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Restorative Justice in Illinois: A Holistic Approach to Reformation and Juveniles in Conflict with the Law

Emily Knox

INTRODUCTION

Restorative justice is a community-based approach to criminal justice, which has slowly gained momentum beginning in the 1970s.¹ A restorative justice model can take many forms, including peacemaking circles, accountability conferences, community service and restitution, community victim impact panels, and peer juries.² Recently, organizations like the Illinois Balanced and Restorative Justice (IBARJ) have collaborated with communities and schools to implement the restorative justice model in many ways and at many levels throughout Illinois.³ Other organizations have partnered with similar local programs to create a citywide network of restorative justice hubs (“RJ Hubs”) in Chicago, like the Community Restorative Justice Hub in the North Lawndale neighborhood and the Precious Blood Ministries of Reconciliation in Back of the Yards neighborhood.⁴ These models truly exemplify that, when it comes to healing from crimes, it takes a village.

IMPLEMENTING THE “TOUGH ON CRIME” MOVEMENT

The endeavor to encourage restorative justice models began after a movement in the early 1980s, which continued throughout the late 1990s, promoting a “tough on crime” approach to criminal misconduct.⁵ The purposes of the “tough on crime” policies were threefold: punishments for serious crimes were

¹ Ali M. Abid, *In This Issue: Restorative Justice in the Gilded Age: Shared Principles Underlying Two Movements in Criminal Justice*, 8 CRIM. L. BRIEF 29, 29 (2012).

² *Restorative Justice Practices*, ILLINOIS BALANCED AND RESTORATIVE JUSTICE, http://www.ibarj.org/communities_RJPractices.asp.

³ *IBARJ Projects and Collaborations*, ILLINOIS BALANCED AND RESTORATIVE JUSTICE, <http://www.ibarj.org/collaborations.asp>.

⁴ *Community Restorative Justice Hub*, LAWNSDALE CHRISTIAN LEGAL CENTER, <http://lclc.net/programs/rjhub/>; *About*, COMMUNITY RESTORATIVE JUSTICE HUBS, <https://rjhubs.org/about/>.

⁵ Marc Mauer, *SYMPOSIUM: Why Are Tough on Crime Policies So Popular?: Despite the promises of political leaders and others who have promoted them as effective tools for fighting crime, “tough on crime” policies have proved to be costly and unjust*, 11 STAN. L. & POL’Y REV. 9, 10 (1999).; Gerald P. Lopez, *How Mainstream Reformers Design Ambitious Reentry Programs Doomed to Fail and Destined to Reinforce Targeted Mass Incarceration and Social Control*, 11 HASTINGS RACE & POVERTY L.J. 1, 4-5 (2014).

too lenient; criminals who were targeted by the reforms were considered dangerous people upon whom lesser sanctions would be ineffective; and more imprisonment would reduce crime by incapacitating and deterring dangerous offenders.⁶ Many states implemented a “three strikes” rule as part of the “tough on crime” policy, which incarcerated those who had a history of crime, and took on many variations.⁷ During the “tough on crime” era, however, about 20% of those convicted and incarcerated were convicted of a nonviolent offense and had no prior convictions.⁸

Compared to other countries, the United States has the highest imprisonment rate with 693 per 100,000 people being incarcerated in jails and prisons, which is five times more than any other country.⁹ To put this in perspective, the next highest rate is in the United Kingdom, with just 145 per 100,000 people being incarcerated.¹⁰ While the rate of incarceration steadily increased from 1980 to 2013, the rates of violent and property crimes decreased.¹¹ The “tough on crime” approach led to a costly trend toward mass incarceration, specifically among black men in inner-city communities.¹² Black men, between the ages of 16 and 34, in and around large cities, had the highest rates of incarceration for drug and nonviolent crimes.¹³ Cook County, Illinois, for example, incarcerated 69% of the state’s total incarcerated persons in 1992.¹⁴ To mend the wounds caused by the “tough on crime” approach in the greater Chicago communities, restorative justice should be implemented on a wide scale basis.

The “tough on crime” approach had a specific effect on juvenile justice.¹⁵ In the early 1990s, the “tough on crime” movement identified a generation of “super-predators” who were naturally inclined to “murder, rape, rob, assault,

⁶ James P. Lynch & William J. Sabol, *Did Getting Tough on Crime Pay? Crime Policy Report No. 1*, Urban Institute (Aug. 01, 1997).

⁷ Michael Vitiello, *Three Strikes: Can We Return to Rationality*, 87 J. Crim. L. & Criminology 395, 400 (1997).

⁸ Lynch & Sabol, *supra* note 6.

⁹ Andrea Krieg, *Tough on Crime Policies Lead to Mass Incarceration*, LEWIS UNIVERSITY FACULTY FORUM, (June 22, 2017), <https://www.lewisu.edu/experts/wordpress/index.php/tough-on-crime-policies-lead-to-mass-incarceration/>; Lopez, *supra* note 5 at 5.

¹⁰ Krieg, *supra* note 9.

¹¹ *Id.*

¹² *Id.*; Lynch & Sabol, *supra* note 6.; Vitiello, *supra* note 7 at 399.

¹³ Lynch & Sabol, *supra* note 6.

¹⁴ *Id.*

¹⁵ See *Youth in the Justice System: An Overview*, JUVENILE L. CEN., <https://jlc.org/youth-justice-system-overview> [hereinafter “Youth”].

burglarize, deal deadly drugs, and get high.”¹⁶ In response, forty states passed legislation that significantly expanded these offenses, triggering the transfer of juveniles to adult courts, where they were deprived of the procedural protections of the juvenile court system.¹⁷ Other legislation imposed harsh penalties for juvenile offenders at all procedural levels, leading some to question the very existence of juvenile courts at all.¹⁸ In many states, including Illinois, once a juvenile was convicted as an adult for one offense, he would be charged thereafter as an adult without consideration of the charge.¹⁹ As such, juveniles were often given harsher sentences such as the death penalty or life in prison without parole.²⁰

THE EFFECTS OF THE “TOUGH ON CRIME” MOVEMENT

Despite their support, these “tough on crime” efforts did not prevent recidivism or deter juveniles from offending.²¹ Although there was an overall decline in juvenile offenders after the “tough on crime” application to juveniles in the early 1990s, these same juveniles, once tried, were more likely to be re-arrested — and for more serious crimes.²² This increase in incarceration also had detrimental effects on the futures of juveniles and young adults, as they were being given heavier sentences during critical stages in their lives, making it difficult to successfully reintroduce those incarcerated into the community.²³ As a result, the “tough on crime” approach created a system that did little to prevent offending, reduce reoffending, and protect young people from abuse or death while incarcerated.²⁴

Treating juveniles harshly and consistently with adult offenders is inconsistent with the purpose of the juvenile court system.²⁵ The juvenile court system, which was first established in Cook County, Illinois in 1899, recognizes

¹⁶ Josh Rovner, *How Tough on Crime Became Tough on Kids: Prosecuting Teenage Drug Charges in Adult Courts*, THE SENTENCING PROJECT, (Dec. 07, 2016), <http://www.sentencing-project.org/wp-content/uploads/2016/12/how-tough-on-crime-became-tough-on-kids.pdf>.

¹⁷ *Id.*; *Youth*, *supra* note 15.

¹⁸ Douglas E. Abrams, Susan V. Mangold & Sarah H. Ramsey, *Children and the Law: Doctrine, Policy, and Practice*, 6th ed., 935 (2017).

¹⁹ Rovner, *supra* note 16.

²⁰ *Youth*, *supra* note 15.

²¹ Rovner, *supra* note 16.

²² *Id.*

²³ Lynch & Sabol, *supra* note 6.

²⁴ Rovner, *supra* note 16.

²⁵ *Youth*, *supra* note 15.

that children are different from adults.²⁶ At its inception, juvenile courts intended to provide guidance and rehabilitation in order to change the direction of juvenile offenders' behavior.²⁷ Originally, there were five main purposes of the juvenile court: individualized rehabilitation and treatment to allow consideration of all circumstances; civil jurisdiction, as opposed to criminal jurisdiction; informal procedure that provided flexibility; confidentiality and closed proceedings; and the incapacitation of children separate from adults for their protection.²⁸ Despite these longstanding purposes, the "tough on crime" movement reimagined juvenile offenders less as "helpless objects" and placed upon them greater accountability for their crimes, which created a more punitive court system.²⁹ In *Miller v. Alabama*, the Supreme Court confirmed the initial views of the juvenile court by noting that juveniles are often immature and reckless, and that rehabilitation efforts are less likely to be lost on them than adults.³⁰ While the Court in *Tatum v. Arizona* noted that there must still be consideration of the juvenile offender's susceptibility to rehabilitation efforts, as some crimes indicate "irreparable corruption," this is a factual consideration where mandatory "tough on crime" transfers and sentences would not have been appropriate.³¹ This is especially true considering the likelihood of nonviolent offenders being incarcerated under the "tough on crime" approach.³²

THE HISTORY OF RESTORATIVE JUSTICE

Inspired by the justice systems of native and aboriginal communities throughout the world, restorative justice is a model in which the entire community is involved.³³ Three pillars uphold this justice model: crime violates people and their relationships; this violation creates obligations; and the primary obligation is to "right the wrong" from the offense.³⁴ The goal is to encourage offenders to assume responsibility for their actions and avoid future

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Abrams, Mangold & Ramsey, *supra* note 18 at 940-945.

²⁹ Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 549 (2004).

³⁰ *Miller v. Alabama*, 567 U.S. 460, 471-72 (2012).

³¹ *Tatum v. Arizona*, 137 S. Ct. 11, 13 (2016).

³² *Supra* note 13.

³³ Walgrave, *supra* note 27 at 551; Abid, *supra* note 1 at 30.

³⁴ Lynn S. Branham, *Incarceration in the United States: Issues in America's Jails and Prisons: Plowing in Hope: A Three-Part Framework for Incorporating Restorative Justice into Sentencing and Correctional Systems*, 38 WM. MITCHELL L. REV. 1261, 1266 (2012).

harm by participating in mediation.³⁵ The current criminal justice system focuses on culpability and punishment,³⁶ rather than focusing on the victims' interests. Our criminal justice system often does not focus on victims' restitution and instead pressures them to act as the States' witnesses.³⁷

Importantly, restorative justice focuses on the “redemptive, reintegrating shaming” of offenders that promotes accountability but encourages offenders they will be welcomed back into the community.³⁸ The accountability promoted by restorative justice is one that encourages offenders to contribute to the victim's healing to repair the harm.³⁹ This notion reminds everyone involved in the restorative justice process that we all share a “deep mutual involvement” with each other.⁴⁰ Offenders often view their crimes as influenced by their environments, which reconfirms the importance of a community-based approach to crimes.⁴¹ Restorative justice allows these community factors to be presented during the peace circle.⁴² Mentioned in *Miller v. Alabama*, mandatory sentences prohibit judges from considering the entirety of the situations in which juveniles find themselves.⁴³ In order to end the ostracizing stigma associated with those who commit crimes, a stigma that stems from a criminal justice system that emphasizes assigning blame and punishing offenders, we must consider the environments that shape offenders.⁴⁴

THE EFFECTS OF RESTORATIVE JUSTICE

In looking at the benefits of restorative justice, these models have been found to reduce recidivism rates.⁴⁵ Recidivism rates post-restorative justice have been found to decrease by a range of 16% to 33%, with those who reoffend committing less frequent and less serious offenses.⁴⁶ New Zealand exemplifies the beneficial long-term effects of implementing a restorative justice

³⁵ Sascha Brodsky, *Is Discipline Reform Really Helping Decrease School Violence?*, THE ATLANTIC, (Jun. 28, 2016), <https://www.theatlantic.com/education/archive/2016/06/school-violence-restorative-justice/488945/>.

³⁶ Walgrave, *supra* note 29 at 550.

³⁷ *Id.*

³⁸ *Abid*, *supra* note 1 at 30.

³⁹ Branham, *supra* note 34 at 1268.

⁴⁰ *Abid*, *supra* note 1 at 31.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Miller v. Alabama*, 567 U.S. 460, 470 (2012).

⁴⁴ *Abid*, *supra* note 1 at 30.

⁴⁵ *Abid*, *supra* note 1 at 32

⁴⁶ *Id.*

model in juvenile justice.⁴⁷ Returning to its Maori traditions, New Zealand restructured its juvenile justice system to implement a more restorative philosophy in 1989, and has since experienced “plummeting juvenile violence as well as arrest and incarceration rates.”⁴⁸ In the school setting, restorative justice contributes to a decline in suspensions, with Chicago Public Schools seeing a drop from 23% to 16% of high school students being disciplined with an out of school suspension.⁴⁹ This could be linked to the self-relabeling youth experience, transforming their self-views from the “bad kid” to someone who takes responsibility and learns from his mistakes.⁵⁰ Instead of responding defensively, youth are able to learn from the experience and change their behavior.⁵¹ Juvenile offenders participating in restorative justice are shown the humanity of others in their communities; once others are humanized, these youth are less likely to harm them out of respect for their humanity.⁵² If youth can see themselves in others, and acknowledge who others are and identify others’ feelings, they will feel more accountable.⁵³

IMPLEMENTING RESTORATIVE JUSTICE IN CHICAGO COMMUNITIES

For restorative justice to be successful, teachers need to be trained and provided resources on how to execute a restorative justice approach to school discipline.⁵⁴ This is often a complaint from those involved with restorative justice models in schools.⁵⁵ The proper implementation is important for restorative justice to be effective in schools and help redirect the school to prison pipeline.⁵⁶ The effectiveness of the RJ Hubs rests partly on constantly developing each member’s skills.⁵⁷ There is also a lack of understanding of what restorative justice needs, how long it takes (the average process takes about sixth

⁴⁷ Brodsky, *supra* note 35.

⁴⁸ *Id.*; Abid, *supra* note 1 at 34.

⁴⁹ Brodsky, *supra* note 35.

⁵⁰ Amelia Harper, *Restorative justice more likely to provoke responses conducive to learning*, EDUCATION DIVE, Sept. 07, 2018, available at <https://www.educationdive.com/news/restorative-justice-more-likely-to-provoke-responses-conducive-to-learning/531764/>.

⁵¹ Harper, *supra* note 50.

⁵² Interview with Tomas Ramirez, RJ Hubs Coordinator, Lawndale Christian Legal Center (Oct. 02, 2018) [hereinafter “Ramirez”].

⁵³ Ramirez, *supra* note 52.

⁵⁴ Brodsky, *supra* note 35.

⁵⁵ *Id.*

⁵⁶ Harper, *supra* note 50.

⁵⁷ Ramirez, *supra* note 52.

months), and the extent of the multilayered process.⁵⁸ There is a common misconception that restorative justice does not assign enough punishment to the youth; however, this comes from a misunderstanding that justice requires punishment.⁵⁹ According to Tomas Ramirez, RJ Hub coordinator at the Lawndale Christian Legal Center, it does not.

RJ Hubs in Chicago have come as an answer to reducing youth violence and juvenile detention in communities experiencing high rates of youth violence.⁶⁰ Chicago's RJ Hubs, comprised of a continually growing, intricate collaboration among local agencies and communities, aim to uplift youth to realize their full potential for positive change in their communities.⁶¹ Youth are given the opportunity to right their wrongs in a humanizing way.⁶² The RJ Hubs address three main questions: first, how communities can best support positive outcomes for youth involved in the court system or in gangs; second, how communities can share the responsibility for neighborhood safety with these youth; and third, how the juvenile justice system can be most effective in communities where youth violence is most predominant.⁶³ These solutions are founded on five main pillars: welcoming hospitality; accompaniment; building relationships with youth and families; relentless engagement of organizations and resources; and collaboration and relationships with other RJ hubs.⁶⁴ The goal is to heal relationships with the self, with others, with institutions, and with the environment or community.⁶⁵ The Chicago RJ Hubs give youth this opportunity by showing them how they affect others, how they are connected to their communities, and allow them to rebuild broken relationships,⁶⁶ giving them a sense of community belonging.

The communities from which these youth come from are often broken themselves.⁶⁷ In Chicago, there are labels of poverty and criminality already attached to these communities, which face many levels of oppression.⁶⁸ These

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *About, supra* note 4

⁶¹ *Id.*

⁶² Ramirez, *supra* note 52.

⁶³ *About, supra* note 4.

⁶⁴ *Community Restorative Justice Hub, supra* note 4.

⁶⁵ Ramirez, *supra* note 52.

⁶⁶ Ramirez, *supra* note 52; Johanne Vallee, *Restorative Justice: Rebuilding Relationships with Society*, POLICY OPTIONS, (Apr. 19, 2018), available at <http://policyoptions.irpp.org/magazines/april-2018/restorative-justice-rebuilding-relationships-society/>.

⁶⁷ Ramirez, *supra* note 52.

⁶⁸ Ramirez, *supra* note 52.

communities often experience cycles of “intergenerational poverty and racism.”⁶⁹ Youth are welcomed into the restorative process and supported while they rebuild healthy relationships with others and themselves, express themselves, address their own trauma, and develop skills to prevent recidivism.⁷⁰ When a person from one of these communities is able to understand that they are “worth something,” express their anger, and say “I’m hurt” or “I’m sorry,” this person is able to develop agency and discipline in his community.⁷¹ The Chicago RJ Hubs guide youth to respect others, despite the lack of respect they experience in their own communities.⁷²

One common method of restoring harm is through the implementation of peace circles.⁷³ As previously mentioned, peace circles stem from aboriginal methods of pursuing justice.⁷⁴ Peace circles often include the victim, the offender, one or more circle-keeper, and other community members, including school teachers, police officers, and community religious figures;⁷⁵ it is critical for the youth to understand that their community believes in them.⁷⁶ Peace circles “create understanding, build and repair relationships, and assist with solving conflicts and disputes.”⁷⁷ Using a “talking piece,” each participant in the circle is given the opportunity to speak without interruption and be heard fully.⁷⁸ Additionally, in peace circles, the victim and the aggressor are able to verbalize the harm they have felt and express their feelings in an attempt to heal.⁷⁹ By understanding each person’s humanity, the victim and the aggressor are both able to view the other as a sensitive individual who is capable of experiencing harm.⁸⁰ The circles use non-labeling language as much as possible

⁶⁹ Lynn Freehill-Maye, *Restorative Justice Helps Rehabilitate Tough Chicago Neighborhoods*, UNIV. OF NOTRE DAME KROC INST. FOR INTL. PEACE STUD., (Jan. 24, 2018), available at <https://kroc.nd.edu/news-events/news/restorative-justice-helps-rehabilitate-tough-chicago-neighborhoods/>.

⁷⁰ *About*, *supra* note 4.

⁷¹ Ramirez, *supra* note 52.

⁷² *Id.*

⁷³ *Restorative Justice Practices*, ILLINOIS BALANCED AND RESTORATIVE JUSTICE, available at http://www.ibarj.org/communities_RJPractices.asp [hereinafter “*Restorative*”].

⁷⁴ See Walgrave, *supra* note 27 at 551; see also Abid, *supra* note 1 at 30.

⁷⁵ Freehill-Maye, *supra* note 69; *Restorative*, *supra* note 73.

⁷⁶ Ramirez, *supra* note 52.

⁷⁷ *Restorative*, *supra* note 73.

⁷⁸ *Id.*

⁷⁹ Vallee, *supra* note 66.

⁸⁰ Ramirez, *supra* note 52.

because often, the language created by the criminal justice system have no connection to the communities in which the youth live.⁸¹

When peace circles are implemented, various needs of the offenders often emerge.⁸² In juvenile courts, these needs are not always understood by or received with compliance from judges.⁸³ Once the youth's needs are identified, circle keepers and community case managers can collaborate to support these needs through mentoring, counseling, providing work opportunities, and so on.⁸⁴ The youth then meets with the judge, an attorney, circle keepers, and case managers on an equal level, with all participants listening to the concerns of the youth.⁸⁵ While juvenile courts separate offenders from others, the peace circle, with its premise of community reintegration, does not impose this disconnect.⁸⁶

CONSIDERATIONS WHEN IMPLEMENTING RESTORATIVE JUSTICE

This restorative justice process, however, is not always easy for youth. It can be a long process, as the entire community's concerns and needs are heard.⁸⁷ The speed of the process is heavily dependent on how willing all involved are to be vulnerable and grow.⁸⁸ Additionally, the process can be emotionally taxing for young people.⁸⁹ It requires vulnerability, growth, and generosity from all involved.⁹⁰ However, the restorative process provides openness and acceptance that ensures everyone, including the youth who committed the harm, to conclude the process in agreement with the restitution and restoration.⁹¹

While there has been some pushback from communities, this comes mostly from a misunderstanding, rather than from a disbelief in the less-mainstream process.⁹² Moving forward, continuing education and awareness of the restorative justice process can create a more enthusiastic, receptive environ-

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Ramirez, *supra* note 52.

⁹² *Id.*

ment.⁹³ This can be done through sharing the successful cases the Chicago RJ Hubs experience because the more success the communities see, the more communities will pay attention and trust the process.⁹⁴ As Tomas Ramirez noted, the growth of the communities is ongoing and developing in a way that will sustain the court long-term.⁹⁵

It is important to keep in mind that restorative justice is not a one-size-fits-all approach to community growth and healing.⁹⁶ Different communities require different approaches, a nod to the individualized nature of restorative justice.⁹⁷ Each community experiences its own degrees of social-economic growth, demographics, and current conflicts.⁹⁸ Not all communities are in a position in which they are ready to accept certain forms of restorative justice. Some communities might require growth and education preceding the implementation of an RJ Hub.⁹⁹ Therefore, it is imperative to the success of restorative justice to consider the time each community needs to develop and organize its restorative justice model.¹⁰⁰ Additionally, different harms require different approaches¹⁰¹ Cases involving harms such as murder request more generosity from the victim's family and loved ones than from the youth who committed the harm, for example.¹⁰² In certain instances, creativity in the restorative approach and an understanding of the harm's complexity is required.¹⁰³ These needs, however, do not exclude harms from being successfully healed through the restorative justice process.¹⁰⁴

CONCLUSION

The long-term goals of Chicago's RJ Hubs include the following: normalizing restorative justice practices; foregoing juvenile detention; creating safer communities; decreasing violence; decriminalizing communities; improving community members' quality of life through education, employment, and

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

community engagement; and increasing peer support and expectations.¹⁰⁵ Attaining these goals is as much a community effort as the restorative justice process itself. Through education, open-mindedness, and empathy, our communities can become more receptive to the restorative justice process and continue to expand the RJ Hubs across the state.

¹⁰⁵ *Goals and Outcomes*, COMMUNITY RJ HUBS, available at <https://rjhubs.org/goals-and-outcomes/>.