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CRIME & COMMUNITY

**RESTORATIVE JUSTICE AS AN
ALTERNATIVE APPROACH TO
JUVENILE OFFENCES**



OUR AMERICAN GENERATION
THINK. SPEAK. CREATE. SOCIAL JUSTICE

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WHO WE ARE:

Our American Generation is a youth powered think tank for social justice.

OAG helps you(th) get serious and get organized about social justice issues you care about. We strive to engage youth in critical research and discussion about all social justice issues, in hopes to create a strong and diverse community of young Americans – a community that will not be reluctant to take on our nation’s most challenging problems.

Today OAG facilitates research by youth in the Seattle metropolitan area, and accepts blog articles from youth anywhere! OAG incorporated as a non profit in the state of Washington in October of 2009. In March of 2011 OAG was recognized as a 501c(3) Non Profit organization. OAG was first founded in March of 2009 as a registered student organization at the University of Washington.

The Takeover is a quarterly ‘zine produced by members of Our American Generation. Hard copies are available on University of Washington’s campus and at Seattle University, as well as various locations throughout Seattle. It is also published online at OAG.org. The Takeover is created in Adobe InDesign by Sarah Hiraki. She can be reached at sarah.hiraki@gmail.com

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A SYSTEM IN SHAMBLES

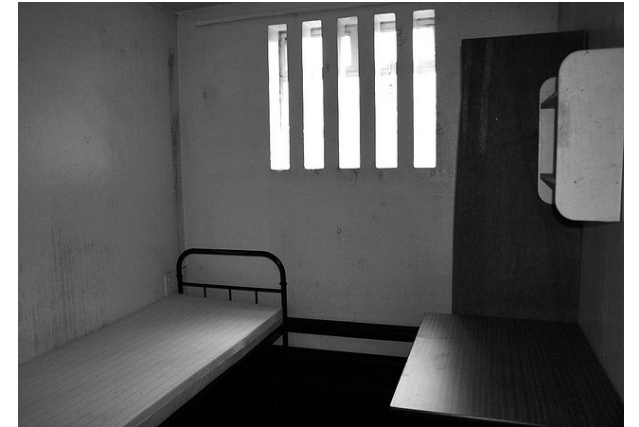


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Over the past several decades, a ‘tough-on-crime’ agenda has come to dominate local, state and national politics, resulting in an unprecedented rise in American incarceration. Today, almost one out of every one hundred adults in America is detained in either a jail or prison.ⁱ Across the country, correctional facilities are now overcrowded, where lower level drug, property and immigration offenders constitute much of the newly incarcerated population.ⁱⁱ Rather than representing an abnormal spike in crime, much of the historic growth in the imprisoned population is directly due to increased severity in the administration of justice. Tougher prosecution and judicial sentencing have caused a rise in prison commitments per arrests while mandatory minimum sentencing and restrictions on parole have led to longer time served per offense.

The incarceration boom has only been possible because targeted individuals disproportionately include young racial minorities who generally enjoy less political clout than their European American counterparts. While one out of every one hundred and six European Americans are in custody, one out of fifteen African American adults and one out of thirty-six Hispanics are currently behind bars.

Our current recidivism rates (the pro-

portion of inmates that reoffend after imprisonment) are quite telling. Upon release, about two thirds of those convicted reoffend and are rearrested for new crimes, and a total of about 40 percent are sentenced to additional prison time within three years of release. This increasingly common pattern of arrest, sentence, time served, rearrest, sentence, time served is now referred to as prison’s “revolving door.”

Even a surface level evaluation of our criminal justice system reveals a clear shift of focus away from rehabilitation of the offender to retribution for the offense. When the state administers retributive punishment it claims to be operating on behalf of the particular victim as well as the general public. However, victims’ needs are moved to the margins during criminal investigations, courtroom processes, and final sentencing. They are commonly left feeling resentful, confused, exploited and alienated. This is true of victims of serious violent crimes as well as those who have been victimized by so-called “everyday crimes,” like vandalism and theft. Even after justice is dealt and the offender is thoroughly punished, it is not uncommon for victims to continue to suffer from a lasting depression.^{vi} It is also clear that the punitive approach

has failed to meet the public’s need for safety as recidivism rates remain high.

Additionally, growth in the incarcerated population has come at an incredible financial cost, about \$22,650 per prisoner, per year.^{vii} The previously ignored victim inherits the significant burden of funding the offender’s imprisonment through taxes. The public has been put at the distinct disadvantage of paying for convicts’ everyday necessities (food, shelter, health-care, etc.). This includes prisoners who have violated crimes that lack specific victims (drug, prostitution, and immigration offenses). Corrections have come to consume a greater portion of state general funds, effectively reducing the extent to which states may invest in other priorities like education. Over the last two decades, states have increased their spending on corrections by 127 percent, while their investment in higher education has grown by only 21 percent.^{viii}

It is easy to feel overwhelmed when thinking about the large and complex issue of crime. In order to understand and effectively approach criminal offenses, it is helpful to begin by examining juvenile delinquency considering the fact that almost all adult felons have a juvenile record.

JUVENILE JUSTICE

The recent trend of increased punishment severity is apparent within our current approach to juvenile delinquency. It is most evident in the wave of legislation, on both the state and federal level, which enabled juvenile offenders, sometimes as young as twelve years old, to be transferred to adult criminal courts.¹⁰ The intent behind the legislation was to have young offenders be punished more harshly than they might otherwise be in juvenile courts; studies now show that the legislators have been successful in accomplishing their goals.¹¹ When youth are tried as adults, they often receive lengthy prison sentences to be served in adult prisons. Instead of recognizing the distinct attributes of being young, including angst, impressionability and general confusion, judges and prosecutors treat juveniles as though they were grown-up, hardened criminals. While serving time in adult prison, young offenders are less likely to access age-appropriate services and are at far greater risk of physical and sexual abuse as well as suicide.¹²

Another concerning com-

ponent of contemporary juvenile justice is the privatization of corrections that has emerged over the last several decades. Since the dramatic rise in incarceration has led to overcrowded state and federal detention facilities, more and more prisoners, including juveniles, have had their sentences contracted out to for-profit correctional institutions. By the year 2000, nearly 30 percent of youth offenders were serving their time in privately operated correctional facilities.¹³ These private corporations have a financial incentive to keep convicts incarcerated for as long as possible. They also hardly ever have contractual obligations to focus on prisoner rehabilitation and tend to lack vocational or educational services that might otherwise cut into profits.¹⁴

A recent scandal serves as a particularly illustrative ex-

ample, revealing just how vulnerable juveniles are within the criminal justice system. Two Pennsylvania judges were recently caught in a scheme whereby they sentenced over 5,000 young offenders to private juvenile detention centers in exchange for more than \$2.6 million in kickbacks.¹⁵ It is clear that the current system can be less than caring in its approach to youth delinquency. This example also illuminates the dangerous intersection between our retributive punishment paradigm and privatized correctional facilities.

The most troubling aspect of increased severity within juvenile justice is that these long periods of detention actually increase the likelihood that a young offender will be re-arrested after release.¹⁶ This is especially true of sentences served in private facilities. Furthermore, any costs

that may have been saved by contracting out youth detention is most likely negated by the resulting increase in recidivism.¹⁷ This positive relationship between length of incarceration and likelihood of future offenses sheds doubt on the popular premise that a deterrent effect is attached to long prison sentences.

What makes this dynamic even more alarming is the fact that the vast majority of young offenders simply age out of crime. This is particularly evident for property crimes, a relatively common class of delinquent act.¹⁸ This is somewhat intuitive; an adolescent graffiti artist is less likely to vandalize property as they grow older. Across the country, crimes are disproportionately committed by 15-24 year old males. The majority desist from offending by their late twenties, usually due to some combination of employment, relationships, and education.¹⁹ With this in mind, recidivism is actually the exception to the rule. So, it is important then to uncover reasons why incarceration leads to future criminality instead of the typical aging out of crime.



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THEORETICAL UNDERSTANDING OF RECIDIVISM

The positive relationship between long detention periods and increased recidivism noted above is rather confusing considering the normal aging out of crime pattern. Three interrelated sociological theories of deviance (Anomie, Labeling, and Differential Association) are useful when considering why incarceration may lead a young offender to commit future crimes.

A consideration of Anomie theory sheds a great deal of light on why a prisoner may be rearrested upon release. According to this theory, when the population shares particular goals, like wealth and prestige in the case of the US, but there simultaneously exist certain obstacles to obtaining those goals by the mainstream means, like discrimination in hiring practices, certain individuals will innovate, committing crimes in order to achieve said goals.²⁰ Anomie theory asserts that the more difficult it is for an individual to succeed in reaching their goals the more likely that individual is to become delinquent. So, the question now is in what ways is life more difficult for juveniles that have been incarcerated? For one, when young offenders are shipped off to prisons that are miles away from home, they are separated from any sort of outside community. Their relationships with friends and family decay, so when they are finally released they are often very much on their own, lacking support from others.²¹ Furthermore, these young offenders soon realize the stigma attached to convictions and incarceration. This is espe-



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cially true as those with criminal records attempt to find employment.²² It almost goes without saying, but with the absence of a stable job it is much more difficult to stay out of trouble.

Next, Labeling theory also involves the role of stigma in causing recidivism, only with an increased focus on psychological changes within young offenders. It should be noted that adolescents can be quite impressionable. So, the pervasive

stigma can have the adverse effect of convincing a young offender that he or she is nothing but a delinquent, a criminal. They internalize the label of lawbreaker and it becomes a part of their identity.²³ The process of internalization begins with their arrest, continues with courtroom proceedings that are referred to by some labeling theorists as a “degradation ceremony.”²⁴ Internalization continues while the young offender is behind bars surrounded by others who have been labeled criminals. Finally, when the offender is released and suffers from discrimination based upon their criminal record, the internalization process is complete. Once an individual identifies as a criminal, it follows that they will commit crimes. In this way, a conviction and prison sentence act as a sad sort of self-fulfilling prophesy.

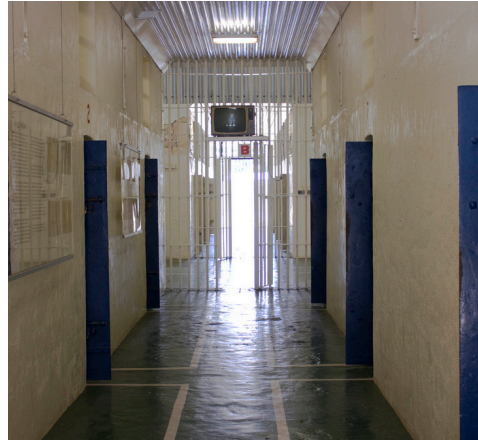
The last theory to consider is Differential Association, which is quite similar to Labeling theory but distinct in ways that further illuminate the role of incarceration in increased recidivism. It contends that the likelihood of future deviance is raised when you place an impressionable young offender in the company of other criminals.²⁵ The prison environment is less than warm and the community of tough convicts may transmit and reinforce a deviant culture characterized by contempt for the law and the acceptance of violence. This is especially true when juveniles serve time in adult correctional facilities where they join career criminals. Instead of spending time with mix peers with different sorts of aspirations and dif-

RESTORATIVE JUSTICE

Restorative justice programs are an alternative to our current criminal justice approach that involve conferencing sessions with participation of the offender, victim, community members, and a trained facilitator. This process focuses on the needs and interests of each stakeholder instead of simply punishing the offender while hoping the rest can cope.²⁷ All of the participants work actively to create a resolution that will fill the

loss experienced by the victim and help reintegrate the offender into the community.²⁸

These programs are malleable and there are several different possible methods of conferencing. In introducing restorative justice it is helpful to examine its distinct philosophy and historical development as they compare to the philosophy and history behind our current administration of criminal justice.



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OPPOSING PHILOSOPHIES

In order to reach a deeper understanding of restorative justice the ways in which it differs from our current administration of justice, it is important to address the philosophical divide between the two approaches in regards to both their understanding of what constitutes a crime and how to best handle the criminal.

Restorative justice and our current approach to criminal justice differ to a great extent in their philosophical conception of crime. The philosophical grounds behind criminal justice today assert a narrow focus on offenders. This stance assumes that individuals are autonomous rational actors who alone make their decision to break the law. By violating the law, that individual is breaking the social

contract. The philosophical understanding of crime according to restorative justice focuses more on the way in which conflicts can damage relationships between community members. Furthermore, the crime is larger than a single offence but is rather an incident that is part of a larger dynamic conflict.

There is also an obvious distinction between the philosophy behind restorative justice and that of our current approach to criminal justice concerning how to handle criminals. As has already been mentioned, criminal justice today is focused almost entirely on retributive punishments for criminals. It is also asserted that these retributive punishments have a deterrent effect that prevents individuals from committing crime since

they assumed to be rational actors who measure advantages and disadvantages in a sort of cost-benefit analysis before making decisions. Alternatively, the philosophy behind the restorative approach calls for the healing of damaged relationships through dialogue. This approach asserts that there must be restitution for victims, the recovery of material losses, before the restoration of communal ties is possible. This conception of how to handle criminals involves a distinct notion of community as more than the sum of its parts, it is the caring connection between all of the individuals and the support they are able to provide one another in trying times.

HISTORICAL DEVELOPMENT OF CRIMINAL JUSTICE

Before we consider the historical development of restorative justice it is helpful to briefly examine the history behind our current approach to criminal justice. Common law, the legal system that lies at the foundation of US criminal justice, began with the invasion of William the Conqueror, who united large tracts of Europe and subjugated many different peoples under a single legal structure with a common set of laws, hence the name. Under common law, crime was considered an offense against the throne instead of the actual victim because all conquered people were property of the king.²⁹

When the US won its independence, the state inherited common law from the British and monopolized justice as a means of social control much in the same way that empires used law to control their subjugated populations.³⁰ While the law is still a mechanism for social control, it has been applied more and more harshly since the birth of 'tough-on-crime' politics, which can be traced back to the American South during 1950's where politicians employed political rhetoric that called for a crackdown of 'hoodlums' and 'agitators' who resisted segregation and African American disenfranchisement. By the 1960's 'law-and-order' politics had risen to the national arena and tended to focus on "street crime," which commonly conflated delinquent acts with protests.³¹ Legal scholars have

noted that this rhetoric was used as a way for politicians to express sympathy and solidarity with elderly conservative European Americans who were upset by the civil rights movement and the progressive social upheaval that characterized the 1960's generally.³² In the years since, 'tough-on-crime' policies have been legislated on every level of government.

Restorative justice is often referred to a "new" alternative that is a "progressive" approach to crime but in a certain respect restorative methods have been at play since the first formation of the human community. While perhaps not in a formal conferencing model, the same mission of conflict resolution has been an integral part in the maintenance of every community. Numerous indigenous communities across the globe have independently developed different models of restorative justice. The Navajo Nation in North America and the Maori in New Zealand serve as two prime examples of indigenous communities that have implemented successful restorative programs. The Maori model of conferencing as even been legislated into the New Zealand criminal justice system as an alternative that can be accessed by both Maori and those of European decent.

During the 1970's, Western criminologists and legal theorists began to construct conferencing methods that borrowed from the indigenous



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conflict resolution models. In 1975, English psychologist coined the term restorative justice, "For thousands of years retributive justice and its techniques of punishment for crime; for decades, distributive justice and its technique of therapeutic treatment for crime – these are the alternatives to restorative justice and its techniques of

restitution."³³ In 1978, the first restorative diversion alternative on US soil began in Elkheart, Indiana with the Victim Offender Reconciliation Program. And in 1994, the restorative movement was given galvanizing push when the American Bar Association endorsed victim-offender mediation.

METHODS OF MEDIATION

In actualizing restorative justice, there are many different methods to follow. Additionally, these methods of mediation are malleable. The parties to these methods are a trained facilitator, victim, offender, and supporting members for both parties. Mediation sessions are held in a safe and structured setting and en-

victim and offender and invites them to the conference along with key individuals who they consider to be their support system. The meeting starts with the offender describing the incident and any extenuating circumstances. Next, the victim and others present express feelings and personal impacts as well as ask

the harm that was caused. Mediation could also take the shape of a community reparative board also known as youth panels, neighborhood boards, and community diversion boards. In practice, these boards are comprised of a small, intensively trained group of citizens who discuss the nature of the incident and

sentencing is typically used for more violent or otherwise harsh crimes and involves multiple steps. These steps include an application by the offender to participate in the program, separate healing circles for the victim and the offender, an all inclusive healing circle to develop an understanding and consensus on the elements of the sentencing plan, and follow up circles to monitor the progress of the offender. In the mediation sessions, a talking piece is instituted and passed around in order for the perspectives of all the actors to be heard. Because of the nature of circle sentencing, it usually requires commitments from all parties (offender, victim, justice system, community, and family members) to ensure that everyone is vested in the process of healing. Through the process of mediation, circle sentencing provides the means for the offender to make amends and addresses the underlying causes of crime. The process also creates a shared responsibility of the community to resolve conflicts and promotes shared community values.

the consequences it renders on the victim, the offender, and the community alike. The board then works with the offender to reach an agreement on the steps they will take in order to repair the harm. After the meeting, there are many follow-ups with the offender in order to ensure that they are fulfilling the agreement. This method promotes the community's ownership of the justice system, allows the victim and community to confront the offender, generates community-driven rehabilitation plans, and reduces our reliance on incarceration.

Another mediation model is circle sentencing. Circle

“The process also creates a shared responsibility of the community to resolve conflicts and promotes shared community values.”

gage in a discussion about the incident that took place.

One of the many models for mediation is family group conferencing. In this method, a facilitator contacts both the

questions. After discussion of the crime, the victim is asked to express desired outcomes. This allows everyone present to be involved in deciding how the offender can best repair

“In practice, these boards are comprised of a small, intensively trained group of citizens who discuss the nature of the incident and the consequences it renders on the victim, the offender, and the community alike.”

AN ALTERNATIVE TO JUVENILE OFFENCES

Restorative justice is an especially advantageous alternative for juvenile offenders because it necessarily involves the consideration of potential extenuating circumstances that may have impacted a young individual's decision-making. The retributive model fails to effectively handle juvenile offending largely because it lacks this holistic perspective that is needed to identify the root causes of delinquency. By examining the motivations behind delinquency and the totality of circumstances that surround juveniles, an overall better understanding of conflict is reached and offender rehabilitation is much more attainable.

Delinquent acts are not isolated events. Rather, there are often many potential root causes and extenuating circumstances that lead to offenses by juveniles. For example, increased delinquency has been associated with the presence learning disabilities.³⁴ When students have difficulty comprehending material and the educational environment does not meet their special requirements, students are more likely to act out in various ways. Likewise, juveniles that have suffered

some form of trauma, like abuse, may begin to act out.³⁵ Offending is in many ways a cry for help, especially when there is some sort of addiction involved.³⁶ Restorative justice programs allows for participants to identify potential causes of juvenile delinquency and to craft ways in which they might be able to prevent future crimes through increased support and possibly treatment.

There are many proponents for using restorative

conferencing to our current top-down criminal justice system. And finally, all of the participants generally believe restorative programs to be procedurally fair.³⁸

Most importantly, restorative programs are a great alternative for juveniles because they work. Studies consistently show that young offenders that participate in restorative programs are significantly less likely to recidivate.³⁹ This point alone makes

“Delinquent acts are not isolated events. Rather, there are often many potential root causes and extenuating circumstances that lead to offenses by juveniles.”

methods as an alternative to our mainstream criminal justice system, especially when the offender is a juvenile. Studies show that victims are often more satisfied with the restorative approach than they are with typical courtroom adjudication.³⁷ Parents are also commonly among the supporter of restorative alternatives. It comes to no surprise that youth offenders prefer

the restorative approach a better alternative than incarceration.

An example of restorative justice in action helps demonstrate the positive impact that it provides. Several years ago in North Minneapolis, a 17-year-old African American male was arrested for attempted armed robbery of an adult European American neighbor. In the resulting mediation, the

victim, his family, supporters of the victim, the offender, his family, and several other supporters were brought together (20 people in all). During mediation, a talking piece was instituted and the victim expressed the harm done and the nature of the event. Empathy for the victim was expressed by the young man's family. The young man then reflected on his situation of being motivated by drug use/sales and wanting to recover the \$200 previously stolen from him in a drug deal. The family of the offender then showed solidarity against firearms and drug use. The offender's brother discusses what it is like to grow up as a young African American male and shows disappointment as well as support for his brother. In the conclusion of the session, the family and community members present show support for both parties and aspire to strengthen the community through the experience. The victim tells the offender that he wants to take him out to lunch and everyone involved noted that the session was more effective than previously thought, both in terms of conflict resolution as well as strengthening the community.

CONCERNS AND LIMITATIONS

Now that the various advantages of RJ process have been sufficiently discussed, it is time to note several concerns and possible limitations. First, it is incredibly important that RJ programs be entirely optional. If juvenile offenders are coerced into participation they may be less likely to take the proceedings seriously and may have a harder time reaching genuine apologies. Forced participants may deny

responsibility for the conflict or may be overtly disrespectful, which is particularly troubling for victims who may feel as though they have been traumatically re-victimized by the program.

It is also crucial that RJ conferencing serves as a pre-trial diversion program that does not require offenders to plead guilty in any formal courtroom setting. Offenders should not have to waive their

constitutional rights in order to get the community support they so badly need. This may be a difficulty in some cases where the crime in question is very serious and when the method of choice involves the participation of criminal justice professionals (police, prosecutors, judges).

Facilitators must be highly trained. They need to be particularly vigilant in making sure that conferencing dia-

logue does not shift from the sort of shaming that promotes reintegration to shaming that induces stigma and actively isolates the young offender.⁴⁰

Lastly, if victims do not wish to meet with offenders, or at the very least participate through a facilitated correspondence, than the restorative approach is impossible.⁴¹

CONCLUDING THOUGHTS

It is disturbing to think about the amount of human capital that is being wasted by warehousing so many Americans behind bars. It is apparent that the retributive criminal justice approach has failed. Not only has mass incarceration come at a sig-

nificant financial cost, it has also cost many juveniles their future. As a nation, we need a change of course. We cannot afford to continue to ship people off to correctional facilities that correct nothing. We need to implement restorative programs that will rec-

ognize the needs of offenders, victims, and the community. Delinquent acts should not be an excuse to imprison youth. Instead, we need to treat offences as educational opportunities and start the healing of relationships through dialogue. Communities need

to support at-risk youth and attempt to understand the various hardships that serve as a backdrop for their deviant behavior. Without addressing the root problems that cause juvenile delinquency, we will never be able to break the cycle of crime.

SUGGESTED READINGS

Race, Incarceration, and American Values

Changing Paradigms: Punishment and Restorative Discipline

Repairing Communities Through Restorative Justice

Punishment and Inequality in America

Race to Incarcerate

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