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THE SIGNIFICANCE OF RESTORATIVE JUSTICE IN SCHOOLS

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ABSTRACT

This article attempts to address the dominant use of punitive approaches to issues of social behavior in schools, and proposes a restorative justice approach. In the United States, and particularly after 1994, zero-tolerance policies have transformed social control issues into a crisis of grave proportions. Zero-tolerance seems to clearly work to only further marginalize Latino and African American boys and to aggravate, over the long haul, the country's economic, social, and political challenges. Building on international restorative justice traditions and the experience of indigenous peoples in the United States, The goal of restorative justice is to restore the victim to the position prior to the offence, and to rebuild the offender's relationship with both the offended and the community. The article lays out the governing principles as well as essential components of a restoration process.

KEYWORDS: restoration, justice, punishment, school culture, social control.

RESUMEN

Este artículo trata de abordar el uso dominante de los enfoques punitivos a los problemas de comportamiento en las escuelas, y se propone un enfoque de justicia restaurativa. En los Estados Unidos, y especialmente después de 1994, las políticas de tolerancia cero han transformado los problemas de control social en una crisis de graves proporciones. Estas políticas («tolerancia cero») parece que han servido, principalmente, para sólo marginalizar más a los chicos latinos y afroamericanos y para agravar, a largo plazo, los retos políticos, económicos y sociales del país. Sobre la base de las tradiciones de justicia restaurativa internacionales y la experiencia de los pueblos indígenas en los Estados Unidos, el objetivo de la justicia restaurativa es devolver a la víctima a la situación anterior al delito y reconstruir la relación del agresor tanto con el ofendido como con la comunidad. El artículo establece los principios que rigen un proceso de restauración, así como sus componentes esenciales.

PALABRAS CLAVE: restauración, justicia, castigo, cultura escolar, control social



INTRODUCTION

This article attempts to address the dominant use of punitive approaches to issues of social behavior in schools, and to propose a restorative justice approach. In this first section, the article discusses the problem of overuse of punitive approaches to discipline issues in schools in the country and the state of California. Then it describes the immediate problem at the level of a school district in Northern California as illustration of how the problem manifests at a local level. The last section discusses the nature of restorative justice as a response to and solution of the excesses of a punishing culture.

In the United States, and particularly after 1994, zero-tolerance policies have transformed social control issues into a crisis of grave proportions. Zero-tolerance seems to clearly work to only further marginalize Latino and African American boys and to aggravate, over the long haul, the country's economic, social, and political challenges (Rausch & Skiba, 2005). Back then, the Free-Gun Schools Act became law allegedly designed to keep drugs and weapons out of schools, but instead it ended up emulating the punitive, adversarial legal system. Zero-tolerance established a set of punishments consistent with the damage done.

This punitive paradigm certainly works against the country's efforts to close the academic achievement gap. It has been shown that children and youth sent out of the classroom perform poorly academically, and fail to graduate from high school at staggering rates (Huefner, 1991; Noguera, 2003; Fenning & Rose 2007; Gregory, Skiba, & Noguera, 2010). To aggravate matters just in the 2009-2010 school-year, for instance, African American students abandoned California schools at a rate of 30.1%, and Latinos at 31.1% (Becker, Wise, Hardoin & Watters, 2011).

According to D. Delisle, the Assistant Secretary of Education, as cited in Home-room (2013) –the official blog of the U.S. Department of Education– in the school year 2009-2010, in the United States more than three million students were suspended, almost 110 thousand were expelled, and more than 240 thousand were referred to the police.

It can be predicted that male, African American and Latino students will more likely be expelled, suspended, or detained in any public school at any time in the United States (Morrison & D'Incau, 1997). Latino and Black students have three to five times greater chances of being in trouble in school than their White and Asian counterparts (Nichols, Ludwin & Iadicola, 1999; Arriaza, 2003). A report by the Office for Civil Rights of the US Department of Education (2014) asserted «Black students represent 18% of preschool enrollment but 42% of students suspended once, and 48% of the students suspended more than once» (p. 2). In the 2012-2013 school year, while a little less than in the previous one, schools in the state of California issued 8,562 expulsions, and a total of 609,471 suspensions (Blade, 2014), for a total population of about six and one quarter million (Ed Data, 2014).

Students suspended from school and sent home certainly become a liability for their families and the community. They are very likely to spend their idle time with little or no parental supervision, thus prone to participating in risky behavior, which may land them in the juvenile justice system. As Nelson (2008) has shown, youth who experience excessive suspension or expulsion are more likely to end up in this key point



of the school-to-prison pipeline. The American Civil Liberties Union (2009) articulated the school suspension issue as a criminalizing trend, instead of an educating one.

Pope (1995); McCord, Spatz, Widom & Crowell (200) have documented how the Black and Latino populations tend to be overrepresented in the juvenile legal system. And as researchers (e.g. Wald & Losen, 2003; Nicholson-Crotty, Birchmeier & Valentine, 2009; Teske, 2011) have shown, it is certainly possible to describe the trajectory of children, from their early discipline experiences in elementary through middle and high school, directly to the juvenile justice and prison systems.

The article argues that a paradigm shift is in order. Schools must get away from punitive approaches, and embrace a restorative approach to address discipline issues. It is organized in two sections. In order to place the above national and state statistics under closer scrutiny, the first section discusses the nature of the problem at the local level-at Strong School District in Northern California. The second section discusses the philosophy and principles of restorative justice.

The Problem at Hand.

Some teachers care and some don't. Those who care talk to students and help them understand what they did wrong, so they will try not to do it another time. Other teachers just write referrals and let the office deal with the kids. Nothing changes when they come back and it starts all over again.

Gerry M. (interview series)

Gerry, now an 8th grader, is a model student and has not received a discipline referral since his 6th grade year. However, he has witnessed his friends receive discipline referrals. His quote questions the prevailing practices of social control that affect students, especially Latino and Black, in detrimental ways.

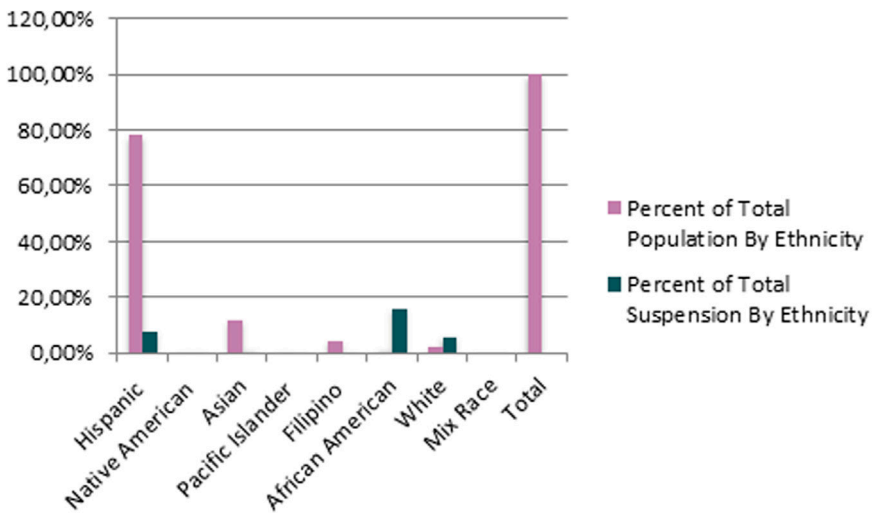
Schools in this one large district deal with a multitude of discipline issues while adhering to zero tolerance policy. According to the California Department of Education (2012) in the year 2011-2012 suspensions and expulsions looked as the following:

Table 1 Strong School District. Suspensions and Expulsions in Absolut Numbers.

Ethnicity	Defiance Suspensions (In)	Defiance Suspensions (Out)	Other Suspensions (In)	Other Suspensions (Out)	Total Suspensions	Defiance Expulsions	Other Expulsions	Total Expulsions
Hispanic	7	247	16	580	850	0	2	2
Native American	0	0	0	2	2	0	0	0
Asian	0	7	0	17	24	0	0	0
Pacific Islander	0	2	0	8	10	0	0	0
Filipino	0	1	0	5	6	0	0	0
African American	2	5	0	29	36	0	0	0
White	1	1	0	15	17	0	0	0
Mix Race	0	1	0	2	3	0	0	0

Source: California Department of Education (CDE), 2014

This table indicates the number of students suspended in 2011-2012 by ethnicity and in absolute numbers. Clearly, Latino (labeled Hispanic by the CDE) and Black students were suspended more than any other student group. The number of Latino students amounted to a total of 850, and the only group with two expelled students through the year. African American student suspensions reached a total of 36, and zero expulsions. Asian, the third group with high suspension numbers, accumulated a total of 24, zero expulsions. The main reason cited for sending Latino students home was defiance, while other reasons were cited for sending home the other groups. Yet, when the numbers above are translated into relative numbers, what we have is this:



Graph 1 Percentage of students relative to the total population by ethnicity.
Source: California Department of Education (CDE), 2014.

Latino population (labeled Hispanic by the CDE) account for the staggering total of 850 suspensions, and Blacks for 36. When compared to any other ethnic group, in relative terms to the size representation, such numbers seem dramatic. For instance, the group labeled Asian makes 1,527 –or 11.8%– of the total district population, which is seven times more than that of African American-224 or 1.7% students, yet the Asians group was issued 1.5% of the total suspensions while Blacks received 16%. Our point here is to underline the fact of overrepresentation of Black students, in relative terms, and of Latino students, in absolute numbers.

Parallel to the above discipline gaps runs the academic gap. The California Department of Education published the 2013 Academic Performance Index (API) results for Strong School District. White and Asian students outperformed their counterparts. Latino students achieved an API of 762 and African American students achieved an API of 744, while White students achieved an API of 863 and Asian students achieved an API of 885; a combined differential of 242 points.



Additionally, in their report Hemphill & Vanneman (2011), the 2009 National Assessment of Educational Progress (NAEP) data show that Black and Latino students trailed white students by 20 or more test score points on math and reading assessments, which means a difference of Black's and Latino's academic performance of approximately two full school grade levels below White and Asian students. Gregory et al, (2010) have undeniably shown that, the use of school exclusionary actions –such as home suspension– contribute to the gaps in achievement. Huefner,(1991); Noguera (2003), Fenning & Rose (2007), and Gregory, Skiba, & Noguera (2010), among others, have clearly linked children and youth sent out of the classroom to their poor academic performance, and to their overwhelming low rates of high school graduation.

RESTORATION PHILOSOPHY AND CORE PRINCIPLES

For the purposes of this paper restorative justice is discussed as a normative approach. It is both a philosophy of life and a normative procedure to redress injustice at the level of a society in general, and at the level of specific social institutions such as the criminal justice system, juvenile justice, and institutions of learning. It consists of the organized restoring of broken social relations, where three key participants –offender, victim, and the community– gain some sort of benefits. The organized and intentional approach of restorative justice implies the existence of a participating community, responsible for redressing the issues its members bring forth, and following established procedures.

The same community defines the problem, arrives at conclusions, agrees on and applies the remedial actions to heal the damages inflicted to the victim, and to repair the broken relationship between the victim, the offender, and the community. Such amending includes the affected community's norms. A fundamental effect of this practice is the strengthening of a culture of restorative justice. In order for this culture to flourish and be sustainable, understanding social conflict is key.

Social conflict is to society what friction is to physics -necessary and unavoidable. The restorative treatment to social conflict assumes that conflict is indeed embedded in society's very existence. Conflict arises as soon as humans enter in contact with each other. Social conflict can, therefore, lead individuals, groups, and in fact entire societies to destruction or renewal. Destruction only happens when no capacity seems available to restoratively solve seemingly irreconcilable interests. Sadly today, we have too many examples of this kind. This topic, though, goes beyond the article's scope and focus.

Let's only say here that, as an important factor in our lives, social conflict traditional is defined as undesirable, a curse, and as something ultimately determined by a win-lose dichotomy. This is a one-dimensional approach governed by retribution at its core. Our current legal system exemplifies this approach perfectly well. In civil cases, people bring legal action against each other as a way to repair some damage. Justice here seeks to both punish the culprit and to bring the victim to the position prior to the harmful situation (i.e. the status quo ante).

Mediated by experts, the offender may have a chance to apologize and the victim to forgive, but they do not talk to each other. Learning and thus, reforming



behavior, may or may not occur, since central to the prevailing approach is to punish the perpetrator, as the way to restore the rules broken.

Contrary to the zero-sum approach, restorative justice looks at social conflict, as it has been expressed above, as inevitable and integral to human existence. Social conflict, in this view, contains the potential to lead the offender, the victim, and the community, into a path of growth and transformation. Consistent with this notion, restorative justice promotes a redressing process that centers on reparations—whether emotional, material or both—for the victim, in the first place; it also offers an opportunity for the perpetrator to amend the damaged relationships with the victim and the community. In this sense, all those involved in an incident accrue some sort of benefits.

Furthermore, a restorative approach assumes that a community possesses the collective will to mobilize its social power to address injustice by itself, which is done with no external intervention of experts, or even the formal court system. Restoration provides the opportunity for the perpetrator and the victim to talk to each other face to face—and before active witnesses and community members—by following the skillful mediation provided by the same community. Such social interaction is primarily mediated by language.

Language usage functions relationally. This means that all communication happens within social relations among all those involved in an incident. Language certainly makes it possible for all those involved in a restorative process to engage each other, elucidate issues, create agreements, and ultimately repair relationships. In this sense, language embodies culture by functioning as transmitter of social habits, and customs.

CORE PRINCIPLES

The restorative justice process seeks, again, to restore broken social relations. In order to accomplish this, the restorative process focuses on the damage inflicted, and not on the perpetrator individually. It is the behavior that is framed as anti-social, and not the doer. This emphasis allows pursuing repair, instead of finding a verdict against the offender. Thus, rather than punishing the culprit, the restorative justice process seeks, for example, the restitution of material values stolen, destroyed, or damaged; the process looks for acknowledgment of the victim's rights, the recognition of the victim's deserving respect, and a chance for the victim to let go of resentment or anger provoked by the offense.

The restorative justice process also aims at the offender's full, sincere acceptance of responsibility. It also creates the environment for the perpetrator to amend relations with the victim as well as with the community. Drawing on some of the current experience in the United States and abroad, it is proposed here a restorative justice practice for schools grounded on five fundamental principles: all implicated in a dispute must participate; participation must always be free of coercion; participation is an act of truth telling; restoration processes must be made public; and the offender accepts his or her share of responsibility.



PARTICIPATION

To forge a restorative-justice culture in a school, the leadership generates the unequivocal expectation that when incidents happen, those involved will engage face-to-face in a restorative process. No exceptions allowed. Participants chiefly include the person(s) directly affected, and the offender(s) –called here the protagonists– and the community.

Having the protagonists facing each other represents a precondition for restoration to take hold in a school and to become a cultural practice-how acts of injustice are addressed. This involvement contributes to building community capacity to directly engage conflict, to ground solutions within the community itself, and to increase understanding of the value of the non-punitive nature of restorative justice. Every time people participate in a restorative process, the school community –especially students and parents– grows mediation and negotiation skills; they also learn ownership of the process, as opposed to conflict addressed by experts. The restorative approach also makes justice a participatory endeavor.

Talking to each other face-to-face means that the perpetrator has a chance to explain what happened, how events unfolded. Telling the story of the offense may help the perpetrator to understand individual responsibility, and eventually initiate a personal change. The victim, on the other hand, also has the opportunity to explain the hurt and its emotional ramifications. Explaining what was done to her or him, may allow also initiating a process of forgiveness.

The facilitator mediates the protagonists' face-to-face encounter and the involvement of witnesses and community members. In addition, facilitators' use of appropriate formats may help to create an inviting environment, far removed from the threat of punishment, blame, and guilt. Eventually this facilitation may enforce a culture of restorative justice in the entire school.

The formats available to the facilitator vary depending on both, the nature of the incident, and what those involved want to accomplish. Among the many ways to organize restorative sessions, here are three examples: fishbowl, concentric circles, and single file circles.

In the fishbowl format the protagonists sit in a small, central circle, while other participants –the witnesses and the community representatives serving as interested audience– sit in a larger, outward circle surrounding the central circle. In the fishbowl format a space (e.g. a chair) is always available in the central circle; the chair is for whoever volunteers from the outside circle to momentarily join to provide data, clarifications, questions, or points of view on the issue being discussed. Such participation takes place when appropriate and closely monitored by the facilitator.

In the concentric circle format the protagonists sit in a small, central circle. The other participants –the witnesses and the community representatives serving as audience– sit in a larger, outward circle surrounding the central circle. The concentric circle format, does not allow an open space in the central circle. The audience only listens attentively, and follows the facilitation's protocols.

In a single file circle, protagonists and audience sit at the same level., in one, large circle. Everybody follows the facilitator's protocols, listen attentively,



and when asked, will contribute to the discussion. Typically, the protagonists have the floor first, and always have it when necessary. In this format everybody present may actively participate in the session's different steps. Given the size, facilitation may be challenging, but ultimately, it is up to the facilitator to manage who talks, the appropriate moments to do so, and how to move the meeting forward.

Creating hybrid formats entirely depends on the facilitation's needs and participants' requests. Thus, for a particular case, the format may vary from session to session. But, regardless of format, the nature of the incident will always determine the process.

VOLUNTARY

Protagonists' participation may be mandatory. Making it compulsory must be decided based on the type of offense and the school's cultural practices. Nonetheless, for a restorative process to authentically help mend relationships—and fully address the damage inflicted on the victim and the community—the ideal is for protagonists, direct witness, and community members, preferably be involved on their own will.

In a school where restorative justice is becoming a cultural practice, whomever needs to take part in a restoration process will naturally do so. In such environments reluctance to participate will diminish, if not disappear altogether. When not, though, it is up to the school leadership, and the school community, to exert the necessary influence on reluctant parties to acquiesce to and become involved in restorative sessions.

Yet, removing any sense of coercion or manipulation may prove crucial to the success of restoration. In this sense, when requesting someone to be involved, guilt and shame must be thought of as paramount threats. Thus, eradicating any hint of both, guilt tripping or shaming potential participants, must be central to the facilitators. Participants who perceive their involvement in restorative sessions as a result of undue pressure, may inhibit their commitment and, that way, hinder the ultimate two key premises of restorative justice: 1) restoring harmed relationships and 2) providing the opportunity of personal transformation and growth.

Participants who perceive coercion, may especially end up not owning the lessons stemming from the sessions. In turn, this lack of learning—i.e. understanding—may seriously limit the chance to see the entire restoration process as a potential turning point, one that could make participants grow and change for the better.

As measure of last resort the school leadership may offer a choice for those refusing to be involved—to take the restoration path, or to go through the traditional, disciplinarian path. While this action may contradict the voluntary nature of the restorative justice approach, the school may have no other choice, but to offer solutions of this sort and avoid injustice.



TRUTHFULNESS

Stating and owning the truth governs restoration. At the core of a restorative process lies the expectation that all participants embrace truth telling as their moral compass. Thus, every single person involved knows that participation implies total honesty and transparency.

As a result, what is expressed in the restorative process is taken face value, and considered vital for mapping the nature of an incident, for following its ramifications, and for searching solutions. Moreover, participants know that any deviation from the truth may, sooner or later, come back to hunt them; when this happens, social status within networks, as well as relationships in the larger community, will probably be painfully affected.

Participants know that all the stories are verifiable, and that the school reserves the right to intentionally pursue confirmation of facts. Here corroboration functions as a key element of truth telling, which runs parallel to the testimonies shared in a restorative session. That is, everything being said can be shown as true or false.

Matching facts to reality –as perceived by participants– forms part of a school's cultural practices. Individuals' proximity to each other sustains and invigorates these practices. These relationships take place in interrelated social networks. A school with strong social networks functions as an organic community, where the social distance among individuals may even be inexistent. As a consequence, all social interactions travel at high speed across different social networks. The activation of networks makes it possible to find out the nature and details of an event.

Participants must be aware that when a deviation from the truth becomes known, an action to address the issue may ensue. Instead of a prolonged set of sessions, swift action may take place depending on the gravity of the situation. The community in charge of the process calls the individual(s) back to discern the situation and, later on, to determine and implement whichever consequences. The individual thus responsible for not accurately telling the truth may, for instance, be required to earn back the trust and respect from the community, as the indispensable condition to continue with the restorative justice process' original case. This means that on top of the original restoration efforts, a new one arises around veracity of the events. The person in this situation has made the process to take a step backwards; now he or she must first regain the community's trust, so that to then continue with the case, momentarily disrupted.

Some schools may use ostracism. That is, the implicated person is asked to remain in the school, attend classes, but is forbidden from attending social and cultural events, such as sports, sport games, theater performances, poetry readings, holiday celebrations, and others. The individual in such position is responsible for calling in a session to review his or her status. If the committee in charge deems it appropriate, the individual may be publicly allowed to come back in to the community. It is until this moment when the original case may start anew.



PUBLIC

Forging a culture of restorative justice in schools requires public knowledge. For such a purpose, let's keep in mind that protagonists and community serve as points of information for the whole school. Indeed, they will convey the story of what happened, the procedures, and the results achieved in the restoration process; fundamental to this function is the narrative of fairness and justice to the school community. Public sharing of such narrative may open the space for the victim's vindication, may aid restoring the perpetrator's standing, and may also help building the collective perception that safety –emotional, physical, symbolic– is being restored, and that trust –among individuals and within the school community as a whole– is being repaired.

The involvement of social networks –e.g. friendship groups - in the restorative process is, therefore, a must. The process– which usually takes a series of sessions–draws on the protagonists' social relationships. This work starts with the closest social circles of the protagonists and reaches out to less connected individuals (i.e. eye-witnesses, third party indirectly affected by the incident), plus any member of the larger school community, who may have a saying on the matter. Again, the inclusion of these groups throughout the process may enable the school community, as a whole, to participate in the efforts to repair disrupted relationships.

Additionally, the use of all types of public displays and clear communication systems to and from the school community, may serve as a formidable venue to enhance the restoring effects of justice. Community involvement is, in other words, tied to school culture, which is grounded on the just and equitable treatment of social conflict. The one caveat might be the participants' right to privacy.

In case a protagonist wishes to keep parts or the whole process private, the school leadership may limit public access to a particular session, or series of sessions. The facilitator may also ask community participants to keep things confidential. Yet, tireless efforts must be made to persuade protagonists to open the information to the school community. Keeping the community informed, if managed well, may provide a powerful source not only for the implementation of the solutions the restorative process seeks, but also for the process itself to be a prime educational space. The impact of restorative justice will always have greater chances to produce change when the school community participates.

RESPONSIBILITY

In the process to reintegrate the offender's relationships to the status prior to the incident, with both the victim and the community, taking responsibility is perhaps the most crucial moment of the entire restorative process. At this point converge all the efforts mounted from the very start of the process. In a way, it synthesizes meanings and actions, and opens a whole new stage of the process: restoration.



The restorative process aims at creating the space for the protagonists –particularly the offender– to acknowledge and own full responsibility of the causes, events and ramifications of the incident. The best way to know whether the process has produced positive results is precisely when the offender clearly recognizes personal responsibility.

Without accepting responsibility no possible redressing actions may take place. In other words, if the perpetrator does not accept full accountability of his or her actions, the person(s) affected by the incident may have a difficult time comprehending the offender's action, and be impaired to initiate a healing process. Resentment, anger, desire for revenge will linger and find ways to manifest. Likewise, the perpetrator may never understand the source of his or her acts, the ramifications both personally and socially of such acts and lastly, he or she may ultimately waste an opportunity to grow and change.

A contract containing clear expectations and specific objectives, may be necessary at this juncture. The protagonists and the community may agree on a series of checking-in points, to come together so that to ensure progress, and the completion of agreements. These contact points indeed make it possible to calibrate remedies, and explore different support systems. In sum, any measure of success is determined by the offender's acceptance of responsibility, since impunity has no place in a regimen of justice and equity in schools.

However, in the case the offender refuses to accept responsibility, the school leadership may enlist the larger community's help for its sanction of morally charged penances, such as shame without humiliation.

Shame works as an integrative force, where the offender is giving the chance to reflect on the events that lead to the use of restorative processes, as well as time to come to terms with personal responsibility. Temporally ostracizing a student within the school premises might be a way to solve the impasse. Again, an explicit contract between the school community and the offender may play a key role in the reintegration of the offender into the community. In any case, the school leadership seeks repentance by the offender's acceptance of responsibility.

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