focused approaches to harm, which inform litigious approaches to dispute resolution. The foundational principles of restorative justice include:

1. Wrongdoing causes harm, and justice requires repairing that harm.
2. Those most affected by wrongdoing should be able to participate in its resolution.
3. Healing the community and preventing further harm should be the guiding goals of any intervention.

OUR WORK

- 7 Client organizations
- 4 Locations: Baltimore, Boston, Houston, and New Brunswick
- 3 Sectors: education, community organizations, government
- 2 Conferences hosted featuring 30 restorative justice experts

HNMCP INITIATIVES + CLIENT WORK

2015



Government of
New Brunswick

HARVARD
Negotiation
LAW REVIEW

HNLRSymposium:
Restorative Justice
Theory Meets Application

2016



Cornerstone
Co-Housing
Village

2017



Inner City
Weightlifting



Community
Conferencing Center

2018



Restorative
Response Baltimore

2019



Harris County
Justice of
the Peace, 7-1

HARVARD
Negotiation
LAW REVIEW

HNLRSymposium:
Redressing Harm Through
Restorative Justice

2020

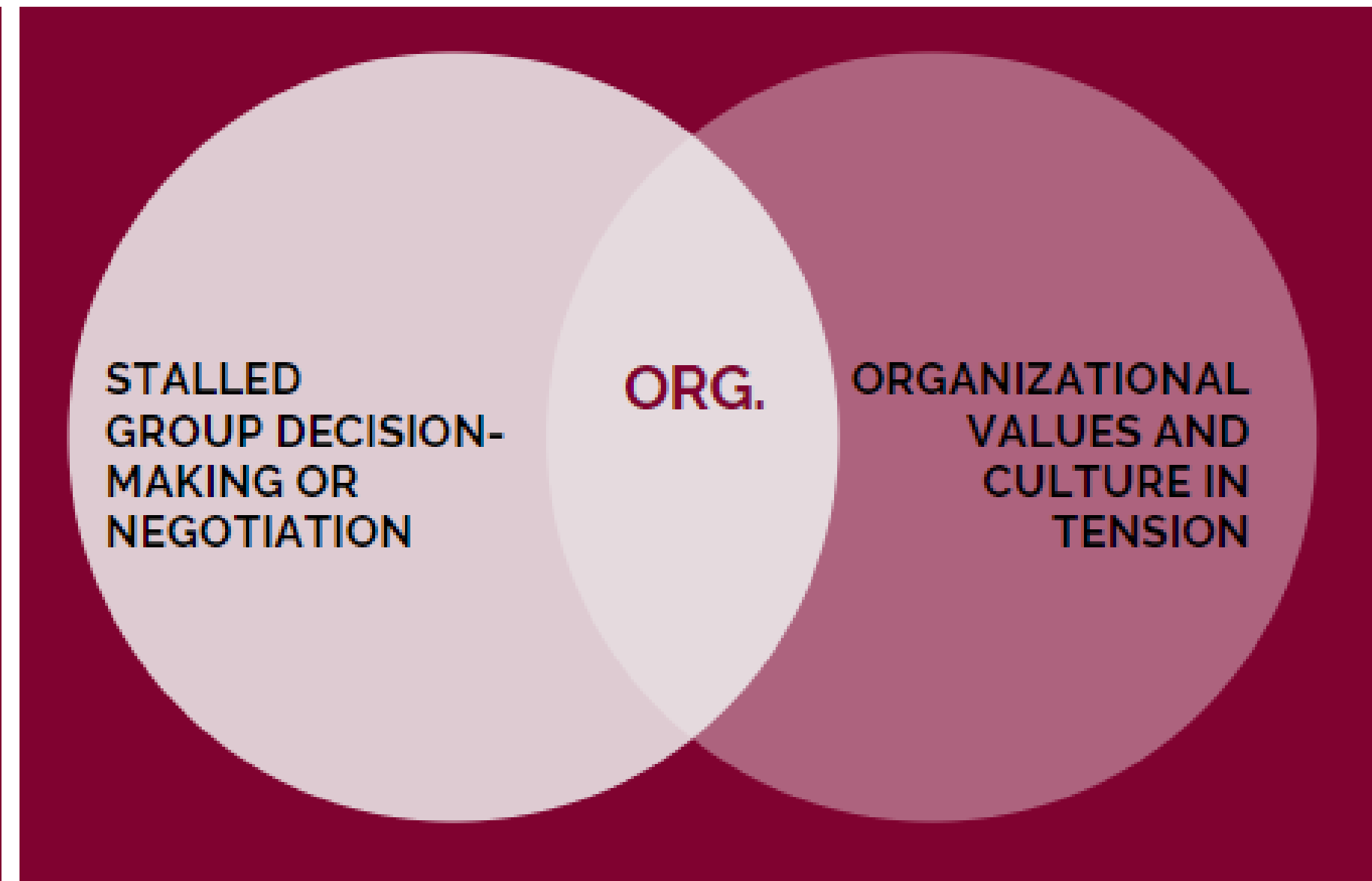
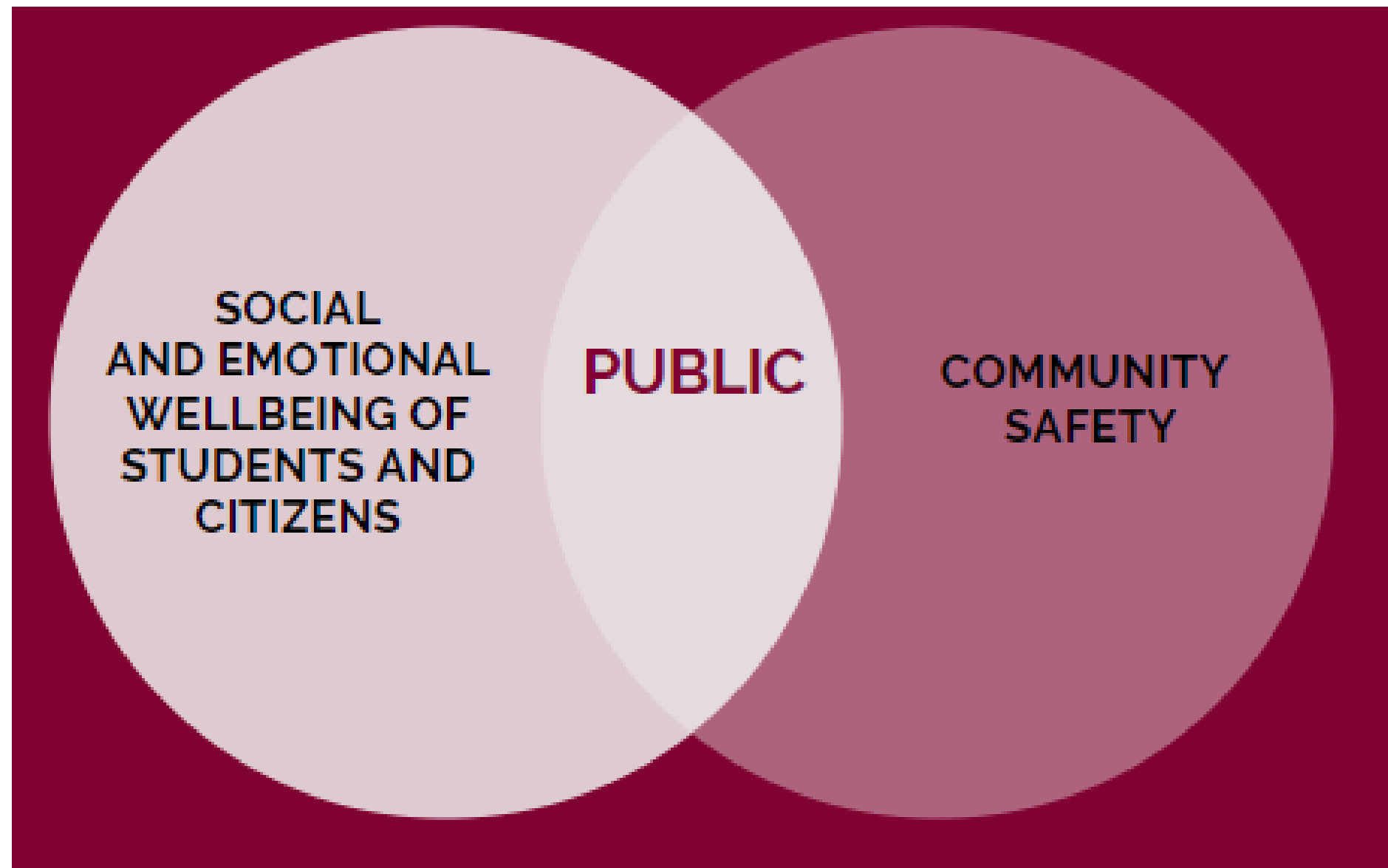


Alternative 911

CLIENT WORK: KEY LEARNINGS

SOURCES OF HARM

Restorative justice processes can be designed to address a wide variety of harms experienced by a community or group. We can categorize the harm(s) experienced or perceived by HNMCP clients as **public** and **organizational** harms, as outlined below.



CLIENT WORK: KEY LEARNINGS

SOURCES OF HARM

Regarding **public** life, these harms have included the real or threatened harm towards the social and emotional well-being of children (in schools) or citizens (in personal or medical crisis), as well as the individual harm(s) experienced by a victim of crime and the harm(s) to felt community safety.

Organizational harms include those that interrupt organizational functioning, such as delays and/or breakdowns in group decision-making or negotiation, or felt tensions between stated organizational values and the experience of organizational culture.

This is certainly not an exhaustive account of the harms restorative justice processes are well poised to help repair, but it offers a starting point. It is important to understand the nature of the harm(s) an individual or community has experienced, in part because it guides the stakeholders who need to be at the table to design the process and implementation approach. Clients may experience multiple sources of harm, and therefore may benefit from various restorative processes and approaches.

CLIENT WORK: KEY LEARNINGS

CLIENT MOTIVATIONS AND GOALS

Expedient Dispute Resolution

Overwhelmingly, our clients wished for an **expedient** resolution or mitigation of the harm(s) experienced, whether at the individual, community, or organizational level. The harm(s) experienced, perceived, or predicted were urgent to many stakeholders, and in many cases the disputes underlying these harms were “live.”

Long Lasting Shift in Community Culture

In addition to expedient resolution, clients also sought a **long-lasting** resolution. Specifically, many articulated the need for a shift in community and/or organizational **culture** to prevent further harms.

Increased Conflict Engagement Skills

As part of this cultural change, many clients sought to enhance the **conflict engagement skills** of relevant stakeholders. Clients identified the need for robust active listening, thoughtful inquiry, and collaborative problem solving skills to avoid perpetuating present harm(s) and creating future harm(s).

CLIENT WORK: KEY LEARNINGS

CLIENT MOTIVATIONS AND GOALS

Just and Equitable Experience + Outcomes

Overwhelmingly, clients shared an interest in engaging in and delivering a **just and equitable resolution** of the dispute, both in terms of stakeholders' lived experience of the process, as well as the outcomes delivered. This concern, when read alongside the aforementioned interest in shifting a community's culture of conflict engagement, makes restorative justice's non-punitive approach a particularly good fit.

Punitive Approach	Restorative Approach
<ul style="list-style-type: none">▪ Rules are violated.▪ Justice focuses on establishing guilt.▪ Accountability is defined as punishment.▪ Justice is directed at the offender.▪ The victims' needs are ignored.▪ No opportunity is offered for the offender to express remorse or make amends.	<ul style="list-style-type: none">▪ People and relationships are violated.▪ Justice identifies needs and obligations.▪ Accountability is defined as understanding the effects of the offense and repairing any harm.▪ The impacted parties have direct roles in the justice process.▪ Individuals are held responsible for their behavior, repairing any harm they have caused and working toward a positive outcome.▪ Opportunities are offered for individuals to express remorse or make amends.

Adapted by HNMCP from San Francisco Unified School District Restorative Practices Whole-School Implementation Guide, 19 (available at <https://www.healthiersf.org/RestorativePractices/Resources/documents/SFUSD%20Whole%20School%20Implementation%20Guide%20final.pdf>).

DESIGN TIPS

ADVICE FOR CREATING RESTORATIVE PROCESSES

Restorative justice processes cannot be “one size fits all.” In fact, the development of restorative justice theory was in part a response to the same critique of the criminal justice system. Each restorative justice process should be uniquely responsive to the community in which it operates, and its design process is itself a negotiation among potential goals such as efficiency, reconciliation, and community-building. Notwithstanding the particular elements of restorative processes, there are three shared, sequential elements of the design process that emerge.



These sequential elements map onto HNMCP's tips for designing an effective restorative process.

1. While restorative justice processes vary widely in their structure and level of formality, effective processes have a clear **connection** between the harm the process addresses, and the action plan it generates.
2. Successful restorative justice processes are **tailored** to the legal, social, and historical context in which they are engaged.
3. Successful restorative processes intentionally **gather and incorporate feedback** on their design and operation from the stakeholders involved in the process.

DESIGN TIPS

1. CONNECT HARM AND PROCESS DESIGN

Restorative processes exist on a spectrum of formality; the formality of restorative process design should be responsive to the harm(s) and concerns it endeavors to address. In one project, our students proposed differing restorative approaches that, intentionally, mapped onto different levels of formality and harm:



HNMCPC Client Report, on file with author. Client information intentionally withheld.

The most **informal** approach recommended included the use of affective “I” statements; these are brief comments that tell another person how their actions have affected you. They do not necessarily have to be in response to negative behavior; statements can also be made in appreciation of another person's actions. These were considered approaches that all community members could and should use regularly to support an organizational culture of restorative justice.

The most **formal** approach recommended included formal conferences, designed to address serious disputes that caused harm. These conferences have a fixed structure, utilize a pre-determined script, and employ a facilitator. These recommendations responded to the desire to cultivate a culture of skillful conflict engagement, coupled with a structured process for more serious disputes. In this way, the severity and type of harm helped determine the recommended approach and appropriate level of formality.

Design Tip: Design a dynamic process! Consider a range of restorative elements and the different purposes they could serve. 11

DESIGN TIPS

2. TAILOR PROCESS TO LEGAL, SOCIAL, AND HISTORICAL CONTEXT

Once a restorative process has been identified as potentially responsive to the nature and severity of the harms experienced by community members, it is essential that the process design take into account legal, social, and historical context. In her address at the 2019 Harvard Negotiation Law Review (HNLR) Symposium, legal scholar Thalia Gonzalez asks whether restorative justice is the “adjacent or complimentary practice, process or system or are you moving it into the dominant paradigm?” So long as traditional or litigious adjudicative measures are accepted as part of the reparation of harm, she says, restorative justice will simply be “filling the void” or shortcomings that those traditional avenues create.

In HNMCP's work with the Community Conferencing Center (currently known as Restorative Response Baltimore), our student teams surveyed the restorative processes available in different states for incarcerated individuals to engage with people who had been harmed and take accountability for the impact of their actions. Depending on the legal and social landscape, states employed combinations of the following processes: apology letter program, victim-offender dialogue, victim impact classes or panels, and circles of support or accountability.

In a public project in Fall of 2020, HNMCP studied how the City of Boston could change its approach to public safety, including by incorporating mental health, mediation, and social services centers into the crisis response system; see diagram below. In examining comparative case studies in Denver, Portland, Eugene, New York, and Houston, HNMCP found that the most effective public safety systems attempt to tailor crisis responses to meet the needs of community members. Rather than allow police to become a catch-all for anything requiring public assistance, successful public safety systems look to the needs of community members, and from those needs determine how best to respond and what resources to provide.

DESIGN TIPS

2. TAILOR PROCESS TO LEGAL, SOCIAL, AND HISTORICAL CONTEXT

In Houston, for example, the Harris Center for Mental Health and Intellectual and Developmental Disabilities assists law enforcement officers in responding to crises as part of Houston PD's Crisis Intervention Response Team. They respond to mental health emergency calls as part of Houston PD's Crisis Call Diversion program; Rather than bringing individuals to the police station, Houston and Harris County police officers bring those in need of mental health-related support to the Harris Center, a crisis drop-off center that is better equipped to meet their needs and keep them out of the legal system..

Develop and fund connections between BPD and local mental health/social service organizations.

- Create crisis drop-off centers.
- Establish a mechanism for follow-up on cases by a mental health or social service provider.

Introduce mental health clinicians and social workers into the city's crisis response system.

- Continue evaluating, expanding, and supporting a co-response model.
- Add a mental health question to the 911 dispatch script.
- Create a mental health division within the police department.
- Direct calls to mental health/social work professionals.

Design Tip: To ensure community ownership of the process, consider engaging in an extensive assessment early in the design phase to learn about the community's needs and interests.

DESIGN TIPS

3. GATHER FEEDBACK AND ADAPT PROCESS OVER TIME

Restorative justice processes are inherently interdisciplinary and have no standardized criteria for evaluation. As a general matter, these factors make collecting data or measuring the impact of these processes challenging. HNMCP's short-term engagement with clients also poses specific challenges in assessing the long-term impact of our collaboration with clients. However, in our work conducting stakeholder assessments and engaging RJ experts, the following considerations have emerged for anyone interested in collecting feedback or assessing a restorative process.

Who. In addition to always centering the purpose of the process (i.e. the harm intended to be repaired), restorative justice process designers should be wary of any continued presence of outside stakeholders. These actors should eventually become obsolete, and should avoid hoarding the resources or skills necessary for the long-term facilitation of the restorative process. One way to do this is to ensure that sufficient training and leadership has been given to local stakeholders.

How. Restorative justice processes take time to design, implement, and/or assess. Experts agree that the timeline for any restorative process should be generous enough to accommodate adaptation and change by the communities in which they operate. In his address at the 2019 Harvard Negotiation Law Review (HNLR) Symposium, Dr. Ronan Feehily noted that a restorative justice process takes time to become effective. Drawing on the example of Northern Ireland, he noted that healing historic wounds is part of the healing of more recent traumas.

As restorative practices are integrated into a community or organization, the skills that support the administration and facilitation of restorative processes also support the fostering of a restorative and conflict-resilient culture. The development of these interpersonal skills and awareness can also help prevent and deescalate future conflicts, and empower individuals to manage differences thoughtfully. In their work with Restorative Response Baltimore, HNMCP students identified the following skills as those any participant in a restorative process should hone:

- **Self-Awareness**
- **Self-Management**
- **Social Awareness**
- **Relationship Skills**
- **Responsible Decision-Making**

DESIGN TIPS

3. GATHER FEEDBACK AND ADAPT PROCESS OVER TIME

What. The exact timeline of a restorative process should, of course, vary depending on the scope of the harm the process is intended to address. If the harm is a discrete one – between fewer parties, for example – operationalizing the process, collecting feedback, and implementing any necessary changes may be a more limited engagement. However, if the harm experienced by a community is a broader one – a shift in attitudes or culture, for example – the process intended to repair this harm should reflect the generosity to which Dr. Feehily refers.

Why. A restorative process cannot exist without buy-in. Ensure there is sufficient buy-in for the continued adaptation and operation of this process along a longer time horizon. In one project focused on juvenile justice, HNMCP identified that implementing long-term changes to K-12 school disciplinary culture would require buy-in from myriad stakeholders, spanning school administrators who set policy and allocate funds, through to classroom teachers who would be on the front lines of facilitating restorative processes. Building stakeholder buy-in is a complex task that relies on stakeholders having a fair and realistic assessment of the intended impact of the restorative process. Misrepresenting the kinds of harms a restorative process is suited to repair risk damaging any trust built between parties.

Design Tip: Build feedback loops into your restorative process so that it can adapt over time!

When Evaluating an Restorative Justice Process, Consider

- **Who:** Empower stakeholders as designers and implementors; ensure that outside stakeholders do not hoard power or essential resources
- **How:** Do not a shortchange a process's efficiency for effectiveness
- **What:** Understand the scope of the harm the process is designed to address
- **Why:** Balance building buy-in among stakeholders, with a realistic assessment of what a process can do

MOVING FORWARD

HNMCP's clinical work in restorative justice suggests that across geographies, conflicts, and communities, restorative justice has the potential to provide a wide array of robust and flexible tools for addressing harms. To learn more about these tools, we invite you to consult the appendices outlining a checklist for designing a restorative justice process in your community, and a list of recommended readings on the subject.

We also invite you and your community to learn more about HNMCP's client work through [our website](#), and consider applying to [work with us as a client](#).

APPENDIX: RJ CHECKLIST

If you, your community, or organization are considering integrating restorative justice principles or processes into your work, we encourage you to center the questions below. These are drawn from the central concerns and challenges present in the projects reviewed for this report.

- I. Is a restorative justice process a fit for you or the community you serve?**
- II. Who might you need to consider as you design and implement a restorative process?**
- III. What might you need to consider as you design and implement a restorative process?**

I. Is a restorative justice process a fit for you or the community you serve?

- Has someone been harmed? Do they have an interest in being made whole?
- Have they and other community members expressed that a restorative process could aid in the process of being made whole?
- Have they and other community members expressed that a restorative process could aid in preventing further or future harm(s)?
- Does whoever caused the harm have an interest in taking responsibility?

APPENDIX: RJ CHECKLIST

II. Who might you need to consider as you design and implement a restorative process?

- Who has been hurt?
- What are their needs?
- Whose obligations are these?
- What are the causes?
- Who has a stake in the situation?
- What is the appropriate process to involve stakeholders in an effort to address causes and put things right?

III. What might you need to consider as you design and implement a restorative process?

- How much time can people commit to a process? How much time has passed since the harm has occurred?
- How have you defined the harm experienced? How many people have been aggrieved? How many people are seeking to be “restored”?
- Who is “creating the space”? Who is implementing/facilitating the restorative process? Who is funding the work? Who can participate in the process, and what incentives exist for doing so?

RECOMMENDED READINGS

- Thalia Gonzalez, Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline, 41 J.L. & Educ. 281 (2012).
- Kay Pranis, Little Book of Circle Processes: A New/Old Approach To Peacemaking. (2015).
- Danielle Sered, Until we reckon: Violence, mass incarceration, and the road to repair. New York, NY: The New Press (2019)
- Margaret Thorsborne and Peta Blood, Implementing Restorative Practices in Schools: A Practical Guide to Transforming School Communities (2013).
- Mark S. Umbreit and Marilyn Peterson Armour, Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community, 36 Wash. U. J. L. & Pol'y 65 (2011).
- Marieke van Woerkom, Building Community With Restorative Circles.
- Ted Wachtel and Paul McCold, Restorative Justice in Everyday Life, in Restorative Justice and Civil Society (Heather Strang ed., John Braithwaite ed., 2001).
- Anita Wadhwa, Restorative Justice in Urban Schools: Disrupting the School-to-Prison Pipeline (2016).
- Andrew Woolford & R.S. Ratner, Nomadic Justice? Restorative Justice on the Margins of Law, 30 SOC. JUST. 177 (2003).
- Howard Zehr, The Little Book of Restorative Justice (2002).

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Outside of her work as an educator, Deanna served as the Principal Consultant of CMA Consulting Group, an international strategic negotiation firm based in Melbourne, Australia, as well as a litigation associate with the law firm of Arnold & Porter. She was also a Legal Fellow with the Center for Conflict Resolution (CCR), mediating disputes in the Circuit Court of Cook County.

She holds a B.A. in International & Area Studies and Women, Gender & Sexuality Studies, summa cum laude, from Washington University in St. Louis, and a J.D. from Harvard Law School. She is a certified mediator and member of the District of Columbia Bar.

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