

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Integrating Restorative Justice

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

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February 2021**

ABSTRACT

The retributive criminal justice system should consider integration of restorative justice principles within its framework. The retributive justice system has proven to have many weaknesses. A few of those weaknesses are high recidivism rates, low victim satisfaction, and the lack of offender reintegration into society. The retributive justice system is less effective than many would hope due to the unrealized benefits of many restorative justice principles.

Statistics show that the current criminal justice system produces high numbers of repeat offenders. According to the Bureau of Justice Statistics, 67.5% of prisoners released have reoffended within a three year period ("Reentry Trends," 2002). Prisoners are sent away to jail or prison and then released with no system of reintegration into society. Restorative justice addresses the issues of reintegration and allows for programs to accommodate the offender's successful integration back into society. With successful reintegration comes better relationships with the community and lower recidivism rates.

As leaders in today's modern criminal justice processes, it is imperative that we come together and address the needs of victims and offenders alike. Society must move from a broken system of repeat offending, victim dissatisfaction, and lack of offender reintegration. Although the current system of retributive criminal justice is not in its entirety wrong, the integration of restorative justice practices will help to alleviate some of the most common complaints with this system. Shifting to an integrative approach between both restorative and retributive justice systems is not only good for society, but is owed to both the victim and offender alike.

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INTRODUCTION

Restorative justice concepts should be given greater attention as an alternative to current criminal justice processes. The positive impact that the restorative justice system has on victims, offenders, and the community cannot be ignored. The current system of justice in place in the United States today, retributive justice, leaves many victims feeling like they were left out of a process that originated from their loss or harm. Retributive justice also lacks focus on the offender relationship with society. Restorative justice is a system that tries to bridge the gap between victim and offender, and through the process of reconciliation creates an agreeable outcome between all parties involved.

The basis behind the current criminal justice system is “an eye for an eye, a tooth for a tooth” (Exodus 21:24, New Living Translation). This form of justice is punitive in nature and embraces the idea that the amount of punishment must be proportionate to the amount of harm done by the offense. When this type of justice is employed, the prevention of future crimes and the rehabilitation of the offender are not considered. One might say revenge is the primary factor regarding retributive justice.

Many law enforcement professionals today will tell you that the current justice system has its fair share of flaws. For example, many law enforcement officers see the same offenders processed through the justice system time and time again. The argument could be made that this is due to the lack of victim and offender involvement in the system. As of 1994, recidivism rates for the retributive justice system in the United States was approximately 67.5% (“Reentry Trends,” 2002). In comparison, restorative recidivism rates average around 7 percent lower than the retributive average

and can drop up to 31 percent lower than the average if successful therapeutic interventions are integrated into the process (Goulding & Steels, 2013).

The fact that many in today's society feel that justice needs to be carried out by a certain degree of retribution can not be ignored. This is why restorative justice concepts should be implemented into the currently used criminal justice system. By integrating both justice systems, victims, offenders, and third-party community members will attain a higher degree of satisfaction with the American justice system. Victims will feel they are a part of the solution in repairing the harm done by the offender and in return the offender is allowed to make amends for the wrongs he or she has committed.

POSITION

The retributive criminal justice system should move toward a system that reduces recidivism among offenders and seeks out the lower rates seen in the restorative model of criminal justice. The current criminal justice system has proven to be unsuccessful in the area of preventing future reoccurrence of criminal activity by offenders. As of 1994, 67.5% of prisoners released were rearrested within a three year period ("Reentry Trends", 2002). Many say this is due to the lack of community and social support given to the offender during and after prosecution.

The retributive justice process leaves the offender no avenue for correcting problems that led them to commit the offense or offenses. The offender has no means of making amends to the victim or his or her community, even if they wanted to. Many researchers have argued against the current criminal justice system stating we should be careful suggesting that increased incarceration is an effective tool in crime control.

Actually, the contrary is often the case. High incarceration rates can often times be indicative of a breakdown in values accepted by a community (Coyle, 2002).

In contrast, restorative justice recidivism rates are showing results much lower than the traditional justice system. Studies show restorative justice programs reduce offending behavior by 7%, but more importantly, when implemented with therapeutic interventions, rates can drop as low as 31% below traditional values (Goulding & Steels, 2013). The above study found that implementation of the restorative justice principles reduced the offender's neutralization of the offense and increased the offender's accountability for their actions.

One study found that a key factor in lowering recidivism rates with these programs was the use of family group conferences (Maxwell & Morris, 2002) . The study showed that family groups tend to hold the offender accountable for his or her actions and reduced the tendency for the offender to make untruthful excuses for his or her criminal behavior. It was found that family members would frequently interject if the offender began making false statements and excuses for prior criminal behaviors. This method of intervention increases accountability for the decisions the offender has made.

Restorative justice programs also see a higher rate of victim satisfaction than traditional justice programs. Participant satisfaction, especially victim satisfaction, is a common measure for the success of restorative practices. Data shows almost 90% of victims have a high satisfaction rate using restorative processes, while only 15% of victims are satisfied using traditional programs (Goulding & Steels, 2013). Often times this satisfaction comes from the fact that the offender is able to express their remorse for the wrong doing in a meaningful manner (Armstrong, 2012). Victims also expressed

satisfaction in their ability to participate and express their opinions throughout the process. This is unlike the traditional methods of the retributive process which allows judges and juries to handle most of the decision making during a trial. Victims have said they feel like they are treated more like witnesses during the trial than the victim. Witness's often describe their role as being evidentiary and feel there is no remedy for the injury done (Garbett, 2016).

Many say using a system of restorative justice can be empowering for the victim since they are allowed to directly tell their story and tell how the harm done by the offender has affected their life, including past, present, and future. This allows victims a degree of ownership to the justice process. The victim is not just a piece of evidence, but an integral part of the resolution process. Furthermore, evidence suggests that approximately 50% of those victims involved in restorative processes felt the harm done to them was repaired (Garbett, 2016).

Allowing victims and other participant's ample time to prepare for the process is another reason for the high satisfaction levels. This allows participants the ability to educate themselves regarding the restorative process and alleviates many of the concerns, fears, and misconceptions that may go along with the concept of restorative justice (Armstrong, 2012). As part of the preparation phase to restorative proceedings, victims are informed of the details to the restorative process, the offense is discussed in detail, and the script utilized during the proceedings is read. All participants, including offenders, are able to ask questions concerning the proceedings including what the proceeding entails, what can be asked of the offender, and what is required of them.

In contrast, the retributive justice system often times throws victims into the “hot seat” without any prior preparation and thus increases the chances of revictimization. Victims have reported satisfaction with the ability to directly interact with the offender and get significant details as to why the crime occurred. Victims said they were pleased to find out that the majority of the time they were not being targeted during the crime, but that the incident was merely a crime of opportunity (Armstrong, 2012). This reduced the fears of victims and their thoughts of future retaliation from the offender.

Additionally, the incorporation of restorative justice processes assists with the successful reintegration of offenders back into society. This concept can go hand-in-hand with recidivism. One of the fundamental ideas of restorative justice is to reconcile the offender with society. Often times, the offender feels like he is ostracized from society after going through a retributive judicial process. The victim may feel as if he was unable to give reasoning for the actions of his crime and furthermore feel like he was never given the opportunity to reconcile his wrongs.

Implementing the restorative justice system via conferencing, healing circles, or any of the other methods available seeks to resolve these issues. The offender may go through a process called re-integrative shaming. This is the process of shaming the act that was committed and not shaming the actor. This allows the offender to complete the restorative process without feeling stigmatized or rejected. The process allows the victim, or community, the opportunity to communicate to the offender that they disapprove of the act that was committed but are willing to acknowledge the offender's integration back into the community.

Studies have shown high rates of success with offender reintegration if informal social controls are in place (Stewart et al., 2018). Family members, friends, and the community are all examples of support systems that can prevent offenders from reoffending and allow for the successful release back into society. An offender's reintegration into society can be accommodated by programs requiring systematic and regular contact with these support systems (Stewart et al., 2018).

Once their sentence is complete, most incarcerated individuals return to society. Since imprisonment is temporary, it is crucial that individuals accused of crimes be assisted with integration back into society. Many people think all offenders should be given reintegration opportunities along with some sort of supervision (Cesaroni, 2002). Although this belief exists, society does expect the quality and intensity of the supervision be quite high.

One system that has been implemented and shown success is called Circles of Support. Circles of Support is not a remediation tool for victims and offenders but rather a vehicle to bring the community and offender together. Members of the Circle act as support and help the offender with everyday tasks and intervention with the community. One of the most important factors to this program is that participants enter the Circle voluntarily. It is vitally important that the offender recognize that his past actions were wrong and caused harm. The offender must make a commitment to not re-offend and acknowledge that he will be held accountable by his Circle. The offender must also recognize what need he hopes the Circle will fill. Of the sample in the study, 95.6% of the members involved in a Circle agree that they were assisted with reintegration either practically, emotionally, or both (Cesaroni, 2002).

COUNTER ARGUMENTS

The underlying concept of restorative justice can cause many victims to be revictimized. In many studies, offenders have proven to be unremorseful and lack full engagement with the restorative process. Many victims enter into the process willingly and expectant that the other party involved, the offender, will do the same. This is not always the case. In a study conducted examining assaults committed by teens, many of the teens involved refused to accept responsibility stating that they were not at fault and were just defending themselves (Daly, 2008). If both parties have the mutual feeling of self-defense, it is highly unlikely that any agreement or resolution can be drawn in these particular cases. This has led researchers to believe face-to-face meetings should not take place when offenders and victims contest the facts of the incident and the offender has little interest in making amends or changing their behavior (Daly, 2008). Daly (2008) goes on to say “this produces a damaging dynamic that brings more suffering to those injured” (p. 137).

It is important to remember that restorative justice is centered on the victim of the offense. The principle theory behind restorative justice is that the decision lies with the victim to proceed with this type of intervention. While offenders also benefit from participation, no victim should ever be coerced or pressured into participating in this process. Victims should see this process as an alternative to what the current criminal justice system offers. The ability to have family group conferences or panels can alleviate the tension between victim and offender. These options have been instrumental in determining appropriate responses to the situation and reaching decisions about these responses (Maxwell & Morris, 2002). Having family support

during the conferencing has proven to be instrumental in the success of restorative justice. Victims have an immediate support group to walk with them through traumatic testimony and/or experiences.

Many people believe that the restorative justice approach is not appropriate and ineffective at handling more serious offenses. Such offenses that many believe are inappropriate for the restorative process are sexual assault and domestic violence. The argument brought forth by these opponents is that these crimes are very personal and it would be traumatizing for the victim to face their offender in face-to-face meetings. Opponents often make reference to the fact that it is highly improbable that both parties involved in these crimes will be able to compromise since the offender and victim have such varying views of the incident. Due to the severity and frequency of these offenses, many believe only the retributive justice system is capable of handling these situations (Hudson, 2002). Restorative justice is viewed as ineffective and not harsh enough for these types of offenses.

In analyzing the appropriateness of the restorative justice process to these more serious offenses, it is important to recognize the failures of the retributive process in dealing with them in the past. Many victims are faced to live with the hard facts that prosecution rates are historically low, conviction rates are low, and revictimization of women in these cases is common. The main reason these cases fail in the retributive system are lack of evidence. Since most of these cases occur in private, there are very few witnesses to these offenses (Hudson, 2002).

Victims are often apprehensive of testifying in trial because of the consequences of prosecution. Many victims fear what the offender will do once time is served and

released back into society. Restorative justice seeks to rectify many of these issues. By allowing the victim to voluntarily enter into conferencing with the accused, conversation and healing are more likely to occur. Victims also report feeling vindicated by being allowed to tell their side of the story. Victims can let the offender know how the crime affected them on a personal level. Victims are given a voice in the outcome and they feel they were truly a part of the process. Since many of these crimes are committed by family members, most victims stated they were more interested in the behavior stopping than the offender being punished. Many victims reported they felt left out of the process using the traditional methods of the retributive justice system and felt the State was given more of a voice in their case.

RECOMMENDATION

Restorative justice concepts should be implemented into the currently used criminal justice system. The retributive justice system can be described as anything but perfect. The current criminal justice system needs a fresh set of ideas and those ideas should be integrated into the retributive system of justice. The restorative justice model offers solutions for many of these shortcomings. Factors like high recidivism rates, low victim satisfaction, and low success rates of offender reintegration all should cause those living in a modern day society to have great concern ("Reentry Trends," 2002 & Garbett, 2016).

Reduction in recidivism rates are one reason for the adoption of restorative justice principles. Recidivism rates are proven lower in a restorative system than in a retributive system. These rates can be up to 31% lower when implementing restorative justice principles (Goulding & Steels, 2013). Victim satisfaction cannot be ignored in

studies using the restorative justice approach. Victims consistently report high levels of satisfaction with this process since victims are given a direct voice in the cases that directly affect them. Victims understanding of the process and direct communication with the offender has proven to be reasons why victim satisfaction is continuously high. Implementing these conferencing practices will alleviate the days of victims feeling left out of the judicial process.

The restorative justice model also leads to higher rates of offender reintegration into the community. Using vehicles of reintegration, such as Circles of Support, offenders are better able to cope with the stresses of re-entering society and can be better prepared for future advancement, such as gaining employment (Cesaroni, 2002). Having these support systems allow offenders resources for success. This in turn reduces recidivism rates and allows for a more successful criminal justice system.

Many have argued against the use of a restorative justice model. Complaints are the revictimization of individuals and the fact that it may not work in all circumstances (Garbett, 2016). The argument is that victims are revictimized when they enter into conferencing with the very individuals that they have had such a traumatizing experience with. Offenders often times refuse to accept responsibility for their actions and show signs of being unremorseful. This in turn can lead victims feeling powerless and weak. Victims may feel like they have experienced a whole new set of negative emotions. This is why many say restorative justice will not work when dealing with many crimes. Crimes such as domestic violence and sexual assaults are often targeted in this argument because many do not believe agreement can be met when such personal crimes occur. Reaching an agreed upon outcome is seen as highly

improbable due to perspectives of the victim and the offender being so wide spread. Opponents also see these types of offenses as needing the most punitive and robust form of criminal justice available.

Having the ability to avoid the common failures of the retributive justice system has reinforced the restorative justice system. With prosecution and conviction rates historically low using traditional justice models, victim's satisfaction with these alternative methods has proven to be high (Goulding & Steels, 2013). Victims reduce the probability of being revictimized on the stand by defense attorneys and the lack of information provided them by the traditional process. In dealing with personal crimes, most victims know the offender personally and would rather see a change in behavior than punitive punishment for the offender. Restorative justice encourages voluntary conversation and leads to healing for the victim.

Restorative justice must be recognized as a model that puts the victim first. Victim participation in the restorative justice process is completely voluntary and other options of retributive justice are always available. Understanding that participation in restorative justice methods will not always be the answer is crucial in successful integration. The ability to willingly confront offenders and having the opportunity for all parties to seek what they feel is just has proven to be successful for both victims, community, and offenders. Legislators must come together and recognize the shortcomings of the current criminal justice system. Legislation should be introduced to integrate restorative principles of justice into the retributive justice system. Left ignored, these problems addressed in this paper will continue and progressive criminal justice reform will go unrecognized.

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