



Restore the Heart

Healing the Communal Trauma of Abortion through a Restorative Justice System

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Abstract

This paper consolidates inquiry and analysis of ethical, scientific, juridical, and historical concerns related to the ultimate abolition of abortion in the United States. Facing the reality that it is an all-too-common act of violence in our nation, we delve into the scientific facts, the statistical data, and cultural acceptance of elective abortion.

Acknowledging that justice requires the protection of the preborn human being within the law (as all humans deserve protection from aggressive violence), our exploration within this paper specifically focuses on the treatment of abortion as a crime. The ultimate goal of this paper is to ascertain how a justice system should treat this destruction of a human being within a larger cultural paradigm that seeks to uphold and protect the human dignity of all members of our human family in all circumstances.

We hope that this paper will inform lawmakers, influencers, judicial leaders, and our society as a whole about the need for a system of Restorative Justice to be enacted in union with all efforts to end this legal practice of medicalized violence.

Introduction

*I have crossed the horizon to find you
I know your name
They have stolen the heart from inside you
But this does not define you
This is not who you are
You know who you are*
— “Know Who You Are” from *Moana*¹

It is a widely accepted maxim that “hurt people hurt people.” Trauma and pain are often passed down from generation to generation: damaging communities, impacting relationships, and breeding violence and oppression.² It is only by the conscious work of healing that we can build a just world, for “healed people heal people.” This universal phenomenon of harm and healing has rarely been explored so well as in the 2016 blockbuster hit Disney film, *Moana*.

In this iconic story, we see clearly how trauma runs in cycles, systematically imparted without intent across time and space to infect the relationships between loved ones, families, friends, communities, and the world at large. Of the main characters, none is left untouched by trauma and pain. Maui, the demi-god and anti-hero of the story, was rejected and abandoned by his parents as a baby. This deep and lasting hurt results in him acting out his trauma by continually, repeatedly seeking affirmation, love, and affection from the human race. He does this through various outstanding acts like pulling up the sky, stealing fire, lassoing the sun, harnessing the breeze, and creating coconut palm trees. In his most infamous act, Maui is tempted by the fame that would come if he gave humans the power to create life. He rips away the Heart of Te Fiti from the goddess as she is sleeping, taking away her power to create life. But in stealing the Heart away, Maui unleashes a dark trauma upon the land: Te Fiti, in her loss and grief, morphs into Te Kā, a gigantic demon of earth and fire. In contrast to the way that Te Fiti was generous, calm, and life-giving, Te Kā is suspicious, overprotective, vengeful, and lethal.

After the Heart of Te Fiti is stolen, natural things slowly begin to lose their life, eventually impacting the vegetation and wildlife all the way on Motonui, where Moana (a 16-year-old indigenous Polynesian girl) and her family live. As the rising future chief of Motonui, Moana is both experiencing her first major foray into leadership and dealing with the overbearing nature of her father, Tui. When her island community is infected with the sickness that is killing all living creatures, Moana suggests going beyond the safe waters of the reef on their island to fish in the open ocean; but Moana’s bold plan is condemned by her father just as quickly as she suggests it. This is because decades earlier, Tui and his closest friend had gone beyond the reef for fun; and though Tui made it back to shore alive, his best friend did not. In the aftermath of such a formative trauma, Tui is fearful, tense, and overprotective. He refuses to let anyone, much less his precious only daughter, traverse the open seas and risk death — even for a good cause.

But Moana represents a shift in the cycle of hurt; she refuses to pass on the heritage of trauma and listens to the vocational call she hears within her to heal their shared home of Motonui. Through the course of the film narrative, Moana becomes the facilitator of healing for all of these characters: she brings love and a sense of family to Maui; she returns the Heart of Te Fiti; she heals the land; and she ultimately does all of this because she goes beyond the reef, healing her father’s fear and investing her life in the work of healing the world around her. By healing trauma, Moana speaks dignity into all those around her, and brings justice and hope to her people.

In the story of Moana, we see how so many traumas are not mere individual experiences to be hidden away under lock and key — but how they impact everything and everyone. Trauma is communal because the central experience of trauma is disconnection and isolation,³ and the goal of healing from trauma is re-integration within the self and of the self into the community. Until together we acknowledge and do our best to make amends for the violence, pain, and hurt that is passed on from one generation to the next, we will never fully see justice.

What is Justice?

Some dictionary definitions of “justice” read simply “just behavior or treatment,”⁴ and include among its synonyms, “fairness,” “equity,” “impartiality,” and “righteousness.”⁵ But while all of these words are closely related, they mean different things and don’t, on an individual level, cut to the heart of what justice is. Colloquially, then, one might define justice as “giving one what is their due.”⁶

Communities and nations around the world and at different periods of history have approached justice in unique ways. Some adhere relatively closely to the Moana model, while others might be nearly unrecognizable. When it comes to a justice system prioritizing restoration to wholeness over blame and punishment, however, the Judaic model of repentance, or תשובה (literally, “return,” pronounced *teshuvah*), is particularly revelatory. It requires: recognition of wrongdoing (*hakarát ha-chét*), remorse (*charatá*), desisting from the sin (*azivat ha-chét*), restitution wherever possible (*peira’ón*), and confession (*vidui*).⁷ In Rabbeinu Yonah or Geron’s *Gates of Repentance*, a standard work of Jewish ethics, repentance is accomplished by: regretting/acknowledging the sin, forsaking the sin, worrying about the future consequences of the sin, acting and speaking with humility, acting in a way opposite to that of the sin, understanding the magnitude of the sin, refraining from lesser sins for the purpose of safeguarding oneself against committing greater sins; confessing the sin, praying for atonement, correcting the sin however possible, pursuing works of *chesed* and truth, remembering the sin for the rest of one’s life, refraining from committing the same sin if the opportunity presents itself again, and teaching others not to sin.⁸ In this system, it is not enough to merely apologize; justice prioritizes not only contrition but concrete, holistic restoration and a demonstrable change in future behaviors.

In order to achieve justice, any community must have a bedrock moral and ethical foundation that is transferable to nearly any ethical situation. A recognition of the unique nature of human beings and the inherent, intrinsic value of every human life is, however, central to healing and restoration among persons. In order to acknowledge and communicate this, then, a human-centered model affirms that we should, “respect the inherent dignity of each and every human being as the central value of all moral action.” When we look at justice as serving the person, then we understand that mercy must go hand in hand with justice; when violence is off the table because we understand that each and every human being has inherent, intrinsic, immutable dignity, then mercy is indispensable.

While the goals of justice systems around the world may vary, if one acknowledges that a justice system has the responsibility to protect our natural human rights and to act in fairness, impartiality, and righteousness, in a society and a model that values human beings for their intrinsic worth, then justice and mercy are so inextricably linked that to tear them apart would be to act contrary to human dignity, and in so doing would be contrary to authentic justice.

Ethical Foundations

In the effort to build a more just world, we must have a moral foundation that encourages justice and peace. Our efforts for human rights and peace must be built upon a solid foundation that sees the selfhood of the human person to inform, guide, and support all of our work to build a more just world. Authentic justice necessitates that everyone get what is their due, but how do we know what each one of us deserves? To answer this question, we must first rule out those philosophies that undermine authentic justice and human dignity.

Philosophies of Injustice

Some people may try to submit that, morally speaking, all things are relative or subjective. An example of Relativism might say that what may have been morally acceptable for a person 2500 years ago in an agricultural society might not be morally acceptable today; the thesis of such relativism being that there is no objective moral truth, therefore that nothing is impermissible in all times and all places, and accordingly, that what is socially approved by a

1. Miranda, Lin-Manuel, comp. *Moana*. Dirs. Ron Clements, John Musker. Perfs. Auli'i Cravalho, Dwayne Johnson, Rachel House, Temuera Morrison, Jermaine Clement. Walt Disney Studios Motion Pictures, 2016.
2. One useful resource on this subject is Jonice Webb's *Running On Empty: Overcome Your Childhood Emotional Neglect*, published in 2012. This book can help those who suffered emotional neglect to heal and refrain from passing on further emotional trauma to their loved ones. Another powerful resource on healing trauma is Bessel Van der Kolk's *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*.
3. Several resources on this topic exist in the field of psychology and trauma-informed practice. Two books that speak to this subject aptly are Judith Herman's *Trauma and Recovery* and Bessel Van der Kolk's *The Body Keeps the Score*.
4. Justice, [Lexico.com](https://www.lexico.com), Oxford University Press (2019).
5. Justice. 2011. In [Merriam-Webster.com](https://www.merriam-webster.com). Retrieved January 16, 2020, from <https://www.merriam-webster.com/thesaurus/justice>.
6. Authors' note: While the specific realm of justice which this paper addresses is less in the vein of social justice and distribution of goods than it is “criminal” justice in response to a wrong committed. The two, however, are connected inasmuch as they both relate back to the definition, “to give one what is their due.”
7. For example, see David J. Blumenthal, “Repentance and Forgiveness,” 48 *Cross Currents* 75 (1998); see also Maimonides' *Rules of Repentance in the Mishneh Torah*.
8. See Yonah Ben Avraham of Gerona, Shaarei Teshuva: *The Gates of Repentance* (Shraga Silverstein, trans. 1971).

culture defines what is morally acceptable. This ethic can be attractive to those especially who want to have a large degree of cultural sensitivity, especially in view of the histories of violent hegemony worldwide. However, not only is the perspective of Relativism one that is internally inherently inconsistent,⁹ but this moral philosophy would also imply that Nazism (being the prevailing socially approved moral structure in the Third Reich in 1932 - 1945) and all of its associated atrocities in the Holocaust was morally right and good during its reign in Germany and other European nations. Under Relativism, not only would discriminatory practices of racism and ableism be potentially morally acceptable, but grave violence like child sacrifice, rape, and infanticide could be justified. It is clear that moral relativism is not the human-centered ethic we need as our foundation.

A seemingly more just moral philosophy is one that can be universal and normative, like Utilitarianism or Consequentialism. To aim at the ends (telos) of an action permits that we may take whatever action will maximize good consequences, even if that action is violence. The Utilitarian philosophy dictates that whatever action produces the greatest balance of pleasure over pain is the course that should be adopted: pleasure is the “good” in question. Under this hedonistic view, pleasure is the only intrinsic good in the universe; there is no higher good at play, and the question then arises: whose pleasure should we maximize: ourself? our “group”? perhaps all humans? or what about all sentient beings? or even, all living things? Whatever the circle of inclusion for moral consideration, a problem still remains that is similar in complexity to Relativism's own conundrum: moral questions based on individual or group perceptions of “pleasure” and “happiness” can permit

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the sadistic and cruel situations exemplified in lynch mobs, stonings, and the sacrifice of Omelas.¹⁰ When we examine the evils and harms that could be allowed under such Utilitarian thinking, it's clear that the violent consequences of Consequentialism rule out this ethical theory as it is not one that is authentically human-centered.

A Philosophy of Human Dignity

Contrary to all of these philosophies that can see and use human beings as mere means to an end, the Personalist philosophy came to be because of the profound and perhaps sometimes unspeakable knowledge that every human being has inherent dignity. In 1785, Immanuel Kant shared this belief in his landmark secular proto-Personalist philosophical treatise called the *Groundwork of the Metaphysics of Morals*.¹¹ His moral framework was built upon the central idea that:

“... the human being and in general every rational being exists as an end in itself,¹² not merely as a means to be used by this or that will at its discretion; instead he must in all his actions, whether directed to himself or also to other rational beings, always be regarded at the same time as an end.”¹³

When we delve into this basic ethical paradigm, we grasp several things: that humans ought to always be treated as ends in themselves, that treating a human being as a mere means to an end is contrary to their inherent dignity as a being with a rational nature, and that this is a universal ethic that cannot be trumped, even for good outcomes.

We can see the consequences of violating this human-centered principle in order to achieve good outcomes when we examine narratives of Consequentialism, scapegoating, and violence. I can think of no example in which it is easier to see the problems within scapegoating and Consequentialism than this story included by John Crosby in his book *The Selfhood of the Human Person*:

“In a racially mixed community a crime has been committed by a member of one race against a member of the other, and the criminal has escaped, nothing more being known of him than his race. Racial violence is imminent, and nothing can avert this except finding the criminal and bringing him to justice; only this, it is assumed, will allay the outrage of the offended race and prevent it from turning into an angry mob looking for revenge on all the members of the other race. But since the criminal is nowhere to be found, it occurs to the authorities, who are not willing to sit by and watch many lives be lost in the race riots that are about to be unleashed, to look for a scapegoat. They decide to accuse, condemn, and punish someone (of the same race as the criminal) whom they know to be innocent. They resolve on this course of action with much regret, but they cannot think of any other way to defuse the potentially explosive social situation.

“No one can fail to see that the scapegoat is violated *as person*. Although we may sense nothing wrong with sacrificing him as long as we think of him as a thing rather than as *per-*

son, and speak of him as *something* rather than as *someone*, we are struck forcibly by the wrongness of sacrificing him as soon as we realize that he is a person, a *who* rather than a *what*. And it is not just any violation of him as person but a grievous violation, so grievous, in fact, that the action of framing him seems morally unacceptable even if innumerable lives will be saved by it.”¹⁴

It is plainly obvious that committing an act of violence against the innocent scapegoat in order to appease the crowd is a violation of that individual's selfhood and inherent dignity. We can see the immutable dignity of the selfhood of all human beings perhaps most clearly when this dignity is violated. There is a profound sense of injustice and discord with our moral intuition when we do evil that good may come of it.

Instead, the proper moral response to a being with a rational nature is in the relationship of “I and You,” explored in Personalist philosopher Martin Buber's seminal work of 1923, *I and Thou*. It is in this relationship of seeing the “infinite abyss of existence”¹⁵ within each human being with whom we interact that we treat the other not as a mere object, but as a subject with their own desires, dreams, hopes, and fears. It is in this relationship of acknowledgment that the Other is profoundly both like us in dignity and in nature and in the shared experience of subjectivity, and is yet also deeply different from us in who they are. It is hard to pinpoint the nature of the self, of the unique and incommunicable “I” that exists within each one of us; the *je ne sais quoi* about us is again, best demonstrated in narrative and in lack.

For example, countless students and young adults have been posed with this question: “Would you be alright if we stole away your significant other? If we abducted them and replaced them with someone with the same hair color and eye color, same tone of voice, same height, same gait, similar IQ, and similar interests, how would you feel?” Almost unanimously, they respond, “No, that wouldn't be okay! I'd be mad/sad/upset.” When inquired as to why they would be dissatisfied and upset with this outcome, they respond with something like, “Well, it just wouldn't be [my significant other]!” They understand, in a way that can't quite be put into words, that there is something beyond physical and intellectual characteristics that comprises a human being.

Buber again clarifies this somewhat clumsy illustrative thought experiment in his own work:

“When I confront a human being as my You and speak the basic word I-You to him, then he is no thing among things nor does he consist of things... Even as a melody is not composed of tones, nor a verse of words, nor a statue of lines—one must pull and tear to turn a unity into a multiplicity—so it is with the human being to whom I say You. I can abstract from him the color of his hair or the color of his speech or the color of his graciousness; I have to do this again and again; but immediately he is no longer You... The human being to whom I say You I do not *experience*. But I stand *in relation* to him...”¹⁶

What Buber is talking about here is the untouchable selfhood of

each and every human being; it is that which Kant seeks to protect with his moral imperative that each rational being be respected as an end in himself. This selfhood is what makes it such that one human being cannot be swapped out with another of “like make and model” or similar characteristics. Because ultimately, the characteristics or circumstances we live under do not encompass all that we are as human beings.

Morally, discarding a human being is nothing like throwing out an old paper cup, a broken toy, or some moldy vegetables. For when we kill a human being, we don’t kill a class of humans, nor do we destroy a replaceable object: when a human being dies, a unique individual self is forever and irrevocably ended. In committing an act of lethal violence, we bring an end to a singular human being who is worthy of a name, and who has a future and a past. If we think about our killing, in any circumstances, as the ending of an individual life, we stop treating the action as a statistic. There is a quote commonly mis-attributed to Josef Stalin: “A single death is a tragedy; a million deaths is a statistic.”¹⁷ Individual deaths are held up as teachable moments, we mourn their individual loss and the extinguishing of their unique traits and their incommunicable life. We may know the names of Laci Peterson, Jon-Benet Ramsey, and Caylee Anthony; but when thousands die, we lose their faces in the headlines, and we forget the intimacy necessary to rehumanize the other.

In the question of justice in human relationships, we have a responsibility to keep the inherent dignity of each human at the center of our efforts. Likewise, we must also remember that a central facet of who we are as human beings is our self-communicative nature: we desire to share ourselves with others and to exist in community,¹⁸ to encounter.¹⁹ When harm is done and the structures of justice come into play, **a Personalist, human-centered system would both uphold and defend the inherent dignity of all involved, and make the utmost effort to restore the bonds of community wherever possible.** This requires a rejection of models that seek vengeance (contrary to our human dignity) and disintegration of community (contrary to our human nature), and instead to adopt a justice system that allows for authentic communication across divides, reintegrates community, and restores the heart of each and every human being connected to the central trauma.

9. i.e. If there is nothing that is true in ethics in all times and all places, then the thesis of relativism would also be rendered untrue, nullifying the statement itself.

10. This is a reference to Ursula K. LeGuin’s short story “The Ones Who Walk Away from Omelas,” which I highly recommend as a quick study of the implications of Consequentialist philosophy on the weak and marginalized. And no, it is not lost on the authors that LeGuin, whose story is an incisive critique of sacrificing innocents for the “greater good,” was a vehement advocate for legal abortion.

11. Kant was a proto-Personalist, and though many Personalists of today find some of his ethical conclusions to be somewhat lacking, the foundation that he laid in a human-centered ethical philosophy is solid and many of us are deeply indebted to his work on the subject.

12. There is some disagreement on what this particular phrase “rational being” means. We and many modern Personalist philosophers find that the most equitable and non-discriminatory meaning of the term is: a being with a rational nature. It implies that a being need not be currently using their rational nature (say, if they are asleep, disabled, very young, or otherwise unconscious), but only that they have the essence within their being of a creature that is rational. From this meaning, we can extract that humans (as individual beings who are of a rational nature) are creatures who share this unchangeable rational nature and therefore the right to never be treated as a mere means to an end from the very moment we begin to exist.

13. Kant, Immanuel. Translated by Mary Gregor. *The Groundwork of the Metaphysics of Morals*. Cambridge University Press: Cambridge, UK., 1997. §4:428, p. 37.

14. Crosby, John F. *The Selfhood of the Human Person*. The Catholic University of America Press: Washington D.C., 1996. p. 10.

15. Newman, John Henry Cardinal. “Sermon VI: The Individuality of the Soul.” from *The Works of John Henry Cardinal Newman*. Accessible via the Newman Reader online: <http://www.newmanreader.org/works/parochial/volume4/sermon6.html>

16. Buber, Martin, edited by Walter Kaufmann. *I and Thou*. Touchstone, New York, NY. Original work published 1923. Translation copyright 1970. p. 59-60, (emphasis mine).

17. Quote Investigator. “A Single Death is a Tragedy; a Million Deaths is a Statistic.” Accessed on January 7, 2020 at <https://quoteinvestigator.com/2010/05/21/death-statistic/>

18. Clarke, W. Norris, S.J. *Person and Being*. Marquette University Press, Milwaukee, WI. Original work published 1993. P. 22-24

19. Buber, p. 62, 78

“When harm is done and the structures of justice come into play, a Personalist, human-centered system would both uphold and defend the inherent dignity of all involved, and make the utmost effort to restore the bonds of community wherever possible.”



Models of Justice

In order for us to build justice in our world today, we will have to evaluate the options of method of justice before us and make the conscious decision to shift the paradigm to one that is radically different and human-centered from what we have now.

A Brief Overview of Various Justice Models

When a person has been wronged, they may turn to one of several approaches to justice. We will briefly review several options to clarify our direction within this paper more fully.

- **Distributive Justice:** focuses on how a society allocates benefits and burdens. These can include financial or economic benefits and burdens, but often are more holistically based on “welfare.” In economics, the version of distributive justice most people are familiar with is “strict egalitarianism.”²⁰ This is the idea that because people are morally equal, they are entitled to an equal amount of goods and services.²¹ While critics grumble at the impossibility of allocating economic benefits and burdens “equally” in an ever-changing world, the equal and inestimable value of each human person is a principle of this theory that finds much harmony with traditional pro-life thinking.
- **Procedural Justice:** focuses on the processes and procedures applied by a society to ensure just outcomes. It has two main components: 1) the quality of the decision-making process and 2) the quality of the treatment. Factors determining whether the decision-making process is just include the professionalism, competence, and bias of the decision maker (police, judge, or other government entity) and whether the person gets notice of the incident and the opportunity to respond.²² Factors determining whether the treatment is just focus on whether the person is treated with dignity and respect throughout the adjudication process.²³
- **Retributive Justice:** prioritizes punishment of the offender over any kind of rehabilitation. In this model, crimes are treated as being against the state, thereby making the state the arbiter of punishment instead of creating the opportunity for person-to-person compensation. This model diminishes and discounts every human being’s intrinsic worth and value, and reduces us to our relationship to the state as objects of utility. Additionally, retributive models seek a sort of retribution or punishment against the offender, within the construct of “an eye for an eye” or *lex talionis* to balance the harms done by the offender with the harms the state may perpetuate against the offender after conviction. Within this model of justice, the question of what the offender deserves is based almost entirely on punishment and creating more suffering to equalize the total suffering within a community.²⁴
- **Restorative Justice (AKA Transformative Justice):** focuses on the rehabilitation of the offender and how it helps both the offender and the offended. The goal with such a system

is to repair harms, make amends, and seek the good of all parties. Within a restorative model, the first step and part of the foundational basis of all that follows is an understanding and acknowledgement of harms done that have created a break or a rift between the offender and the offended, as well as between the offender and the community. Under the Restorative Justice model, crime is viewed as an injustice against individuals, rather than against the state, and the focus is on the reintegration of the offender with the community, making the community as whole as is possible, and respecting the dignity of all. This approach allows for holistic rebuilding and transforms communities.²⁵

Retributive Justice: Overview and Conflicts with a Pro-Life Ethic

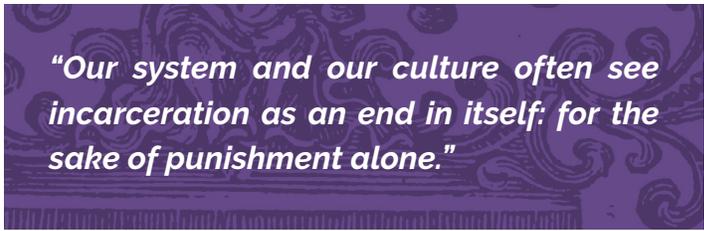
When facing trauma and harm inflicted upon another human being, we should keep in mind one of the lessons of *Moana*: that trauma is almost always inflicted by wounded people. To recognize that trauma is often passed down from generation to generation is to require that we address the *whole* of the human person in whatever system of justice we adopt.

In electing a praxis for human-centered justice, we must first evaluate how well our existing system of justice meets the goals of a human-centered ethic. Our existing system of criminal justice in the United States is often vengeful, punitive, and carceral because the foundational principle is a balance of harms. This retributive model of justice has been widely accepted in our nation, but in practice, we must question whether this system aligns with our philosophy that every human being has inherent dignity and immutable value.

Ethical Incongruence

As stated in the prior section, there are a few central goals to keep in mind while we are building a pro-life model of justice: we need to both uphold and defend the inherent dignity of all involved, and make the utmost effort to restore the bonds of community wherever possible. How does or does not the retributive model we practice in the United States today meet these goals and our underlying ethic that values each and every human being as irreplaceable and invaluable?

Our nation has one of the most harsh and inhumane justice systems in the world. According to the U.S. Bureau of Justice Statistics, an estimated 6,613,500 persons were in U.S. adult correctional systems as of December 31, 2016.²⁶ Over 2 million of those people were incarcerated, representing about 4% of the U.S. population — the highest known rate of incarceration in the world.²⁷ Our system and our culture often see incarceration as an end in itself: for the sake of punishment alone. But as we have heard from those “on the inside” and experts alike, prisons act like “Crime University,” and according to the Pew Center, recidivism rates are regrettably around 43%.²⁸ The system isn’t one that seems to be either aimed at or especially successful at rehabilitation and restoration.



“Our system and our culture often see incarceration as an end in itself: for the sake of punishment alone.”

The retributive model of justice that we have been raised with is based on a statist, impersonal model that views all crimes as essentially “breaking the King’s peace,” instead of as harms against another individual.²⁹ Our crimes are not treated as against other human beings, but against the state, against the amorphous government. It’s the state acting as though they own us, instead of respecting our individual, personal value. This model is inherently anti-personal, because instead of seeking to repair relationships between the offender and the offended, instead of acknowledging that one party has harmed another, the state comes in and acts as if all the harm committed was done solely against itself. The wants or needs of the offended party do not play a central role.

When recidivism rates are so high, family reunification so low, and the retributive model itself being unconcerned with any restitution towards the violated parties, it seems clear that our system doesn’t meet the criteria of promoting community restoration and the dignity of the offended. But perhaps the most pertinent question may be that of the dignity of the offender: how does our vengeful justice system treat the immutable dignity of the human being who has violated another human and the law?

The Prison Industrial Complex, Racism, and Poverty

We would be remiss if we did not include a critical mention of the existing prison industrial complex (shared between public and for-profit prisons) and its dehumanizing treatment of incarcerated people within the system. Not only is the criminal justice system racist in much of its implementation, but the roots of our modern system are tied to the historical practice of chattel slavery in the history of our nation. Our retributive model, instead of seeking to restore community and respect dignity, has carried on the legacy of slavery under the banner of the 13th Amendment by removing men primarily of racial minorities and the poor from community and inserting them into forced prison labor at mere pennies an hour.³⁰

Race, poverty, and the prison industrial complex are intimately intertwined, especially as it concerns policing, arrest, conviction, and sentencing. As reported by The Sentencing Project in 2018, major racial and income disparities persist in the percentage of those arrested, convicted, and sentenced, despite the modern perception that we might have of our society having overcome racism and classism. For example, “African-American adults are 5.9 times as likely to be incarcerated than whites, and Hispanics are 3.1 times as likely.”³¹ And though the disproportionately high arrest rate of African-Americans might lead some to point to some sort of eugenic reasoning like an “inherent proclivity

towards crime,” what ample research has made clear is that the higher arrest rates of racial minorities is largely due to the higher rates of urban poverty in those communities.³² Additionally, the research of The Sentencing Project has shown that “the wealthy can access a vigorous adversary system replete with constitutional protections for defendants.” However, “the experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of factors...”³³ All of these issues with our U.S. justice system point to the fact that the retributive model of justice is not only inequitable in practice, but that it was also built primarily for the well-being of well-to-do citizen landowners. Not only that, but the criminal justice system was founded during the reign of genocidal colonialism and erasure of indigenous people and the hegemony of chattel slavery by the total subjugation of Black people. The United States justice system was not built to include the poorest of the poor who had been systematically stolen, treated as property, massacred, or colonized — whose descendants still remain disenfranchised to this day.³⁴

Another dehumanizing aspect of the U.S. system lies in mandatory minimum sentences. These mandatory minimum sentences are regulated and set by Congress and state legislatures, not judges, and they require automatic minimum prison terms after convictions for certain crimes. According to the organization Families Against Mandatory Minimums, “Most mandatory minimum sentences apply to drug offenses, but Congress has also enacted them for other crimes, including certain gun, pornography, and economic offenses. As an example of a mandatory minimum sentence, under federal law, selling 28 grams of crack cocaine triggers a minimum sentence of five years in prison,” despite extenuating circumstances that may have led to the crime. And “if [a person is] caught selling 280 grams of crack, [they]’ll face a minimum of 10 years behind bars even if the judge does not think [they] need such a long sentence”³⁵ nor think that incarceration will solve the problem. By enacting mandatory minimum sentences, our vengeful justice system doesn’t see the dignity and uniqueness of an individual human being, but will slam down harsher sentences than may be necessary to restore community and achieve restitution.

All of this is to hardly scratch the surface of the dehumanizing treatment of prisoners while incarcerated. Statistics are hard to come by on such torturous practices, but the experiences and testimony of inmates and their contacts on the outside point to practices that we shouldn’t be imposing upon non-human members of the animal kingdom, much less fellow human beings. Regular beatings by guards, abuse from fellow inmates, sensory deprivation and dis-integration of community through solitary confinement and refusal of mail from family, all piled on top of subhuman living conditions contribute to the feeling of prisons as more akin to overcrowded torture dens than places where authentic restoration, reform, and re-integration of the human person can take place.³⁶ Some may insist that these dehumanizing conditions are ample and fitting punishment for criminals; but as those who defend the inherent dignity of every human being from conception to death, we will confidently push back against such dehumaniz-

ing treatment. We declare that our current model of dehumanizing, vengeful, retributive justice does not fit within a vision of human-centered, dignity-affirming justice for all involved.

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33. *Ibid.*
34. The U.S. Justice system was built during a time “between the 17th and early 19th centuries) when Native Americans were being systematically wiped from the map by colonization and genocide and Black people were systematically enslaved and deprived of rights. Both marginalized groups functionally had few, if any, rights before the law, and our legal system was regrettably built this way: with white people as citizens, and the rest as “sub-human” and seen as undeserving of recognition as humans within the law. Some resources on the subject that we have found particularly enlightening include Ava DuVernay’s 2016 documentary *13th*, Shaun King’s pieces “Stop Saying The System Is Broken, It’s This Way On Purpose” and “How the 13th Amendment didn’t really abolish slavery, but let it live on in U.S. prisons,” and the book *Inside America’s Concentration Camps: Two Centuries of Internment and Torture* by James L. Dickerson.

Restorative Justice: An Overview

When we seek to find a model of justice that is focused on the life and dignity of every person, what are we looking for? To give one what is their due in a just, human-centered system would be *not* to seek revenge, but to both respect the needs and dignity of the offender and the offended — to repair harms, make amends, and seek the good of all parties. So what should the goals of a justice system be, according to this model? We believe the following encapsulate the human-centered needs within such a system:

1. Recognize and acknowledge legitimate grievance.
2. Make amends for or reconstruct loss or damage wherever possible.
3. Reduce recidivism.
4. Be reasonably uniform.
5. Establish trust in the legal system and in the community.
6. Protect the lives and safety of the community.

An authentically pro-life system of justice ought to be based in the inherent dignity of the human person — the dignity of both the offender and the offended. We should build a model that makes amends and seeks to generate positive outcomes rather than preferring to ensure a balance of harms.

How a Restorative Justice Model Meets the Goals of a Pro-life Ethic

The Restorative Justice model that we desire to build should be one that meets all of the goals stated above, beginning with the foundational understanding of the dignity of all parties. When we bring the inherent human dignity to the center of our moral action, it becomes clear that Consequentialist scapegoating and retributive punishment are not viable options within a human-centered ethic.

RECOGNIZING AND ACKNOWLEDGING LEGITIMATE GRIEVANCE

The first step in a trauma-informed, life-affirming model of justice will be to recognize and acknowledge a legitimate grievance: a real harm has been done, a real trauma inflicted. To avoid all possibility of gaslighting and non-apologies,³⁷ such an acknowledgement should come in the following steps: first, an apology for the wrongdoing, second, admitting why the harm was wrong and hurtful, third an amendment of change to behavior, fourthly making restitution, and lastly asking for forgiveness. These steps are meant to be outlines of the work to be done in recognizing the legitimate grievance, but should not restrain the system from similar human-centered actions. Ultimately, the offender and the offended should be able to come to an understanding of what harm was done, what that initial harm might have precipitated down the line, and then propel

both parties towards restitution and amendment of change. This acknowledgement of a legitimate grievance is central to any of the following steps: non-apologies like “I’m sorry if you didn’t like what I did” are unacceptable.

In the case of homicide, the killer must acknowledge the humanity of the deceased — the murderer must comprehend that their act of violence deprived an intrinsically valuable, unrepeatably human of their entire future. In the case of abortion, in particular, there must be real recognition of the inherent dignity of the preborn human whose life was taken; there must be authentic acknowledgement that abortion has killed an unrepeatably human child. Within our current retributive model, this acknowledgement of harm done is ancillary and not required to bring “justice” to all parties; however, a new, restorative model can and should meet this goal of focusing the healing on the recognition of harm done and the subsequent work necessary to make restitution and bring healing after the rift of violence has been done.

MAKING AMENDS FOR OR RECONSTRUCTING LOSSES OR DAMAGES WHEREVER POSSIBLE

In order to promote healing of community, after acknowledging the harm done, the offender’s amendment of resolution to never do that harm again is central to their growth and the healing of all parties. However, saying “I will never do that again” is *not* the whole picture of making amends. To make amends is to make “compensation for a loss or injury”;³⁸ we understand that *nothing* can fully or truly compensate for the death of a human being. Not even the death of the offender can balance the scales. All such vengeful killing does is add more harm and more pain and more violence to the scales — it does not bring true healing or justice.

So, how would a justice model in accordance with pro-life values make amends for the loss of a human’s life? This would likely be a process refined with the input of all parties: restitution isn’t necessarily a one-act service and done. More important than any other concern, the act of restitution should seek to heal the harm that was done and repair the rift in community. For those who have suffered the loss of a loved one, healing often means decades of grief and a lot of therapy. And there is no purely economic number to account for how much “worth” a human being has,³⁹ because our moral value is inestimable and we as individuals are totally irreplaceable, so compensatory payment of that human’s life seems out of place and lacking. One potential suggestion for restitution and making amends in the case of homicide might include responsibility for funerary and therapy costs for the family and friends.

However, because abortion is typically an ordeal in which the parents of the preborn child procure violence against an as-yet voiceless embryo or fetus, this intra-familial context does provide some degree of complexity. Other ways to make amends to change in the future with the goal of the offender never participating in such a crime again might involve prescribed educational courses on human dignity, human development, and

a therapist-led series on building empathy. Though the process of restitution and amendment are difficult where bodily harm has been done (because the body can never be fully un-traumatized, it will always carry the trauma within),⁴⁰ we should look to examples historically and even contemporaneously for how various cultures have navigated Restorative Justice after sexual violence, assault, abuse, and other forms of violence.⁴¹

REDUCING RECIDIVISM

Yet another goal of a human-centered model should be to reduce the rate at which offenders recidivate into the criminal justice system. According to a Bureau of Justice Statistics study, “inmates released from state prisons have a five-year recidivism rate of 76.6%,” while “the USSC study calculated comparable federal prisoners released have a 44.7% re-arrest rate after five years.”⁴² Recidivism indicates that those who are entering the criminal justice system will often re-enter after their initial release; statistics like these prove that our justice model is not doing well at meeting the goal of reducing recidivism. Incarceration is hardly the deterrent that it’s touted as, and instead our carceral system is proving to be more of a training in criminal behaviors and acquaintance with organized crime for those behind bars, especially when we notice that those who were placed on probation (instead of being imprisoned) have a much lower rate of recidivism.⁴³ Connection to one’s community, to resources, to healing resources, and to mentorship and accountability all seem to be contributing factors to reducing recidivism and restoring community wholeness after a crime: all of these aspects are part and parcel of the restorative model of justice that we want to build. And as we will examine in the next section of this paper, various models of Restorative Justice have proven to reduce recidivism greatly.

REASONABLE UNIFORMITY

Though a human-centered model of justice should have generous room for discernment on the part of the judge in light of seeing the context, the whole self of offender and offended and all involved, and the lives and mitigating factors that might be in play, a reasonable amount of uniformity should be able to be expected so as to ensure that those who commit similar crimes might be given similar treatment. This is necessary especially in the face of the prejudices that exist within our retributive model and the racism and classism that lies in the roots of our justice system; a new, restorative system should seek to treat all, regardless of income or race or religion or any other confounding factor with the same dignity and respect.

ESTABLISHING TRUST IN THE LEGAL SYSTEM AND THE COMMUNITY

In order to establish trust in the legal system, a restorative model should seek to be human-centered, reasonably uniform, and dedicated to restoring relationships within the given community. Judges should be invested in the community, servants foremostly of the dignity of everyone in their community, and

stewards of the law. To paraphrase Jesus of Nazareth: the law exists for man, not man for the law. The legal system should be one that sees the selfhood of all involved, rejects violence as a solution, and does the hard work of accompanying victims, offenders, and community members through the arduous process of creating a positive peace.⁴⁴

PROTECTING THE LIVES AND SAFETY OF THE COMMUNITY

Lastly, an important goal of any system of criminal justice should be to protect the lives and safety of those within the community. Though we desire that no one would participate in any form of violent crime, it would make sense to have some limited degree of incarceration in the case of those who present a higher threat of violence to the members of the community, such as unrepentant or repeat offenders.

A humane incarceration might be suitable until they would be deemed safe for release, and mandatory minimums should not be the logic adopted herein. Incarceration in our modern system is so dehumanizing that the first step in humane incarceration for the purpose of community safety should be to adopt this new human-centered paradigm and apply it to incarceration. Doing so would not be without difficulties, but it would be worth doing because it could upend the brutal and grotesque prison industrial complex. Without mandatory minimum sentences, and with the goal of incarceration being safety and not punishment, the court will have more of an interest in authentic healing, education, and rehabilitation to community as much as is possible. The court will likely also have to keep closer tabs on any offenders under its jurisdiction to see if restoration and rehabilitation have taken place: there is no “lock ‘em up and throw away the key” aphorism in a human-centered model, wherein we acknowledge that everyone has the power to change and grow and reform.

It must be also considered that in most cases of crime, incarceration is not necessary for community safety and serves only to be punitive in nature and tears an even greater rift between the offender and the community. More humane probation options that keep the offender in contact with the community are more in line with a pro-life ethic. In any case, incarceration should be seen as a last resort used only for the protection of the community; prison should never be used as a retributive punishment used to “balance harms.”

Examples of Restorative Models

Restorative models of justice have been seen in history in remnants and glimpses through a variety of forms. In 2050 BC the Code of Ur-Nammu was written, and is the oldest surviving law code still in existence. In some ways, it was as retributive as ever, but in a few exceptional cases, the Code of Ur-Nammu was revolutionary in that it promoted compensatory payment after certain cases of bodily harm instead of capital punishment.⁴⁵ Models of justice based on person-to-person restitution and compensation were generally quite common until the

prevailing law in the West in the 11th century came to view citizens as primarily subjects of the King's rule instead of worthy in and of themselves.⁴⁶

There are historical representations of this model that are used even today. For example, the Catholic Church's model of Excommunication is based on the idea of identifying how an individual has already separated themselves from the Body of Christ — the Church community — through intentional, deliberate, and public sin (often additionally causing scandal). The goal is not to be punitive and vengeful, but to point out the disunity and work for reunification and reintegration of the member. This is often achieved by firstly acknowledging harms through a confession of sin, secondly by penance in an effort to make amends for the wrongs committed, and lastly, through the grace of the Sacrament, to endeavor to sin no more (thereby working to reduce recidivism).⁴⁷ The process is reasonably uniform, and done properly, works to engender confidence in the system and the Church community.

"Peaceful parenting" models likewise seek to implement a restorative model of justice rather than authoritative retribution. This parenting model focuses on building authentic relationship based on a deeper, holistic encounter with and understanding of the child and his or her perspective, recognizing that parents are otherwise apt to be caught up in juggling many different priorities, leaving them prone to overreaction. So, instead of a child getting a spanking or being immediately sent to time out, peaceful parenting seeks to help the child understand and acknowledge the harm and make reparations.⁴⁸

An institutional version of the "peaceful parenting" position can be seen in various schools around the nation. The conscious discipline model, used both in group and home settings, emphasizes self-awareness, self-regulation, conflict understanding, maintaining composure, and conscious response. The goals of such a restorative model for youth include increasing connection and relationship, and building upon teachable moments to develop communication skills, self-management, and healthy behaviors.⁴⁹ Likewise in one school in San Francisco, instead of being kicked out or sent straight to detention, students are asked to listen to each other, write or speak apologies, and work out solutions to the offense and the potential systemic issue.⁵⁰ Similarly, a school in Baltimore is teaching students to practice mindfulness and meditation to cope with trauma, stress, and anger.⁵¹ All of these options representing a shift from fear to love and present more restorative options that seek to rebuild community rather than imposing further harms upon the wrongdoer.

A current example of a partially Restorative Justice model within our modern US justice system is the Drug Courts model that has been instituted in various jurisdictions around the nation, including in Rehumanize International's home of Pittsburgh, PA. In this model offenders of nonviolent drug crimes acknowledge the wrong they committed, acknowledge their addiction, seek to repair and heal the addiction and harms done through community involvement and service, and work to reduce recidivism by healing addiction and building supportive

communities to maintain accountability. The process is both reasonably uniform and profoundly personal. According to the National Association of Drug Court Professionals, 75% of graduates of the Drug Court model remain arrest-free two years after graduation, and family reunification rates are 50% higher for Drug Court participants than the normal for drug offenders.⁵² According to the National Institute of Justice, the drug court model is reducing recidivism anywhere from 17 to 26 percent, and saving our system a ton of money — upwards of \$6700 per participant — because treatment of addiction is cheaper than repeat prison stays.⁵³ This drug court model much more effectively achieves the goals of justice than the normal retributive model used for drug offenders, achieving input from all parties, restoration to family and community, and a massive reduction in recidivism.

How Restorative Justice Substantially Differs from a Retributive Model

When we look at justice as serving and respecting the inherent dignity of each and every member of our human family, then we understand that justice and mercy must go hand in hand. Violence, torturous conditions, and incarceration as revenge are off the table because we understand that each and every human being has inherent, intrinsic, immutable dignity. A Restorative Justice model does not bear mere differences in degree of punishment when compared with a Retributive Justice model, but rather the difference is qualitative in nature. The underlying motive of a retributive model is a balance of harms, whereas within a human-centered model, the foundational principle of human dignity necessitates a paradigmatic shift away from punishment and towards authentic, dignity-respecting restoration.

RESPECTING THE INHERENT DIGNITY OF ALL INVOLVED

Unlike in the retributive model of justice, a restorative model of justice seeks to acknowledge the harm done while simultaneously, constantly, and consistently respecting the dignity of both the offender and the offended. Practically, this foundational principle of human dignity results in a completely different system.

Dehumanizing living conditions, torturous sensory deprivation and isolation, refusal or prohibitive costs for outside human contact (via mail, phone, in-person visits), the violence of the death penalty, and lack of holistic, humane healthcare should all be considered as unacceptable outright under a human-centered model. To build a restorative model tailored to the needs of a given community, lawmakers and policy leaders should look to the examples utilised in other nations and in indigenous communities that make use of some or all of these principles in their justice processes.

Beyond the narrow limits of incarceration, there is a wide potential for what sorts of methods can be used to restore community while simultaneously respecting the dignity of all involved in a crime — even a violent crime. Unlike a model based on

retribution, restorative systems of justice are inherently more personal. For example, when acknowledging the harm at play, a restorative model can and should involve all who have been touched by the harm: from the offender to the victim and their family, to the community whose systemic prejudices may cause social or financial coercion, and more. Since the goal of a restorative system is not punishment, but healing, involving all parties is for the benefit of all. This restorative system should ask how and why the offender violated the offended and address that impact on the lives of all involved. It should see how all parties were impacted by social structures and institutions. It should see how everyone can work together to repair the systemic injustices, address and overcome prejudices and implicit bias, and make restitution for the harm that was done. Where the current retributive model of justice sees all crime (even violent crime) as a crime against the state, a human-centered restorative model of justice would view all crime as harm against an individual or group. Doing so re-centers the victim and allows for a more community-oriented discourse to respond to the harm done that asks the question, “what restitution would promote the healing of this rift in community?”

NON-PUNITIVE: HEALING & RESTITUTION

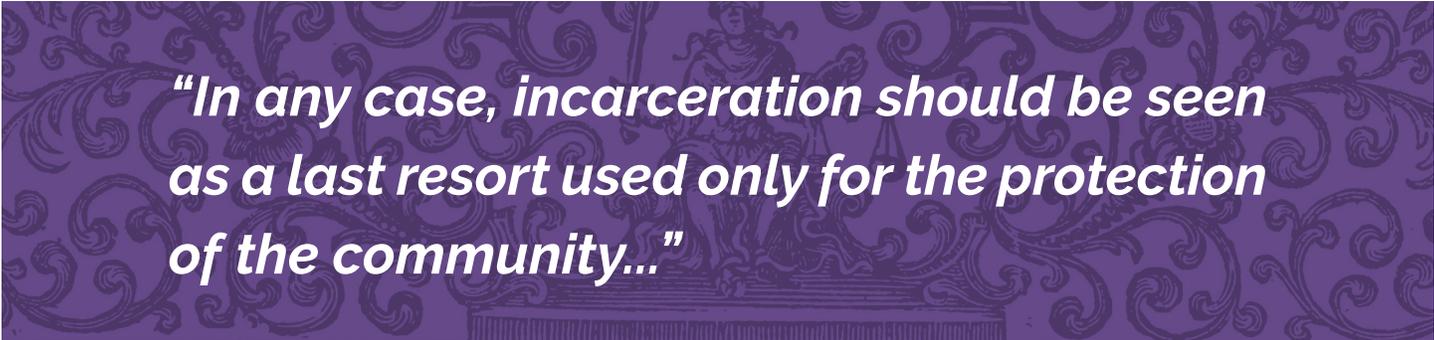
This question of restitution for healing of community moves the criterion of success away from balance of harms and necessitates a deeper, more intimate, and perhaps more difficult process of justice. When we shift the goal from punishment to healing, whole systems must be replaced. However, in examples of partial Restorative Justice like drug courts, results have proven to be not only more successful in restoration of community and family, but also have proven to be more cost-effective because of the substantially lower rates of recidivism. Putting money and bureaucratic efforts towards the healing of real trauma and the restoration of community can stop the cycle of crime and violence in its tracks.

In this newly-implemented model of Restorative Justice, a paradigm shift towards healing community and restitution will also shift the framework of policing and judicial structures. Policing in a human-centered model would necessarily be non-punitive and as non-violent as possible, thereby shifting the responsibilities more towards those of a social worker and less towards the retributive “Punisher” view.⁵⁴ Judicial structures within a

Restorative Justice model would naturally lead the judgeship to be less of a process of dealing out prescribed punishments and more of a process of being an advocate for dignity, a mediator for dialogue, and a counsellor for all involved.

When the judge is in more of a counsellor role and less of a punitive distributor of sentences, there is more opportunity for personal judgment and leeway, while also allowing for the invaluable input necessary from the victim and the community. In such a process, as many meetings as may be deemed necessary by the judge-counsellor can be used to meet with the victim, the offender, the community representatives, any number of other people party to the crime in question, whether solo, in groups, or all together. The victim and like parties would get to have their voices heard and their concerns weighed on the question of restitution, and the offender would be required to go through an authentic process of reconciliation and rebuilding trust: **first an authentic apology for the wrongdoing, second, admitting why the harm was wrong and hurtful, third an amendment of change to behavior, fourthly making restitution, and lastly asking for forgiveness.** Of course, there is no requirement that the victim must accept the apology or offer forgiveness; but this is a crucial step for the offender in an attempt to rebuild relationships and heal the community. This model is so unlike our current retributive model, where we see people convicted of past crimes recommit and re-enter the criminal justice system time and time again because the issues that contributed to the crime have not been addressed. When our justice system fails to address the systemic issues and individual traumas that contribute to the impetus of a crime, it makes sense that recidivism is so high under our current retributive model.

It is obvious that the punitive model does not repair the harm done to the victim or the community, when so rarely are the desires of the offended and their needs to heal taken into account. Not only that, but we can also see that systemic injustices and societal ills are not taken into account except perhaps marginally, every once in a while, in sentencing. A restorative model will involve the victim and their needs as central to the justice process, while holding the offender accountable and promoting healing for all involved. This is not a system of top-down punishment, but instead a model of authentic human-centered justice that is based in community, with the hope of healing and human flourishing.



“In any case, incarceration should be seen as a last resort used only for the protection of the community...”

35. Families Against Mandatory Minimums. "Sentencing 101." for [FAMM.org](https://famm.org). Accessed on 11/4/2019: <https://famm.org/our-work/sentencing-reform/sentencing-101/>.

36. There are several readily available examples of this type of dehumanizing treatment. To find some, read *Life Sentences: Writings from Inside an American Prison* published by the Elsinore Benuu Think Tank for Restorative Justice, or *Prison Torture in America: Shocking Tales from the Inside* by Paul Singh, and Melissa Brown's piece "American horror story": The prison voices you don't hear from have the most to tell us." *Montgomery Advertiser*, November 15, 2019. Accessed on 1/5/2019 at: <https://www.montgomery-advertiser.com/in-depth/news/2019/11/13/alabama-department-corrections-prison-inmates-describe-horrid-conditions/2234480001/>

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39. We must point to the economic "value of life" (as referenced here: https://www.wikiwand.com/en/Value_of_life) as a pitiable attempt to come to terms with the loss of a human's life for insurance companies and the like. However, as many individuals can attest, the financial remuneration for lost wages and economic value is just one small aspect of a human's life and does not encompass human selfhood and the total loss of an individual by any means.

40. Van der Kolk, Bessel A. *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*. Viking: New York NY, 2014.

41. One modern example that has recently been featured in headlines is that advocated by Marlee Liss of the Re-Humanize Movement. Learn more in this piece "How A Sex Assault Survivor Found Justice Outside The Courtroom" by Samantha Beattie in the *Huffington Post*, (https://www.huffingtonpost.ca/entry/sexual-assault-restorative-justice_ca_5db9c623e4b0bb1ea3738740) and on the Re-Humanize Movement website: <https://www.rehumanizemovement.com/>.

42. Hunt, Kim Steven, and Robert Dumville. "Recidivism Among Federal Offenders: A Comprehensive Overview." United States Sentencing Commission, 2016.

43. This statistic is a little hard to parse in Hunt and Dumville's paper, but it's there: "Recidivism rates differ according to the type of sentence imposed. As previously noted, 81.2 percent of the study group were sentenced to some amount of imprisonment. These offenders had the highest rate of rearrest, 52.5 percent. Conversely, offenders sentenced to probationary sentences (18.8 percent of the study group) had a rearrest rate of 35.1 percent." on pg. 22.

44. This "positive peace" is a reference to Martin Luther King Jr's "Letter from a Birmingham Jail," which reads: "First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." ... I had hoped that the white moderate would understand that the present tension in the South is a necessary phase of the transition from an obnoxious negative

peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with."

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48. See, e.g., Laura Markham, *Peaceful Parent, Happy Kids: How to Stop Yelling and Start Connecting* (2012).

49. See, e.g., Becky A. Bailey, *Conscious Discipline: Building Resilient Classrooms* (2d ed. 2015).

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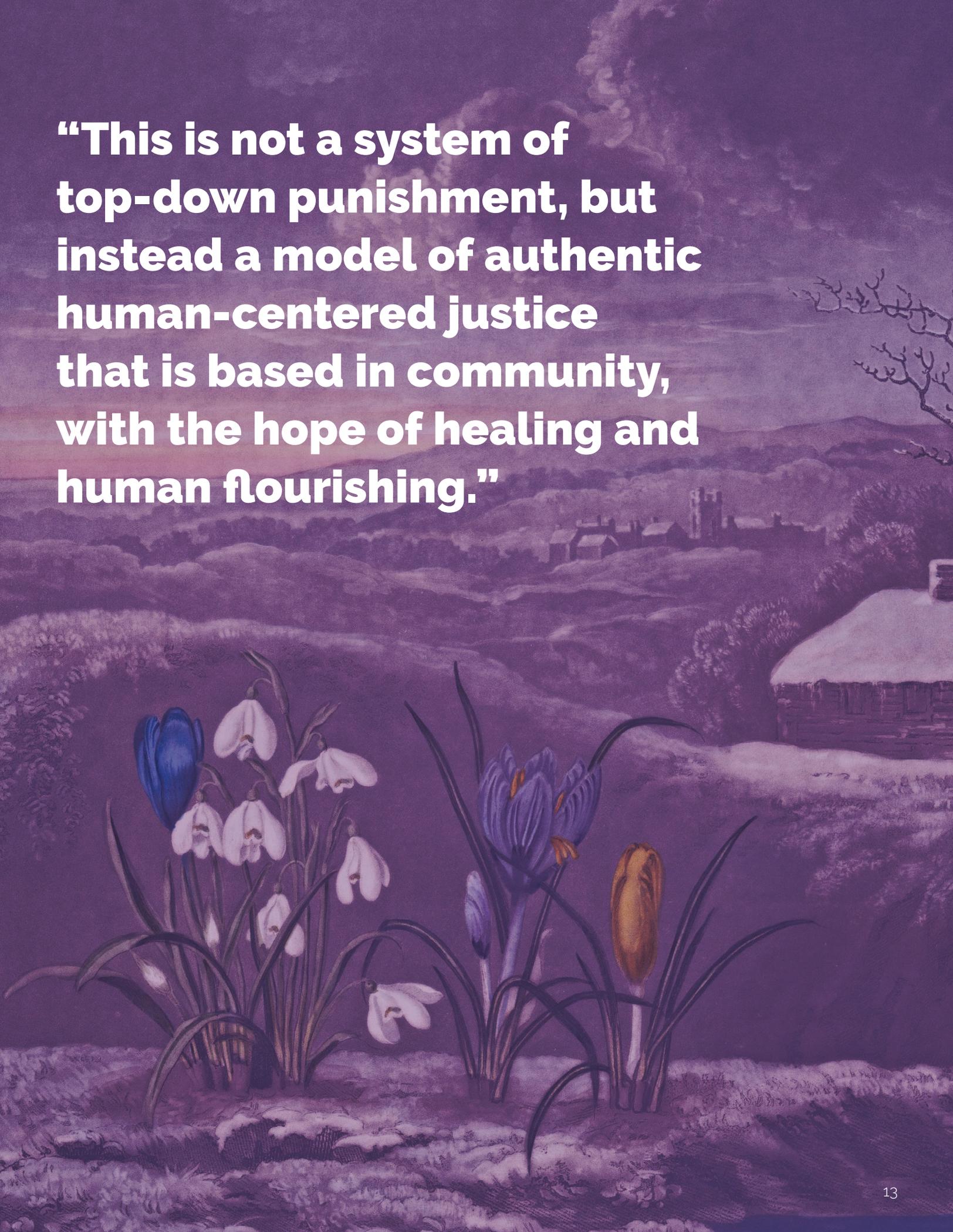
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“This is not a system of top-down punishment, but instead a model of authentic human-centered justice that is based in community, with the hope of healing and human flourishing.”



The Crime of Abortion

Within a restorative model of justice, the first step is acknowledging the harm done. Within the system of justice laid out in this paper, the primary step needs to be recognition of the violence of abortion and a rehumanization of the prenatal children lost and dehumanized to the trauma of elective abortion. And because our current justice system does not see the prenatal human child as worthy of protection from such violence, we must begin with the basic science of human development, alongside a cursory review of the legal status and moral worth of all preborn children.

Embryology

Abortion is violence that results in the death of one or more human beings. It is a truth universally acknowledged — except by those more beholden to abortion apologetics than to science — that human fetuses are, by definition, human beings in the womb. Human fetuses are unique and distinct from their mother. “A human being is simply a member of the species *homo sapiens*, and it is defined biologically, by species, not developmentally.”⁵⁵ Fetuses by definition are not egg, sperm, or merely human tissue; they are preborn human beings who have tissue.⁵⁶ “Although life is a continuous process, fertilization . . . is a critical landmark because . . . a new genetically distinct human organism is formed when the chromosomes of the male and female pronuclei blend in the oocyte.”⁵⁷

“Human development begins at fertilization, when a sperm fuses with an oocyte to form a single cell, the zygote.”⁵⁸ Specifically, “[a]fter the oocyte finishes meiosis, the paternal and maternal chromosomes come together, resulting in the formation of a zygote containing a single diploid nucleus.”⁵⁹ And all “genetic input is complete with the formation of that one-celled human zygote.” The zygote—a specialized, totipotent cell (a cell “capable of giving rise to any cell type”)—is the nascent stage of a new individual.⁶⁰⁶¹ In sum, “at all stages the embryo is a living organism.”⁶²

After conception and prior to birth, mammals go through two major stages of development: embryo and fetus. An “embryo” is the “young of any organism in an early stage of development,” while a “fetus” is “an unborn animal in its later stages of development.”⁶³ For humans, “[t]he embryo and the fetus are the two primary names given to the unborn human during gestation.”⁶⁴ “Embryo” is “the stage of prenatal development from the time of fertilization of the ovum (conception) until the end of the eighth week.”⁶⁵ The embryonic period is “characterized by rapid growth, differentiation of the major organ systems, and development of the main external features.”⁶⁶ A “fetus” is “the human being in utero after the embryonic period and the beginning of the development of the major structural features, from the ninth week after fertilization until birth.”⁶⁷

Although humans develop in the womb and are dependent on their mother for survival, they are separate and distinct human beings. A child in the womb has unique DNA that is distinct from either parent.⁶⁸ A male human being in the womb is a different sex



from his mother (a female). The U.S. Supreme Court has recognized that “by common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb.”⁶⁹ Children in the womb are separate and unique human beings, and not merely a part of their mother’s body.⁷⁰

The Preborn Child and the Law

This has been recognized both inside and outside the context of abortion for over one hundred years under state law and for decades under federal law. Twenty years prior to *Roe v. Wade*, the Supreme Court of New York, Third Department, found:

“We ought to be safe in this respect in saying that legal separability should begin where there is biological separability. We know something more of the actual process of conception and fetal development now than when some of the common law cases were decided; and what we know makes it possible to demonstrate clearly that separability begins at conception.

“The mother’s biological contribution from conception on is nourishment and protection; but the fetus has become a separate organism and remains so throughout its life. That it may not live if its protection and nourishment are cut off ear-

lier than the viable stage of its development is not to destroy its separability; it is rather to describe the conditions under which life will not continue.”⁷¹

Additionally, many federal and state laws define children in the womb as human beings. For example, the federal Unborn Victims of Violence Act — which makes it a federal crime to kill or cause bodily injury to a human being in utero — defines “unborn child” as a “child in utero,” or “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”⁷² Many states have adopted this definition or have used a similar definition in their own laws. States have also increasingly recognized children in the womb as “persons” with legally enforceable rights and have afforded these children legal protections in the areas of criminal law, tort law, guardianship law, healthcare law, and family law.⁷³

More broadly, one of the primary functions of our nation’s laws or of any system of justice is to proscribe violence against human beings. Thomas Jefferson drew upon the natural law in drafting the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The primacy of the right to life in that declaration reflects the inherent value and dignity of every human life, and the right of every human being to live free from violence.

British legal philosopher H.L.A. Hart analyzed the elements of a legal system that would be organized to support life and promote survival in his 1961 volume *The Concept of Law*.

“Hart takes as ‘given’ five contingent facts about ‘human nature and the world in which men live’: (a) human vulnerability; (b) approximate equality; (c) limited altruism; (d) limited resources; and (e) limited understanding and strength of will. He then assumes, on the basis of observation, the additional contingent fact that most people desire to survive: ‘survival has . . . a special status in relation to human conduct and in our thought about it, which parallels the prominence and the necessity ascribed to it in the orthodox formulations of Natural Law.’

“Hart concludes that, given these five factual conditions, if persons desire to survive, then their legal systems ought to have such features as rules that ‘restrict the use of violence in killing or inflicting bodily harm’; ‘a system of mutual forbearance and compromise’; ‘some minimal form of the institution of property (though not necessarily individual property), and the distinctive kind of rule which requires respect for it’; rules that ‘enable individuals to create obligations and to vary their incidence’; and the imposition of sanctions by an ‘organization for the coercion of those who would . . . try to obtain the advantages of the system without submitting to its obligations.’”⁷⁴

And so we have outlined within our system of laws proscriptions of violence, such as homicide, battery, rape, sexual assault, domes-

tic abuse, and child abuse. Yet there is one form of violence subject to a glaring loophole, a distortion in our nation’s laws.

Abortion is Violence

Abortion is an act of violence. Every completed abortion has resulted in the unnatural, untimely death of one or more human beings. The most commonly used abortion procedures demonstrate the violence inherent in the process:

- Suction aspiration: This procedure is typically used for first-trimester abortions. The abortionist inserts a tube into the uterus and uses it to dismember the child and suck their body parts out of the uterus.
- Dilation and evacuation: The abortionist uses forceps to dismember the child and then crushes the child’s head in order to extract it from the womb because the skull has hardened by the age at which this procedure is typically performed.
- Mifepristone (RU-486) and misoprostol: Mifepristone blocks the hormone that supports the uterine lining; as the lining breaks down, the child starves to death. Misoprostol then causes contractions that expel the dead child from the womb.

Other abortion methods, such as dilation and curettage, other chemical or poison abortion procedures, and the practice of injecting digoxin or potassium chloride directly into the child’s heart are no less gruesome and violent. Yet abortion has been singled out by the U.S. Supreme Court in *Roe v. Wade* and in subsequent Supreme Court abortion opinions and by some state legislatures as being a protected form of violence, to which there is a supposed constitutional right. And so court-mandated legalized abortion sweeps away the protections inherently due to an entire class of human beings, those in the womb.

Abortion Differs from Most Acts of Violence

We’ve reviewed how and why abortion is an act of violence and why it should be illegal: it kills a human being. However, in a Restorative Justice model we must also consider that there are several ways in which abortion is different from many other forms of violence and homicide when we evaluate the culpability and responsibility for this particular crime.

Pregnancy: One Marginalized Population within Another

Though many instances of violent crime include one marginalized population targeting another marginalized population, abortion is even more unique: in pregnancy, one marginalized population resides within the body of another marginalized population. Women have fought for millennia against patriarchal violence and oppression to achieve the degree of agency and rights that they have today, and are rightfully skeptical of lawful impositions and restrictions of their bodies and rights.

There is a degree of privilege that the born often bear over the preborn in this day and age where abortion is legal that is made obvious by this hypothetical: those who are born have legal protections against violence and harm, while those alive but not yet born may legally be killed at the will of those older, larger, and less dependent than themselves. In abortion, there are layers of ableism, ageism, sizeism, and sometimes even sexism at play that are tacit in our society and the prejudices of many such that they discount and ignore the inherent dignity of the embryonic or fetal human. When we consider born children, it is clear to see that no degree of dependence, disability, youth, smallness, or sex should be a factor that determines whether one deserves rights; yet implicit bias against preborn children has permitted the violence of abortion in our culture for far too long.

Through this, we can see that not even the unique bodily dependence by the embryonic or fetal human upon their mother can permit violence against that totally innocent and defenseless child. The child is not an invader or an aggressor in any way. This is especially obvious because the conception of each and every child is one that occurs totally apart from any agency or will of the child, since the child does not exist prior to the process of fertilization when egg fuses with sperm. And albeit while no analogy is perfect, even in a case where an infant is dropped in your house (with or without your consent), there is no implicit right to harm that child. If an infant suddenly appears in a house — whether or not the homeowner would want them there — it is not permissible to then dismember, poison, or starve that child to death. In fact, not only would harming this small, defenseless human be ethically wrong, inhumane, and unlawful, but the resident adult would become the de facto guardian for this child and would be responsible for their care until another suitable guardian could be found.

We must always take into account the historical oppression of women and girls within patriarchal structures, but we must be sure not to allow or be comfortable with an extension of violent oppression onto our preborn children. Our care for the women who have had abortions as members of the human family with our shared inherent human dignity alongside an understanding of the gendered oppression endured for millennia is perhaps one of the best ancillary reasons why a Restorative Justice model is crucial in addressing the violent act of abortion. A restorative model of justice allows for generous discretion on the part of the judge-counselor because of the understanding of the varied and extremely personal factors that can mitigate the culpability of the woman in question.

Mitigated Culpability

When reviewing many of the thousands upon thousands of stories of abortion available for public consumption, it is clear to see that not all who have had or participated in abortions have had full consent of the will or total knowledge of what the procedure entailed. Evaluating the degree of culpability of those involved in the abortion will be a crucial part of the judge-counselor's role within a restorative system in order to facilitate justice and restitution.

One factor of mitigated culpability that is common among count-

less women's stories is coercion and force.⁷⁵ Sometimes it can be a partner threatening violence against the pregnant person if they don't have an abortion. Sometimes it can be the clinic staff holding a woman down on the table, preventing her from leaving the clinic with her baby still alive within her womb. Sometimes it can be a parent, grandparent, coach, teacher, and/or abuser pushing a girl into the clinic with threats of disowning, homelessness, poor grades, being dropped from the team, or worse hanging over her head.⁷⁶ Or perhaps it's a more nebulous lack of encouragement or assistance from a support network, or family and friends who are hostile to pregnancy, childrearing or "evidence of sin."⁷⁷ In none of these cases is the pregnant person in question 100% at fault for the death of their child, and the justice system should not treat these victims of reproductive violence as if they made the free, unfettered choice to participate in the abortion.

Likewise, a lack of education and informed consent is a common factor for many who have participated in an abortion. Despite many high school and college level biology textbooks including the facts on reproduction, the propaganda machine of the abortion industry has convinced a large proportion of people that a human embryo or fetus isn't a human being. We have been told time and time again that abortion doesn't kill a human, that abortion just "gently removes" a "clump of cells."⁷⁸ This intentional and dehumanizing misinformation spread by those who benefit from legalized abortion has perpetuated this systemic violence and made millions in our society complicit in the homicide of preborn children.

Even before *Roe v. Wade*, there was ample evidence within medical literature to indicate that a new human being is created at the moment of sperm-egg fusion,⁷⁹ but it could perhaps be argued that our public knowledge was lacking in some degree or another until ultrasound was in common use. However, in 2020 there is no excuse whatsoever beyond bold discrimination or blatant mis-education to continue to dehumanize the smallest, most defenseless members of our human family when we have such easy access to scientific knowledge via the internet or the library, and ultrasound photos are often the first pictures we see of our youngest family and friends.

Because the medical professionals who run and maintain abortion clinics are continuing to tout these dehumanizing lies as truth, millions upon millions of women have suffered the medical malpractice of a lack of full informed consent. An intentional lack of informed consent this grave is not only a harm to the women who procure abortion services under the assumption of trust in their doctors to give them full information before any procedure, but it is most especially a grievous harm to the children who have been killed after this gross dehumanization.

The abortion industry in the U.S. has allowed for coerced and forced abortions, and has promulgated and promoted intentionally misleading, false statements concerning the humanity of the preborn child. When we acknowledge these facts of our society, it's easy to see that many who have had abortions are not fully culpable for the taking of their child's life. But even still, we can and should make abortion illegal, seek justice for the preborn victims of abortion, and do our best to heal the harm that the abortion industrial

complex — one of the most infamous, violent, and profitable industries in our history — has done to us all by stealing countless lives of the most vulnerable members of our human family.

Addressing Other Reasons Why People Seek Abortions

As people who work to protect human life and dignity in all stages and circumstances, our effort should be to make abortion both illegal and unthinkable. In a Restorative Justice model, the judge-counsellor should be taking into consideration the underlying reasons why the people in question sought abortion. The reasons may be numerous and varied, but in our effort to seek restoration of community we need to be asking “what information was lacking?” or “what resources could have been provided to prevent this?” or “how should our society adapt to the reality of pregnancy, instead of asking women to become exactly like men in order to succeed?”⁸⁰ And though none of these reasons justify the violent act of abortion, they do offer a bigger picture of the social, fiscal, and cultural coercive factors at play that may mitigate culpability and shift the response of the judge-counsellor within a restorative framework.

POVERTY AND WORKPLACE COERCION

An obvious and all-too-common case is that of poverty driving people to consider abortion. Not having the financial resources to feel equipped to raise a child is quite common in this day and age, where many Millennials of childbearing age are forgoing pregnancy and parenting because of the stagnating economy and rising costs of healthcare, housing, and other necessities.⁸¹ According to the Guttmacher Institute and their most recent data on abortion in the U.S., “some 75% of abortion patients in 2014 were poor (having an income below the federal poverty level of \$15,730 for a family of two in 2014) or low-income (having an income of 100—199% of the federal poverty level).”⁸² And according to a study published in *Contraception* in 2017 on the reasons cited for procuring abortions, 40% of women who had an abortion cited “not [being] financially prepared” as one of the reasons for having their abortion, which is closely related to two other popular answers: “Interferes with work opportunities” at 20%, alongside “Want[s] a better life for the baby than she could provide” at 12%.⁸³

A baby interfering with work opportunities points to a consequence of our society being oriented around the wombless male body as normative.⁸⁴ In a restorative model of justice, after abortion the judge-counsellor must seek to discern the financial pressure and coercion that was placed upon the woman by academia, her workplace, or other organizations and seek to ameliorate the implicit bias of sexism within that institution and uphold the dignity of women, their bodies, and childbearing powers as just as normal as the wombless cisgender male body.

Beyond and including the issue of workplaces holding women back and committing pregnancy discrimination, there is the priorly-mentioned layer of poverty. Not being able to provide for a child is a valid and important concern, and one that a Restorative Justice model should also seek to ameliorate. Not only should women feel

empowered to choose life for their children, but we should also ensure that no one placing a child for adoption is doing so because of a lack of resources: doing so amounts to the heinous and immoral trafficking of children from impoverished families (who are more likely to also be racial minorities suffering under systemic racism⁸⁵) into upper-class white families.⁸⁶ The societal and fiscal pressure placed on expectant families is massive, and this subtle but pervasive coercion can mitigate culpability as well. This new restorative model should seek to not only heal the trauma of abortion, but also make all resources known and available so that future children will not be needlessly separated from their families of origin because of the weight of financial coercion.

YOUTH

Unfortunately, many teenagers and young adults often seek abortions because they (or their families) think that they are too young to be parents. In a Guttmacher study, a full 14% of those under the age of 25 who procured an abortion cited that reason.⁸⁷ With the combination of a lack of informed consent and many teens making this decision before legal age of consent and without parental involvement, we have a cyclone of mitigating factors when it comes to teenage abortion and culpability. Not only is the abortion industry duping teens into killing their preborn children by withholding full information, and thereby inhibiting informed consent, but then the teens are often not equipped to deal with the fallout of an abortion because their families are completely unaware of the context when trauma comes to the surface. Helping a young person to heal after participating in abortion should take all of these mitigating factors into account and integrate all of the family into the process as much as is possible while prioritizing the safety of the teen victimized by the abortion industry.

LIFE AND HEALTH OF THE MOTHER AND CHILD

Another combination of often-touted reason for abortion (particularly late-term abortion) is that of the life and health of the mother and adverse diagnoses of the fetal human. According to the most recent Guttmacher Institute data, 12% of abortions are for the reason of risk to maternal/fetal health.⁸⁸ The irony of intentionally killing a child to “solve” the problem of a risk to fetal health should not be lost on the reader, but we must take into account the deeply rooted ableism in our nation and how this systemic prejudice and the lack of information about perinatal hospice impacts the culpability of those who’ve had abortions for this reason. Additionally, the methodology in the Guttmacher study unfortunately groups maternal and fetal health risk into one category, allowing no differentiation for the two quite-different situations.

“...though none of these reasons justify the violent act of abortion, they do offer a bigger picture of the social, fiscal, and cultural coercive factors at play...”

When adverse fetal diagnosis comes into consideration, the resultant reasoning for abortion is often rooted in non-disabled people's presumption that a life with disability is not worth living; but when a risk to the mother's life and health is pressing, there isn't necessarily a prejudice at play. And in a disingenuous use of legal language, *Roe* and all subsequent rulings on abortion all permit abortion for "health," the broad banner under which sits more vague terms like "financial health," "emotional health," and "mental health." For any of these situations, killing the preborn human will not magically disappear the underlying financial problems, relational difficulties, or mental health concerns. All of these concerns can and should be treated during pregnancy, instead of performing a violent procedure on a woman that kills her child and throws her back into the same turbulent situations.

In the case where abortion is said to be necessary to save the life of the mother, there is some degree of misinformation touted by many abortion proponents that directly contradicts the testimony of countless OB/Gyn physicians.⁸⁹ Even Alan Guttmacher, the former head of Planned Parenthood said back in 1967 before *Roe v. Wade*: "Today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from a fatal disease such as cancer or leukemia, and if so, abortion would be unlikely to prolong, much less save the life."⁹⁰ Since 1967, advancements in medicine help women get through pregnancies even with heart disease, diabetes, cancer, and other illnesses with their lives and their babies' fully intact. In the many cases often cited by abortion-choice leaders, there are and were nonviolent options available that would have saved the mother's life while not doing intentional harm to the preborn child: for example, even in the extremely rare case where the pregnancy itself is life-threatening, early-term delivery can be performed and a medical team can do all in its power to support and try to save both lives.⁹¹ However, not many people know about these nonviolent options, so it is understandable that many would see abortion as acceptable for health reasons. When our abortion industry has spread lies and misinformation in order to justify a need for abortion, it is hardly surprising that anyone would trust their physician and follow through with an abortion to preserve their own life. In a restorative model of justice, work must be done to extricate ourselves from the Consequentialist mindset that says we can kill one to save another. Counsellor-judges will have to do the necessary work to help educate upon nonviolent resources like perinatal hospice, procedures like pre-term delivery, and other solutions that can save lives without intentionally killing.

CONCEPTION FROM RAPE

Lastly, we must bring up one of the most hotly-contested topics within the abortion debate today: how to respond to pregnancy from rape conception. Firstly, it must be stated that all victims of sexual violence should be treated with the utmost of respect for their inherent dignity, grief in their pain, and compassion in their walk to healing. But we know that addressing violent trauma with more violence only continues the cycle of violence and oppression, so abortion cannot be the solution after rape conception. In fact, the most recent studies on the reasons why women choose abortion

indicates that rape is not often a reason given. Rape did not appear on the list of reasons, but there was an "other" category, for which there was a response rate of 1%.⁹² Additionally, in 2005 the most recent study that included "rape" as an identifiable reason for seeking abortion reported similar results, with just 1% of respondents "indicated that they had been victims of rape."⁹³ It can be deduced that rape makes up $\leq 1\%$ of all reasons women sought abortion in the United States. This aligns with some much older research that demonstrated that women who conceived in rape were more likely to choose life.⁹⁴ Based on these statistics, we can perhaps surmise that many survivors of sexual violence found a degree of solidarity with innocent preborn children, and were therefore unwilling to impose the violent act of abortion upon the child conceived in rape.⁹⁵ However, even if abortion is sought by someone who conceived from an act of sexual violence, the Restorative Justice system should too involve them and work to get them the healing that they need from the dual-trauma of rape and abortion.

In all of these circumstances above, the woman having an abortion is not fully culpable for the violent act of starvation, dismemberment, or poisoning. We must acknowledge these degrees and shades of culpability if we want to properly respect the inherent dignity of all involved and make proper restitution for the life lost in abortion. These factors will be crucial for those in the role of counsellor-judge to consider and keep in mind as they work for human-centered justice that upholds the dignity of all.

References and Notes | The Crime of Abortion

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67. "Fetus," *Mosby's Medical Dictionary* 690.
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69. *Gonzales v. Carhart*, 550 U.S. 124, 147 (2007).
70. We highly recommend the research and work of Dr. Maureen L. Condic on this subject, whose book *Human Embryos, Human Beings: A Scientific & Philosophical Approach* delves into these questions at the intersection of biology and ethics.
71. *Kelly v. Gregory*, 125 N.Y.S.2d 696, 282 App. Div. 542, 543-44 (1953).
72. 18 U.S.C. § 1841(d).
73. See *Phillips v. State*, No. 1160403, slip op. at 149, 158-76 (Ala. Oct. 19, 2018) (Parker, J., concurring specially) (surveying state laws demonstrating that “unborn children have numerous rights that all people enjoy”), available at <http://acis.alabama.gov/displaydocs.cfm?no=906161&event=5B-M0QIZOW>.
74. Barnett, Randy E. “A Law Professor’s Guide to Natural Law and Natural Rights.” 20 *Harvard Journal of Law & Public Policy*, 1997. p. 655. (internal citations to H.L.A. Hart, *The Concept of Law* (1961) omitted).
75. N.B. Both of the authors of this white paper are survivors of reproductive violence and coercion/force. Aimee Murphy was threatened with murder by her abusive ex-boyfriend if she didn’t have an abortion. (You can access a video including this story on the Rehumanize International YouTube channel: <https://www.youtube.com/watch?v=nB71mNo37IA>.) Catherine Glenn Foster changed her mind while in the abortion clinic, but was held down on the table by clinic staff and forced to endure the violent procedure that took her child’s life. (You can access one interview recounting this tragedy here: <https://www1.cbn.com/cbnnews/us/2018/january/i-had-four-people-holding-me-down-woman-recounts-horror-of-forced-abortion>.) As survivors, both of us were compelled by conscience to enter anti-abortion advocacy at young ages so that we could stand for the lives and dignity of women and their preborn children. These experiences have contributed greatly to our pro-life work and our desire to see Restorative Justice implemented and integrated into any legal work that seeks to make abortion unlawful.
76. There’s nearly an endless stream of online forum and social media questions posed by teenage girls who have asked how to navigate the situation when their parents have threatened to kick them out for being pregnant. This is a very real, and unfortunately ubiquitous, tale.
77. For one recent example of this, see the 2017 *New York Times* story on Maddi Runkles, a teen mom who was punished for being visibly pregnant at her Christian school: <https://www.nytimes.com/2017/05/20/us/teen-pregnancy-religious-values-christian-school.html?smid=pl-share>.
78. This colloquialism is often used in dialogue, and though this exact phrase might not be found in a medical text, similar language is still found used by abortion providers today, including in the Early Options Guide to Early Abortion (found at <https://www.yumpu.com/en/document/read/39433241/guide-to-early-abortion>): “...handheld aspirator gently removes the pregnancy lining” removes the preborn child from the discussion and treats the child as “lining”, or “tissue”.
79. Ample evidence of a pre-*Roe* scientific consensus on the subject (of when a human’s life begins) exists to the modern day, where I can easily find quotations from pre-1973 medical school embryology textbooks that cite fertilization of human sperm and ovum as the point where a new human being begins to exist. For example, “It is the penetration of the ovum by a spermatozoan and resultant mingling of the nuclear material each brings to the union that constitutes the culmination of the process of fertilization and marks the initiation of the life of a new individual.” from Patten, Bradley M. *Human Embryology*, 3rd edition. McGraw Hill: New York NY, 1968. p. 43. One other example includes Dr. Morris Krieger’s *The Human Reproductive System* from 1969 that reads, “All organisms, however large and complex they might be as full grown, begin life as a single cell. This is true for the human being, for instance, who begins life as a fertilized ovum.”
80. Erika Bachiochi summed this up succinctly when she stated that “abortion rights actually hinder the equality of women by taking the wombless male body as normative, thereby promoting cultural hostility toward pregnancy and motherhood” in her paper “Embodied Equality” in the *Harvard Journal of Law & Public Policy*, Vol. 34, No. 3, Summer 2011.
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87. Chae, Desai, Crowell, and Sedgh.
88. Chae, Desai, Crowell, and Sedgh.
89. This is not at all to deny the very deadly reality of racism and classism and even sexism in our healthcare industry in the United States, where maternal mortality is absurdly high for a developed nation. Countless stories document this (see one here: <https://www.youtube.com/watch?v=8DYh55sIeJU>) scary reality for many women in this nation. However, abortion is not the cure for maternal mortality: better, culturally-sensitive, accessible maternity and post-partum care are the solution.
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Restorative Justice Concerns in the Context of Abortion

When we implement a Restorative Justice model, we must be willing to accompany offender and offended on long and arduous journeys through trauma and healing. Though it might sound difficult and trying, we cannot achieve a lasting, positive peace without taking these vital steps towards healing everyone touched by abortion — by healing our culture.

History of Punishment of Abortion

The claim that the government punished women who procured abortions prior to *Roe v. Wade* has been proven to be a myth. Nearly uniformly, prior to *Roe*, state criminal laws on abortion were focused on the person performing the abortion, not on the woman. State legislatures and state courts explicitly recognized women as the second “victim” of abortion. Bearing this out, no pregnant woman was charged under any abortion law in the United States between 1922 and 1973. In the last 110 years, there have been only two cases in which a woman has been prosecuted under an abortion law in the U.S., whether for self-abortion or consenting to an abortion, either as a principal or as an accessory⁹⁶: in Pennsylvania in 1911⁹⁷ and in Texas in 1922.⁹⁸ In neither of those cases was the woman convicted. Most state statutes did not allow for the prosecution of women seeking abortions, and in those that did, no women were prosecuted.⁹⁹ American states had come to recognize that women should not be prosecuted for participation in their abortion.

The irony is that, instead of states prosecuting women, the exact opposite is true. To protect their own interests, it was abortionists (like the cult hero and abortionist Ruth Barnett when Oregon last prosecuted her in 1968), who, when they were prosecuted, sought to haul in the women for whom they’d performed abortions to court. As a matter of criminal evidentiary law, if the court treated the woman as an accomplice, she could not testify against the abortionist, and the case against the abortionist would be thrown out.¹⁰⁰

If *Roe v. Wade* is overturned and the issue of abortion returns to the states, there is no reason to believe that states would deviate from this uniform policy. No major pro-life organization advocates for women seeking abortion to be prosecuted, and decades of abortion restrictions explicitly prohibit prosecution of the pregnant woman.¹⁰¹ When on rare occasion a public figure has suggested that prosecution might be on the table at some point, the public outcry — from the pro-life movement — has been swift and firm.¹⁰²

However, state and federal laws have provided for civil and criminal penalties for persons performing abortions. While these laws are intended to protect women and children, the retributive justice system does not adequately address either the root causes of abortion or its deep, far-reaching harms. The abortionist’s incarceration and fines do not help the woman to heal, address the concerns that led her to abortion in the first place, or restore her relationships. The potential removal of one bad actor from the marketplace does not provide the woman with real, life-affirming options if she finds

herself pregnant in the future. The prosecution of an abortionist does not renovate the institutions and systems of oppression that lead to abortion.

Community: Who Is Involved?

Humans are personal beings, capable of and meant to be members of community. When a harm is done, it breaks the bond of community, it causes suffering in disunity, both for the offender and the offended. The answers that we seek should work to restore harmony to the community through restoration and reintegration. If we seek to repair harms with more harms (to the point of even cutting off the offender from all community, writing them off as “a lost cause” and declaring them past the point of potential conversion), or if we seek retribution for its own sake, we are not respecting the dignity of the person. An act of violence done (even to an offender) only continues to break the bond of community further and continue the cycle of violence.

The issue in the dialogue surrounding justice and abortion stems from the fact that most pro-life people do not want to punish someone for having an abortion. We do not want to ever be “anti-woman,” because we stand for the dignity of both woman and child. So current legislation on the books that would be enacted if *Roe* were to be overturned does not really include the woman in the picture of justice: it is only the abortionist who is to be “punished.” But if we move away from a model of justice as punishment, and instead see it as restoration, we see that we must incorporate not only the abortionist but also the woman, the community, potentially also the partner, the other family members, the friends. Because so many people have participated in abortion, it is a violence that touches everyone; our entire culture, our entire nation, our entire global community must be committed to pursuing restoration.

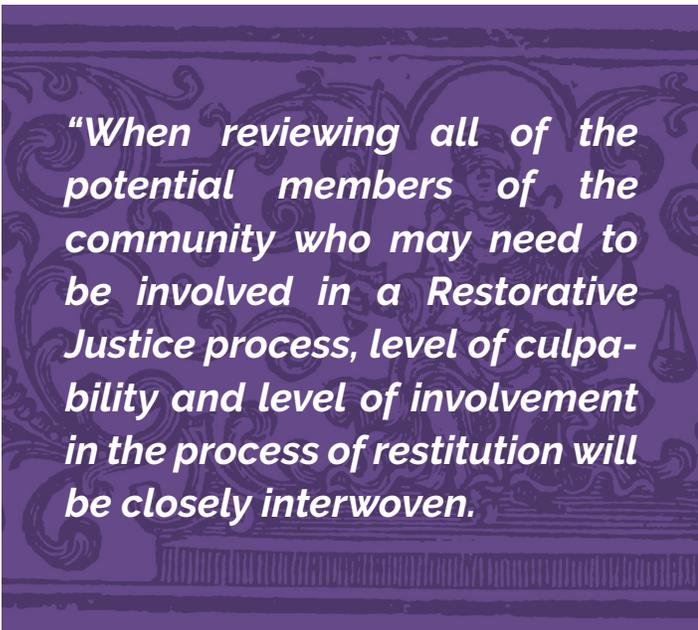
There are some vital aspects to consider and include in legislation that aims to build a Restorative Justice model after abortion:

- **Community (and institutions, too):** How is the community at all culpable in coercion to abortion? What about the place of business, the financial system, the academic institutions? Have they pressured the parents into thinking that bearing a child right now would lead to job loss? Losing housing? Losing the opportunity to finish college?
- **Abortionist (including clinic team):** How are the staff at the abortion facility (if it is a facility), or the abortionist themselves, or the pharmaceutical company, or others culpable in coercion to or participation in abortion? When abortion is illegal, how did the abortion provider (whether doctor, nurse, pharmaceutical company, or drug trafficker) do this action, though illegal? Have they pressured the parents? Did the staff give the impression that abortion was the only way out of this difficult situation? Did they force the mother to go through with an abortion even after she had changed her mind?
- **Woman:** How is the woman who has an abortion culpable in procuring an abortion? Did she choose abortion because she didn’t know about the humanity of the preborn child? Did she choose it out of carelessness or malice? — or (much more

likely) did she choose it out of fear or desperation?

- **Partner:** How is the partner culpable in all of this? Did they attempt to save their child, or did they pressure, coerce, threaten force, or harm their partner into having an abortion?
- **Parents:** Especially if the person who had an abortion is a teenager, we must ask how their parents are culpable in this situation. Did they try to save their grandchild's life? Did they offer support to their daughter? Or did they tell her that they would kick her out and she would lose all financial support if she didn't have an abortion?
- **Friends:** Lastly on this surely incomplete list, it's important to assess the influence and pressure from friends. If they have had an abortion, they might try to justify their past decision by encouraging others around them make the same choice, but even friends who have not had abortions may see it as the only way out of a difficult situation and pressure or coerce a woman to have an abortion. How are they culpable?

When reviewing all of the potential members of the community who may need to be involved in a Restorative Justice process, level of culpability and level of involvement in the process of restitution will be closely interwoven. But when our standard of justice shifts from retributive to restorative and human-centered, community involvement is absolutely necessary. Abortion violates the first and smallest community: the family. But beyond that, abortion has become so pervasive (even in its statistical decline) that many people are keen to brush off prenatal deaths with ease and dehumanize preborn children. In our work to build a truly rehumanized world where every human is respected, valued, and protected, justice is not going to be a state-imposed punishment, but a community, working together to acknowledge the harm of abortion and heal from the tragedy of lost children.



“When reviewing all of the potential members of the community who may need to be involved in a Restorative Justice process, level of culpability and level of involvement in the process of restitution will be closely interwoven.”

Addressing Needs: What Drove Them to Abortion?

Women may consider abortion for a variety of reasons, but they typically fall along similar themes. The top three reasons cited by women are financial concerns (40%), not feeling prepared for a baby (36%), and relationship issues (31%).¹⁰³ Each of these concerns is an area where we should come together in our communities to partner with women and girls and enable an authentic life-affirming choice by offering support, resources, and holistic care. Indeed, systemic failures are at the root of many women's cited reasons for seeking abortion.

Moreover, in one recent study by Priscilla K. Coleman, 58.3% of women reported aborting to make others happy, 73.8% of women reported experiencing at least subtle forms of pressure to abort, and 66% said “they knew in their hearts that they were making a mistake when they underwent the abortion.”¹⁰⁴ And according to *Aborted Emotions* by J.L. Madeira, even when the circumstances do not rise to the level of a forced abortion:

“[w]omen in these circumstances [of ‘consented but unwanted’ abortion] experience the most emotional distress from regret, remorse, guilt, shame, mourning, trauma, and other painful and negative emotions . . . Women who agree to a consented but unwanted abortion might choose differently if circumstances were other than what they are—if they had a healthy fetus, more economic resources, greater flexibility with employment or education, or stronger social supports to make parenthood a workable option.”¹⁰⁵

The Coleman study concludes, “As a society that values freedom and choice, we have a moral obligation to provide the social structures necessary to make choosing motherhood as easy as choosing abortion. In the U.S. we have clearly failed in this regard, as Madeira notes:

‘Abortion has a number of ugly truths. One of them is that many abortions are prompted by social conditions, social scripts, and social pressures that have removed a robust safety net of formal and informal supports that should exist and, in fact, do exist in other, primarily European, countries. Abortions are disproportionately higher among low-income women and women of color. This is a good indicator that at least some women are electing abortion because they feel they cannot materially provide for the child they would bear.’¹⁰⁶

Ending the Cycle of Trauma and Violence through Healing

In light of the reality of Perpetration-Induced Traumatic Stress, we both want to acknowledge the harm done and also get those who were involved in the act of abortion (i.e. abortionist and clinic staff) the care that they need to heal from participation in or suffering from such violence.¹⁰⁷ We will need a robust

team of trauma-informed therapists and educators,¹⁰⁸ and physicians who perform only nonviolent healthcare to get all parties the care that they need to end the cycle of trauma and violence through human-centered healing.

There is new and abundant research coming out of the medical and psychology fields that demonstrates the power of trauma to even impact our DNA through epigenetics: the trauma experienced by a parent can manifest in DNA mutations in children, grandchildren, and even generations on.¹⁰⁹ Of course, it is accepted as a truism that “hurt people hurt people”: those who have been touched by a traumatic event are more likely to pass on trauma to others. Likewise, it is a given in most therapeutic practices that the goal of therapy is to heal from traumas that one has endured for the good of oneself, loved ones, and untold future generations.

Without having the resources to go through healing, many people who have participated in abortions have suffered severe adverse mental health outcomes. Suffering the traumatic stress of having participated in the violent act of abortion means having to cope with the grief of the loss of one’s child and the guilt over one’s personal responsibility in the matter.¹¹⁰ However, as Dr. Theresa Burke, founder of Rachel’s Vineyard post-abortion healing program has stated, because “abortion is a secret... it’s not something they want people to know about so it’s surrounded by a lot of shame, and a lot of grief... So there are a lot of things that go into that decision making process, but it’s one made in a lot of isolation.”¹¹¹ This isolation is a demonstration of the rift in community that abortion causes; because it is an act of violence, we often try to sweep it under the rug. Like veterans returning from warzones, many who’ve experienced that violence do not want to talk about it. But, Dr. Burke continues, “not being able to process what happened, [being compelled] to go back and pretend that nothing just happened to you when you had a very life changing event that involves the death and destruction of one’s child. That’s going to impact us...”¹¹² The impact of the abortion on those who have procured one is evident in the harmful after-effects and coping mechanisms: workaholicism, depression, drug abuse, suicidality, eating disorders, and reproductive retraumatizations all tear at the fabric of community and unintentionally damage it further.¹¹³ Additionally, those who have participated in violence can often seek to justify it ex post facto by convincing others that it is good and right to have done or to do that violence; the consequence of this is that those who have had abortions may try to convince others that it is a morally acceptable decision. This act of convincing, as we have seen through the growth of the abortion industry, often comes at the expense of truth as the preborn are dehumanized in the attempt. It is therefore imperative that everyone who has participated in an abortion is equipped with ample life-affirming trauma-informed healing so that we may stop the cycle of violence in its tracks.

With extensive resources, therapists, and programs built around healing, all in the community can heal. Dr. Burke founded The Center for Post Abortion Healing in 1986 and has led the

Rachel’s Vineyard program since 1994. Her experience as a clinical psychotherapist has been invaluable to the healing of many who have participated in abortions. In 2014, she stated that:

“now there are retreats that have ten teenagers. People are coming younger and younger. Now we have a lot of abortion providers coming, like nurses whose job it is to put pieces together to make sure that it’s a complete abortion, and they have extreme trauma. They come and they cry and they say they didn’t know where else to go. And then siblings of aborted children are coming.”¹¹⁴

Just looking at that demographic profile of those who have taken part in a Rachel’s Vineyard retreat is a somewhat representative sample of the community that will be participating in the healing of Restorative Justice: teens, young women, abortion providers, family members of aborted children. This faith-based model is one of many dedicated to healing the trauma of abortion and putting people on the path to restoration. In a restorative system of justice that is expansive and state-based, we will of course need adequate secular/non-faith-based healing methods and the like to best serve the needs of all involved. And when we heal that trauma, we will see a large portion of our world be rehumanized.

Restorative Justice and a Pro-Life Culture

We’ve discussed Restorative Justice and why we as people who value and uphold human dignity should pursue this model. But there are several reasons why it is crucial for people who want to end abortion to promote this model.

Back in the 2016 election cycle, Donald Trump opined in an interview that women who have abortions “should be punished.”¹¹⁵ And in 2018, Bob Nonini, a candidate for lieutenant governor of Idaho, nodded when asked if he would support the death penalty for the crime of abortion.¹¹⁶ Or perhaps you recall the news story about conservative writer Kevin Williamson, who was fired from his position at the Atlantic for saying, “I would totally go with treating (abortion) like any other crime up to and including hanging — which kind of, as I said, I’m kind of squishy about capital punishment in general, but I’ve got a soft spot for hanging as a form of capital punishment. I tend to think that things like lethal injection are a little too antiseptic.”¹¹⁷

Of course, while these propositions Nonini and Williamson made are for the day in the future when abortion is made illegal, this is something that we need to be talking about now. Every action that we take helps build the future; so if we want to see a pro-life world, we need to be building it up bit by bit in the here and now. Because we adhere to the idea that each and every human being is inherently valuable and that no act or lack of action can deprive a person of their intrinsic worth, we oppose the death penalty categorically, regardless of the crime of the perpetrator. We know that violence doesn’t end violence, it extends

it. We know that further violence just passes on trauma and oppression — that the death penalty doesn't "unkill" a victim, nor does it deter crime.¹¹⁸ But especially in the case of abortion, where there is often cultural, familial, social, and financial coercion and abuse, we need to be advocates not for further violence and retribution, but for restoration.

As we've discussed already, our current justice system seeks retribution. Our current justice system is broken: it disproportionately targets and convicts people of color, and prisons exploit incarcerated people and treat them with inhumanity. This is not a system that upholds human dignity. In a restorative model, we acknowledge that violence creates a rift between the offender and the offended, and between the offender and the community. We should not seek to further dis-integrate our human community through the continued harms against the offender of further violence, of inhumane incarceration, or of "an eye for an eye." We should see crime as an injustice against individuals. We do not "belong" to the state — they do not own us. We should seek instead the re-integration of the offender to the community, to make our community as whole as is possible; to respect the dignity of all.

A pro-life movement that rejects violence and retribution as a "solution" is one that authentically adheres to the central principle that each and every human being is inherently valuable. A pro-life movement that seeks to restore community where violence has broken that bond is one that consistently abides by the tenet of human dignity. A pro-life movement that includes Restorative Justice plans in every piece of legislation that would restrict or ban abortion is one that has the good of preborn children and their mothers at heart.

If the pro-life movement embraces this restorative model after abortion, it will not only be a living testament to our foundational principles of our shared human dignity, but will also demonstrate a central, necessary compassion in the effort to abolish abortion. We should always approach those who have had abortions with compassion, but this compassion does not prohibit us from protecting the most defenseless of all: the preborn. We can stand for the dignity of all — we don't have to choose between a pregnant person and their preborn child. We should refuse to accept a paradigm that pits certain humans against others: we can love them both. We can stand for justice and still stand by the central idea that every human being, by the mere fact that they are human, deserve to live free from violence.

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Implementing a Restorative Justice Model in U.S. Abortion Law

When it comes to implementing a restorative justice model in American abortion law, it must first be understood that what we are recommending begins with our current system as the established and operating model. Starting from today, then, where do we go to get to a fully restorative model in which the goal is not punishment, but rather rehabilitation and healing?

First Steps in Restorative Justice

Achieving this will require the participation of all the different individuals and institutions who were involved in and/or impacted by the abortion. In many abortion situations, navigating the restoration process will rely upon someone less like a punisher-judge, and more like a counselor-judge. Abortion may well belong in a family court or other setting outside of the traditional criminal justice system, and require the involvement of the community/“jury” as well as that of a judge navigating these complex situations. Communally, we want to get at the root of why this violence was perpetrated, and address those social ills. And in light of the reality of Perpetration-Induced Traumatic Stress, we both want to acknowledge the harm done and also get those who were involved in the abortion the care that they need to heal from their participation in such violence. This may require the participation of therapists, educators, and physicians who perform only nonviolent healthcare.



We do propose that restorative models be included in legislation relating to abortion. Recommendations and considerations should be tailored to each bill in order to reflect the needs of restoration in each specific case. For example, if the bill is a 20-week abortion limitation, the restoration process after a violation could include education on nonviolent alternatives when faced with adverse fetal diagnosis and connection to the resources available to women facing difficult pregnancies. Additionally, the family of the aborted child as well as the abortionist, staff, and anyone else who participated in the abortion should have easy access to post-abortion healing where they all can acknowledge the harm done and the very real loss of a child to violence — where they can rehumanize. Perhaps the family could also be connected to community resources that can affirm life and support a woman and her family in a time of great crisis, so that recidivism would be much less likely — this is especially crucial when you consider that nearly half of all abortions are sought by women who have already had at least one prior abortion. And as we know from the success of Rachel’s Vineyard and similar post-abortion healing programs, people who go through this healing are far less likely to ever participate in abortion again. When we look at all of the good in this model, from the foundational understanding of our shared human dignity to lowering the rate of repeat abortions, we can see how important it is that we allow for these opportunities for very real compassion and restoration.

Some needs for post-abortion healing and restoration will be more or less universal under the restorative justice model. For example, all parties involved in the abortion may need counseling and mental healthcare, education on embryology and human dignity, and connection to life-affirming resources, for example, training on how to talk to people who find themselves unexpectedly pregnant. For each of these people, we can hold up positive examples of women who are thriving after choosing life or after healing from their abortions. However, some roles and some levels of involvement or participation in the abortion may call for additional interventions and healing tools in order to achieve restoration.

Restorative Justice for All Touched by Abortion

Many communities and institutions may impact and be impacted by abortion decisions.¹¹⁹ We advocate that they be counseled to:

Community and Institutions:

- *Workplaces:*
 - Offer breastfeeding support, lactation rooms, parental leave, child-friendly workspaces where possible, paid family leave, and remote work flexibility (especially helpful when children are sick).
 - Allot time for parent-teacher conferences, schooling support, field trips, and other needs. This will help both the parent and the child’s education, improving the child’s outcomes

through parental investment.

- Afford team members practical support rather than simply the baseline non-discrimination.

▪ *Academic Institutions:*

- Provide support for pregnant & parenting students, to include childcare, housing, healthcare, and class flexibility.

- Conduct awareness campaigns and offer community groups and supports for parents, both to spend quality time with their families in community and to join the broader community.

- Offer embryology and fetology in bioethics classes in medical, biology, and ethics programs.

▪ *Churches/Faith-based Organizations:*

- Build a supportive community that does not judge for unwed pregnancy, thereby working to end pregnancy stigma.

- Celebrate all new life by hosting baby showers and providing for both emotional support and concrete needs whether a woman chooses parenting, adoption, or abortion.

▪ *Prisons/Jails/Immigration Detention Centers:*

- Provide resources to help women make life-affirming decisions both during and after their term.

- Do not shackle pregnant prisoners during labor nor immediately after birth.

Interventions toward healing for lawmakers to consider when addressing the roles of individuals who were involved in the abortion include:

Abortionist (including healthcare team):

- In the case of doctors or healthcare teams performing late-term abortions, mandate continuing medical education in fetal surgery or perinatal hospice.

- Connect them to a nonviolent career, if necessary.

- In the case of an abortion facility owner, a doctor performing abortions, or any others who may have substantially profited from their violent career in abortion, consider how to address their earnings. Set up a process by which a woman may be able to obtain a refund on her abortion, whether at the abortion business when she changes her mind before the abortion has taken place, or in some circumstances after the abortion procedure.

- Suspend or revoke the doctor's medical license, to be restored on the fulfillment of conditions including continuing medical education that respects the value of every human life.

- Show them nonviolent ways to help women and their pre-born children.

- Incarcerate only if they pose an imminent and ongoing threat to others in the community.

Manufacturers and Distributors of abortion-inducing drugs:

- Educate them on bioethical concerns and the value of every human life.

- Mandate reporting so that women have the full information on options before making abortion decisions.

- Address their profits from the distribution and sale of

life-ending drugs.

- If absolutely necessary for community safety, shutting down the production of the drug in question or the production plant itself might be a just course of action.¹²⁰

Woman:

- Provide for programs for ancillary issues that are rehabilitation-focused (in the case of survivors of human trafficking, drug use, or other concerns).

- Sharing with her stories of women who have had regretted self-managed abortions or those who have had a change of heart; connect her to a larger community of healed post-abortion women.

- Offer her financial support, counseling for her unique role in the abortion, and life skills training.

- Through counseling, assist her in clearly evaluating her relationship with her partner and others in her life.

Partner/Parents/Siblings/Family Members/Friends:

- Whether their role was to coerce/force the abortion, or their perspective was neutral or life-affirming, connect them with educational materials, healing resources, grief counseling, and relationship tools to help them rebuild or strengthen their bonds with the other people who were involved in the abortion.

- If the relationship is coercive in nature, does the woman have the ability to get out of the abusive environment? Provide them resources and connections to be able to leave such coercive relationships and living situations.

With all of these interventions, the goal is achieving a deep, holistic understanding of those around us and of the circumstances that have gone into a woman considering abortion, and getting to a place of healing. Therefore, miscarriage and self-harm situations may also be addressed by this model. Many hospitals and doctors are already trained to check in and maintain contact post-birth; this model simply expands that more broadly to support women in cases of loss or other pregnancy and reproductive situations. If our societal goal is to build communities of healthy, productive individuals working in harmony and relationship with each other, it is critical we come alongside those who may be struggling and compassionately offer them the counseling, resources, and stable mentorship relationships they may be lacking. With a miscarriage, as with an abortion, a child has been lost. Women who suffer a miscarriage; women who may have harmed a child in utero, e.g. via drug use; and other women who have suffered the loss of an unborn child should have the opportunity to meet with a social worker who will check in and offer her resources in a counseling-like setting, including trauma-informed counseling. The sole goal here is restoration and rehabilitation, not punishment. And these resources should be available to women universally, regardless of what her abortion decision might be, in order to make care universally available to women who may seek it and avoid slowing down access.

Preventing Violence: Social Justice and Abortion

We must also pursue policies that will help to preempt the consideration of abortion. For example, states can create a state stipend or emergency assistance fund that women would apply for or automatically receive in order to assist them in the direct and indirect costs of reproduction, including pregnancy, childbirth, and parenting. Women could become eligible for such a fund during pregnancy or upon the child's birth, and abortion facilities could be mandated to disclose this fund in consultation. Likewise, partners should be held financially accountable in order to reinstate paternal responsibility, with paternity support retroactive to conception to cover extra costs in food, healthcare, clothing, preparing for the child, and other needs.

And in the abortion context, in order to get informed consent, counseling should take place outside of the abortion clinic in order to remove the fiscal incentive and any risk of a coercive environment. Instead, women should consult with an external, third-party social worker who will provide counseling for all of the various issues involved (including medical, financial, and relational).

References and Notes | Implementing... and Conclusion

119. One aspect of the abortion decision that must be addressed is how these various parties acted in response to the pregnancy: were they coercing or forcing the pregnant person to have an abortion in any way? Or were they neutral? If they weren't aware of the pregnancy, were there still actions historically or contemporaneous with the abortion decision that were implicitly coercive? Or, was the party in question life-affirming and making an effort to save the life of their preborn child? Ultimately, the grief and trauma of being a party to the killing of a human being will impact each unique individual in unique and different ways, so the judge-counselor should have generous discretion with how to address the needs of each and how to involve them in the process of restitution. If the woman who had the abortion was coerced or forced, not only should the coercive party make restitution in recognition of the violence against the preborn child, but they should also make restitution to the woman in acknowledgement of the forcible violence done against her. Similarly, if the pregnant person chose abortion against her partner or family's wishes and efforts to prevent it, she should also make restitution not only for the violence against her child, but also in recognition of the harm done to all those community members who now grieve the child. This discussion is just barely scratching the surface of what must be considered within the restorative model and the sorts of options that can be implemented in a given local system, though hopefully some examples like these will help to build a more robust set of opportunities for healing and restoration.

120. This becomes a quite complicated question: some abortion-inducing drugs have multiple indications, and could be prescribed for good reason and with cause unrelated to abortion. Maybe the drug company and pharmacy didn't at all intend for this potential usage to occur — even prescription drugs can be abused. Or perhaps, the company and pharmacy did intend to procure this drug because it can contribute to abortions. Getting to the bottom of this question sounds incredibly tricky, and the question of how the concern of community safety can be balanced here is a worthwhile question.

121. Miranda, Lin-Manuel, comp. *Moana*. Dirs. Ron Clements, John Musker. Perfs. Auli'i Cravalho, Dwayne Johnson, Rachel House, Temuera Morrison, Jermaine Clement. Walt Disney Studios Motion Pictures, 2016.

Conclusion

In the story of *Moana*, it takes a shift in the cycle of hurt to restore the heart of the mother island, to restore communion, sharing, light, and life. Only the healing that grows from returning the Heart of Te Fiti was able to return the land to its natural, verdant green.

Likewise, abortion can wreak havoc in a community, in a family, and in the life of a woman. As the theft of the Heart leaves the islands barren, the communal trauma of abortion lays waste to the natural order and to life. America's nearly fifty years of legalized abortion have led to the deaths of tens of millions of children in the womb, and physical, psychological, emotional, and relational harms to all too many women, girls, partners, and communities.

The helplessness many feel in the face of so much suffering, division, and pain leads some to resort to a retributive, blame-centered perspective on abortion and abortion law. Tui is representative of this approach, reacting from a place of deep, longstanding hurt and fear as he proclaims, "No one goes beyond the reef." He is afraid to engage in a holistic evaluation of what would be best for his people, instead defaulting to worry rather than relationships and prioritizing protection to the exclusion of healing. He is so afraid of losing someone else he loves to the open seas that he is blind to the real needs on Motonui.

The unique harms of abortion, however, are best addressed by a Restorative Justice approach. Abortion strips away not only life, but also love, relationships, and futures. It denies intrinsic human identity, value, and dignity. By rejecting violence and by being based in person-to-person restitution, the Restorative Justice model respects human dignity. By effectively involving the offender, the offended, and the community in the pursuit of justice, it reduces recidivism, as well as costs. By seeking to offer restoration and rehabilitation instead of a balance of harms, and through community involvement in creating justice, it restores families and communities to wholeness.

Through intentional restorative work, the hearts that know the loss and pain of abortion can be restored. When we invest in recovery and healing, we can reshape our communities, reestablish the peace and the relationships that have been lost, and bring hope to a land left scarred by death. This is work that we all must engage in, for it is our hearts, together in fellowship, that have the strength to form connections, and to repair and rebuild harmony. And so the more people who facilitate this healing, the more people who share the message of dignity and hope, the more people who work to restore the hearts of those impacted by the violence of abortion, the sooner we will achieve that harmony and bring new life to our land.

*"Her heart held the greatest power ever known.
It could create life itself."¹²¹*

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Aimee Murphy
Executive Director of Rehumanize International

I am grateful to all those who have supported and prayed for Aimee and me in this endeavor: the Americans United for Life and Rehumanize International teams who came alongside us in this process; Herb, Maria, Steve, and Tom, for sitting down and brainstorming with us back when the idea of putting forward a substantive document reexamining how we seek justice in the context of abortion was just a dream; Katie and Natalie, for their invaluable assistance with research and citations; Herb, for honing our thoughts and words to ensure that we would convey the right message and tone; Maria, for adding visual beauty and context to our writing; all our other friends and family who edified us in ways big and small through this process; and Aimee, who inspires me every day with her principled, consistent stand for life, dignity, and compassion, at all times, in all circumstances, without fail. I am privileged to call each of them a friend. And I am grateful to our supporters, without whom this paper would not have been possible. It has been a labor of love.

Catherine Glenn Foster
President and CEO of Americans United for Life

Editor's note: Throughout this document for clarity purposes the authors have chosen to use the words "mother" and "woman" to refer to pregnant and childbearing persons. Rehumanize International recognizes that there are individuals who have been gestational parents but do not identify with the societal or gendered implications that these terms carry. We apologize for any discomfort this may have caused.

Appendix

Addressing Complicated Topics Related to Pregnancy and Abortion

Before Abortion is Illegal

In creating a sustainable and long-term strategy to make abortion illegal, we must necessarily consider the legal steps on the way to our goal. While our legal goal is the total, Constitutional abolition of abortion in junction with human-centered Restorative Justice plans to address the violation of said law, we respect the strategy to work somewhat incrementally toward that goal. In doing so, limits, restrictions, and bans on abortion may be signed into law in various states or even nationally before we see a total federal recognition of the rights and dignity of all preborn children and a total ban on all elective abortion. In these potential incremental laws that seek to save as many lives as possible under a given standard, there are some complicated topics that are worthy of addressing within our human-centered framework.

RAPE

As was mentioned earlier in this paper, all survivors of sexual violence should be treated with the utmost respect and compassion. This is a non-negotiable principle within a human-centered model of justice. A topic often brought up in discourse on the subject of legal restrictions on abortion is whether abortions for survivors of rape should be legal and/or funded by taxpayer dollars. Abortions after rape are often some of the only exceptions listed in anti-abortion legislation, and are often pushed by Republicans who are seeking to look moderate or compassionate.¹²²

As advocates of the intrinsic, immutable dignity of each and every human being from conception until death, we should reject the rape exception. When we reject the rape exception, we declare that no matter the circumstances of a child's conception, each and every human being has the right to live free from violence. When a woman is raped and becomes pregnant, she is innocent and deserves protection; likewise, the preborn child conceived of that violence is innocent and deserves protection. We can and should accompany a survivor of sexual violence through pregnancy and beyond. We can and should affirm and uphold and protect the lives of both mother-survivor and child in the law and eliminate rape exceptions.

We want to challenge all legislators to embrace the consistently pro-life position: end rape exceptions.¹²³ In addition to being misguided, these exceptions ultimately divert the question of why abortion is wrong. They imply that — instead of being wrong because it kills a preborn child — abortion is wrong because it violates some natural consequence of irresponsible sexual behaviors. If pregnancy were a punishment for irresponsible sexual behaviors, and we wanted to discourage irresponsible sexual behaviors, then it would make sense to allow the termination of

pregnancy only when the sex that led to it was not consensual. But pregnancy is not a punishment, and despite what many say, the goal of the pro-life movement is not to control women and their sex lives. Abortion is wrong because it kills a human being who has inherent dignity no matter how they were conceived.

FETAL ANOMALIES AND DISABILITIES

Parallel to the complicated controversy around the rape exception, there are several exceptions to anti-abortion legislation based on the cases where the fetus has been diagnosed with an anomaly. In Maryland, these sorts of anomalies can include conditions like cleft palate, Down syndrome, intersex conditions, hydrocephalus, cystic fibrosis, spina bifida, and many others. In several other states, the fetal anomalies must be “lethal” in order for the exception to come into play.¹²⁴

Ignoring the fact that human existence is fatal and that every human will someday die, we must still address the ableism at the root of these exceptions which implies that someone is better off dead than alive with a disability, no matter how long their life may turn out to be. Legalized abortion for fetal anomalies functions as lethal eugenics; it does not prevent a disabled child from living, it violently kills a child with a disability who is worthy of love, respect, and care. Despite the aching desire we may feel to ease the suffering of disabled children and their parents, we must never ever seek to eliminate suffering by eliminating the sufferer. People with disabilities are an especially marginalized class and deserve legal protection from ableist violence that would seek to kill them on the way to a pain-free Utilitarian utopia.

After Abortion Has Become Illegal

Though the prior section is relevant in the effort to make abortion illegal, and this section is also significant prior to abortion being wholly prohibited, there are some complicated legal concerns that are more pertinent after that goal is met.

MISCARRIAGE

The central theme around these questions is that of “spontaneous abortions,” commonly known as miscarriages. The scientific name can be somewhat confusing for the common person, since it sounds like the commonly-used term we use to mean “elective abortion”; however, a miscarriage, or spontaneous abortion, is “the natural death of an embryo or fetus (baby) before he/she is able to survive outside the mother.”¹²⁵ In this paper, we have used the colloquial terms: “abortion” to refer to elective abortions that intentionally kill the preborn child, and “miscarriage” to refer to the unfortunate and unintentional natural death of a preborn child. When approaching this very sensitive subject, we acknowledge that miscarriage is so very common and that we must be champions of the dignity of the embryonic and fetal children who have died before birth and stewards of the dignity of their families who mourn them.

While morally differentiating the two acts of abortion and miscarriage, we also bear the weight of understanding that in both cases, a mother has lost her child to death. There is bound to be

grief and trauma in need of healing either way, and this healing of community and acknowledgement of real loss of a child is something that the Restorative Justice system can help facilitate.

Many questions arise when discussing hypothetical scenarios surrounding miscarriage. Ultimately, people of good will just want to know that those who have suffered the loss of a child in a miscarriage will not be treated punitively or subjected to further traumatization by the justice system. We share these concerns and want to analyze and work through these solutions together as we move forward.

Will there be mandated reporting of miscarriages?

This is a very sensitive question that certainly requires a lot of compassion and understanding. Because we want to acknowledge that each and every human begins their life at the moment of fertilization, we would appreciate the state recognizing the existence of these prenatal humans in some way.

Many women who miscarry are unaware that they were even pregnant, and their doctors were unaware as well. Others who miscarry may have known of their pregnancy and even started doctor's appointments, but might have kept that knowledge hidden from the community for fear of loss and stigmatization and poor responses from others. And other people might have shared their news of pregnancy with everyone, sought a doctor's care, and may grieve the loss more openly.

We would support legislation that allows for some sort of recognition of the life of a prenatal child, and in the case of miscarriage (reported by a doctor or self-reported by a patient), a death certificate also issued and offered to the family.

In any case, when miscarriage is discovered (by a woman or her doctor), we would like the first reaction of responders (including physicians) to always be one of condolence, compassion, and respect for human life. Everyone who suffers a miscarriage should be offered healing and grief resources, just as anyone would if they suffered the tragic death of their born child.

What would happen if a friend or neighbor reported a pregnant person's abortion, whether elective or spontaneous?

In a restorative model of justice, policing as we know it will be radically different, and any reporting of an abortion (elective or spontaneous, induced or miscarriage) should be treated with extreme care and compassion, akin to a report of a potential suicide attempt or neglect of a child out of desperation. We know that many women have abortions while in crisis, and many who suffer miscarriage are facing a crisis as well. Our response to either of these crisis situations should not be one of violence nor any dehumanizing interrogation.

One suggestion might be to send a crisis counselor or social worker to follow up on such a report, equipped with healing skills and ready to serve. The crisis counselor and/or social worker should ask gentle questions to inquire about whether this loss was intended or natural, while assuring the woman that punishment is not a part of the restoration after abortion. If it can be determined that the loss was intended, the social worker

can begin to guide the woman into the process of Restorative Justice as outlined earlier in the paper. There should also be follow-up within the restorative process at the community engagement stage to address and place safety restrictions on the doctor, drug trafficker, or pharmaceutical group who helped the woman induce or procure an abortion.¹²⁶ If the loss cannot be determined to be induced and the woman in question so desires to access further resources, that crisis counselor should be ready to connect them to such resources and plug them into a restorative system for healing if so desired.

What would happen if a pregnant person is caught smoking, drinking in excess, consuming drugs or doing other things considered harmful for pregnancy?

This case is again complicated, and we must acknowledge a balance of bodily liberties of the woman and the prevailing right to life of the preborn child. While not nearly as severe as the death of a child from miscarriage or abortion, the welfare of the preborn child should also be worth protection and respect. In the case of drugs, connection to a crisis counselor or social worker would be fitting so that the woman in question might be connected to free, human-centered detoxification, sobriety, health and well-being resources. Coffee, sushi, lunch meats, limited amounts of alcohol, and soft cheeses are safer than the rumors might have the public believe, and any unintended loss of a child because of the tragedy of food poisoning should be treated with care and offered all available resources for healing after the loss of a child.

What would happen if a pregnant person attempts suicide and the preborn child is harmed or dies because of the attempt?

Though this is by no means an easy situation, for those with compassion and understanding, this crisis has an easy answer: in the case where a woman attempts suicide and survives, the harm to or loss of her child is a tragically unintended side effect. Abortion is already akin to suicide in many aspects, commonly including desperation and an inability to see a way out, and our treatment of this loss should reflect the care that we should give to all facing mental illness. Mental healthcare resources (including humane inpatient care), grief and loss support, and connection to all Restorative Justice healing resources should be offered once the woman is again stable after the attempt.

What would happen if a person has had recurrent miscarriages, and her body has difficulty maintaining pregnancy, and she loses another child to miscarriage while knowing about this recurrent miscarriage condition?

A child's likelihood of lengthy survival in the face of natural causes that might thwart living to an old age has no bearing whatsoever on the morality of miscarriage. Miscarriage, as a natural loss of a preborn child, is something tragic and worthy of grieving, but there should be nothing done beyond what would normally occur after a miscarriage within this restorative system.

What would happen if it was discovered that a woman sought physical harm for the purpose of ending her preborn child's life?

As with other reported miscarriages, the normal involvement of a crisis counselor or social worker would be expected. If it was revealed that the woman sought physical harm with the express intention to end her child's life, that woman should receive medical healthcare, including especially mental healthcare first and foremost. Someone who is this desperate to kill their child deserves great compassion, and crisis counselors should see this case as especially heart-wrenching. After the woman is healed from any physical wounds, we would recommend the social worker to begin the process of admittance to the Restorative Justice system to begin the vital process of healing and restitution. Whoever participated in the intentional violence against her body and the child (even though it was partly consensual) should also be included in the restoration process for their willingness to harm the child at the additional expense of the woman's health.

References and Notes | Appendix

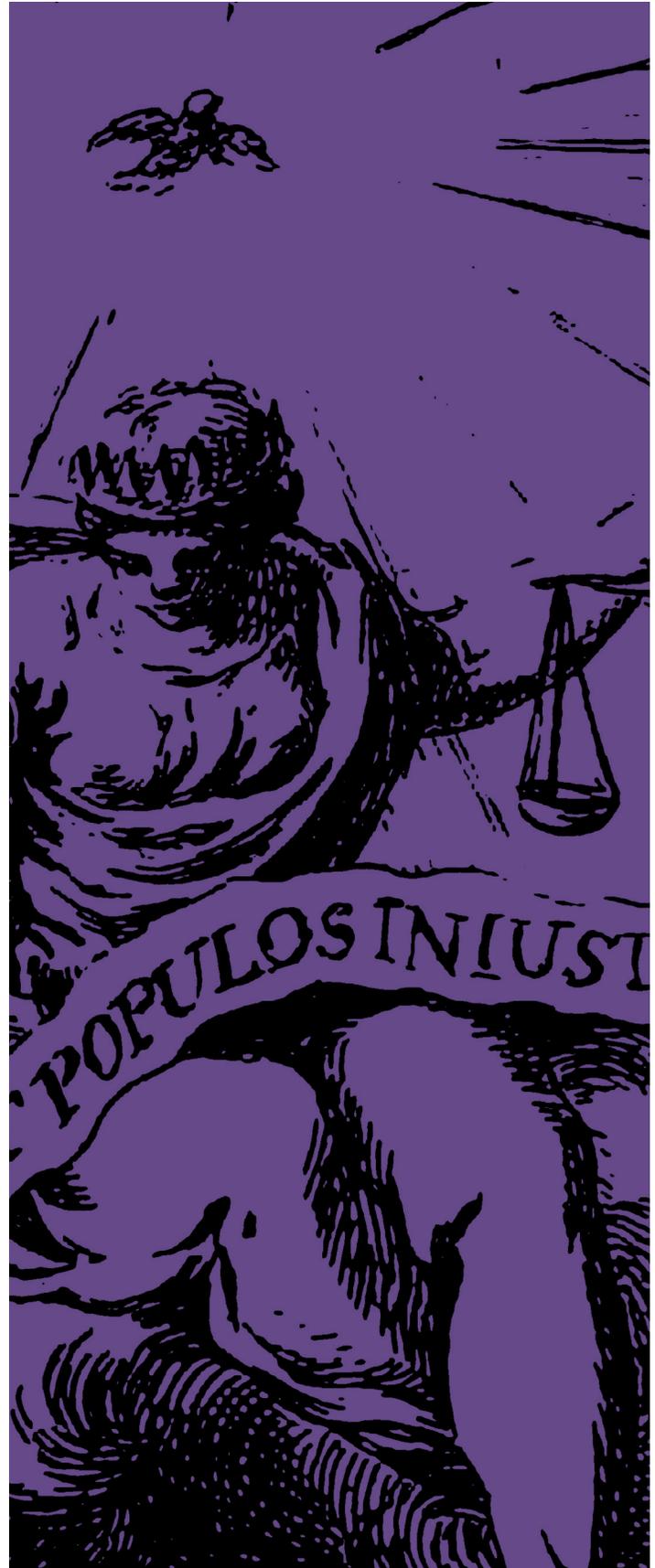
122. Haberkorn, Jennifer. "New far-reaching abortion bans too extreme for some Republican leaders." in the *Los Angeles Times*, May 16, 2019. Accessed on 1/10/2019 at: <https://www.latimes.com/politics/la-na-pol-congress-abortion-ban-exceptions-republicans-oppose-20190516-story.html>

123. We did not say "rape and incest exceptions", even though the two often go together in existing legislation. The reasoning why we excluded the word "incest" is twofold. Firstly, most acts of incest that would be implied by the general public in this case would be tiptoeing around the central issue: that many times, incest means a violent rape of a young girl by an older male family member — in which case, we should just call it "rape" and act accordingly. This is crucial because, as to the second point of this reasoning, the other instances of incest are consensual, between two adult members of a given family. While there are potential moral objections to that sexual act, the resultant child conceived within that act is just as deserving of human rights as any other. If people support abortion after incest because of the risk of mutations and/or disability, then the support for the incest exception is rooted in ableism and is a dual act of dehumanization.

124. Guttmacher Institute. "State Bans on Abortion Throughout Pregnancy" updated on January 1, 2020. Accessed on 1/10/2020 at: <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>

125. Miscarriage Care. "Educational Resources." Accessed on 1/5/2019 at: <http://www.miscarriagecare.com/resources.html>.

126. One example of such restrictions imposed for the safety of members of a community would be to suspend or revoke the medical license of a doctor who has performed abortions. This sort of limitation on a medical license should drastically limit the amount of interaction and opportunity such a doctor might have to kill more preborn children through abortion. Another example would be to shut down or limit the pharmaceuticals that a given company may compound.



The Authors



Aimee Murphy is the Executive Director and founder of Rehumanize International, a non-partisan, secular organization dedicated to bringing an end to all aggressive violence against human beings through education, discourse, and action. After a personal conversion to the cause against abortion as a teen, she was able to claim and defend a holistic ethic of non-violence during her time in university: the Consistent Life Ethic. Through her work with Rehumanize International, Aimee is reaching people all over the globe with the consistent message of human rights and is creating and engaging in effective dialogue to change hearts and minds. Murphy was selected as a winner of the Susan B. Anthony Young Leader Award in 2014 for her trailblazing pro-life leadership. Since then, she has been featured in news media outlets such as *MSNBC*, *Marie Claire*, *Cosmopolitan*, *The New York Times*, *The Washington Post*, *VICE News*, and many more. She currently resides in Pittsburgh with her profoundly supportive husband, their dog Domino, and—in the spirit of radical hospitality— whichever friends wander into the Murphy household.



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