AN ABSTRACT OF THE THESIS OF
Roni Sue for the degree of Master of Arts in Applied Ethics presented on May 4, 2006.
Title: Sexual Harassment and Restorative Justice: A Transformative Approach to Addressing Sexual Harassment Claims

Abstract approved:

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In this thesis, I argue that using principles of restorative justice as a guide in the resolution of sexual harassment claims is more efficacious than a traditional retributive approach. I support this claim by synthesizing the work of Phillip Hallie, Josiah Royce and Martin Buber in order to come to a comprehensive definition of human dignity.

In addition, I use the concept of Beloved Community and agape of Dr. Martin Luther King, Jr. in order to illustrate the link between human dignity and community.

Finally, I use Bishop Desmond Tutu’s work with Truth and Reconciliation Commission after the fall of apartheid in South Africa as a model for a restorative justice approach to sexual harassment claims. In order to illustrate my claim, I employ two hypothetical fact patterns to demonstrate the relative advantages of a restorative justice process versus a retributive justice process. Cherrystone State University demonstrates a retributive process and Magnolia State University demonstrates a restorative process.

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Roni Sue, Author
ACKNOWLEDGMENTS

This thesis is the culmination of a transformative period in my life. I set this thesis as a challenge to myself, and after many agonizing hours, I have finally come to the end of this portion of my journey. Needless to say, I could have not done it without the incredible support of my family and friends. I wish I could thank each and every one of you personally, but the space is too short. Suffice it to say that I love you all and I feel blessed and grateful to have you in my life.

I would like to thank the members of my master’s committee: Dr. Mina Carson for standing by patiently these last few years, and being ready and willing when the time finally came; Dr. Courtney Campbell, for his very kind willingness to step in when his plate is already overflowing with duties; Dr. Janet Lee, for being a role model who is always authentic and bringing a critical eye to all you do. Dr. Lani Roberts, who has pushed and prodded and hung back in every effort to support me in this sometimes overwhelming project. Thank you for always believing I could do this.
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DEDICATION

This is dedicated to my children, Zachary, Nicholas and Grace. You are my hope and inspiration. Thank you for teaching me more about justice and integrity than I could learn from reading a thousand books.
Sexual Harassment and Restorative Justice: A Transformative Approach to Addressing Sexual Harassment Claims
Chapter One- Introduction

In 1999, after ten years of staying home to care for my children I embarked on a new endeavor. With thoughts of going to law school, I began taking classes at the local university. People in the department began to become familiar to me and we would nod our acquaintances to each other while passing. One summer, while tracing my standard route from the coffee shop to class, a professor from the department asked me if I would like to have coffee with him one afternoon. Although I was a bit surprised at his offer, I reasoned that others in the department seemed quite friendly and most faculty I had met made an effort to make me feel welcome, so I agreed. As our date neared, I became a bit apprehensive. As it turns out, I had good reason to be anxious. As we had our coffee, our conversation turned to the professor’s interest. He began to tell me that the three things in life that he lived for were sex, drugs and classical music. I was astounded and completely unnerved although he seemed oblivious to my discomfort. As common for most of us in times of great stress and anxiety, I have a thousand things that I wish I had said to this man after the fact, but then I could only sit there, smile and wait for an appropriate moment to excuse myself.

I didn’t have a name for what was happening, but I knew it was wrong. I was angry at being subjected to his dirty thoughts and confounded as to why I couldn’t bring myself to just tell him off and leave. Consequently, I did what I could to avoid this man. I didn’t tell anyone for a long time because I was embarrassed and humiliated. When I eventually had to take a class with this professor, I found myself in a quandary over a presentation topic. I wanted to present a theory from a well
known feminist philosopher, but I was concerned that because of my topic, the professor would be particularly antagonistic. Little did I know how common this reaction is for victims of sexual harassment.

One day, I finally asked a trusted professor about this man. I phrased my question in a general way and she wanted to know why I was asking. I told her the whole story about our meeting in the coffee shop. She told me that this was not unusual for him, and that this kind of behavior had been going on for a long time. I asked why his behavior had been allowed to persist for so long. She responded that although she had brought his behavior to the attention of various department chairs on numerous occasions, her complaints bore no fruit of which she was aware. I am not sure if any formal complaints against this professor had been made in the past, but it was clear from my discussion with my trusted professor that his penchant for sexual harassment towards female students was well known in the department. I was astounded, and angry that a group of professional academics in a department with an emphasis on teaching ethics would allow this to continue.

Fast forward in time to fall 2003 when a group of ten students, including myself, wrote a formal letter to the Director of the Office of Affirmative Action and Equal Opportunity and the Dean of the College of Liberal Arts. It was also copied to the Chair of the Department and distributed to the faculty. This letter was the result of a small cohort of graduate and undergraduate students who had become aware of the ongoing sexual harassment in the department. This letter had three main sections. In the first section, we explained to the faculty how we as peers had created a supportive academic community and that not only individuals had been directly harmed but, as a
community, we were also harmed. As students, when something happened to one of us, we all felt the effects. We noted that we often felt anxiety and concern about our peers who had to take courses with the offending professor. We felt that our ability to learn was compromised because we couldn’t realistically access certain faculty members whose expertise and mentoring we needed in order to complete our academic programs. We explained how we avoided certain physical locations, such as offices, presentations, and academic and co-curricular settings, in order to avoid negative or awkward interactions with certain faculty and instructors.

The second section of the letter contained recommendations for how the department and the university, as an institution, could take positive action on behalf of the involved community. Included in this section was the requirement that the offenders take responsibility for their actions and the recommendation that an opportunity be available for the offenders to offer restitution and to reconcile with both the victim and the community. The third section gave our expectations of immediate response. In the closing of the letter, we noted that this letter was a first step, and let the department know that we were committed to continue addressing our concerns.

This was our beginning effort at initiating a process of restorative justice and education to heal the community of faculty and students. It was our conviction that the path to true healing and community transformation required the truth to be told and opportunities for forgiveness to be created. Over the next academic year, a number of us had individual meetings with the Office of Affirmative Action. Also, all of the concerned students and the entire faculty and staff participated in two facilitated
meetings. In addition, we held one meeting where we read and discussed two narratives by women professors where they related their experiences of sexual harassment in the academy. It became clear during these meetings that not only were we students concerned about our academic environment, the faculty was as well. Truths were told, tears were shed and healing began to take place. As I write this, the process is not yet complete, but it is from the perspective of a victim, friend and concerned student that I offer my thesis.

I will argue that using principles of restorative justice as a guide in the resolution of sexual harassment claims is more efficacious than a retributive approach. I will limit my thesis application to situations in which sexual harassment claims are made that occur in small work or educational communities. Additionally, I will assume for the sake of my argument that these communities are governed by Affirmative Action policies because it is this office that often renders retributive outcomes.

The Equal Employment Opportunity Commission has defined sexual harassment as sex discrimination that violates Title VII of the Civil Rights Act of 1964 (Equal Employment Opportunity Commission). Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment (Facts).
This legal definition fails to acknowledge the inherent power relations in which sexual harassment can occur. Most often, sexual harassment is not about sex; it is about the unjust exercise of power.

In cases where complaints of sexual harassment or hostile environment are made typically the victim is a woman, but not always. When the offense takes place in the workplace, most often she holds a position that is equal or subordinate to the harasser. In an academic environment, she is often a graduate student or undergraduate student seeking assistance and advice from her instructors. Catharine MacKinnon, in her groundbreaking work on sexual harassment in the workplace, argues that sexual harassment is an expression of the subordinate position that women hold in our society (xi). Although sexual harassment typically happens to women, harassment and hostile environment claims are also made by men as well as those who are lesbian, gay, bisexual, transgender, queer, questioning or intersex (LGBTQQI).

Sexual harassment generally occurs in a relationship burdened by the differential power that the harasser has relative to the victim. Naomi Wolf notes, “Powerful men and women who belittle and humiliate their subordinates manage not to belittle or humiliate their supervisors. Neither men nor women tend to harass upward in a hierarchy” (2). Although harassment most often takes place as Naomi Wolf explains above, it is also often the case that women who are in a superior place in an organizational hierarchy, such as the work place or the university department, are harassed by men who are not their formal superiors. This may occur between equally positioned professors where the male professor harasses a female professor, or when a male student imposes himself on a female student or female professor. I agree with
Catharine MacKinnon when she notes that, overall, women occupy a place in our society that is less valued than the place that men occupy (10-13). Thus, even when men and women appear to hold equal status, women are subject to subtle prejudice and discrimination which often is expressed through sexual harassment.

Because sexual harassment usually occurs within an unequal power relationship, it is often difficult for those who experience harassment or a hostile environment to expose their harassers for fear of losing their job, getting a poor grade, losing a potential letter of recommendation or other forms of retaliation. The hierarchy in which they are embedded serves as a structure to maintain the status quo. Women who experience sexual harassment often experience depression, guilt, anxiety, low self-esteem and medical problems related to stress. Students often respond by changing their majors or dropping out of school altogether (Paludi, 69).

Anita Superson, in her argument exposing the limitations of a legal definition of sexual harassment, claims that when sexual harassment is directed at one woman, it is also directed to all women (176). In personal narratives by women who have experienced sexual harassment within a university setting, the victims also note that their relationships with other women and men in the program are affected by the harassment. Collegial relationships among faculty and students become tainted with suspicion and the development of a positive academic community becomes impossible. I argue that sexual harassment not only affects an individual, it affects the people within the community and the ability to maintain the integrity of that community. Often it is assumed that only the victim is harmed by sexual harassment however, I believe this is very rarely the case. Where sexual harassment occurs
between two people, a hostile environment is also created for the immediate
community of individuals. The possibility of healing community is the greatest asset
of restorative justice.

The standard approach to addressing sexual harassment cases is couched in a
retributive model of justice where consequences are brought to bear on the harasser
with little regard for the needs of the victim. Many women report that when they do
attempt to file a claim, their claims are frequently dismissed with excuses made for the
harasser or the systems in place to receive these claims are difficult to negotiate
(MacKinnon, 49; Mink, 27-28; Morris, 133-139). When a formal complaint is made,
often the law is unclear as to whether it falls under the legal category of sexual
harassment. This makes the investigation difficult, especially when the investigation
seems to focus on the victim’s behavior rather than the behavior of the offender. When
a successful claim is made and consequences are delivered to the offender, the
claimant is often excluded from the process except in the initial presentation of the
case or in a situation mediated by attorneys or other designated affirmative action
officers. When sexual harassment is addressed within a retributive model, the victim is
rarely given the opportunity to express her injury to the offender and the toll that it has
had on her emotions and her academic and/or professional life.

When the outcome resulting from a successful claim of sexual harassment or
hostile environment are kept confidential, as is frequently the case, there is little
possibility for the education of the harasser or the community. Confidentiality is
often required due to the legal demands governing the intervention of an affirmative
action office. Without the opportunity for the victim to bring the incident to light,
there is little opportunity for her to directly address the offender in the context of the particular offense. Because of these circumstances, the offender is not given an opportunity to come to an understanding of his behavior or to ask for forgiveness. In an effort to maintain the reputation of the harasser and the privacy of the victim, the opportunity for the healing qualities of truth telling and education are significantly reduced. Offenders are not given an opportunity for personal growth and there is little opportunity to heal the damage to the community. Sometimes the offender becomes isolated from or shunned by the community due to the desires of others to disassociate themselves from him and his actions. Restorative justice provides opportunity for personal growth and community healing.

Retributive justice also limits the potential for forgiveness and sometimes hinders the potential for the victims to move on in their lives. To illustrate this, it is important to distinguish the offense of sexual harassment from the injury caused by it. The offense is an act or acts that cause injury to an individual and/or a community of individuals. It is the act that requires consequences. Retributive justice, in this case is a covert acknowledgement of harm done; however, the harm and the sometimes devastating consequences for the victim are rarely brought to light. When retributive consequences are mandated, it is not a public event where the community has access to the nature of the offense or the consequences; rather, there is frequently pressure and sometimes legal requirements to keep the offense hidden in order to protect the reputation of the offender. There is a code of silence, sometimes official and often unofficial that perpetuates the injury by limiting the possibilities for healing of the victim and reconciliation for the offender.
Retributive justice can do little to acknowledge the devastating experience that can fragment the community in which the wrong occurred. Retributive justice in this way functions retrospectively. By this I mean it delivers consequences concerning a past incident or incidents, but it does little to advance the cause of justice. It is not a method that encourages community education and healing, or moving toward the future.

Retributive justice often conceptualizes the harm as being against the state or institution rather than harm against an individual or community. It also fails to acknowledge the relational qualities of the offense. Sexual harassment or hostile environment claims are brought to bear by one or more individuals against another person or a group of individuals. Sexual harassment, however, is also an offense that occurs within the context of a relationship or relationships within a community. Often the harms caused by one to another also affect the surrounding community. With a retributive model of justice, the consequences applied to the offender do not address the harms done to the community. If distancing has occurred, there is a reduced or nonexistent opportunity for reintegration of the offender into the community that has been harmed.

The retributive model has the effect of dehumanizing not only the victim, but the offender as well. The retributive model assumes that harm is repaired via punishment of the offender by an institution outside the context in which the offense occurred. For example, this method deprives the offender the opportunity to ask for and receive forgiveness by denying the wrongdoer an opportunity to make amends directly to the victim and the community. In a retributive model, the offender is seen
as wrong or bad rather than the act or acts being judged. When the focus is on the individual rather than the behavior, the effect is to demonize the individual, and this makes it difficult for the offender to receive forgiveness and gain reintegration into the community. Since there is little opportunity available in the retributive model to address the context of the offense, it is the offender who becomes the focus rather than the harm done to the victim or the actions that caused the harm. Retributive justice is a process that often perpetuates the oppositional qualities of the relationship within which the harm occurred. It is just these circumstances that open the door for the scholars to develop a new approach to healing injury caused by sexual harassment and hostile environments.

Restorative justice is more efficacious than retribution because the underlying values of restorative justice include the creation and maintenance of community where all persons are valued equally. I will argue that restorative justice complies with the ethical obligation that we acknowledge the humanity of each individual involved in a conflict. For the purposes of this thesis, acknowledging humanity means that we must give each individual involved in the conflict an opportunity to express the consequences of the harm to the offender/s in a safe and supportive environment, give the offender an opportunity to be accountable for his/her behavior, to ask for forgiveness and provide restitution and to be reintegrated into the community if necessary. I maintain that we should treat an offense as arising between individuals within a community, rather than an offense against a state or institution. I will also argue that the restorative model of justice can provide an opportunity for healing and forgiveness for the individuals involved as well as for the community of people within
which it takes place where the retributive model reduces or eliminates these possibilities. When using a process guided by restorative justice to address sexual harassment, there is a greater possibility that the dignity of the victim and the integrity of the community will be restored as well as reconciliation between the victim and the offender will be accomplished. This does not mean that the victim and offender will become the best of friends; it only means that the victim and the offender have come to some shared agreement of harm done to the victim and the offender has made himself accountable for that harm.

The concept of restorative justice has existed for many years. In 1947, Congress founded the Federal Mediation and Conciliation Service (FMCS) following the passage of the National Labor Relations Act to reduce conflict between labor organizations and employees. Although this mediation process was in part a reaction to the fear that national production would decrease as a result of labor disputes, it was an early recognition that mediation could better address conflict than an adversarial system. Following the success of the FMCS, Congress established the Justice Department’s Community Relations Service. This agency employed mediators to work in racially divided communities with the aim of reducing racial conflict. This began a trend towards alternative methods of dispute resolution and the implementation of various mediation programs in Canada and the United States (Mediation Training Manual). Appreciation for mediation programs whose goal is to provide a forum for the healing of wounds to be accomplished directly by the involved parties continues to grow. This leaves room for the amends to take many forms which can be crafted and approved by the parties themselves. Otherwise the application of
justice is left to those outside the matter. It is a flexible and contextual approach that can meet the needs of all involved parties.

Offering victims an opportunity to talk about their experiences, express their feelings, and sometimes find others who have had similar experiences can create much healing for the wounded. This is the story told by many who took part in the hearings held by the Truth and Reconciliation Commission (TRC) in South Africa after the defeat of apartheid and the onset of a new democracy. Many victims, when able to tell of their horrific experience of abuse and indignities in a safe and supportive environment, were able to find healing where none seemed possible before. Additionally, the proceedings of the TRC provided the space in which formerly antagonistic communities could find reconciliation. Although the circumstances in South Africa in which harm occurred are vastly different and more severe than the circumstances in a situation of sexual harassment, the processes guiding reconciliation and healing are alike in relevant ways. Women who are sexually harassed also experience healing when given the chance to be heard. Using a model of restorative justice also allows for reconciliation and healing for the community as a whole.

In the philosophical literature, justice has been discussed as two distinct but related kinds, distributive justice and retributive justice. Distributive justice is most often concerned with the equitable distribution of goods, services and advantages of a society. Retributive justice is concerned with socially prohibited wrongs and the appropriate punishment. Questions of retributive justice involve who should be punished and what form punishment should take. These questions are answered in many forms by many philosophers. The general agreement however, is that
punishment must be deserved and should be in proportion to the wrong done. The reasons for punishment vary from philosopher to philosopher. Some philosophers argue that the punishment should serve as a deterrent to other potential wrong doers. Some claim that punishment should serve as compensation to the victim. The victim may be an individual, an organization or the state. Some philosophers argue that punishment must be given in order to acknowledge the wrong doers as responsible moral agents (Encyclopedia of Philosophy, 704-705). Ultimately, all philosophers of justice are concerned about creating or maintaining a civil and safe society.

Retributive justice is characterized by holding individuals or institutions accountable for wrongs committed by levying some sort of punishment. Generally, assessing punishment is carried out by an agent of the state. It may or may not include direct restitution to the victim, but it does not have as its central goal reconciliation. In contrast, restorative justice maintains a central goal of reconciliation and restoration of injured relationships within a community. For that last twenty-five centuries, retributive justice has been the normative model for addressing civil and criminal harms.

In this thesis, I will argue that restorative justice is a more efficacious method to address issues of sexual harassment, without the loss of any benefit from retributive justice. Hume claimed that justice is relational and that the end of justice is the mutual trust, confidence and general interest in society (267). Restorative justice, in this context, meets that end. Offering a victim an opportunity to express the harms she experiences as well as providing a framework for healing and forgiveness creates the conditions necessary for justice as Hume describes.
Additionally, a restorative approach to addressing sexual harassment and hostile environment claims creates the potential for change in an environment that prevents future harms. It is a model that compels individuals in a community to hold themselves accountable for their impact on others and the community. It has the potential to create a more cohesive community where the members support each other and hold each other accountable for their behavior. The values of restorative justice include respect for every individual human and care for community. Furthermore, the methods of restorative justice cohere with the ends. It is a model where the values of justice are consistent throughout the process. The process is open and concerned for all those involved, rather than circumspect and adversarial.

The development of the idea of restorative justice comes from many sources, some religious and others not. I subscribe to the ideals of justice for all; this includes holding equal compassion for the offender as well as the victim. As I mentioned earlier, sexual harassment is not confined to the relationship between the victim and the offender, but affects the immediate community as well. A restorative justice process acknowledges that it is the responsibility of the community to seek justice for victims of sexual harassment. Restorative justice also provides the opportunity to the offender to ask for forgiveness in order to reconcile and reintegrate into the community.

In short, this is a thesis of hope. It is my hope that education, compassion and a deliberate effort to employ values of restorative justice will reduce the harm done to all by sexual harassment and provide opportunity for reconciliation of all those involved. It is my further hope that this method will become an opportunity for the
building of "Beloved Community" as it has been defined by Dr. Martin Luther King, Jr. I realize that it is impossible to create community by focusing on just one aspect of healing community, but it is my intention to provide a method to begin healing damaged relationships that so often work to prevent community that values everyone.

In chapter two, I will begin with a short history of the concept of justice in the philosophical literature. I will include the concepts of justice as written by Plato, Aristotle, Immanuel Kant, John Rawls, David Hume. I will explicitly say what I mean by retributive justice and restorative justice. In my approach to developing a model for addressing sexual harassment and hostile environment claims, I then turn to Dr. Martin Luther King's philosophies concerning what he terms the "Beloved Community" as well as his concept of agape. Bishop Desmond Tutu's experiences with the Truth and Reconciliation Commission (TRC) in South Africa demonstrate the potential for healing and for the offender's reintegration into the community. Additionally, I will use the writings of Martin Buber, Phillip Hallie, Josiah Royce, to illustrate the integral concept of human dignity.

In Chapter three, I will propose a model of restorative justice to specifically address sexual harassment and hostile environment claims. Through the use of a hypothetical fact pattern I will illustrate the inadequacies of retributive justice as they apply to cases of sexual harassment. I will also use a hypothetical fact pattern demonstrating sexual harassment in a small university department in order to illustrate the superiority of the restorative justice model. I choose this example because, as a current graduate student, I am most familiar with that community and the experiences of graduate students.
In Chapter four, I will summarize my thesis and discuss ways in which the model may be incorporated into existing institutional structures. I will also address some concerns that may arise when applying restorative justice to issues of sexual harassment. Finally, I will discuss some issues that may need to be addressed and that are outside the scope of this thesis.
Chapter 2 - Literature Review

Introduction

Questions of the appropriate responses to sexual harassment exist in a larger context of justice and human dignity. Although restorative justice is a recent development in the philosophical literature, discussion of justice, what it is and why it is important, occur throughout the entire history of Western-Greek based cultures. The concept of justice in the philosophical literature is driven by a strong desire to define how we should treat one another. For philosophers, justice is social morality. It is usually discussed in the context of relationships between the individual and the state. In order to place my arguments within a philosophical and historical context, I will first provide a brief discussion of retributive and restorative justice. I will then discuss a short history of the concept of justice within the philosophical literature that will include Plato, Aristotle, David Hume, Immanual Kant, and John Rawls. Next, I will go on to examine ideas of human dignity. This discussion will include Phillip Hallie, Josiah Royce and Martin Buber. I will further discuss ideas of human dignity and community from Martin Luther King, Jr. Finally, I will discuss Bishop Desmond Tutu and his work with the Truth and Reconciliation Commission (TRC) in order to illustrate restorative justice in practice. My goal is to illustrate how the concept of justice has been variously approached, and to frame the underlying basis for my thesis.

One final note: I would like to acknowledge the gendered nature of the language used by most of the authors I discuss. Although I strive to limit gendered
language in my writing, I occasionally find it necessary to use it in order to maintain the integrity of an author’s thinking.

Restorative Justice: Past and Present

There is very little written concerning restorative justice in the philosophical literature; however, it has a long history in many communities throughout the world. John Braithwaite notes that forms of restorative justice were present in ancient Hindu, Buddhist, Taoist and Confucian traditions (323). Many indigenous peoples in North America and Australia have been using principles of restorative justice for centuries and continue to employ them within their current system (Melton, 126; Braithwaite, 323).

The use of restorative justice began to appear in the western criminal justice system in the early 1970’s beginning with an experimental victim-offender reconciliation program (Braithwaite, 323). Since those early forays into restorative justice, many communities use various methods to facilitate restitution, reconciliation, and healing. In the county where I live, there is a juvenile restitution and mediation program affiliated with the youth correction system and the courts. The neighboring county also employs restorative justice principles that include a peer court system for juvenile offenders and mediation opportunities.

Although principles of restorative justice are used world wide to address various forms of conflict, there is no single comprehensive definition. Generally when a restorative justice approach is used to address a particular harm, the situation is viewed as a breach of interpersonal relationships situated within a community, it is victim centered, and seeks to provide the offender an opportunity to offer restitution,
seek forgiveness and for reconciliation. Reconciliation in this sense does not necessarily mean that the victim(s) and the offender(s) become friends, although that is a possibility. It simply means that the parties to a conflict gain a deeper understanding of one another as fully human beings and can respectfully receive one another as positive contributing members of a community.

In the next section, I will discuss some of the early philosophical theories of justice. It is my intention to illustrate the development of the concept of justice in the philosophical literature and to examine those ideas that are useful to my thesis as well as those instances where the theories fall short in support of restorative justice.

Early Philosophical Discussions of Justice

In the Republic, Plato endeavors to come to a definition of justice through a series of dialogues. He comes to the conclusion that the nature of justice is two fold: individual and societal (73). The societal and individual aspects of justice each have a particular role to fill, and both must be fulfilled for justice to be realized. For society, Plato argues that justice means a balance between three classes of people: the guardians, the warriors and the merchants. Each individual person has a specific role to fill within a given class. Since, for Plato, the society is a larger mirror of the individual soul, he also comes to the conclusion that individual justice is a harmonious balance between the rational, appetitive and spirit aspects of the soul. Plato argues for a social organization that creates internal harmony for the individual and the society.

Plato, however, assumes that for each class, there is a certain type of person who would be suitable, and that there is a natural hierarchy to people's abilities. For example, people in the merchant classes do not have the ability to be guardians, and
are somehow less worthy (74). This results in certain societal benefits and privileges accorded only to the guardian class. For example, Plato argues that the guardians be given preference in being allowed to marry and bear progeny. Plato also argues that abortion should be legal and decisions concerning abortion should be in the hands of the guardians. Plato’s seemingly just society is created as a hierarchy with deliberate bias; it seems that, for Plato, not all souls are created equal.

Plato’s approach to justice is useful when thinking about the relationship between individual and societal harmony. Ultimately, Plato argues that there is a reciprocal relationship between society and the individual, and for justice to be present, the relationship must be balanced. When principles of restorative justice are used to mediate a conflict between two or more people, there is an effort to balance the needs of all the parties involved as well as to consider the future of the community in which the offense has occurred. His theory is limiting, however, in terms of its mandatory hierarchy. In order to create the conditions in which truth telling and forgiveness are possible, it is necessary to make sure that all the involved parties feel that they are equally valued. This is impossible in Plato’s society where a strict hierarchy of the classes must be maintained in order to achieve his definition of justice.

Aristotle, Plato’s student, has a multifaceted definition of justice. First, he distinguishes between intellectual and moral virtues. Intellectual virtues encompass those states of being that include “philosophic wisdom and understanding and practical wisdom” (139). Moral virtues include liberality, temperance, courage and many others. A virtue is the mean between two poles of behavior, i.e., a virtue is a
state of being bound by its excess and deficiency. Aristotle claims that virtues must be cultivated by the individual through conscious practice and become habitual. As a moral virtue, Aristotle claims that justice is a complete virtue (154). This means that justice is relevant both internally as one relates to oneself and externally as one relates to others. Justice, as a complete virtue, encompasses all other virtues and illustrates the interconnectedness between specific virtues.

Aristotle also looks at justice in a particular sense, as a part of virtue but not as the complete virtue. He distinguishes those virtues relating to the distribution of money or honor from those virtues that play a rectifying role in which some action causes an injustice such as theft, assault or insult (156). This is an early distinction between distributive and retributive justice. Finally, Aristotle distinguishes between natural justice and legal justice. For Aristotle, natural justice is the law that orders the universe in and human life in accord with reason and under which people can live and create good and happy lives.

Practically, however, Aristotle realizes the need for legal justice in the state. This justice is simply that which is according to the law. Aristotle recognizes, however, that laws do not always apply equally to every person and situation, so he describes the need for equity. Equitable justice is a correction for legal justice where the error is not in the law itself but in the practical application (156-157). This reflects Aristotle’s emphasis on the importance of context to justice. Aristotle claims that it is not the law or the legislator that is unjust, but instead injustice can arise from the fact that the law cannot account for every situation. Therefore, equity must be an integral part of legal justice.
The most useful aspect of Aristotle's theory of justice for my purposes is his idea of equity. It is here he acknowledges that it is imperative to consider the context of each situation in order to effect justice. The principles of restorative justice require that we take the multiple contexts of each situation into account when developing the process leading to restoration. I argue that in order to maintain the possibilities for healing and forgiveness, it is imperative that those involved are given some voice in designing the process and the outcomes. It is this flexibility that allows for the specific situations of each individual as well as the needs of the community as a whole to have value.

Although Aristotle maintains that justice as a virtue is both an internal and an external trait, he does not directly address issues of retribution or restoration. The division of justice into natural and legal justice, with its emphasis on legalities, diminishes the relationship between the individual and the community. Although Aristotle notes that equity is necessary, it is still the state with which he is concerned rather than the individuals and their relationships and immediate relevant community.

David Hume argues that the exclusive goal of justice is public utility and that the positive consequences of justice are the "sole foundation of its merit" (267). For Hume, justice is a mediating force between persons, and its ultimate end is the mutual trust, confidence and general interest of society. Ultimately, justice is the state of affairs that guarantees an orderly society. The methods may vary from culture to culture and society to society, but its general utility remains the same.

It is also important to note that, for Hume, determining questions of justice must make use of both reason and sentiment. He states, "Extinguish all the warm
feelings and prepossessions in favour of virtue, and all disgust or aversion to vice: render men totally indifferent towards these distinctions; and morality is no longer a practical study, nor has any tendency to regulate our lives and actions” (263). Hume argues that sentiment is an innate aspect of our being. Justice is relational for Hume; he argues that we are social by nature and that our emotions are influenced by our own experiences and the experiences of others. Hume states, “The human countenance, says Horace, borrows smiles or tears from the human countenance” (277). I understand this to mean that as human beings, we are affected by expressions of emotions by other human beings because they trigger the empathic virtues. For Hume, justice is required to support the continued existence of our relationships with one another. Reason and sentiment work together to decide questions of justice. Reason allows us to find the facts, weigh the options and circumstances and then decide how we should approach or resolve a situation. Sentiment mediates reason by including compassion, empathy and sympathy into decision making. When discussing the utility of reason in moral decision making he claims, “But though reason, when fully assisted and improved, …; it is not alone sufficient to produce any moral blame or approbation” (283). Hume is arguing that sentiment is necessary to move us to act. How we feel and what we think all play a part in how we make ethical decisions.

Hume begins to bridge the gap between an individualistic sense of justice and a more community based perspective of restorative justice principles. His claim that we are influenced by the experiences and emotions of others points to the place that empathy has in restorative justice. He is also one of the earliest philosophers to acknowledge the relationship between sentiment and reason in ethical decision
making. Hume’s theory links the social nature of humanity and our capacity to feel empathy for one another with the notion of justice as necessary for social harmony.

Where Hume includes sentiment, Kant excludes it. In *The Science of Right*, Kant argues that although laws may provide a guide in the determination of what is right or just, he claims that the universal law of right compels one to act so as to maximize others and one’s own exercise of free will, and can only be determined through pure reason (3). This claim is concurrent with his practical imperative that requires one to treat others as ends in themselves and never as a means only (Fundamental, 306). Additionally, Kant argues that moral principles must originate from pure reason so that they can be universalizable. This yields the categorical imperative that requires each of us to act “so that I could also will that my maxim should become a universal law” (Fundamental, 294). This means that one should only act in a particular way if it would be logically coherent that everyone would act that way. These ideas lead Kant to argue that it is necessary for a society to punish its offenders in such a way that their punishment equates with the severity of their crime. He supports this thesis by arguing that if one commits a crime upon another without consequence, one commits a crime upon oneself (Science, 79). Kant explains, “In this way, that whoever steals anything makes the property of all insecure; he therefore robs himself of all security in property, according to the right of retaliation” (Science, 79). This means that justice for Kant is achieved by following the practical and categorical imperatives in order that “the pointer of the scale of justice is made to incline no more to the one side than the other” (Science, 79). In other words, in order to maintain the
balance of justice, one must receive as one gives. For Kant, this also acknowledges respect for individual autonomy that is, one freely chooses to do whatever one does.

Kant’s contribution to the development of a philosophical concept of restorative justice is his emphasis on treating another as an end and not only as a means. This recognizes each individual’s human dignity which is the foundation for all acts of restorative justice. However, Kant’s notion of punishment does not fit with principles of restorative justice. Kant requires the offender to be punished by an objective entity in order to ensure that punishment is not... administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. For one man ought never to be dealt with merely as a means subservient to the purpose of another... (Science, 78).

Although this approach prevents the violation of the practical imperative it denies the emotional aspect of the claim on both the victim and the offender. Kant seems to imply that punishment should not include the input of the victim or the offender. I imagine that his concern would be that the victim may seek revenge and violate the practical imperative and the offender may seek leniency which would be inconsistent with the categorical imperative.

The goal of restorative justice is to create the possibilities for healing, forgiveness and reconciliation; this is not possible if punishment as Kant describes is pursued. For justice to be restorative, all the relevant parties and the emotional aspects must be involved. This does not mean that the offender will not face consequences that may be unpleasant and perhaps restrictive; however, the process by which the consequences are decided must be inclusive rather than exclusive.
John Rawls, in an effort to define justice within the context of social contract theory, offers a theory of "justice as fairness." He argues that in order to eliminate the innate selfishness of human nature and accidental social privilege, one must apply the "veil of ignorance" to designing a just society. This means that in order to discover the principles of a just society, one must take the "original position" and blind oneself to one's own preferences and prejudices. The result of taking the "original position," he claims, is that everyone would have "an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others" (549). Additionally, he maintains that the original position would also find a principle that says "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all" (549). This means that any inequality must benefit the least advantaged.

Rawls' theory is useful in that the "original position" points to the value in attempting to see society from no particular person's perspective in order to determine what is just. He asks us to try and view principles of justice in such a way as to eliminate bias and prejudice. Rawls asks us to find a way to level the playing field as much as possible in order to create a just society. This is integral to creating the opportunity for healing and reconciliation. In terms of restorative justice, it is important, as much as is possible, to create an environment where all participants, regardless of their status in the community, are respected. Rawls however, seems to focus on distributive justice rather than a rectificatory approach. He is more
concerned with the fair distribution of goods and opportunities than with restoring relationships between individuals and the community.

Although this has been a very brief exploration of the concept of justice in the philosophical literature, and many details have been omitted, it is clear that each theorist endeavors to best define the method that ensures individual well being as well as the maintenance of civil society. Plato’s and Aristotle’s theories are useful for distinguishing between the concept of justice that applies to specific acts or behaviors and justice that concerns the general framework of society. These theorists acknowledge that justice occurs between individuals as well as within a community.

Aristotle’s emphasis on the contextuality of justice is a useful guide for determining specific methods to address wrongs as well as determining consequences for an offender. Aristotle’s theory implies that every situation has particularities that must be considered when considering a just process. Although Kant doesn’t allow for the flexibility of Aristotle, he does remind us to treat each person, offenders included, as an end. This means that one must maintain the dignity of both the offender and the victim. This does not necessarily mean that they are treated exactly the same, but that their innate human dignity as rational, autonomous beings must be respected. David Hume maintains that it is not only reason that governs justice, but human sentiment as well and discourages us from attempting to divorce the two. It is here that compassion enters the picture. Rawls claims that it is important when seeking justice to work diligently to create an even playing field for all involved.

For the purposes of my thesis, I will also use a multifaceted approach to defining restorative justice. Justice in this sense takes place within the context of
individual relationships and within a community of individuals in relationship with one another. It includes not only a notion of fairness, but one of compassion as well. I will begin with a discussion of relevant theories from Phillip Hallie, Josiah Royce, and Martin Buber in order to establish a useful notion of human dignity and the moral requirements entailed. I will then move to broader discussion of Dr. Martin Luther King's philosophies of the "Beloved Community," and Bishop Desmond Tutu's examples of the potential for healing and forgiveness through his experiences with the Truth and Reconciliation Commission.

Human Dignity

The notion of human dignity is integral to restorative justice. It is the principle that acknowledges that each and every human being is a valued member of their community and must be treated with respect. When human dignity is respected it prevents us from objectifying one another; we are obligated to view each other as complete persons and required to treat each other as ends rather than merely means to ends.

Phillip Hallie, in "From Cruelty to Goodness," states, "My approach to good and evil emphasizes not abstract common nouns like 'justice,' but proper names and verbs" (2). In this quote, Hallie tells us that it is necessary to ground our understanding of justice in terms of actual human beings, rather than abstract principles and laws. He defines evil, or substantial cruelty, as the "maiming of a person's dignity, the crushing of a person's self-respect" (2). This is a deep harm, one where the victim is considered as less than human by the offender in a way that causes the victim to lose self respect. Hallie defines institutional cruelty as substantial cruelty
that is integrated with societal institutions, consistent, pervasive and that operates on
the edge of the oppressor’s awareness. Institutional cruelty exists within an unequal
power relationship. In such a case, the person with more institutional power is the
victimizer and the individual with less power is the victim. Institutional cruelty is
distinguished from substantial cruelty in that it is a persistent pattern of humiliation
rather than being episodic. A particular quality of institutional cruelty is that the
victim and the offender often create ways to hide and deny the harm. Hallie notes that
this is the subtlest form of cruelty (3). It is just this situation where even a seemingly
benign kindness can create further harm. Even when the offender offers a kindness,
the power relationship still dictates that the victim must remain a victim.

For Hallie, the end of harm is not only the cessation of the cruel relationship,
but also the presence of hospitality described as “...unsentimental, efficacious love”
(5). Using the French village of Le Chambon, Hallie describes the positive force of
hospitality. Le Chambon was a small community in the southeast Cevennes
Mountains that exhibited unsentimental, efficacious love to Jewish refugees during the
Holocaust. During that dangerous time, the community of Le Chambon did not
hesitate to share whatever they had with Jews who were fleeing for their lives. They
did this at great risk to themselves. The element that made this village different from
many others who harbored refugees was that their underlying value was respect for
human dignity. The villagers of Le Chambon gave of everything they had with no
reservations. They saw the refugees as people like themselves, deserving of respect
and hospitality. When Hallie asked some of the villagers why they acted as they did
when their risk was so great, they replied that there was no way they could not do so.
They saw each and every human being as sacred and believed that we must lovingly care for one another (8). To Hallie, the Chambonnais demonstrated that the opposite of cruelty is not simply the cessation of the cruel relationship, but a loving positive action.

In “The Moral Insight,” Josiah Royce argues that we must strive to view others as real individuals like ourselves with hopes, dreams and fears. He is careful to distinguish this sentiment from mere sympathy. Sympathy is a temporary state and often the person with whom we are concerned “…becomes obscured. He is once more a foreign power. He is unreal” (19). Royce asks us to not only to refuse to diminish others humanity by minimizing their realness, but to expand our awareness by viewing our neighbor in the same way that we view our future selves. It is important to Royce that we maintain a vision of others as future selves so that we do not limit our conception of other people to the brief moment of our interaction, but to gain a perspective of them as enduring selves. Royce states emphatically, “Take whatever thou knowest of desire and of striving, of burning love and of fierce hatred, realize as fully as thou canst what that means, and then with clear certainty as: *Such as that is for me, so it is for him, nothing less*” (emphasis in original, 19).

Royce’s claims reflect Hume’s view that sentiment and reason both are necessary for justice. Royce maintains that the initial sentiment of sympathy is a necessary beginning to truly becoming aware of another’s dignity, but we must use reason as well to create something more than sympathy. Royce charges us to see “…the oneness of this life everywhere, the equal reality of all its moments, thou wilt be ready to treat it all with the reverence that prudence would have thee show to thy
own little bit of future life” (20). He asks us to notice our sympathy and then reflect on that sentiment to come to the understanding of each and every human as real.

In *I and Thou*, Martin Buber seeks to further elicit the potential depth of relationality between two human beings. According to Buber, there are two ways of relating to other individuals. He notes that the I is always present when relating to other individuals, but it takes on different qualities when the I is part of an I-It relationship relative to when the I is in an I-Thou relationship. For Buber, the I is always a whole being in relation to a Thou, however, when I is in relation to an It, I am only potentially the sum of my parts (3). He states, “Whoever says Thou does not have something; he has nothing. But he stands in relation” (4). Buber’s meaning here is that one cannot be a whole person unless one relates to another as a whole being, rather than an amalgamation of characteristics or qualities which objectifies another individual. Buber argues that in an I-it relationship both individuals are objectified. I argue that it is essential to maintaining human dignity to relate to others as an I-Thou. Treating another as less than a whole being, I am negating the opportunity for myself to be whole, because we can only be whole beings when we are in relationship with a Thou. Every individual has many different roles and identities as they move through life. It is in the acknowledgement of others’ complexities that we create the opportunity to maintain everyone’s human dignity. For example, I am a woman, a mother, a friend, a daughter, etc. but *who* I am cannot be quantified by any individual characteristic or sum of each of these parts of myself. Thou is the whole being, more than the sum of these parts. It is when we treat others only as a single aspect of their complex being that we devalue them and ourselves.
To acknowledge human dignity, according to Hallie, Royce and Buber, means that one must treat others as ends only, as Kant claims, but one must also acknowledge that we all are bound by our relationships with one another. Hallie notes that the cessation of cruelty is not enough to assuage the pain of cruelty, but one must take positive action to care for others in need. Royce calls us to remember that others have future enduring selves as we do; their existence is much more complex than we can possibly know in a brief interaction or limited relationship, but we can know their lives are as real as our own. Buber argues that we ourselves cannot be whole beings unless we are in relationship to others as whole beings.

Buber, Royce and Hallie represent my conception of human dignity and are a major element of my thesis. In the next section, I will discuss the thinking of Dr. Martin Luther King about what he called “Beloved Community” and agape love. Dr. King integrates human dignity with the concept of community. I will also discuss Bishop Desmond Tutu’s service on the Truth and Reconciliation Commission in South Africa and will illustrate his application of restorative justice using concepts of human dignity and community.

In the introductory chapter, I claim that restorative justice is a more efficacious approach to issues of sexual harassment and hostile environment claims than a retributive model and I have begun to examine the philosophers on whom I draw in order to support my claims. Dr. Martin Luther King, Jr. and Bishop Desmond Tutu offer ethical models which say we ought to view victims and perpetrators as having a common humanity. It is this ethical claim from which I will argue that a restorative justice model is more effective in healing wounds and maintaining community than a
retributive model. The work of Bishop Desmond Tutu with the Truth and Reconciliation Commission (TRC) complements and supports the work of Dr. Martin Luther King. The TRC offers a useful model for addressing sexual harassment and hostile environment claims in a small community or work group governed by Affirmative Action Policies.

Beloved Community

According to Dr. King, Beloved Community begins with the idea of love, more specifically a particular kind of love termed “agape.” Much like Phillip Hallie’s hospitality, his is not a sentimental love that requires reciprocation. “Agape is disinterested love” (Experiment, 19). Agape is the love one has for another simply for their own sake. It assumes that individuals have inherent value and deserve unconditional concern and care for their humanity. It is a love that springs from another’s need, without consideration for reciprocity. Dr. King said that agape “is an overflowing love which is purely spontaneous, unmotivated, groundless and creative” (Experiment, 19). This is a love best exemplified by love for one’s enemy where the result is likely to be hostility.

Given that agape is the foundation for Beloved Community, its focus is not only on the individual. For Dr. King, agape is also the recognition that all human life is interrelated and, consequently, if I harm another I also harm myself (Experiment, 20). My humanity is diminished when others are diminished as well. Like Martin Buber, Dr. King maintains that we need the other person to be fully whole so that we can be fully whole ourselves. The underlying assumption is that there is potential for goodness in everyone, something that responds to goodness. Agape is a love that
understands the redeeming good in others and believes that people have the capacity to change. According to Dr. King, "Agape is a willingness to go to any length to restore community," where the integrity and well being of those within the community are of the highest priority (Experiment, 16).

Dr. King defines community as "the mutually cooperative and voluntary venture of man to assume a semblance of responsibility for his brother" (Ethical Demands, 122). King implies that Beloved Community binds individuals to one another within the circle of agape love. Beloved Community creates an obligation for us to care for one another because each individual's well being is intricately bound to the well being of the community.

One of the methods that Dr. King used to create Beloved Community is non-violent resistance. Non-violent resistance is more than passive resistance; it is positive action in service to Beloved Community. Non-violent resistance seeks to win friendship and understanding from our enemies (Nonviolence, 7). Its primary goal is to awaken moral shame with the ends of redemption and reconciliation. It requires us to defeat the evil we encounter, not to defeat the actor. Meeting hate with hate can only intensify the animosity and further dehumanize the oppressed as well as the oppressor (Experiment, 17). A practitioner of non-violent resistance avoids humiliating the opponent at all costs. Dr. King maintains that one must be willing to accept suffering without retaliation because suffering is redemptive and has tremendous educational possibilities (Experiment, 18-19). This means that witnessing another's suffering can be transformative for an individual and, therefore, the community. He asks us to recognize the pain that our oppressor feels and to
understand that relief from that pain can only come from the love and understanding of his enemy (Experiment, 19). Although restorative justice is not non-violent resistance, the goals of non-violent resistance cohere with the goals of restorative justice. Restorative justice seeks to arouse moral shame in order to restore respect with those whom we have a conflict. It seeks to eliminate the humiliation of the victim while respecting the dignity of the offender. The ultimate goal of restorative justice is reconciliation of individuals in a community.

Dr. King claims that “…conflicts are never resolved without trustful give and take on both sides” (Silence, 232). He argues that the means to effect change must cohere with the ends, and that the change desired is an ideal in the making (Civil Disobedience, 45). This is exactly the result the Truth and Reconciliation Commission sought to bring about in South Africa.

Truth and Reconciliation – A Model of Restorative Justice

Apartheid was a state sanctioned system of forced segregation in South Africa that began in 1948. During apartheid, the races were classified into White, Black, Indian, and Coloured and were separated into their own institutions and townships. Practically, this meant that non-white people had significantly poorer quality of housing, education, medical care and other public services. They were not allowed to vote or to own land. This was a system enforced by law and violence. The most violent time of apartheid began during the government of P.W. Botha in the early 1980’s. During this time, his government used violent means to quell any opposition to apartheid. It is estimated that an average of more than 100 resisters died in the black townships every month. This is estimated to have increased to over 200 deaths
per month between 1990 and 1993. Due to this resistance, and pressure from outside of South Africa, the legal system of apartheid was abolished between 1990 and 1991. In March of 1992, the last white only vote gave the government authority to negotiate a new constitution (History).

The momentous election of Nelson Mandela in 1994, as the first democratically elected president in South Africa, led to the tasks called for in the National Unity and Reconciliation Act. The National Unity and Reconciliation Act was a postscript to the interim constitution that had been negotiated by the Convention for a Democratic South Africa, a group composed of the African National Congress, the existing South African government and other groups. The National Unity and Reconciliation Act called for a process that would "... transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge" (Tutu, 45). Bishop Tutu noted that "(w)e have had to balance the requirements of justice, accountability, stability, peace, and reconciliation" (Tutu, 23). This act gave rise to the TRC which had three subcommittees: the Committee on Human Rights Violations, the Committee on Reparation and Rehabilitation and the Committee on Amnesty.

The Committee on Human Rights Violations investigated human rights abuses that took place between 1960 and 1994. The task of the committee was to ascertain the identities of the victims, their fate and whereabouts, the extent and nature of the harm suffered and whether the violations were at the hand of state planning or any
other individual or group. Once the victims were identified, they were referred to the Committee on Reparations and Rehabilitation.

The committee on Reparations and Rehabilitation provided victim support and ensured that the TRC served to restore victim dignity by supervising the process of interviews and giving specific input concerning reparations. It also formulated policy proposals and recommendations about the rehabilitation of survivors, their families and their communities. The desired outcome of the committee on Reparations and Rehabilitation was to recommend conditions that would ensure non-repetition of the offense, healing and healthy co-existence with the offenders.

The Amnesty Committee’s task was to decide whether applications for amnesty were done within the provisions of the National Unity and Reconciliation Act. In all, these three committees were the structure crafted in order to address the needs of a newly democratic, yet highly divided nation. The following discussion details the values and principles on which the TRC was founded and demonstrates the parallel thinking between Bishop Tutu and Dr. Martin Luther King Jr.

In Bishop Desmond Tutu’s book, No Future Without Forgiveness, he gives a detailed account of his experiences as Chair of the Truth and Reconciliation Commission in South Africa. His story begins on April 27, 1995, with a description of his experiences as a newly recognized citizen of his country and the excitement and trepidation that accompanied his first act of voting for a president in the newly reconfigured state. As he documents this experience, he talks of the many faces and personalities he encountered on this fateful day. He describes long lines of people waiting to place their vote in the first democratic process ever in South Africa. Bishop
Tutu noted that during the day, the people of South Africa were able to rediscover who they were. While waiting in line to vote in their first free and democratic election, the citizens of South Africa discovered a common humanity. Reminiscent of Royce and Buber, he states,

They discovered not a Colored, a black, and Indian, a White. No, they found fellow human beings, who had the same concerns and anxieties and aspirations. They wanted a decent home, a good job, a safe environment for their families, good schools for their children, and almost none wanted to drive the whites into the sea. They just wanted their place in the sun (7).

Like Josiah Royce, one of the underlying assumptions of the Truth and Reconciliation Commission is that each and every human being shares many of the same hopes, dreams, and worries for themselves and their loved ones. This is similar to Dr. King’s concept of agape love and its demand that we care for one another simply because we share a common humanity.

Another guiding principle of the TRC is the African concept of ubuntu. This concept ties the individual to the community. Bishop Tutu says, “Ubuntu is very difficult to render into a Western language. It speaks of the very essence of being human...It is to say, ‘My humanity is caught up, is inextricably bound up in yours” (31). Clearly, ubuntu is a parallel concept to Dr. King’s Beloved Community where the good of the community is grounded in the relationships of the individuals. Like Martin Buber and Dr. King, Bishop Tutu claims that “a person is a person through other persons” (31). This is a reflexive concept of the self and community and describes both the individual and the community. Tutu describes it this way, “A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she belongs in a greater whole and
is diminished when others are humiliated or diminished, when others are tortured or
oppressed, or treated as if they were less than who they are” (31).

Echoing many of the philosophers I have discussed previously, this is a
cancept of self in community where the greatest good is social harmony and anything
that undermines social harmony should be avoided at all costs. Tutu argues that
forgiveness is the best form of self-interest because the dehumanization of one
dehumanizes all. Forgiveness offers us the chance to recreate humanity through
recognition of the humanity of others. It offers us the opportunity to restore the
dignity of our enemies while reclaiming our own. Tutu claims that, since “anger,
resentment and revenge are corrosive of the greatest good,” forgiveness offers the
opportunity to survive and thrive in the face of oppression and opens the door for
social harmony (30-33). Tutu argues that forgiveness opens the door for “resilience,
enabling them to survive and emerge still human despite all efforts to dehumanize
them” (31).

As Dr. King argued that the whites during the civil rights era needed the black
folks to mirror their humanity, Bishop Tutu agrees that the whites in South Africa
would never truly be free until the black folks were free as well (8). He describes
watching a white South African enter the voting booth heavy with guilt and grief and
emerge with a lighter step. Bishop Tutu implies that this act of liberation for the black
people of South Africa also gave the white people of South Africa freedom from the
pain of the grievous harm they caused. The new South African administration asked
Tutu to construct a framework to rehabilitate the human and civil dignity of the
victims (26). This was the main task of the TRC.
Tutu claims that the central concern of restorative justice is the healing of breaches, the redressing of imbalances and the restoration of broken relationships so that healing for both the victim and the perpetrator can take place. Bishop Tutu maintained that in order to create a truly new future for the country of South Africa, it was necessary to face the past (28). To do this, it was crucial to provide a forum where the victims could tell their stories and seek validation of their suffering. As one of the TRC slogans notes, “Truth Hurts But Silence Kills.” Bishop Tutu acknowledged that truth telling can be painful and is not without risk, however, silence can also serve to revictimize the victims by denying their claims to restoration of dignity (29, 107). Likewise, Dr. King’s theory notes that ending silence is difficult but maintaining silence betrays the dignity of the victims (Silence, 231). Dr. King argued that it was necessary to bring the tension between victim and oppressor to everyone’s awareness in order to effect change. He called this creative tension and argued that it was a catalyst for change (Letter, 291). Similarly, Bishop Tutu argues that the acknowledgement of a harm done is important in reaching the root of the relationship breach (270).

Like Dr. King, Bishop Tutu also believes that suffering can be redemptive. Using the experiences of Nelson Mandela, Tutu notes that although he was imprisoned for twenty-seven years, Mandela was able to come out “a whole person” (39). Tutu claims that Mandela had more authority and credibility with the citizens of South Africa because of his suffering. He was able to provide an example of what Dr. King would call agape and illustrate the redemptive opportunities of suffering. Mandela came out of prison ready to continue his work of reunifying South Africa without
resorting to violence and hate. It became clear to the South Africans, and indeed the world, that Mandela was not seeking revenge; he was asking for true reconciliation with great generosity of spirit. Because of his enduring compassion for all South Africans, Nelson Mandela became a role model for ubuntu and a leader for a new democracy.

In addition to the dehumanizing effects of the system of apartheid, the TRC also had to consider the many atrocities that took place by supporters and opponents of apartheid. Just as Dr. King argued that it was not enough to end segregation but that it was necessary to work towards integration, it was not enough to dismantle the institution of apartheid; it was also necessary to face the violence that occurred as well. This was the task of the TRC. Using the underlying concepts of inherent humanity of all persons and ubuntu, the TRC went about crafting a model to address the harms to the many victims as well as address those who did the injury.

The TRC was reluctant to use a formal legal method to address the reunification of South Africa because, as Bishop Tutu noted, the power relationships remain in a retributive system. In their investigations, the TRC found that deception and lying were pervasive throughout the upper and lower echelons of the system of apartheid. It would be one person’s word against another. Often the only witnesses who were alive were the perpetrators, so there were great obstacles to getting to the truth if the offenders had no reason to come forward. In this case, the retributive system offers no incentive to work toward healing and reconciliation because, even though the system of apartheid had been dismantled, the power relationships lingered (29).
It was a difficult task to create a framework that would serve the needs of both the harmed and the perpetrators. Bishop Tutu noted that if all perpetrators were brought to trial, it would recreate the oppositional system that victims of apartheid had fought so hard to dismantle. The legal retributive system is an adversarial one that pits one individual against another and requires each to continually defend her or his position. It leaves no incentive for truth telling and diminishes the possibility for forgiveness. If one is continually required to defend one’s own position, it is difficult to view your opponent as a full human being like oneself. Bishop Tutu noted that the Chief Justice, Judge Ismail Mohamed quoted Judge Marvin Frankel, author of Out of the Shadows of Night: The Struggle for International Human Rights, when arguing for the efficacy of the model of the TRC. He quotes,

> While the debate over the Nuremburg trials still goes on, that episode—trials of war criminals of a defeated nation—was simplicity in itself as compared to the subtle and dangerous issues that can divide a country when it undertakes to punish its own violators.

A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous...If they are treated too harshly - or if the net of punishment is cast too widely – there may be a backlash that plays into their hands. But their victims simply cannot forgive and forget (21-22).

A solely retributive system, Tutu argued, would only perpetuate the animosity that the opponents felt for one another and would prevent mutual respect and the building of community (200). This way of thinking about the negative effects of a retributive process is similar to the thinking Dr. King used to support non-violent resistance. King, in a rebuttal to those civil rights activists who advocated violence, pointed out that it is a self defeating tactic. He said that violence has two goals: one is
to retaliate for wrongful suffering and the other is to seek change and progress (Social Organization, 32). He implies that the goal of retribution is contradictory to the goal of change and progress.

In service to the goal of change and progress, the TRC argued for a limited amnesty that would give perpetrators of violence an opportunity to make a full disclosure to the community. Bishop Tutu stated that the TRC found it necessary to "balance the requirements of justice, accountability, stability, peace and reconciliation" (23). This meant that if a perpetrator was willing to make a full disclosure to the TRC and the community, he or she would be exempt from criminal charges or civil damages. Many people questioned whether this system could provide adequate justice for the victims. However, Bishop Tutu cites many examples where simply having the opportunity to be heard in a safe and respectful atmosphere provided much relief from pain and grief. Additionally, it provided the opportunity for perpetrators to cleanse themselves of the guilt and shame for committing horrific acts, and to ask for forgiveness.

It is important to note that forgiveness is not guaranteed in this process; it only provides the opportunity for it to occur. Bishop Tutu claimed that although forgiveness eliminates one's right to seek retribution, it is also a liberating event for the victim (272). It is liberating in the sense that, as a result of forgiveness, the victim is not still bound to anger, hate and the desire for revenge. It frees the victims to move on in their lives. It is not absolutely necessary for confession to take place in order for a victim forgive, however it is of very great assistance and every effort should be made to create the opportunity for this to happen (272).
Bishop Tutu acknowledges that once the victims and abusers have been heard, this was not the end of the process. He claims that “confession, forgiveness and reparation, wherever feasible, form part of a continuum” (273). Reconciliation through restorative justice is a process, not an event, and Bishop Tutu recognized that although the TRC had a great impact on the people of South Africa, the work had only just begun.
Chapter 3- Sexual Harassment and Restorative Justice

Introduction

In Chapter One I argue that sexual harassment is a relational harm that takes place within a community of individuals. By relational harm I mean that it is the result of interactions between individuals whose behavior influences the thoughts, feelings and behavior of one another. Additionally, I argue that sexual harassment is often supported by hierarchical structures because the harasser has more institutional power than the victim. In Chapter Two, I begin with a history of the concept of justice in Western-Greek based philosophies. This discussion illustrates the important distinction between retributive and restorative justice. I then turn to a discussion of ideas of human dignity and the relationship it has to community as written by Dr. Martin Luther King, Jr. Finally, I discuss Bishop Desmond Tutu’s work with the Truth and Reconciliation Commission (TRC) and the idea of restorative justice and its application to the healing and rebirth of South Africa after the fall of apartheid.

The theories discussed in Chapter Two cover ideas of human dignity from Phillip Hallie, Josiah Royce and Martin Buber. Human dignity is integral to the concept of community as conceived by Dr. Martin Luther King, Jr. Using these theories, I will now synthesize concepts of human dignity and community and, using principles modeled by the TRC, will design a process of restorative justice to address sexual harassment in a small community. Although the experience of sexual harassment is certainly very different than the experience of the victims and perpetrators during apartheid, the TRC models a process that can provide opportunities for healing breaches between individuals as well as those that occur
within a community. If a nation can seek to rebuild itself after the grievous harm of apartheid, I argue that it is possible for a smaller group of individuals in a community to take on the task of healing relationships damaged by sexual harassment. I am arguing and will show that using a process rooted in restorative justice is more likely to lead to satisfaction for all parties and institutions involved than a retributive process. I also claim that there is a greater potential for reconciliation among the victim, the relevant community and the offender.

In order to illustrate my claim, I first provide a basic fact pattern of sexual harassment as experienced by students and faculty in two small fictional university departments. I will begin by describing the environment at Cherrystone State University which serves to illustrate a retributive approach. I will then describe the departmental environment at Magnolia State University that will demonstrate a restorative approach. Using these fact patterns, I will show the distinctions between retribution and restoration and why the latter is superior. I created these two fictional fact patterns based on a combination of personal experience, published writings concerning sexual harassment and news articles chronicling the development of sexual harassment law suits.

**Cherrystone State University**

Cherrystone State University (CSU) is a public university that has approximately 19,000 students. It has 85 undergraduate programs and 80 graduate programs. Additionally, it has several professional programs. There are many departments within each college and they vary in size. The particular department with which we are concerned has 10 faculty who are either tenured or are working towards
tenure. The majority of the faculty has been teaching in this department for over 15 years, however, some of the faculty have been with the department for fewer than five years. Because this department resides within a state university, policies concerning sexual harassment complaints are governed by Affirmative Action policies and are regulated by the state.

Within this department there are 15 graduate students pursuing masters programs as well as over 100 undergraduate students pursuing the departmental major. Because the department is small, most of the graduate students find themselves taking classes with the same cohort which often also includes a small number of third and fourth year undergraduate major students. Because many of the upper division and graduate classes have fewer than 30 students, this small cohort of upper class and grad students begin to create a social and academic community. They often meet outside of class to assist one another with their studies. These students also share stories of their experiences with certain faculty inside and outside the classroom. As the bonds among the students grow, they come to rely on one another for insights into class assignments, for help or support with individual projects and for social support. In short, these students create ties of friendship and a sense of community. As a result of this environment, students notice when their peers are missing or seem to be behaving differently than what they have come to know as normal. They check on one another and provide academic and personal support. Additionally, faculty generally encourage students to read one another’s papers, provide critical feedback, share information, resources and, ideas for paper topics and exams.
A sense of community is also fostered within the department through various means. The department holds a yearly picnic where students, faculty and staff come together to celebrate and acknowledge the graduating students as well as award honors to outstanding students. Partners, friends and children also attend to socialize and share a meal together. When new faculty join the department, the faculty usually hold an open house and invite students to meet with the new department members. Occasionally, faculty will invite students to their homes for an end of the term gathering to celebrate their work together and provide another opportunity for students and faculty to get to know one another in a more social setting. Students build relationships of respect and trust with some of the faculty and begin to recognize the varying collegial relationships among the faculty. Although most of these events may seem to be common practice in a small university department, it creates an environment where students feel valued and come to care for one another as peers and friends and often confide in one another. Students also feel welcome to seek mentoring relationships with trusted faculty.

Unfortunately, not all faculty members are worthy of student trust. Within this department at Cherrystone University, there has been a longstanding history of sexual harassment by one tenured professor. Throughout the last 10 years, it has become a known fact among other departmental faculty that this particular professor repeatedly makes inappropriate comments of a sexual nature to female students. He has, on a number of occasions, inappropriately touched female students. Students and faculty have made both formal and informal complaints about these incidents.
Many of the women who were harassed complained to the department chairs who tended to simply dismiss the claims. The small number of women who dared to file a formal complaint with the Affirmative Action Office over the years were met with a difficult and adversarial system. Initially it was difficult to figure out the appropriate process. For one woman, by the time she had figured out how to file a formal complaint, an investigation was denied because the elapsed time between the incident and the complaint was longer than the required time to file. Another woman who was able to file a complaint in the allotted time period was invited for an interview with the affirmative action officer; however, this experience left her afraid to pursue the complaint. The officer queried her extensively about the nature of the harassment and indicated to her that if she continued pursuing her claim it would result in a long and drawn out process that would be draining and embarrassing. This student was intimidated by the tone and attitude of the affirmative action officer and decided to drop the claim. In fact, because it was required by her program that she take another class with this particular professor she dropped out of the graduate program altogether.

Finally, one woman decided to take her claim of sexual harassment to the bitter end. After receiving no support from the chair of her department, she filed a timely claim with the Affirmative Action Office. She received the same treatment as the previous claimant; however, this student was not intimidated and pursued her claim. Like her predecessor, she was queried in depth about the nature of the harassment. She noted that during the interview with the affirmative action officer, many of the questions seemed designed to place the blame on her. For instance, when the
affirmative action officer asked her about an incident where this particular professor began to ask her about her sexual history, he wondered aloud whether this line of questioning by the professor was relevant to the class she was taking with him. The student informed the officer that she told the instructor that she was not comfortable discussing her sexual history with him and relayed that the professor responded that because of her reticence she shouldn’t expect a passing grade in the class unless she was willing to continue this conversation. The student told the affirmative action officer that she felt humiliated by the professor’s insistence that she detail her sexual history to him and felt compelled to do so in order to pass the class. The affirmative action officer intimated that this may have been an appropriate topic of conversation between the professor and student and completely disregarded her discomfort in that situation.

Although the interview with the affirmative officer was stressful and often humiliating, this student was tenacious. She continued to press the affirmative action office to pursue the claim. Finally, when the case was closed by the affirmative action office the student was notified, but because of the privacy requirements surrounding personnel files, she was not told any further details. She was only told that the case was complete with a positive finding of sexual harassment and that the issue had been addressed. When the student asked specifically about the nature of the investigation, she was told that all the faculty of the department had been interviewed and that certain measures were taken to prevent future harassment from occurring. At that point, the affirmative action officer refused to answer any further questions and ended the conversation. She was left wondering if the professor received any consequences
for his behavior, whether anyone interviewed by the affirmative action officer corroborated her experience and what specific measures were taken.

Although this particular student seemed to successfully navigate the complicated complaint system of the Affirmative Action Office, she was not satisfied. It seemed to her that no one had really heard her complaint or understood the humiliation and stress that came with the sexual harassment and the subsequent investigation. Although her studies in this particular department were finished as a result of her graduation, she was not at all convinced that this professor would indeed stop harassing other female students, but remained concerned that he would find more subtle and devious ways to harass them.

As noted previously, there were some faculty in this department who were trustworthy. One woman professor in this department received many complaints from women students over the years. Although this professor brought each and every claim by these women to the various department chairs, she never saw any obvious actions taken as a result of her complaints. As she heard these stories over the years, she became increasingly angry and heartbroken that these students were treated in such a demeaning manner. Although this professor had a number of private discussions with other faculty who were also concerned about the continual sexual harassment occurring in the department, she found no one who was willing to make a formal claim. Some were worried about the negative effect that it might have on the department. One individual was concerned about violating the privacy of the offending professor and the legal ramifications that might have. This professor felt
powerless to help these struggling women students and was only able to give them practical advice about how to avoid him and his harassment.

Not only was this professor concerned for women students, she was also very disturbed by the environment in the department among the faculty. Although it was well known among the faculty that this particular professor was sexually harassing some of the women students, there was no forum for her to discuss these issues. She felt that her professional relationships with the other faculty in the department were compromised. She was missing out on professional opportunities to discuss her work with others and create collaborative professional partnerships that would benefit not only her but the department as a whole. She desired collegial relationships with other faculty members that were impossible due to the tension created by the continual sexual harassment of students in the department. The known but unspoken tensions in the department caused by the sexual harassment of women students created what she felt was a hostile working environment. She felt isolated as a professional and had nowhere to turn. This professor was highly disturbed by the hypocritical nature of the department. Although the faculty seemed to work to create an environment where students and faculty were part of a cohesive academic community, there was also an underlying current of tension and distress that was not addressed or diminished. She felt isolated in her concern for the faculty working in these conditions as well as for the students subjected to the tense working atmosphere.

Although the problem of sexual harassment in this particular department at Cherrystone University has ostensibly been successfully dealt with, none of the faculty or students has any real knowledge of the resolution. Even if the sexual harassment
has truly stopped, the lingering fears, tensions and anger remain. Rumors, some more accurate than others, remain among the students and are passed down to subsequent cohorts. Tension and suspicion among the faculty inhibit potential professional and personal relationships. During faculty meetings, everyone pretends that all is well but the environment in the department feels fractured with no resolution in sight. Faculty keep their office doors open, but rarely do they stop by just to chat and ask how each others' work is progressing. In fact, most faculty do not even know what others' current projects are. Most of the faculty feel isolated and spend as little time in their offices as possible. Many often work from home. Clearly, even though the sexual harassment occurred between one particular professor and various individual students, its effects have been significantly more far reaching. Although there has been some resolution for the student, there has been none for the faculty and students in the department.

Analysis: Retributive Justice, Cherrystone State University

The goal of a retributive system is not reconciliation as in restorative justice, but simply resolution and possibly restitution. In a retributive system, when an individual makes a claim against another individual concerning sexual harassment, it becomes the responsibility of an agent of the state to deal with the matter. In the case of CSU it was the Affirmative Action Office. Because it is a state university, the Affirmative Action Office is charged with seeing to the defense of the University as well the claim of the victim. This is a very precarious balance. At CSU, the legal requirements were satisfied and we may assume that the offender was censured in some way. This model assumes that the needs of the victim are cared for by
mandating certain consequences for the offender, whether known or not. It also supposes that the needs of both the victim and the University were met with silence and confidentiality. Although the case at Cherrystone State University was deemed settled, the victim who pursued the claim experienced no real resolution. She was left feeling, at a minimum, unsettled and confused and had remaining concerns for future students. Her needs were certainly not addressed.

This is further complicated by the competing demands of the university and the claimant and their relative status. As noted in the introduction, sexual harassment most often occurs between two individuals who do not have equal levels of institutional power. At Cherrystone State University, the affirmative action officer must balance the needs of the victim, the offender and the university. The offender and the university hold much more institutional power than the victim. If this fact is ignored, rather than actually considered as a part of the process, it is likely that the demands of the university and the professor will have greater sway in the resolution than the victim. There was no obvious effort on the part of the Affirmative Action Office to address or mediate the power differential at CSU. The affirmative action officer is an employee of the university and also has an interest in the outcome of the case. In this way, the equation of justice is not balanced. In order to balance the power differentials among the involved parties, it is absolutely necessary to consider the broader social context in which sexual harassment occurs.

A retributive process creates an adversarial situation where the victim and offender must defend their positions against one another through indirect communication. An opportunity for reconciliation and forgiveness is derailed by the
oppositional nature of the retributive process. I argue that in order to create the conditions for reconciliation and forgiveness, there must be a process that includes the opportunity for the victim, offender and the relevant community to share their experiences openly and honestly and to ask for, give, and receive forgiveness.

It is my claim that the theories of Buber, Hallie and Royce taken together define what it is to truly honor human dignity. Buber argues that one can only be whole if one is in relationship with another whole being (4). Retributive justice does not require us to make the effort to relate to each other as whole beings or to make ourselves open and vulnerable to our own and another’s pain and fear. Royce claims that it is our moral obligation to view another as real as ourselves, with hopes, dreams and fears for now and in the future (19). If there is no opportunity for the victim, offender and the community to interact directly with one another, it is very difficult to view the other as real. Hallie argues that the cessation of a cruel relationship is not enough to restore the dignity of the victim. He claims that one must take positive action; one must demonstrate hospitality to restore dignity (8).

In CSU’s effort to acknowledge the difficult relationship, contact between the victim and offender was limited. In order to protect the victim and offender from further harm, they had no direct contact with one another. The affirmative action officer acted as the point of contact for the case. There were no opportunities for the harasser to witness the wide emotions of the victim so there was limited opportunity for him to relate directly to her concerns or the concerns of the community. The process at CSU failed to acknowledge the dignity of the victim, offender and the community and therefore the opportunity for forgiveness and reconciliation was lost.
For Plato, justice is a human quality characterized by duty and goodness. A just society would be characterized by being internally harmonious and good. Plato argues that justice is a reciprocal relationship between society and the individual. He states that the needs of society must be balanced with the needs of individuals (95). In both fact patterns, the offender and the university represent the society and the claimant represents the individual. At CSU the reputation of the university is protected by silence and secrecy. The retributive process assumes that the needs of the victim are cared for by mandating certain consequences for the offender.

Plato does not directly speak to the relationships individuals have with one another. Given that the nature of sexual harassment is absolutely relational and there are cases when making a public claim of sexual harassment may cause the victim further harm, it can be claimed that her needs are also addressed by silence and secrecy. The investigation of a sexual harassment claim can be a devastating personal experience for both the victim and the offender. CSU attempts to account for the relational nature of sexual harassment by limiting contact between the victim and the offender in order to prevent further harm from occurring as a result of that relationship. The process at CSU may have eliminated further harm to the victim, but it fails to directly address the enduring harm to the claimant and the community due to that relationship. In the case of CSU, the Affirmative Action Office has protected the reputation of the university and that of the professor and presumably the victim as well. The legal requirements were carried out, and we may presume that the offender was censured in some way. This method assumes that the harm to the victim is
ameliorated by mandating certain consequences for the offender without concern for lingering harm.

John Rawls' theory of justice as fairness requires us to take the view of no person in particular, a rational person interested in her or his own good, in order to achieve principles of justice. He argues that taking the "original position," behind a veil of ignorance, will eliminate the inequitable distribution of social status and create a level playing field for justice (549). In order to determine the just course of action, Rawls argues that one must strive to imagine what unknown abstract others would wish for and accept. The process at CSU attempts to neutralize bias by using an ostensibly neutral, objective entity to investigate and determine the outcome of the case. The affirmative action officer independently interviews the claimant, the offender and the members of the academic department. These interviews are confidential; only the affirmative action officer has all the information. It is the officer's duty to weigh all the information and determine the fair and appropriate resolution of the case and the obligations of those involved. One could argue that this is best accomplished by employing a neutral, objective adjudicator to reduce the effects of power differentials between the offender and victim. However, due to the inequitable distribution of institutional power between the victim, offender and the affirmative action officer, it is impossible for the officer to be completely unbiased, i.e., to take the "original position." As an agent of the university, the officer is more likely to prioritize the needs of the university and the offending professor over that of the victim. The levels of institutional power are not balanced.
Plato and Rawls offer constructive platforms for the application of retributive justice. Plato reminds us that justice is a balance between the state or university and the individual. John Rawls calls us to level the playing field. Our duty according to Rawls is to acknowledge the unequal distribution of institutional power when making decisions concerning justice. However, even in the most generous analysis, applying Plato, Hume and Rawls' theories in a retributive system leaves the victim of sexual harassment unsatisfied. The concerns of the relevant community members are not even considered. Active consideration for the return of human dignity is not part of the equation. Little opportunity for reconciliation and forgiveness are offered in a retributive model. Later in this chapter I argue that the noble goal of balancing the needs of those involved and leveling the playing field is a more realistic possibility when combined with notions of human dignity and the preservation of community. Additionally, the outcome of a restorative justice process is more likely to leave all parties more satisfied than a retributive process.

Magnolia State University

Much like Cherrystone State University, Magnolia State University (MSU) is a public university that has approximately 21,000 students. It has 80 undergraduate programs and 75 graduate programs. Additionally, it has several professional programs. There are many departments within each college that vary in size. The particular department with which we are concerned here has 12 faculty who are either tenured or are working towards tenure. The majority of the faculty have been teaching in this department for over 17 years, however, some of the faculty have been with the department for fewer than 7 years. Because this department resides within a state
university, its policies concerning sexual harassment complaints are governed by Affirmative Action policies.

This department has similar methods for integrating students and staff into the academic atmosphere as Cherrystone State University. They hold picnics and other events in order to provide students and faculty an opportunity to get to know one another on an informal basis. This particular department prides itself on valuing the input of their students, graduate students in particular. They have invited a graduate representative to each department meeting (when appropriate) who then communicates about the programs, research and other pertinent information concerning the faculty and the department to the rest of the graduate students.

Recently, Magnolia State University hired a new president. Since she came from a university where there had been serious problems with sexual harassment of women students by a number of male professors, including a case that was covered extensively in the state press, this president was very concerned with the sexual harassment policies of the university. As part of her charge to the Affirmative Action Office, she required that this office closely examine the processes by which these kinds of cases are investigated and resolved. Over the course of the subsequent academic year, the Affirmative Action Office created a very easy process for anyone to submit an official complaint. Each affirmative action officer was trained in the process, and given instruction in compassionate modes of interviewing claimants that also followed affirmative action policy. The Affirmative Action Office developed literature that each department chair received which details the university’s sexual
harassment policies and procedures and offered presentations concerning sexual harassment to faculty meetings.

Additionally, the Affirmative Action Office recognized that the potential harm from sexual harassment isn’t simply between the two individuals directly involved. They acknowledged that sexual harassment also has the potential to disrupt an office or academic department within which it is happening. They developed procedures to address these issues and offered to present them to any department chair who felt that the process would benefit the department.

Not surprisingly, the Affirmative Action Office at Magnolia State University soon had an opportunity to put their new methods to the test. Much like the department described at Cherrystone University, there was a small university department with a history of sexual harassment of female students. Within this department at Magnolia State University, there has been a similar longstanding history of sexual harassment by one tenured professor. Throughout the last eight years, it has become a known fact among other departmental faculty that this particular professor repeatedly made inappropriate comments of a sexual nature to female students. He has also been known on a few occasions to have inappropriately touched female students. The atmosphere in the department was similar to the one at Cherrystone State University. There was anger and resentment among some of the faculty who knew that sexual harassment was regularly occurring but not being directly addressed. Until recently, no one had filed a formal complaint, although informal complaints have been received by the department chair as well as the Affirmative Action Office from students and faculty. Because none of these complaints were pursued by the
complainants, the issue has never been formally dealt with or resolved. This was to change shortly.

During the recent academic year, one woman graduate student chose to file a formal complaint with the Affirmative Action Office. She had been asked by this particular professor to come to his office late in the day, and he suggested that instead of them meeting at his office, they should grab a quick bite to eat at a local restaurant while they discussed her upcoming term paper topic. Although she thought this question was a bit out of the ordinary, she acquiesced to his suggestion and the left the campus and walked a couple of blocks to a restaurant. During this dinner, the professor declined numerous times to discuss her paper topic, and instead tried to get this young woman to discuss her love life with him. She was disturbed by this line of conversation, but because he held the key to her grade in his hands, she relented and told him a bit about her current dating history. As the conversation continued, he proposed that they should move their meeting to his house nearby. She declined, and he became more insistent about his request. At one point during this meeting, the professor reached under the table and stroked her thigh. It was at this point that the student stood up and abruptly left. She was very anxious, stressed and terrified of going to class the next day. The student was highly agitated the following week and missed all of her classes. After talking with some of her friends who were students in the department, she decided to meet with the department chair and tell him about her experience. Fortunately, the department chair had taken the new Affirmative Action policies and procedures to heart and listened to her distress with compassion and caring. He listened carefully to her story and encouraged her to file a formal
complaint with the Affirmative Action Office. The department chair had received a
number of informal complaints from faculty who had heard second hand about this
professor as well as some direct complaints from students. He was ready to have
some help dealing with this contentious issue in his department.

The student accessed the website of the Affirmative Action Office and found
the complaint process easy to follow. There were two possibilities: she could file an
informal complaint or she could file a formal complaint. She chose to file an informal
complaint knowing from the clear instructions that it did not mean that she would be
prohibited from filing a formal complaint at a later date. This student was
understandably wary, and did not want to jeopardize the progress of her degree
program with a lengthy and contentious process. She entered all of the information
into the web form and waited for a response. She did not have to wait very long.
Within three days, she was contacted by an affirmative action officer and was invited
to meet and discuss her complaint.

During this meeting, the affirmative action officer first explained that their
conversation would be completely confidential unless she chose to proceed further
than that particular meeting. The officer then asked the student to tell her story.
During this interview, the officer let the woman speak and rarely interrupted. The
officer would occasionally ask clarifying questions, but avoided making any other
comments. After the student was finished telling her story, the officer explained the
various possibilities of action from that point. This student chose to continue the
process and file a formal complaint. It was important to the student that she be able
help guide the process to maintain her feeling of safety. Specifically, the student was
concerned that she would have to confront the offender directly without support. The officer assured her that the office would not take any steps before consulting her unless it was legally obligatory. For example, if she chose to continue with a formal complaint, he would be required to notify the offender and or the department that a formal claim was filed. The officer explained that the first step would be to interview the department chair and the offending professor and the student and the officer would meet again and discuss the next step. Due to the legal obligations that accompany a formal complaint of sexual harassment, the officer explained that there may be some information that could not be shared with the student. The officer would not be able to divulge the content of particular conversations with any of the interviewed parties unless they gave specific consent. The officer gave the student an opportunity to ask questions and assured her that she could ask any further questions at a later date.

The affirmative action officer interviewed the department chair and the offending professor and then met with the student again. Together they decided that the Affirmative Action Office would interview the rest of the faculty as well as a select group of students who knew about the harassment and were concerned. The student was angry at the harasser, but was also concerned for his future students and wanted to face him in front of his peers about his behavior and discuss how it had affected her. She hoped that if he could see the harm that he had caused, perhaps he would be reluctant to continue this behavior. The student also wanted witnesses from her cohort and the department to this discussion because in that way he would be held accountable for his behavior. The student felt that if she was allowed to tell her story
in front of concerned witnesses it would give her claim more legitimacy than if all the conversations were privately held.

Following these interviews, the affirmative action officer suggested that a meeting be convened of the entire faculty, staff and selected students from her cohort to discuss the sexual harassment in the department. The student agreed so the officer called the mandatory meeting and prepared to act as facilitator. In this way, although the meeting would be difficult and emotional for everyone involved, there would be someone there who could maintain basic ground rules for a productive discussion.

At the beginning of this meeting, after everyone introduced themselves, the affirmative action officer gave a brief outline of the agenda. The ground rules were explained and then the student was given the floor. She told her story without naming the particular professor. After this, the affirmative action officer offered anyone who desired to do so an opportunity to speak. After a short silence, many people offered up their experiences, opinions and expressions of anger, pain and sorrow that this had happened. After most of the students and several faculty had spoken, the offending professor spoke up on his own, admitted his guilt and apologized for his egregious behavior. After two long and difficult hours of dialogue, the student felt validated in her experiences. The faculty spent some time talking about how the ongoing sexual harassment had negatively affected their relationships within the department. At the end of this meeting, it was suggested that they all meet at least once more to discuss any remaining issues as well as what steps should be taken next to promote a healthier academic and work environment for all.
At the subsequent meeting, the faculty and students discussed the overall environment of the department and came up with some plans to make the department a more welcoming place for everyone. They also devised a plan for students and faculty to gain some education and further understanding of sexual harassment. Students and faculty expressed appreciation to one another, including the harasser, for their courage and openness in this matter. They acknowledged that this was a difficult process, but everyone felt better at having the opportunity to air their concerns and provide the opportunity to create a healthier work and academic environment.

**Analysis: Restorative Justice, Magnolia State University**

The restoration and preservation of human dignity and the building of community is central to the goals of restorative justice. In order to come to a deeper understanding of restorative justice, it is necessary to explore the notion of human dignity and community. Thus, I will apply ideas from of dignity as developed by Phillip Hallie, Martin Buber and Josiah Royce. Then, I will show their relationship to Bishop Desmond Tutu’s concept of unbuntu and Dr. Martin Luther King’s beloved community. Although Magnolia State University is also an imaginary creation, it illustrates an uncommon, but efficacious restorative justice model of addressing sexual harassment.

The methods used at MSU attempted to balance the needs of the community with those of the individuals directly involved. Opportunities for all to be heard and included in the plan for the future were available. The affirmative action officer who facilitated the department conversations created an environment where everyone’s views were invited and concern for all parties was maintained. The agreed upon
ground rules created a safe environment that could accommodate varying view points and emotions, including those of the perpetrator.

As an agent of the University, the affirmative action officer made sure that all the legal issues were addressed. He also assured the victim that in the case that the restorative justice process did not lead to a satisfactory result, her rights to further pursue the claim were not abrogated. The needs of the victim, perpetrator and the community were balanced with the need to pursue the claim of sexual harassment. The affirmative action officer did not dismiss the victim’s claims. The victim had an opportunity to share her experiences. The needs of the institution were also protected by providing a less oppositional process and cultivating the support of the immediate community.

For Hume, justice is necessary for our continued healthy relationships. He argues that reason and sentiment both are necessary for all just determinations (263). Hume claims that justice would not be needed if all had the “...utmost tenderness for every man, and feels no more concern for his own interest than for that of his fellows...” (267). Hume argues that humans are innately influenced by the emotions of others (277). This means that justice is relational; it is a result of the interaction between humans who necessarily influence each other and must be considered when working towards justice. This relationality is different from the reciprocal relationship that Plato describes. Hume is talking about relationships among individuals while Plato is addressing the relationship an individual has with herself and the internal balance of the state.
Hume argues that by virtue of our inherent social nature, our feelings are influenced by not only our own experience, but the emotions of others as well (277). In harmony with Hume's views, the process used at MSU took into consideration varying sentiments held by the victim, offender and the relevant community. The face-to-face meetings included faculty, the victim and the students who were impacted by the sexual harassment by virtue of membership in a close cohort with the victim. The affirmative action officer offered the participants an opportunity to talk about their experiences and the emotional impact they held. The participants were given the opportunity to relate to one another on a more personal, less abstract level. The environment was a safe venue for all to reflect on their experiences as well as to plan for the future health of the relationships within the department. The expression of emotion provided some relief from the tensions held back by silence and the participants were then able to process information and plan for the future. The impact on the offender of hearing the victim's pain caused by the sexual harassment was integral to his motivation and willingness to take accountability for his actions. An opportunity for sentiment and reason to interact was afforded to all.

Phillip Hallie includes the emotional dimension of human life in his work as well. He describes what he calls institutional cruelty as a pattern of substantial cruelty that exists within a hierarchical relationship (3). Institutional cruelty is evident in the described cases of sexual harassment. He also notes that one of the qualities of institutional cruelty is that the victim and offender create ways in which to deny and hide the harm. By convening face to face meetings among and allowing the community to relate their experiences, the perpetuation of institutional cruelty via
silence and secrecy were eliminated. Hallie also argues that the end of harm in a cruel relationship must be the presence of hospitality. By this, he means “unsentimental, efficacious love” (5). Hospitality requires us to take positive action in order to restore dignity and self respect. The process at MSU was designed to eliminate institutional cruelty. The affirmative action officer listened carefully to the claimant and acknowledged her many feelings. He acknowledged her human dignity by validating her experience. Further, the officer acknowledged the dignity of both the victim and the offender by offering them an opportunity to share their experiences in a supportive environment. This created the possibility for the ending of cruel relationship which, Hallie argues, requires positive action. The positive action in this case was the inclusive meetings and providing an opportunity for all concerned to regain dignity and self respect.

Josiah Royce argues it is our duty to not only view others as individuals in the moment, but to think of others as enduring selves with hopes, dreams and fears (18-19). If we can bring ourselves to do this we have a means of fully relating, treating and appreciating others as real persons. This is the moral insight that Royce is striving for. The process at MSU was designed from the beginning to allow for everyone involved to gain a view of each other as real people. The discussions in the large group provided just this opportunity. The participants were able to realize a view of each other as fully human beings with hopes, fears and dreams. It provided a safe opportunity for the participants to feel and express vulnerability and to see one another as fully complex as themselves. Once people begin to share the real pain, joy and fear of their lives with one another, it is difficult to return to a view of others as a two
dimensional object. Royce points to a way in which we can have deeper and more meaningful relationships with one another.

Martin Buber argues that the I can only be whole when we are in relationship with a Thou (4). I interpret this to mean that we can only be whole beings when we are in relationship with others as whole beings. In order to preserve our own dignity and the dignity of others we must acknowledge the complexities of each person’s life, and that a whole person, or a Thou, is more than the sum of their parts, and not just a collection of characteristics or qualities. Buber’s assumption is that we are inherently relational beings, so when an I stands in relation to a Thou, the I is also whole, or a Thou. However, when the I is not in relation to a Thou, but to an It, the I cannot be whole (3). At Magnolia State University, the opportunity was provided to the victim, faculty and other involved students to relate to one another in I-Thou relationships. This means that the affirmative action officer created an environment where each person was encouraged to come to the table as a whole person rather than as discrete elements of their identities. The facilitated discussions were designed to create an opportunity for everyone to truthfully discuss their experiences and listen to others with compassion. The participants were given the opportunity to bring their whole realm of experience and being to the table and this brought about the possibility for them to view each other as whole, or as Thou. It was evident that this was at least somewhat successful given that, at the end of the first discussion, everyone felt they had a larger perspective of everyone’s experience and they were willing to continue the process. They began to see one another as Thou rather than It. The participants’
willingness to come to the table again is evidence that they found some value in the process.

Hallie, Royce and Buber all speak to how our own being is influenced by our relationships with others. Buber argues that the existence of an I that is a whole being is impossible without a Thou (4). This means that we cannot be whole beings without being in relationship to other whole beings. Royce claims that viewing others with mere sympathy is not enough to make them real to us; he asks us to expand our view of others as having hopes, dreams and fears in the present and in the future like we do for ourselves (19). Royce’s theory offers a way to establish I-Thou relationships. Hallie argues that the value of our own lives is directly related to the value we place on others and that we must take positive action to end substantial cruelty (8-9). If considered as a whole, Hallie, Royce and Buber demonstrate the elements necessary to truly honor what I define as human dignity.

Bishop Desmond Tutu also argues that our own humanity is irrevocably related to others. When talking about the concept of ubuntu, he states, “...a person is a person through other persons” (31). When one is dehumanized, all are dehumanized. It is an opportunity to recreate humanity, and therefore community when we recognize one another’s humanity. He claims further, “…to forgive is indeed the best form of self-interest since anger, resentment, and revenge are corrosive of that summum bonum, that greatest good, communal harmony that enhances the humanity and personhood in all the community” (35). His experiences with the Truth and Reconciliation Commission cemented the belief that in order to move forward, one must face the
past. He argues that silence can revictimize individuals by denying their claims to dignity. Silence becomes a betrayal (29, 107).

The process used at MSU acknowledged the harm done not only to the victim, but to the community as well. It encouraged openness and vulnerability. The affirmative action officer recognized the relationship between individuals and the health of the community. Through this recognition, the affirmative action officer created the conditions where forgiveness was a possibility and therefore was also a possibility of restoration of dignity to individuals and the community. Rather than encouraging long-lasting animosity, this process encouraged reconciliation.

Like Bishop Tutu, Dr. Martin Luther King, Jr. firmly believed that one cannot be whole without community and that there can be no community without the benefit of whole individuals. He elegantly states, “The self cannot be self without other selves. I cannot reach fulfillment without thou….All life is interrelated. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny” (Ethical Demands, 122). Dr. King maintained that the well being of the individual is reciprocally tied to the well being of the community. This means that if there is a breach in relationships between two members, it not only affects those individuals, but the rest of the community as well. The process and methods used at MSU were designed with the assumption that individual health and community health are related. The affirmative action officer not only interviewed the faculty and students concerning their knowledge about the case, but also asked about their shared environment. In order to create a safe, lively and productive department, the wider effects of sexual harassment had to be addressed. It was clear at both universities that ongoing sexual
harassment created a breach in the community that was not directly observable. The facilitated discussions at MSU created the opportunity for reconciliation for the whole community and redemption for the offender.

For Dr. King, community members must hold each other accountable for their actions while maintaining human dignity. The idea is to expose wrong doing while maintaining respect for the doer. It is essential to avoid humiliation of any one person, including the offender, if community is to be healed. Dr. King asks us to recognize the full humanity of the offender, even if harm has occurred (Experiment, 19). The affirmative action officer at MSU created the conditions for this to occur by setting ground rules for dialogue that emphasized active, compassionate listening, personal sharing and by explicitly noting that the goal of the conversations was healing and reconciliation, not punishment and retribution.

It is relevant that Bishop Tutu titled his book *No Future Without Forgiveness*. In this book, he claims that in order for victims to thrive and survive in the face of oppression, one must be given the opportunity to forgive (30-33). He argues that we must forgive ourselves and others for harms committed in order to move towards building a safe and supportive community. Forgiveness is only possible when we are able to respect and value each other’s dignity. True reconciliation is not possible without forgiveness. The restorative process at MSU created the possibility of reconciliation.

**Conclusion**

In this chapter, I have argued that applying restorative justice principles when addressing a sexual harassment claim is more effective at meeting the needs of the
institution, the victim and the offender than using a retributive approach. The imaginary fact patterns presented illustrate the advantages of a restorative justice model and the disadvantages of a retributive model in action. I have supported this thesis with the help of ideas from Plato, Hume and Rawls. In addition, I have demonstrated how the concepts of human dignity as presented by Hallie, Buber and Royce are fundamentally connected with the conception of community as discussed by Bishop Tutu and Dr. King and add to the depth of applied restorative justice.

In both of the fictional fact patterns presented, a process addressing a claim of sexual harassment was carried out. The fact pattern at CSU is unfortunately common. CSU followed a typical model of addressing sexual harassment as described by many women who have traveled this road and have been sorely disappointed. Magnolia State University, in contrast, offered an uncommon restorative justice approach. Although these are both fictitious events, it is reasonable to assume that the results of each process are likely. Though many details are missing, it is realistic to conclude that the retributive process used by Cherrystone State University was less able to restore dignity to the victim and health to the community than the process at Magnolia State University. The process at MSU more effectively considered the relational nature of sexual harassment and the wider effects it has on a community than at CSU. There was great effort made at MSU to respect the dignity of the victim, offender and others involved. We can assume the process at CSU was designed to respect the dignity of at least the victim and the offender, but concern for the broader community was neglected. In the end, the process at CSU left the victim feeling unheard and that her experiences were devalued. The process used at MSU is similar to the process
used to rebuild community and provide opportunities for forgiveness and reconciliation by the Truth and Reconciliation Commission. Bishop Tutu vividly describes the relief from grief that both victims and offenders experienced through participation in the TRC (146-156).

It is important to note that any process grounded in restorative justice can merely open the door to reconciliation and recreation of community; there are no guarantees. Restorative justice is grounded in the values of inherent human dignity, the notion that it is our relationships with one another that make us whole beings and that the health of our relationships is directly and reciprocally related to the health of our communities. It is up to the individuals involved to work to make this happen even though it is often difficult to make one’s self vulnerable, especially when there may be practical negative consequences. Because of the legalities involved in findings of sexual harassment cases, even with a restorative justice process, there may also be further consequences for the offender that are not made public. This does not negate the potential effectiveness of a process that respects each person’s dignity and seeks to recreate community. Restorative justice can only happen if we take positive, intentional steps in that direction.

In thinking about the likely futures of sexual harassment at CSU and MSU, I envision two different scenarios. If the process does not change at CSU, it is likely that harm from sexual harassment will continue to affect the lives of everyone it touches. If an institution does not offer and encourage restorative justice, the harm from sexual harassment to individuals and the community will be sustained without possibility of reconciliation. I imagine that the relationships among the faculty in the
department at Cherrystone State University will remain strained. Possibilities of
collegial relationships and collaboration will be reduced. I picture the students who
are aware of sexual harassment distancing themselves from the faculty in order to
preserve their safety and dignity. It is possible that, eventually, the reputation of the
department might be so damaged that enrollment suffers. I envision a lost possibility
of a vibrant and collegial academic community.

In contrast, at MSU, I envision an entirely different image. I imagine that as
an institution, MSU will continue to address issues of sexual harassment across
campus and begin to reduce the lingering harm of sexual harassment to individuals
and communities. I envision the potential for a lively and vibrant academic
community where the faculty are willing to take the sometimes rocky road of
recreating trust in their colleagues. I picture students who aren’t afraid to seek
mentoring relationships with professors and who don’t worry who they might run into
when they come to the department and attend campus events. I imagine a community
of scholars who have deep respect for one another’s humanity. The title of Bishop
Desmond Tutu’s book is No Future without Forgiveness. Magnolia State University
has a future.
Chapter 4 – Looking Forward

Being party to a claim of sexual harassment can be a devastating experience. For the victim, it can negatively affect productivity and relationships inside and outside the context in which it occurs. Claimants experience stress and anxiety and may become depressed. For the offender, it can also be a difficult experience, affecting relationships within and outside the work environment. It is painful not only for the claimant and the offender, but also often negatively impacts members of the community in which it is situated. Members of a community in which sexual harassment is known to occur may find creating and maintaining positive working relationships difficult.

It is difficult to address a sexual harassment claim within an institution. The agency involved in investigating and adjudicating the claim must attempt to balance the needs of the offender, the claimant, the institution and the requirements of law. This is a difficult balance to maintain when the manner of resolution is modeled on a system of retributive justice, where the claimant and offender are often pitted against one another and the agency addressing the claim is a representative of the institution in which the harassment occurs. This is complicated by the disparate power relationship between the claimant and the offender. As I noted previously, often the harasser holds more institutional power than the claimant and the institutional structures, policies and procedures that guide the resolution of these claims tend to provide little support for equitably balancing the various practical and emotional needs of those involved.
Using a retributive system to address sexual harassment claims can serve to exacerbate the stress and anxiety experienced by the victim and the offender.

Sexual harassment occurs in small businesses, large corporations, government offices and schools. It is a multifaceted problem that is not limited to particular environments. Sexual harassment is a result of hierarchies of power and status that afford privilege to men and institutions at the expense of women and those with less privilege and power. Policies and procedures based on a retributive system used to address claims of sexual harassment serve to maintain the hierarchies that sustain sexual harassment while seeming to appropriately address it. Using a retributive model of justice to guide the resolution of sexual harassment claims ignores the inequitable distribution of power between the parties.

If the current normative method for addressing sexual harassment claims maintains inequitable hierarchies and fails to adequately serve the needs of the individuals and community involved then, as ethicists, we are called to find a better way to approach these claims. If the normative process does not adequately balance the needs of the individuals, community and the institution, then we must seek a process that strives to meet those needs. The guiding values must be respect for the inherent dignity of all persons and the relationships among individuals that create and sustain the integrity of a community. This means creating an environment where offenders can be held accountable to the victim and the community with the goal of reconciliation. Restorative justice allows individuals to be held accountable to their communities, and to individuals within those communities while maintaining the integrity and dignity of all.
In this thesis, I have offered an alternative viewpoint from which to address claims of sexual harassment that serve to maintain the dignity of all involved and protect the needs of the community and institution as well. I have applied the theories of Plato, Hume and Rawls to demonstrate that classic western philosophy can point us in the direction of restorative justice. Plato recognizes the inevitable relationship between individuals and society. If we focus a bit closer, we see that Plato also directs us to think about the relationships that individuals have in smaller communities and how those communities relate to institutions. Hume reminds us that fundamentally, humans are relational beings and that the affect of others influence our own reactions. Human sentiment must necessarily be considered when resolving conflict between individuals. John Rawls requires us to eliminate or at least reduce the influence that unearned privilege has on the pursuit of justice. Although it is not always possible to completely eliminate the effects of varying levels of institutional power, it is possible to reduce its influence. Rawls reminds us that it is important to consider all involved parties equals in the pursuit of justice.

Josiah Royce, Martin Buber, and Phillip Hallie ask us to acknowledge innate human dignity and the potential for us to be whole beings in relationship with one another as guiding values. If we apply the values of restorative justice to addressing claims of sexual harassment, we provide the opportunity for the claimant to fully express to the offender and the relevant community members the harm that she has suffered. We offer witness to her pain which can be healing in itself. For the offender, we offer an opportunity to fully understand the harm that he has caused in a context that will support forgiveness and reconciliation.
Dr. Martin Luther King, Jr. reminds us of the importance of community and the value that it holds for individuals. The health of the individual is directly and reciprocally integrated with the health of the community. The values of restorative justice call us to recognize that harms committed against one member of a community affect the community as a whole. When the values of restorative justice are applied, members of the community are given an opportunity to express how sexual harassment in their immediate environment has affected their personal and working relationships with one another. It is assumed that the offender wishes to be a welcome part of the community, and in order to restore his place in that community an opportunity for wider reconciliation must be provided.

When a restorative justice approach is used to address claims of sexual harassment, the institution is also well served. Bishop Tutu demonstrated that the needs of an institution, in his case the nation of South Africa, can be addressed when applying the values of restorative justice. A process designed to heal relationships is much more likely to result in a satisfactory end than an adversarial process. If all parties are more satisfied with the result, it is less likely that a claim of sexual harassment will harm the reputation of the institution. When individuals are treated with respect and dignity the likelihood that the process will result in legal battles and negatively affect the reputation of the offender and the institution as a whole is significantly reduced.

I do not claim that using principles of restorative justice when addressing claims of sexual harassment is easy or free from stress. It requires a significant amount of energy and commitment on the part of the institutions to do the work and
prepare the environment in which restorative justice can occur. It also requires
commitment and energy from the participants in order to openly participate in the
process, and in my experience, it is often stressful. I only argue that the stress and
anxiety resulting from a restorative justice approach can lead to healing and
reconciliation.

One might also argue that using restorative justice to address sexual
harassment requires an excessive amount of time and energy that could be better spent
in the workplace. I counter that although using restorative justice can be more
disruptive to schedules in a workplace than using a traditionally retributive process,
ultimately productivity will increase when individuals feel respect for one another and
their community. A process guided by restorative justice principles is more
efficacious than one guided by retribution. It can be a truly transformative experience
for all involved.

In an effort to contain the scope of this thesis, it was necessary to omit some
details in the fact patterns that must not be neglected in an actual sexual harassment
claim. For example, the sex of the affirmative action officer was not made clear. If
this were an actual case, the sex of the affirmative action officer must be considered,
particularly during the interview process, but also when designing the process. Given
that sexual harassment is about the unjust exercise of power, the sex of the affirmative
action officer or the designated investigating agent should be a factor when designing
the process and conducting the interview. Every effort must be made to make the
environment as comfortable for all participants as possible. If at all possible I would
recommend that the facilitation team be a man and a woman and that they take
balanced roles during the process. A woman may feel more comfortable being interviewed by another woman, especially if the harassment was particularly egregious. It is beyond the scope of this thesis to address the many other factors that may also impact a restorative justice approach to addressing sexual harassment however, issues of race, sexual orientation, and gender identity might also need to be considered.

Although only hinted at in the resolution of the claim at Magnolia State University, I would be remiss if I did not emphasize the need for education concerning sexual harassment. In addition to a restorative justice process designed to heal relationships between individuals and restore community, it is necessary for all involved to have a basic understanding of the nature of sexual harassment and its effects on all individuals. Students, staff and faculty should also take part in seminars and trainings designed to help them recognize sexual harassment, the power relationships that often exist within this context and ways in which to interrupt it. Additionally, I would recommend that any institution with an Affirmative Action Office create a clear, easy and transparent process to receive claims of sexual harassment.

In the introduction I stated that the process in which I was a part was not yet finished. It is difficult to know how everyone now feels about what happened that spring. From casual conversations with members of the department, I do know that some individuals feel more comfortable with their colleagues. I also know that I am no longer concerned about women students taking classes in that department with particular professors. When I am in the department I am more comfortable as well; I
am no longer afraid who I will run into when I'm there. Perhaps each of us must come
to the end of that process as individuals in our particular relationships with one
another; for myself, this thesis is the end of my process, and I am left with hope that
we can continue to use the values of restorative justice to strengthen ourselves and our
communities. If a nation like South Africa can transform itself from a society burning
with hatred and pain to one that acknowledges human frailties and dignity in order to
heal itself, and begin building a functioning democracy, imagine what small steps
towards restorative justice might be accomplished in a smaller setting.
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