

Restoring Racial Justice

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Abstract:

Despite important overlapping interests, until recently, few racial justice advocates have embraced restorative justice, and the restorative justice community has largely failed to explicitly address race. Suggesting a convergence of the two movements, this article presents an overview of restorative justice principles, history, and methods. We review the evidence for racial bias in criminal justice and school discipline and then note emerging restorative initiatives to ameliorate historical and contemporary racial inequities. We conclude by touching on gaps and challenges characterizing research and applied work in the field while suggesting strategies to move toward a racially-conscious restorative movement as both an effective alternative to state-imposed punishment and a powerful force for racial justice.

Introduction

Based on present U.S. population trends, racial minorities will make up more than half of children under 18 before 2020. By 2043, white Americans will no longer constitute the majority (U.S. Census, 2012). Despite these trends, the considerable gains of the civil rights movement and policy reforms that followed, racial inequities remain “well documented, relatively stable, and generally not contested by demographers, historians, and social scientists” (Lyubansky & Hunter, 2014, p. 185). These persistent legacies of slavery and segregation are most evident in the U.S. criminal and juvenile justice systems, where the “school to prison pipeline” has become part of the popular lexicon and racially disproportionate arrest, conviction and incarceration rates reflect outcomes so racially biased that civil rights attorney and legal scholar Michelle Alexander refers to the criminal justice system that generates them as “The New Jim Crow” (Alexander, 2010).

For some 40 years, the international Restorative Justice (RJ) movement has sought to

promote community involvement and restoration as alternatives to incarceration and other punitive criminal justice responses. Despite important overlapping interests, until recently, few racial justice advocates have embraced RJ, and the RJ community has largely failed to explicitly address race. Suggesting a convergence of the two movements, this article presents an overview of RJ principles, history, and methods. We review the evidence for racial bias in criminal justice and school discipline and then note emerging RJ initiatives to ameliorate historical and contemporary racial inequities. We conclude by touching on gaps and challenges characterizing research and applied work in the field while suggesting strategies to move toward a racially-conscious RJ movement as both an effective alternative to state-imposed punishment and a powerful force for racial justice.

Foundations of Restorative Justice

RJ requires a fundamental ‘paradigm shift’ away from punitive justice responses targeting culpable individuals, towards inclusive, dialogue-driven and community-based practices where affected parties respond to crime and other harmful acts (Zehr, 1990). Restorative interventions are based on the key principles of repairing harm, including key stakeholders, and engaging communities (Van Ness & Strong, 2010). Restorative interventions happen when desired by all parties (or their surrogates), and may occur both instead of and in addition to conventional incapacitative strategies.

According to restorative principles, justice is achieved when persons causing harm understand the impact of their actions on others and take responsibility by making amends to the persons and community harmed. This is designed to give peace and healing to persons harmed, reintegrate responsible persons back into the community and, ultimately, to construct community capacity to manage crime and other harm. “Making amends” can be reparative (e.g., reimbursing for, mending, or replacing what was damaged), and restorative (offering emotional

healing, reassurance, safety). While literature and practice tend to focus on more tangible reparative goals, restorative ones may engender more powerful and long-lasting outcomes (Lyubansky & Barter, 2011).

RJ is a philosophical framework and an internationally recognized response to crime, delinquency and school rules violations. While the number of RJ programs ebbs and flows over time, Van Ness (2005) reported that approximately 100 countries utilize RJ, Umbreit (2008) estimated over 300 U.S. victim-offender mediation programs and over 700 European ones, and Bazemore and Schiff (2005) estimated over 700 U.S. juvenile conferencing programs as of about 2001. Australia and New Zealand codified RJ as a first response to juvenile offending over two decades ago (Maxwell and Hayes, 2006). The Council of Europe, European Union and United Nations Economic and Social Council have publicly encouraged the use of restorative practices (Richards, 2010).

RJ interventions can occur at arrest, pre-adjudication, sentencing, in custody or post-release, as well as in schools for disciplinary and other behavioral issues. Restorative approaches are used in adult and juvenile diversion programs (Rodriguez, 2007), as alternative sanctioning options (Barnes, Hyatt, Angel, Strang and Sherman, 2013), for sexual assault/abuse (Cossins 2008), domestic violence (Stubbs 2007), homicide (Miller, 2011), hate crimes (Dixon and Ray 2007), with prisoners on death row (Beck, Britto, & Andrews, 2007) and for offender reentry (Fox, 2012).

Restorative practices include a non-adversarial decision-making process allowing stakeholders to discuss the impact of the harm, followed by an agreement about how to repair it. Common practices include Victim-Offender Mediation, Family Group Conferencing, Neighborhood Accountability Boards and Peacemaking Circles. Each approach differs slightly in

format and participants, but all restorative dialogue models generally require the presence of at least the person(s) causing harm, the person(s) harmed (or their representative(s)) and a facilitator. Though especially sensitive to the needs of those harmed, restorative agreements address the needs of all, including offender and community. They aim to build the capacity of the responsible person who makes positive contributions to and improves relations with the community. Thus, the person causing harm can rejoin the community by earning redemption and is known for “doing right” instead of causing harm (Butts, Bazemore and Meroe, 2010).

RJ presents a viable alternative to mass incarceration policies that have resulted in the incarceration of almost 2.5 million people in the United States. The U.S. is the highest ranking country worldwide in the total number incarcerated and per capita incarceration rate (International Center for Prison Studies, 2013). This is particularly troubling given that African American men comprise a disproportionate share of those imprisoned. Below, we discuss racial disparities and how restorative approaches can ameliorate them.

A Racially Unjust System

In New York City, blacks were 12 times more likely than whites to be stopped by police using physical force and 40 times more likely to be stopped by having a gun drawn (Ogletree 2010). In Illinois, police search requests yielded contraband for 15% of black drivers compared to 24% of Caucasian drivers, despite the fact that police requested searches of non-white drivers’ cars twice as frequently as they did of white drivers (IDOT, 2004-2009). Similarly, in Los Angeles, the black stop rate is twice as high per 10,000 residents than the white rate, but frisked black drivers are 42% *less* likely to be found with a weapon than whites, and consensual vehicle searches of black drivers are 37% *less* likely to uncover weapons, 24% *less* likely to uncover drugs, and 25% *less* likely to uncover anything else (Ayres & Borowsky, 2008). If frisk and

search requests were motivated solely by probable cause --rather than by profiling or implicit bias-- the rates of uncovered contraband should not differ across racial groups.¹

In addition, studies show black and Latino men are significantly more likely than their white counterparts to be incarcerated when judges have broad discretion in sentencing, as in less serious crimes as larceny and drug possession or trafficking. For example, a Florida study found that after controlling for crime type and criminal history, black defendants were 47% more likely to receive a jail sentence and 24% more likely to receive a prison sentence than whites (Warren, Chiricos, & Bales, 2012). Altogether, black men are imprisoned at a rate 6.5 times higher than white men (Sabol, West, & Cooper 2010), and one in three black men can expect to spend time in prison during his lifetime (Lyons & Pettit, 2008).

The war on drugs is especially insidious. Though studies consistently fail to show meaningful race-group differences in either drug use or trafficking, a vastly disproportionate number of black and Latino men are not only locked up for significant periods but also upon release are forced into a subclass, often legally disenfranchised and deprived of voting, public housing, education, employment, and other citizenship rights (Alexander 2010; Human Rights Watch, 2009).

For youth, the School-to-Prison Pipeline (STPP) refers to the national trend of criminalizing instead of educating them. Exclusionary discipline policies such as suspension, expulsion, and school-based arrest are often used to address even the most minor infractions: a five-year having a temper tantrum, a child doodling on her desk with erasable ink, or adolescent students having a milk fight. Parallel to the rise of the prison-industrial complex,

¹ “Implicit bias” refers to unintentional preferences that lie beneath the level of awareness that nevertheless consistently show up in a variety of laboratory and real-world studies (e.g., Schneider, Zaslavsky, & Epstein, 2002). The Implicit Association Test (e.g., IAT, Greenwald et al., 1998) is the most widely used instrument used to study implicit bias.

suspensions have increased for black children at more than 11 times the rate for white children, and their current rate is 24.3% compared to 7.1% for white children (Losen & Martinez, 2013).

While suspensions purportedly increase safety and academic achievement, a major study concluded that “higher suspending schools reap no gains in achievement, but ... have higher dropout rates and increase the risk that ... students will become embroiled in the juvenile justice system” (Losen & Martinez, 2013, p. 20). Being suspended once in 9th grade doubles the drop-out rate from 16% to 32% and a single suspension triples the chance of juvenile justice involvement within a year. Additionally, high suspension rates likely diminish school and community safety by increasing student disengagement, diminishing trust between students and adults, and removing students from adult supervision for extended periods (Losen and Martinez, 2013). Research findings are so unambiguous that in 2013 the American Pediatrics Association concluded that suspensions do not make schools safer and called for pediatricians to urge schools to end them except as a last resort (American Academy of Pediatrics, 2013).

A Role for Restorative Justice

Studies have shown RJ reduces repeat violent offending, diverts offenses from criminal justice, reduces victim post-traumatic stress, increases victim and offender satisfaction, reduces victim desire for violent revenge, reduces criminal justice costs, and decreases recidivism when compared to incarceration (Sherman and Strang, 2010).

A small but growing number of restorative juvenile justice programs explicitly aim to remediate racial injustice. Brooklyn’s *Common Justice* offers a culturally-responsive victim service and diversion program designed specifically for youth of color who are statistically at greatest risk of being criminally harmed. *Restorative Justice Louisville’s* diversion program intentionally serves a district with highest rates of disproportionate minority incarceration.

Baltimore's Community Conferencing Program serves 97% persons of color and program graduates are 60% less likely to reoffend. In Oakland, *Community Works' Restorative Conferencing* program emphasizes reducing disproportionate incarceration rates of youth of color and program graduates have a 11% recidivism rate. This race equity approach has been adopted by emerging RJ pilot projects in the city of Long Beach's *California Conference on Equality and Justice*, San Francisco's *Make it Right* program, and San Diego's *National Conflict Resolution Center*. Additionally, eliminating racial disparities is an explicit goal of *Restorative Justice for Oakland Youth's* school, community and juvenile justice initiatives.

In schools, restorative approaches have generally reduced suspensions and expulsions, decreased disciplinary referrals, improved academic achievement, and decreased violent and serious acts (Lewis, 2009; Sumner et. al, 2010; Mirsky, 2003). Oakland's and Los Angeles' school districts are successfully using RJ expressly to reduce racial disciplinary disparities. The U.S. Departments of Justice and Education launched an initiative in January 2014 to help districts use RJ and other means to meet their legal obligation to administer nondiscriminatory discipline.

Research supports RJ's effectiveness in reducing racial discrimination in school discipline. Simson (2012) suggests it helped schools in two large public school districts tackle disproportionate suspension rates for African American students. Gregory, Clawson, Davis and Gerewitz (2014) found that teachers implementing strong restorative practices rarely used exclusionary discipline for misconduct/defiance, were less likely to disproportionately discipline African American/Latino students, and had better overall relationships with their students. Similarly, after adoption of school-based RJ, overall suspension rates in Oakland, California fell district-wide by 52% in one year, percentage of African American males suspended fell from

21% to 14%, instructional days lost by African American males decreased 75% in three years, and, at one site, racial disparity in discipline was eliminated by the second year of RJ implementation.²

Initiatives Addressing Race-Based Historical Harms

As noted, restorative strategies are emerging to ameliorate racial inequities involving interpersonal harm in schools and the justice system. Nascent restorative and transitional justice initiatives are also being used to heal historical racial harms perpetrated by the state. Overlapping but not coterminous with RJ, transitional justice connotes a range of remedies available to countries transitioning from past human rights violations and also to those still divided by long-standing human rights abuse. Promoting accountability, addressing the needs of those harmed, and fostering possibilities for justice and reconciliation, strategies include truth commissions, institutional reform, official apologies, reparations, and memorialization initiatives that honor victims and heighten public consciousness (Hansen, 2007).

Truth commissions are impaneled to unearth past or ongoing patterns of pervasive human rights violations. The South African Truth and Reconciliation Commission (TRC) is the best known of about 40 truth commissions extant since the early 1980's (Hayner, 2010). The newly elected South African post-apartheid government initiated a broad public dialogue culminating in the 1995 passage of legislation establishing its TRC. Investigating human rights abuses from 1960 to 1994, the commission heard victims' stories, considered and decided responsible parties' amnesty petitions, ordered reparations, and made recommendations to prevent recurrences. While South Africa's TRC yielded positive psychosocial outcomes, reparations were not implemented and apartheid's legacy of extreme poverty was left intact.

² Data received from Jean Wing, Director of OUSD's Research and Assessment Data Office.

South Africa's TRC is nonetheless internationally hailed as having enabled a spirit of forgiveness that helped the country transcend hundreds of years of hatred and violence.

The 2004 Greensboro Truth and Reconciliation Commission (GTRC) in North Carolina was inspired by South Africa's. On November 3, 1979, Ku Klux Klansman and Nazis opened fire on a racially mixed group of protesters in a black neighborhood in Greensboro, killing five and wounding ten. Despite awareness of the impending violence, police were absent. After two decades, two failed criminal trials resulting in acquittals by all-white juries, and a civil trial holding the police complicit with the Klan and Nazis in one death, the Greensboro community remained deeply fractured (Jovanovic, 2006). Community members set out boldly to create the first TRC in the U.S., comprised of a community selected independent body of seven citizens. Despite a petition signed by thousands, local governmental authorities refused to sanction the GTRC (Brown, et al. 2006). After holding public hearings, examining historical documents, and interviewing hundreds of survivors, witnesses, police, judges, lawyers, former Klansmen and Nazis, the commission issued a report in 2006 recommending institutional reform and community healing through official apologies, public monuments, museum exhibits, a community justice center, police review board, and anti-racism training for police and other officials (Brown, 2006).

Addressing a single incident only, the GTRC did not involve a government transitioning from past human rights violations. However, the "Greensboro massacre" was emblematic of pervasive and unresolved human rights abuses perpetrated by the state against African-Americans for centuries (Hanson, 2007). Experts concluded the Greensboro effort was effective and consistent with the truth commission model (Margarell, 2008).

In another effort, five Wabanaki tribal chiefs and Maine's governor established the first

truth commission developed by Indian nations and a government in 2012. The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission focuses on abuses perpetrated since 1978 by the state's child welfare system's forced assimilation of native children by placing them in non-native families, severing them from their cultural identity and exposing them to physical and sexual abuse (Attean and Williams, 2011).

Canada's Truth and Reconciliation Commission (CTRC) is the first such commission created in an established democracy and the first focused on crimes against children and indigenous groups. Empaneled in 2008 as part of a \$2 billion class action settlement, the CTRC addresses legacies of Indian Residential Schools, a church and state-run system operating from 1874 to 1996 that forcibly removed Aboriginal children from their homes, punished them for honoring their language and traditions, and subjected them to physical and sexual abuse. Having traveled to more than 300 communities and taken testimony from 6500 witnesses, the commission's report is due in June 2015 (ICTJ, 2008).

The Mississippi Truth Project, still in planning stages, will unearth racially motivated human rights violations committed between 1945 and 1975. According to the website, the commission will examine structural racism, racial violence, and "the collusion of public officials and conspiracies of silence that for ... 60 years have divided Mississippians."

Focused specifically on historical harms resulting from local law enforcement's failure to protect activists and black people in the southern states during the civil rights era, Northeastern University Law School's *Civil Rights and Restorative Justice Institute* (CRRJI) is another initiative to transform historical racial harm. Researchers compile, analyze, and publicly expose information about racially motivated violence, including cold civil rights-era cases. With local partners, CRRJI promotes truth proceedings, state pardons, memorialization

activities, official apologies, as well as institutional reform.

Coming to the Table (CTT) is a Virginia-based dialogue initiative that seeks to heal wounds of slavery and the racial inequities it continues to engender. Bringing together descendants of slaves and slaveowners, CTT participants expose and take responsibility for family ties to the slave trade, slavery and racism, and explore how we heal through dialogue, ceremony, the arts, apology, and social action. Lastly, *Welcome Table: An Era of Dialogue on Race* is a series of training retreats for Mississippians to learn to create safe spaces in which members of racially divided communities can deeply listen to one another with mutual respect and trust.

Future Directions

This concluding section identifies gaps in research and applied work and offers suggestions for restorative justice strategies that can provide an alternative to prevailing punitive justice while effectively transforming contemporary and historical racial inequities.

For the first 35 years of the RJ movement, there were no known gatherings focused on race. Then, in 2009 the YWCA held its *Racial and Restorative Justice Summit* in Madison, Wisconsin, followed by University of California Berkeley Law School's convening on *Structural Racism and Restorative Justice*. The first formalized convening of racial and restorative justice scholars and practitioners, the June 2013 Fourth National Restorative Justice Conference, *Keepin' it Real: Race and Restorative Justice* was historic. The *Second International Restorative Justice Symposium: Race and Power* occurs June 2014 in Greece. We encourage more conversations like these at local, regional, national, and international levels.

Concomitantly, the scant publications on race and RJ are an enormous gap given the flourish of RJ literature as a whole in the last 40 years. Additionally, we know of no formalized

RJ curricula in the school, community, or justice context that explicitly guide users in developing race-conscious trainings and practices. We encourage more race-conscious initiatives, conversation, research, curricula, and publications featuring multiple voices and perspectives.

Practice

To address the structural nature of racial oppression, RJ practitioners should pair individualized projects addressing racialized interpersonal harm with corresponding systems change efforts. Holistic race-conscious RJ programs spanning the entire continuum of the justice process -- from pre-adjudication through post-release -- are likely to be effective in reducing racial disparities. Practitioners must specifically identify the reduction or elimination of racial disparities as desired outcomes. Researchers must monitor and measure RJ's impact on disparities.

The goal of creating an RJ movement that ameliorates racial inequities also invites RJ scholars and practitioners to think critically about what it means to be "victim-centered." Classic victim-centered programs confer veto power on persons harmed, without whose voluntary participation the conference cannot occur. However, to expressly reduce disproportionate minority incarceration, a race-conscious restorative approach asks us to meet the needs of the person harmed, *and* to go forward with the conference through a surrogate if that person refuses. Further, practitioners often report that the person causing harm was typically exposed to complex trauma, whether domestic violence, drug addiction, foster system involvement, physical or sexual abuse, parental incarceration, extreme poverty, or loss of peers to gun violence. This does not excuse the harmful act, but rather is an essential part of understanding the subjective reality and environmental conditions that make violence likely. If

communities play a role in creating such conditions, then a justice response must address the needs and obligations of the responsible person, the person harmed, *and* those of the community. Moving beyond binary ways of thinking, RJ should give balanced and equal attention to the needs and responsibilities of *all* who are impacted by present and past harm.

The extent of transitional justice strategies to transform historical and structural harm as surveyed above are relatively unknown. The time is ripe for establishing truth commissions on the pervasive human rights violations engendered by racialized mass incarceration at local, regional, or national levels. Commissions and other transitional justice strategies might address the criminalization and dehumanization of African-American and Latino youth, as well as the mass historical harms and legacies of slavery, lynching, racial violence, and genocide against Native Americans.

Guiding Principles

To model the changes necessary for a racially just world, RJ practitioners must become skilled in negotiating across racial and other differences. One strategy is to embed “unlearning racism” components and tutorials on racialized mass incarceration and school discipline strategies in *all* standard RJ trainings. Looking to other disciplines may also be helpful. Both psychotherapy and the corporate world use the notion of “cultural competence” to describe the consciousness and communication skills needed to work effectively across cultural, racial, and ethnic boundaries, while recognizing that there is no objective criteria for a “culturally competent” practitioner. Though the academic literature on cultural competence is fraught with inconsistencies, its influence and contributions are undeniable. The RJ movement would do well to insist that individuals be seen as racial, ethnic, and cultural beings.

Urging RJ adherents to explicitly acknowledge race and address racial inequities

recognizes that, like it or not, race matters in our society. Given the racial inequities embedded in the criminal justice system, a justice movement that fails to explicitly address this will be perceived by racially targeted groups as either uninformed, unjust, uncaring, or all of the above. Failing to acknowledge and take action to address racial injustice allows legacies of slavery, genocide, and segregation to persist. Given the nation's changing demographics, how we remediate racial inequities is a pivotal question that can determine the ultimate success or failure of the RJ movement.

We propose three dimensions of competence often articulated in the psychotherapy and counseling literature: "1. Awareness of one's own assumptions, values, and biases; 2. Understanding the worldview of culturally different clients; and 3. Developing appropriate facilitation strategies and techniques" (Sue et al., 1998). The first of these is foundational, as it allows those interested in justice to recognize and eventually cognitively override their own prejudices and biases. Here, we can recognize and acknowledge our own unseen privilege that can create unintentional harm across racial lines, preventing us from also taking responsibility and making amends.

Profoundly relational and community-based, restorative efforts require collaboration with a wide range of allies, including those with divergent world-views and ideologies. The potential of RJ will remain unrealized and the integrity of the movement limited until restorative practices become both a justice system response *and* a foundation for negotiating natural and healthy ways of living together in community. It is tempting to distance ourselves from those who embrace punitive and retributive strategies and dismiss their efforts as misguided or even unenlightened. It is equally tempting to avoid conflicting ideologies within the restorative movement itself, and it is certainly easy to avoid the racialized dimensions of

justice on the grounds that it is too controversial or too deeply entrenched. Such conflict avoidance can be logical in a right-wrong, win-lose paradigm, but is at odds with restorative principles propelling us towards understanding conflict in mutually beneficial ways. Economic justice, gender equity, marriage equality and other social justice efforts could also benefit from restorative principles, but such collaborations are possible only if those who identify with the restorative movement are themselves willing to move toward conflict and negotiate differences restoratively. In our view, doing so is essential both to achieving sustainable social justice outcomes and to “walking the walk” with integrity as we push the restorative revolution forward.

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