

Restorative Justice

Can it help victims and rehabilitate criminals?

As calls for criminal justice reform grow louder, some social workers, religious leaders and legal experts want to expand the use of an alternative, nonpunitive system of justice for cases ranging from student conflicts to assaults involving adults. They say that “restorative justice,” through “peace circles,” mediation and other methods, promotes conciliation and remediation by bringing offenders, victims and community members together to determine how best to help victims and rehabilitate offenders. Advocates say restorative justice can potentially reduce repeat offenses, incarceration rates and court costs. But critics, including some prosecutors, deride it as a soft-on-crime approach that won’t work for violent crimes such as assault. They also disagree with proponents’ claims that restorative justice programs can heal victims or keep career criminals from returning to prison. All sides agree more research is needed to determine whether restorative justice can one day help transform the nation’s criminal justice system.



Tiago Robinson, in charge of the Manhood Development Program at Oakland High School in California, passes a Hacky Sack to students to signify they can ask or answer questions during a program aimed at teaching African-American boys how to become responsible men. The program uses restorative justice principles that emphasize accountability and peaceful conflict resolution.

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Restorative Justice

BY CHRISTINA L. LYONS

THE ISSUES

In Middlesex County near Boston, communities are bringing some young first-time offenders face to face with their victims to come up with ways to make reparations and to get on the right path toward rehabilitation. Juveniles who are selected by the district attorney for this “restorative justice” program have a chance to wipe their arrest record clean and avoid court — provided they follow through with the program — while their victims get a say in the process and a chance to heal.

Susan Maze-Rothstein, a law professor at Northeastern University in Boston, along with other supporters, has spent four years lobbying Massachusetts legislators to pass a bill, introduced by Democratic Sen. Jamie Eldridge, that would expand the use of restorative justice programs and allow more communities, rather than courts, to handle crimes committed by juveniles and possibly adults and help their victims.

Her organization, Our Restorative Justice (OurRJ), works with the district attorney in Middlesex County to give some young offenders a chance to face their victims and work with community representatives to make reparations for their harm and get on a better path.¹

Programs like Maze-Rothstein’s — which use various methods to promote conciliation and remediation over punishment — can assist offenders and victims alike, she says. As a bonus, implementing restorative justice can help reduce court costs and relieve overcrowded prisons, a major focus of the national discussion on criminal justice reform.



Getty Images/The Asahi Shimbun

Howard Zehr, co-director of the Zehr Institute for Restorative Justice at Eastern Mennonite University in Harrisonburg, Va., is widely considered the “grandfather” of the restorative justice movement. He stresses that in criminal cases, restorative justice programs should meet the needs of victims and hold offenders accountable.

“Those who are concerned about the cost of incarceration . . . are interested in such lower-cost approaches,” says Maze-Rothstein, board president and chair of OurRJ, centered in Lowell, Mass., which has a high immigrant and minority population. “Then there are those people who are actually concerned about justice and fairness in society, about reparation for untold generations of harms that have been done to . . . marginalized communities,” she says, adding that OurRJ hopes to expand to serve more minorities in neighboring Suffolk County.

Since the 1970s, social workers, criminal justice experts and faith-based groups in a scattering of communities and prisons around the world have been studying and testing various types

of restorative justice — based on principles of indigenous and ancient Western cultures — to address a range of crimes. Now advocates of the practice want it expanded in the United States to help reduce recidivism, halt a so-called school-to-prison pipeline, reverse a trend toward mass incarceration, lower prison costs and eliminate racial disparities in the justice system.

But critics are skeptical that restorative justice can do all that, and they say it won’t work for violent crimes such as assault.

Matt DeLisi, coordinator of criminal justice studies at Iowa State University in Ames, says, “To me, it’s a form of diversion” from the criminal justice system. “It’s nice and kind of meaningful,” but it won’t have “a huge impact” on incarceration levels.

“Is it a solution to all our problems? No,” says Mark A. R. Kleiman, a professor of public policy at New York University.² He and Kathleen Daly, a criminal justice professor at Griffith University in Brisbane, Australia, support restorative justice but warn that it can be applied only to a limited number and type of offender, victim or crime.³

Former federal prosecutor William G. Otis, an adjunct Georgetown University law professor, is more critical: He calls restorative justice a “soft-on-crime” approach that amounts to merely “innovative dialogue” to stop imprisonments.

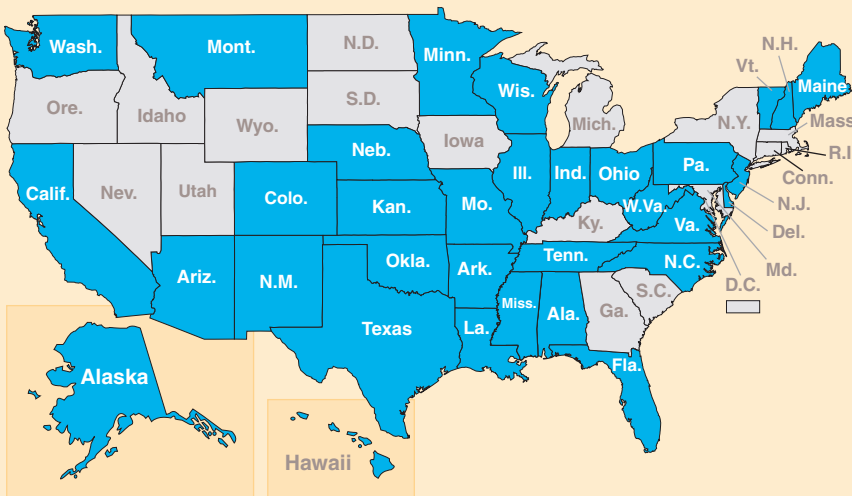
Restorative justice programs bring offenders face to face with their victims — with the consent of both parties — through various methods, including:

- Victim-offender mediation, in which a facilitator oversees a meeting between the two.

Majority of States Have Restorative Justice Laws

Since 1988, 33 states — most recently West Virginia — have enacted laws that require or mention some form of restorative justice. Colorado, Vermont and several other states mandate funding for such programs and spell out staffing requirements. Twelve states have statutes that refer to restorative justice or its core principles but do not require implementation.

States with Restorative Justice Statutes



Sources: Shannon Sliva and Carolyn Lambert, "Restorative justice legislation in the American states: A statutory analysis of emerging legal doctrine," *Journal of Policy Practice*, April 7, 2015, pp. 77-95, <http://tinyurl.com/jzywj9j>; "Gov. Tomblin signs bill to launch comprehensive juvenile justice reform in West Virginia," *The State Journal*, April 2, 2015, <http://tinyurl.com/jb9c7wr>

- Peace, or healing, circles, in which participants — including the offender's family or community members — sit in a circle to discuss the offense, how victims were affected and how the offender should make amends.

- Group conferencing, in which the victim and offender meet with community or group representatives to discuss the crime and determine how to hold the offender accountable and to help the offender rehabilitate and reintegrate into society.

- Reparative boards, panels of local representatives that confront the offender, discuss the crime and devise a contract detailing what the offender must do to "right the wrong."

Those involved in each method devise a plan, approved by law enforcement

officials or a judge, to remediate the offense and ensure the offender follows the plan. Failing to abide by the plan can land an offender back in court.⁴

Law enforcement agencies or courts may offer offenders and victims such alternatives before an arrest is made, before or after a conviction or during incarceration, depending on the agreement with the justice system or state laws and whether the offender is willing to take responsibility. A resulting agreement could include imprisonment or payment of restitution.

Practitioners cite New Zealand as a model because it requires, by statute, that all youth offenders — other than murderers — be offered a restorative justice alternative. Such methods also have been practiced in Australia, Cana-

da, the United Kingdom, Belgium and elsewhere.⁵

At least 32 states have statutes that include language on restorative justice, ranging from statements of support to a structure for its use.⁶ (See map, at left.) More communities have been testing the concept since then—U.S. Attorney General Eric Holder called in 2013 for a "smart on crime" campaign to address a rising prison population.⁷

The state and federal prison population increased more than fivefold between 1980 and 2013, from 503,600 to nearly 2.9 million.⁸ The population in local jails rose from 184,000 in 1980 to more than 785,000 in 2008, before dropping to just over 731,200 in 2013. Although the total number of state and federal prisoners fell to 2.2 million by 2013 — the lowest level since 2005 — the United States still has among the highest incarceration rates in the world.⁹

Moreover, the recidivism rate is high. While about 650,000 prisoners are released annually, some two-thirds of them return to prison within three years.¹⁰ Warning that "we cannot prosecute our way to becoming a safer nation," Holder, when announcing the "smart on crime" campaign, called for reserving the harshest penalties for the most violent criminals and seeking alternatives for nonviolent offenders.

Obama administration officials also urged schools to end harsh zero-tolerance policies, implemented in the late 1990s after a rash of school shootings. The administration said the policies disproportionately target minority and disabled students, in some cases creating a "school-to-prison pipeline."¹¹

The Justice Department already had supported the use of restorative justice for juveniles and increasingly promoted such alternatives. Many faith-based groups, whose philosophies of forgiveness align with restorative justice principles, had been pushing the concept for a range of incarcerated offenders.¹²

While the Christian community has long backed the goals of restorative

justice, Catholic Church leaders urged U.S. officials to look more closely at the alternative after Pope Francis told Congress last year that he supported a global abolition of the death penalty because “a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation.”¹³ Many pointed to the forgiveness that survivors and families of victims of a 2015 shooting of nine black parishioners at a church in Charleston, S.C., offered to the alleged gunman.¹⁴

Howard Zehr, a retired restorative justice professor at Eastern Mennonite University in Harrisonburg, Va., who is considered the “grandfather of restorative justice,” initially advocated for restorative justice from a Christian perspective. But now Zehr, who co-directs the Zehr Institute for Restorative Justice at Eastern Mennonite, says the faith-based pressure for forgiveness misleads the public about what restorative justice seeks to do.

The priority, Zehr says, should always be the needs of the victim, as well as holding the offender accountable and making sure he or she understands the impact of the crime on the victim and community. Reduced recidivism, he says, is a byproduct of restorative justice.

Researchers measure restorative justice’s success by its ability to help victims and lower recidivism rates. Several studies find some positive effects on both measures.¹⁵

“Of course, it’s not that victims feel euphoria after such a meeting, but at least they feel better than when they go through the traditional [criminal justice] process. It’s an absolute finding that comes back all the time,” says Lode Walgrave, emeritus professor of criminology at the University of Leuven in Belgium.

Yet other studies, such as a 2013 review in Australia by the New South Wales Bureau of Crime Statistics and Research, conclude that researchers have provided little evidence that restorative

justice either reduces recidivism or provides greater satisfaction for victims than if the cases had gone through the traditional legal process.¹⁶

Michael Rushford, president of the Sacramento, Calif.-based Criminal Justice Legal Foundation, which advocates for a “swift and decisive system of justice,” says victims of violent crimes never really heal.

The National Center for Victims of Crime, based in Washington, has lobbied for criminal justice reforms that help victims. It supports the development of restorative justice approaches but warns that many such programs do not fully focus on the victims or allow them to control how they participate.¹⁷

“Restorative justice is fine, provided the victim is in favor of it,” says Mai Fernandez, executive director of the crime victims’ center. While many victims may not want to face an offender, she says, others do. “Some victims are looking for some sort of remorse or apology. There’s many situations where, like in a homicide situation, you may not really want to see the person who killed your loved one, but in some situations you want to understand why they did this,” witness the offender’s expression of remorse and receive an apology.

Steve Martin, a corrections consultant, prison monitor and attorney in Broken Arrow, Okla., says, “From the first I ever heard of the concept, I said this should not be couched at all as victim-oriented; it should be couched as justice-oriented, which services all stakeholders — the victim, the offender, the courts.”

But many in law enforcement “view restorative justice with a jaundiced eye, seeing it as nothing more than hand-holding that does not address the real reasons for criminality,” wrote Diana McKibben, a restorative justice practitioner, and Phil Penko, a former Monterey, Calif., police chief.¹⁸

William Wood, a criminal justice professor at Griffith University in Australia, suggests the problem is more complicated in the United States, where

the government’s policing and sentencing policies support a get-tough-on-crime culture and emphasizes prison over rehabilitation. Restorative justice is a “well-thought-out alternative” in certain cases, he says, but by itself it cannot transform the U.S. culture and reduce incarceration levels.

Prisons are not the result of individual behaviors, Wood says. “They’re the result of political regimes” that have built discriminatory policing practices and tough sentencing laws.

As the debate continues, researchers, social workers, legal experts and local and state officials are asking these key questions:

Does restorative justice reduce recidivism?

The bill backed by OurRJ in Massachusetts seeks to “reduce recidivism and the risk of more serious crimes in the future that may require a more intensive and costly response from the legal system, such as prosecution and incarceration.”¹⁹

The bill in past years has failed to gain sufficient support to reach the Senate floor, largely due to other policy priorities of legislative leaders and, Maze-Rothstein believes, a limited understanding of restorative justice programs and their ability to reduce recidivism.

Sujatha Baliga, director of the Restorative Justice Project for the non-profit group Impact Justice in Oakland, Calif., insists restorative justice does reduce recidivism.

She started a community conferencing program in 2008 for youths in Alameda County, where Oakland is located. Schools, law enforcement officials and district attorneys can select juvenile offenders before they are arrested and give them the option of entering a three- to six-month restorative justice program rather than face prosecution.

The diverted youths are accused of a range of offenses, Baliga says, including crimes for which they could be charged

as adults in some other states, such as burglary or assault.

The program handles about 100 youths annually and has a recidivism rate of 11.8 percent, compared with 31.4 percent for juvenile offenders in the regular justice system, according to Baliga. Further, African-American boys show the highest success rate.²⁰

In Vermont, low-level offenders can appear before community reparation boards, says Derek Miodownik, the restorative and community justice executive for the state Department of Corrections. Those who appear before the boards typically do not reoffend, according to a progress report on the program.²¹ Miodownik, however, says he is reluctant to attribute all of the success to restorative justice.

"It might be because they have a great relationship, they got a great job, completed a drug program," he says.

In Belgium, Walgrave led an experimental family conferencing program from 2000 to 2003 with five judges who selected the juvenile cases. Evidence indicates that about 22 percent of those juveniles committed crimes again, compared with 58 percent of juveniles who went through the court system, he says.²² The program was then expanded to all courts.

But allowing judges or law enforcement officials to select cases for restorative justice limits its potential, Walgrave says, because they typically don't pick violent offenders. Many researchers point to the progress in New Zealand, where young offenders accused of any crime other than murder must be allowed to opt for restorative justice. The New Zealand Ministry of Justice reported that "restorative justice had a statistically significant impact on the number of offenders who reoffended and, for those who did reoffend, the frequency of that offending."²³

But results elsewhere have been mixed. A group of researchers from the United Kingdom, the United States, Australia and Israel — led by Lawrence

Sherman, director of Cambridge University's Institute of Criminology — reviewed results from 10 randomized trials of restorative justice conferencing and concluded the programs produced a "modest but highly cost-effective" reduction in recidivism.²⁴

Sherman and Heather Strang, director of the Centre for Restorative Justice at Australian National University in Canberra, had published an analysis in 2007 comparing results of restorative justice to conventional justice for juvenile and adult offenders charged with a variety of crimes, including burglary, assault and arson. The results showed a "modest" reduction in recidivism. The researchers also found that restorative justice, compared with prison, worked better at stemming recidivism among adults than among juveniles. But they also concluded that the method "works differently on different kinds of people," and that more research was needed.²⁵

Griffith University's Wood doubts restorative justice could noticeably lower U.S. incarceration levels. These programs, he says, often target young offenders who weren't likely to reoffend anyway, particularly as they mature.

"Even if restorative justice results in some recidivism, most [perpetrators] would not end up committing offenses that land them in jail anyway," Wood says. "Most youth commit one or two offenses they are caught for, then they age out," or mature and stop misbehaving.

DeLisi of Iowa State says restorative justice is "disproportionately more useful for youth." But he says it can't help all youths. "I have known juvenile offenders that had 100 [contacts with] police. If they are 17 and had 90 contacts by the police, that's who they are. They're just a young career offender," he says. Restorative justice for such offenders "would be a poor use of resources."

Martin, the corrections consultant in Oklahoma, says typically he has seen restorative justice applied for lower-level, nonviolent offenses.

"The screening and selection process is critical," he says. "The average run-of-the-mill person" on a lifelong path of crime "will tend to manipulate systems like this," he says, viewing it as a way to avoid prison.

For juveniles, poor parenting can give "rise to criminal lifestyles," Martin says, and restorative justice programs cannot make up for a dysfunctional home life.

Michael Braswell, a former prison psychologist and emeritus professor of criminal justice at East Tennessee State University, rejects the notion that offenders could easily manipulate the process. "A lot of inmates would rather just do the time" than go through all the requirements of a restorative justice process — especially having to face their victim and own up to what they did.

Martin also says he has seen offenders turned around for a range of reasons. "They experience something that makes them feel better about who they are than doing the crime."

Should restorative justice be used in cases of violent crime?

After 19-year-old Conor McBride of Tallahassee, Fla., shot and killed his fiancée Ann Grosmaire and turned himself in to police, the victim's parents, Kate and Andy Grosmaire, forgave McBride. Then they and McBride's parents found Baliga, the restorative justice practitioner in Oakland, and persuaded her to facilitate a restorative justice meeting.

McBride listened to the Grosmaires' pain, and they listened to his account of an extended fight that began one Friday and continued through Sunday. The couple had spent the previous night at McBride's parents' house, where their arguing continued until he pulled out a shotgun to shoot himself but killed Ann instead. After the conference, Ann's mother recommended a prison term of five to 15 years. She later said she had to forgive in order to go on. "When people can't forgive, they're stuck. . . . Forgiveness for me was self-preservation."

The judge approved the recommendation, but extended the term to 20 years.²⁶

Baliga, of Impact Justice in Oakland, says such a case “has never happened again” for her and that the Grosmaires’ compassion for their daughter’s killer is highly unusual. But she says restorative justice can and should be applied to a wide range of crimes, including violent crimes, to help victims and offenders and to devise appropriate punishments. And ideally — although she says she knows it would be difficult — Baliga would like to see it done before offenders are booked.

“Our biggest bang for recidivism and cost effectiveness is on the front end, pre-charge,” she says. “We need to be doing restorative justice in a way that actually reduces incarceration,” rather than focusing on low-level offenders who likely would be diverted [away from prison] anyway. Herman and Strang’s 2007 study found that among some samples, restorative justice appeared to reduce recidivism more effectively in violent crimes than in less serious crimes.²⁷ Similarly, an analysis of Australia’s restorative justice program also found that it “may be more effective for more prolific offenders and . . . for more serious offenders,” but researchers were unclear why.²⁸

Practitioners have applied restorative justice in some violent crime cases in the United States, but typically it is used in corrections facilities when counselors are helping prepare prisoners for reintegration into society or to help heal victims. In Vermont, where prisoners are often sent to local reparative boards to discuss reintegration into the community, the boards have found that ex-inmates “do better when they’re connected and receive support,” says Miodownik of the Department of Corrections. Vermont is looking to expand the process to diminish recidivism.

Joan Pennell, a professor of social work at North Carolina State University in Raleigh, directs the university’s Center

for Family and Community Engagement, which offers family group conferencing in cases of child abuse and, in some instances, domestic violence.

The program uses the principles of restorative justice, she says. “It’s not where you just figure out who committed maltreatment, but you [also] are figuring out support for the family,” which may be facing situations of poverty or neglect, says Pennell, who worked as an investigator in Newfoundland for a family group conferencing program. During sentencing, judges can choose

don’t want to see their partners punished but who want an apology and the abuse to stop.³⁰

Some groups representing domestic violence victims say restorative justice can help victims find a voice, help them heal and potentially keep families together if the abuser gets further help. It can also provide an alternative for women — particularly those of color — who do not feel safe calling the police.³¹

Carrie Outheir Banks, a former shelter worker, founded Domestic Violence Safe Dialogue in Portland, Ore., to bring sur-



AP Photo/Eric Gay

Seventh-graders talk with two assistant principals and a counselor last October about a recent conflict at Ed White Middle School in San Antonio. Three years after the school started a disciplinary program that relies on restorative justice practices, out-of-school suspensions have fallen 72 percent, principal Philip Carney said.

whether to use a plan devised during the conference.

“We have developed extensive protocols for preparing people to participate, including a safety assessment” by a facilitator to ensure that victims are not in danger of being revictimized, Pennell says. If coordinators feel the process would not be safe, they can cancel the conference, but that rarely happens, she says. Often studies report high victim satisfaction, as well as a reduction in recidivism.²⁹

Leigh Goodmark, a University of Maryland law professor who also teaches the school’s Gender Violence Clinic course, said restorative justice can empower domestic violence victims who

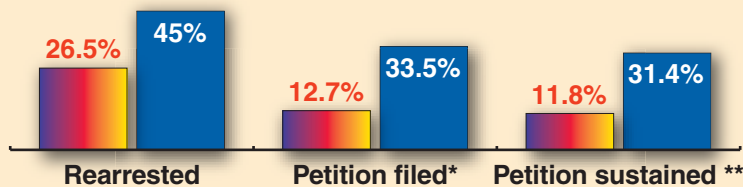
live with offenders together in dialogue, and she denies it is too traumatic for victims. “These are people who have gotten up and lived through abuse every single day,” she said. “They’re strong.”³²

In a paper written on behalf of the National Resource Center on Domestic Violence, James Ptacek, chairman of the sociology department at Suffolk University in Boston, and Loretta Frederick, senior legal and policy adviser for the Battered Women’s Justice Project in Minneapolis, suggest that restorative justice could be a promising outlet for domestic violence survivors. But they warn that many programs focus not on the victims but the offenders. They point to Pennell’s programs as more

Study: Conferencing Cut Juvenile Crime

About 27 percent of 102 Alameda County, Calif. (Oakland), juvenile offenders who completed restorative community conferencing from 2012 through 2014 were rearrested, compared with 45 percent of county offenders in the regular juvenile justice system. Restorative conferencing allows offenders to meet with community members and victims to create a plan to repair any harm done.

Outcomes for Arrested Juveniles



* Offender charged in juvenile court.

** Offender found guilty in juvenile court.

■ Completed Restorative Conferencing
■ Handled by Juvenile Justice System

Source: "Scaling Restorative Community Conferencing Through a Pay for Success Model: A Feasibility Assessment Report," National Council on Crime and Delinquency, March 2015, p. 11, <http://tinyurl.com/h7jv542>

promising, but also say much more research needs to be done.³³

Some proponents of restorative justice say it potentially could be used in sexual assault cases, including on university campuses, but others are skeptical.

In a study of youths charged with sexual offenses, Australian researchers found a lower rate of reoffending among those who participated in a restorative justice conference than those who went to court. However, researchers also attributed this result to the fact that the youths who were sent to court instead of to restorative justice programs often had a criminal record.³⁴

Mary Koss, a professor of gender and women's studies at the University of Arizona, examined the RESTORE program in Pima County, Ariz. — the first restorative conferencing program for sexual assault cases — and found a high number of female victims consented to meet with their offender, but typically only if the offender accepted responsibility. Koss provided "cautious optimism" for the program.³⁵

But Cynthia Alkon, a professor at Texas A&M University School of Law, worries that restorative justice could mean the victim will have "a lot less power, and there is concern about them being revictimized in the process." She also questions whether all restorative justice facilitators are properly trained to handle sexual assault cases.

Alkon says not all sexual assault cases are appropriate for restorative justice. "The whole theory underlying restorative justice is the offender should take responsibility and repair the harm that was caused," she says. "If they're not taking responsibility and denying they did anything, that's not [a case] for a restorative justice process."

All practitioners agree restorative justice only works if the offender takes responsibility and the victim wants to participate in the process. Some, like the Criminal Justice Legal Foundation's Rushford, are hesitant to use restorative justice for any type of violent crime unless the offender remains in confinement. He says the victim can obtain some closure, but in other cases —

particularly sexual assault — the offender never treats the victim as a human and could try to manipulate the system.

DeLisi maintains that restorative justice methods are "counterproductive" in serious crimes, including sexual assault cases, where you would be reluctant to expose victims to their abuser.

"Many [offenders] are really psychopathic, so there's really no interest to engage with the crime victims," DeLisi says. "At best they would go through the process . . . to victimize and humiliate the person involved."

Heather Mac Donald, a fellow at the Manhattan Institute, a conservative think tank in New York City, agrees that restorative justice has little effect on many serious criminals. "There's a lot of therapy happening in Rikers [Island in New York City], and it's had zero effect," she says. "So I'm not sure that this would do much different."

Can restorative justice address racial disparities in the criminal justice system?

Minority groups and others have been demanding that officials address ongoing racial disparities in the U.S. justice system.

According to The Sentencing Project, a Washington-based nonprofit that advocates for criminal justice reform, more than 60 percent of people in state and federal prisons are racial and ethnic minorities. One in 10 prisoners is a black male in his 30s, and a disproportionate number of minorities have contact with the juvenile justice system, it said.³⁶ African-American students also are suspended or expelled from school at three times the rate of white students, according to the U.S. Department of Education.³⁷

Restorative justice proponents say their methods could help resolve these disparities, which some attribute to the failure of the justice system to address underlying problems in communities where systemic crime occurs. Other say the disparity is the result of racial targeting by law enforcement agencies.

“Those communities are our society’s most harmed communities by the societal structure that exists,” Maze-Rothstein in Massachusetts says.³⁸ “So an empowerment of those communities through restorative justice actually has great value,” because it allows those communities — rather than the courts — to help heal victims and offenders and determine how to make reparations.

Fania Davis, co-founder and executive director of Restorative Justice for Oakland Youth, which develops school-based programs, says the process can help minority youths in high-crime areas recover from psychological trauma and end cycles of criminal behavior.

“Trauma is pervasive in a city where the greatest cause of death is homicide . . . , in a city where so many of our youth, particularly youth of color, have incarcerated parents,” she says. “We are dealing on a day-to-day basis with . . . racism, incarceration, substance abuse in families and communities, . . . sexual violence, domestic violence. It’s just pervasive. The harm is everywhere, everywhere you turn.”

Davis says the circle process — which places the offender, victims and community leaders in a circle to discuss the crime, its effects and potential resolution — combined with treatment by clinical therapists, helps heal trauma for both offenders and victims and sets offenders on a better path.

Zehr of Eastern Mennonite University says the problem of stereotyping ethnic minorities is passed on through generations. The New Zealand model, he says, was crafted to address law enforcement’s treatment of minority Maori communities — the indigenous group that makes up about 15 percent of the nation’s population. Under this model, social workers “believe if you label people by getting them in the system, they are more likely to be that,” Zehr says. “So this was an attempt to address that by both keeping [the Maori population] out of the system and using a conference that would allow culturally appropriate processes.”

Andrea Brenneke, director of Seattle’s Restorative Justice Initiative, helped organize a restorative circle for a high-profile 2011 case involving a Seattle police officer’s killing of a Native American woodcarver. The case exposed tensions between law enforcement and the Indian community, and the meetings with the family and law enforcement officials established a process to resolve differences with the grieving family and the community and to change police behavior.³⁹

“Restorative justice wasn’t designed to focus on racial inequities” in the United States, says David R. Karp, sociology professor at Skidmore College. But he adds, “The potential of restorative justice to address those issues is huge.

“First of all, people from poor segregated black communities don’t want to be involved in the criminal justice system. They see it as danger. They won’t report crimes, they won’t be witnesses,” he says. “If they felt like they would be treated fairly if they were given the alternative,” it could work.

Baliga, from Impact Justice in Oakland, agrees that minority communities distrust the police and the courts. “What’s interesting to me is that most crime is intraracial. When you attend to kids of color as offenders, you also must be attending to kids of color who have been victimized,” she says. “They also are the same crime victims who think nobody bothers [about them].”

No researchers have yet studied restorative justice’s ability to alter racial disparities, largely because the method isn’t widely practiced, many legal experts say. Nevertheless, others say that the use of restorative justice cannot reverse the racial disparities noted in crime statistics.

Minorities are disproportionately imprisoned because of policing practices that discriminate against minorities, says Griffith University’s Wood, likening their treatment to apartheid. “Nobody thinks the stop-and-frisk policy in New York isn’t racist,” he says. “And much of the literature says African-Americans and

Latinos aren’t using drugs more — they are policed” at higher rates than whites.

While Wood supports restorative justice practices, he says racial disparities can only be reduced through structural changes in the U.S. justice system.

The Manhattan Institute’s MacDonald says racial disparities exist in the judicial system because minorities are the ones committing the crimes. Overall, 28 percent of the FBI’s “known offenders” are African-American, significantly above the black population share, according to FBI data.⁴⁰

DeLisi of Iowa State University agrees. “There’s huge criminal justice disparities because there are huge disparities in offending,” he says. “Look at homicide and victimization. Blacks are well more represented than whites. So that will have an effect on prison statistics as well.” ■

BACKGROUND

Ancient Circles

Many indigenous groups and ancient cultures — such as Native Americans, First Nation people of Canada, Native Hawaiians and African tribal councils — used a holistic approach to justice. The victim, offender, community and family members sat in a circle and identified the culprit, discussed the wrongdoing and determined how to repair the harm or make amends.

In ancient times, minority groups within larger societies — such as in the Russian or Ottoman empires — used the circle because they did not trust the judicial system. Many tribes today continue to employ this practice, which experts consider the basis for restorative justice.⁴¹

Some restorative justice methods also incorporate Christian ideals, which preach forgiveness and stress giving “sinners” a

second chance to reform their behavior. In many faiths, especially among Protestant groups such as the Moravians, that meant congregations in the 17th and 18th centuries used communal pressure to punish the wayward and to discourage repeat offenses.

But outside the church, Western nations relied on a far more punitive approach to crime that focused on punishing the offender, with incarceration in prisons becoming increasingly important in the 19th and early 20th centuries.

In the United States in the tumultuous 1960s and '70s, states expanded a "get-tough" approach to crime, particularly youth crime, despite complaints that such a policy ignored more humane and effective responses to crime.⁴²

In the 1970s a variety of approaches to restorative justice quietly emerged in Canada and the United States. A judge in Ontario in 1974 conducted the first recorded victim-offender mediation program. Rather than sentence two young men, ages 18 and 19, to prison or probation for vandalizing residents' homes while intoxicated, the judge agreed to a plan by the probation officer, Mark Yantzi, and a volunteer with the Mennonite Central Committee — a relief and peace agency founded by the Mennonite Church — to have the men face their 22 victims. The young men ultimately listened to the victims, apologized and paid restitution. Two years later, Yantzi founded a non-profit organization to further promote such meetings.⁴³

Restorative justice practitioners credit American psychologist Albert Eglash with coining the term "restorative justice" in a series of papers in the 1950s and again in 1977.⁴⁴ A year later, a small halfway house for former Indiana prisoners burned down. Rather than rebuild the house, state officials asked Zehr, who was then the house's director, to work with prisoners and their victims to find reconciliation.

Zehr wrote a handbook in 1980 on his model of restorative justice, encour-

aging its further use as an alternative to traditional judicial processes. He followed a decade later with *Changing Lenses: A New Focus for Crime and Justice*, further detailing restorative tenets.

Meanwhile, a form of restorative justice was used to address national crimes. In 1980, the U.S. Congress established a commission to investigate the legacy of Japanese internment camps that operated during World War II, which was followed by an apology and reparations during the Reagan administration.

In 1981, a sheriff in Batavia, in upstate New York, began a restorative justice program called Genesee Justice, which offered community service sentencing, victim assistance and victim-offender mediation.⁴⁵

But as the crack cocaine epidemic wreaked havoc on urban communities and sent homicide rates soaring across the United States in the late 1980s, the trend toward stricter penalties and minimum-sentencing standards gained momentum in the United States. At that time, restorative methods were being embraced more readily overseas and in Canada.

In 1989, New Zealand approved the Children, Young Persons and Their Families Act in response to concerns among Maori communities that increasing numbers of their children were being removed from their families when accused of misbehaving and placed in state residential facilities. The statute introduced the concept of family group conferencing to replace youth courts in most cases.⁴⁶

Also in 1989, Australian sociologist John Braithwaite published *Crime, Shame and Reintegration*, proposing that offenders be dealt with through a process called "reintegrative shaming," which offers respect for the offender and helps them reenter the community. The following year, John MacDonald, an adviser to the New South Wales Police Service, started a police-run conferencing program in several jurisdictions in Australia.⁴⁷

Another method of restorative justice drew on the use of circles by the First

Nations people of Canada. In 1992, Judge Barry Stuart presided over a case in Mayo, a Yukon Territory village, involving a 26-year-old who had approached a police officer with a bat. The youth had many criminal convictions and a long history of alcohol abuse.

Rather than sentence him, the judge modified the courtroom to create a circle with 30 chairs for the judge, lawyers, police, First Nations officials and members, probation officer, the offender and others. Community members pledged to help the offender and his family deal with substance abuse. The offender agreed to a treatment program, and his family agreed to help him.⁴⁸

Evangelical Push

Chuck Colson, a former top aide to President Richard M. Nixon, pleaded guilty in 1974 to obstruction of justice related to the break-in at the Democratic National Committee's headquarters at the Watergate complex in Washington, D.C. After serving seven months in Alabama's Maxwell Prison, Colson started the Prison Fellowship in 1976 to create a ministry outreach program for prisoners. The program advocates for a restorative justice approach, promoting it as "an important contemporary expression of biblical justice" and forgiveness.

Colson would later recruit the assistance of Pat Nolan, a former California Assembly member, who was indicted on April 27, 1993, on six counts, including racketeering, conspiracy, extortion and money laundering. Nolan served 33 months in prison, then joined Colson to lead a branch of the Prison Fellowship called the Justice Fellowship, which focuses on criminal justice reform.⁴⁹ (By 1998, Nolan was advocating restorative justice along with a lead researcher and Prison Fellowship colleague, Daniel W. Van Ness.⁵⁰)

As restorative justice overseas began showing promising results, and as criticism

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Chronology

1974-1994

Restorative justice is defined and modeled.

1974

A judge in Ontario conducts the first victim-offender mediation program in Canada.

1976

Chuck Colson, an ex-aide to President Richard M. Nixon and former federal prisoner, starts Prison Fellowship rehabilitation program.

1977

American psychologist Albert Eglash coins the term “restorative justice.”

1978

Howard Zehr, considered the “grandfather” of the restorative justice movement, administers a version of restorative justice for halfway-house prisoners and their victims.

1981

The sheriff in Batavia, N.Y., founds a restorative justice program — among the first such experiments in the United States.

1989

New Zealand offers family group conferencing as alternative to youth court. . . . Australian sociologist John Braithwaite introduces “reintegrative shaming,” which restores offenders to the community.

1992

A judge in Canada’s Yukon Territory conducts a peace circle, an ancient form of restorative justice.

1994

Minnesota’s Department of Corrections hires the state’s first restorative justice planner. . . . American Bar Association endorses use of victim-offender mediation.

1995-2012 *The movement expands worldwide.*

1995

The National Organization for Victim Assistance endorses restorative justice concepts. . . . A South African Truth and Reconciliation Commission, a form of restorative justice, begins meeting to address civil rights abuses during the apartheid era.

1996

U.S. Attorney General Janet Reno asks Justice Department to look into community-based approaches for dealing with crime.

1997

National Institute of Corrections begins training sessions on restorative justice.

1998

Thames Valley Police starts the United Kingdom’s first restorative justice program.

2000

A Vermont statute requires restorative justice principles to shape how the criminal justice system handles offenders and victims.

2001

New Zealand experiments with a court-referred restorative justice program.

2002

United Nations endorses basic principles of restorative justice. . . . An assistant U.S. attorney writes two reports arguing that elements of New Zealand’s restorative justice process for juveniles should be incorporated in the U.S. juvenile justice system.

2004

The first Truth and Reconciliation Commission is formed in the United

States to deal with the 1979 killings of civil-rights activists by Ku Klux Klan members in Greensboro, N.C.

2006

Oakland, Calif., school district pilots restorative justice program to address discipline problems.

2007

European Commission issues guidelines for mediating criminal cases.

2013-Present

Growing U.S. prison population spurs reform efforts.

2013

Justice Department Inspector General Michael Horowitz writes of a “growing crisis in the federal prison system” due to overcrowding and escalating costs. . . . Attorney General Eric Holder calls for an end to zero tolerance policies in schools, spurring school districts to turn to restorative justice programs.

2014

Police killings of young African-American men lead civil-rights advocates to call for a national truth and reconciliation commission.

2015

Rep. Robert Scott, D-Va., introduces the Youth Promise Act aimed at keeping youths out of prison. . . . Congress discusses eliminating mandatory minimum-sentencing requirements for drug offenders. . . . Sociology professor David Karp starts a national discussion on using restorative justice on college campuses to address sexual assault cases, but the issue is controversial.

Restorative Justice Gets a 'P' for 'Promising'

"Students are learning what conflict resolution really means."

When school administrators across the nation pull misbehaving students out of the classroom, an increasing number of them are not suspending the students but are having them meet with "justice committees" or in "peace circles" to discuss with their peers, teachers and counselors the effects of their behavior, face those they have harmed and talk about how to change.

"Students are learning what conflict resolution really means, as well as critical social-emotional skills," said lawyer Thena Robinson-Mock, project director of the Ending the Schoolhouse to Jailhouse Track campaign of the Advancement Project, a Washington-based national civil-rights organization. "They're developing empathy for their peers and building trust and understanding. Those are essential skills."

But restorative justice should not be used for more serious infractions, say critics, who defend traditional discipline when circumstances warrant.

Kevin Ahern, president of the Syracuse Teachers Association in New York state, raised this concern after a 2014 newspaper article on the school board's use of restorative justice. "Educators are not asking for harsh punishments for minor infractions" when they suspend or expel students, Ahern wrote in a letter to the editor, "but rather meaningful consequences for dangerous, violent and seriously disruptive behaviors that put students and staff at risk and make quality instruction impossible."¹

States have been requiring schools to find alternatives to traditional disciplinary methods in response to the Obama administration's 2013 call to end what it termed the school-to-prison pipeline. The administration said school districts needed to reduce the skyrocketing use of suspensions and expulsions and find ways to keep kids in school. Nationwide, about 3.5

million elementary and secondary school students were suspended during the 2011-12 school year, most for minor offenses. Another 130,000 were expelled, and 260,000 were referred to law enforcement agencies.²

The rates for African-Americans were three times that of whites — a disparity the Justice and Education departments sought to rectify by asking schools to use restorative justice programs and other alternatives.³

The Oakland, Calif., school district pioneered the use of restorative justice in public schools after the U.S. Office of Civil Rights in 2004 began probing the district's discipline policies for racial discrimination.⁴ The nonprofit Restorative Justice for Oakland Youth (RJOY) piloted a program at one middle school during the 2006-07 school year that helped reduce suspension rates by 87 percent and eliminated violence, racial disparity and teacher attrition, according to Fania Davis, co-founder and executive director of RJOY.

RJOY expanded the program to about 30 schools in Oakland with a budget of more than \$2 million from state and local sources and 40 trained district employees, called restorative practice facilitators, Davis says.

Damon Smith, a former Oakland student who had been suspended more than 15 times before the new practices took root, reported in 2013 that peace circle sessions had helped him change his behavior. "I didn't know how to express emotions with my mouth. I knew how to hit people," he said. "I feel I can go to someone now" and work things out.⁵

A September 2014 report showed that school suspensions among all races in Oakland declined by 22.6 percent between the 2011-12 and 2013-14 school years, including a 40 percent drop for African-American students accused of "disruption/willful

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mounted over the U.S. criminal justice system's failure to address increasing crime, some American officials advocated more pilot restorative justice programs. A victims' rights movement also called attention to the needs and concerns of victims in the judicial process.

In 1994, the American Bar Association endorsed the use of victim-offender mediation.⁵¹ The following year the National Organization for Victim Assistance endorsed "restorative community justice."⁵²

While Colson was developing his ministry fellowship, a not-for-profit community agency in Minnesota had begun to advocate for restorative justice as public

policy. Eventually, a position was created within the state Department of Corrections focusing on restorative justice.⁵³

Kay Pranis, the department's restorative justice coordinator at the time, helped start "circle sentencing" in 1995, modeled on the Canadian approach. In 1996 she created the first community-based circle sentencing project to work with both juveniles and adults. Several rural and urban communities developed variations of victim offender mediation, group conferencing, reparative boards and peacemaking circles to work in conjunction with the justice system, while prison staff incorporated these methods when working with incarcerated individuals.⁵⁴

Minnesota's programs spurred communities in Colorado, Florida, Oregon and Pennsylvania to follow suit.

Increasingly, however, judges, prosecutors, probation officers and juvenile justice professionals nationwide became frustrated over contradictory government directives on young offenders. First, in 1974, Congress had passed a law creating the Office of Juvenile Justice and Delinquency Prevention to oversee how communities were charging and rehabilitating youths. Then in 1994, as urban crime was spiking amid an epidemic of crack cocaine, Congress passed many punitive measures, including the landmark Violent Crime Control and Law Enforcement

defiance.” Davis also has helped start programs in other school districts throughout California.⁶

Pittsburgh Public Schools in Pennsylvania began a restorative justice program in 2014.⁷ That same year, Chicago Public Schools listed restorative justice as a discipline alternative in its student code of conduct.⁸

Early reports are encouraging. In Los Angeles, where the school board mandated that by 2020 every school use restorative justice as an alternative to conventional discipline, suspension days dropped from 74,765 to 8,351 between 2010 and 2015.⁹ Two other studies showed promising results elsewhere.¹⁰

Students of Michael Seng, a professor at John Marshall Law School in Chicago, run peace circles in several city schools to address misbehavior, ranging from truancy to bullying and fighting.

But restorative justice has its critics. Paul Sperry, a former media fellow with the Hoover Institution, a conservative think tank connected to Stanford University, called restorative justice “a touchy-feely” method. “Yes, other large urban school districts are reporting fewer suspensions since adopting the nonpunitive approach,” he said. “But that doesn’t necessarily mean fewer infractions.”¹¹

Chicago public school teachers said many schools lack a dedicated “peace room” where students can calm down after being removed from a class.¹²

Seng says Chicago restorative justice facilitators have had to gain the support of the city’s law enforcement agencies, which were skeptical of the method’s ability to stem crime.

Asked if the practice is working, Seng says, “Anecdotally, we are real optimistic. But to put it down on paper? I’m not sure we can make the case yet.”

— Christina L. Lyons

¹ Kevin Ahern, “Syracuse Teachers’ Union: ‘Restorative justice’ is fine, but what about immediate safety?” Letter to the Editor, *The Post-Standard*, April 8, 2014, <http://tinyurl.com/jmt3rhw>.

² “Civil Rights Data Collection, Data Snapshot: School Discipline,” U.S. Department of Education Office for Civil Rights, March 21, 2014, pp. 2 and 6, <http://tinyurl.com/kls2ajo>. For more information, see Ann Farris Rosen, “School Discipline,” *CQ Researcher*, May 9, 2014, pp. 409–432.

³ “Civil Rights Data Collection,” *ibid.*; “Resource Guide for Superintendents,” U.S. Department of Education, Office of Secondary Education, July 2015, <http://tinyurl.com/ht8tyfz>; and “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” Civil Rights Division, U.S. Department of Justice and Office for Civil Rights, U.S. Department of Education, Jan. 8, 2014, <http://tinyurl.com/j4pvklt>.

⁴ Jessica Chasmar, “Oakland schools ban suspensions for defiant behavior following civil rights probe,” *The Washington Times*, May 15, 2015, <http://tinyurl.com/jp2rod7>; “Agreement to resolve Oakland Unified School District, OCR Case Number 09125001,” Office for Civil Rights, U.S. Department of Education, Sept. 27, 2012, <http://tinyurl.com/hsxox4c>.

⁵ Patricia Leigh Brown, “Opening Up, Students Transform a Vicious Circle,” *The New York Times*, April 3, 2013, <http://tinyurl.com/zmdpwx7>.

⁶ “Restorative Justice in Oakland Schools: Implementation and Impacts 2014,” Oakland Unified School District, September 2014, <http://tinyurl.com/jqthpta>.

⁷ Joshua Wachtel, “Pittsburgh in groundbreaking project to make schools safer,” *Restorative Works*, Oct. 15, 2014, <http://tinyurl.com/zwdguog>.

⁸ “CPS Proposes Revisions to Student Code of Conduct to Further Reduce Suspensions and Keep Students Engaged in the Classroom,” press release, Chicago Public Schools, June 26, 2014, <http://tinyurl.com/j6jy323>.

⁹ Christine Armario, “In LA, policy shift yields decline in school suspensions,” *The Associated Press*, Jan. 10, 2015, <http://tinyurl.com/jeweozs>.

¹⁰ “Improving School Climate: Evidence from Schools Implementing Restorative Practices,” International Institute for Restorative Practices, 2014, <http://tinyurl.com/j7w7lhe>; Anne Gregory *et al.*, “The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity in School Discipline,” *Journal of Educational and Psychological Consultation*, Nov. 4, 2014, <http://tinyurl.com/h84b9lf>.

¹¹ Paul Sperry, “How liberal discipline policies are making schools less safe,” *New York Post*, March 14, 2015, <http://tinyurl.com/pv9m8up>.

¹² Juan Perez Jr., “Teachers complain about revised CPS discipline policy,” *Chicago Tribune*, Feb. 25, 2015, <http://tinyurl.com/jnlq7q>.

Act, which put 100,000 cops on the street, expanded prisons and tightened sentencing guidelines.⁵⁵

In the same year, Justice Department’s Office of Juvenile Justice created the Balanced and Restorative Justice Project, designed to help communities find ways to achieve a balanced approach to holding juveniles accountable while rehabilitating them.⁵⁶ A guidance document prepared by the office stated: “The restorative justice focus on crime as harm, and justice as repairing the harm, offers a vision that elevates the role of crime victim, yet views victim, offender, and community as equal customers of juvenile justice services.”⁵⁷

In 1996, U.S. Attorney General Janet Reno called for the Justice Department to look into community-based approaches.⁵⁸ And the following year, the National Institute of Corrections undertook demonstration projects and training sessions on restorative justice methods.⁵⁹

Several community programs focused on restorative justice in cases involving young offenders or adult offenders accused of relatively minor, nonviolent crimes or with first-time offenders. The process “has shown it can be an appropriate total or partial substitute to incarceration for felony offenders,” said Zehr, then associate director of the Parents and Children

Together (PACT) Institute of Justice, a nonprofit family-intervention program based in Valparaiso, Ind., and Mark Umbreit, PACT’s executive director and cofounder.⁶⁰ Other researchers began to look more closely at its effect on victims as well as offenders and their subsequent behavior.

Restorative justice gained further legitimacy in 2002 when Minnesota’s Supreme Court held that the District Court did not abuse its discretion by agreeing to a sentencing circle recommendation to grant an offender a stay of adjudication if she pleaded guilty to wrongfully obtaining public assistance by lying about her income.⁶¹

Truth and Reconciliation Panel Sought

"It's an idea whose time has come," says its leading proponent.

Fania Davis has suffered the effects of racial violence since she was 15, when two close friends were killed in the white supremacist bombing of a Birmingham, Ala., Baptist church in September 1963. The bombing marked a turning point in the civil rights movement and helped lead to the Civil Rights Act of 1964.

Six years later, Davis says, police broke into her home and shot her husband because of their support for the Black Panthers — a revolutionary African-American nationalist group. Since then, she says, a pattern of racial violence and discrimination has continued, something she believes needs to be addressed through a form of restorative justice known as a truth and reconciliation commission. Such a panel could be similar to one formed in 1995 in South Africa to deal with human rights abuses that had occurred during apartheid.¹

"It's an idea whose time has come," says Davis, executive director of Restorative Justice for Oakland Youth, which provides training and support for practitioners nationwide. She also is a civil-rights lawyer and the sister of Angela Davis, the 1960s radical who has waged numerous battles on behalf of the oppressed.

A series of high-profile police killings of young African-American men in 2014 and '15 has sparked outrage among minority communities nationwide.² Some type of truth commission, Davis says, might enable open discussions within communities affected by those killings, such as Ferguson, Mo., and Baltimore, where racial violence has led to riots.

Davis is joining forces with restorative justice activists across the country to discuss how to undertake such an initiative. These activists include Margaret Burnham, professor at the Northeastern University School of Law in Boston, Bryan Stevenson, founder and executive director of the Equal Justice Initiative, a nonprofit in Montgomery, Ala., that provides legal services to indigent defenders and prisoners; and Howard Zehr, who helped found the restorative justice movement and wants to see a commission formed.

Davis and her allies have not worked out how a commission

would operate, including such key details as its size, scope of operation and powers. But Davis says she foresees a commission that is national in scope and would use "healing circles" in Ferguson and other places. The circles — a restorative justice method often used in schools and communities to address specific crimes — would bring together law enforcement, victims, local leaders and community members to talk about the incidents, their causes and effects and ways to make amends and build new relationships.

"Not only will people share stories of either causing harm or being harmed at local levels in these circles, but they also will come up with local ideas for action," such as perhaps a requirement that police live in the communities they serve, Davis says.

Davis concedes she hasn't seen the "peace circle" used to redress historical harms, but says dozens of truth and reconciliation commissions deployed worldwide are models. Such commissions typically do not conduct trials or cross-examine witnesses; instead, they provide an official history of incidents and offer recommendations of how to make reparations.³

The South Africa Truth and Reconciliation Commission invited victims of human rights violations to testify about their experiences and offered amnesty from prosecution to offenders who confessed publicly. The commission, formed by the government, traveled around the country to hear testimony.

"Stories of abuse were publicly shared for the first time," Davis says of the commission. "The beauty of that process in South Africa was that everyone tuned in. . . . That's what I'd like to see in this country."

In 2004 a private organization formed the Greensboro Truth and Reconciliation Commission in North Carolina, the first such commission in the United States, many years after white supremacists had killed five anti-Klan demonstrators in Greensboro on Nov. 3, 1979. The commission was charged with determining the "context, causes, sequence and consequences" of the incident

International Momentum

The Thames Valley Police was the first organization in the United Kingdom to use restorative justice to deal with young offenders.⁶² In the late 1990s the former chief constable, Charles Pollard, helped facilitate the first conference at the police station in Aylesbury to deal with two 16-year-olds who had taken a woman's car on a joyride.

"The offenders were hugely remorseful. They were appalled by what they'd done," Pollard said. From there, restora-

tive justice programs spread to the rest of the country.⁶³

In 1995, South Africa devised a Truth and Reconciliation Commission to address human rights abuses that occurred during apartheid.⁶⁴

Restorative justice principles — the understanding that justice should focus on repairing the harm done in a crime and that the people most affected by the crime should be able to participate in its resolution — began to appear in statutes around the world. In 2001, New Zealand piloted a court-referred restorative justice program that extended to

adult cases.⁶⁵ In subsequent years several statutes were amended to require that restorative justice be considered at sentencing and parole release. New Zealand schools also offer restorative justice.⁶⁶

The United Nations did not define restorative justice when it encouraged its use by member states in 2002, but it endorsed many of the same basic principles.⁶⁷ The following year the U.N. Office on Drugs and Crime published a handbook to help member states craft their own programs.⁶⁸

In 2007 the European Commission took a step toward a restorative concept

and recommended ways to repair harm done to the wider community, such as an acknowledgment of the tragedy by the city and public apology by the offenders.⁴

Davis sees a similar role for a national truth commission. Besides hearing grievances and promoting reconciliation, the panel might establish a national slavery museum and a truth and reconciliation center to keep the work ongoing, she says. “It takes more than a few years to undo more than 500 years of oppression,” she says.

Meanwhile, Burnham and her students are working to uncover the details behind hundreds of killings during Jim Crow — an 80-year period after Reconstruction when state laws enforced racial segregation and during which nearly 4,000 African-Americans were lynched.⁵

Melissa Nobles, dean of MIT’s School of Humanities, Arts, and Social Sciences, and her students are working with Northeastern to compile data of racially motivated homicides in former Confederate states between 1930 and 1954. As they find answers, they share the details with surviving family members to help heal ongoing pain. “The ramifications of these murders have been far reaching,” Noble said.⁶

Zehr says he supports the effort to create a commission in hopes it will lead to racial healing. Offenders in the criminal justice system, he says, often feel labeled as incorrigibles, particularly those in minority communities — an issue addressed in Michelle Alexander’s 2012 book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

“Rather than rely on race, we use our criminal justice system to label people of color ‘criminals’ and then engage in all the [exclusionary] practices we supposedly left behind,” Zehr says. “Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African-Americans.”

— Christina L. Lyons



Getty Images/The Boston Globe/Suzanne Kreiter

Margaret Burnham, a law professor at Northeastern University in Boston, is working with some of her students to investigate hundreds of racially motivated killings that occurred during the Jim Crow era in an attempt to bring closure for victims’ families. The effort is part of the healing techniques used in restorative justice.

¹ Fania Davis, “This Country Needs a Truth and Reconciliation Process on Violence Against African Americans — Right Now,” *YES! Magazine*, Dec. 5, 2014, <http://tinyurl.com/oj729mj>.

² Jason Hanna, Josh Levs and Ben Brumfield, “Police: Teen raised gun before officer killed him near Ferguson,” CNN, Dec. 26, 2014, <http://tinyurl.com/o98nlf2>; “Timeline: Freddie Gray’s arrest, death and the aftermath,” *The Baltimore Sun*, April 12, 2015, <http://tinyurl.com/pps8ees>; and Kim Bellware, “Chicago Releases ‘Chilling’ Video of Cop Shooting Teen 16 Times,” *The Huffington Post*, Nov. 25, 2015, <http://tinyurl.com/z4nxdvx>. For background, see Peter Katel, “Racial Conflict,” *CQ Researcher*, Jan. 8, 2016, pp. 25–48.

³ For background see Jina Moore, “Truth Commissions,” *CQ Researcher*, Jan. 1, 2010, pp. 1–24.

⁴ “Greensboro Truth and Reconciliation Report: Executive Summary,” May 25, 2006, <http://tinyurl.com/gupd54o>.

⁵ “Lynching in America: Confronting the Legacy of Racial Terror, Report Summary,” Equal Justice Initiative, 2015, <http://tinyurl.com/pu8gqwd>.

⁶ “3 Questions: Melissa Nobles on advancing racial and restorative justice: Head of political science at MIT says understanding the past is a source for social innovation in our own time,” *MIT News*, April 6, 2015, <http://tinyurl.com/hjatf3o>.

when it issued new guidelines for implementing mediation in crime cases. But in 2012, the commission adopted a directive giving all victims the right to review a decision not to prosecute and providing for safeguards when choosing restorative justice.⁶⁹ Belgium was already modeling a restorative justice method entailing family conferencing for young offenders.⁷⁰

Meanwhile, in the United States, the New Zealand program had caught the eye of justice groups and law enforcement officials. Many state statutes began to endorse — but not mandate — restorative

methods, primarily for young offenders or those arrested or convicted of relative minor, nonviolent offenses.⁷¹ One exception was the Vermont General Assembly: In 2000 it had passed a statute requiring that restorative justice tenets be used to shape criminal justice.⁷²

In 2002, an assistant U.S. attorney had written two reports stating that the New Zealand practice showed promise for use in the U.S. criminal justice system.⁷³

Law enforcement agencies and social workers tried restorative methods with some violent criminal cases. In Massa-

chusetts, the victim-offender dialogue method was used in 2006 when a woman met with two men accused of killing her son Joel. The mother reported, “Sitting in that dialogue helped me feel that Joel’s life . . . mattered,” and she said she would hold the young men to a commitment to live different lives — which they reportedly did after they were released from prison in 2012.⁷⁴

Promoters of restorative justice heightened their efforts after U.S. Inspector General Michael E. Horowitz in 2013 noted a “growing crisis in the federal prison system” due to overcrowding

and told the U.S. attorney general that the rising costs of the judicial system were eating up the Justice Department budget.⁷⁵

The Justice Department encouraged communities and states to explore alternatives — naming restorative justice as a potential solution, particularly for youthful offenders. Many communities and schools responded to the call.

“I’ve never seen things turn around so fast,” Pranis says. “Suddenly you

meet state and federal demands that schools end zero-tolerance policies. (See sidebar, p. 132.)

Many schools overseas are using the approach as well. And more communities worldwide are eyeing the practice and building new programs. Several legal experts, victims’ rights groups and social workers are debating the feasibility of using restorative justice approaches in domestic and sexual assault cases in the United States. Restorative justice

after producing cost savings from reduced incarcerations. People who participated in the program were 58 percent less likely to reoffend compared with offenders processed through the justice system, according to an evaluation of the project.⁷⁷

Steve Cook, president of the National Association of Assistant U.S. Attorneys, disagrees that the thousands of drug traffickers released from federal prisons last year were low-level offenders, or that restorative justice might offer an alternative to incarceration.

“Because we are dealing with high-level offenders, not low level, we think the way the criminal justice system is dealing with it is correct — minimum penalties for significant drug traffickers.”

He continues: “We all would like an alternative that works. But we are interested not only in incapacitating a person but in sending a message.”

Cook says the most appropriate use for a restorative justice program would be at the state level with very low-level offenders, or before releasing high-level offenders from prison into the community.

Meanwhile, Zehr is working with Davis of Restorative Justice for Oakland Youth and others to use restorative justice to solve endemic racial violence. They want to form a truth and reconciliation commission to address the violence against minorities in the United States. (See sidebar, p. 134.)



Getty Images/Toronto Star/Marta Iwanek

Cathy Stronghearted Woman listens during a drum circle at the Walk for Reconciliation last May in Toronto. The circle, a restorative justice practice first used in ancient indigenous cultures, is designed to promote reconciliation between Aboriginal peoples and other Canadians.

had the federal government . . . speaking out” for restorative justice. “But by that time, communities were already in front of that.” ■

CURRENT SITUATION

In Communities

School systems across the country are expanding the use of restorative justice practices as local officials try to

programs in Australia recently have been expanded to address sexual assault and domestic violence cases — a move that has generated some criticism.⁷⁶

Meanwhile, as the Obama administration releases thousands of so-called “low level” drug offenders in an attempt in part to relieve overcrowding, corrections officers and social workers are debating whether restorative justice could be a feasible alternative to prison.

Seattle has established a pre-booking diversion pilot program, called the Law Enforcement Assisted Diversion (LEAD), for those who have committed low-level drug and prostitution crimes. Initially funded by the Ford Foundation, the project gained state financial support

On Campuses

Skidmore College’s Karp is urging a national discussion among practitioners and universities about using restorative justice practices to address campus sexual assaults, a problem that is receiving growing national attention. A committee of the American Bar Association also is looking into the idea.⁷⁸

The Justice Department reported that sexual assault on college and university campuses increased from 2,200 in 2001

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Could restorative justice reduce U.S. incarceration rates?



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Evidence of restorative justice's impact on incarceration rates is inconclusive, but the experience with juveniles is instructive. Youth incarceration has dropped over the past decade in the United States. Can we attribute this decrease solely to restorative justice practices? Certainly not. Approaches such as family group conferencing and peace circles are far too infrequently and inconsistently applied across the country to assess their impact.

Nevertheless, the usefulness of family group conferencing is evident in New Zealand, where it was legislated in 1989 for child welfare and juvenile justice. Since the adoption of family group conferencing, the rate of young people held in custodial facilities has fallen by at least two-thirds and is at a level far lower than in the United States. The question is not whether restorative justice can reduce youth incarceration but rather how we can leverage this approach to keep young people connected to their families, schools and communities.

Conferencing cannot stand alone. Its ability to reduce reoffending must be seen within the larger context of reforms that include diversionary policing, shorter sentences and better support for families.

Moreover, the New Zealand experience shows that applying the lowest possible level of intervention also prevents youths from progressing further in the legal system. This comprehensive approach is in line with the recommendations of the National Juvenile Justice and Delinquency Prevention Coalition in the United States, as well as with initiatives that encourage investment in community-based interventions over costly detention centers.

Restorative justice practice is best construed as a meta-strategy rather than as an intervention that stands on its own. Accordingly, even a small positive effect is notable. To fully ascertain its impact on incarceration levels, we need to take into account family and community engagement at different life stages by the various systems. For instance, family group conferencing in child welfare cases can avert problems involving safety and wellbeing that could lead to later offending by a juvenile.

In trying to protect children, we have learned that family group conferencing promotes the reunification of families, especially for African-American and Hispanic children. These early efforts at stabilizing children's lives can potentially reduce their contacts with the legal system, increase the children's sense of fairness in how the system makes plans regarding their lives and educate them about how to engage responsibly in their communities.



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While restorative justice has many merits, reducing incarceration rates is not one of them. Restorative justice approaches generally include meetings between victims, offenders and other parties, where victims are allowed to explain the harms caused to them and offenders are afforded the possibility of making amends for these harms. Research has found that restorative justice probably leads to a small or moderate reductions in reoffending rates and is generally better for victims than conventional justice practices.

Reductions in reoffending would seem to be a good starting point for lowering prison rates, but this is misleading. In the United States and most other English-speaking countries, restorative justice is used largely for youth and/or lesser offenses. On the whole, it is not widely used for more serious offenses, or for repeat offenders likely to commit imprisonable offenses. Unless restorative justice is used more systematically for serious offenders, it will have little ability to reduce prison rates through reduced reoffending.

Another possibility would be to use restorative justice as an alternative to incarceration for first-time or low-risk offenders. Some of the earliest restorative programs were developed in the 1970s as alternatives to incarceration, and many early advocates focused on ways to lower prison populations. Since then, however, restorative justice has been largely institutionalized as part of criminal justice sanctions, not as an alternative to them, and there are few examples today of restorative justice being used as an alternative to incarceration.

Finally, incarceration rates in the United States and elsewhere did not grow due to increases in crime. On the contrary, the United States, Australia, New Zealand and the United Kingdom saw decreases in serious crime over the last two decades, even while prison rates soared.

Prisons did not fill up because people committed more crime. They filled up because of changes in policing practices, sentencing laws and correctional policies. These changes are far beyond the purview of restorative justice or criminal justice interventions in general.

If we seek ways to substantially reduce incarceration, we must confront the historical drivers of prison growth. Restorative justice may have a role to play in this, but to date that role is not yet well-defined. Mass incarceration is a political problem — a consequence of almost four decades of "tough on crime" practices. Without redress of these policies, no type of alternative sanction will make much difference.

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to 3,300 in 2011, and the Department of Education has been investigating dozens of colleges and universities for their handling of the cases. The issue has victims' rights groups and civil libertarians debating the best process for handling sexual assault cases.⁷⁹

"There is a knee-jerk resistance" to restorative justice, Karp says, because many people oppose bringing the victim and perpetrator together. But, he says, often the victim doesn't want the other student arrested and just wants the issue resolved. "In the current climate, it may not be possible. But there is an increasing desire for it."

Meg Mott, a professor of political theory at Marlboro College in Vermont, says using restorative justice in cases of sexual assault is "a no-brainer." If the victim is reluctant to participate or thinks the perpetrator is a danger to society, she adds, "they can go downtown and go to court and get the full force of the law."

But she expects resistance to the approach to continue because of a growing "war on rape." This war, she says, is "creating that same sort of fear, enormous fear," that we saw with the war on drugs. The response in such situations, Mott says, "has always been to create tougher laws, put more people away."

At the National Level

Restorative justice is drawing some limited congressional attention.

Rep. Robert Scott, D-Va., has proposed the Youth Promise Act, which aims to encourage communities to deal with juvenile delinquency and criminal street gang activity by seeking alternatives, including restorative justice, to jail. The bill is pending before the House Committee on Education and the Workforce.⁸⁰

Colson's Justice Fellowship is rallying behind the Smarter Sentencing Act, proposed by Rep. Raúl Labrador of Idaho and Sen. Mike Lee of Utah, both Republicans. The Justice Fellowship said

the bill — which has not moved forward in either the House or Senate — would advance the principles of restorative punishment because it "promotes the value of proportional punishment."

Lee has not used the term "restorative justice." He has only discussed the need for "forgiveness" and imposing appropriate sentences — two Christian principles associated with restorative justice.

"Forgiving is not the same thing as excusing," Lee said. "And it's not incompatible with punishment. Forgiveness requires assigning blame and, when necessary, imposing just punishments."⁸¹

Few other national politicians are talking about restorative justice. One presidential candidate, Republican Jeb Bush, mentioned it last year when he told the National Urban League that "real justice in America has got to include restorative justice. I opened the first faith-based prison in the United States," he said, referring to his 2003 decision to start a religious-based program in a medium-security prison in Bradford County, Fla., aimed at rehabilitating prisoners.⁸²

Karp says restorative justice has yet to enter the official national discussion on criminal justice reform. "It's a very insular movement; . . . traditionally it's been faith-based or academic-based, so it's not been part of [the] vernacular of criminal justice reform leaders" and hasn't made it to that level yet, he says.

Expansion of the restorative justice movement in the United States pales in comparison to what's happening in New Zealand and England and Canada, Karp says. Manitoba, a Canadian province, recently passed a Restorative Justice Act, allowing offenders and victims — either before or after charges are filed — to work with community members to seek an appropriate resolution.⁸³

But, Karp adds, in the United States, "the winds are shifting because people are realizing that the very adversarial processes are damaging to everyone involved. Everyone leaves bitter and resentful and unhappy. So they are searching for a more productive solution." ■

OUTLOOK

Hard Work Ahead

Criminal justice experts agree that expansion of the use of restorative justice could take many years. Its application for violent crimes will continue to be particularly controversial and its effectiveness hard to measure, they say.

"That's going to be the hard one to sell," Mott of Marlboro College says. But she adds, "When you engage in prison reform, you engage incrementally and then work down the line."

The future of restorative justice will depend on further study, researchers say. But Pranis, the former restorative justice director in Minnesota, objects to how restorative justice programs are usually measured. "People want proof that it will reduce recidivism," she says. "But nobody says we should spend less on prisons because [they don't] reduce recidivism."

"You have to be clear on what you are looking for" when deciding whether to implement restorative justice, Pranis continues. For instance, "Would torture be OK if it worked? My answer would be no."

For her part, she says, "I'm looking [to make] communities . . . stronger in a healthy way." Whether restorative justice can become part of criminal justice reform remains a question. Karp of Skidmore College and one of his students, Olivia Frank, said the restorative justice movement "has some hard work ahead if it is to become central to contemporary criminal justice reform."⁸⁴

Zehr of Eastern Mennonite University says it's unclear how much the U.S. public and lawmakers are willing to change the current system; many politicians, he noted, don't want to appear soft on crime.

But some also worry about restorative justice being co-opted by the criminal justice system and losing sight of its

core principles. “Widespread adoption can lead to a dilution or misunderstanding of the values that underlie truly restorative systems,” said John Lash, executive director of the Georgia Conflict Center, a nonprofit in Athens, Ga., working to reduce violence. “And groups that haven’t been represented in the process can be marginalized.”⁸⁵

Wood of Griffith University agrees. “One of the problems restorative justice is facing is how to become institutionally integrated while not being co-opted,” he says.

The Genesee County, N.Y., program was founded by a system champion but may not survive because it has not been institutionalized, Wood says. When the sheriff who built the program retired, government appropriators spied it as a place to cut costs during tough economic times.⁸⁶

Success also will depend on getting sufficient community support for restorative justice, adds Wood, who analyzed how to gain such support in a Washington state community and the benefits and limits of such support.⁸⁷

The practice needs “much better infrastructure,” Zehr says. “There hasn’t been a real infrastructure for training and support.”

“We are in our infancy,” Pranis says. “We are still very young in thinking how to apply this in modern Western society.”

“In many places today, restorative justice is considered a sign of hope and the direction of the future,” wrote Zehr, in the 2014 version of his handbook first published in 1980. “Whether it will live up to this promise remains to be seen.”⁸⁸

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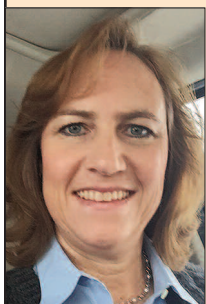
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Equal Justice Initiative, 122 Commerce St., Montgomery, AL 36104; 334-269-1803; www.eji.org. Promotes restorative justice and provides legal representation for poor and minority juvenile offenders and inmates.

Peace Alliance, <http://peacealliance.org/#>. Coalition of U.S. organizations that advocates for restorative justice practices and lobbies on state and national legislation.

Restorative Justice for Oakland Youth, 1203 Preservation Park Way, Suite 200, Oakland, CA 94612; 510-931-7569; <http://rjoyoakland.org/>. Provides information on developments in restorative justice practices and trains practitioners.

Restorative Justice International, PO Box 467, Carson City, NV 89702; www.restorativejusticeinternational.com/. Membership organization for groups seeking to help victims of violent crime.

Restorative Justice on the Rise, restorativejusticeontherise.org/. Web-based organization that facilitates online discussions with supporters and practitioners of restorative justice; offers instructional podcasts and tracks legislation.

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