

August 2020

The River Phoenix Center For Peacebuilding



A Renewed Call For A Restorative Juvenile Justice System

Brady Kennedy
Research Intern







Introduction

Despite the restorative justice movement's successes in the United States and around the world, the U.S. juvenile justice system remains overly reliant on punitive and paternalistic approaches that largely minimize the involvement of victims and offer offenders little chance to better themselves and their communities. Restorative justice programs are increasingly offered as a diversion from formal processing, but the majority of court-involved youth still face traditional sanctions that disproportionately punish youth of color and perpetuate the cycle of mass incarceration.

Today, the United States maintains the highest rate of youth confinement of any major developed country. Today around 21% of court-involved youth are placed in detention, three-quarters of which only face non-violent charges. The past decades' overall reduction in detention has also failed to address the justice system's stark racial disparities, with nearly 70% of those detained in recent years being youth-of-color. While it is the most common sanction placed on youth today, probation can obligate youth and their families to abide by up to thirty wide-ranging and restrictive conditions, the violation of which is the leading reason that non-violent offenders are placed in detention, 68% of whom are youth-of-color.

Punitive and paternalistic sanctions persists in the juvenile justice system despite long-established evidence about their ineffectiveness at reducing recidivism and outsized costs to the public.


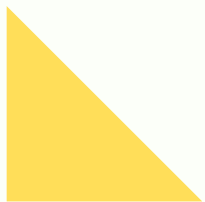




Placing youth on probation has been shown to have virtually no effect on reducing criminal behavior, and confining youth has been shown to increase reoffending by up to 26%. From a theoretical standpoint, these findings are unsurprising given that punishing individual offenders by isolating them in detention does little to confront the youth with the consequences of their actions or to heal the interpersonal harm resulting from the crime. Similarly, merely supervising or seeking to treat court-involved youth through probation or other programs relegates offenders to a passive role and doesn't provide for the needs of the victims and communities affected by crime.

The Restorative Alternative

The restorative approach to justice has the potential to significantly reduce the overreliance on practices that neglect victims and can create further harm for offenders. Beyond this, restorative justice encompasses a transformative vision for the juvenile justice system by redefining crime as primarily as a violation of societal relationships. In this view, true justice occurs when the needs of all affected parties are identified and a plan is agreed upon to best meet such needs and put right the wrongdoing to the fullest extent possible. In general, the restorative process involves representatives of all key stakeholders in a crime, often the individual victims and offenders themselves. These interactions can take place in many different contexts with varying degrees of formality; for this reason, restorative justice is best understood as a collection of new questions and principles rather than as a fixed set of practices. This flexibility engenders the potential for restorative justice to be integrated into virtually all aspects of the juvenile justice system. Restorative practices have been proven to reduce recidivism, lower procedural costs, and increase participant satisfaction in multiple contexts of the United States juvenile justice process, from school suspension and arrest alternatives up to formal sentences at adjudication.

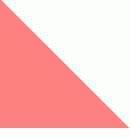




Guiding Questions

The set of questions that guides all restorative practices emphasizes the obligations that arise as a result of a crime and the collective interest in meeting them in order to make things right.

When a dialogue based on these questions is facilitated, each stakeholder is given an opportunity to express their needs and a role in identifying solutions to the effects of the crime. While the traditional approach to justice minimizes the role of victims in the justice process, restorative justice centers their concerns. Open discussion of the impacts of an offender's actions grants victims an opportunity to directly hold the responsible youth accountable for the personal consequences of their actions. Restorative justice also offers victims the chance to lead the development of a plan of action to put right the wrong to the fullest extent possible. Victims are encouraged to suggest forms of reparation that will heal the harm they have experienced in a meaningful way. Such actions can be further tailored toward meeting a specific need that arose as a result of the crime, whether social-emotional, financial, or otherwise. Restorative justice programs are proven to lead to significantly higher rates of compliance with restitution and victim satisfaction than traditional practices. Victims who have gone through restorative practices report greater levels of emotional healing, reduced desire for retribution, and increased trust in the fairness of the justice process.

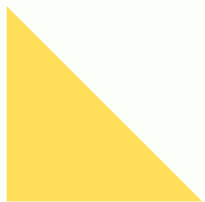

Given the strikingly high likelihood of young offenders having been victims of trauma themselves, the restorative process empowers offenders to empathize with victims, leading to a greater recognition of the consequences of their wrongdoing and to positive behavioral change. The confrontational yet cooperative restorative process engages the offender with the human costs of their actions through the "respectful disapproval" of victim and community representatives, leading to positive social pressure to act in ways that reintegrate the youth into their communal environment.






Rather than assume the offender is inherently an immoral person, restorative practices encourages him or her to act in ways more consistent with a renewed connection to their own sense of right and wrong going forward. The offender can meet his or her own need for reconciliation through their role in deciding how to best repair the harm they have caused. The opportunity for the youth to express other unmet needs that led to the wrongdoing leads to plans for the offender to receive services in order to prevent the crime from happening again. Upon completion of the agreed upon forms of restitution and competency building programs, offenders are far less likely to reoffend and report greater feelings of understanding and belonging in their communities. Representatives of the community are often present within a restorative setting, whether they be parents, teachers, coaches, clergy, or others. Restorative justice uniquely connects the effects of crime on individuals with it's effects on the interconnected members of society. The restorative process enables communities to reinforce prosocial norms with a much greater degree of autonomy than the traditional justice system. The resulting increase in trust and decrease in recidivism meets the societal need for cohesion and safety.

Best Practices

Ongoing research is continually clarifying the best practices for restorative practices in order to consistently reach the best possible outcome for all involved stakeholders. While earlier studies focused on the benefits of restorative programs on low-level offenses, more recent research has revealed that restorative justice has even stronger effects in more serious cases. While this finding demonstrates the versatility of the restorative approach, it is important to note that a formal restorative justice conference is not appropriate in every case. While restorative justice implies a preference for face-to-face encounters, a direct dialogue cannot take place without the freely chosen participation of all parties.





In certain cases a full restorative process may be infeasible or undesirable. For instance, a simple police caution guided by restorative principles is preferable to any more formal processing for the lowest level of offenses since any unnecessary involvement with the juvenile justice system can prove to be criminogenic. This point is especially important given the disproportionate contact of youth of color with police and the justice system that perpetuates the cycles of the school to prison pipeline and mass incarceration. For minor cases, the restorative approach would be to divert the youth away from arrest and to encourage positive interactions with law enforcement and the larger community. For more serious cases, the encouraging results from studies on restorative justice within juvenile detention centers strengthen the potential for restorative principles to guide more community-based forms of supervision for high risk youth.

Towards A Restorative Future

By bringing together the interconnected parties affected by an offense in a participatory and intentional setting, restorative justice is uniquely suited to address the shortcomings of the traditional juvenile justice process. When victims are able express their pain and offenders are able to work towards healing it, transformative bonds are built in the community. The growing body of evidence around the effectiveness of restorative practices in a variety of contexts supports the case for the expanded implementation and integration of restorative principles throughout all levels of the juvenile justice system. With issues of equity, race, and justice already becoming defining issues of the new decade, the restorative approach offers a comprehensive, transformative, and practical vision for the future.

