ELDER RESTORATIVE JUSTICE

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I. INTRODUCTION

As populations age throughout the world and older people face the challenges of declining health and independence, opportunists frequently exploit seniors’ vulnerabilities. This exploitation may take the form of financial, emotional, physical, and sexual abuse, and even neglect, and it occurs with alarming frequency. It happens in a climate where older people endeavor to maintain their independence, and advocates and service providers face the challenge of helping seniors to remain autonomous while simultaneously preventing and addressing harm when it occurs.

Most elder abuse and exploitation occurs at the hands of family members and caregivers—usually the same people seniors rely on for assistance to live independently. Too often, options to address harms caused by elder abuse and exploitation are limited. Although seniors may be encouraged to report abuse to law enforcement and other service providers, civil and criminal remedies are often ineffective.

This dynamic confluence of factors further complicates a serious problem that currently lacks effective solutions and begs for alternative options. “Elder restorative justice” presents such alternatives. The process promotes repair and reconciliation of the underlying relationships. In a restorative process, the person harmed has the opportunity to obtain reparation and closure, while the person committing the harm has the opportunity to understand the effects of his behavior and take responsibility, and the community

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1 See infra Part II.
2 See infra Part II.
3 See infra Part II.
4 See infra Part III.
5 Elizabeth Beck et al., Restorative Justice with Older Adults: Mediating Trauma and Conflict Later in Life, 21 Traumatology 219, 220 (2015).
can promote well-being and prevent future crime.\(^6\) Restorative principles currently are utilized in a variety of conflict resolution contexts, such as addressing behavioral issues and disputes between students in schools,\(^7\) addressing juvenile offenses,\(^8\) resolving custody issues,\(^9\) and most recently, in situations of domestic violence.\(^10\) Some proponents of restorative principles also are exploring their application in addressing problems in workplaces, community groups, apartment complexes, agencies, and in other community-based contexts.\(^11\) However, restorative principles have rarely been adapted to address elder abuse.\(^12\)

This article explores the viability of utilizing restorative principles to address elder abuse and recommends the continuing implementation of an “elder restorative justice” paradigm. Part I describes the widespread problem of elder exploitation and possible reasons for it, and Part II outlines current strategies to address it. Part III offers an overview of restorative principles, with a description of selected models. In Part IV, this paper reviews restorative approaches currently addressing elder abuse, and their benefits and challenges. Part V analyzes the applicability of the restorative models outlined above to the elder abuse context, assessing the most effective options for addressing this rapidly ex-

\(^{6}\) Id. at 219.

\(^{7}\) See, e.g., Jill Davidson, Restorative Justice: Putting the Responsibility on the Shoulders of Students to Correct Mistakes When They Happen, 80 EDUC. DIG. 19, 19 (Nov. 2014).


\(^{12}\) But see infra Part III.
panding societal problem. Finally, the article concludes with recommendations for specific pilot projects. Although restorative processes are not a panacea, they do provide viable alternatives in certain elder abuse contexts. The goal of this article is to examine past and present projects using restorative justice principles to assess the potential for broader adoption of these models. This analysis is a step towards identifying alternative remedies to assist older people confronted with elder abuse, enabling them to repair the underlying relationships, and enhancing their ability to continue their aging processes in safer and genuinely supportive environments.13

II. THE BASICS OF ELDER ABUSE

The World Health Organization (“WHO”) defines elder abuse as “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person,”14 although terminology and definitions vary.15 The harm may be financial, physi-

13 Because of the negative connotations and stigma associated with the words “victim,” “offender,” and “perpetrator,” this article will refrain from using those terms, and instead refer to “the person harmed” and “the person committing the harm.” See Alan Clarke et al., Access to Justice for Victims/Survivors of Elder Abuse: A Qualitative Study, 15 Soc. Pol’y & Soc’y 207, 208 (2016) (noting that “it has also been suggested that older adults are less likely to engage with interventions if they have to identify themselves as being ‘abused’ rather then [sic] ‘mistreated’” (citing Gemma Smyth, Mediation in Cases of Elder Abuse and Mistreatment: The Case of University of Windsor Mediation Services, 30 Windsor Rev. of Legal & Social Issues 121, 125 (2011)). For clarity, feminine pronouns are used throughout when referring to the older person and male pronouns when referring to the person who committed the harm. While not intended to be rigid stereotypes, this is consistent with research findings. See Shelly L. Jackson, All Elder Abuse Perpetrators Are Not Alike: The Heterogeneity of Elder Abuse Perpetrators and Implications for Intervention, 60 Int’l J. of Offender Therapy and Comp. Criminology 265, 272 (2016)).

14 Ageing and Life-Course: Elder Abuse, World Health Org., https://www.who.int/ageing/projects/elder_abuse/en/ (last visited Mar. 24, 2019). This article addresses only abuse caused by people known to the senior. Although financial exploitation perpetrated on seniors generally in the form of scams, fraud, and identity theft, is rampant, these issues are beyond the scope of this article. See, e.g., Money Smart for Older Adults Resource Guide, Consumer Protection Finance Bureau (Sept. 2018), https://files.consumerfinance.gov/f/documents/201703_cfpb_money-smart-for-older-adults-resource-guide.pdf.

15 See Clarke et al., supra note 13 (“A broader view, within the policy context of the protection of vulnerable adults, describes abuse as ‘a violation of an individual’s civil or human rights by any other person or persons.’ However, the definition of elder abuse remains problematic. The very term is seen as failing to reflect the diversity of the phenomenon and the ‘mistreatment of older adults’ is preferred. It has also been suggested that older adults are less likely to engage with interventions if they have to identify themselves as being ‘abused’ rather [than] ‘mis-
94 CARDOZO J. OF CONFLICT RESOLUTION [Vol. 21:91
cal, psychological, and sexual, or some combination of these types, and it may be the result of intentional or unintentional neglect. 16

The prevalence of elder abuse is well-documented. The WHO estimates that 17% of all people aged 60 and older have been subjected to some form of abuse 17—roughly 141 million people. 18 Due to the difficulty of collecting accurate data and the reluctance of many who have been harmed to report the abuse, most experts believe the figure to be much higher. 19 In the United States, it is estimated that 10% of those over age 65 have been subject to physical, sexual, psychological, verbal, or financial abuse, or to neglect. 20 It is estimated that only 1 in 24 cases of elder abuse comes to the attention of authorities, while only 1 in 44 cases of financial abuse is actually reported to authorities. 21

Despite growing awareness and attention to prevention and effective responses, elder abuse is expected to affect an increasingly large number of people. A comprehensive systematic study of international elder abuse reports found that the global prevalence rate of elder abuse was 15.7%, or about one in six older adults. 22 Worldwide populations continue to age, with a projected worldwide population of 2 billion people over age 60 by 2050. 23 Assuming the prevalence rate remains constant, there will be an

treated”); see also SHELLY L. JACKSON, UNDERSTANDING ELDER ABUSE: A CLINICIAN’S GUIDE 11 (2018) (noting that comparing international studies is difficult due to differences in definitions, methodologies, and instruments).

18 Yongjie Yon et al., Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-analysis, 5 The Lancet Global Health 147, 147 (2017).
19 Abuse Of Older People on the Rise, supra note 17.
21 Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University & New York City Dep’t for Aging, Under the Radar: New York State Elder Abuse Prevalence Study (May 2011), https://oefc.ny.gov/main/reports/Under%20the%20Radar%202005%202012%2011%20Final%20Report.pdf; see also Abuse Of Older People on the Rise, WHO, supra note 17; Arlene Groh & Rick Linden, Addressing Elder Abuse: The Waterloo Restorative Justice Approach to Elder Abuse, 23 J. of Elder Abuse & Neglect 127, 128 (2011) (Possible reasons for failure to report abuse include dependence on the one committing the harm, shame, fear of suffering additional harm or being confined to a facility, and fear of losing the familial relationship.).
22 Yon et al., supra note 18, at 152.
23 Abuse Of Older People on the Rise, supra note 17.
estimated 330 million victims of elder abuse worldwide by 2050. Only as the aging population has grown to such extreme levels have policy makers, researchers, and other professionals actually begun to grasp the magnitude of the problem, and to consider more effective ways to address and prevent it. In the last ten years, new efforts have been initiated to better understand this phenomenon. Surveys of the problem continue to proliferate, and large datasets are now available to analyze prevention and intervention strategies, the fiscal impact, and the public health consequences of elder abuse.

Elder abuse significantly impacts those involved and the surrounding communities. For example, psychological abuse, the type of abuse most frequently reported, harms a person’s well-being and self-worth. Financial abuse may leave the senior without food, shelter, medication, and other basic necessities. Neglect, by defi-
nition, is the failure to meet the seniors’ needs, and therefore has similar consequences.  

Physical abuse can cause serious injuries, which can result in expanded use of emergency services, increased hospitalizations, and potentially death. All types of abuse can result in depression, stress, and anxiety, and increased risk of placement in long-term care, an issue of grave concern to many seniors. These health consequences require expenditure of scarce resources on treatment and care, resulting in high societal costs.

Characteristics of those being harmed and of those committing harm are relevant when considering effective solutions to elder abuse. Research indicates which populations of older adults are most at risk of elder abuse, with risk being described generally as “vulnerability plus exposure.”

Older adults with poor physical health and other risks of impairment are at greater risk of abuse, as are those who have poor social support systems. It is estimated that approximately 50% of elders who have dementia have experienced abuse. Other factors increasing the likelihood of abuse include living with a large number of family members and lower income or poverty. Factors increasing the likelihood of financial abuse specifically include non-use of social services, needing assistance with activities of daily living, not having a spouse or partner, being female, and being African-American. One study

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30 XinQi Dong & Melissa A. Simon, *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173 JAMA INTERNAL MED. 911, 911 (2013) ("Elders who have experienced abuse are three times more likely to require hospitalization").

31 NAT'L CTR. ON ELDER ABUSE, supra note 27 (citing Dong & Simon, supra note 30 ("Elders who have experienced abuse are three times more likely to require hospitalization")).

32 Abuse Of Older People on the Rise, supra note 17.


34 Statistics/Data, NATIONAL CENTER ON ELDER ABUSE, supra note 27; NAT'L CTR. ON ELDER ABUSE, supra note 22 (citing Claudia Cooper & Gill Livingston, *Intervening to Reduce Elder Abuse: Challenges for Research*, 45 AGE AND AGING 184, 184–85 (2016)).

35 NAT'L CTR. ON ELDER ABUSE, supra note 27 (citing Bruce Friedman, et al., *Longitudinal Prevalence and Correlates of Elder Mistreatment Among Older Adults Receiving Home Visiting Nursing*, 27 J. OF ELDER ABUSE AND NEGLECT 34 (2015)).


37 NAT'L CTR. ON ELDER ABUSE, supra note 27 (citing Bruce Friedman, et al., *Longitudinal Prevalence and Correlates of Elder Mistreatment Among Older Adults Receiving Home Visiting Nursing*, 27 J. OF ELDER ABUSE AND NEGLECT 34 (2015)).

38 NAT'L CTR. ON ELDER ABUSE, supra note 27.

found that those who are “extremely friendly” experience financial losses at a rate four times greater than those with a more average degree of friendliness.41

Burgeoning research also offers insight into those who commit the harm, most of whom are adult children or spouses.42 They are more likely to have a criminal history, to have a former or current substance abuse problem, to have health problems of their own, to be socially isolated, and to be unemployed or facing financial challenges.43 Other than family members, those most likely to financially exploit seniors are friends, neighbors, and home health aides.44 Research is limited regarding the demographics and situations of those committing specific kinds of harm, but there is increasing awareness that they are a heterogeneous group with notable patterns, associating characteristics of the person committing the harm with the specific type of abuse.45

Research efforts are currently underway to further develop theories explaining the causes of elder abuse. Current theoretical explanations include: 1) caregiver stress; 2) ecological theory;46 3)
the life course perspective,\textsuperscript{47} 4) feminist perspectives; 5) the National Academies of Science ("NAS") “Elder Mistreatment Framework,”\textsuperscript{48} and 6) a human rights perspective.\textsuperscript{49} Given the heterogeneity of those committing the abuse, some argue that the theory, and intervention, should target the motivation of the abuser and the context.\textsuperscript{50}

III. CURRENT STRATEGIES TO ADDRESS ELDER ABUSE

The complexities of elder abuse and exploitation present challenges for identifying successful potential interventions. Traditional legal remedies are law enforcement, prosecution, and civil action. However, many seniors do not want to pursue these options. This is understandable when considering that a large percentage of perpetrators are family members. For example, a grandmother, may not want to feel responsible for her grandson going to prison.\textsuperscript{51} Additionally, she may be reluctant to participate due to the trauma she may experience through the prosecution process. Some older people may experience guilt about their need to depend on others for their care and daily needs, or feel shame that one of their own adult children or a family member would treat them with such disrespect. As mentioned above, many older people are dependent on the very people who are committing the

\textsuperscript{47} The life course perspective focuses on periods of stability and transition and the many factors that affect them. See DARLING supra note 46 at 26.

\textsuperscript{48} This theory focuses on elders in relationship to others, acknowledging that the elder and the person committing the harm are embedded in a social context. See DARLING, supra note 46 at 27–28.


\textsuperscript{50} See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 276.

harm. The older person may be grateful for the assistance these family members provide because it enables her to live independently and she may not want to risk damaging that relationship. This abuse may be seen as a relatively small price to pay for the ability to live independently, and although fully aware of the exploitation and other abuse occurring, she may reasonably choose to ignore it. These are just some of the considerations for an older person when deciding whether to utilize a traditional remedy for the abuse.

A. Law Enforcement and Prosecution

Historically, perpetrators of elder abuse were characterized as overwhelmed caregivers needing support. As a result, protective services programs became the leading interveners. Research in the 1980s and 1990s concluded that while abuse may be the result of caregiver stress, often it is due to “abuser psychopathology.” Consequently, interventions transitioned from a child protective model to one based upon domestic violence, resulting in more frequent criminal justice responses.

In the past, prosecution was limited. Few cases were referred for prosecution, and even fewer were prosecuted. The cases were difficult, and included criminal offenses or legal issues which prosecutors and law enforcement were not trained to address, required expert testimony, and demanded analysis of extensive financial records. Additionally, the nature of the offense often allowed the abuse to go undetected for a significant amount of

52 See Stiegel, supra note 51. But see Clarke et al., supra note 13, at 214 (describing the relationship between senior and perpetrator as interdependent).
53 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 267.
54 See id.
55 See id.
56 See id.
57 See id. (noting that historically, elder abuse has not been considered criminal)
58 See id. at 276.
59 See Page Ulrey, Confusion on the Front Lines: The Response of Law Enforcement and Prosecutors to Cases of Elder Abuse (2016), https://www.acl.gov/sites/default/files/programs/2016-09/ulrey_white_paper.pdf (last viewed Mar. 27, 2019); see also Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 268 (finding that certain categories of cases, including physical abuse cases and cases involving physical abuse and financial exploitation, are more likely to be prosecuted).
time, and securing reliable testimony became more difficult when the older person exhibited diminishing capacity.\footnote{See, e.g., \textit{Mary Joy Quinn & Susan K. Tomita, Elder Abuse & Neglect: Causes, Diagnosis, and Interventional Strategies} 286 (2d ed. 1997); \textit{The Elderly and Civil Procedure: Service and Default, Capacity Issues, Preserving and Giving Testimony, and Compulsory Physical or Mental Examinations}, 30 \textit{Stetson L. Rev.} 1273, 1273 (2001).}

However, prosecution is of limited usefulness. First, a large percentage of elder abuse cases are unreported. Additionally, not all elder abuse cases rise to the level of a criminal offense. Also, because the perpetrator is often a family member or caregiver, some seniors do not want to see those same people face the threat of incarceration, and a successful prosecution usually requires participation of the person harmed. Some seniors, because of denial, disbelief, fear, or lack of understanding that the abuse is occurring, may not want to address the problem at all. Finally, some of those who have been harmed by elder abuse have diminishing capacity, rendering prosecution more challenging.

The threat of prosecution has minimal impact as a deterrent because even convicted abusers often return to the person they harmed. Scholars argue that criminal justice interventions have not been effective in reducing recidivism in the intimate partner violence context and therefore are unlikely to be effective in addressing elder abuse. Another concern is the revictimization of persons harmed, and the disempowering impact of prosecution.

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68 See supra note 21; see also Abuse Of Older People on the Rise, WHO, supra note 17.
69 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 276.
70 Shelly L. Jackson & Carrie F. Mulford, The Complexity of Responding to Elder Abuse Demands the Use of Multidisciplinary Teams, NCCD BLOG (Oct. 30, 2013), https://www.nccdglobal.org/newsroom/nccd-blog/complexity-responding-elder-abuse-demands-use-multidisciplinary-teams (Noting the complexity of the relationship between the person committing the harm and the person harmed, researchers have acknowledged that often the cases “typically involve long-standing, co-dependent relationships in which the dyad has no desire to be separated”).
71 See Sarah M. Harless, From the Bedroom to the Courtroom: The Impact of Domestic Violence Law on Marital Rape Victims, 35 Rutgers L. J. 305, 322 (2003); see also Douglas E. Beloof & Joel Shapiro, Let the Truth be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims' Out of Court Statements as Substantive Evidence, 11 Colum. J. Gender & L. 1, 32 (2002).
73 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 276.
74 See id.
75 See id.
B. Civil Remedies

Theoretically, traditional civil remedies are also available to those who have been harmed. These remedies include pursuing litigation against the perpetrator by alleging undue influence, unjust enrichment, breach of contract, breach of fiduciary duty, rescission, or fraud, and by pursuing actions seeking orders of protection, restitution, injunctive relief, damages, or declaratory relief. In recent years, resources for advocates, such as training and resource materials, have proliferated, and include those offered by the National Center on Elder Abuse and the National Clearinghouse on Abuse in Later Life.

Civil suits against those abusing and exploiting seniors carry some of the same challenges as criminal prosecutions. First, it may take many months, even years, to identify that the abuse is happening or has occurred, resulting in diminished memories and insufficient documentation. The senior may be reluctant to pursue litigation, despite acknowledging that it does not involve jail time. Gathering evidence remains difficult, particularly in matters of financial exploitation that may involve securing and examining large volumes of documents. Often the stolen money is spent or the property is sold long before the litigation begins, limiting the amount of compensation a senior may recover if her claim is successful. Finally, litigation is a famously slow process, a problem further aggravated by the inevitable aging of the person harmed.


79 See Sabatino, supra note 39, at 6–7. This problem is aggravated by the lack of subpoena power until after the lawsuit is filed.

80 The challenge of obtaining any lost resources is even more difficult when the person who committed the harm has a substance abuse and/or mental health problem. The National Elder Mistreatment Study concluded that 21–51% of known perpetrators had a drug or alcohol problem and 19–28% had a history of receiving mental health treatment. See Travis Labrum & Phyllis L. Solomon, Elder Mistreatment Perpetrators with Substance Abuse and/or Mental Health Conditions: Results from the National Elder Mistreatment Study, 89 Psychiatric Q. 117, 121–22 (2018); Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 272–73; see also supra note 20.
C. Multi-Disciplinary Teams

Given the need for “collaboration, cooperation, and communication” among the professionals involved in elder abuse cases, one modern approach is the use of Multidisciplinary Teams (“MDTs”). MDTs are groups of professionals who collaborate to review incidents of elder abuse and pool their collective resources to develop a plan of action. They provide consultations to service providers, identify service gaps, advocate for change, offer trainings, and facilitate coordinated investigations. Team members typically include aging services personnel, adult protective services representatives, civil attorneys, criminal justice participants, health care representatives, and victim advocates.

The DOJ’s Multidisciplinary Team Technical Assistance Center provides consultation and training on the establishment of MDTs, and produces materials. It describes the predominant characteristics of MDTs as: 1) shared decision-making; 2) partnership; 3) interdependency; 4) balanced power; and 5) process. Advantages of MDTs include enhanced evidence gathering, support for the person who has been harmed, and collaboration to encourage that person’s participation in the investigation and potential prosecution. Although MDTs report successful interdisciplinary collaborations, more evaluation is needed to assess their effectiveness and develop a consensus of appropriate goals and outcomes for this approach. Despite these limited improvements, traditional criminal and civil remedies remain largely inadequate to address the complex nature of elder abuse.

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84 See id.

85 About the MDT TAC, supra note 82.


87 Jackson & Mulford, supra note 70. One study found a relationship between multi-disciplinary services and a reduction in mistreatment risk. Moore & Browne, supra note 51.

88 See Anetzberger, supra note 83, at 427; see also Moore & Browne, supra note 51, at 392.

89 Finally, there is some evidence that “traditional” legal options are not even explored with some seniors who have been harmed. See generally Clarke et al., supra note 13 (finding that
IV. OVERVIEW OF RESTORATIVE PRINCIPLES AND SELECTED MODELS

This Part offers a foundational discussion of basic restorative principles before considering their application to elder abuse. The literature in this field has expanded exponentially in recent years, particularly as policymakers consider alternatives to the current criminal justice system and the large number of incarcerated offenders in the United States. However, the application of restorative principles expands far beyond the criminal justice system, as scholars and practitioners consider their application in diverse contexts that include even the development of restorative institutions and communities. Advocates, policy-makers, and funders should initiate and implement projects applying restorative principles to elder abuse.

A. Restorative Justice Generally

Definitions of restorative justice abound. Howard Zehr, referred to as “the grandfather of restorative justice” and author of The Little Book of Restorative Justice, one of the early texts in the field, defines it as “an approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”

DECISIONS REGARDING HOW TO ADDRESS ELDER ABUSE WERE MADE FOR SENIORS, NOT BY SENIORS, AND THAT THE HARMED SENIORS FREQUENTLY WERE NOT INFORMED ABOUT THE PROCESS, LIKELIHOOD OF SUCCESS, AND CONSEQUENCES. IN PART V, THIS ARTICLE WILL OUTLINE ALTERNATIVE REMEDIES, ACKNOWLEDGING THAT THE THEORETICAL FRAMEWORK WILL INFORM APPROACHES AND CRITERIA FOR IDENTIFYING WHICH REMEDIES MAY BE USEFUL IN WHICH SITUATIONS.


93 Id. at 50.
Restorative justice is based upon three principles: 1) “Wrongdoing is a violation of people and of interpersonal relationships;” 2) “Violations create obligations;” and 3) “The central obligation is to put right the wrongs, i.e. to repair the harms caused by wrongdoing.”

Acknowledging that restorative justice practices have proliferated, he writes that “[r]estorative justice is not a map . . . . but can be seen as a compass offering direction. At a minimum, it is an invitation for dialogue and exploration.” It expands stakeholders to include the community, which is inevitably harmed as well, and focuses on the needs of the person harmed, the person who committed the harm, and the community.

More specifically, restorative justice includes a dialogue that focuses on facts and emotions, and addresses what happened in the past, what things are like now as a result of that experience, and what participants want for the future. Essential components of the process include voluntariness, respect, honest communication, a desire to repair harms, and accountability for the harms. It is “a process that has empathy at its heart,” with a primary goal being to “reduce the social distance or ‘gap’ that results from crime.”

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94 Id. at 30–31.
95 Id. at 19.
96 Id. at 23. Zehr suggests that the following six questions must be asked when a wrong occurs, and thus they form the essence of restorative justice: 1) Who has been harmed? 2) What are their needs? 3) Whose obligations are these? 4) Who has a stake in this situation? 5) What are the causes? and 6) What is the appropriate process to involve stakeholders in an effort to put things right and address underlying causes? Id. at 51.
98 See id. at 19–20.
100 Id. at 2. Wallis also identifies different forms of the restorative processes in the criminal context, including “pure restorative justice,” where the parties organically resolve the issues independently; “street restorative justice interventions,” where the police utilize restorative processes in the immediate aftermath of a crime; and pre-court restorative justice, offered as an alternative to the criminal justice system. Id. at 42–44. As the application of restorative justice has expanded, so has the language used to describe the activities and models. Today, the term “restorative practice” is used to describe “a process that be used anywhere to prevent conflict, build relationships and repair harm by enabling people to communicate effectively and positively.” What is restorative justice?, RESTORATIVE JUSTICE COUNCIL, https://restorativejustice.org.uk/what-restorative-justice (last visited Feb. 14, 2019).

It can “involve both a proactive approach to preventing harm and conflict and activities that repair harm where conflicts have already arisen.” Id.
Consistent among all definitions and descriptions of a restorative approach is its emphasis on relationships.\textsuperscript{101} The goal is to foster relationships based upon respect, concern, and dignity, and to facilitate those relationships to function in a positive way.\textsuperscript{102} However, practitioners and scholars alike express frustration with the focus on descriptive definitions.\textsuperscript{103} Scholar Jennifer Llewellyn focuses instead on restorative justice’s underlying “relational theory of justice” and emphasizes that restorative justice’s strength “lies with its relational approach and the understandings it offers about needs and capacities of human beings, the institutions, systems, practices, processes and policies in and through which we can flourish.”\textsuperscript{104}

While a complete history of the evolution and development of restorative justice principles is beyond the scope of this discussion, it is important to acknowledge their roots in indigenous communities,\textsuperscript{105} most notably among the Navajo and Maori.\textsuperscript{106} Although the Navajo people were not the only Native American tribe to utilize restorative processes,\textsuperscript{107} their peacemaking process has been

\textsuperscript{103} Zehr, supra note 92, at 49; see also Llewellyn et al., supra note 101 (suggesting that most discussions of restorative justice focus on descriptions of the processes, and not on the underlying theory and articulating a “relationship theory of justice”).
\textsuperscript{104} Llewellyn, supra note 102. With this as a backdrop, she describes the essential principles of restorative approaches as relationship focused, participatory, inclusive, comprehensive and holistic, and forward looking. See Llewellyn et al., supra note 101, at 282 (Other descriptive terms include “community-based, informal, dialogical . . . and egalitarian.” Id. at 283). See also Restorative Justice Council, Principles of Restorative Practice, https://restorativejustice.org.uk/sites/default/files/resources/files/Principles%20of%20Restorative%20Practice%20%20%20FINAL%202012.11.15.pdf (last visited Oct. 11, 2019) (describing the principles of restorative practice—restoration, voluntarism, neutrality, safety, accessibility, and respect). But also Zehr, supra note 92, at 14–15 (writing that although he acknowledges the term “justice” can be limiting, he chooses to use it so as not to “lose awareness of the justice dimension”).
\textsuperscript{105} Jon’a F. Meyer, History Repeats Itself: Restorative Justice in Native American Communities, 14 J. OF CONTEMPORARY CRIM. JUST. 42, 43 (1998).
\textsuperscript{106} Id.
\textsuperscript{107} See id. at 44–45 (noting the practices of the Iroquois, Karok, and Ojibway tribes among others); see also, Robert V. Wolf, Widening the Circle: Can Peacemaking Work Outside of Tribal Communities?, CTR. FOR CT. INNOVATION 3 (2012), https://www.courtinnovation.org/sites/default/files/documents/PeacemakingPlanning_2012.pdf (citing Robert B. Porter, Strengthening Tribal Sovereignty through Peacemaking: How the Anglo American Legal Tradition Destroys Indigenous Societies, 28 COLUM. HUMAN RIGHTS L. REV. 235 (1997) (noting the use of peacemaking among tribes in the U.S. Southwest, but also in the Pacific Northwest, the Plains, the Southeast, Alaska, and Hawaii)).
broadly adapted. Instead of judging the participants, the process addresses the “consequences of such actions and substitutes healing in place of coercion.” In 1992, the Navajo formally established the Peacemaker Court which incorporates traditional Navajo law into its tribal court system. Other tribes similarly have begun reconstructing their traditional justice systems, all with problem-solving as a core component with a focus on future, not past, events. Beginning in the 1990s, prominent judges and scholars began suggesting the adaptation of native justice models to the U.S. justice system. At most, these peacekeeping models used in state court and other dispute resolution contexts are described as “inspired” by Navajo traditions, but not “considered replications of Native peacemaking.”

Somewhat akin to the Navajo, the Maori people’s legal system is based on relationships and “on mutual expectations and collective responsibility with the goal of avoiding dispute.” This unwritten “customary law” derives its essence from spiritual, economic, political, and social principles which enables it to be flexibly applied to a variety of disputes. Although all Maori communities utilize restorative principles to resolve disputes, specific practices may vary from community to community.

Today, New Zealand law incorporates restorative practices and some of the values fundamental to indigenous communities. This process began after a study of New Zealand’s child protection system concluded that current governmental practices had elimi-

108 Meyer, supra note 105, at 44–45 (noting the practices of the Iroquois, Karok, and Ojibway tribes).

109 Jud. Branch of the Navajo Nation, Peacemaking: A Guide to the Peacemaking Program of the Navajo Nation, 1 (Sept. 2004), http://www.navajocourts.org/Peacemaking/peaceguide.pdf (explaining that by solving their own problems in peacemaking, people replace coercive decisions such as punishment to correct behavior).

110 Wolf, supra note 107, at 1.

111 Id. at 1–3.

112 Id. at 1–2 (noting support from then-Attorney General Janet Reno, then-U.S. Supreme Court Justice Sandra Day O’Connor, and leaders at the U.S. Justice Department).


115 Id. at 3–4. Tikanga Maori, “the Maori way of doing things,” is about relationships and kinship, central to the culture, which results in seeing crime as a breakdown in relationships, for which there is a collective responsibility. Id. at 6.

116 See id. at 2.
nated Maori self-determination. In response to this finding, New Zealand created a new child protection system. It adopted a Family Group Conferencing Model adapted from Maori tradition that provided for native communities to have a voice in this process; however, the process was not developed by the Maori people. As the New Zealand government adapted these native practices, it exerted control over how and when they were used, resulting in criticisms that it had reduced the Maori’s complex, customary law to codes and fixed practices.

Following the incorporation of family group conferencing into New Zealand’s youth justice system, New Zealand later adapted the model to address school disciplinary issues and adult offenders. Since then, the use of restorative principles has continued and expanded throughout the world. For example, peacemaking circles are used in the United States, most notably in local courts to address juvenile offender issues, as a diversion program to prevent youth offenders from entering the criminal justice system, and to address parenting issues. Restorative principles are now applied to disputes in residential settings and in nursing facilities; in campus abuse situations; among sports teams; regarding corporate reg-

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117 EdX, Online Course, supra note 11; Allan Cooke, State Responsibility for Children in Care 204–205 (Dec. 17, 2013) (unpublished Ph. D. thesis, University of Otago) (on file at https://ourarchive.otago.ac.nz/bitstream/handle/10523/4796/CookeAllanJ2014PhD.pdf?sequence=1&isAllowed=y)]. This transformation occurred following a 1986 examination of social issues impacting Maori children and the government’s removal of children from their families and homes, and placing them in foster care and institutions. In response to this study, which included a listening component with members of Maori communities, the New Zealand government acknowledged the lack of Maori self-determination.

118 EdX, Online Course, supra note 11; see also Vieille, supra note 114.


120 EdX, Online Course, supra note 11; see also Vieille, supra note 114.

121 See Sasson & Sydow, supra note 113, at 19.
ulatory compliance, staffing conflicts and employment grievances; and among communities and neighborhoods.\textsuperscript{122}

B. Descriptions of Selected Restorative Practice Models

Numerous conflict resolution models incorporate restorative principles, all based on the fundamental importance of dialogue.\textsuperscript{123} There are three main dialogue-based models: 1) Circle processes; 2) Family Group Conferences; and 3) Victim-Offender Mediation.\textsuperscript{124} All models include preparation of the parties, attention to interconnecting relationships, third party participation, facilitator guidance, an emphasis on story-telling, listening and being heard, and practical agreements.\textsuperscript{125} Because Victim-Offender Mediation focuses on those already convicted,\textsuperscript{126} it is less likely to be a viable remedy for elder abuse.\textsuperscript{127}

Beyond having these basic characteristics, restorative practice models are difficult to categorize; programs have unique features appropriate to particular situations and communities, “making clear distinctions between them difficult.”\textsuperscript{128} As Zehr writes, the “restorative justice field is becoming too diverse to capture it in any simple classification,” an issue further compounded by blended models.\textsuperscript{129} The outline below describes selected restorative models and then considers their use in the elder abuse context, where they

\textsuperscript{122} The principles are also utilized to resolve environmental problems and social issues. See e.g., International Restorative Justice Conference, \textit{supra} note 91. A well-known example of a restorative process in the political realm is in the South African Truth and Reconciliation Commission. \textit{Id}.


\textsuperscript{124} Zehr, \textit{supra} note 92, at 58. \textit{See also} Umbreit & Lewis, \textit{supra} note 123.

\textsuperscript{125} Umbreit & Lewis, \textit{supra} note 123, at 20. Other components include voluntariness, safety, acceptance of all, and respect. \textit{Id.} at 19.


\textsuperscript{127} Therefore, it will not be addressed further in this article. For more information on Victim Offender Mediation, see Bradshaw & Umbreit, \textit{supra} note 8 at 17; Umbreit & Lewis, \textit{supra} note 123, at 40. \textit{See also} Amanda Dissel & Kindiza Ngubeni, \textit{Giving Women Their Voice: Domestic Violence and Restorative Justice in South Africa}, CTR. FOR THE STUD. OF VIOLENCE & RECONCILIATION 1 (2003), http://www.csvr.org.za/docs/crime/givingwomenvoice.pdf. (discussing specific projects); \textit{see also} Bradshaw & Umbreit, \textit{supra} note 8, at 19.

\textsuperscript{128} Zehr, \textit{supra} note 92, at 57.

\textsuperscript{129} \textit{Id}.
may be particularly useful for repairing relationships, with the assistance of relevant support persons and community interventions.130

1. Peacemaking

The restorative practice holding the most promise for addressing elder abuse is peacemaking. Peacemaking involves not only the person harmed and the person who committed the harm, but also potentially includes family, friends and the larger community, signifying that disputes between two people negatively impact the entire community.131 Typically, the peacemaking process offers all participants opportunities to speak, often with a “talking piece” or similar instrument designating the person authorized to speak at a given time.132 Peacemaking circles typically involve four stages: 1) screening for appropriateness; 2) meetings with the involved parties and others to prepare for the session; 3) the circle process itself, hopefully leading to a resolution; and 4) implementation of the resolution plan.133 There is no search for truth.134 Instead, the goal is “a consensus decision that focuses on healing and restitution, not punishment.”135

As is true with other restorative models, peacemaking circles are being implemented in a variety of non-Native settings, addressing, for example, adult and juvenile criminal matters, school disciplinary matters and related disputes, family law issues,136 child protective cases, and guardianships.137 In recent years, the New York State Center for Court Innovation has championed peacemaking as an alternative to the adversarial justice system, and sup-

130 Because of the considerable debate regarding characterizing mediation as a restorative practice, it will be addressed separately.
132 Beck et al., supra note 5, at 224.
134 Beck et al., supra note 5, at 224.
135 Wolf, supra note 107, at 7. In the Native tradition, the peacemaker is a community elder, respected and knowledgeable, whose “leadership depends on respect and persuasion.” Id. at 3. The native peacemaker has also been described as a combination of “leader, teacher, and healer.” Judicial Branch of the Navajo Nation, Peacemaking Program: Plan of Operations 1, 9 (2013), http://www.navajocourts.org/Peacemaking/Plan/PPPO2013-2-25.pdf.
136 See Daicoff, supra note 9, at 429.
ported the development of programs through funding and technical expertise.\(^\text{138}\)

One example of the peacemaking process was developed in the Cook County, Illinois family court, which used it to address parenting issues, and found it particularly useful for resolving issues between unmarried parents.\(^\text{139}\) Among the positive attributes of the process were its ability to incorporate the voices of supportive extended family members, its ability to foster positive communication between the parties following the resolution of the immediate issue, and the emphasis on self-enforced accountability.\(^\text{140}\) In describing its use in family law, Susan Daicoff writes that the “Circle process can reduce anxiety, slow down the participants’ interactions, reduce hostility, create a community within the participants, communicate mutual respect for all present, and unify them in common values and goals.”\(^\text{141}\)

2. Family Group Conferencing

Another restorative model used in a variety of contexts is family group conferencing, which also involves the individuals as well support people, extended family, and community members.\(^\text{142}\) Often used in the child welfare context, it has been described as a “decision-making model that focuses on the family and its social network, and which aims to gather all parties with an interest in the wellbeing of a child and his or her family to make a family group

\(^{138}\) See Sasson & Sydow, *supra* note 113, at 1. A specific example of the circle process is sentencing circles, which bring together both parties, participants from the criminal justice system, and members of the community. See Dandurand & Griffiths, *supra* note 133, at 22–23 (noting that processes will vary in different locales, and that this model continues to operate within the context of the criminal justice system); see also Heino Lilles, *Circle Sentencing: Part of the Restorative Justice Continuum*, INT’L INST. FOR RESTORATIVE PRACTICES (Aug. 9, 2002), https://www.iirp.edu/eforum-archive/circle-sentencing-part-of-the-restorative-justice-continuum. The goal is to gain consensus on a sentencing plan, while balancing the needs of the victim and offender. Umbreit & Lewis, *supra* note 123, at 16.

\(^{139}\) Sasson & Sydow, *supra* note 113, at 15; see Daicoff, *supra* note 9, at 434.

\(^{140}\) See Daicoff, *supra* note 9, at 430.

\(^{141}\) Id. at 435. This pilot program ended when the participating judge retired. Email from Heather Dorsey, Program Manager- Courts, Children and Family Unit, Administrative Office of Illinois Court, August 8, 2019 (on file with author).

plan that teaches and supports active responsibility.”143 The process is based on the assumption that “the family knows best what they need and are indeed experts,”144 and parents are more likely to be invested in, and successful with, a plan the family devises.145

Similar to other restorative models, a trained professional facilitates the conference process.146 The model includes three parts: 1) A preparatory meeting with family members to identify participants’ concerns and resource needs and prepare family members for the conference; 2) the conference process itself, which may have its own stages—an initial meeting involving the referring social worker and the restorative coordinator, private family time, and then a review of the family’s plan with the social worker and practitioner; and 3) an implementation stage, during which the professionals assist the family in following the plan.147 A specific feature of family group conferencing, and one that distinguishes this model from the peacemaking model, is that the family meets alone to devise its plan.148 Once the plan has been determined, other participants rejoin the family, may offer input, and describe how they can assist in its implementation.149

After being adopted in New Zealand to address the burgeoning youth crime problem,150 this statutorily enacted model was subsequently applied to adult crimes151 and is now utilized in the

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143 Sharon Dijkstra et al., The Effectiveness of Family Group Conferencing in Youth Care: A Meta-Analysis, 62 CHILD ABUSE & NEGLECT 100, 101 (2016).
144 Beck et al., supra note 5, at 223.
145 See Dijkstra et al., supra note 143.
146 See Dandurand & Griffiths, supra note 134, at 20.
147 See Dijkstra et al., supra note 143. See also Interview with Richard Chalmers, CEO, Daybreak Family Group Conferences, London, U.K. (July 3, 2019).
148 See Dandurand & Griffiths, supra note 134, at 20–21; see also What is a family group conference? (Also known as a family group meeting), FAM. RTS. GROUP 3, https://www.frg.org.uk/images/Advice_Sheets/3-what-is-a-family-group-conference.pdf (last visited Feb. 18, 2019); see also Beck et al., supra note 5, at 223; Interview with Richard Chalmers, CEO, Daybreak Family Group Conferences, London, U.K. (July 3, 2019). In some models, the family meeting may not be private. See Dijkstra et al., supra note 143.
149 Family group conferencing can be particularly effective at monitoring compliance with the participants’ agreed-upon resolution. See Dandurand & Griffiths, supra note 134, at 21
150 See Dijkstra et al., supra note 144. See also Children, Young Persons, and their Families Act 1989 (N.Z.).
school system. Following family group conferencing’s implementation in New Zealand, by 2016 it had spread throughout the world and was present in more than twenty countries.

Strengths of the family group conferencing model include providing families a voice in addressing their problems, to share their problems with others, to accept help, and to be respected by others. Conferences purportedly can be designed in a culturally appropriate manner, although some scholars dispute this claim. While some conferences have been found to yield positive results, a meta-analysis of existing studies of family group conferencing in child welfare cases suggests little evidence of improved outcomes for the involved children.

3. Mediation: A Restorative Model?

There is considerable debate about whether or not mediation (distinguished from Victim-Offender Mediation) is a restorative model. Some scholars argue that distinctions between the two are beginning to blur, while others go to considerable lengths to distinguish mediation from restorative processes. This section will provide an overview of how mediation has been used in working with the elderly, and then briefly summarize the debate regarding the relationship between mediation and restorative practices.

Mediation is defined as “a process by which an impartial third party meets with the parties to a dispute in order to help them settle their differences.”

152 Vieille, supra note 115.
153 Dijkstra et al., supra note 142.
154 Id.
155 Metze et al., supra note 143, at 177.
156 See Beck et al., supra note 5, at 224.
157 See Paora Moyle & Juan Marcellus Tauri, Māori, Family Group Conferencing and the Mystifications of Restorative Justice, 11 VICTIMS & OFFENDERS 87, 97 (2016) (arguing that New Zealand’s family group conferencing model fails to be culturally responsive, practitioners are insufficiently knowledgeable about Maori cultural perspectives, and that restorative justice generally is mischaracterized as based on indigenous principles).
158 See Beck et al., supra note 5, at 224.
159 See Dijkstra et al., supra note 143, at 108.
160 Mark Umbreit et al., supra note 142.
161 See, e.g., Mark Umbreit et al., supra note 142. Bradshaw & Umbreit, supra note 8; see Sasson & Sydow, supra note 113, at 1; see also Zehr, supra note 92, at 17–18.
Elder mediation, pioneered in Canada, is a growing field that uses “a person-centred [sic] approach” that “aims to enhance the wellbeing . . . of the elderly and promote communication between everyone involved.” Practitioners are expected to be knowledgeable about age-related issues, the aging process, and capacity assessment, and to adapt the model to the specific needs of seniors. Issues addressed include disputes over caregiving responsibilities, financial issues, housing concerns, inheritances issues, alternative living arrangements, safety issues, and health and medical care issues as well as elder abuse.

Among the recommended practices in elder mediation are pre-mediation interviews with the parties; co-mediators when multiple family members are involved; and mediators with specialized training, who are neutral but not passive, and who are capable of assessing the parties’ capacity to participate. Other suggestions include using an evaluative model and having the referring social

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163 Id. at 12. For a brief explanation of the mediation process, see Alexandra Crampton, Elder Mediation in Theory and Practice: Study Results From a National Caregiver Mediation Demonstration Project, 56 J. OF GERONTOLOGICAL SOC. WORK 423, 424 (2013).
164 See Părăsănu, supra note 97, at 15.
165 Id. (citing Judy McCann-Beranger, Exploring the Role of Elder Mediation in the Prevention of Elder Abuse: Final Report, Dep’t of Just., Can. 1, 1 (2010)); see also Dale Bagshaw et al., Elder Mediation and the Financial Abuse of Older People by a Family Member, 32 CONFLICT RESOL. Q. 443, 448 (2015) (“Older-person-centered family mediation is a voluntary, collaborative, confidential, informal process in which members of a family come together, face-to-face or separately (e.g. by telephone or with the mediator going between), with the assistance of an impartial mediator who helps them to communicate respectfully, listen to others, share concerns, clarify issues, create options, consider consequences and plan for the future.”).
166 See id. at 15–16 (citing Judy McCann-Beranger, Exploring the Role of Elder Mediation in the Prevention of Elder Abuse: Final Report, Dep’t of Just., Can. 1, 1 (2010)).
167 See id. at 16–17 (citing Lise Barry, Elder Mediation, 24 AUSTL. DISP. RESOL. J. 251, 251–58 (2013)).
168 See id. at 15 (citing Judy McCann-Beranger, Exploring the Role of Elder Mediation in the Prevention of Elder Abuse: Final Report, Dep’t of Just., Can. 1, 2–3 (2010)); see also Canadian Ctr. for Elder Law, supra note 162; see also Crampton, supra note 163, at 426; Bagshaw et al., supra note 165, at 446–47.
169 See Canadian Ctr. for Elder Law, supra note 162 (describing the success of a program using senior volunteers as mediators, following a basic mediation training).
170 There are three general styles of mediation: 1) facilitative; 2) transformative; and 3) evaluative. A facilitative style involves a mediator assisting parties in reconciling a conflict, encouraging them to reach a voluntary solution, with the mediator being “in charge of the process, while the parties are in charge of the outcome.” In evaluative mediation, the mediator may make recommendations and suggestions, focusing on a fair result and the legal merits of the situation. In this context, the mediator is responsible for the process but also influences the outcome. Finally, in transformative mediation, the goal is to empower “disputants to resolve their own conflict . . . . and to recognize each other’s needs and interests.” The mediator follows the parties’ lead; the parties structure both the process and the result. See Katie Shonk, Types of Mediation: Choose the Type Best Suited to Your Conflict, HARV. L. SCH.: PROGRAM ON NEGOTI-
worker participate as the older person’s advocate.\textsuperscript{171} Although research addresses several critiques,\textsuperscript{172} one study concluded that with a specially trained mediator, the process could enhance the rights and wishes of older people, increase communication in the family, enhance accountability, and reduce family conflict overall.\textsuperscript{173}

Elder mediation is commonly used in the guardianship context,\textsuperscript{174} with older people who have limitations and may be frail, dependent, and vulnerable.\textsuperscript{175} In some courts, mediation is required before guardianship proceedings,\textsuperscript{176} reportedly with mixed results.\textsuperscript{177}

While there are similarities between mediation and restorative practices, both being based on dialogue and the parties deciding the outcome,\textsuperscript{178} there are also significant differences. In the restorative model, the peacemaker assumes a proactive role, and supports people and community members actively participating.
Additionally, restorative processes include community members, while mediation rarely includes accompanying support people in the decision-making process. A final distinguishing feature of restorative processes is the goal sought to be accomplished, which is “healing relationships and restoring the participant’s place in the community.” Mediation, on the other hand, seeks to resolve a dispute. Studies of restorative practices and mediation demonstrate that there are no pure models, but instead “degrees of restorativeness,” with the benefit of all models being their flexibility.

C. Past and Existing Applications of Restorative Principles to Elder Abuse

Despite the growing popularity of restorative principles, they have been applied to address elder abuse infrequently. Worldwide, a small number of international projects explicitly do incorporate restorative principles in addressing elder abuse.

One early model, the Waterloo Restorative Justice Approach to Elder Abuse, was developed in Ontario in 2000. The project’s goals were to increase the reporting of elder abuse, “to develop and to implement a restorative approach to elder abuse that encourages personal responsibility, permits healing, and promotes healthier relationships,” and to assist individuals experiencing abuse. The Waterloo project included a community education component and implemented the use of circles, guided by the principles of “safety, confidentiality, dignity and respect, autonomy, access to information, and the least restrictive interventions.” It excluded cases where the senior was at risk of imminent harm, and determined that the most appropriate cases were those in their earliest stages.

The program successfully changed attitudes about elder abuse, strengthened partnerships among the participants, and was useful for those who completed the circles. However, it did not attract

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179 Id. at 5.
180 Id. at 3.
181 See Groh & Linden, supra note 21.
182 Id. at 129.
183 Id. at 130.
184 Id. at 130–31.
185 Id. at 139. Assessments concluded that the process gave voice to the seniors participating, those seniors who participated were satisfied with the results, and the circles addressed the needs of the persons who committed the harms. Id. at 137–38.
a large number of referrals, despite a reinvigorated effort mid-
stream, because the issue “was just too sensitive and too private for
people to come forward.”186 Other challenges included heavy reli-
ance on volunteers, the resource-intensive preparation for the cir-
cles, explaining the process to family members, securing family
participation, and the declining cognitive abilities of some
participants.187

Ultimately, the program was modified to create a comprehen-
sive model integrating the health care and criminal justice sys-
tems.188 Today’s Elder Abuse Response Team (“EART”) is
integrated into the police department’s Domestic Violence Investi-
gations Unit, with a mandate to provide community education and
training as well as direct interventions, including investigations, re-
ferrals to resources, and case management.189 Still guided by re-
storative principles, the EART offers broader, more holistic
supports to those in abusive situations.190

The Caring for Native American Elders project, a community-
based participatory research project in one northwestern Native
American community, implemented a family conferencing model
in the 2000s.191 It was developed following concerns that demon-
stration projects designed to address elder abuse did not reflect tri-
bal traditions and values.192 In response, the tribe created an
“elder-focused, family-centered, community-based intervention for
the prevention and mitigation of elder abuse.”193 Family members,
a spiritual leader, and service providers came together to address
concerns about the elder, with trained and respected professionals
facilitating the meetings.194 Following an initial discussion, family
members had the option of meeting alone to develop a plan, and
then inviting service providers to participate in its
implementation.195

186 Id. at 138.
187 Id. at 138–39.
188 Id. at 140.
189 Id. at 141.
190 Id.
191 See Patricia A. Holkup et al., Drawing on the Wisdom from the Past: An Elder Abuse
Intervention With Tribal Communities, 47 THE GERONTOLOGIST 248, 254 (2007).
192 See id. at 249.
193 Id.
194 See id. at 251.
195 See id. at 254. As with other restorative practices, this model consisted of various stages,
including referral, screening, engaging the family, logistical preparation, the family meeting and
follow-up. Id.
Early assessment of this family group conferencing model demonstrated that families accepted the model and intervention.\textsuperscript{196} It provided a forum to be heard and understood, drew upon “the values of interdependence and reciprocity among Native American kin,” and provided “a culturally anchored and individualized way to identify a frail elder’s care needs and to find solutions . . . .”\textsuperscript{197} Other strengths included empowering seniors to share their life stories and to be valued as members of society, promoting their autonomy and independence, illuminating the challenges of caregiving and fostering the involvement of additional family members, and building social supports.\textsuperscript{198}

The Jamestown S’Klallam Family Group Conferencing Project, sponsored by the United States Administration on Aging,\textsuperscript{199} used family group conferences to address family conflict related to issues such as end of life planning, sibling rivalry, caregiver burnout, and confronting anger and guilt.\textsuperscript{200} Advantages identified with this model were that the family determined the solution independently, the service was “culturally anchored,” and it relied on community and family resources.\textsuperscript{201}

The Choice Project, established at the University of Aberstwyth, Wales, was originally founded on restorative principles, with the goals of raising public awareness about the problem of elder abuse and effective responses, and designing new approaches to justice based upon restorative principles. It includes the creation of a “Well Being” service as an alternative to civil and criminal remedies. Focused on those determined to be low risk, the staff include a “Choice Support Worker,” who identifies options with the senior, and a “Choice Practitioner,” who provides support for up to 18 months. Different entities provide necessary support services.\textsuperscript{202}

The Nova Scotia “Restorative Approach with Seniors Network,” a collaboration that includes representatives of the departments of Justice and Aging, legal counsel, government and

\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Beck et al., supra note 5, at 224. Research revealed no further information about this project; it appears to no longer exist.
\textsuperscript{199} LISA NERENBERG, ELDER ABUSE PREVENTION: EMERGING TRENDS AND PROMISING STRATEGIES 136 (2008).
\textsuperscript{200} See Păroșanu, supra note 97, at 16.
\textsuperscript{201} Id. at 15.
community stakeholders, the police, and safety officers, is designed to address seniors’ needs to be heard, have their questions answered, feel safe, provide input throughout the process, and experience meaningful accountability. Each restorative process involves preparation, voluntary participation of the victim and person committing the harm, a safe environment, a facilitator, community members and other support people, and a talking instrument. The project is designed for both simple and complex cases, and is also being used to prevent problems before situations escalate.

In 2017, a new project, Kōrero Tahi: Using Restorative Circles for Addressing Harms Experienced by Older Persons, began in Wellington, New Zealand. The goals of this pilot project are to develop a model that is “victim sensitive, empowers older people to have a voice, strengthens positive family relationships and promotes justice and accountability.” An objective is to create “a safe space for repairing the harm and to develop a community of care around older people.” The ensuing research will study the success of the circles, and in particular, their impact on “the older person’s sense of wellbeing, safety and connectedness to others.”

Several elder abuse programs utilize family group conferencing. Project Daybreak Bluebird, in southern England, provides family group conferences to “extended families where decisions have to be made with and for an adult member of the family . . . .” Issues may include “domestic violence; physical, emotional or financial abuse; or where a vulnerable adult wants to live.” Following the initial coordination and support of a restor-

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204 See id. at 43.
205 See id. at 45.
206 See id. at 47.
208 Id.
209 Id.
210 Id.
212 Id.
ative practitioner, the family develops a resolution and plan independently.\footnote{See id.; see also Moore & Browne, supra note 51, at 392.} One scholar notes that families will discuss problems more openly when there are no “outsiders” present, and will be able to find solutions that take into account their own culture(s) . . . . It also has the effect of empowering the family as a unit, to think about problems and develop their own solutions . . . .\footnote{Linda Tapper, Using Family Group Conferencing in Safeguarding Adults, 12 J. OF ADULT PROTECTION, 27, 30 (2010).}

Depending on the nature of the abuse, safety risks, and desires of the senior, the person committing the harm may or may not participate.\footnote{See id.} Project leaders report that the model works well for those seniors able to make their own decisions, and they have found family group conferences effective in addressing elder abuse.\footnote{See id.; see also Daybreak, Family Group Conferences for Adults, Pilot Project for Elder Abuse, Evaluation Report 2007–2010 1, 15 (2010), http://www.daybreakfgc.org.uk/wp-content/uploads/2012/02/Adult-Safeguarding-Evaluation-report-2007.pdf (acknowledging that measurements of success vary depending on the viewpoint from which success is evaluated).} The use of family group conferencing in the elder abuse context, particularly if it includes the family meeting alone, runs the risk of replicating existing power imbalances within the family. For a critique of restorative justice as mirroring power imbalances in the broader community, see MIKHAIL LYUBANSKY & ELAINE SHUPING, THE PSYCHOLOGY OF RESTORATIVE JUSTICE 183 (Theo Gavrielides ed., 2015). In response to this concern, Daybreak CEO Chalmers stated his belief that this potential problem can be counterbalanced by trained and highly skilled restorative coordinators who address these issues at the outset. Interview with Richard Chalmers, CEO, Daybreak Family Group Conferences, London, U.K. (July 3, 2019).

Finally, a small number of projects have adapted mediation to address elder abuse issues.\footnote{The Canadian Department of Justice reported that a Google web search returned 8,800 results for “elder mediation” and 1,860 results for “elder mediation + elder abuse,” noting the growing interest in the use of mediation to address elder abuse. See Government of Canada, Exploring the Role of Elder Mediation in the Prevention of Elder Abuse, DEP’T. OF JUST., http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mp-pm/p1.html (last visited Feb. 26, 2019).} A community-based model in Israel incorporates family mediation with counseling and group work.\footnote{See id.; see also Sarah Alon & Ayelet Berg-Warman, Treatment & Prevention of Elder Abuse & Neglect: Where Knowledge & Practice Meet—A Model for Intervention to Prevent & Treat Elder Abuse in Israel, 26 J. OF ELDER ABUSE & NEGLECT 150, 155 (2014).}

Other interventions include public awareness workshops and training for the public and professionals. Among the identified successes of this project are the development of coping strategies and empowerment of those who have been harmed, an improved awareness of possible responses, and better identification of elder abuse cases.\footnote{See id. at 161, 163–64.}
“Relationships Australia” offers therapeutic family counseling and mediation services designed to prevent and resolve family conflict and to prepare for future medical, financial, health, or living arrangements. The goal is to assist the family in improving relationships and protecting “the interests, rights, and safety of all family members.”

With the exception of the Waterloo project, which was heavily evaluated, and the Jamestown S’Klallam Family Group Conferencing Project, which no longer exists, most of these programs are too new to have been studied comprehensively. However, they do exhibit commonalities that may be essential for successful interventions. One is interdisciplinary collaborations, as exhibited in the Waterloo project as redesigned, the Nova Scotia program, and the Choice Project. Recommended members of an interdisciplinary team include health care providers, law enforcement, social service providers, conflict resolution entities, mediators, and those with expertise in restorative approaches. Today, restorative-based models are being developed collaboratively, potentially resulting in more effective teams.

Many existing programs offer comprehensive approaches with an array of options, often including educational programs and training initiatives. Following an evaluation, the Waterloo project implemented a more holistic approach, evolving into a “comprehensive conflict management programme [sic] guided by restorative principles.” Researchers in New Zealand recommend offering diverse interventions that are tailored to the individual who has been harmed. The developing project in Maine intends to modify existing models as needed to best address seniors’ individualized needs.

221 Id.
222 See generally Groh & Linden, supra note 21, at 127.
223 The redesigned Waterloo project created the “Inter-Agency Elder Abuse Working Group” involving case managers and law enforcement, specifically developed to facilitate an interdisciplinary response. See Groh & Linden, supra note 21, at 140. As a result, the project did reach more seniors. Id. at 140–41.
224 See, e.g., the CAPSTONE (Community and Adult Protective Services Trial of Novel Enhanced Services), a collaboration between the Elder Abuse Institute of Maine and Adult Protection Services. (Project Description on file with authors).
225 See Groh & Linden, supra note 21, at 143.
226 Păroșanu, supra note 97, at 29.
227 Interview with Patty Kimball, Executive Director, Elder Abuse Institute of Maine, January 11, 2019.
Another essential component of a successful restorative project is specialized training for the restorative practitioners. In addition to providing training in the restorative models themselves, the training should incorporate issues specific to elder abuse, including training on the aging process; indicators of, and risk factors for, abuse; family dynamics and family systems; principles of senior autonomy and empowerment; information on community resources; and an overview of relevant legal issues. Perhaps most importantly, restorative facilitators must be trained in utilizing trauma-informed techniques.\textsuperscript{228} Successful models also further educate service providers and community members about both elder abuse and restorative models and options. These have been found effective in enhancing communities’ capacities to address the problem.\textsuperscript{229}

\textbf{V. Lessons from Existing Projects and Research}

Both traditional and innovative elder abuse intervention models reveal key lessons relevant when assessing the viability of restorative practice models. Existing literature summarizes the critical components of a successful intervention system. There is a growing consensus that “[a]ddressing elder abuse requires multiple and co-ordinated [sic] approaches, which involve increasing public awareness, addressing cultural norms and effective multi-disciplinary collaboration in areas such as health, policing, law and social care.”\textsuperscript{230} Multi-disciplinary teams have proven successful, and can assist with articulating strategic responses, case planning, and decision-making.\textsuperscript{231}

Increasingly, researchers are identifying the importance of involving both the person harmed and the person who committed the harm in successful resolutions. Scholar Shelly Jackson offers four principles critical to effective elder abuse interventions: (1) treatment must be focused on both parties; (2) no unitary solution will be effective in all situations; (3) variations in culpability among those committing the harm must be acknowledged; and (4) cases

\textsuperscript{228} Beck et al., \textit{supra} note 5, at 221. \textit{See also} Păroșanu, \textit{supra} note 97, at 29–30.

\textsuperscript{229} \textit{See} Groh & Linden, \textit{supra} note 21, at 142; \textit{See also} Păroșanu, \textit{supra} note 97, at 13–17.


\textsuperscript{231} \textit{See} Păroșanu, \textit{supra} note 97, at 23; \textit{see also} O’Donnell et al., \textit{supra} note 230 at 18.
exist on a continuum of complexity. Without addressing these factors, “intervention and prevention efforts will be futile if not harmful.”

The literature describes varying characteristics of the person committing the harm based on type of abuse and based on varying degrees of culpability. Jackson describes five different levels of culpability: (1) bad-actors whose abuse is knowing and deliberate; (2) those who readily exploit opportunities; (3) those who reluctantly exploit opportunities (i.e. due to caregiver stress); (4) those who act according to the seniors’ wishes, although inappropriately; and (5) those who lack understanding that their actions constitute abuse or neglect. Cases are increasingly complex when they involve familial relationships and co-occurring forms of elder abuse. Restorative models are ideally suited for addressing some types of elder abuse. They give a voice to seniors, and may empower them to develop personalized, creative, and feasible solutions that can be implemented with adequate support. The flexibility of restorative practices also enables the processes to be adapted to culturally appropriate interventions. This is critical because not only do cultures define elder abuse differently, but their willingness to discuss elder abuse and identify appropriate interventions varies as well. For these reasons, if implemented properly, restorative processes show tremendous potential.

Despite these benefits, restorative practices also present challenges when used to address elder abuse. One challenge is determining for which types of abuse these models are most

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232 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, supra note 13, at 277–78.
233 Id. at 279.
234 See id. at 270–71 (Even within a particular type of abuse, such as financial exploitation, perpetrator characteristics vary depending on the nature of the financial abuse . . .).
235 See id. at 271–75.
236 See id. at 275.
237 See id.
238 See e.g., O’Donnell et al., supra note 230 at 20 (noting the effectiveness of using an empowerment model to address psychological abuse). Another advantage of such models is that they may “equip older people to develop coping strategies and resilience to abusive behaviors.” O’Donnell et al., supra note 230 at 54.
239 See infra.
240 See Laura Mosqueda et al., The Abuse Intervention Model: A Pragmatic Approach for Intervention for Elder Mistreatment, 64 J. AM. G ERIATRICS SOC’Y 1879, 1883 (2016) (noting that different cultures have different norms as to what constitutes elder abuse); See also MARSHALL B. KAPP, Future Directions in Public Policy Relating to Elder Abuse, in ELDER ABUSE: RESEARCH, PRACTICE AND POLICY 693, 704 (XinQi Dong ed., 2017) (citing INTERNATIONAL PERSPECTIVES ON ELDER ABUSE (Amanda Phelan ed., 2013)).
appropriate. Other difficulties include defining the category of persons committing the harm for which these models would be most successfully implemented; identifying strategies to encourage participation by the person committing the harm; the possible diminished capacity of the older person; and finally, defining the meaning of a successful intervention.

A. Using Restorative Processes for Different Types of Harm

A major challenge is to determine which types of elder abuse are most effectively addressed through the use of the restorative processes. This challenge is intensified by the prevalence of complex family relationships and co-occurring types of abuse. Cases need to be examined individually, taking the type of abuse and other factors into account. Although the analysis below relies on generalizations, it categorizes abuse generally to assess where restorative principles may be most appropriately implemented.

1. Financial Abuse

Financial abuse may be the type of abuse best-suited for a restorative intervention. While proof may be complicated and cases often require extensive investigation, the abuse is verifiable and the monetary losses are tangible. Restorative processes may be particularly useful when the person committing the harm either inadvertently or negligently mismanaged a senior’s money or reluctantly took advantage of an unexpected opportunity. A restorative model would permit the financially irresponsible person to explain his situation and perspective to the elder, and to take responsibility for his conduct. Also, the process may empower the participants to resolve the situation without the threat of criminal or civil punishments by developing a plan to reimburse the senior or provide an alternative remedy, and by identifying and implementing creative alternatives, such as selecting a different person to assist with the senior’s financial management.

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242 See id. (Although physical and sexual abuse may result in physical conditions that are either visible or able to be proven clinically, those harmed may go to considerable trouble to camouflage their injuries).
243 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 275.
2. Neglect

Neglect, whether intentional or unintentional, is another category of elder abuse that can be resolved using a restorative process. Unintentional neglect can be addressed through education and traditional interventions. A restorative process offers the additional benefit of enabling support people and members of the community to identify and provide suitable alternative caregivers or resources needed by the person committing the harm.

Intentional neglect could similarly be addressed using a restorative process, enabling the involved parties to each share their perspectives. With the active participation of family members and other support people, the individual committing the neglect may fully realize the consequences of his conduct. All parties can use restorative dialogues to agree on ways to repair the effects of prior conduct and to prevent future abuse.

3. Psychological and Emotional Abuse

Elder abuse is a multi-dimensional phenomenon, with older adults often experiencing psychological or emotional abuse in conjunction with other types of abuse. Older adults with dementia are particularly at risk, and as many as 88.5% of older adults with dementia experience some type of psychological abuse. Too often, this type of abuse may not be reported. Victims may not consider emotional or psychological abuse severe enough to merit seeking help, and although psychological and emotional abuse can often be a marker for other types of abuse, providers may prioritize physical or sexual abuse over emotional abuse. The ability of a restorative process to address psychological and emotional abuse may depend more on the characteristics of the person committing the harm than of the person being harmed. If the person committing psychological or emotional harm is genuinely unaware of the effect of his behavior and is willing to accept assistance to reform his behavior, a restorative process may be appropriate. Restorative justice provides the opportunity for the person causing the harm, upon hearing the older person’s perspective, to change his behavior and take steps to repair his relationship with the older person.

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244 See Ana Joao Santos et al., *Elder Abuse Victimization Patterns: Latent Class Analysis Using Perpetrators and Abusive Behaviors*, BMC Geriatrics, April 23, 2019, at 1, 11.
245 *Statistics/Data*, National Center on Elder Abuse, supra note 20.
4. Physical and sexual abuse

To evaluate whether restorative principles may be applicable to physical and sexual abuse, the debate about using restorative principles in intimate partner violence cases provides some insight. Historically, alternative dispute resolution techniques, such as mediation, were deemed inappropriate for addressing complex domestic violence situations. Critics argued that the severity of battering was reduced to a mere “dispute,” “victimizing events [were] deemphasized” with the process favoring the batterer, reconciliation often became the goal rather than repairing the harm, and the victim’s voice was silenced in the language of disagreement and misunderstanding. Many critics viewed mediation techniques as inappropriate when the abuse stemmed from underlying issues of power and control.

However, as interest in restorative justice increases, advocates are reexamining its usefulness in the context of intimate partner violence. This focus is, at least in part, due to frustration with traditional criminal justice models. Restorative practices offer survivors an opportunity to participate by telling their story, to have their experiences and perspectives validated by the community and the batterer, and to hear their batterer take responsibility for his conduct. They also allow for flexible resolutions and may have the effect of repairing the damaged relationship. In the context of intimate partner violence, the harmed party seeks individualized justice, which includes survivor autonomy, self-determination, voice, validation, and vindication. Restorative processes seek to achieve these same objectives.

However, critics are concerned that the power dynamics present in the intimate partner violence context may continue within the restorative process itself. Specifically, concerns exist regarding the safety of the survivor; offenders manipulating the process.

248 Id. at 180.
249 Id. at 179–80; see also Leigh Goodmark, Law and Justice Are Not Always the Same: Community-Based Justice Forums for People Subjected to Intimate Partner Abuse, 42 FLA. ST. U. L. REV. 707, 718 (2015) (“when prosecutors have their own goals, victims’ voices can be silenced”).
250 See Presser & Gaarder, supra note 246 at 181.
251 See Kathleen Daly & Julie Stubbs, Feminist Engagement with Restorative Justice, 10 THEORETICAL CRIMINOLOGY 9, 18 (2006).
252 See id.
253 See Goodmark, supra note 248, at 726–31. See also Coker, supra note 119, at 67–68.
254 See Goodmark, supra note 248, at 731.
through insincere acknowledgments of responsibility or half-hearted attempts to repair the relationship; ineffective participation from the survivor due to the power dynamics; an absence of supportive family and community members; the minimal impact on offenders; the conveyance of the message that the abuse is not serious or criminal in nature; and the presence of community norms that reinforce the abusive relationship. Feminist critiques argue that practitioners fail to appreciate the challenges and dangers of intimate partner violence, that offenders may not be held accountable, and that the criminal nature of the conduct is diminished.

Proponents of applying restorative principles to intimate partner violence cases argue that community participation in restorative justice models provides vindication to the abused. Restorative processes facilitate implementing innovative and creative remedies to solve problems, and ongoing accountability that is more likely to result in reformed behavior than is likely in the criminal justice context. Other advantages of restorative models include moral and community support for confrontation of the batterer, alternatives to the binary “staying or leaving” options available to the person harmed, and discussion of oppression in the batterer’s life. Advocates of using restorative processes in the intimate partner violence context recommend their use if processes: (1) prioritize victim safety; (2) offer material and social supports; (3) are incorporated into a coordinated community response; (4) resist gendered domination; and (5) do not require the goal of forgiveness.

In elder abuse cases, restorative approaches may be ineffective in repairing relationships since the power dynamics often mirror those present in intimate violence cases. For example, the “Duluth

255 See Daly & Stubbs, supra note 250, at 17–18.
256 See Goodmark, supra note 248, at 723.
257 Leigh Goodmark, Responsive Alternatives to the Criminal Legal System in Cases of Intimate Partner Violence, in RESTORATIVE AND RESPONSIVE HUM. SERVS. 165, 169 (Gale Burford et al. eds., 2019).
258 Id.
259 See Coker, supra note 119, at 68.
Power and Control Wheel, a popular conceptual model used to analyze domestic violence, has been adapted for the elder abuse context. The dynamics of power and control, physical and sexual violence, and emotional and psychological abuse exist in both contexts. The principle distinction is how the abuse is manifested.

Although using restorative models to address physical and sexual abuse among seniors would offer some of the advantages noted above, particularly when the person committing the harm is a family member, the risks outweigh the potential advantages. Both intimate partner violence and elder abuse involve complex interpersonal dynamics. However, those dynamics are often more complex in the elder abuse context because the people committing the harm are often adult children and the abuse may be motivated by life-long conflict, abuse within the family, rivalries between siblings, and perceptions of parental favoritism. These family dynamics and communication patterns have often become entrenched over time. Persons committing the harm may involve other family members in support of their conduct, and other family members may rally in support of the older person, creating additional tensions and intrafamily conflict, weakening the senior’s support system. This dynamic further exacerbates the isolation many seniors already experience.

Although survivors of partner violence also are often dependent on their abusers, they typically have the physical ability to access help. Many seniors do not. Many older people are dependent on those committing the harm for their most basic needs—the

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263 See Griffith, supra note 261.

264 See Statistics & Data, supra note 245. Additional factors contributing to isolation include friends aging and moving or passing away. Seniors often move to a smaller, more accessible home, or to a structured living situation. Some seniors relocate to be closer to adult children. While helpful on a practical level, these changes distance elders from their customary social contacts. Physical limitations may constrain a seniors’ ability to socialize and interact. Hearing or visual impairments that often accompany aging further limit social interactions, as does lack of transportation.
ability to get out of bed, eat, bathe, secure medical care, interact, and communicate. These issues of family dynamics, social isolation, and greater dependence on the person harming them can place elders at greater risks for additional harm when using restorative processes to address physical and sexual abuse.\textsuperscript{265}

B. Using Restorative Processes for Different Types of People Committing the Harm

Recent research has begun to closely examine who commits elder abuse and their relevant characteristics.\textsuperscript{266} It correlates particular characteristics of people and particular types of harm committed, and suggests that interventions should vary with these characteristics in mind.\textsuperscript{267} Returning to Jackson’s degrees of culpability, a restorative process would be most effective with those “least culpable.”\textsuperscript{268} This includes those who act out of ignorance, unaware that their behavior constitutes abuse or even neglect, and those whose behavior is inappropriate and contrary to the senior’s desires.\textsuperscript{269} In these instances, those committing the harm may have the older person’s best interests at heart, but that person’s vision of the older person’s best interests may differ from the older person’s own desires. Those committing the harm are likely to have empathy, “the driver for the restorative process.”\textsuperscript{270} Equipped with this mindset, they may be receptive to the “restorative inquiry” and willing to explore their own needs and potential paths forward.

Similarly, a person who commits harm by “reluctantly exploiting opportunities” may be a good candidate for participating in a restorative process.\textsuperscript{271} Restorative processes could be particularly valuable for a person in this category because their reluctance to exploit the senior suggests that their own unmet needs may be con-

\textsuperscript{265} To date, there is no meaningful research evaluating the success of restorative processes in addressing intimate partner violence. See Daye Gang et al., \textit{A Call for Evaluation of Restorative Justice Programs}, Trauma, Violence, & Abuse, 2019, at 1, 2 (noting the dearth of empirical research and recommending study as a matter of urgency). Future studies in this area could be mined for insights regarding its usefulness in addressing elder abuse and exploitation.

\textsuperscript{266} See Jackson, All Elder Abuse Perpetrators Are Not Alike, \textit{supra} note 13, at 266.

\textsuperscript{267} See id. at 277–78.

\textsuperscript{268} See id. at 277.

\textsuperscript{269} See id. id. at 277–78.

\textsuperscript{270} Wallis, \textit{supra} note 99, at 6–7 (defining empathy as having three components: (1) identifying with another person’s feelings; (2) assessing the reasons for that person’s feelings; and (3) responding with action).

\textsuperscript{271} See Jackson, All Elder Abuse Perpetrators Are Not Alike, \textit{supra} note 13, at 275.
tributing to their behavior. The restorative process could successfully identify and address those needs as well as the emotional fallout of the abuse.

Restorative processes are not recommended for harms committed by those with the greatest degrees of culpability—those consciously exploiting opportunities and those acting in a deliberate, knowledgeable and premeditated way.272 However, a detailed assessment could identify select cases that might be appropriate depending on the person’s level of empathy, his ability and willingness to participate in a restorative process, and ultimately his motivation to change his behavior.273 Most importantly, it would determine whether initiating a restorative process could cause any future harm between the parties, particularly if their relationship is restored.

Another category of those committing harm is those with a substance abuse problem.274 Because restorative processes require honest communication and a sincere desire to repair the relationship, they are not appropriate for individuals currently suffering from addiction. In contrast, a person receiving treatment and progressing toward a stable lifestyle may be a suitable candidate. A critical factor will be the degree of personal and professional support available to assist both parties. Similarly, severely mentally ill individuals who commit harms against seniors may not be able to meaningfully participate in a restorative process unless they also participate in treatment and receive support. A detailed assessment can determine whether restorative processes are viable options in both of these scenarios.

C. Capacity Issues: Ability of the Older Person to Participate in Restorative Processes

Addressing the problems of elder abuse and exploitation is further complicated when the older person is experiencing diminishing capacity. The initial assumption should be one of capacity and respect for self-determination.275 However, as the prevalence

272 See id.
273 See Wallis, supra note 99, at 76.
274 See Jackson, All Elder Abuse Perpetrators Are Not Alike, supra note 13, at 273. Rates of substance abuse among those committing elder abuse are estimated to be between 20–50%.
of Alzheimer’s, other forms of dementia, and other medical conditions that cause cognitive challenges are increasingly diagnosed, all participants in a restorative process must be aware of this dynamic. In a restorative setting, critical questions must be addressed. Who is best situated to evaluate an older person’s capacity when necessary? What should the standard be for determining adequate capacity to participate? And what supportive mechanisms can be adopted to enhance an older person’s ability to participate?

Legal and medical assessments of capacity differ, and a clinical assessment tool may be of limited usefulness in this context. Such evaluations often assess the older person at a particular moment in time. However, the question is whether the senior has the capacity to make necessary decisions throughout the duration of the restorative process. Given that capacity may vary depending on location of the meeting, time of day, stress levels, and various other factors, using an instrument that is fixed in time is not optimal. Second, a clinical assessment is expensive. The older person may not have the ability to pay for it, especially if the harm is financial exploitation. Finally, clinical assessments typically do not allow for the accommodations and supported decision making that can maximize the older person’s ability to participate.

A legal assessment of capacity is contextual, and asks whether the senior has the capacity to engage in the particular task, with the required degree of capacity depending “largely on the type of transaction or decision under consideration.” Given that the restorative process is an alternative to a legal resolution, the legal assessment approach, although not necessarily conducted by a law-

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276 A HANDBOOK FOR LAWYERS, supra note 72. For example, conditions such as dehydration, vitamin deficiencies, persistent pain, and even grief may result in symptoms of cognitive decline. See, e.g., id. at 16–17. See also Am. Bar Ass’n, Practical Tool for Lawyers: Steps in Supported Decision-Making 11–12 (2016), https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf.

277 A HANDBOOK FOR LAWYERS, supra note 72, at 16–18.

278 See id. at 22 (noting that “cognitive screening alone has been found lacking sensitivity or specificity to many decisional tasks, such as medical decision making”).


280 A HANDBOOK FOR LAWYERS, supra note 72.

281 Id. at 5. See also, Candice A. Garcia-Rodrigo, Tips for Representing a Client With Diminished Capacity, ABA (Jan. 29, 2016), https://www.americanbar.org/groups/litigation/committees/solo-small-firm/practice/2016/tips-representing-client-diminished-capacity/. 
yer, is most appropriate in this context. The legal assessment approach would evaluate whether the older person has an understanding of the restorative process and an appreciation for the consequences of her decisions.  

If there is a central screening and referring entity, ideally that service provider would perform an informal capacity assessment before exploring options with the older person. That provider would make the assessment, with the legal standard in mind, of whether the older person understands each option, its consequences, and its potential results. The assessment would be conducted on an ongoing basis throughout the referral, screening, preparation, and restorative process itself.

Most importantly, the question is whether the older person has the ability to participate with support. That support could include necessary accommodations to address physical limitations, which may include “changing the place or time of the session . . . keeping the sessions short, or using techniques and strategies helpful for communication with persons with memory loss or confu-

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283 See Wood, supra note 282. Those options could include criminal prosecution, civil litigation, mediation, or restorative practices.

284 Id. These are not, in fact, binary options. One could opt for using restorative principles, and if that is not successful in accomplishing the client’s goals, shift to a more confrontational approach. One would need to be mindful, however, of any relevant statutes of limitation that could require these legal claims to be brought within a fixed period of time or be lost forever. See, e.g., HARTMAN, supra note 275, at 81–84.

285 HARTMAN, supra note 275, at 83, (g)uidelines established in the mediation context are instructive here, where appropriate considerations include an understanding of who the parties are, the issues at hand, the role of the mediator, and the various options being explored, as well as the ability to understand and make an agreement.) See also The Kukin Program for Conflict Resol. at Benjamin N. Cardozo Sch. of L. & The Cardozo J. of Conflict Resol., ADA Mediation Guidelines, 1, 6 (2003), https://cardozojcr.com/ADA%20Mediation%20Guide.pdf. The assessment should not rely exclusively on a medical diagnosis, and even a participant adjudicated legally incapacitated is not necessarily lacking capacity to mediate. Id.

286 HARTMAN, supra note 275 at 83. See also Am. Bar Ass’n Comm’n, A HANDBOOK FOR LAWYERS, supra note 72 at 1–3; Susan H. Crawford et al., From Determining Capacity to Facilitating Competencies: A New Mediation Framework, 20 CONFLICT RESOL. Q. 385, 393 (2003) (although skeptical of mediators assessing capacity, describes the process as “facilitating competencies”).
Equally important is providing personal support by utilizing “supported decision making,” which “generally occurs when people use one or more trusted friends, family members, professionals, or advocates to help them understand the situations and choices they face so they may make their own informed decisions.” In a supported decision making model, the older person may rely on a support person to help her understand the options, answer questions, and communicate her choices to others. Such a process could be useful in assisting an older person to evaluate possible elder abuse interventions, including restorative processes. However, caution must be exercised when identifying the support person because the older person’s family, “friends,” or support people may be the very ones perpetrating the abuse.

The greatest challenge arises when an individual’s capacity declines during the process of selecting the most appropriate remedy and addressing the abuse problem. This situation presents several options. One could conclude that the view the senior expressed previously remains her choice, absent information to the contrary. Another option is to involve a surrogate decision maker, as recommended in the supported decision-making models. That person would honor the wishes of the senior based upon the wishes and values she expressed in the past. While involving another person is cumbersome, this process will enable the senior’s preferences to be honored. Although this requires a highly trained practitioner

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287 Wood, supra note 282.


291 See e.g., Whitlatch, supra note 289, at 25. See e.g., WHITLATCH & GODFREY, supra note 289, at 25.
aware of potentially ongoing capacity issues, restorative models’ flexibility allows the practitioner to adapt recommendations and procedures to account for any changes in capacity throughout the restorative process.

D. Encouraging the Person Committing the Harm to Participate

An additional challenge of using restorative processes to address elder abuse is encouraging the person who committed the harm to participate. Unlike in the criminal or civil litigation contexts, the person committing the harm faces no penalty or other repercussion if he refuses to participate. A restorative process may be useful precisely because the person who has been harmed does not want to pursue criminal action or other punitive action.

Among restorative justice practitioners and scholars, there is debate about the need for “voluntary” participation by the person committing the harm. Ideally, that person would participate willingly. However, some argue that to insist on completely voluntary participation would consign restorative models to the margins. Others argue that effective restorative justice relies on coercion, given that it is often proposed as an alternative to the criminal process. Pete Wallis suggests a “continuum of voluntariness,” with different ways of proposing the process, ranging from coercion to encouragement to a neutral offer.

The restorative justice practitioner should assess the person’s sincerity, wary of self-serving motives. The practitioner may offer incentives to encourage the person who committed the harm to participate, which might include opportunities to: (1) tell their story and confess to the person they hurt; (2) show themselves in a better light; (3) explain what happened and why, and answer questions; (4) offer help; (5) atone and find redemption; and (6) learn how the other person is doing.

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292 This is true unless the older person ultimately pursues civil or criminal action.
293 See Wallis, supra note 99, at 101.
294 See id. (citing Lodewalgrave, Integrating Criminal Justice and Restorative Justice, in HANDBOOK OF RESTORATIVE JUSTICE 560 (Gerry Johnstone & D. Van Ness eds., 2007)).
295 See id. at 101–02.
296 See id. at 102–03 (Wallis also acknowledges the risks involved of engaging in a restorative process with a reluctant participant).
297 See id. at 106.
298 See id. at 105.
Whether or not the person doing the harm is willing to participate in the process may be very circumstantial. For example, if the cause of financial exploitation is a lack of resources, additional social services support could enable the person doing the harm to live more securely and minimize the chances she would take the senior’s property in the future. If the cause is an inability to meet the senior’s needs or not knowing what constitutes abuse, education and support could be valuable incentives to participate. For those whose culpability is more deliberate, persuading them to participate may not be possible or advisable. The same could be true for those suffering from severe, untreated mental illness or active substance abuse.299

An additional consideration here is the process of engaging the parties’ participation. The most significant challenge may be facilitating the initial conversation and the “restorative inquiry,” and may begin with a gentle approach that encourages the person who committed the harm to participate while simultaneously assessing his empathy level.300 Identifying underlying needs that could lead to a desire for a restorative solution requires a skillful practitioner, patience, a trusting relationship with the person who committed the harm, and engagement at a deep level. However, bringing together a vulnerable senior and an unwilling or reluctant person who committed the harm risks enflaming their relationship and could result in future harm.

E. Measuring Success

A major challenge to the use of restorative models is accurately measuring their success. Most often, measures of success replicate those used in the criminal justice field.301 However, restorative justice scholars critique these approaches for being too narrowly focused on procedures and descriptive indicia of restorative justice, and for failing to define the underlying notions of justice being measured.302 Llewellyn and her colleagues reject traditional indices of measurement used in the criminal justice context, and recommend a “reimagining of success” in the restorative

299 See Labrum & Solomon, supra note 80.
300 See Wallis, supra note 99, at 76.
301 See Llewellyn, supra note 101, at 308–09.
302 See id. at 294–97.
justice context.303 As a foundation for measuring success, they offer a relational theory of justice:

Restorative justice takes the relational nature of human beings as a conceptual starting point for understanding the meaning and requirements of justice. From this starting point justice must take account of our connectedness to one another. Attention to the multiple and intersecting relationships in which we live makes clear the ways in which wrongdoing causes harm not only to the individuals involved but also to the connections and relationships in and through which individuals live. . . . A relational approach reveals that harms related to wrongdoing extend from the individual victim(s) and wrongdoer(s) to affect those connected with them, including their immediate communities of care and support, broader communities to which they belong, and ultimately the social fabric of their society.304

One component of that relational theory is “equality of respect, dignity, and mutual care and concern for one another.”305 These concepts expand beyond liberal notions of equality and dignity, “tak[ing] equality of relationships as its goal.”306 In this relational theory of justice, process and outcomes are integrally connected, and any measure of success must take account of both.307

Llewellyn and her colleagues argue that measures of success must consider whether the processes and outcomes further this alternative theory of justice. Therefore, they recommend alternative indicia of success, such as the restorative process’s impact on “social relationships, community-building, and skills that generate enhanced positive social attitudes and behaviours [sic]” and highlighting “the creation of a stronger, positive sense of community.”308 Noting the limitations of evidence-based research, they suggest evaluation models include “observational research, before

303 See id. at 309.
304 Id. at 297.
305 Id. at 298 (citing Jennifer J. Llewellyn, Restorative Justice: Thinking Relationally about Justice, in Being Relational: Reflections on Relational Theory & Health Law and Policy 89 (2012)).
306 Id. at 299.
307 Llewellyn, supra note 101, at 300. (This relational theory of justice embodies seven principles: (1) relationship-focused; (2) holistic; (3) contextual and flexible; (4) inclusive and participatory; (5) dialogical and communicative; (6) democratic and deliberative; and (7) forward-focused and solution-focused.) Id. at 301–05.
308 Id. at 308.
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and after measures of relationships, and ‘community’ studies," evaluating the process’ impact on the larger community. With this framework in mind, the first relevant question relates to “success according to whom?” The older person, the person doing the harm, other family members, and service agencies may all have different definitions of success.

Focusing first on the older person, while she may be interested in being “made whole,” she may also desire an apology, an acknowledgement that abuse occurred, a restored relationship with the person who committed the harm, or harmony within the family. If a close family member commits the harm, improving that relationship and the overall family dynamic may be most important to the senior. If a friend or caregiver commits the harm, a mere acknowledgment may be sufficient. Other components of “success” might include whether the person harmed felt a reduced fear of revictimization and reduction in anger toward the other person.310 Another aspect of the senior’s perspective relates to her reactions to the intervention itself, and whether or not it resulted in empowerment, greater resilience, or enhanced feelings of self-worth.311 Qualitative and observational research methods would obtain the seniors’ perspectives on such tangible and intangible outcomes.

Success from the perspective of the person who committed the harm could include that person’s acknowledgement of remorse or shame for his conduct.312 Other possible measures of success depend on the underlying situation that gave rise to the abuse. For example, in instances of financial abuse, if the person’s actions were due to that person’s legitimate inability to make ends meet, securing additional social and employment services as a result of this process would be a “success.” Success for a caregiver might

309 Id. at 310. See also KAREN STEIN, Elder Abuse Prevention Initiatives, in Elder Abuse: Research, Practice and Policy 433, 452 (XinQi Dong ed., 2017) (recommending an emphasis on developing methodologies that recognize individualized change, acknowledging that no one intervention can be applied to every case).


311 See Părăsănu, supra note 97, at 23.

312 See Kurki, supra note 310.
mean additional resources to relieve the stress of caregiving, re-
sources that benefit both the senior and the person who committed
the harm.

Evaluations should also track the impact of the process on
other participants, including community volunteers and others pre-
sent in support of the person harmed or the person committing the
harm.313 They should assess the impact of interventions on com-
unity members’ development of conflict resolution skills and
their sense of responsibility toward those in crisis.314

While the “relational theory of justice” approach provides a
deeper vision of the potential for restorative justice, more tradi-
tional measures of success would complement this approach. For
example, examining whether the person committed harm again,
the number of future contacts with law enforcement, frequency of
requests for services or interventions, and whether the older per-
son feels safer are all additional indicia of “success.”315 Both quan-
titative and qualitative data will assist in evaluating the models’
success.316

Another question related to defining success is the length of
the time horizon measured. Determining if restorative models re-
sult in lasting change requires longitudinal studies.317 For intangi-
ble measures such as the feelings of either the person harmed or
the one doing the harm, the duration of positive emotional changes
will be significant.318

A related challenge is the ongoing availability of the person
who was harmed. Since older seniors are exploited more fre-
quently than younger ones, some will pass away before meaningful

313 Sasson & Sydow, supra note 113, at 22.
314 Id. at 23.
315 For discussion of approaches for evaluating success in the restorative context, see, e.g.,
James Bonta et al., An Outcome Evaluation of a Restorative Justice Alternative to Incarceration, 5
Contemp. Just. Rev. 319, 326; see also Kurki, supra note 310; Ministry of Just., Restora-
tive Justice Victim Satisfaction Survey: Research Report 9 (2016); Llewellyn, supra note 101, at 306; Mark Umbreit & William Bradshaw, Assessing Victim Satisfaction with Victim
Offender Mediation and Dialogue Services: The Development and Use of the Victim Satisfaction
with Offender Dialogue Scale (VSODS), Ctr. for Restorative Just. & Peacemaking 0, 1
(2000), http://rjp.umn.edu/sites/g/files/pua5026/f/media/assessing_victim_satisfaction.pdf (an ex-
ample of one tool used in the context of victim-offender mediation noting that the failure to
utilize consistent mechanisms to collect this data makes comparisons difficult).
316 Jeffrey Sonia, Survivor Studies: The Importance of Evaluating the Effects of Truth Com-
misssions on Survivors of Human Rights Violations, in Assessing the Impact of Transitional
Justice: Challenges for Empirical Research 197 (Hugo van der Merwe et al. eds., 2009).
317 Id. at 198 (describing the need for a longitudinal study if evaluating impact on those
harmed).
318 Id.
data can be collected. Similarly, people with dementia are more likely to be exploited, and some may lose the capacity to articulate their perspectives on the restorative process.319 The shorter the time horizon, the more likely these participants will be available, resulting in a persistent tension in determining the duration of the study period.

The challenges noted above are not insurmountable, but they reflect necessary considerations for designing an effective restorative program most able to meet the needs of older people, those who committed harm, and the communities impacted by this problem.

VI. CONCLUSIONS AND RECOMMENDATIONS

Existing approaches for addressing elder abuse are inadequate to meet the needs of older people and fail to address the underlying relationships between those harmed and those who committed the harm. Restorative justice models undoubtedly provide a much-needed alternative mechanism for addressing and rectifying this harm. Below are recommendations for incorporating restorative processes into existing strategies, and for identifying the particular types of cases and situations in which these practices can be most advantageous.

A. Expanded Interventions, Including Restorative Practices, Should be Piloted and Evaluated

Existing civil and criminal remedies are inadequate responses to elder abuse and exploitation, and fail to meet the needs of older people who have been harmed. Additionally, they provide virtually no assistance to the person committing the harm and are slow and costly. Bluntly, we need more creative options. No single solution will be appropriate for every senior and every situation, so we should embark on an agenda of inquiry, flexibility, and inclusivity as we evaluate less traditional responses.

Restorative practices should be included among these new and creative responses. They are responsive to the needs of those

319 The perspective of others in their lives on the “success” of the model will be informative, however.
harmed, those committing the harm, and communities. Because
the objective is to repair relationships, the resulting solutions have
the capacity to be transformative. The inclusive nature of the
processes, allowing for the participation of other family members
and social supports, provides accountability and resources to assist
through that repair process. Finally, restorative practice models al-
low for flexibility that enables them to be tailored to the unique
needs of the individuals and communities involved.

B. Restorative Practices are Appropriate for Some Elder Abuse
Cases but Not All

Existing research on restorative practices offers guidance for
when these processes are likely to be most effective. Success often
relies on the willingness of the person who committed the harm to
participate, honestly examining his role and relationship with the
person harmed and working with the support of others to change
his behavior. The senior must also be able to express her goals and
be willing to work with the person who committed the harm and
members of the community to develop a creative resolution. Par-
ticipants in appropriate cases will require community support and
adequate resources to enable them to transition to a new
relationship.

In some situations, restorative practice will not be effective.
Cases in which those committing the harm acted in premeditated
and gross disregard for the needs of the senior are highly unlikely
to be successful restorative practice cases. Additionally, a restora-
tive process would not be appropriate for cases where the person
who committed the harm is an active addict or has a serious, un-
treated mental illness. Except in rare circumstances, cases involv-
ing physical and sexual abuse also are not suitable due to the
enhanced vulnerability of the older person and the situations’
complexity.

C. Practitioners Must be Skilled and Specially Trained in
Working with Older Adults

Older adults who have been harmed present unique and com-
plex needs. Relative to those harmed in other settings, seniors are
more likely to have physical and cognitive limitations, increased
dependence on the person who committed the harm, and fear of changed living situations, including institutionalization. Restorative justice practitioners addressing elder abuse should have specialized training in working with the elderly, and be knowledgeable about capacity issues, the many facets of the aging process, the dynamics of elder abuse, and available resources.

D. Practitioners Must Engage in Careful Screening Processes

Because restorative practice will not be appropriate for all elder abuse situations, participants need to be carefully screened. This is particularly important given that the visible abuse may be masking additional forms of abuse. Although restorative processes typically entail individual meetings with each participant in advance of the practice, these sessions should be more comprehensive and exploratory than in other restorative contexts.

E. Restorative Models Most Appropriate for Addressing Elder Abuse

Although this article only examined selected restorative practice models, some are better suited for addressing elder abuse than others. Peacemaking may be one of the most suitable models. Given the complex family dynamics often involved in situations of elder abuse, peacemaking is particularly helpful because it provides opportunities for all family members to participate and includes support people and community members. Family group conferencing, while potentially appropriate in some situations, runs the risk of perpetuating control issues and rivalries already negatively impacting the senior. Only in rare circumstances could most older adults resolve problems of elder abuse without the presence of a support person. Mediation’s application in this context will depend on the type of mediation, the specific issues to be resolved, and the characteristics of the participants.

F. Miscellaneous Other Recommendations

Words matter. The terms “perpetrator,” “offender,” and “victim” have negative connotations that may dissuade the critical par-
ties from participating. Older adults may not want to be viewed as victims, particularly at the hands of family members or friends. Additionally, this labeling could impede progress at creating or re-creating healthy relationships.

Another consideration is time constraints. Restorative models, designed to address the root cause of problems, can be time consuming and protracted. Peacekeeping circles, for example, are designed to reach consensus and take as long as is necessary to achieve that goal. Factors in any situation of elder abuse are the age and health of the senior. A successful process must balance a procedure that facilitates the development of a repaired relationship and recognizes of the older person’s age and potential longevity, or lack thereof. Practitioners must be aware of both sets of factors throughout the process.

Adequate resources are necessary for restorative practices to achieve success. The most critical resources are those that enable the family member who committed the harm to access services that ensure he can honor commitments he made during the process. The person who was harmed also may need ongoing resources. Although restorative models may require more resources than a brief judicial proceeding, it is unlikely that restorative processes cost more than the combined efforts of law enforcement, the court system, and the penal system.

Restorative models of justice are not a panacea to elder abuse and exploitation. However, they represent an alternative to existing remedies. They are flexible. They are focused on the needs of the person who was harmed and offer a solution more palatable for those understandably reluctant to prosecute or even bring a civil action against a family member, friend or neighbor. They also address the needs of the person who committed the harm, and potentially provide resources not otherwise available to assist that person. Finally, they incorporate invaluable community members who can provide support, tangible and intangible, for all parties to reestablish a healthy relationship.

The new paradigm of “elder restorative justice” offers a potential solution to complex situations that have traditionally been diffi-

320 Zehr, supra note 92, at 14–15 (noting that labels are judgmental, and they oversimplify and stereotype).
321 See, e.g., Kay Pranis, The Little Book of Circle Processes, in The Big Book of Restorative Justice 321 (2015). See also Sasson & Sydow, supra note 113 (noting in a comparison of Washtenaw County’s peacemaking program with mediation that peacemaking may involve multiple sessions and follow-up circles).
culty to resolve. New restorative projects should be designed, implemented, and evaluated. The status quo is unacceptable, and current approaches are inadequate to address this cataclysmic problem. There is nothing to lose, and potentially much to gain.